

1 **STATE SETTLEMENT AGREEMENTS REQUIREMENTS**

2 2023 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Don L. Ipson**

5 House Sponsor: Robert M. Spendlove

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions related to approval of settlements.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ provides definitions;
- 13 ▶ requires notice of certain settlements be provided to the Legislative Management
14 Committee;
- 15 ▶ adjusts thresholds for executive and legislative approval of settlement agreements
16 involving the state or the state's subdivisions;
- 17 ▶ clarifies that final approval is contingent upon receipt of approvals of lower
18 threshold amounts;
- 19 ▶ requires the Legislature's general counsel to receive notice of and updates on
20 negotiation proceedings, and permits the general counsel to attend negotiations in
21 some circumstances;
- 22 ▶ requires notice of certain settlements to be sent to the Legislative Management
23 Committee;
- 24 ▶ revises language for clarity; and
- 25 ▶ makes technical changes.

26 **Money Appropriated in this Bill:**

27 None

S.B. 273



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **63G-10-102**, as last amended by Laws of Utah 2020, Chapter 365

33 **63G-10-201**, as renumbered and amended by Laws of Utah 2008, Chapter 382

34 **63G-10-202**, as renumbered and amended by Laws of Utah 2008, Chapter 382

35 **63G-10-301**, as renumbered and amended by Laws of Utah 2008, Chapter 382

36 **63G-10-302**, as renumbered and amended by Laws of Utah 2008, Chapter 382

37 **63G-10-303**, as renumbered and amended by Laws of Utah 2008, Chapter 382

38 **63G-10-401**, as renumbered and amended by Laws of Utah 2008, Chapter 382

39 **63G-10-402**, as enacted by Laws of Utah 2011, Chapter 361

40 **63G-10-403**, as last amended by Laws of Utah 2017, Chapter 348

41 **63G-10-503**, as last amended by Laws of Utah 2021, Chapter 63



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

44 Section 1. Section **63G-10-102** is amended to read:

45 **63G-10-102. Definitions.**

46 As used in this chapter:

47 (1) (a) "Action settlement agreement" includes a stipulation, consent decree, settlement
48 agreement, or any other legally binding document or representation that resolves a threatened
49 or pending lawsuit between the state and another party by requiring the state to take legally
50 binding action.

51 (b) "Action settlement agreement" includes stipulations, consent decrees, settlement
52 agreements, and other legally binding documents or representations resolving a dispute
53 between the state and another party when the state is required to pay money and required to
54 take legally binding action.

55 (c) "Action settlement agreement" does not include:

56 (i) the internal process established by the Department of Transportation to resolve
57 construction contract claims;

58 (ii) any resolution of an employment dispute or claim made by an employee of the state

59 of Utah against the state as employer;

60 (iii) adjudicative orders issued by the State Tax Commission, the Public Service
61 Commission, the Labor Commission, or the Department of Workforce Services; or

62 (iv) the settlement of disputes arising from audits, defaults, or breaches of permits,
63 contracts of sale, easements, or leases by the School and Institutional Trust Lands
64 Administration.

65 (2) (a) "Agency" means each department, commission, board, council, agency,
66 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,
67 unit, bureau, panel, or other administrative unit of the state.

68 (b) "Agency" includes the legislative branch, the judicial branch, the attorney general's
69 office, the State Board of Education, the Utah Board of Higher Education, the institutional
70 councils of each higher education institution, and each higher education institution.

71 (3) (a) "Financial settlement agreement" includes a stipulation, consent decree,
72 settlement agreement, and any other legally binding document or representation that resolves a
73 dispute between the state and another party exclusively by requiring the payment of money
74 from one party to the other.

75 (b) "Financial settlement agreement" does not include:

76 (i) agreements made under the internal process established by the Department of
77 Transportation to resolve construction contract claims;

78 (ii) adjudicative orders issued by the State Tax Commission, Public Service
79 Commission, Labor Commission, or the Department of Workforce Services;

80 (iii) the settlement of disputes arising from audits, defaults, or breaches of permits,
81 contracts of sale, easements, or leases by the School and Institutional Trust Lands
82 Administration; or

83 (iv) agreements made under the internal processes established by the Division of
84 Facilities Construction and Management or by law to resolve construction contract claims
85 made against the state by contractors or subcontractors.

