

SB0098S01 compared with SB0098

~~deleted text~~ shows text that was in SB0098 but was deleted in SB0098S01.

Inserted text shows text that was not in SB0098 but was inserted into SB0098S01.

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Senator Jani Iwamoto proposes the following substitute bill:

EXCESS DAMAGES CLAIMS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jani Iwamoto

House Sponsor: ~~_____~~ V. Lowry Snow

Cosponsors: Howard A. Stephenson

Lyle W. Hillyard

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ establishes a process for addressing personal injury claims to the extent that they exceed a statutory limit;
- ▶ provides for Executive Appropriations Committee evaluation of excess damages claims and for a recommendation about whether the claims should be paid;

SB0098S01 compared with SB0098

- ▶ provides for the appointment of a special master to help in the process of evaluating certain excess damages claims;
- ▶ modifies the inflationary adjustment formula for personal injury damages caps; and
- ▶ modifies the permissible uses of the General Fund Budget Reserve Account.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

63G-7-701, as last amended by Laws of Utah 2013, Chapter 278

63G-9-201, as last amended by Laws of Utah 2016, Chapter 350

63G-9-302, as renumbered and amended by Laws of Utah 2008, Chapter 382

63J-1-312, as last amended by Laws of Utah 2015, Chapter 214

ENACTS:

63G-7-605, Utah Code Annotated 1953

63G-7-1001, Utah Code Annotated 1953

63G-7-1002, Utah Code Annotated 1953

63G-7-1003, Utah Code Annotated 1953

63G-7-1004, Utah Code Annotated 1953

63G-7-1005, Utah Code Annotated 1953

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

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

63G-7-604. Limitation of judgments against governmental entity or employee --

Process for adjustment of limits.

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

SB0098S01 compared with SB0098

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

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

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

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

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

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

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

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

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

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

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

SB0098S01 compared with SB0098

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

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

(1) As used in this section:

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

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

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

(d) "Latest aggregate limit" means the aggregate limit, as last adjusted by the risk manager under this section.

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

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

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

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

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

(2) (a) Each even-numbered year, the ~~frisk manager~~ legislative fiscal analyst shall, subject to Subsection (3):

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

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

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

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

SB0098S01 compared with SB0098

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

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

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

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

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

~~(b) The risk manager~~ iv) no later than June 1, communicate the adjusted limits under Subsections (2)(a)(i), (ii), and (iii) to the risk manager.

(b) The legislative fiscal analyst shall round up to the nearest \$100 the individual limit, aggregate limit, and property damage limit adjusted under Subsection (2)(a).

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

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

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

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

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

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

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

SB0098S01 compared with SB0098

(a) the state risk manager; or

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

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

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

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

Part 10. Excess Damages Claims

63G-7-1001. Title.

This part is known as "Excess Damages Claims."

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

63G-7-1002. Definitions.

As used in this part:

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

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

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

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

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

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

(a) exceeds the damages cap; and

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

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

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

SB0098S01 compared with SB0098

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

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

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

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

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

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

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

(i) (A) the date of a final, nonappealable judgment in favor of the individual on a personal injury claim in an amount that would have exceeded the damages cap except for the operation of Subsection 63G-7-604(1)(a) or (d); or

(B) the date of a damages cap settlement; or

(ii) the date that all third-party claims the individual has asserted are resolved by final, nonappealable judgment or settlement, if that date is later than the applicable date under Subsection (1)(a)(i).

(b) An excess damages claim may not be denied as untimely under Subsection (1)(a) if:

(i) the excess damages claim is based on the same facts as a claim that is submitted:

(A) to the Board of Examiners under Chapter 9, Board of Examiners Act; and

(B) before the effective date of this part;

(ii) the claimant withdraws the claim from the Board of Examiners before the Board of Examiners decides the claim; and

(iii) the statement of claim is filed within 30 days after the claimant withdraws the claim from the Board of Examiners.

(2) In conjunction with submitting a statement of claim to the Executive Appropriations Committee, the claimant shall provide a copy of the statement of claim to ~~the~~

~~(a) the attorney general; and~~

SB0098S01 compared with SB0098

~~(b)~~ the governmental entity against which the claimant asserted the underlying personal injury claim that forms the basis of the claimant's excess damages claim.

