

**GOVERNMENTAL IMMUNITY REVISIONS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael K. McKell**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies provisions relating to governmental immunity.

**Highlighted Provisions:**

This bill:

- ▶ waives governmental immunity for injury resulting from certain claims of sexual battery;
- ▶ limits a court from dismissing an action based on an invalid, inadequate, or untimely notice of claim, under certain circumstances;
- ▶ modifies provisions relating to a governmental entity's response to a notice of claim;
- ▶ provides a consequence if a governmental entity fails to acknowledge receipt of a notice of claim within a specified time;
- ▶ increases the aggregate limit on injury claims against governmental entities;
- ▶ provides for the board of examiners to require a special master proceeding for excess damages claims that the board of examiners considers;
- ▶ authorizes the use of money in the General Fund Budget Reserve Account to pay for claims approved by the board of examiners; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **63G-6a-1904**, as last amended by Laws of Utah 2015, Chapter 218

32 **63G-7-201**, as last amended by Laws of Utah 2016, Chapter 181

33 **63G-7-203**, as last amended by Laws of Utah 2018, Chapter 178

34 **63G-7-301**, as amended by Statewide Initiative -- Proposition 4, Nov. 6, 2018

35 **63G-7-302**, as last amended by Laws of Utah 2008, Chapter 3 and renumbered and  
36 amended by Laws of Utah 2008, Chapter 382

37 **63G-7-401**, as last amended by Laws of Utah 2014, Chapter 210

38 **63G-7-403**, as last amended by Laws of Utah 2017, Chapter 300

39 **63G-7-604**, as last amended by Laws of Utah 2017, Chapter 151

40 **63J-1-312**, as last amended by Laws of Utah 2017, Chapter 474

41 ENACTS:

42 **63G-9-302.5**, Utah Code Annotated 1953

43 REPEALS:

44 **63G-7-601**, as last amended by Laws of Utah 2017, Chapter 300



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

47 Section 1. Section **63G-6a-1904** is amended to read:

48 **63G-6a-1904. Costs to or against protestor.**

49 (1) If a protest is sustained administratively or upon administrative or judicial review  
50 and the protesting bidder or offeror should have been awarded the contract under the  
51 solicitation but is not, the protestor is entitled to the following relief as a claim against the  
52 procurement unit:

53 (a) the reasonable costs incurred in connection with the solicitation, including bid  
54 preparation and appeal costs; and

55 (b) any equitable relief determined to be appropriate by the reviewing administrative or  
56 judicial body.

57 (2) If the final determination of a procurement appeals panel or other appellate body  
58 does not sustain the protest, the protestor shall reimburse the conducting or issuing

59 procurement unit for all expenses that the conducting or issuing procurement unit incurred in  
60 defending the appeal, including personnel costs, attorney fees, other legal costs, the per diem  
61 and expenses paid by the conducting or issuing procurement unit to witnesses or appeals panel  
62 members, and any additional expenses incurred by the staff of the conducting or issuing  
63 procurement unit who have provided materials and administrative services to the procurement  
64 appeals panel for that case.

65 (3) The provisions of Title 63G, Chapter 7, Part 4, Notice of Claim Against a  
66 Governmental Entity or a Government Employee, [~~and Section 63G-7-601~~] do not apply to  
67 actions brought under this chapter by an aggrieved party for equitable relief or reasonable costs  
68 incurred in preparing or appealing an unsuccessful bid or offer.

69 Section 2. Section **63G-7-201** is amended to read:

70 **63G-7-201. Immunity of governmental entities and employees from suit.**

71 (1) Except as otherwise provided in this chapter, each governmental entity and each  
72 employee of a governmental entity are immune from suit for any injury that results from the  
73 exercise of a governmental function.