86 (4) "Government entities" means the state and its political subdivisions.

87 (5) "Settlement agreement report" means a report that:

88 (a) states the total amount of the settlement;

89 (b) states the payer of the settlement;

- 90 (c) states the recipient of the payment;
- 91 (d) summarizes the circumstances related to the settlement; and
- 92 (e) contains a copy of the settlement agreement, unless the agreement is not permitted
- 93 to be disclosed due to a court order or other legal requirement.

94 Section 2. Section **63G-10-201** is amended to read:

95 **63G-10-201. Governor to approve financial settlement agreements.**

96 (1) Before legally binding the state by executing a financial settlement agreement that
97 might cost government entities more than [~~\$100,000~~] \$250,000 to implement, an agency shall
98 submit the proposed financial settlement agreement to the governor for the governor's approval
99 or rejection.

100 (2) The governor shall approve or reject each financial settlement agreement.

101 (3) (a) If the governor approves the financial settlement agreement, the agency may
102 execute the agreement.

103 (b) If the governor rejects the financial settlement agreement, the agency may not
104 execute the agreement.

105 (4) If an agency executes a financial settlement agreement without obtaining the
106 governor's approval under this section, the governor may issue an executive order declaring the
107 settlement agreement void.

108 (5) An agency executing an agreement under this section shall give notice of the
109 settlement to the Legislative Management Committee by sending a settlement agreement report
110 to the president of the Senate, the speaker of the House of Representatives, and the director of
111 the Office of Legislative Research and General Counsel within three business days of executing
112 the agreement.

113 Section 3. Section **63G-10-202** is amended to read:

114 **63G-10-202. Legislative review and approval of financial settlement agreements.**

115 (1) (a) Before legally binding the state by executing a financial settlement agreement
116 that might cost government entities more than [~~\$500,000~~] \$1,000,000 to implement, an agency
117 shall:

118 (i) submit the proposed financial settlement agreement to the governor for the
119 governor's approval or rejection as required by Section **63G-10-201**; and

120 (ii) if the governor approves the financial settlement agreement, submit the financial

121 settlement agreement to the Legislative Management Committee for its review and
122 recommendations.

123 (b) The Legislative Management Committee shall review the financial settlement
124 agreement and may:

125 (i) recommend that the agency execute the financial settlement agreement;

126 (ii) recommend that the agency reject the financial settlement agreement; or

127 (iii) recommend to the governor that the governor call a special session of the
128 Legislature to review and approve or reject the financial settlement agreement.

129 (2) (a) Before legally binding the state by executing a financial settlement agreement
130 that might cost government entities more than [~~\$1,000,000~~] \$2,000,000 to implement, an
131 agency shall:

132 (i) upon initiation of negotiations that an agency reasonably believes to have the
133 potential to lead to a settlement agreement:

134 (A) notify the Legislature's general counsel that negotiations have commenced;

135 (B) continue to keep the Legislature's general counsel informed of material
136 developments in the negotiation process; and

137 (C) permit the Legislature's general counsel to attend the negotiations;

138 (ii) submit the proposed financial settlement agreement to the governor for the
139 governor's approval or rejection as required by Section 63G-10-201; and

140 ~~[(ii)]~~ (iii) if the governor approves the financial settlement agreement, submit the
141 financial settlement agreement to the Legislature for its approval in an annual general session
142 or a special session.

143 (b) (i) If the Legislature approves the financial settlement agreement, the agency may
144 execute the agreement.

145 (ii) If the Legislature rejects the financial settlement agreement, the agency may not
146 execute the agreement.

147 (c) If an agency executes a financial settlement agreement without obtaining the
148 Legislature's approval under this Subsection (2):

149 (i) the governor may issue an executive order declaring the settlement agreement void;
150 or

151 (ii) the Legislature may pass a joint resolution declaring the settlement agreement void.

