

Representative Michael K. McKell proposes the following substitute bill:

GOVERNMENTAL IMMUNITY REVISIONS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael K. McKell

Senate Sponsor: Curtis S. Bramble

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;
- ▶ provides an additional basis for disallowing a governmental entity to challenge the timeliness of a notice of claim;
- ▶ modifies the time for filing an action against a governmental entity;
- ▶ modifies provisions relating to a governmental entity's response to a notice of claim;
- ▶ modifies a provision relating to a plaintiff's filing of an undertaking in an action under the Governmental Immunity Act of Utah;
- ▶ 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.



26 **Money Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

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

33 **63G-7-301**, as amended by Statewide Initiative -- Proposition 4, Nov. 6, 2018

34 **63G-7-401**, as last amended by Laws of Utah 2014, Chapter 210

35 **63G-7-403**, as last amended by Laws of Utah 2017, Chapter 300

36 **63G-7-601**, as last amended by Laws of Utah 2017, Chapter 300

37 **63G-7-604**, as last amended by Laws of Utah 2017, Chapter 151

38 **63J-1-312**, as last amended by Laws of Utah 2017, Chapter 474

39 ENACTS:

40 **63G-9-302.5**, Utah Code Annotated 1953



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

43 Section 1. Section **63G-7-201** is amended to read:

44 **63G-7-201. Immunity of governmental entities and employees from suit.**

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

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

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

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

56 (c) respond to a national, state, or local emergency, a public health emergency as

57 defined in Section [26-23b-102](#), or a declaration by the President of the United States or other
58 federal official requesting public health related activities, including the use, provision,
59 operation, and management of:

- 60 (i) an emergency shelter;
- 61 (ii) housing;
- 62 (iii) a staging place; or
- 63 (iv) a medical facility; and

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

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

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

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

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

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

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

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

82 (b) except as provided in Subsection [63G-7-301\(2\)\(k\)](#), assault, battery, false
83 imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel,
84 slander, deceit, interference with contract rights, infliction of mental anguish, or violation of
85 civil rights;

86 (c) the issuance, denial, suspension, or revocation of, or the failure or refusal to issue,
87 deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar

88 authorization;

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

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

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

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

95 (h) the collection or assessment of taxes;

96 (i) an activity of the Utah National Guard;

97 (j) the incarceration of a person in a state prison, county or city jail, or other place of
98 legal confinement;

99 (k) a natural condition on publicly owned or controlled land;

100 (l) a condition existing in connection with an abandoned mine or mining operation;

101 (m) an activity authorized by the School and Institutional Trust Lands Administration
102 or the Division of Forestry, Fire, and State Lands;

103 (n) the operation or existence of a pedestrian or equestrian trail that is along a ditch,
104 canal, stream, or river, regardless of ownership or operation of the ditch, canal, stream, or river,
105 if:

106 (i) the trail is designated under a general plan adopted by a municipality under Section
107 [10-9a-401](#) or by a county under Section [17-27a-401](#);

108 (ii) the trail right-of-way or the right-of-way where the trail is located is open to public
109 use as evidenced by a written agreement between:

110 (A) the owner or operator of the trail right-of-way or of the right-of-way where the trail
111 is located; and

112 (B) the municipality or county where the trail is located; and

113 (iii) the written agreement:

114 (A) contains a plan for operation and maintenance of the trail; and

115 (B) provides that an owner or operator of the trail right-of-way or of the right-of-way
116 where the trail is located has, at a minimum, the same level of immunity from suit as the
117 governmental entity in connection with or resulting from the use of the trail;

118 (o) research or implementation of cloud management or seeding for the clearing of fog;

