

1 **EXCESS DAMAGES CLAIMS**

2 2017 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Jani Iwamoto**

5 House Sponsor: V. Lowry Snow

6

7 **LONG TITLE**

8 **General Description:**

9 This bill addresses claims for damages for personal injury in an amount that exceeds a
10 statutory limit.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ establishes a process for addressing personal injury claims to the extent that they
14 exceed a statutory limit;
- 15 ▶ provides for Executive Appropriations Committee evaluation of excess damages
16 claims and for a recommendation about whether the claims should be paid;
- 17 ▶ provides for the appointment of a special master to help in the process of evaluating
18 certain excess damages claims;
- 19 ▶ modifies the inflationary adjustment formula for personal injury damages caps; and
- 20 ▶ modifies the permissible uses of the General Fund Budget Reserve Account.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **63G-7-604**, as renumbered and amended by Laws of Utah 2008, Chapter 382



- 28 **63G-7-701**, as last amended by Laws of Utah 2013, Chapter 278
- 29 **63G-9-201**, as last amended by Laws of Utah 2016, Chapter 350
- 30 **63G-9-302**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 31 **63J-1-312**, as last amended by Laws of Utah 2015, Chapter 214

32 ENACTS:

- 33 **63G-7-605**, Utah Code Annotated 1953
- 34 **63G-7-1001**, Utah Code Annotated 1953
- 35 **63G-7-1002**, Utah Code Annotated 1953
- 36 **63G-7-1003**, Utah Code Annotated 1953
- 37 **63G-7-1004**, Utah Code Annotated 1953
- 38 **63G-7-1005**, Utah Code Annotated 1953

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

41 Section 1. Section **63G-7-604** is amended to read:

42 **63G-7-604. Limitation of judgments against governmental entity or employee --**
 43 **Process for adjustment of limits.**

44 (1) (a) Except as provided in Subsection (2) and subject to Subsection (3), if a
 45 judgment for damages for personal injury against a governmental entity, or an employee whom
 46 a governmental entity has a duty to indemnify, exceeds \$583,900 for one person in any one
 47 occurrence, the court shall reduce the judgment to that amount.

48 (b) A court may not award judgment of more than the amount in effect under
 49 Subsection (1)(a) for injury or death to one person regardless of whether or not the function
 50 giving rise to the injury is characterized as governmental.

51 (c) Except as provided in Subsection (2) and subject to Subsection (3), if a judgment
 52 for property damage against a governmental entity, or an employee whom a governmental
 53 entity has a duty to indemnify, exceeds \$233,600 in any one occurrence, the court shall reduce
 54 the judgment to that amount, regardless of whether or not the function giving rise to the
 55 damage is characterized as governmental.

56 (d) Subject to Subsection (3), there is a \$2,000,000 limit to the aggregate amount of
 57 individual awards that may be awarded in relation to a single occurrence.

58 (2) The damage limits established in this section do not apply to damages awarded as

59 compensation when a governmental entity has taken or damaged private property for public use
60 without just compensation.

61 (3) The limitations of judgments established in Subsection (1) shall be adjusted
62 according to the methodology set forth in ~~[Subsection (4)]~~ Section 63G-7-605.

63 ~~[(4)(a) Each even-numbered year, the risk manager shall:]~~

64 ~~[(i) calculate the consumer price index as provided in Sections 1(f)(4) and 1(f)(5),
65 Internal Revenue Code;]~~

66 ~~[(ii) calculate the increase or decrease in the limitation of judgment amounts
67 established in this section as a percentage equal to the percentage change in the Consumer
68 Price Index since the previous adjustment made by the risk manager or the Legislature; and]~~

69 ~~[(iii) after making an increase or decrease under Subsection (4)(a)(ii), round up the
70 limitation of judgment amounts established in Subsection (1) to the nearest \$100.]~~

71 ~~[(b) Each even-numbered year, the risk manager shall make rules, which become
72 effective no later than July 1, that establish the new limitation of judgment amounts calculated
73 under Subsection (4)(a).]~~

74 ~~[(c) Adjustments made by the risk manager to the limitation of judgment amounts
75 established by this section have prospective effect only from the date the rules establishing the
76 new limitation of judgment take effect and those adjusted limitations of judgment apply only to
77 claims for injuries or losses that occur after the effective date of the rules that establish those
78 new limitations of judgment.]~~

79 Section 2. Section **63G-7-605** is enacted to read:

80 **63G-7-605. Adjustments to limitation of judgment amounts.**

81 (1) As used in this section:

82 (a) "Adjusted consumer price factor" means what the consumer price index, as
83 provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code, would be without the medical
84 care component and the medical services component.