152 Section 4. Section **63G-10-301** is amended to read:

153 **63G-10-301. Cost evaluation of action settlement agreements.**

154 (1) Before legally binding the state to an action settlement agreement that might cost
155 the state a total of [~~\$100,000~~] \$250,000 or more to implement, an agency shall estimate the
156 cost of implementing the action settlement agreement and submit that cost estimate to the
157 governor and the Legislative Management Committee.

158 (2) The Legislative Management Committee may:

159 (a) direct its staff to make an independent cost estimate of the cost of implementing the
160 action settlement agreement; and

161 (b) affirmatively adopt a cost estimate as the benchmark for determining which
162 authorizations established by this part are necessary.

163 Section 5. Section **63G-10-302** is amended to read:

164 **63G-10-302. Governor to approve action settlement agreements.**

165 (1) Before legally binding the state by executing an action settlement agreement that
166 might cost government entities more than [~~\$100,000~~] \$250,000 to implement, an agency shall
167 submit the proposed settlement agreement to the governor for the governor's approval or
168 rejection.

169 (2) The governor shall approve or reject each action settlement agreement.

170 (3) (a) If the governor approves the action settlement agreement, the agency may
171 execute the agreement.

172 (b) If the governor rejects the action settlement agreement, the agency may not execute
173 the agreement.

174 (4) If an agency executes an action settlement agreement without obtaining the
175 governor's approval under this section, the governor may issue an executive order declaring the
176 settlement agreement void.

177 (5) An agency executing an agreement under this section shall give notice of the
178 settlement to the Legislative Management Committee by sending a settlement agreement report
179 to the president of the Senate, the speaker of the House of Representatives, and the director of
180 the Office of Legislative Research and General Counsel within three business days of executing
181 the agreement.

182 Section 6. Section **63G-10-303** is amended to read:

183 **63G-10-303. Legislative review and approval of action settlement agreements.**

184 (1) (a) Before legally binding the state by executing an action settlement agreement that
185 might cost government entities more than [~~\$500,000~~] \$1,000,000 to implement, an agency
186 shall:

187 (i) submit the proposed action settlement agreement to the governor for the governor's
188 approval or rejection as required by Section [63G-10-302](#); and

189 (ii) if the governor approves the action settlement agreement, submit the action
190 settlement agreement to the Legislative Management Committee for its review and
191 recommendations.

192 (b) The Legislative Management Committee shall review the action settlement
193 agreement and may:

194 (i) recommend that the agency execute the settlement agreement;

195 (ii) recommend that the agency reject the settlement agreement; or

196 (iii) recommend to the governor that the governor call a special session of the
197 Legislature to review and approve or reject the settlement agreement.

198 (2) (a) Before legally binding the state by executing an action settlement agreement that
199 might cost government entities more than [~~\$1,000,000~~] \$2,000,000 to implement, an agency
200 shall:

201 (i) submit the proposed action settlement agreement to the governor for the governor's
202 approval or rejection as required by Section [63G-10-302](#); and

203 (ii) if the governor approves the action settlement agreement, submit the action
204 settlement agreement to the Legislature for its approval in an annual general session or a
205 special session.

206 (b) (i) If the Legislature approves the action settlement agreement, the agency may
207 execute the agreement.

208 (ii) If the Legislature rejects the action settlement agreement, the agency may not
209 execute the agreement.

210 (c) If an agency executes an action settlement agreement without obtaining the
211 Legislature's approval under this Subsection (2):

212 (i) the governor may issue an executive order declaring the action settlement agreement
213 void; or

214 (ii) the Legislature may pass a joint resolution declaring the action settlement
215 agreement void.

216 Section 7. Section **63G-10-401** is amended to read:

217 **63G-10-401. Condemnation, inverse condemnation settlements involving the**
218 **Department of Transportation.**

219 (1) Notwithstanding the provisions of this chapter, the Department of Transportation
220 need not obtain the approval of the governor or the Legislature for financial or action
221 settlement agreements that resolve condemnation or inverse condemnation cases.

