

**AMENDMENTS TO SETTLEMENT AGREEMENTS
REQUIREMENTS**

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Margaret Dayton

This act modifies provisions governing state settlement agreements. This act renumbers sections, differentiates between purely financial settlement agreements and those requiring state action, and requires gubernatorial and legislative approval for certain settlement agreements requiring state action. This act authorizes the governor or the Legislature to void settlement agreements lacking proper approval. This act requires the attorney general to report the state's potential financial and legal exposure to the Legislative Management Committee.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

63-38b-101, as last amended by Chapter 375, Laws of Utah 1997

63-38b-102, as enacted by Chapter 313, Laws of Utah 1995

67-5-1, as last amended by Chapters 212 and 316, Laws of Utah 2000

ENACTS:

63-38b-301, Utah Code Annotated 1953

63-38b-302, Utah Code Annotated 1953

63-38b-303, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

63-38b-201, (Renumbered from 63-38b-103, as enacted by Chapter 313, Laws of Utah 1995)

63-38b-202, (Renumbered from 63-38b-104, as last amended by Chapter 41, Laws of Utah 2001)

63-38b-401, (Renumbered from 63-38b-105, as enacted by Chapter 41, Laws of Utah 2001)

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **63-38b-101** is amended to read:

Part 1. General Provisions

63-38b-101. Definitions.

As used in this chapter:

(1) (a) "Action settlement agreement" includes a stipulation, consent decree, settlement agreement, or any other legally binding document or representation that resolves a threatened or pending lawsuit between the state and another party by requiring the state to take legally binding action.

(b) "Action settlement agreement" includes stipulations, consent decrees, settlement agreements, and other legally binding documents or representations resolving a dispute between the state and another party when the state is required to pay money and required to take legally binding action.

(c) "Action settlement agreement" does not include:

(i) the internal process established by the Department of Transportation to resolve construction contract claims;

(ii) any resolution of an employment dispute or claim made by an employee of the state of Utah against the state as employer;

(iii) adjudicative orders issued by the State Tax Commission, the Public Service Commission, the Labor Commission, or the Department of Workforce Services; or

(iv) the settlement of disputes arising from audits, defaults, or breaches of permits, contracts of sale, easements, or leases by the School and Institutional Trust Lands Administration.

~~[(1)]~~ (2) (a) "Agency" means each department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state.

(b) "Agency" includes the legislative branch, the judicial branch, the attorney general's office, the State Office of Education, the Board of Regents, the institutional councils of each higher education institution, and each higher education institution.

(3) (a) "Financial settlement agreement" ~~[means]~~ includes a stipulation, consent decree,

settlement agreement, and any other legally binding document or representation that resolves a dispute between the state and another party exclusively by requiring the payment of money from one party to the other.

(b) "Financial settlement agreement" does not [~~mean~~] include:

(i) the internal process established by the Department of Transportation to resolve construction contract claims;

(ii) adjudicative orders issued by the State Tax Commission, Public Service Commission, Labor Commission, or the Department of Workforce Services; or

(iii) the settlement of disputes arising from audits, defaults, or breaches of permits, contracts of sale, easements, or leases by the School and Institutional Trust Lands Administration.

[~~(2)~~] (4) "Government entities" means the state and its political subdivisions.

Section 2. Section **63-38b-102** is amended to read:

63-38b-102. Notice of voidableness of settlement agreements.

Each financial settlement agreement that might cost government entities more than \$100,000 that is executed by an agency in violation of this chapter, and each action settlement agreement that is executed by an agency in violation of this chapter, is voidable by the governor [~~and~~] or the Legislature as provided in this chapter.

Section 3. Section **63-38b-201**, which is renumbered from Section 63-38b-103 is renumbered and amended to read:

Part 2. Financial Settlement Agreements

~~[63-38b-103].~~ **63-38b-201. Governor to approve financial settlement agreements.**

(1) Before legally binding the state by executing a financial settlement agreement that might cost government entities more than \$100,000 to implement, an agency shall submit the proposed financial settlement agreement to the governor for his approval or rejection.

(2) The governor shall approve or reject each financial settlement agreement.

(3) (a) If the governor approves the financial settlement agreement, the agency may execute the agreement.

(b) If the governor rejects the financial settlement agreement, the agency may not execute

the agreement.

(4) If an agency executes a financial settlement agreement without obtaining the governor's approval under this section, the governor may issue an executive order declaring the settlement agreement void.

Section 4. Section **63-38b-202**, which is renumbered from Section 63-38b-104 is renumbered and amended to read:

~~[63-38b-104].~~ **63-38b-202. Legislative review and approval of financial settlement agreements.**

(1) (a) Before legally binding the state by executing a financial settlement agreement that might cost government entities more than \$500,000 to implement, an agency shall:

(i) submit the proposed financial settlement agreement to the governor for his approval or rejection as required by Section ~~[63-38b-103]~~ 63-38b-201; and

(ii) if the governor approves the financial settlement agreement, submit the financial settlement agreement to the Legislative Management Committee for its review and recommendations.