74 (2) Notwithstanding the waiver of immunity provisions of Section ~~63G-7-301~~, a  
75 governmental entity, its officers, and its employees are immune from suit for any injury or  
76 damage resulting from the implementation of or the failure to implement measures to:

77 (a) control the causes of epidemic and communicable diseases and other conditions  
78 significantly affecting the public health or necessary to protect the public health as set out in  
79 Title 26A, Chapter 1, Local Health Departments;

80 (b) investigate and control suspected bioterrorism and disease as set out in Title 26,  
81 Chapter 23b, Detection of Public Health Emergencies Act;

82 (c) respond to a national, state, or local emergency, a public health emergency as  
83 defined in Section ~~26-23b-102~~, or a declaration by the President of the United States or other  
84 federal official requesting public health related activities, including the use, provision,  
85 operation, and management of:

86 (i) an emergency shelter;

87 (ii) housing;

88 (iii) a staging place; or

89 (iv) a medical facility; and

90 (d) adopt methods or measures, in accordance with Section 26-1-30, for health care  
91 providers, public health entities, and health care insurers to coordinate among themselves to  
92 verify the identity of the individuals they serve.

93 (3) A governmental entity, its officers, and its employees are immune from suit, and  
94 immunity is not waived, for any injury if the injury arises out of or in connection with, or  
95 results from:

96 (a) a latent dangerous or latent defective condition of:

97 (i) any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, or  
98 viaduct; or

99 (ii) another structure located on any of the items listed in Subsection (3)(a)(i); or

100 (b) a latent dangerous or latent defective condition of any public building, structure,  
101 dam, reservoir, or other public improvement.

102 (4) A governmental entity, its officers, and its employees are immune from suit, and  
103 immunity is not waived, for any injury proximately caused by a negligent act or omission of an  
104 employee committed within the scope of employment, if the injury arises out of or in  
105 connection with, or results from:

106 (a) the exercise or performance, or the failure to exercise or perform, a discretionary  
107 function, whether or not the discretion is abused;

108 (b) except as provided in Subsection 63G-7-301(2)(k), assault, battery, false  
109 imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel,  
110 slander, deceit, interference with contract rights, infliction of mental anguish, or violation of  
111 civil rights;

112 (c) the issuance, denial, suspension, or revocation of, or the failure or refusal to issue,  
113 deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar  
114 authorization;

115 (d) a failure to make an inspection or making an inadequate or negligent inspection;

116 (e) the institution or prosecution of any judicial or administrative proceeding, even if  
117 malicious or without probable cause;

118 (f) a misrepresentation by an employee whether or not the misrepresentation is  
119 negligent or intentional;

120 (g) a riot, unlawful assembly, public demonstration, mob violence, or civil disturbance;

- 121 (h) the collection or assessment of taxes;
- 122 (i) an activity of the Utah National Guard;
- 123 (j) the incarceration of a person in a state prison, county or city jail, or other place of  
124 legal confinement;
- 125 (k) a natural condition on publicly owned or controlled land;
- 126 (l) a condition existing in connection with an abandoned mine or mining operation;
- 127 (m) an activity authorized by the School and Institutional Trust Lands Administration  
128 or the Division of Forestry, Fire, and State Lands;
- 129 (n) the operation or existence of a pedestrian or equestrian trail that is along a ditch,  
130 canal, stream, or river, regardless of ownership or operation of the ditch, canal, stream, or river,  
131 if:
  - 132 (i) the trail is designated under a general plan adopted by a municipality under Section  
133 10-9a-401 or by a county under Section 17-27a-401;
  - 134 (ii) the trail right-of-way or the right-of-way where the trail is located is open to public  
135 use as evidenced by a written agreement between:
    - 136 (A) the owner or operator of the trail right-of-way or of the right-of-way where the trail  
137 is located; and
    - 138 (B) the municipality or county where the trail is located; and
  - 139 (iii) the written agreement:
    - 140 (A) contains a plan for operation and maintenance of the trail; and
    - 141 (B) provides that an owner or operator of the trail right-of-way or of the right-of-way  
142 where the trail is located has, at a minimum, the same level of immunity from suit as the  
143 governmental entity in connection with or resulting from the use of the trail;
  - 144 (o) research or implementation of cloud management or seeding for the clearing of fog;
  - 145 (p) the management of flood waters, earthquakes, or natural disasters;
  - 146 (q) the construction, repair, or operation of flood or storm systems;
  - 147 (r) the operation of an emergency vehicle, while being driven in accordance with the  
148 requirements of Section 41-6a-212;
  - 149 (s) the activity of:
    - 150 (i) providing emergency medical assistance;
    - 151 (ii) fighting fire;