(3) A statement of claim shall include:

(a) a recitation of the facts and explanation of the evidence supporting the excess damages claim;

(b) the excess damages amount;

(c) a list and description of each third-party claim the individual has asserted and an explanation of the disposition of the third-party claim, including the amount of any judgment or settlement and the amount actually recovered;

(d) (i) a list of all amounts recovered by the claimant from any source as compensation for damages for the claimant's personal injury claim; and

(ii) a description of the source of each amount included in the list under Subsection (3)(d)(i);

(e) if applicable, a summary of a damages cap settlement;

(f) if applicable, the amount of a final judgment awarded to the claimant against the governmental entity with:

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

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

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

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

(a) a final judgment in favor of the claimant on the claimant's personal injury claim that forms the basis of the claimant's excess damages claim, together with any findings of fact and conclusions of law entered by the court, if the claimant has recovered a judgment that exceeds the damages cap; or

(b) the agreement memorializing the damages cap settlement, if the claimant is asserting an excess damages claim following a damages cap settlement.

(5) An excess damages claim may not include an amount recovered by a claimant from any source as compensation for damages for the claimant's personal injury claim.

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

SB0098S01 compared with SB0098

Subsection 63G-7-604(1)(d) may not submit a statement of claim under this section before the amount of the personal injury claim has been determined after application of Subsection 63G-7-604(1)(d).

(7) A claimant with a claim pending before the Board of Examiners under Chapter 9, Board of Examiners Act, on the effective date of this part may not submit a statement of claim under this part for an excess damages claim that arises from the same facts as the claim pending before the Board of Examiners, unless the claimant first withdraws the claim pending before the Board of Examiners.

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

63G-7-1004. Special master proceedings.

(1) The Executive Appropriations Committee may require a claimant's excess damages claim to be submitted to a special master, as provided in this section, to make a recommendation concerning:

(a) the governmental entity's liability for the personal injury claim that forms the basis of the excess damages claim; and

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

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

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

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

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

~~———— (i) the claimant and the attorney general shall each select an individual to serve on;~~
the Executive Appropriations Committee shall select a special master ~~panel~~ and

~~———— (ii) the individuals selected} from a list of three individuals submitted by the claimant.~~

(b) An individual on a list submitted by claimant under Subsection (3)(b)(i) shall together select a third individual to serve on the} 2(a):

SB0098S01 compared with SB0098

(i) shall be:

(A) an attorney licensed to practice law in the state, with experience in personal injury cases;

(B) an individual who has retired from serving as a judge of a district court or appellate court in the state; or

(C) a trained mediator in the state with experience in mediating personal injury cases;
and

(ii) may not be related to or affiliated with the claimant or any attorney representing the claimant.

(c) The selection and hiring of a special master ~~{panel}~~

~~— (4) under this Subsection (2) is not subject to Chapter 6a, Utah Procurement Code.~~

(3) In a special master proceeding under this section, ~~{unless the claimant and the attorney general otherwise agree in writing, the claimant and the attorney general shall:~~

~~— (a) each pay an equal share of} the claimant shall pay the fees and costs of a special master selected under Subsection (~~{3}~~)(a); or~~

~~— (b) if the proceeding is conducted by a special master panel selected under Subsection (~~{3}~~)(b):~~

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

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

~~— (5)2).~~

(4) Within 30 days after the appointment of a special master ~~{ or special master panel}~~, the claimant shall provide the special master ~~{ or special master panel}~~ a written statement that includes:

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

(ii) a description of the health care services provided by each health care provider listed in Subsection (~~{5}4~~)(a)(i); and

SB0098S01 compared with SB0098

(iii) a statement describing and explaining any health care services described under Subsection (f5t4)(a)(ii) that the claimant claims are immaterial to the claimant's personal injury claim;

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

(ii) a description of the health care or other similar benefits claimed under claims submitted to health care insurers or other entities listed under Subsection (f5t4)(b)(i); and

(iii) a statement describing and explaining any health care or other similar benefit described under Subsection (f5t4)(b)(ii) that the claimant claims is immaterial to the claimant's personal injury claim;

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

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

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

(f6t5) The claimant shall submit with the statement required under Subsection (f5t4):

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

(b) a signed authorization from the claimant allowing the special master or special master panel to obtain all documents, including any billing statements, relevant to the claimant's excess damages claim from each person listed under Subsections (f5t4)(a)(i), (b)(i), and (c).

