

Senator Howard A. Stephenson proposes the following substitute bill:

LOCAL GOVERNMENT CAPITAL PROJECTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Howard A. Stephenson

This act modifies provisions relating to certain capital projects of certain local government entities. The act requires that counties, municipalities, special districts, and local districts request bids for certain capital projects and establishes a bid process, including the amount of the project for which a bid is required. The act provides for the amount of the cost of a project required to be submitted to bids to be adjusted for inflation. The act provides for attorney's fees and costs to be awarded to a successful party against the local government entity in a civil action for a violation of the requirements. The act also makes technical changes.

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

AMENDS:

17A-2-1314, as last amended by Chapter 133, Laws of Utah 2000

17A-3-208, as last amended by Chapters 86 and 133, Laws of Utah 2000

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

ENACTS:

11-39-101, Utah Code Annotated 1953

11-39-102, Utah Code Annotated 1953

11-39-103, Utah Code Annotated 1953

11-39-104, Utah Code Annotated 1953

11-39-105, Utah Code Annotated 1953

11-39-106, Utah Code Annotated 1953

11-39-107, Utah Code Annotated 1953



26 REPEALS:

27 **10-7-20**, as last amended by Chapter 365, Laws of Utah 1999

28 **17-53-308**, as renumbered and amended by Chapter 133, Laws of Utah 2000

29 **17A-2-531**, as last amended by Chapters 86 and 254, Laws of Utah 2000

30 **17A-2-723**, as last amended by Chapter 285, Laws of Utah 2002

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

32 Section 1. Section **11-39-101** is enacted to read:

33 **CHAPTER 39. BUILDING IMPROVEMENTS AND PUBLIC WORKS PROJECTS**

34 **11-39-101. Definitions.**

35 As used in this chapter:

36 (1) "Bid limit" means:

37 (a) for a building improvement:

38 (i) for the year 2003, \$40,000; and

39 (ii) for each year after 2003, the amount of the bid limit for the previous year, plus an
40 amount calculated by multiplying \$40,000 by the lesser of 3% or the actual percent change in
41 the Consumer Price Index during the previous calendar year; and

42 (b) for a public works project:

43 (i) for the year 2003, \$125,000; and

44 (ii) for each year after 2003, the amount of the bid limit for the previous year, plus an
45 amount calculated by multiplying \$125,000 by the lesser of 3% or the actual percent change in
46 the Consumer Price Index during the previous calendar year.

47 (2) "Building improvement":

48 (a) means the construction or repair of a public building or structure; and

49 (b) does not include construction or repair at an international airport.

50 (3) "Consumer Price Index" means the Consumer Price Index for All Urban

51 Consumers as published by the Bureau of Labor Statistics of the United States Department of
52 Labor.

53 (4) "Emergency repairs" means a building improvement or public works project
54 undertaken on an expedited basis to:

55 (a) eliminate an imminent risk of damage to or loss of public or private property;

56 (b) remedy a condition that poses an immediate physical danger; or

- 57 (c) reduce a substantial, imminent risk of interruption of an essential public service.
- 58 (5) "Independent special district" means an independent special district under Title
- 59 17A, Chapter 2, Independent Special Districts, excluding a special service district under Title
- 60 17A, Chapter 2, Part 13, Utah Special Service District Act.
- 61 (6) "Legislative body" means:
- 62 (a) for a county, the county legislative body;
- 63 (b) for a city or town, the municipal legislative body;
- 64 (c) for an independent special district or for a local district, the board of trustees;
- 65 (d) for a special service district under Title 17A, Chapter 2, Part 13, Utah Special
- 66 Service District Act, the legislative body of the county or municipality that created the special
- 67 service district; and
- 68 (e) for a dependent special district under Title 17A, Chapter 3, Dependent Special
- 69 Districts, the board or other body that exercises legislative authority with respect to the
- 70 dependent special district.
- 71 (7) "Local district" has the same meaning as defined in Section 17B-2-101.
- 72 (8) "Local entity" means a county, city, town, special district, or local district.
- 73 (9) "Lowest responsive responsible bidder" means a prime contractor who:
- 74 (a) has submitted a bid in compliance with the invitation to bid and within the
- 75 requirements of the plans and specifications for the building improvement or public works
- 76 project;
- 77 (b) is the lowest bidder that satisfies the local entity's criteria relating to financial
- 78 strength, past performance, integrity, reliability, and other factors that the local entity uses to
- 79 assess the ability of a bidder to perform fully and in good faith the contract requirements;
- 80 (c) has furnished a bid bond or equivalent in money as a condition to the award of a
- 81 prime contract; and
- 82 (d) furnishes a payment and performance bond as required by law.
- 83 (10) "Procurement code" means the provisions of Title 63, Chapter 56, Utah
- 84 Procurement Code.
- 85 (11) "Public works project":
- 86 (a) means the construction of:
- 87 (i) a park or recreational facility; or

88 (ii) a pipeline, culvert, dam, canal, or other system for water, sewage, storm water, or
89 flood control; and

90 (b) does not include:

91 (i) the replacement or repair of existing infrastructure on private property;

92 (ii) construction commenced before June 1, 2003; and

93 (iii) construction or repair at an international airport.

