

1 **CONSTRUCTION BID LIMIT AMENDMENTS**

2 2001 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Howard A. Stephenson**

5 **This act modifies the Transportation Code to provide certain accounting requirements and**
6 **sanctions on a highway authority that violates certain highway construction bid limit**
7 **provisions.**

8 This act affects sections of Utah Code Annotated 1953 as follows:

9 AMENDS:

10 **72-6-107**, as last amended by Chapter 365, Laws of Utah 1999

11 **72-6-109**, as renumbered and amended by Chapter 270, Laws of Utah 1998

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

13 Section 1. Section **72-6-107** is amended to read:

14 **72-6-107. Construction or improvement of highway -- Contracts -- Retainage --**
15 **Accountability -- Sanctions.**

16 (1) (a) The department shall make plans, specifications, and estimates prior to the
17 construction or improvement of any state highway.

18 (b) Except as provided in Section 63-56-36.1 and except for construction or improvements
19 performed with state prison labor, a construction or improvement project with an estimated cost
20 exceeding \$40,000 for labor and materials shall be performed under contract awarded to the lowest
21 responsible bidder.

22 (c) The advertisement for bids shall be published in a newspaper of general circulation in
23 the county in which the work is to be performed, at least once a week for two consecutive weeks,
24 with the last publication at least ten days before bids are opened.

25 (d) The department shall receive sealed bids and open the bids at the time and place
26 designated in the advertisement. The department may then award the contract but may reject any
27 and all bids.



28 (e) If the department's estimates are substantially lower than any responsible bid received,
29 the department may perform any work by force account.

30 (2) If any payment on a contract with a private contractor for construction or improvement
31 of a state highway is retained or withheld, the payment shall be retained or withheld and released
32 as provided in Section 13-8-5.

33 (3) If the department performs a construction or improvement project by force account,
34 the department shall:

35 (a) provide an accounting of the costs and expenditures of the improvement, including
36 material and labor;

37 (b) disclose the costs and expenditures to any person upon request and allow the person
38 to make a copy if the person pays the actual cost of the copy; and

39 (c) perform the work using the same specifications and standards that would apply to a
40 private contractor.

41 (4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
42 department shall establish procedures for:

43 (a) hearing evidence that a region within the department violated this section; and

44 (b) administering sanctions against the region if the region is found in violation.

45 Section 2. Section **72-6-109** is amended to read:

46 **72-6-109. Class B and C roads -- Construction and maintenance -- Definitions --**
47 **Estimates lower than bids -- Accountability -- Sanctions.**

48 (1) As used in this section and [~~Section~~] Sections 72-6-107 and 72-6-108:

49 (a) "Bid limit" means \$100,000.

50 (b) (i) "Construction" means the work that would apply to:

51 (A) any new roadbed either by addition to existing systems or relocation;

52 (B) resurfacing of existing roadways with more than two inches of bituminous pavement;

53 or

54 (C) new structures or replacement of existing structures, except the replacement of
55 drainage culverts.

56 (ii) "Construction" does not include maintenance, emergency repairs, or the installation
57 of traffic control devices as described in Section 41-6-20.

58 (c) "Improvement project" means construction and maintenance as defined in this section

59 except for that maintenance excluded under Subsection (2).

60 (d) "Maintenance" means the keeping of a road facility in a safe and usable condition to
61 which it was constructed or improved, and includes:

62 (i) the reworking of an existing surface by the application of up to and including two
63 inches of bituminous pavement;

64 (ii) the installation or replacement of guardrails, seal coats, and culverts;

65 (iii) the grading or widening of an existing unpaved road or flattening of shoulders or side
66 slopes to meet current width and safety standards; and

67 (iv) horizontal or vertical alignment changes necessary to bring an existing road in
68 compliance with current safety standards.

69 (e) "Project" means the performance of a clearly identifiable group of associated road
70 construction activities or the same type of maintenance process, where the construction or
71 maintenance is performed on any one class B or C road, within a half-mile proximity and occurs
72 within the same calendar year.

73 (2) The following types of maintenance work are not subject to the contract or bid limit
74 requirements of this section:

75 (a) the repair of less than the entire surface by crack sealing or patching; and

76 (b) road repairs incidental to the installation, replacement, or repair of water mains, sewers,
77 drainage pipes, culverts, or curbs and gutters.

78 (3) (a) (i) If the estimates of a qualified engineer referred to in Section 72-6-108 are
79 substantially lower than any responsible bid received or in the event no bids are received, the
80 county or municipality may perform the work by force account.

81 (ii) In no event shall "substantially lower" mean estimates that are less than 10% below
82 the lowest responsible bid.

83 (b) If a county or municipality performs an improvement project by force account, it shall:

84 (i) provide an accounting of the costs and expenditures of the improvement including
85 material, labor, and direct equipment costs to be calculated using the Cost Reference Guide for
86 Construction Equipment by Dataquest Inc.;

87 (ii) disclose the costs and expenditures to any person upon request and allow the person
88 to make a copy and pay for the actual cost of the copy; and

89 (iii) perform the work using the same specifications and standards that would apply to a

90 private contractor.

91 (4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
92 department shall establish procedures for:

93 (a) hearing evidence that a county or municipality violated this section or Section
94 72-6-108; and

95 (b) administering sanctions against the county or municipality if the county or municipality
96 is found in violation.

97 (5) ~~§ (a)~~ § The sanctions under Subsection (4) shall include a ~~§ [loss of the county or]~~
97a PROBATION PERIOD ESTABLISHED BY RULE OF THE DEPARTMENT, WHEREIN ALL PROJECTS OF
97b THE COUNTY OR MUNICIPALITY SHALL RECEIVE PRIOR REVIEW AND APPROVAL OF THE
97c PRIVATIZATION POLICY BOARD CREATED UNDER SECTION 63-55a-2 IF:

97d (a) THE PROJECT HAS AN ESTIMATED COST OF MORE THAN 50% OF THE BID LIMIT;

97e AND

97f (b) THE WORK IS BEING PERFORMED BY FORCE ACCOUNT.

98 [~~_____municipality's class B and C road funds allocation for the fiscal year following a finding of a~~
99 ~~violation.~~

100 ~~_____ (b) Class B and C road funds withheld under Subsection (5)(a) shall be reallocated~~
101 ~~according to existing formulas to the other counties and municipalities of the state.] §~~

Legislative Review Note
as of 1-23-01 2:02 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel