

Representative James A. Dunnigan proposes the following substitute bill:

HEALTH REFORM - HEALTH INSURANCE

COVERAGE IN STATE CONTRACTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: _____

LONG TITLE

General Description:

This bill requires certain state entities to require a contractor who contracts with the state entity to offer the contractor's employees qualified health insurance coverage during the duration of the contract if the contract is over a certain amount, and if the contract is a construction or design contract.

Highlighted Provisions:

This bill:

▶ defines the following terms:

- "employee";
- "qualified health insurance coverage"; and
- "subcontractor";

▶ requires the following state entities to require a contractor who contracts with the state entity to offer qualified health insurance coverage to the contractor's eligible employees and the employee's dependents if the contract amount is above a certain amount:

- the Department of Environmental Quality;
- the Capitol Preservation Board;



- 26 • the Department of Natural Resources;
- 27 • the Division of Facilities Construction and Management;
- 28 • the Utah Department of Transportation; and
- 29 • public transit districts;
- 30 ▶ establishes enforcement and penalties for a contractor who does not maintain an
- 31 offer of qualified health insurance coverage for employees during the duration of the
- 32 contract;
- 33 ▶ deposits any penalties collected into the Medicaid Restricted Account; and
- 34 ▶ applies to construction or design contracts entered into on or after July 1, 2009.

35 **Monies Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

38 None

39 **Utah Code Sections Affected:**

40 AMENDS:

41 **17B-2a-818**, as last amended by Laws of Utah 2008, Chapter 382

42 **26-18-402**, as last amended by Laws of Utah 1998, Chapter 360

43 **63A-5-205**, as last amended by Laws of Utah 2008, Chapter 382

44 ENACTS:

45 **17B-2a-818.5**, Utah Code Annotated 1953

46 **19-1-206**, Utah Code Annotated 1953

47 **63-34-22**, Utah Code Annotated 1953

48 **63C-9-403**, Utah Code Annotated 1953

49 **72-6-107.5**, Utah Code Annotated 1953



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

52 Section 1. Section **17B-2a-818** is amended to read:

53 **17B-2a-818. Requirements applicable to public transit district contracts.**

54 (1) If the expenditure required to construct district facilities or works exceeds:

55 (a) \$25,000, the construction shall be let as provided in Title 63G, Chapter 6, Utah

56 Procurement Code[-]; and

57 (b) \$500,000, the construction shall be let as provided in:

58 (i) Title 63G, Chapter 6, Utah Procurement Code; and

59 (ii) Section 17B-2a-818.5.

60 (2) (a) The board of trustees of a public transit district shall advertise each bid or
61 proposal through public notice as the board determines.

62 (b) A notice under Subsection (2)(a) may:

63 (i) include publication in:

64 (A) a newspaper of general circulation in the district;

65 (B) a trade journal; or

66 (C) other method determined by the board; and

67 (ii) be made at least once, not less than ten days before the expiration of the period
68 within which bids or proposals are received.

69 (3) (a) The board of trustees may, in its discretion:

70 (i) reject any or all bids or proposals; and

71 (ii) readvertise or give notice again.

72 (b) If, after rejecting bids or proposals, the board of trustees determines and declares by
73 a two-thirds vote of all members present that in the board's opinion the supplies, equipment,
74 and materials may be purchased at a lower price in the open market, the board may purchase
75 the supplies, equipment, and materials in the open market, notwithstanding any provisions
76 requiring contracts, bids, proposals, advertisement, or notice.

77 (4) The board of trustees of a public transit district may let a contract without
78 advertising for or inviting bids if:

79 (a) the board finds, upon a two-thirds vote of all members present, that a repair,
80 alteration, or other work or the purchase of materials, supplies, equipment, or other property is
81 of urgent necessity; or

82 (b) the district's general manager certifies by affidavit that there is only one source for
83 the required supplies, equipment, materials, or construction items.

84 (5) If a public transit district retains or withholds any payment on a contract with a
85 private contractor to construct facilities under this section, the board shall retain or withhold
86 and release the payment as provided in Section 13-8-5.

