

HB0311S01 compared with HB0311

~~{deleted text}~~ shows text that was in HB0311 but was deleted in HB0311S01.

Inserted text shows text that was not in HB0311 but was inserted into HB0311S01.

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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: _____

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}~~ provides an additional basis for disallowing a governmental entity to challenge the timeliness of a notice of claim ~~{, under certain circumstances}~~;
- ▶ 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;
- ▶ ~~{provides a consequence if a governmental entity fails to acknowledge receipt of a~~

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~~notice of claim within a specified time}~~ 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.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- ~~{ 63G-6a-1904, as last amended by Laws of Utah 2015, Chapter 218~~
- + 63G-7-201, as last amended by Laws of Utah 2016, Chapter 181
- ~~{ 63G-7-203, as last amended by Laws of Utah 2018, Chapter 178~~
- + 63G-7-301, as amended by Statewide Initiative -- Proposition 4, Nov. 6, 2018
- ~~{ 63G-7-302, as last amended by Laws of Utah 2008, Chapter 3 and renumbered and amended by Laws of Utah 2008, Chapter 382~~
- + 63G-7-401, as last amended by Laws of Utah 2014, Chapter 210
- 63G-7-403, as last amended by Laws of Utah 2017, Chapter 300
- 63G-7-601, as last amended by Laws of Utah 2017, Chapter 300
- 63G-7-604, as last amended by Laws of Utah 2017, Chapter 151
- 63J-1-312, as last amended by Laws of Utah 2017, Chapter 474

ENACTS:

63G-9-302.5, Utah Code Annotated 1953

~~{REPEALS:~~

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

~~}~~

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

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Section 1. Section ~~{63G-6a-1904}~~ 63G-7-201 is amended to read:

~~{~~ ~~63G-6a-1904. Costs to or against protestor.~~

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

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

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

~~———— (2) If the final determination of a procurement appeals panel or other appellate body does not sustain the protest, the protestor shall reimburse the conducting or issuing procurement unit for all expenses that the conducting or issuing procurement unit incurred in defending the appeal, including personnel costs, attorney fees, other legal costs, the per diem and expenses paid by the conducting or issuing procurement unit to witnesses or appeals panel members, and any additional expenses incurred by the staff of the conducting or issuing procurement unit who have provided materials and administrative services to the procurement appeals panel for that case.~~

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

~~———— Section 2. Section 63G-7-201 is amended to read:~~

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

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

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

(a) control the causes of epidemic and communicable diseases and other conditions

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significantly affecting the public health or necessary to protect the public health as set out in Title 26A, Chapter 1, Local Health Departments;

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

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

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

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

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

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

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

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

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

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

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

(b) except as provided in Subsection 63G-7-301(2)(k), assault, battery, false

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imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, or violation of civil rights;

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

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

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

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

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

(h) the collection or assessment of taxes;

(i) an activity of the Utah National Guard;

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

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

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

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

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

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

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

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

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

(iii) the written agreement:

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- (A) contains a plan for operation and maintenance of the trail; and
- (B) provides that an owner or operator of the trail right-of-way or of the right-of-way where the trail is located has, at a minimum, the same level of immunity from suit as the governmental entity in connection with or resulting from the use of the trail;
 - (o) research or implementation of cloud management or seeding for the clearing of fog;
 - (p) the management of flood waters, earthquakes, or natural disasters;
 - (q) the construction, repair, or operation of flood or storm systems;
 - (r) the operation of an emergency vehicle, while being driven in accordance with the requirements of Section 41-6a-212;
 - (s) the activity of:
 - (i) providing emergency medical assistance;
 - (ii) fighting fire;
 - (iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;
 - (iv) an emergency evacuation;
 - (v) transporting or removing an injured person to a place where emergency medical assistance can be rendered or where the person can be transported by a licensed ambulance service; or
 - (vi) intervening during a dam emergency;
 - (t) the exercise or performance, or the failure to exercise or perform, any function pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources;
 - (u) an unauthorized access to government records, data, or electronic information systems by any person or entity; or
 - (v) an activity of wildlife, as defined in Section 23-13-2, that arises during the use of a public or private road.

Section ~~{3}~~2. Section ~~{63G-7-203}~~63G-7-301 is amended to read:

~~{~~ **63G-7-203. Exemptions for certain actions.**

~~_____~~ ~~The requirements of Sections 63G-7-401, 63G-7-402, and 63G-7-403[, and 63G-7-601]~~
~~do not apply to:~~

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

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

‡ **63G-7-301. Waivers of immunity.**

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

(b) Actions arising out of contractual rights or obligations are not subject to the requirements of Sections 63G-7-401, 63G-7-402, ~~or~~ 63G-7-403 ~~or~~, or 63G-7-601 ~~or~~.

(c) The Division of Water Resources is not liable for failure to deliver water from a reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development Act, if the failure to deliver the contractual amount of water is due to drought, other natural condition, or safety condition that causes a deficiency in the amount of available water.