85 (b) "Aggregate limit" means the limit on the aggregate amount of personal injury
86 damages claims from a single occurrence, as provided in Subsection 63G-7-604(1)(d).

87 (c) "Individual limit" means the limit on the amount of a judgment for damages for
88 personal injury, as provided in Subsection 63G-7-604(1)(a).

89 (d) "Latest aggregate limit" means the aggregate limit, as last adjusted by the risk

90 manager under this section.

91 (e) "Latest individual limit" means the individual limit, as last adjusted by the risk
92 manager under this section.

93 (f) "Latest property damage limit" means the property damage limit, as last adjusted by
94 the risk manager under this section.

95 (g) "Medical care component" means the medical care sub-index of the consumer price
96 index, as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

97 (h) "Medical services component" means the medical services sub-index of the
98 consumer price index, as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

99 (i) "Property damage limit" means the limit on the amount of a judgment for property
100 damage, as provided in Subsection [63G-7-604\(1\)\(c\)](#).

101 (2) (a) Each even-numbered year, the risk manager shall, subject to Subsection (3):

102 (i) adjust the individual limit by an amount equal to the sum of:

103 (A) 66.5% of the latest individual limit, multiplied by the adjusted consumer price
104 factor;

105 (B) 16.75% of the latest individual limit, multiplied by the medical care component;
106 and

107 (C) 16.75% of the latest individual limit, multiplied by the medical services
108 component;

109 (ii) adjust the aggregate limit by an amount equal to the sum of:

110 (A) 66.5% of the latest aggregate limit, multiplied by the adjusted consumer price
111 factor;

112 (B) 16.75% of the latest aggregate limit, multiplied by the medical care component;
113 and

114 (C) 16.75% of the latest aggregate limit, multiplied by the medical services component;
115 and

116 (iii) adjust the property damage limit as a percentage equal to the percentage increase
117 or decrease in the consumer price index as provided in Sections 1(f)(4) and 1(f)(5), Internal
118 Revenue Code.

119 (b) The risk manager shall round up to the nearest \$100 the individual limit, aggregate
120 limit, and property damage limit adjusted under Subsection (2)(a).

121 (3) The risk manager may not adjust an individual limit or aggregate limit under
122 Subsection (2) if the adjustment results in a decrease in the amount of the limit.

123 (4) (a) Each even-numbered year, the risk manager shall make rules, to become
124 effective no later than July 1 of that year, that establish a new individual limit, aggregate limit,
125 and property damage limit, as adjusted under Subsection (2).

126 (b) An adjustment to the individual limit, aggregate limit, or property damage limit
127 under this section has prospective effect only from the date the rules establishing the new limit
128 take effect.

129 (c) An individual limit, aggregate limit, or property damage limit, as adjusted under
130 this section, applies only to a claim for injury or loss that occurs after the effective date of the
131 rules that establish the adjusted limit.

132 Section 3. Section **63G-7-701** is amended to read:

133 **63G-7-701. Payment of claim or judgment against state -- Presentment for**
134 **payment.**

135 (1) Each claim, as defined by Subsection **63G-7-102**(1), that is approved by the state or
136 any final judgment obtained against the state shall be presented for payment to:

137 (a) the state risk manager; or

138 (b) the office, agency, institution, or other instrumentality involved, if payment by that
139 instrumentality is otherwise permitted by law.

140 (2) If payment of the claim is not authorized by law, the judgment or claim shall be
141 presented to the board of examiners for action as provided in Section **63G-9-301**.

142 (3) If a judgment against the state is reduced by the operation of Section **63G-7-604**,
143 the claimant may submit the excess claim to the [~~board of examiners.~~] Executive
144 Appropriations Committee, as provided in Section **63G-7-1003**.