- 119 (p) the management of flood waters, earthquakes, or natural disasters;
- 120 (q) the construction, repair, or operation of flood or storm systems;
- 121 (r) the operation of an emergency vehicle, while being driven in accordance with the
- 122 requirements of Section [41-6a-212](#);
- 123 (s) the activity of:
 - 124 (i) providing emergency medical assistance;
 - 125 (ii) fighting fire;
 - 126 (iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;
 - 127 (iv) an emergency evacuation;
 - 128 (v) transporting or removing an injured person to a place where emergency medical
 - 129 assistance can be rendered or where the person can be transported by a licensed ambulance
 - 130 service; or
 - 131 (vi) intervening during a dam emergency;
 - 132 (t) the exercise or performance, or the failure to exercise or perform, any function
 - 133 pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources;
 - 134 (u) an unauthorized access to government records, data, or electronic information
 - 135 systems by any person or entity; or
 - 136 (v) an activity of wildlife, as defined in Section [23-13-2](#), that arises during the use of a
 - 137 public or private road.

138 Section 2. Section **63G-7-301** is amended to read:

139 **63G-7-301. Waivers of immunity.**

- 140 (1) (a) Immunity from suit of each governmental entity is waived as to any contractual
- 141 obligation.
- 142 (b) Actions arising out of contractual rights or obligations are not subject to the
- 143 requirements of Sections [63G-7-401](#), [63G-7-402](#), [63G-7-403](#), or [63G-7-601](#).
- 144 (c) The Division of Water Resources is not liable for failure to deliver water from a
- 145 reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development
- 146 Act, if the failure to deliver the contractual amount of water is due to drought, other natural
- 147 condition, or safety condition that causes a deficiency in the amount of available water.
- 148 (2) Immunity from suit of each governmental entity is waived:
 - 149 (a) as to any action brought to recover, obtain possession of, or quiet title to real or

150 personal property;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

184 (ii) by an employee of a public elementary or secondary school or charter school who:

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

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

188 (C) the public elementary or secondary school or charter school knew or in the exercise
189 of reasonable care should have known, at the time of the employee's hiring, to be a sex
190 offender, as defined in Section [77-41-102](#), required to register under Title 77, Chapter 41, Sex
191 and Kidnap Offender Registry, whose status as a sex offender would have been revealed in a
192 background check under Section [53G-11-402](#).

193 Section 3. Section **63G-7-401** is amended to read:

194 **63G-7-401. When a claim arises -- Notice of claim requirements -- Governmental**
195 **entity statement -- Limits on challenging validity or timeliness of notice of claim.**

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

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

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

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

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

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

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

210 (i) a brief statement of the facts;

211 (ii) the nature of the claim asserted;

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

213 (iv) if the claim is being pursued against a governmental employee individually as

214 provided in Subsection 63G-7-202(3)(c), the name of the employee.

215 (b) The notice of claim shall be:

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

218 (ii) directed and delivered by hand or by mail according to the requirements of Section
219 68-3-8.5 to the office of:

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

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

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

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

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

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

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

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

235 (b) If a guardian ad litem is appointed, the time for filing a claim under Section
236 63G-7-402 begins when the order appointing the guardian ad litem is issued.

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

240 (i) the name and address of the governmental entity;

241 (ii) the office or agent designated to receive a notice of claim; and

242 (iii) the address at which [~~it~~] the notice of claim is to be directed and delivered.

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

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

247 (d) (i) A newly incorporated municipality shall file the statement required by
248 Subsection (5)(a) promptly after the lieutenant governor issues a certificate of incorporation
249 under Section [67-1a-6.5](#).

250 (ii) A newly incorporated local district shall file the statement required by Subsection
251 (5)(a) at the time that the written notice is filed with the lieutenant governor under Section
252 [17B-1-215](#).

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

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

257 (a) maintain an index of the statements required by this section arranged both
258 alphabetically by entity and by county of operation; and

259 (b) make the indices available to the public both electronically and via hard copy.

260 (7) A governmental entity may not challenge the validity of a notice of claim on the
261 grounds that it was not directed and delivered to the proper office or agent if the error is caused
262 by the governmental entity's failure to file or update the statement required by Subsection (5).