- 152 (iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;
- 153 (iv) an emergency evacuation;
- 154 (v) transporting or removing an injured person to a place where emergency medical
- 155 assistance can be rendered or where the person can be transported by a licensed ambulance
- 156 service; or
- 157 (vi) intervening during a dam emergency;
- 158 (t) the exercise or performance, or the failure to exercise or perform, any function
- 159 pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources;
- 160 (u) an unauthorized access to government records, data, or electronic information
- 161 systems by any person or entity; or
- 162 (v) an activity of wildlife, as defined in Section 23-13-2, that arises during the use of a
- 163 public or private road.

164 Section 3. Section 63G-7-203 is amended to read:

165 **63G-7-203. Exemptions for certain actions.**

166 The requirements of Sections 63G-7-401, 63G-7-402, and 63G-7-403~~[, and 63G-7-601]~~

167 do not apply to:

- 168 (1) an action that involves takings law, as defined in Section 63L-3-102; or
- 169 (2) an action filed under Title 67, Chapter 21, Utah Protection of Public Employees
- 170 Act.

171 Section 4. Section 63G-7-301 is amended to read:

172 **63G-7-301. Waivers of immunity.**

173 (1) (a) Immunity from suit of each governmental entity is waived as to any contractual

174 obligation.

175 (b) Actions arising out of contractual rights or obligations are not subject to the

176 requirements of Sections 63G-7-401, 63G-7-402, or 63G-7-403~~[, or 63G-7-601]~~.

177 (c) The Division of Water Resources is not liable for failure to deliver water from a

178 reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development

179 Act, if the failure to deliver the contractual amount of water is due to drought, other natural

180 condition, or safety condition that causes a deficiency in the amount of available water.

181 (2) Immunity from suit of each governmental entity is waived:

- 182 (a) as to any action brought to recover, obtain possession of, or quiet title to real or

183 personal property;

184 (b) as to any action brought to foreclose mortgages or other liens on real or personal  
185 property, to determine any adverse claim on real or personal property, or to obtain an  
186 adjudication about any mortgage or other lien that the governmental entity may have or claim  
187 on real or personal property;

188 (c) as to any action based on the negligent destruction, damage, or loss of goods,  
189 merchandise, or other property while it is in the possession of any governmental entity or  
190 employee, if the property was seized for the purpose of forfeiture under any provision of state  
191 law;

192 (d) subject to Subsection 63G-7-302(1), as to any action brought under the authority of  
193 Utah Constitution, Article I, Section 22, for the recovery of compensation from the  
194 governmental entity when the governmental entity has taken or damaged private property for  
195 public uses without just compensation;

196 (e) subject to Subsection 63G-7-302(2), as to any action brought to recover attorney  
197 fees under Sections 63G-2-405 and 63G-2-802;

198 (f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees  
199 Act;

200 (g) as to any action brought to obtain relief from a land use regulation that imposes a  
201 substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious  
202 Land Use Act;

203 (h) except as provided in Subsection 63G-7-201(3), as to any injury caused by:

204 (i) a defective, unsafe, or dangerous condition of any highway, road, street, alley,  
205 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

206 (ii) any defective or dangerous condition of a public building, structure, dam, reservoir,  
207 or other public improvement;

208 (i) subject to Subsections 63G-7-101(4) and 63G-7-201(4), as to any injury  
209 proximately caused by a negligent act or omission of an employee committed within the scope  
210 of employment; [~~and~~]

211 (j) as to any action or suit brought under Section 20A-19-301 and as to any  
212 compensation or expenses awarded under Section 20A-19-301(5)[~~;~~]; and

