

Representative Julie Fisher proposes the following substitute bill:

DEPARTMENT OF TRANSPORTATION SETTLEMENT

AGREEMENT AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Julie Fisher

Senate Sponsor: Kevin T. Van Tassell

LONG TITLE

General Description:

This bill modifies the State Settlement Agreements Act by amending provisions relating to certain Department of Transportation construction contract claim settlement agreements and settlement agreements that resolve bid or request for proposal protests.

Highlighted Provisions:

This bill:

- ▶ provides definitions;
- ▶ requires the Department of Transportation to obtain approval of the Transportation Commission or the governor or review by the Legislative Management Committee for certain construction contract claim settlement agreements if the claim is being recommended by the Department of Transportation's claims review board;
- ▶ prohibits the Department of Transportation from entering into a construction contract claim settlement agreement that is being recommended by the Department of Transportation's claims review board in certain circumstances until the Transportation Commission or the governor has approved the agreement or the Legislative Management Committee has reviewed the agreement;
- ▶ requires the Department of Transportation to obtain approval of the Transportation



26 Commission or the governor or review by the Legislative Management Committee for certain
 27 settlement agreements that resolve a bid or request for proposal protest; and
 28 ▶ prohibits the Department of Transportation from entering into a settlement
 29 agreement that resolves a bid or request for proposal protest in certain
 30 circumstances until the Transportation Commission or the governor has approved
 31 the agreement or the Legislative Management Committee has reviewed the
 32 agreement.

33 **Money Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 None

37 **Utah Code Sections Affected:**

38 AMENDS:

39 **63G-6-801**, as renumbered and amended by Laws of Utah 2008, Chapter 382

40 ENACTS:

41 **63G-10-402**, Utah Code Annotated 1953

42 **63G-10-403**, Utah Code Annotated 1953



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

45 Section 1. Section **63G-6-801** is amended to read:

46 **63G-6-801. Protest to chief procurement officer -- Time -- Authority to resolve**
 47 **protest.**

48 (1) Any actual or prospective bidder, offeror, or contractor who is aggrieved in
 49 connection with the solicitation or award of a contract may protest to the chief procurement
 50 officer or the head of a purchasing agency. A protest with respect to an invitation for bids or a
 51 request for proposals shall be submitted in writing prior to the opening of bids or the closing
 52 date for proposals, unless the aggrieved person did not know and should not have known of the
 53 facts giving rise to the protest prior to bid opening or the closing date for proposals. The
 54 protest shall be submitted in writing within five working days after the aggrieved person knows
 55 or should have known of the facts giving rise thereto.

56 (2) [~~The~~] Subject to the applicable requirements in Section 63G-10-403, the chief

57 procurement officer, the head of a purchasing agency, or a designee of either officer shall have
58 the authority, prior to the commencement of an action in court concerning the controversy, to
59 settle and resolve the protest.

60 Section 2. Section **63G-10-402** is enacted to read:

61 **Part 4. Department of Transportation Settlement Agreements**

62 **63G-10-402. Department of Transportation construction contract claim**
63 **settlement agreement approval and review.**

64 (1) As used in this section:

65 (a) "Claims review board" means a committee established by the department to hear
66 unresolved claims and make recommendations for settlement to the deputy director of the
67 department.

68 (b) "Department" means the Department of Transportation created in Section 72-1-201.

69 (c) "Settlement agreement" includes stipulations, consent decrees, settlement
70 agreements, or other legally binding documents or representations resolving a dispute between
71 the department and another party when the department is required to pay money or required to
72 take legally binding action.

73 (2) The department shall obtain the approval of the Transportation Commission or the
74 governor or review by the Legislative Management Committee of a settlement agreement that
75 involves a construction contract claim in accordance with this section.

76 (3) A construction contract claim settlement agreement that is being recommended by
77 the department's claims review board that might cost government entities more than \$100,000
78 to implement shall be presented to the Transportation Commission for approval or rejection.