222 (2) Financial settlement agreements involving condemnation or inverse condemnation
223 cases for \$1,000,000 to \$2,000,000 over the Department of Transportation's original appraisal
224 shall be presented to the Transportation Commission for approval or rejection.

225 (3) (a) Financial settlement agreements involving condemnation or inverse
226 condemnation cases for more than \$2,000,000 over the Department of Transportation's original
227 appraisal and all action settlement agreements that resolve condemnation or inverse
228 condemnation cases shall be presented:

229 (i) to the Transportation Commission for approval or rejection; and

230 (ii) if the financial or action settlement agreement is approved by the Transportation
231 Commission, to the Legislative Management Committee.

232 (b) The Legislative Management Committee may recommend approval or rejection of
233 the financial or action settlement agreement.

234 (4) (a) The Department of Transportation may not enter into a financial settlement
235 agreement that resolves a condemnation or inverse condemnation case and requires payment of
236 \$1,000,000 to \$2,000,000 over the Department of Transportation's original appraisal until the
237 Transportation Commission has approved the agreement.

238 (b) The Department of Transportation may not enter into a financial settlement
239 agreement that resolves a condemnation or inverse condemnation case and requires payment of
240 more than \$2,000,000 over the Department of Transportation's original appraisal or enter into
241 an action settlement agreement that resolves a condemnation or inverse condemnation case
242 until:

243 (i) the Transportation Commission has approved the agreement; and

244 (ii) the Legislative Management Committee has reviewed the agreement.

245 (5) The Department of Transportation shall, for each settlement agreement approved
246 under this section for an amount greater than \$1,000,000 but less than \$2,000,000, give notice
247 to the Legislative Management Committee by sending a settlement agreement report to the
248 president of the Senate, the speaker of the House of Representatives, and the director of the
249 Office of Legislative Research and General Counsel within three business days of executing the
250 agreement.

251 Section 8. Section **63G-10-402** is amended to read:

252 **63G-10-402. Department of Transportation construction contract claim**
253 **settlement agreement approval and review.**

254 (1) As used in this section:

255 (a) "Claims review board" means a committee established by the department to hear
256 unresolved claims and make recommendations for settlement to the deputy director of the
257 department.

258 (b) "Department" means the Department of Transportation created in Section [72-1-201](#).

259 (c) "Settlement agreement" includes stipulations, consent decrees, settlement
260 agreements, or other legally binding documents or representations resolving a dispute between
261 the department and another party when the department is required to pay money or required to
262 take legally binding action.

263 (2) The department shall obtain the approval of the Transportation Commission or the
264 governor or review by the Legislative Management Committee of a settlement agreement that
265 involves a construction contract claim in accordance with this section.

266 (3) A construction contract claim settlement agreement that is being recommended by
267 the department's claims review board that might cost government entities more than [~~\$100,000~~]
268 \$250,000 to implement shall be presented to the Transportation Commission for approval or
269 rejection.

270 (4) A construction contract claim settlement agreement that is being recommended by
271 the department's claims review board that might cost government entities more than [~~\$500,000~~]
272 \$1,000,000 to implement shall be presented:

273 (a) to the Transportation Commission for approval or rejection; and

274 (b) to the governor for approval or rejection.

275 (5) (a) A construction contract claim settlement agreement that is being recommended

276 by the department's claims review board that might cost government entities more than
277 [~~\$1,000,000~~] \$2,000,000 to implement shall be presented:

- 278 (i) to the Transportation Commission for approval or rejection;
- 279 (ii) to the governor for approval or rejection; and
- 280 (iii) if the construction contract claim settlement agreement is approved by the
281 Transportation Commission and the governor, to the Legislative Management Committee.

282 (b) The Legislative Management Committee may recommend approval or rejection of
283 the construction contract claim settlement agreement.

284 (6) (a) The department may not enter into a construction contract claim settlement
285 agreement that is being recommended by the department's claims review board that might cost
286 government entities more than [~~\$100,000~~] \$250,000 to implement until the Transportation
287 Commission has approved the agreement.