145 Section 4. Section **63G-7-1001** is enacted to read:

146 **Part 10. Excess Damages Claims**

147 **63G-7-1001. Title.**

148 This part is known as "Excess Damages Claims."

149 Section 5. Section **63G-7-1002** is enacted to read:

150 **63G-7-1002. Definitions.**

151 As used in this part:

152 (1) "Claimant" means an individual who asserts an excess damages claim under this
153 part.

154 (2) "Damages cap" means the amount to which a personal injury claim is or would be
155 reduced because of the operation of Subsection 63G-7-604(1)(a) or (d).

156 (3) "Damages cap settlement" means a written settlement agreement:

157 (a) between an individual with a personal injury claim that exceeds the damages cap
158 and the governmental entity against which the personal injury claim is asserted; and

159 (b) that provides for the governmental entity to pay the individual an amount equal to
160 the damages cap to settle the personal injury claim.

161 (4) "Excess damages amount" means the amount of a personal injury claim that:

162 (a) exceeds the damages cap; and

163 (b) a governmental entity would be liable to pay except for the operation of Subsection
164 63G-7-604(1)(a) or (d).

165 (5) "Excess damages claim" means a claim for an excess damages amount.

166 (6) "Personal injury claim" means a claim for damages for personal injury that is
167 subject to the operation of Subsection 63G-7-604(1)(a) or (d).

168 (7) "Statement of claim" means a statement detailing an excess damages claim as
169 provided in Section 63G-7-1003.

170 (8) "Third-party claim" means a personal injury claim that:

171 (a) arises out of the same underlying facts as the facts that provide the basis for an
172 individual's personal injury claim against a governmental entity; and

173 (b) the individual asserts against a person who the individual claims is also liable, in
174 addition to the governmental entity, for the individual's personal injury claim.

175 Section 6. Section **63G-7-1003** is enacted to read:

176 **63G-7-1003. Personal injury claims exceeding damages limit -- Determination by**
177 **the Executive Appropriations Committee.**

178 (1) (a) An individual may seek payment of an excess damages claim by submitting a
179 written statement of claim to the Executive Appropriations Committee after, but no later than
180 180 days after, as applicable:

181 (i) (A) the date of a final, nonappealable judgment in favor of the individual on a
182 personal injury claim in an amount that would have exceeded the damages cap except for the

183 operation of Subsection [63G-7-604\(1\)\(a\)](#) or (d); or
184 (B) the date of a damages cap settlement; or
185 (ii) the date that all third-party claims the individual has asserted are resolved by final,
186 nonappealable judgment or settlement, if that date is later than the applicable date under
187 Subsection (1)(a)(i).

188 (b) An excess damages claim may not be denied as untimely under Subsection (1)(a) if:
189 (i) the excess damages claim is based on the same facts as a claim that is submitted:
190 (A) to the Board of Examiners under Chapter 9, Board of Examiners Act; and
191 (B) before the effective date of this part;
192 (ii) the claimant withdraws the claim from the Board of Examiners before the Board of
193 Examiners decides the claim; and
194 (iii) the statement of claim is filed within 30 days after the claimant withdraws the
195 claim from the Board of Examiners.

196 (2) In conjunction with submitting a statement of claim to the Executive
197 Appropriations Committee, the claimant shall provide a copy of the statement of claim to:
198 (a) the attorney general; and
199 (b) the governmental entity against which the claimant asserted the underlying personal
200 injury claim that forms the basis of the claimant's excess damages claim.

201 (3) A statement of claim shall include:
202 (a) a recitation of the facts and explanation of the evidence supporting the excess
203 damages claim;
204 (b) the excess damages amount;
205 (c) a list and description of each third-party claim the individual has asserted and an
206 explanation of the disposition of the third-party claim, including the amount of any judgment or
207 settlement and the amount actually recovered;
208 (d) (i) a list of all amounts recovered by the claimant from any source as compensation
209 for damages for the claimant's personal injury claim; and
210 (ii) a description of the source of each amount included in the list under Subsection
211 (3)(d)(i);
212 (e) if applicable, a summary of a damages cap settlement;
213 (f) if applicable, the amount of a final judgment awarded to the claimant against the

214 governmental entity with:

215 (i) the amount of the judgment before operation of Subsection 63G-7-604(1)(a) or (d);

216 and

217 (ii) a description of each element of damages awarded and the amount awarded for

218 each element; and

219 (g) a certification of compliance with the requirement of Subsection (2).