263 (8) A governmental entity may not challenge the timeliness, under Section [63G-7-402](#),
264 of a notice of claim if:

265 (a) (i) the claimant files a notice of claim with the governmental entity:

266 ~~[(i)]~~ (A) in accordance with the requirements of this section; and

267 ~~[(i)]~~ (B) within 30 days after the expiration of the time for filing a notice of claim
268 under Section [63G-7-402](#);

269 ~~[(b)]~~ (ii) the claimant demonstrates that the claimant previously filed a notice of claim:

270 ~~[(i)]~~ (A) in accordance with the requirements of this section;

271 ~~[(ii)]~~ (B) with an incorrect governmental entity;

272 ~~[(iii)]~~ (C) in the good faith belief that the claimant was filing the notice of claim with
273 the correct governmental entity;

274 ~~[(iv)]~~ (D) within the time for filing a notice of claim under Section 63G-7-402; and
 275 ~~[(v)]~~ (E) no earlier than 30 days before the expiration of the time for filing a notice of
 276 claim under Section 63G-7-402; and

277 ~~[(c)]~~ (iii) the claimant submits with the notice of claim:

278 ~~[(i)]~~ (A) a copy of the previous notice of claim that was filed with a governmental
 279 entity other than the correct governmental entity; and

280 ~~[(ii)]~~ (B) proof of the date the previous notice of claim was filed~~[-];~~ or

281 (b) (i) the claimant delivers by hand or by mail a notice of claim:

282 (A) to an elected official or executive officer of the correct governmental entity but not
 283 to the correct office under Subsection (3)(b)(ii); and

284 (B) that otherwise meets the requirements of Subsection (3); and

285 (ii) (A) the claimant contemporaneously sends a hard copy or electronic copy of the
 286 notice of claim to the office of the city attorney, district attorney, county attorney, attorney
 287 general, or other attorney, as the case may be, representing the correct governmental entity; or

288 (B) the governmental entity does not, within 60 days after the claimant delivers the
 289 notice of claim under Subsection (8)(b)(i), provide written notification to the claimant of the
 290 delivery defect and of the identity of the correct office to which the claimant is required to
 291 deliver the notice of claim.

292 Section 4. Section **63G-7-403** is amended to read:

293 **63G-7-403. Notice of claim -- Approval or denial of claim -- Action in district**
 294 **court -- Time for commencing action -- Commencing action after time limit.**

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

297 (a) that the notice of claim has ~~[either]~~ been ~~[approved or denied.]~~ received; and

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

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

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

305 (ii) A claimant may not file an action before the date that is 60 days after the claimant's
306 notice of claim is filed.

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

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

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

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

315 (b) A claimant may commence an action after the time limit described in Subsection
316 (2)(b) if:

317 (i) the claimant had commenced a previous action within the time limit of Subsection
318 (2)(b);

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

321 (iii) the claimant commences the new action within one year after the previous action
322 failed or was dismissed.

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

324 Section 5. Section **63G-7-601** is amended to read:

325 **63G-7-601. Actions governed by Utah Rules of Civil Procedure -- Undertaking**
326 **required.**

327 (1) An action brought under this chapter shall be governed by the Utah Rules of Civil
328 Procedure to the extent that they are consistent with this chapter.

329 (2) [~~At the time the action is filed, the~~] A plaintiff who files an action under this
330 chapter shall file an undertaking within 20 days after commencement of the action:

331 (a) in the amount of \$300, unless otherwise ordered by the court; and

332 (b) conditioned upon payment by the plaintiff of taxable costs incurred by the
333 governmental entity in the action if the plaintiff fails to prosecute the action or fails to recover
334 judgment.

335 (3) If a plaintiff does not file an undertaking as required in Subsection (2), a court may,

336 sua sponte or pursuant to a motion, order the plaintiff to file an undertaking in an amount and
337 by a deadline that the court establishes.