94 (11) "Special district" has the same meaning as defined in Section 17A-1-101.

95 Section 2. Section **11-39-102** is enacted to read:

96 **11-39-102. Requirement for plans and specifications and cost estimate.**

97 Each local entity intending to undertake a building improvement or public works
98 project paid for by the local entity shall cause:

99 (1) plans and specifications to be made for the building improvement or public works
100 project; and

101 (2) an estimate of the cost of the building improvement or public works project to be
102 made.

103 Section 3. Section **11-39-103** is enacted to read:

104 **11-39-103. Requirements for undertaking a building improvement or public**
105 **works project -- Request for bids.**

106 (1) If the estimated cost of the building improvement or public works project exceeds
107 the bid limit, the local entity shall, if it determines to proceed with the building improvement or
108 public works project:

109 (a) request bids for completion of the building improvement or public works project
110 by:

111 (i) publishing notice at least twice in a newspaper published or of general circulation in
112 the local entity at least five days before opening the bids; or

113 (ii) if there is no newspaper published or of general circulation in the local entity,
114 posting notice at least five days before opening the bids in at least five public places in the
115 local entity and leaving the notice posted for at least three days; and

116 (b) except as provided in Subsection (3), enter into a contract for the completion of the
117 building improvement or public works project with the lowest responsive responsible bidder.

118 (2) (a) Each notice under Subsection (1)(a) shall indicate that the local entity may reject

119 any or all bids submitted.

120 (b) (i) The cost of a building improvement or public works project may not be divided
121 to avoid:

122 (A) exceeding the bid limit; and

123 (B) subjecting the local entity to the requirements of this section.

124 (ii) Notwithstanding Subsection (2)(b)(i), a local entity may divide the cost of a
125 building improvement or public works project that would, without dividing, exceed the bid
126 limit if the local entity complies with the requirements of this section with respect to each part
127 of the building improvement or public works project that results from dividing the cost.

128 (3) (a) The local entity may reject any or all bids submitted.

129 (b) If the local entity rejects all bids submitted but still intends to undertake the
130 building improvement or public works project, the local entity shall again request bids by
131 following the procedure provided in Subsection (1)(a).

132 (c) If, after twice requesting bids by following the procedure provided in Subsection
133 (1)(a), the local entity determines that no satisfactory bid has been submitted, the legislative
134 body may undertake the building improvement or public works project as it considers
135 appropriate.

136 Section 4. Section **11-39-104** is enacted to read:

137 **11-39-104. Exceptions.**

138 (1) The requirements of Section 11-39-103 do not apply to:

139 (a) emergency repairs;

140 (b) a building improvement or public works project if the estimated cost under Section
141 11-39-102 is less than the bid limit; or

142 (c) the conduct or management of any of the departments, business, or property of the
143 local entity.

144 (2) This section may not be construed to limit the application of Section 72-6-108 to an
145 improvement project, as defined in Section 72-6-109, that would otherwise be subject to
146 Section 72-6-108.

147 Section 5. Section **11-39-105** is enacted to read:

148 **11-39-105. Retained payments.**

149 Each payment that the local entity retains on a contract with a private person, firm, or

150 corporation shall be retained and released as provided in Section 13-8-5.

151 Section 6. Section **11-39-106** is enacted to read:

152 **11-39-106. Attorney's fees and costs in civil action.**

153 In a civil action to enforce the provisions of this part against a local entity, the court
154 may award attorney's fees and costs to the prevailing party.

155 Section 7. Section **11-39-107** is enacted to read:

156 **11-39-107. Procurement code.**

157 (1) This chapter may not be construed to:

158 (a) prohibit a county legislative body from adopting the procedures of the procurement
159 code; or

160 (b) limit the application of the procurement code to a special district or local district.

161 (2) (a) In seeking bids and awarding a contract for a building improvement or public
162 works project, a county legislative body may elect to follow the provisions of the procurement
163 code, as the county legislative body considers appropriate under the circumstances, for
164 specification preparation, source selection, or contract formation.

165 (b) A county legislative body's election to adopt the procedures of the procurement
166 code may not excuse the county from complying with the requirements to award a contract for
167 work in excess of the bid limit and to publish notice of the intent to award.

