

**GOVERNMENTAL IMMUNITY ACT AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jon Hawkins**

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

**LONG TITLE**

**General Description:**

This bill modifies the Governmental Immunity Act of Utah.

**Highlighted Provisions:**

This bill:

▶ repeals a provision that:

• states that an action brought under the Governmental Immunity Act of Utah is governed by the Utah Rules of Civil Procedure; and

• requires a plaintiff in an action under the Governmental Immunity Act of Utah to file an undertaking when the action is filed.

**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-7-203**, 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



28 REPEALS:

29 **63G-7-601**, as last amended by Laws of Utah 2017, Chapter 300



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

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

33 **63G-6a-1904. Costs to or against protestor.**

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

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

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

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

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

54 Section 2. Section **63G-7-203** is amended to read:

55 **63G-7-203. Exemptions for certain actions.**

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

58 (1) an action that involves takings law, as defined in Section **63L-3-102**; or

59 (2) an action filed under Title 67, Chapter 21, Utah Protection of Public Employees  
60 Act.

61 Section 3. Section **63G-7-301** is amended to read:

62 **63G-7-301. Waivers of immunity.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

101 (j) as to any action or suit brought under Section 20A-19-301 and as to any  
102 compensation or expenses awarded under Section 20A-19-301(5).

103 Section 4. Section 63G-7-302 is amended to read:

104 **63G-7-302. Assessment of damages in claims for taking or damaging property --**  
105 **Claims for attorney fees in certain cases.**

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

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

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

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

121 Section 5. **Repealer.**

122 This bill repeals:

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

124 **Undertaking required.**