87 Section 2. Section **17B-2a-818.5** is enacted to read:

88 17B-2a-818.5. Contracting powers of public transit districts -- Health insurance
89 coverage.

90 (1) For purposes of this section:

91 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
92 34A-2-104 who works at least 30 hours per calendar week.

93 (b) "First tier subcontractor" has the same meaning as provided in Section 63A-5-208.

94 (c) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

95 (d) "Qualified health insurance coverage" means a health benefit plan that at the time
96 the contract is entered into or renewed:

97 (i) (A) provides coverage that is actuarially equivalent to the current benefit plan
98 determined by the Children's Health Insurance Program under Section 26-40-106; and

99 (B) under which the employer pays at least 50% of the premium for the employee and
100 the dependents of the employee;

101 (ii) (A) is a federally qualified high deductible health plan that has:

102 (I) the lowest deductible permitted for a federally qualified high deductible health plan;
103 and

104 (II) an out of pocket maximum that does not exceed three times the amount of the
105 annual deductible; and

106 (B) under which the employer pays 75% of the premium for the employee and the
107 dependents of the employee; or

108 (iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan
109 determined under Subsection (1)(d)(i); and

110 (B) under which the employer pays at least 75% of the premium of the employee and
111 the dependents of the employee.

112 (e) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

113 (2) Except as provided in Subsection (3), this section applies to all contracts entered
114 into by the public transit district on or after July 1, 2009, if:

115 (a) the contract is for design or construction; and

116 (b) (i) the prime contract is in the amount of \$500,000 or greater; or

117 (ii) a subcontract is in the amount of \$500,000 or greater.

118 (3) This section does not apply if:

- 119 (a) the application of this section jeopardizes the receipt of federal funds;
- 120 (b) the contract is a sole source contract; or
- 121 (c) the contract is an emergency procurement.
- 122 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
123 or a modification to a contract, when the contract does not meet the initial threshold required
124 by Subsection (2).
- 125 (b) A person who intentionally uses change orders or contract modifications to
126 circumvent the requirements of Subsection (2) is guilty of an infraction.
- 127 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the public transit
128 district that the contractor has and will maintain an offer of qualified health insurance coverage
129 for the contractor's employees and the employee's dependents during the duration of the
130 contract.
- 131 (b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor
132 shall demonstrate to the public transit district that the subcontractor has and will maintain an
133 offer of qualified health insurance coverage for the subcontractor's employees and the
134 employee's dependents during the duration of the contract.
- 135 (c) (i) A contractor who fails to meet the requirements of Subsection (5)(a) during the
136 duration of the contract is subject to penalties in accordance with administrative rules adopted
137 by the public transit district under Subsection (6).
- 138 (ii) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the
139 duration of the contract is subject to penalties in accordance with administrative rules adopted
140 by the public transit district under Subsection (6).
- 141 (6) The public transit district shall adopt administrative rules:
- 142 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- 143 (b) in coordination with:
 - 144 (i) the Department of Environmental Quality in accordance with Section 19-1-206;
 - 145 (ii) the Department of Natural Resources in accordance with Section 63-34-22;
 - 146 (iii) the State Building Board in accordance with Section 63A-5-205;
 - 147 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;
 - 148 (v) the Department of Transportation in accordance with Section 72-6-107.5; and
 - 149 (vi) the Legislature's Administrative Rules Review Committee; and

150 (c) which establish:

151 (i) the requirements and procedures a contractor must follow to demonstrate to the
152 public transit district compliance with this section which shall include:

153 (A) that a contractor will not have to demonstrate compliance with Section (5)(a) or (b)
154 more than twice in any twelve month period; and

155 (B) that the actuarially equivalent determination required in Subsections (1) is met by
156 the contractor if the contractor provides the department or division with a written statement of
157 actuarial equivalency from either the Utah Department of Insurance or an actuary selected by
158 the contractor or the contractor's insurer; and

159 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
160 violates the provisions of this section, which may include:

161 (A) a three-month suspension of the contractor or subcontractor from entering into
162 future contracts with the public transit district upon the first violation;

163 (B) a six-month suspension of the contractor or subcontractor from entering into future
164 contracts with the public transit district upon the second violation;

165 (C) an action for debarment of the contractor or subcontractor in accordance with
166 Section 63G-6-804 upon the third or subsequent violation; and

167 (D) monetary penalties which may not exceed 50% of the amount necessary to
168 purchase qualified health insurance coverage for employees and dependents of employees of
169 the contractor or subcontractor who were not offered qualified health insurance coverage
170 during the duration of the contract.