213 (k) notwithstanding Subsection 63G-7-101(4), as to a claim for an injury resulting from

214 a sexual battery, as provided in Section [76-9-702.1](#), committed:

215 (i) against a student of a public elementary or secondary school, including a charter  
216 school; and

217 (ii) by an employee who:

218 (A) at the time of the sexual battery, held a position of special trust, as defined in  
219 Section [76-5-404.1](#), with respect to the student;

220 (B) is criminally charged in connection with the sexual battery; and

221 (C) the governmental entity knew or in the exercise of reasonable care should have  
222 known, at the time of the employee's hiring, to have been previously convicted of unlawful  
223 sexual activity that would have been revealed in a background check under Section  
224 [53G-11-402](#).

225 Section 5. Section **63G-7-302** is amended to read:

226 **63G-7-302. Specific remedies -- "Takings" actions -- Government Records Access**  
227 **and Management Actions.**

228 (1) In any action brought under the authority of Article I, Section 22, of the Utah  
229 Constitution for the recovery of compensation from the governmental entity when the  
230 governmental entity has taken or damaged private property for public uses without just  
231 compensation, compensation and damages shall be assessed according to the requirements of  
232 Title 78B, Chapter 6, Part 5, Eminent Domain.

233 (2) (a) Notwithstanding Section [63G-7-401](#), a notice of claim for attorney fees under  
234 Subsection [63G-7-301\(2\)\(e\)](#) may be filed contemporaneously with a petition for review under  
235 Section [63G-2-404](#).

236 (b) The provisions of Subsection [63G-7-403\(1\)](#), relating to the governmental entity's  
237 response to a claim, [~~and the provisions of Section [63G-7-601](#), requiring an undertaking,~~] do  
238 not apply to a notice of claim for attorney fees filed contemporaneously with a petition for  
239 review under Section [63G-2-404](#).

240 (c) Any other claim under this chapter that is related to a claim for attorney fees under  
241 Subsection [63G-7-301\(2\)\(e\)](#) may be brought contemporaneously with the claim for attorney  
242 fees or in a subsequent action.

243 Section 6. Section **63G-7-401** is amended to read:

244 **63G-7-401. When a claim arises -- Notice of claim requirements -- Governmental**



245 **entity statement -- Limits on challenging validity or timeliness of notice of claim.**

246 (1) (a) Except as provided in Subsection (1)(b), a claim arises when the statute of  
247 limitations that would apply if the claim were against a private person begins to run.

248 (b) The statute of limitations does not begin to run until a claimant knew, or with the  
249 exercise of reasonable diligence should have known:

250 (i) that the claimant had a claim against the governmental entity or [~~its~~] the  
251 governmental entity's employee; and

252 (ii) the identity of the governmental entity or the name of the employee.

253 (c) The burden to prove the exercise of reasonable diligence is upon the claimant.

254 (2) Any person having a claim against a governmental entity, or against [~~its~~] the  
255 governmental entity's employee for an act or omission occurring during the performance of the  
256 employee's duties, within the scope of employment, or under color of authority shall file a  
257 written notice of claim with the entity before maintaining an action, regardless of whether or  
258 not the function giving rise to the claim is characterized as governmental.

259 (3) (a) The notice of claim shall set forth:

260 (i) a brief statement of the facts;

261 (ii) the nature of the claim asserted;

262 (iii) the damages incurred by the claimant so far as [~~they~~] the damages are known; and

263 (iv) if the claim is being pursued against a governmental employee individually as  
264 provided in Subsection 63G-7-202(3)(c), the name of the employee.

265 (b) The notice of claim shall be:

266 (i) signed by the person making the claim or that person's agent, attorney, parent, or  
267 legal guardian; and

268 (ii) directed and delivered by hand or by mail according to the requirements of Section  
269 68-3-8.5 to the office of:

270 (A) the city or town clerk, when the claim is against an incorporated city or town;

271 (B) the county clerk, when the claim is against a county;

272 (C) the superintendent or business administrator of the board, when the claim is against  
273 a school district or board of education;

274 (D) the presiding officer or [~~secretary/clerk~~] secretary or clerk of the board, when the  
275 claim is against a local district or special service district;

276 (E) the attorney general, when the claim is against the state;

277 (F) a member of the governing board, the executive director, or executive secretary,  
278 when the claim is against any other public board, commission, or body; or

279 (G) the agent authorized by a governmental entity to receive the notice of claim by the  
280 governmental entity under Subsection (5)(e).