220 (4) A claimant shall submit with a statement of claim under Subsection (1) a copy of:

221 (a) a final judgment in favor of the claimant on the claimant's personal injury claim that

222 forms the basis of the claimant's excess damages claim, together with any findings of fact and

223 conclusions of law entered by the court, if the claimant has recovered a judgment that exceeds

224 the damages cap; or

225 (b) the agreement memorializing the damages cap settlement, if the claimant is

226 asserting an excess damages claim following a damages cap settlement.

227 (5) An excess damages claim may not include an amount recovered by a claimant from

228 any source as compensation for damages for the claimant's personal injury claim.

229 (6) A claimant with a personal injury claim that is subject to the aggregate limit under

230 Subsection 63G-7-604(1)(d) may not submit a statement of claim under this section before the

231 amount of the personal injury claim has been determined after application of Subsection

232 63G-7-604(1)(d).

233 (7) A claimant with a claim pending before the Board of Examiners under Chapter 9,

234 Board of Examiners Act, on the effective date of this part may not submit a statement of claim

235 under this part for an excess damages claim that arises from the same facts as the claim

236 pending before the Board of Examiners, unless the claimant first withdraws the claim pending

237 before the Board of Examiners.

238 Section 7. Section **63G-7-1004** is enacted to read:

239 **63G-7-1004. Special master proceedings.**

240 (1) The Executive Appropriations Committee may require a claimant's excess damages

241 claim to be submitted to a special master, as provided in this section, to make a

242 recommendation concerning:

243 (a) the governmental entity's liability for the personal injury claim that forms the basis

244 of the excess damages claim; and

245 (b) the amount of the claimant's damages and excess damages claim.

246 (2) In proceedings before a special master under this section, the attorney general shall
247 represent the interests opposed to the payment of the claimant's excess damages claim to guard
248 against the unwarranted payment of an excess damages claim or the payment of an excess
249 damages claim in an unwarranted amount.

250 (3) If the Executive Appropriations Committee requires a claimant's excess damages
251 claim to be submitted to a special master under Subsection (1):

252 (a) the claimant and the attorney general shall together select an individual to act as
253 special master; or

254 (b) if the claimant and the attorney general are unable to agree on one individual to act
255 as special master:

256 (i) the claimant and the attorney general shall each select an individual to serve on a
257 special master panel; and

258 (ii) the individuals selected under Subsection (3)(b)(i) shall together select a third
259 individual to serve on the special master panel.

260 (4) In a special master proceeding under this section, unless the claimant and the
261 attorney general otherwise agree in writing, the claimant and the attorney general shall:

262 (a) each pay an equal share of the fees and costs of a special master selected under
263 Subsection (3)(a); or

264 (b) if the proceeding is conducted by a special master panel selected under Subsection
265 (3)(b):

266 (i) each pay the fees and costs of the special master panel member that each selected;
267 and

268 (ii) each pay an equal share of the fees and costs of the third special master panel
269 member.

270 (5) Within 30 days after the appointment of a special master or special master panel,
271 the claimant shall provide the special master or special master panel a written statement that
272 includes:

273 (a) (i) a list of the name and last known address of each health care provider that has
274 provided health care services to the claimant at any time during the period beginning five years
275 before the event giving rise to the claimant's personal injury claim and ending on the date that

276 the claimant submits the written statement;

277 (ii) a description of the health care services provided by each health care provider listed
278 in Subsection (5)(a)(i); and

279 (iii) a statement describing and explaining any health care services described under
280 Subsection (5)(a)(ii) that the claimant claims are immaterial to the claimant's personal injury
281 claim;