(b) The Legislative Management Committee shall review the financial settlement agreement and may:

(i) recommend that the agency execute the financial settlement agreement;

(ii) recommend that the agency reject the financial settlement agreement; or

(iii) recommend to the governor that he call a special session of the Legislature to review and approve or reject the financial settlement agreement.

(2) (a) Before legally binding the state by executing a financial settlement agreement that might cost government entities more than \$1,000,000 to implement, an agency shall:

(i) submit the proposed financial settlement agreement to the governor for his approval or rejection as required by Section ~~[63-38b-103]~~ 63-38b-201; and

(ii) if the governor approves the financial settlement agreement, submit the financial settlement agreement to the Legislature for its approval in an annual general session or a special session.

(b) (i) If the Legislature approves the financial settlement agreement, the agency may execute the agreement.

(ii) If the Legislature rejects the financial settlement agreement, the agency may not execute the agreement.

(c) If an agency executes a financial settlement agreement without obtaining the Legislature's approval under this Subsection (2):

(i) the governor may issue an executive order declaring the settlement agreement void; or

(ii) the Legislature may pass a joint resolution declaring the settlement agreement void.

Section 5. Section **63-38b-301** is enacted to read:

Part 3. Action Settlement Agreements

63-38b-301. Cost evaluation of action settlement agreements.

(1) Before legally binding the state to an action settlement agreement that might cost the state a total of \$100,000 or more to implement, an agency shall estimate the cost of implementing the action settlement agreement and submit that cost estimate to the governor and the Legislative Management Committee.

(2) The Legislative Management Committee may:

(a) direct its staff to make an independent cost estimate of the cost of implementing the action settlement agreement; and

(b) affirmatively adopt a cost estimate as the benchmark for determining which authorizations established by this part are necessary.

Section 6. Section **63-38b-302** is enacted to read:

63-38b-302. Governor to approve action settlement agreements.

(1) Before legally binding the state by executing an action settlement agreement that might cost government entities more than \$100,000 to implement, an agency shall submit the proposed settlement agreement to the governor for his approval or rejection.

(2) The governor shall approve or reject each action settlement agreement.

(3) (a) If the governor approves the action settlement agreement, the agency may execute the agreement.

(b) If the governor rejects the action settlement agreement, the agency may not execute the agreement.

(4) If an agency executes an action settlement agreement without obtaining the governor's approval under this section, the governor may issue an executive order declaring the settlement agreement void.

Section 7. Section **63-38b-303** is enacted to read:

63-38b-303. Legislative review and approval of action settlement agreements.

(1) (a) Before legally binding the state by executing an action settlement agreement that might cost government entities more than \$500,000 to implement, an agency shall:

(i) submit the proposed action settlement agreement to the governor for his approval or rejection as required by Section 63-38b-302; and

(ii) if the governor approves the action settlement agreement, submit the action settlement agreement to the Legislative Management Committee for its review and recommendations.

(b) The Legislative Management Committee shall review the action settlement agreement and may:

(i) recommend that the agency execute the settlement agreement;

(ii) recommend that the agency reject the settlement agreement; or

(iii) recommend to the governor that he call a special session of the Legislature to review and approve or reject the settlement agreement.

(2) (a) Before legally binding the state by executing an action settlement agreement that might cost government entities more than \$1,000,000 to implement, an agency shall:

(i) submit the proposed action settlement agreement to the governor for his approval or rejection as required by Section 63-38b-302; and

(ii) if the governor approves the action settlement agreement, submit the action settlement agreement to the Legislature for its approval in an annual general session or a special session.

(b) (i) If the Legislature approves the action settlement agreement, the agency may execute the agreement.

(ii) If the Legislature rejects the action settlement agreement, the agency may not execute

the agreement.

(c) If an agency executes an action settlement agreement without obtaining the Legislature's approval under this Subsection (2):

(i) the governor may issue an executive order declaring the action settlement agreement void;
or

(ii) the Legislature may pass a joint resolution declaring the action settlement agreement void.

Section 8. Section **63-38b-401**, which is renumbered from Section 63-38b-105 is renumbered and amended to read:

Part 4. Condemnation and Inverse Condemnation Settlement Agreements

~~[63-38b-105].~~ **63-38b-401. Condemnation, inverse condemnation settlements involving the Department of Transportation.**

(1) Notwithstanding the provisions of this chapter, the Department of Transportation need not obtain the approval of the governor or the Legislature ~~[it]~~ for financial or action settlement agreements [resolving] that resolve condemnation or inverse condemnation cases.

(2) ~~[Settlement]~~ Financial settlement agreements involving condemnation or inverse condemnation cases for \$1,000,000 to \$2,000,000 over the Department of Transportation's original appraisal shall be presented to the Transportation Commission for approval or rejection.

(3) (a) ~~[Settlement]~~ Financial settlement agreements involving condemnation or inverse condemnation cases for more than \$2,000,000 over the Department of Transportation's original appraisal and all action settlement agreements that resolve condemnation or inverse condemnation cases shall be presented:

(i) to the Transportation Commission for approval or rejection; and
(ii) if the financial or action settlement agreement is approved by the Transportation Commission, to the Legislative Management Committee.

(b) The Legislative Management Committee may recommend approval or rejection of the financial or action settlement agreement.