281 (4) (a) If an injury that may reasonably be expected to result in a claim against a  
282 governmental entity is sustained by a claimant who is under the age of majority or mentally  
283 incompetent, that governmental entity may file a request with the court for the appointment of a  
284 guardian ad litem for the potential claimant.

285 (b) If a guardian ad litem is appointed, the time for filing a claim under Section  
286 63G-7-402 begins when the order appointing the guardian ad litem is issued.

287 (5) (a) [~~Each~~] A governmental entity subject to suit under this chapter shall file a  
288 statement with the Division of Corporations and Commercial Code within the Department of  
289 Commerce containing:

- 290 (i) the name and address of the governmental entity;
- 291 (ii) the office or agent designated to receive a notice of claim; and
- 292 (iii) the address at which [~~it~~] the notice of claim is to be directed and delivered.

293 (b) [~~Each~~] A governmental entity shall update [~~its~~] the governmental entity's statement  
294 as necessary to ensure that the information is accurate.

295 (c) The Division of Corporations and Commercial Code shall develop a form for  
296 governmental entities to complete that provides the information required by Subsection (5)(a).

297 (d) (i) A newly incorporated municipality shall file the statement required by  
298 Subsection (5)(a) promptly after the lieutenant governor issues a certificate of incorporation  
299 under Section 67-1a-6.5.

300 (ii) A newly incorporated local district shall file the statement required by Subsection  
301 (5)(a) at the time that the written notice is filed with the lieutenant governor under Section  
302 17B-1-215.

303 (e) A governmental entity may, in [~~its~~] the governmental entity's statement, identify an  
304 agent authorized [~~by the entity~~] to accept notices of claim on [~~its~~] behalf of the governmental  
305 entity.

306 (6) The Division of Corporations and Commercial Code shall:

- 307 (a) maintain an index of the statements required by this section arranged both  
308 alphabetically by entity and by county of operation; and
- 309 (b) make the indices available to the public both electronically and via hard copy.
- 310 (7) A governmental entity may not challenge the validity of a notice of claim on the  
311 grounds that it was not directed and delivered to the proper office or agent if the error is caused  
312 by the governmental entity's failure to file or update the statement required by Subsection (5).
- 313 (8) A governmental entity may not challenge the timeliness, under Section 63G-7-402,  
314 of a notice of claim if:
- 315 (a) the claimant files a notice of claim with the governmental entity:
- 316 (i) in accordance with the requirements of this section; and
- 317 (ii) within 30 days after the expiration of the time for filing a notice of claim under  
318 Section 63G-7-402;
- 319 (b) the claimant demonstrates that the claimant previously filed a notice of claim:
- 320 (i) in accordance with the requirements of this section;
- 321 (ii) with an incorrect governmental entity;
- 322 (iii) in the good faith belief that the claimant was filing the notice of claim with the  
323 correct governmental entity;
- 324 (iv) within the time for filing a notice of claim under Section 63G-7-402; and
- 325 (v) no earlier than 30 days before the expiration of the time for filing a notice of claim  
326 under Section 63G-7-402; and
- 327 (c) the claimant submits with the notice of claim:
- 328 (i) a copy of the previous notice of claim that was filed with a governmental entity  
329 other than the correct governmental entity; and
- 330 (ii) proof of the date the previous notice of claim was filed.
- 331 (9) A court may not dismiss an action on a claim under this chapter on the basis of an  
332 invalid, inadequate, or untimely notice of claim if the claimant establishes that:
- 333 (a) the governmental entity received actual notice of a written communication:
- 334 (i) from the claimant;
- 335 (ii) that purports to assert a claim against the governmental entity; and
- 336 (iii) within the time provided in Section 63G-7-402 for the filing of a notice of claim;  
337 and

338 (b) the written communication substantially complies with the requirements of  
339 Subsection (3)(a).

