

1                                   **AMENDMENTS TO SETTLEMENT AGREEMENTS**

2   **REQUIREMENTS**

3   2002 GENERAL SESSION

4   STATE OF UTAH

5   **Sponsor: Margaret Dayton**

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

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

14   AMENDS:

15                   **63-38b-101**, as last amended by Chapter 375, Laws of Utah 1997

16                   **63-38b-102**, as enacted by Chapter 313, Laws of Utah 1995

17                   **67-5-1**, as last amended by Chapters 212 and 316, Laws of Utah 2000

18   ENACTS:

19                   **63-38b-301**, Utah Code Annotated 1953

20                   **63-38b-302**, Utah Code Annotated 1953

21                   **63-38b-303**, Utah Code Annotated 1953

22   RENUMBERS AND AMENDS:

23                   **63-38b-201**, (Renumbered from 63-38b-103, as enacted by Chapter 313, Laws of Utah  
24   1995)

25                   **63-38b-202**, (Renumbered from 63-38b-104, as last amended by Chapter 41, Laws of Utah  
26   2001)

27                   **63-38b-401**, (Renumbered from 63-38b-105, as enacted by Chapter 41, Laws of Utah



28 2001)

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

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

31 **Part 1. General Provisions**

32 **63-38b-101. Definitions.**

33 As used in this chapter:

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

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

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

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

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

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

49 ~~(1)~~ (2) (a) "Agency" means each department, commission, board, council, agency,  
50 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,  
51 unit, bureau, panel, or other administrative unit of the state.

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

55 (3) (a) "Financial settlement agreement" [~~means~~] includes a stipulation, consent decree,  
56 settlement agreement, and any other legally binding document or representation that resolves a  
57 dispute between the state and another party exclusively by requiring the payment of money from  
58 one party to the other.

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

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

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

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

66 [~~(2)~~] (4) "Government entities" means the state and its political subdivisions.

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

68 **63-38b-102. Notice of voidableness of settlement agreements.**

69 Each financial settlement agreement that might cost government entities more than  
70 \$100,000 that is executed by an agency in violation of this chapter, and each action settlement  
71 agreement that is executed by an agency in violation of this chapter, is voidable by the governor  
72 [~~and~~] or the Legislature as provided in this chapter.

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

75 **Part 2. Financial Settlement Agreements**

76 [~~63-38b-103~~]. **63-38b-201. Governor to approve settlement agreements.**

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

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

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

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

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

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

90           ~~[63-38b-104].~~           **63-38b-202. Legislative review and approval of settlement**  
91 **agreements.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

121 **Part 3. Action Settlement Agreements**122 **63-38b-301. Cost evaluation of action settlement agreements.**

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

127 (2) The Legislative Management Committee may:

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

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

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

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

136 (b) the Legislature may pass a joint resolution declaring the action settlement agreement  
137 void.

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

139 **63-38b-302. Governor to approve action settlement agreements.**

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

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

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

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

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

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

152 **63-38b-303. Legislative review and approval of action settlement agreements.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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**Part 4. Condemnation Settlement Agreements**

~~[63-38b-105].~~      63-38b-401.      **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 in financial or action settlement agreements resolving condemnation cases.

(2) ~~[Settlement]~~ Financial settlement agreements involving 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 cases for more than \$2,000,000 over the Department of Transportation's original appraisal and all action settlement agreements 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 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 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 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

214 Section 67-5-17;

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

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

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

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

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

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

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

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

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

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

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



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

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

256 (12) discharge the duties of a member of all official boards of which the attorney general  
257 is or may be made a member by the Utah Constitution or by the laws of the state, and other duties  
258 prescribed by law;

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

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

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

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

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

276 (18) investigate and prosecute complaints of abuse, neglect, or exploitation of patients at  
277 health care facilities that receive payments under the state Medicaid program[-]; and  
278 (19) (a) report twice a year to the Legislative Management Committee on any pending or  
279 anticipated lawsuits, other than eminent domain lawsuits, that might:  
280 (i) cost the state more than \$500,000; or  
281 (ii) require the state to take legally binding action; and  
282 (b) include in that report, an estimate of the state's potential financial or other legal  
283 exposure.

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**Legislative Review Note**  
**as of 1-24-02 9:18 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**