79 (4) A construction contract claim settlement agreement that is being recommended by
80 the department's claims review board that might cost government entities more than \$500,000
81 to implement shall be presented:

82 (a) to the Transportation Commission for approval or rejection; and

83 (b) to the governor for approval or rejection.

84 (5) (a) A construction contract claim settlement agreement that is being recommended
85 by the department's claims review board that might cost government entities more than
86 \$1,000,000 to implement shall be presented:

87 (i) to the Transportation Commission for approval or rejection;

88 (ii) to the governor for approval or rejection; and
89 (iii) if the construction contract claim settlement agreement is approved by the
90 Transportation Commission and the governor, to the Legislative Management Committee.

91 (b) The Legislative Management Committee may recommend approval or rejection of
92 the construction contract claim settlement agreement.

93 (6) (a) The department may not enter into a construction contract claim settlement
94 agreement that is being recommended by the department's claims review board that might cost
95 government entities more than \$100,000 to implement until the Transportation Commission
96 has approved the agreement.

97 (b) The department may not enter into a construction contract claim settlement
98 agreement that is being recommended by the department's claims review board that might cost
99 government entities more than \$500,000 to implement until the Transportation Commission
100 and the governor have approved the agreement.

101 (c) The department may not enter into a construction contract claim settlement
102 agreement that is being recommended by the department's claims review board that might cost
103 government entities more than \$1,000,000 to implement until:

104 (i) the Transportation Commission has approved the agreement;

105 (ii) the governor has approved the agreement; and

106 (iii) the Legislative Management Committee has reviewed the agreement.

107 Section 3. Section **63G-10-403** is enacted to read:

108 **63G-10-403. Department of Transportation bid or request for proposal protest**
109 **settlement agreement approval and review.**

110 (1) As used in this section:

111 (a) "Department" means the Department of Transportation created in Section 72-1-201.

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

116 (2) The department shall obtain the approval of the Transportation Commission or the
117 governor or review by the Legislative Management Committee of a settlement agreement that
118 involves a bid or request for proposal protest in accordance with this section.

119 (3) A settlement agreement that is being settled by the department as part of a bid or
120 request for proposal protest, in accordance with Section 63G-6-801, that might cost
121 government entities more than \$100,000 to implement shall be presented to the Transportation
122 Commission for approval or rejection.

123 (4) A settlement agreement that is being settled by the department as part of a bid or
124 request for proposal protest, in accordance with Section 63G-6-801, that might cost
125 government entities more than \$500,000 to implement shall be presented:

126 (a) to the Transportation Commission for approval or rejection; and

127 (b) to the governor for approval or rejection.

128 (5) (a) A settlement agreement that is being settled by the department as part of a bid or
129 request for proposal protest, in accordance with Section 63G-6-801, that might cost
130 government entities more than \$1,000,000 to implement shall be presented:

131 (i) to the Transportation Commission for approval or rejection;

132 (ii) to the governor for approval or rejection; and

133 (iii) if the settlement agreement is approved by the Transportation Commission and the
134 governor, to the Legislative Management Committee.

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

137 (6) (a) The department may not enter into a settlement agreement that resolves a bid or
138 request for proposal protest, in accordance with Section 63G-6-801, that might cost
139 government entities more than \$100,000 to implement until the Transportation Commission
140 has approved the agreement.

141 (b) The department may not enter into a settlement agreement that resolves a bid or
142 request for proposal protest, in accordance with Section 63G-6-801, that might cost
143 government entities more than \$500,000 to implement until the Transportation Commission
144 and the governor have approved the agreement.

145 (c) The department may not enter into a settlement agreement that resolves a bid or
146 request for proposal protest in accordance with Section 63G-6-801 that might cost government
147 entities more than \$1,000,000 to implement until:

148 (i) the Transportation Commission has approved the agreement;

149 (ii) the governor has approved the agreement; and

150

(iii) the Legislative Management Committee has reviewed the agreement.