340 Section 7. Section **63G-7-403** is amended to read:

341 **63G-7-403. Notice of claim -- Approval or denial of claim -- Action in district**  
342 **court -- Time for commencing action -- Commencing action after time limit.**

343 (1) (a) Within 60 days ~~[of]~~ after the filing of a notice of claim, the governmental entity  
344 or its insurance carrier shall inform the claimant in writing:

345 (i) that the notice of claim has [either] been [approved or denied.] received; and

346 (ii) if applicable, that the governmental entity believes it is not the correct  
347 governmental entity with which the notice of claim should have been filed.

348 (b) The period under Subsection (2)(b) for a claimant to commence an action against a  
349 governmental entity is three years if:

350 (i) the notice of claim was filed with the correct governmental entity; and

351 (ii) neither the governmental entity nor its insurance carrier informs the claimant as  
352 provided in Subsection (1)(a).

353 ~~[(b) A claim is considered to be denied if, at the end of the 60-day period, the~~  
354 ~~governmental entity or its insurance carrier has failed to approve or deny the claim.]~~

355 (2) (a) ~~[If the claim is denied, a]~~ (i) Subject to Subsections (2)(a)(ii) and (b), a claimant  
356 may pursue an action in the district court against the governmental entity or an employee of the  
357 entity.

358 (ii) A claimant may not file an action before the earlier of:

359 (A) the date the governmental entity denies the claimant's claim; and

360 (B) 60 days after the claimant's notice of claim is filed.

361 (b) ~~[Subject]~~ Except as provided in Subsection (1)(b) and subject to Subsection (3), a  
362 claimant shall commence the action within [one year after denial of] two years after the claim  
363 [or within one year after the denial period specified in this chapter has expired] arises, as  
364 provided in Subsection 63G-7-401(1), regardless of whether or not the function giving rise to  
365 the claim is characterized as governmental.

366 (3) (a) As used in this Subsection (3), "claimant" includes a representative of an  
367 individual:

368 (i) who dies before an action is begun under this section; and

369 (ii) whose cause of action survives the individual's death.

370 (b) A claimant may commence an action after the time limit described in Subsection

371 (2)(b) if:

372 (i) the claimant had commenced a previous action within the time limit of Subsection

373 (2)(b);

374 (ii) the previous action failed or was dismissed for a reason other than on the merits;

375 and

376 (iii) the claimant commences the new action within one year after the previous action

377 failed or was dismissed.

378 (c) A claimant may commence a new action under Subsection (3)(b) only once.

379 Section 8. Section **63G-7-604** is amended to read:

380 **63G-7-604. Limitation of judgments against governmental entity or employee --**

381 **Process for adjustment of limits.**

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

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

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

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

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

399 (3) The limitations of judgments established in Subsection (1) shall be adjusted

400 according to the methodology set forth in Section [63G-7-605](#).

401 Section 9. Section **63G-9-302.5** is enacted to read:

402 **63G-9-302.5. Special master proceeding for damages cap claims.**

403 (1) As used in this section:

404 (a) "Claimant" means an individual who submits an excess damages claim to the board  
405 of examiners.

406 (b) "Damages cap" means the amount to which a personal injury claim is or would be  
407 reduced because of the operation of Subsection [63G-7-604\(1\)\(a\)](#) or (d).

408 (c) "Damages cap settlement" means a settlement:

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

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

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

414 (i) exceeds the damages cap; and

415 (ii) a governmental entity would be liable to pay except for the operation of Subsection  
416 [63G-7-604\(1\)\(a\)](#) or (d).

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

418 (f) "Government attorney" means:

419 (i) an attorney representing a political subdivision, if the personal injury claim that  
420 results in an excess damages claim was asserted against the political subdivision; or

421 (ii) the attorney general, if:

422 (A) the personal injury claim that results in an excess damages claim was asserted  
423 against the state; or

424 (B) the attorney general chooses to participate on behalf of a political subdivision, as  
425 provided in Subsection (9)(b).

