

## HB0347S01 compared with HB0347

~~{deleted text}~~ shows text that was in HB0347 but was deleted in HB0347S01.

Inserted text shows text that was not in HB0347 but was inserted into HB0347S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Jon Hawkins proposes the following substitute bill:

### GOVERNMENTAL IMMUNITY ACT AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jon Hawkins**

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

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#### LONG TITLE

##### General Description:

This bill modifies the Governmental Immunity Act of Utah.

##### Highlighted Provisions:

This bill:

- ▶ ~~{repeals}~~modifies 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~~relating to an undertaking that a plaintiff is required to file in an action under the Governmental Immunity Act of Utah;

- ▶ authorizes a court to order the filing of an undertaking if the plaintiff fails to file within the required time; and

- ▶ provides that a defendant waives a defense based on a plaintiff's failure to file an

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undertaking ~~{when}~~ if the failure is not raised in the ~~{action is filed}~~ defendant's initial responsive pleading.

### 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

#### REPEALS:

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

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

Section 1. Section ~~{63G-6a-1904}~~ 63G-7-601 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~~

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~~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-7-203 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.~~

~~—— Section 3. 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] Section 63G-7-401, 63G-7-402, or 63G-7-403[, or 63G-7-601].~~

~~—— (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~~

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~~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 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):~~

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

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

~~—— (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~~

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~~governmental entity has taken or damaged private property for public uses without just 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 5. **Repealer.**~~

~~—— This bill repeals:~~

~~—— Section 63G-7-601,<sup>1</sup> **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~~]

(2) (a) A plaintiff who files an action under this chapter shall file an undertaking within 30 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

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an affirmative defense in the defendant's initial responsive pleading.