282 (b) (i) a list of the name and last known address of each health care insurer or other
283 entity to which a health care or other similar benefit claim has been submitted on the claimant's
284 behalf at any time during the period beginning five years before the event giving rise to the
285 claimant's personal injury claim and ending on the date that the claimant submits the written
286 statement;

287 (ii) a description of the health care or other similar benefits claimed under claims
288 submitted to health care insurers or other entities listed under Subsection (5)(b)(i); and

289 (iii) a statement describing and explaining any health care or other similar benefit
290 described under Subsection (5)(b)(ii) that the claimant claims is immaterial to the claimant's
291 personal injury claim;

292 (c) a list of the name and address of each employer that employed the claimant at any
293 time during the period beginning five years before the event giving rise to the claimant's
294 personal injury claim and ending on the date that the claimant submits the written statement, if
295 the claimant's personal injury claim includes a claim for lost wages or diminished earning
296 capacity;

297 (d) a list of the name and address of each state or federal entity holding a statutory lien
298 on any recovery obtained by the claimant through the claimant's personal injury claim; and

299 (e) a statement as to whether the claimant has received any Medicare or Medicaid
300 benefits and, if so, a description of those benefits, including the amount.

301 (6) The claimant shall submit with the statement required under Subsection (5):

302 (a) a copy of the documentary evidence upon which the claimant bases the claimant's
303 excess damages claim; and

304 (b) a signed authorization from the claimant allowing the special master or special
305 master panel to obtain all documents, including any billing statements, relevant to the
306 claimant's excess damages claim from each person listed under Subsections (5)(a)(i), (b)(i), and

307 (c).
308 (7) The special master or special master panel:
309 (a) shall consider evidence presented in support of and opposing the claimant's excess
310 damages claim;
311 (b) may hold a hearing in connection with the special master or special master panel
312 recommendation regarding the excess damages claim; and
313 (c) after considering the relevant evidence, shall make a recommendation concerning,
314 as directed by the Executive Appropriations Committee:
315 (i) the governmental entity's liability for the personal injury claim that forms the basis
316 of the claimant's excess damages claim;
317 (ii) the amount of the excess damages claim; or
318 (iii) both the governmental entity's liability and the amount of the excess damages
319 claim.
320 (8) (a) Within 30 days after a hearing under Subsection (7)(b) or, if no hearing is held,
321 after the special master or special master panel's determination not to hold a hearing, the
322 special master or special master panel shall:
323 (i) prepare a written recommendation, including a brief, informal discussion of the
324 factual and legal basis for the recommendation; and
325 (ii) deliver a copy of the written recommendation to the claimant, the attorney general,
326 and the Executive Appropriations Committee.
327 (b) A written recommendation under Subsection (8)(a) may, but need not, contain
328 findings of fact and conclusions of law.
329 Section 8. Section **63G-7-1005** is enacted to read:
330 **63G-7-1005. Executive Appropriations Committee review and evaluation of and**
331 **recommendation concerning excess damages claim.**
332 (1) (a) In reviewing and evaluating an excess damages claim, the Executive
333 Appropriations Committee may require the claimant to provide documentation or evidence,
334 including medical records, witness statements, or live testimony.
335 (b) Subsection (1)(a) applies regardless of whether the excess damages claim was
336 previously submitted to a special master or special master panel under Section [63G-7-1004](#).
337 (2) At the conclusion of the Executive Appropriations Committee's review and

338 evaluation of an excess damages claim, including, if applicable, after receiving the
339 recommendation of the special master or special master panel under Section 63G-7-1004, the
340 Executive Appropriations Committee:

341 (a) shall make a recommendation to the Legislature on the excess damages claim; and

342 (b) may recommend:

343 (i) paying some or all of the excess damages claim, whether in a lump sum or in
344 installments over a period of years; or

345 (ii) denying the excess damages claim.

346 (3) (a) The attorney general is entitled to payment of the attorney general's reasonable
347 fees and costs incurred in fulfilling the attorney general's responsibilities under Subsection
348 63G-7-1004(2), including the attorney general's share of the fees and costs of the special master
349 or special master panel under Section 63G-7-1004.