(f7t6) The special master ~~or special master panel~~:

(a) shall consider evidence ~~presented in support of and opposing the~~

SB0098S01 compared with SB0098

claimant's} relating to the claimant's excess damages claim:

(b) may, in addition to information provided under Section 63G-7-1003 and this section, require the claimant to provide documentation or evidence, including medical records, witness statements, or live testimony, that the special master considers relevant to the excess damages claim:

(~~f~~b~~7~~c) may hold a hearing in connection with the special master ~~} or special master panel~~ recommendation regarding the excess damages claim; and

(~~f~~e~~7~~d) after considering the relevant evidence, shall make a recommendation concerning, as directed by the Executive Appropriations Committee:

(i) the governmental entity's liability for the personal injury claim that forms the basis of the claimant's excess damages claim;

(ii) the amount of the excess damages claim; or

(iii) both the governmental entity's liability and the amount of the excess damages claim.

(~~f~~8~~7~~) (a) Within 30 days after a hearing under Subsection (~~f~~7~~7~~6)(~~f~~b~~7~~c) or, if no hearing is held, after the special ~~} master or special master panel's~~ master's determination not to hold a hearing, the special master ~~} or special master panel~~ shall:

(i) prepare a written recommendation, including a brief, informal discussion of the factual and legal basis for the recommendation; and

(ii) deliver a copy of the written recommendation to the claimant ~~}, the attorney general,~~ and the Executive Appropriations Committee.

(b) A written recommendation under Subsection (~~f~~8~~7~~) (a) may, but need not, contain findings of fact and conclusions of law.

Section 8. Section **63G-7-1005** is enacted to read:

63G-7-1005. Executive Appropriations Committee review and evaluation of and recommendation concerning excess damages claim.

(1) (a) In reviewing and evaluating an excess damages claim, the Executive Appropriations Committee may require the claimant to provide documentation or evidence, including medical records, witness statements, or live testimony.

(b) Subsection (1)(a) applies regardless of whether the excess damages claim was previously submitted to a special master ~~} for special master panel~~ under Section 63G-7-1004.

SB0098S01 compared with SB0098

(2) At the conclusion of the Executive Appropriations Committee's review and evaluation of an excess damages claim, including, if applicable, after receiving the recommendation of the special master ~~for special master panel~~ under Section 63G-7-1004, the Executive Appropriations Committee:

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

(b) may recommend:

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

(ii) denying the excess damages claim.

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

~~— (b) The Executive Appropriations Committee may make a recommendation concerning:~~

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

~~— (ii) the source of the payment.~~

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

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

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

(1) As used in this chapter:

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

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

(2) The governor, the state auditor, and the attorney general shall constitute a Board of

SB0098S01 compared with SB0098

Examiners, with power to examine all claims against the state or a political subdivision, for the payment of which funds appropriated by the Legislature or derived from any other source are not available.

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

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

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

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

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

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

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

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

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

SB0098S01 compared with SB0098

(1) As used in this section:

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

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

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

(ii) identified as coming from the General Fund.

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

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

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

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

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

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

SB0098S01 compared with SB0098

revenue surplus occurred.

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

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

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

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

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

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

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

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

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

(C) excluding any direct legislative appropriation made to the General Fund Budget

SB0098S01 compared with SB0098

Reserve Account for the fiscal year.

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

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

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

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

~~(c) pay excess damages claims recommended for payment under Section 63G-7-1005;~~

~~{ (d) pay the reasonable fees and costs incurred by the attorney general in fulfilling the attorney general's responsibilities under Subsection 63G-7-1004(2);~~

† [(e)] ~~(fe)d~~ pay retroactive tax refunds; or

[(d)] ~~(ffe)~~ resolve an Education Fund budget deficit.

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

†

Legislative Review Note

~~Office of Legislative Research and General Counsel~~