(4) (a) The Department of Transportation may not enter into a financial settlement agreement

that resolves a condemnation or inverse condemnation case and requires payment of \$1,000,000 to \$2,000,000 over the Department of Transportation's original appraisal until the Transportation Commission has approved the agreement.

(b) The Department of Transportation may not enter into a financial settlement agreement that resolves a condemnation or inverse condemnation case and requires payment of more than \$2,000,000 over the Department of Transportation's original appraisal or enter into an action settlement agreement that resolves a condemnation or inverse condemnation case until:

- (i) the Transportation Commission has approved the agreement; and
- (ii) the Legislative Management Committee has reviewed [~~and approved~~] the agreement.

Section 9. Section **67-5-1** is amended to read:

67-5-1. General duties.

The attorney general shall:

(1) perform all duties in a manner consistent with the attorney-client relationship under Section 67-5-17;

(2) except as provided in Sections 10-3-928 and 17-18-1, attend the Supreme Court and the Court of Appeals of this state, and all courts of the United States, and prosecute or defend all causes to which the state, or any officer, board, or commission of the state in an official capacity is a party; and take charge, as attorney, of all civil legal matters in which the state is interested;

(3) after judgment on any cause referred to in Subsection (2), direct the issuance of process as necessary to execute the judgment;

(4) account for, and pay over to the proper officer, all moneys that come into the attorney general's possession that belong to the state;

(5) keep a file of all cases in which the attorney general is required to appear, including any documents and papers showing the court in which the cases have been instituted and tried, and whether they are civil or criminal, and:

(a) if civil, the nature of the demand, the stage of proceedings, and when prosecuted to judgment, a memorandum of the judgment and of any process issued whether satisfied, and if not satisfied, the return of the sheriff;

(b) if criminal, the nature of the crime, the mode of prosecution, the stage of proceedings, and when prosecuted to sentence, a memorandum of the sentence and of the execution, if the sentence has been executed, if not executed, of the reason of the delay or prevention; and

(c) deliver this information to the attorney general's successor in office;

(6) exercise supervisory powers over the district and county attorneys of the state in all matters pertaining to the duties of their offices, and from time to time require of them reports of the condition of public business entrusted to their charge;

(7) give the attorney general's opinion in writing and without fee to the Legislature or either house, and to any state officer, board, or commission, and to any county attorney or district attorney, when required, upon any question of law relating to their respective offices;

(8) when required by the public service or directed by the governor, assist any district or county attorney in the discharge of his duties;

(9) purchase in the name of the state, under the direction of the state Board of Examiners, any property offered for sale under execution issued upon judgments in favor of or for the use of the state, and enter satisfaction in whole or in part of the judgments as the consideration of the purchases;

(10) when the property of a judgment debtor in any judgment mentioned in Subsection (9) has been sold under a prior judgment, or is subject to any judgment, lien, or encumbrance taking precedence of the judgment in favor of the state, redeem the property, under the direction of the state Board of Examiners, from the prior judgment, lien, or encumbrance, and pay all money necessary for the redemption, upon the order of the state Board of Examiners, out of any money appropriated for these purposes;

(11) when in his opinion it is necessary for the collection or enforcement of any judgment, institute and prosecute on behalf of the state any action or proceeding necessary to set aside and annul all conveyances fraudulently made by the judgment debtors, and pay the cost necessary to the prosecution, when allowed by the state Board of Examiners, out of any money not otherwise appropriated;

(12) discharge the duties of a member of all official boards of which the attorney general is

or may be made a member by the Utah Constitution or by the laws of the state, and other duties prescribed by law;

(13) institute and prosecute proper proceedings in any court of the state or of the United States, to restrain and enjoin corporations organized under the laws of this or any other state or territory from acting illegally or in excess of their corporate powers or contrary to public policy, and in proper cases forfeit their corporate franchises, dissolve the corporations, and wind up their affairs;

(14) institute investigations for the recovery of all real or personal property that may have escheated or should escheat to the state, and for that purpose, subpoena any persons before any of the district courts to answer inquiries and render accounts concerning any property, examine all books and papers of any corporations, and when any real or personal property is discovered that should escheat to the state, institute suit in the district court of the county where the property is situated for its recovery, and escheat that property to the state;

(15) administer the Children's Justice Center as a program to be implemented in various counties pursuant to Sections 67-5b-101 through 67-5b-107;

(16) assist the Constitutional Defense Council as provided in Title 63C, Chapter 4, Constitutional Defense Council;

(17) investigate and prosecute criminal violations of Title 26, Chapter 20, False Claims Act, in accordance with Section 26-20-13; [~~and~~]

(18) investigate and prosecute complaints of abuse, neglect, or exploitation of patients at health care facilities that receive payments under the state Medicaid program[-]; and

(19) (a) report at least twice per year to the Legislative Management Committee on any pending or anticipated lawsuits, other than eminent domain lawsuits, that might:

(i) cost the state more than \$500,000; or

(ii) require the state to take legally binding action that would cost more than \$500,000 to implement; and

(b) if the meeting is closed, include an estimate of the state's potential financial or other legal exposure in that report.