350 (b) The Executive Appropriations Committee may make a recommendation
351 concerning:

352 (i) the amount that the attorney general is to be paid under Subsection (3)(a); and

353 (ii) the source of the payment.

354 (4) There is a presumption that an amount recommended by the Executive
355 Appropriations Committee for an excess damages claim is the amount that the claimant should
356 be paid.

357 Section 9. Section **63G-9-201** is amended to read:

358 **63G-9-201. Members -- Functions.**

359 (1) As used in this chapter:

360 (a) "Political subdivision" means any county, city, town, school district, community
361 reinvestment agency, special improvement or taxing district, local district, special service
362 district, an entity created by an interlocal agreement adopted under Title 11, Chapter 13,
363 Interlocal Cooperation Act, or other governmental subdivision or public corporation.

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

367 (2) The governor, the state auditor, and the attorney general shall constitute a Board of
368 Examiners, with power to examine all claims against the state or a political subdivision, for the

369 payment of which funds appropriated by the Legislature or derived from any other source are
370 not available.

371 (3) ~~[No]~~ Except as provided in Chapter 7, Part 10, Excess Damages Claims, with
372 respect to an excess damages claim, as defined in Section 63G-7-1002, no claim against the
373 state or a political subdivision, for the payment of which specifically designated funds are
374 required to be appropriated by the Legislature shall be passed upon by the Legislature without
375 having been considered and acted upon by the Board of Examiners.

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

379 Section 10. Section **63G-9-302** is amended to read:

380 **63G-9-302. Form for presentment of claim against the state or political**
381 **subdivision.**

382 ~~[Any]~~ (1) Except for an excess damages claim, as defined in Section 63G-7-1002, a
383 person having a claim against the state or a political subdivision, for which funds have not been
384 provided [for the payment thereof], or the settlement of which is not otherwise provided for by
385 law, ~~[must]~~ may present the ~~[same]~~ claim to the Board of Examiners, accompanied by a
386 statement showing the facts constituting the claim.

387 (2) (a) A person may not simultaneously pursue a claim under this part and an excess
388 damages claim under Chapter 7, Part 10, Excess Damages Claims, if both claims are based on
389 the same facts.

390 (b) A person who submitted a claim to the Board of Examiners under this part before
391 the effective date of Chapter 7, Part 10, Excess Damages Claims, may withdraw the claim from
392 the Board of Examiners before the Board of Examiners decides the claim and pursue the claim
393 as an excess damages claim, as defined in Section 63G-7-1002, as provided in Chapter 7, Part
394 10, Excess Damages Claims.

395 Section 11. Section **63J-1-312** is amended to read:

396 **63J-1-312. Establishing a General Fund Budget Reserve Account -- Providing for**
397 **deposits and expenditures from the account -- Providing for interest generated by the**
398 **account.**

399 (1) As used in this section:

400 (a) "Education Fund budget deficit" means a situation where appropriations made by
401 the Legislature from the Education Fund for a fiscal year exceed the estimated revenues
402 adopted by the Executive Appropriations Committee of the Legislature for the Education Fund
403 in that fiscal year.

404 (b) "General Fund appropriations" means the sum of the spending authority for a fiscal
405 year that is:

406 (i) granted by the Legislature in all appropriation acts and bills; and

407 (ii) identified as coming from the General Fund.

408 (c) "General Fund budget deficit" means a situation where General Fund appropriations
409 made by the Legislature for a fiscal year exceed the estimated revenues adopted by the
410 Executive Appropriations Committee of the Legislature for the General Fund in that fiscal year.

411 (d) "General Fund revenue surplus" means a situation where actual General Fund
412 revenues collected in a completed fiscal year exceed the estimated revenues for the General
413 Fund for that fiscal year that were adopted by the Executive Appropriations Committee of the
414 Legislature.

415 (e) "Operating deficit" means that, at the end of the fiscal year, the unassigned fund
416 balance in the General Fund is less than zero.

417 (2) There is created within the General Fund a restricted account to be known as the
418 General Fund Budget Reserve Account, which is designated to receive the legislative
419 appropriations and the surplus revenue required to be deposited into the account by this section.