426 (g) "Personal injury claim" means a claim for damages for personal injury that is  
427 subject to the operation of Subsection [63G-7-604\(1\)\(a\)](#) or (d).

428 (h) "Responsible governmental entity" means:

429 (i) the political subdivision against which the personal injury claim was asserted, if an  
430 excess damages claim results from a personal injury claim against a political subdivision; or

431 (ii) the state, if an excess damages claim results from a personal injury claim against  
432 the state.

433 (i) "Special master list" means a list compiled under Subsection (7).

434 (j) "Statement of claim" means a statement detailing an excess damages claim.

435 (k) "Third party claim" means a personal injury claim that:

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

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

440 (2) An individual may seek payment of an excess damages claim by submitting a  
441 written statement of claim to the board of examiners after, but no later than 180 days after, as  
442 applicable:

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

446 (ii) the date of a damages cap settlement; or

447 (b) the date that all third party claims the individual has asserted are resolved by final,  
448 nonappealable judgment or settlement, if that date is later than the applicable date under  
449 Subsection (2)(a).

450 (3) A statement of claim shall include:

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

453 (b) the excess damages amount;

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

457 (d) if applicable, a summary of a damages cap settlement; and

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

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

462 (ii) a description of each element of damages awarded and the amount awarded for  
463 each element.

464 (4) A claimant shall submit with a statement of claim a copy of:

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

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

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

473 (6) A claimant with a personal injury claim that is subject to the aggregate limit under  
474 Subsection 63G-7-604(1)(d) may not submit a statement of claim under this section before the  
475 amount of the personal injury claim has been determined after application of Subsection  
476 63G-7-604(1)(d).

477 (7) (a) The board of examiners shall compile a list of at least five retired Utah judges to  
478 serve as a special master under this section.

479 (b) A retired judge included in the special master list shall meet qualifications  
480 established by the board of examiners.

481 (8) (a) Except as provided in Subsection (8)(b), the board of examiners may require a  
482 claimant's excess damages claim to be submitted to a special master, as provided in this  
483 section, to make a recommendation concerning:

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

486 (ii) the amount of the claimant's damages and excess damages claim; or

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

489 (b) The board of examiners may not require a claimant's excess damages claim to be  
490 submitted to a special master to the extent that the excess damages claim is based on a court  
491 judgment following a verdict by a trier of fact determining the governmental entity's liability or  
492 the amount of damages or both.



493 (9) (a) A political subdivision that is the responsible governmental entity may choose  
494 whether to have an attorney representing the political subdivision participate in proceedings  
495 under this section to represent the interests opposing approval of the excess damages claim.

496 (b) The attorney general may choose to participate in proceedings under this section to  
497 represent the interests opposing approval of the excess damages claim, whether or not the state  
498 is the responsible governmental entity.

499 (10) (a) If the board of examiners requires a claimant's excess damages claim to be  
500 submitted to a special master under this section, the claimant and the government attorney shall  
501 together select an individual from the special master list to act as special master.

502 (b) If the claimant and the government attorney are unable to agree on an individual to  
503 act as special master, or if there is no government attorney participating in the proceedings  
504 before the board of examiners, the board of examiners shall randomly select an individual from  
505 the special master list to act as special master.

506 (11) (a) Within 20 days after appointment under Subsection (10), a special master  
507 shall:

508 (i) prepare a written budget of the special master's estimated fees and costs relating to  
509 the special master's anticipated services under this section; and

510 (ii) provide the budget to the claimant.

511 (b) Within 20 days after receiving the special master's budget under Subsection (11)(a),  
512 the claimant shall:

513 (i) approve or reject the special master's budget; and

514 (ii) notify the board of examiners in writing of the approval or rejection.

515 (c) If the claimant rejects the special master's budget, the claimant's excess damages  
516 claim is considered withdrawn.