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

(a) as to any action brought to recover, obtain possession of, or quiet title to real or personal property;

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

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

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

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

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

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

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Land Use Act;

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

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

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

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

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

(k) notwithstanding Subsection 63G-7-101(4), as to a claim for an injury resulting from a sexual battery, as provided in Section 76-9-702.1, committed:

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

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

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

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

(C) the ~~{governmental entity}~~ ~~public elementary or secondary school or charter school~~ knew or in the exercise of reasonable care should have known, at the time of the employee's hiring, to ~~{have been previously convicted of unlawful sexual activity that}~~ ~~be a sex offender, as defined in Section 77-41-102, required to register under Title 77, Chapter 41, Sex and Kidnap Offender Registry, whose status as a sex offender~~ would have been revealed in a background check under Section 53G-11-402.

~~{~~ ~~Section 5. Section 63G-7-302 is amended to read:~~

~~63G-7-302. Specific remedies -- "Takings" actions -- Government Records Access and Management Actions:~~

~~(1) In any action brought under the authority of Article I, Section 22, of the Utah Constitution for the recovery of compensation from the governmental entity when the governmental entity has taken or damaged private property for public uses without just~~

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~~compensation, compensation and damages shall be assessed according to the requirements of Title 78B, Chapter 6, Part 5, Eminent Domain.~~

~~———— (2) (a) Notwithstanding Section 63G-7-401, a notice of claim for attorney fees under Subsection 63G-7-301(2)(c) may be filed contemporaneously with a petition for review under Section 63G-2-404.~~

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

~~———— (c) Any other claim under this chapter that is related to a claim for attorney fees under Subsection 63G-7-301(2)(c) may be brought contemporaneously with the claim for attorney fees or in a subsequent action.~~

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

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

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

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

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

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

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

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

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

(i) a brief statement of the facts;

(ii) the nature of the claim asserted;

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

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

(b) The notice of claim shall be:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) (A) in accordance with the requirements of this section; and

(ii) (B) within 30 days after the expiration of the time for filing a notice of claim

under Section 63G-7-402;

(b) (ii) the claimant demonstrates that the claimant previously filed a notice of claim:

(i) (A) in accordance with the requirements of this section;

(ii) (B) with an incorrect governmental entity;

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

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

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

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

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

~~(9) A court may not dismiss an action on a claim under this chapter on the basis of an invalid, inadequate, or untimely~~ ~~};~~ or

(b) (i) the claimant delivers by hand or by mail a notice of claim ~~}; if~~:

(A) to an elected official or executive officer of the ~~{claimant establishes that:~~

~~(a) the~~ correct governmental entity ~~{received actual notice of a written communication:~~

~~(i) from the claimant;~~

~~(ii) that purports to assert a claim against the governmental entity; and~~

~~(iii) within the time provided in Section 63G-7-402 for the filing of a notice of claim;~~

and

~~(b) the written communication substantially complies with~~ but not to the correct office under Subsection (3)(b)(i); and

(B) that otherwise meets the requirements of Subsection (3) ~~{(a):~~

~~Section 7~~ }; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~—— (B) } date that is 60 days after the claimant's notice of claim is filed.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) If a plaintiff does not file an undertaking as required in Subsection (2), a court may, sua sponte or pursuant to a motion, order the plaintiff to file an undertaking in an amount and by a deadline that the court establishes.

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

Section ~~63G-7-601~~6. Section **63G-7-604** is amended to read:

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

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

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

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giving rise to the injury is characterized as governmental.

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

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

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

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

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

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

(1) As used in this section:

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

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

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

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

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

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

(i) exceeds the damages cap; and

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

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

(f) "Government attorney" means:

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

(ii) the attorney general, if:

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

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

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

(h) "Responsible governmental entity" means:

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

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

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

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

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

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

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

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

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

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

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

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(3) A statement of claim shall include:

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

(b) the excess damages amount;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) provide the budget to the claimant.

(b) Within 20 days after receiving the special master's budget under Subsection (11)(a),

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the claimant shall:

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

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

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

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

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

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

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

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

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

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

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

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

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the claimant's personal injury claim includes a claim for lost wages or diminished earning capacity;

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

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

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

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

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

(14) The special master:

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

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

(c) may request or allow a responsible governmental entity or government attorney voluntarily to provide information or argument to help the special master understand the factors weighing against an excess damages claim; and

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

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

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

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

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

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

(ii) deliver a copy of the written recommendation to the claimant, the attorney general,

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and the board of examiners.

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

Section ~~††0†8~~. Section **63J-1-312** is amended to read:

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

(1) As used in this section:

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

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

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

(ii) identified as coming from the General Fund.

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

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

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

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

(3) (a) (i) Except as provided in Subsection (3)(a)(ii), at the end of any fiscal year in which the Division of Finance, in consultation with the Legislative Fiscal Analyst and in conjunction with the completion of the annual audit by the state auditor, determines that there

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is a General Fund revenue surplus, the Division of Finance shall transfer 25% of the General Fund revenue surplus to the General Fund Budget Reserve Account.

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

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

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

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

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

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

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

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

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Subsection (3)(b):

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

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

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

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

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

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

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

(c) pay claims approved under Section 63G-9-304;

~~(c)~~ (d) pay retroactive tax refunds;

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

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

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

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

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

~~Section 11. Repealer.~~

~~This bill repeals:~~

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~~Section 63G-7-601, Actions governed by Utah Rules of Civil Procedure~~

~~Undertaking required:~~

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