168 (c) An election under Subsection (2)(a) may be made on a case-by-case basis, unless
169 the county has previously adopted the procurement code as permitted by Subsection
170 63-56-2(3)(e).

171 (d) The county legislative body shall:

172 (i) make each election under Subsection (2)(a) in an open meeting; and

173 (ii) specify in its action the portions of the procurement code to be followed.

174 (3) If the estimated cost of the building improvement or public works project proposed
175 by a special district or local district exceeds the bid limit, the legislative body of the special
176 district or local district may, if it determines to proceed with the building improvement or
177 public works project, use the competitive procurement procedures of the procurement code in
178 place of the comparable provisions of this chapter.

179 Section 8. Section **17A-2-1314** is amended to read:

180 **17A-2-1314. Rights, powers, and authority of service district.**

181 (1) In addition to all other rights, powers, and authority granted by law or by other
182 provisions of this part, a service district has the following rights, powers and authority:

183 (a) The right to sue and be sued.

184 (b) The power to exercise all powers of eminent domain possessed by the county or
185 municipality which established the service district.

186 (c) The power to enter into contracts considered desirable by the governing authority of
187 the service district to carry out the functions of the service district, including, without
188 limitation, the power to enter into contracts with the government of the United States or any of
189 its agencies, the State of Utah, counties, municipalities, school districts, and other public
190 corporations, districts, or political subdivisions including institutions of higher education.

191 These contracts may include, without limitation, provisions concerning the use, operation, and
192 maintenance of any facilities of the service district and the collection of fees or charges with
193 respect to commodities, services, or facilities provided by the service district.

194 (d) The power to acquire or construct facilities, to purchase, take, receive, lease, take
195 by gift, devise or bequest, or otherwise acquire, own, hold, improve, use, finance, and
196 otherwise deal in and with real and personal property, or any interest in them, wherever
197 situated, either within or outside of the service district, including water and water rights, and
198 including the power to acquire other than by condemnation property or interests in property
199 owned or held by institutions of higher education.

200 (e) The power to sell, convey, mortgage, pledge, lease, exchange, transfer, and
201 otherwise dispose of or contract with respect to the use, operation, and maintenance of, all or
202 any part of its property and assets, including water and water rights.

203 (f) The power to accept governmental grants, loans, or funds and to comply with the
204 conditions of them.

205 (g) The right to utilize any officers, employees, property, equipment, offices, or
206 facilities of the county or municipality which established the service district, and for which the
207 governing authority of the service district shall reimburse the county or municipality from
208 service district funds, a reasonable amount for the services so rendered or for the property,
209 equipment, offices, or facilities so used.

210 (h) The right to employ officers, employees, and agents for the service district,
211 including engineers, accountants, attorneys, and financial consultants, and to fix their

212 compensation.

213 (i) The right to adopt an official seal for the service district.

214 (2) The county legislative body shall by ordinance establish those classes of contracts
215 of a service district which shall be subject to the requirements of ~~[Section 17-53-308]~~ Title 11,
216 Chapter 39, Building Improvements and Public Works Projects, or of any law hereafter enacted
217 for the same purpose.

218 (3) The governing authority of a municipality shall by ordinance establish those classes
219 of contracts of a service district which shall be subject to the requirements of ~~[Section 10-7-20]~~
220 Title 11, Chapter 39, Building Improvements and Public Works Projects, or of any law
221 hereafter enacted for the same purpose.

222 Section 9. Section **17A-3-208** is amended to read:

223 **17A-3-208. Contract required for improvement -- Bidding requirements --**
224 **Exceptions.**

225 (1) As used in this section, the word "sealed" does not preclude acceptance of
226 electronically sealed and submitted bids or proposals in addition to bids or proposals manually
227 sealed and submitted.

228 (2) (a) Except as otherwise provided in this section, improvements in a special
229 improvement district shall be made only under contract duly let to the lowest responsible
230 bidder for the kind of service or material or form of construction which may be desired. The
231 improvements may be divided into parts, and separate contracts let for each part, or several
232 parts may be combined in the same contract. A contract may be let on a unit basis. A contract
233 shall not be let until a notice to contractors that sealed bids for the construction of the
234 improvements will be received by the governing body at a specified time and place, and this
235 notice has been published at least one time in a newspaper having general circulation in the
236 county at least 15 days before the date specified for the receipt of bids.

237 (b) If by inadvertence or oversight, the notice is not published or is not published for a
238 sufficient period of time prior to the receipt of bids, the governing body, however, may still
239 proceed to let a contract for the improvements if at the time specified for the receipt of bids it
240 has received not less than three sealed and bona fide bids from contractors.