338 (4) A defendant waives a defense based on the plaintiff's failure to file an undertaking
339 under this section if the defendant does not raise the plaintiff's failure to file an undertaking as
340 an affirmative defense in the defendant's initial responsive pleading.

341 Section 6. Section **63G-7-604** is amended to read:

342 **63G-7-604. Limitation of judgments against governmental entity or employee --**
343 **Process for adjustment of limits.**

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

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

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

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

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

361 (3) The limitations of judgments established in Subsection (1) shall be adjusted
362 according to the methodology set forth in Section **63G-7-605**.

363 Section 7. Section **63G-9-302.5** is enacted to read:

364 **63G-9-302.5. Special master proceeding for damages cap claims.**

365 (1) As used in this section:

366 (a) "Claimant" means an individual who submits an excess damages claim to the board

367 of examiners.

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

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

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

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

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

376 (i) exceeds the damages cap; and

377 (ii) a governmental entity would be liable to pay except for the operation of Subsection
378 63G-7-604(1)(a) or (d).

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

380 (f) "Government attorney" means:

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

383 (ii) the attorney general, if:

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

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

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

390 (h) "Responsible governmental entity" means:

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

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

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

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

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

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

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

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

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

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

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

412 (3) A statement of claim shall include:

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

415 (b) the excess damages amount;

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

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

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

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

424 (ii) a description of each element of damages awarded and the amount awarded for
425 each element.

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

427 (a) a final judgment in favor of the claimant on the claimant's personal injury claim that
428 forms the basis of the claimant's excess damages claim, together with any findings of fact and

429 conclusions of law entered by the court, if the claimant has recovered a judgment that exceeds
430 the damages cap; or

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

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

435 (6) A claimant with a personal injury claim that is subject to the aggregate limit under
436 Subsection 63G-7-604(1)(d) may not submit a statement of claim under this section before the
437 amount of the personal injury claim has been determined after application of Subsection
438 63G-7-604(1)(d).

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

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

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

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

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

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

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

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

458 (b) The attorney general may choose to participate in proceedings under this section to
459 represent the interests opposing approval of the excess damages claim, whether or not the state

460 is the responsible governmental entity.

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

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

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

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

472 (ii) provide the budget to the claimant.

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

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

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

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

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

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

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

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

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

491 claim;

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

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

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

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

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

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

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

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

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

517 (14) The special master:

518 (a) shall objectively consider evidence related to the claimant's excess damages claim;

519 (b) may hold a hearing in connection with the special master recommendation
520 regarding the excess damages claim;

521 (c) may request or allow a responsible governmental entity or government attorney

522 voluntarily to provide information or argument to help the special master understand the factors
523 weighing against an excess damages claim; and

524 (d) after considering the relevant evidence, shall make a recommendation concerning,
525 as directed by the board of examiners:

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

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

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

531 (15) (a) Within 30 days after a hearing under Subsection (14)(b) or, if no hearing is
532 held, after the special master's determination not to hold a hearing, the special master shall:

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

535 (ii) deliver a copy of the written recommendation to the claimant, the attorney general,
536 and the board of examiners.

537 (b) A written recommendation under Subsection (15)(a) may, but need not, contain
538 findings of fact and conclusions of law.

539 Section 8. Section **63J-1-312** is amended to read:

540 **63J-1-312. Establishing a General Fund Budget Reserve Account -- Providing for**
541 **deposits and expenditures from the account -- Providing for interest generated by the**
542 **account.**

543 (1) As used in this section:

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

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

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

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

552 (c) "General Fund budget deficit" means a situation where General Fund appropriations

553 made by the Legislature for a fiscal year exceed the estimated revenues adopted by the
554 Executive Appropriations Committee of the Legislature for the General Fund in that fiscal year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

615 (b) pay some or all of state settlement agreements approved under Title 63G, Chapter
616 10, State Settlement Agreements Act;

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

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

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

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

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

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

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