288 (b) The department may not enter into a construction contract claim settlement
289 agreement that is being recommended by the department's claims review board that might cost
290 government entities more than [~~\$500,000~~] \$1,000,000 to implement until the Transportation
291 Commission and the governor have approved the agreement.

292 (c) The department may not enter into a construction contract claim settlement
293 agreement that is being recommended by the department's claims review board that might cost
294 government entities more than [~~\$1,000,000~~] \$2,000,000 to implement until:

- 295 (i) the Transportation Commission has approved the agreement;
- 296 (ii) the governor has approved the agreement; and
- 297 (iii) the Legislative Management Committee has reviewed the agreement.

298 (7) The department shall, for each settlement agreement approved under this section
299 for an amount greater than \$250,000 but less than \$2,000,000, give notice to the Legislative
300 Management Committee by sending a settlement agreement report to the president of the
301 Senate, the speaker of the House of Representatives, and the director of the Office of
302 Legislative Research and General Counsel within three business days of executing the
303 agreement.

304 Section 9. Section **63G-10-403** is amended to read:

305 **63G-10-403. Department of Transportation bid or request for proposals protest**
306 **settlement agreement approval and review.**

307 (1) As used in this section:

308 (a) "Department" means the Department of Transportation created in Section 72-1-201.

309 (b) "Settlement agreement" includes stipulations, consent decrees, settlement
310 agreements, or other legally binding documents or representations resolving a dispute between
311 the department and another party when the department is required to pay money or required to
312 take legally binding action.

313 (2) The department shall obtain the approval of the Transportation Commission or the
314 governor or review by the Legislative Management Committee of a settlement agreement that
315 involves a bid or request for proposal protest in accordance with this section.

316 (3) A settlement agreement that is being settled by the department as part of a bid or
317 request for proposal protest, in accordance with Subsection 63G-6a-1602(8), that might cost
318 government entities more than [~~\$100,000~~] \$250,000 to implement shall be presented to the
319 Transportation Commission for approval or rejection.

320 (4) A settlement agreement that is being settled by the department as part of a bid or
321 request for proposal protest, in accordance with Subsection 63G-6a-1602(8), that might cost
322 government entities more than [~~\$500,000~~] \$1,000,000 to implement shall be presented:

323 (a) to the Transportation Commission for approval or rejection; and

324 (b) to the governor for approval or rejection.

325 (5) (a) A settlement agreement that is being settled by the department as part of a bid or
326 request for proposal protest, in accordance with Subsection 63G-6a-1602(8), that might cost
327 government entities more than [~~\$1,000,000~~] \$2,000,000 to implement shall be presented:

328 (i) to the Transportation Commission for approval or rejection;

329 (ii) to the governor for approval or rejection; and

330 (iii) if the settlement agreement is approved by the Transportation Commission and the
331 governor, to the Legislative Management Committee.

332 (b) The Legislative Management Committee may recommend approval or rejection of
333 the settlement agreement.

334 (6) (a) The department may not enter into a settlement agreement that resolves a bid or
335 request for proposal protest, in accordance with Subsection 63G-6a-1602(8), that might cost
336 government entities more than [~~\$100,000~~] \$250,000 to implement until the Transportation
337 Commission has approved the agreement.

338 (b) The department may not enter into a settlement agreement that resolves a bid or
 339 request for proposal protest, in accordance with Subsection [63G-6a-1602](#)(8), that might cost
 340 government entities more than [~~\$500,000~~] \$1,000,000 to implement until the Transportation
 341 Commission and the governor have approved the agreement.

342 (c) The department may not enter into a settlement agreement that resolves a bid or
 343 request for proposal protest, in accordance with Subsection [63G-6a-1602](#)(8), that might cost
 344 government entities more than [~~\$1,000,000~~] \$2,000,000 to implement until:

- 345 (i) the Transportation Commission has approved the agreement;
- 346 (ii) the governor has approved the agreement; and
- 347 (iii) the Legislative Management Committee has reviewed the agreement.