517 (d) If the claimant approves the special master's budget, the claimant shall pay all fees  
518 and costs of the special master in a special master proceeding under this section.

519 (12) Within 30 days after the approval of a special master's budget, the claimant shall  
520 provide the special master a written statement that includes:

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

524 the claimant submits the written statement;

525 (ii) a description of the health care services provided by each health care provider listed  
526 in Subsection (12)(a)(i); and

527 (iii) a statement describing and explaining any health care services described under  
528 Subsection (12)(a)(ii) that the claimant claims are immaterial to the claimant's personal injury  
529 claim;

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

535 (ii) a description of the health care or other similar benefits claimed under claims  
536 submitted to health care insurers or other entities listed under Subsection (12)(b)(i); and

537 (iii) a statement describing and explaining any health care or other similar benefit  
538 described under Subsection (12)(b)(ii) that the claimant claims is immaterial to the claimant's  
539 personal injury claim;

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

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

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

549 (13) The claimant shall submit with the statement required under Subsection (12):

550 (a) a copy of all documentary evidence supporting the claimant's excess damages  
551 claim; and

552 (b) a signed authorization from the claimant allowing the special master to obtain all  
553 documents, including any billing statements, relevant to the claimant's excess damages claim  
554 from each person listed under Subsections (12)(a)(i), (b)(i), and (c).

555           (14) The special master:  
556           (a) shall objectively consider evidence related to the claimant's excess damages claim;  
557           (b) may hold a hearing in connection with the special master recommendation  
558 regarding the excess damages claim;  
559           (c) may request or allow a responsible governmental entity or government attorney  
560 voluntarily to provide information or argument to help the special master understand the factors  
561 weighing against an excess damages claim; and  
562           (d) after considering the relevant evidence, shall make a recommendation concerning,  
563 as directed by the board of examiners:  
564           (i) the governmental entity's liability for the personal injury claim that forms the basis  
565 of the claimant's excess damages claim;  
566           (ii) the amount of the excess damages claim; or  
567           (iii) both the governmental entity's liability and the amount of the claimant's damages  
568 and excess damages claim.  
569           (15) (a) Within 30 days after a hearing under Subsection (14)(b) or, if no hearing is  
570 held, after the special master's determination not to hold a hearing, the special master shall:  
571           (i) prepare a written recommendation, including a brief, informal discussion of the  
572 factual and legal basis for the recommendation; and  
573           (ii) deliver a copy of the written recommendation to the claimant, the attorney general,  
574 and the board of examiners.  
575           (b) A written recommendation under Subsection (15)(a) may, but need not, contain  
576 findings of fact and conclusions of law.

577           Section 10. Section **63J-1-312** is amended to read:

578           **63J-1-312. Establishing a General Fund Budget Reserve Account -- Providing for**  
579 **deposits and expenditures from the account -- Providing for interest generated by the**  
580 **account.**

581           (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

644 (c) For appropriations made by the Legislature to the General Fund Budget Reserve  
645 Account, the Division of Finance shall treat those appropriations, unless otherwise specified in  
646 the appropriation, as replacement funds for appropriations made from the account if funds were  
647 appropriated from the General Fund Budget Reserve Account within the past 10 years and have

648 not yet been replaced.

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

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

653 (b) pay some or all of state settlement agreements approved under Title 63G, Chapter  
654 10, State Settlement Agreements Act;

655 (c) pay claims approved under Section [63G-9-304](#);

656 [~~c~~] (d) pay retroactive tax refunds;

657 [~~d~~] (e) resolve an Education Fund budget deficit; or

658 [~~e~~] (f) finance an existing federally funded program or activity when:

659 (i) the federal funds expected to fund the federal program or activity are not available  
660 to fund the program or activity; and

661 (ii) the Legislature and governor concurrently determine that the program or activity is  
662 essential.

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

665 Section 11. **Repealer.**

666 This bill repeals:

667 Section [63G-7-601](#), **Actions governed by Utah Rules of Civil Procedure --**

668 **Undertaking required.**