420 (3) (a) (i) Except as provided in Subsection (3)(a)(ii), at the end of any fiscal year in
421 which the Division of Finance, in consultation with the Legislative Fiscal Analyst and in
422 conjunction with the completion of the annual audit by the state auditor, determines that there
423 is a General Fund revenue surplus, the Division of Finance shall transfer 25% of the General
424 Fund revenue surplus to the General Fund Budget Reserve Account.

425 (ii) If the transfer of 25% of the General Fund revenue surplus to the General Fund
426 Budget Reserve Account would cause the balance in the account to exceed 9% of General Fund
427 appropriations for the fiscal year in which the revenue surplus occurred, the Division of
428 Finance shall transfer only those funds necessary to ensure that the balance in the account
429 equals 9% of General Fund appropriations for the fiscal year in which the General Fund
430 revenue surplus occurred.

431 (iii) The Division of Finance shall calculate the amount to be transferred under this
432 Subsection (3)(a):

433 (A) after making the transfer of General Fund revenue surplus to the Medicaid Growth
434 Reduction and Budget Stabilization Account, as provided in Section [63J-1-315](#);

435 (B) before transferring from the General Fund revenue surplus any other year-end
436 contingency appropriations, year-end set-asides, or other year-end transfers required by law;
437 and

438 (C) excluding any direct legislative appropriation made to the General Fund Budget
439 Reserve Account for the fiscal year.

440 (b) (i) Except as provided in Subsection (3)(b)(ii), in addition to Subsection (3)(a)(i), if
441 a General Fund revenue surplus exists and if, within the last 10 years, the Legislature has
442 appropriated any money from the General Fund Budget Reserve Account that has not been
443 replaced by appropriation or as provided in this Subsection (3)(b), the Division of Finance shall
444 transfer up to 25% more of the General Fund revenue surplus to the General Fund Budget
445 Reserve Account to replace the amounts appropriated, until direct legislative appropriations, if
446 any, and transfers from the General Fund revenue surplus under this Subsection (3)(b) have
447 replaced the appropriations from the account.

448 (ii) If the transfer under Subsection (3)(b)(i) would cause the balance in the account to
449 exceed 9% of General Fund appropriations for the fiscal year in which the revenue surplus
450 occurred, the Division of Finance shall transfer only those funds necessary to ensure that the
451 balance in the account equals 9% of General Fund appropriations for the fiscal year in which
452 the revenue surplus occurred.

453 (iii) The Division of Finance shall calculate the amount to be transferred under this
454 Subsection (3)(b):

455 (A) after making the transfer of General Fund revenue surplus to the Medicaid Growth
456 Reduction and Budget Stabilization Account, as provided in Section [63J-1-315](#);

457 (B) before transferring from the General Fund revenue surplus any other year-end
458 contingency appropriations, year-end set-asides, or other year-end transfers required by law;
459 and

460 (C) excluding any direct legislative appropriation made to the General Fund Budget
461 Reserve Account for the fiscal year.

462 (c) For appropriations made by the Legislature to the General Fund Budget Reserve
463 Account, the Division of Finance shall treat those appropriations, unless otherwise specified in
464 the appropriation, as replacement funds for appropriations made from the account if funds were
465 appropriated from the General Fund Budget Reserve Account within the past 10 years and have
466 not yet been replaced.

467 (4) The Legislature may appropriate money from the General Fund Budget Reserve
468 Account only to:

469 (a) resolve a General Fund budget deficit, for the fiscal year in which the General Fund
470 budget deficit occurs;

471 (b) pay some or all of state settlement agreements approved under Title 63G, Chapter
472 10, State Settlement Agreements Act;

473 (c) pay excess damages claims recommended for payment under Section [63G-7-1005](#);

474 (d) pay the reasonable fees and costs incurred by the attorney general in fulfilling the
475 attorney general's responsibilities under Subsection [63G-7-1004\(2\)](#);

476 [~~e~~] (e) pay retroactive tax refunds; or

477 [~~f~~] (f) resolve an Education Fund budget deficit.

478 (5) Interest generated from investments of money in the General Fund Budget Reserve
479 Account shall be deposited into the General Fund.

Legislative Review Note
Office of Legislative Research and General Counsel