241 (c) If, under the construction contract, periodic payments for work performed are to be
242 made by the issuance of interim warrants, this fact shall be disclosed in the notice to

243 contractors. The notice to contractors may be published simultaneously with the notice of
244 intention.

245 (3) The governing body, or its designated agent, shall at the time specified in the
246 notice, open, examine, and publicly declare the bids. From these bids, the governing body may
247 award a contract to the lowest, responsible bidder if that party's bid is responsive to the request
248 for proposal or invitation to bid; but the governing body shall not be obligated or required to
249 award a contract to any bidder and may reject any or all bids. In the event no bids are received
250 or no responsive or acceptable bids are received after one public invitation to bid, the
251 governing body may take any of the following actions:

252 (a) publicly rebid the project using the original plans, specifications, cost estimates,
253 and contract documents;

254 (b) negotiate a contract privately using the original project plans, specifications, cost
255 estimates, and contract documents;

256 (c) publicly rebid the project after revising the original plans, specifications, cost
257 estimates, or contract documents;

258 (d) cancel the project;

259 (e) abandon or dissolve the improvement district; or

260 (f) perform the project work with the governing entity's work forces and be reimbursed
261 for this work out of the special assessments levied.

262 (4) A contract need not be let for any improvement or part of any improvement the cost
263 of which or the making of which is donated or contributed by any individual, corporation, the
264 county, a municipality, the state, the United States, or any political subdivision of the state or of
265 the United States. These donations or contributions may be accepted by the governing entity,
266 but no assessments shall be levied against the property in the district for the amount of the
267 donations or contributions.

268 (5) A contract need not be let as provided in this section where the improvements
269 consist of the furnishing of utility services or maintenance of improvements. This work may be
270 done by the governing entity itself. Assessments may be levied for the actual cost incurred by
271 the governing entity for the furnishing of these services or maintenance, or in case the work is
272 done by the governing entity, to reimburse the governing entity for the reasonable cost of
273 supplying the services or maintenance.

274 (6) A contract need not be let as provided in this section where any labor, materials, or
275 equipment to make any of the improvements are supplied by the governing entity. Assessments
276 may be levied to reimburse the governing entity for the reasonable cost of supplying such labor,
277 materials or equipment. The provisions of [~~Sections 17-53-308~~] Title 11, Chapter 39, Building
278 Improvements and Public Works Projects, and Section 72-6-108 shall not apply to the
279 improvements to be placed in a special improvement district created under this part.

280 Section 10. Section **72-6-109** is amended to read:

281 **72-6-109. Class B and C roads -- Construction and maintenance -- Definitions --**
282 **Estimates lower than bids -- Accountability.**

283 (1) As used in this section and Section 72-6-108:

284 (a) "Bid limit" means [~~\$100,000~~]:

285 (i) for the year 2003, \$125,000; and

286 (ii) for each year after 2003, the amount of the bid limit for the previous year, plus an
287 amount calculated by multiplying \$125,000 by the lesser of 3% or the actual percent change in
288 the Consumer Price Index during the previous calendar year.

289 (b) "Consumer Price Index" means the Consumer Price Index for All Urban
290 Consumers as published by the Bureau of Labor Statistics of the United States Department of
291 Labor.

292 [~~(b)~~] (c) (i) "Construction" means the work that would apply to:

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

294 (B) resurfacing of existing roadways with more than two inches of bituminous
295 pavement; or

296 (C) new structures or replacement of existing structures, except the replacement of
297 drainage culverts.

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

300 [~~(c)~~] (d) "Improvement project" means construction and maintenance as defined in this
301 section except for that maintenance excluded under Subsection (2).

302 [~~(d)~~] (e) "Maintenance" means the keeping of a road facility in a safe and usable
303 condition to which it was constructed or improved, and includes:

304 (i) the reworking of an existing surface by the application of up to and including two

305 inches of bituminous pavement;

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

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

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

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

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

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

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

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

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

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

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

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

332 (iii) perform the work using the same specifications and standards that would apply to
333 a private contractor.

334 Section 11. **Repealer.**

335 This act repeals:

336 Section **10-7-20, Definition -- Necessity for contract -- Call for bids -- Acceptance**
337 **or rejection -- Retainage.**

338 Section **17-53-308, Repair, alteration, or construction of public buildings --**
339 **Contracts -- Bids -- Payment and performance bonds -- Retainage.**

340 Section **17A-2-531, Bids for construction -- Contracts -- Payment and performance**
341 **bonds -- Retainage.**

342 Section **17A-2-723, Construction -- Notice -- Awarding contracts -- Contractor's**
343 **bonds.**