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GOVERNMENTAL IMMUNITY LIMITS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Howard A. Stephenson

House Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill modifies provisions under the Governmental Immunity Act of Utah and provisions related to the Board of Examiners.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ permits the Board of Examiners to review claims against certain political subdivisions of the state;
- ▶ requires that certain unpaid or unsettled claims against certain political subdivisions be presented to the Board of Examiners; and
- ▶ raises the limitation for damages awardable against a governmental entity for multiple claims and sets a cap for the total amount awardable for multiple claims in a single occurrence.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2007.

Utah Code Sections Affected:

AMENDS:

- 63-6-1**, as last amended by Chapters 303 and 320, Laws of Utah 1983
- 63-6-11**, as last amended by Chapter 150, Laws of Utah 1963
- 63-6-13**, as last amended by Chapter 20, Laws of Utah 1995

30 **63-6-16**, Utah Code Annotated 1953

31 **63-30d-604**, as enacted by Chapter 267, Laws of Utah 2004

32 **Uncodified Material Affected:**

33 ENACTS UNCODIFIED MATERIAL



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

36 Section 1. Section **63-6-1** is amended to read:

37 **63-6-1. Members -- Functions.**

38 (1) As used in this chapter:

39 (a) "Political subdivision" means any county, city, town, school district, public transit
40 district, redevelopment agency, special improvement or taxing district, special district, an entity
41 created by an interlocal agreement adopted under Title 11, Chapter 13, Interlocal Cooperation
42 Act, or other governmental subdivision or public corporation.

43 (b) "State" means the state of Utah, and includes each office, department, division,
44 agency, authority, commission, board, institution, college, university, Children's Justice Center,
45 or other instrumentality of the state.

46 (2) The governor, the state auditor, and the attorney general shall constitute a Board of
47 Examiners, with power to examine all claims against the state or a political subdivision, for the
48 payment of which funds appropriated by the Legislature or derived from any other source are
49 not available.

50 (3) No claim against the state or a political subdivision, for the payment of which
51 specifically designated funds are required to be appropriated by the Legislature shall be passed
52 upon by the Legislature without having been considered and acted upon by the Board of
53 Examiners.

54 (4) The governor shall be the president, and the state auditor shall be the secretary of
55 the board, and in the absence of either an officer pro tempore may be elected from among the
56 members of the board.

57 Section 2. Section **63-6-11** is amended to read:

58 **63-6-11. Form for presentment of claim against the state or political subdivision.**

59 Any person having a claim against the state or a political subdivision, for which funds
60 have not been provided for the payment thereof, or the settlement of which is not otherwise
61 provided for by law, must present the same to the Board of Examiners, accompanied by a
62 statement showing the facts constituting the claim.

63 Section 3. Section **63-6-13** is amended to read:

64 **63-6-13. Adjustment of claims -- Recommendations to Legislature.**

65 (1) The board must, at the time designated, proceed to examine and adjust all claims
66 referred to in Section 63-6-11, and may hear evidence in support of or against them, and shall
67 report to the Legislature [~~such~~] the facts and recommendations concerning them as it may think
68 proper.

69 (2) In making its recommendations, the board may state and use any official or
70 personal knowledge which any member of the board may have touching such claims.

71 (3) The board shall not pass upon or send to the Legislature any claim for which the
72 state or a political subdivision would not otherwise be liable were it not for its sovereign
73 immunity. [~~But all~~]

74 (4) Notwithstanding Subsection (3), claims wherein the state or a political subdivision
75 would be liable, were it not for its sovereign immunity, whether recommended by the board for
76 approval or disapproval, shall be reported by the board to the Legislature with appropriate
77 findings and recommendations as above provided.

78 Section 4. Section **63-6-16** is amended to read:

79 **63-6-16. Reconsideration of rejected claims.**

80 The board shall not entertain for a third time a demand against the state or a political
81 subdivision once rejected by it or by the Legislature, unless [~~such~~] the facts or reasons are
82 presented to the board as in actions between private parties would furnish sufficient ground for
83 granting a new trial.

84 Section 5. Section **63-30d-604** is amended to read:

85 **63-30d-604. Limitation of judgments against governmental entity or employee --**

86 **Process for adjustment of limits.**

87 (1) (a) Except as provided in Subsections (2) and (3), if a judgment for damages for
88 personal injury against a governmental entity, or an employee whom a governmental entity has
89 a duty to indemnify, exceeds \$553,500 for one person in any one occurrence, [~~or \$1,107,000~~
90 ~~for two or more persons in any one occurrence,~~] the court shall reduce the judgment to that
91 amount.

92 (b) A court may not award judgment of more than \$553,500 for injury or death to one
93 person regardless of whether or not the function giving rise to the injury is characterized as
94 governmental.

95 (c) Except as provided in Subsection (2), if a judgment for property damage against a
96 governmental entity, or an employee whom a governmental entity has a duty to indemnify,
97 exceeds \$221,400 in any one occurrence, the court shall reduce the judgment to that amount,
98 regardless of whether or not the function giving rise to the damage is characterized as
99 governmental.

100 (d) There is a \$2,000,000 limit to the aggregate amount of individual awards that may
101 be awarded in relation to a single occurrence.

102 (2) The damage limits established in this section do not apply to damages awarded as
103 compensation when a governmental entity has taken or damaged private property for public use
104 without just compensation.

105 (3) The limitations of judgments established in Subsection (1) shall be adjusted
106 according to the methodology set forth in Subsection (4).

107 (4) (a) Each year, the risk manager shall:

108 (i) calculate the consumer price index as provided in Sections 1(f)(4) and 1(f)(5),
109 Internal Revenue Code;

110 (ii) calculate the increase or decrease in the limitation of judgment amounts established
111 in this section as a percentage equal to the percentage difference between the consumer price
112 index for the preceding calendar year and the consumer price index for calendar year 2003; and

113 (iii) after making an increase or decrease under Subsection (4)(a)(ii), round up the

114 limitation of judgment amounts established in Subsection (1) to the nearest \$100.

115 (b) Each even-numbered year after 2004, the risk manager shall make rules, which
116 become effective no later than July 1, that establish the new limitation of judgment amounts.

117 (c) Adjustments made by the risk manager to the limitation of judgment amounts
118 established by this section have prospective effect only from the date the rules establishing the
119 new limitation of judgment take effect and those adjusted limitations of judgment apply only to
120 claims for injuries or losses that occur after the effective date of the rules that establish those
121 new limitations of judgment.

122 **Section 6. Request for report from state risk manager.**

123 On or before October 1, 2006, the state risk manager is requested to:

124 (1) invite the early and continued participation of all involved parties in the
125 development of a process for the state and its political subdivisions to contribute to and
126 administer an equitable pool for catastrophic claims made against the respective entities;

127 (2) recommend strategies for the creation, composition, and management of a board or
128 boards to administer a statewide catastrophic claims pool; and

129 (3) consider and report to the Political Subdivisions Interim Committee regarding
130 Subsections (1) and (2).

131 **Section 7. Effective date.**

132 This bill takes effect on July 1, 2007.