348 (7) The department shall, for each settlement agreement approved under this section
 349 for an amount greater than \$250,000 but less than \$2,000,000, give notice to the Legislative
 350 Management Committee by sending a settlement agreement report to the president of the
 351 Senate, the speaker of the House of Representatives, and the director of the Office of
 352 Legislative Research and General Counsel within three business days of executing the
 353 agreement.

354 Section 10. Section [63G-10-503](#) is amended to read:

355 **[63G-10-503. Risk manager's authority to settle a claim -- Additional approvals](#)**
 356 **required.**

357 (1) The risk manager may compromise and settle any claim for which the risk
 358 management fund may be liable:

359 (a) if the settlement amount is \$500,000 or less, on the risk manager's own authority;
 360 ~~if the settlement amount is \$100,000 or less~~];

361 (b) if the settlement amount is more than \$500,000 but not more than \$1,000,000, upon
 362 the approval of the attorney general, or the attorney general's representative, and the executive
 363 director[-, if the settlement amount is more than \$100,000 but not more than \$250,000];

364 (c) if the settlement amount is more than \$1,000,000 but not more than \$1,500,000,
 365 upon the governor's approval[-, if the settlement amount is more than \$250,000 but not more
 366 than \$500,000] after receiving approval under Subsection (1)(b);

367 (d) if the settlement amount is more than \$1,500,000 but not more than \$2,000,000,
 368 upon the Legislative Management Committee's approval[-, if the settlement amount is more

369 ~~than \$500,000 but not more than \$1,000,000]~~ after receiving approval under Subsections (1)(b)
370 and (c); and

371 (e) if the settlement amount is more than \$2,000,000, upon the Legislature's approval[;
372 if the settlement amount is more than \$1,000,000.] after receiving approval under Subsections
373 (1)(b), (c), and (d).

374 (2) (a) The risk manager shall~~[(i) as soon as reasonably possible after negotiations~~
375 ~~begin, notify legislative general counsel of],~~ upon initiation of negotiations that the risk
376 manager reasonably believes to have the potential to lead to a settlement requiring approval
377 under Subsection (1)(d) or (e)~~]; and~~:

378 (i) notify the Legislature's general counsel that negotiations have commenced;

379 (ii) continue to keep ~~[legislative]~~ the Legislature's general counsel informed of material
380 developments in the negotiation process~~]; and~~

381 (iii) permit the Legislature's general counsel to attend negotiations.

382 (b) The information that the risk manager shall provide to ~~[legislative]~~ the Legislature's
383 general counsel under Subsection (2)(a) includes:

384 (i) the nature of the claim that is the subject of the settlement negotiations;

385 (ii) the known facts that support the claim and the known facts that controvert the
386 claim; and

387 (iii) the risk manager's assessment of the potential liability under the claim.

388 (c) A document, paper, electronic data, communication, or other material that the risk
389 manager provides to legislative general counsel in the discharge of the risk manager's
390 responsibility under Subsection (2) may not be considered to be a record, as defined in Section
391 [63G-2-103](#).

392 (d) Information provided by the risk manager to legislative general counsel under
393 Subsection (2)(a) and a communication between the risk manager and legislative general
394 counsel under Subsection (2)(a) shall be considered to be evidence that is subject to Rule 408
395 of the Utah Rules of Evidence to the fullest extent possible.

396 (e) Subsections (2)(c) and (d) apply regardless of whether:

397 (i) the risk manager acts personally under this section or through counsel or another
398 individual acting under the risk manager's direction; or

399 (ii) other individuals under the direction of legislative general counsel are involved in

400 the process described in this section.

401 (3) The risk manager shall, for each settlement agreement approved under this section
402 for an amount greater than \$250,000 but less than \$1,500,000, give notice of the settlement to
403 the Legislative Management Committee by sending a settlement agreement report to the
404 president of the Senate, the speaker of the House of Representatives, and the director of the
405 Office of Legislative Research and General Counsel within three business days of executing the
406 agreement.