171 (7) (a) In addition to the penalties imposed under Subsection (6)(c), a contractor or
172 subcontractor who violates the provisions of this section shall be liable to the employee for
173 health care costs not covered by insurance.

174 (b) An employee has a private right of action against the employee's employer to
175 enforce the provisions of this Subsection (7).

176 (8) Any penalties imposed and collected under this section shall be deposited into the
177 Medicaid Restricted Account created in Section 26-18-402.

178 (9) The failure of a contractor or subcontractor to provide health insurance as required
179 by this section:

180 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,

181 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
182 Legal and Contractual Remedies; and

183 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
184 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
185 or construction.

186 Section 3. Section **19-1-206** is enacted to read:

187 **19-1-206. Contracting powers of department -- Health insurance coverage.**

188 (1) For purposes of this section:

189 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
190 34A-2-104 who works at least 30 hours per calendar week.

191 (b) "First tier subcontractor" has the same meaning as provided in Section 63A-5-208.

192 (c) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

193 (d) "Qualified health insurance coverage" means a health benefit plan that at the time
194 the contract is entered into or renewed:

195 (i) (A) provides coverage that is actuarially equivalent to the current benefit plan
196 determined by the Children's Health Insurance Program under Section 26-40-106; and

197 (B) under which the employer pays at least 50% of the premium for the employee and
198 the dependents of the employee;

199 (ii) (A) is a federally qualified high deductible health plan that has:

200 (I) the lowest deductible permitted for a federally qualified high deductible health plan;

201 and

202 (II) an out of pocket maximum that does not exceed three times the amount of the
203 annual deductible; and

204 (B) under which the employer pays 75% of the premium for the employee and the
205 dependents of the employee; or

206 (iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan
207 determined under Subsection (1)(d)(i); and

208 (B) under which the employer pays at least 75% of the premium of the employee and
209 the dependents of the employee.

210 (e) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

211 (2) Except as provided in Subsection (3), this section applies to all contracts entered

212 into by or delegated to the department or a division or board of the department on or after July
213 1, 2009, if:

214 (a) the contract is for design or construction; and

215 (b) (i) the prime contract is in the amount of \$500,000 or greater; or

216 (ii) a subcontract is in the amount of \$500,000 or greater.

217 (3) This section does not apply to contracts entered into by the department or a division
218 or board of the department if:

219 (a) the application of this section jeopardizes the receipt of federal funds;

220 (b) the contract or agreement is between:

221 (i) the department or a division or board of the department; and

222 (ii) (A) another agency of the state;

223 (B) the federal government;

224 (C) another state;

225 (D) an interstate agency;

226 (E) a political subdivision of this state; or

227 (F) a political subdivision of another state;

228 (c) the executive director determines that applying the requirements of this section to a
229 particular contract interferes with the effective response to an immediate health and safety
230 threat from the environment; or

231 (d) the contract is:

232 (i) a sole source contract; or

233 (ii) an emergency procurement.

234 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
235 or a modification to a contract, when the contract does not meet the initial threshold required
236 by Subsection (2).

237 (b) A person who intentionally uses change orders or contract modifications to
238 circumvent the requirements of Subsection (2) is guilty of an infraction.

239 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive
240 director that the contractor has and will maintain an offer of qualified health insurance
241 coverage for the contractor's employees and the employee's dependents during the duration of
242 the contract.

243 (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall
244 demonstrate to the executive director that the subcontractor has and will maintain an offer of
245 qualified health insurance coverage for the subcontractor's employees and the employee's
246 dependents during the duration of the contract.

247 (c) (i) A contractor who fails to comply with Subsection (5)(a) during the duration of
248 the contract is subject to penalties in accordance with administrative rules adopted by the
249 department under Subsection (6).

250 (ii) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the
251 duration of the contract is subject to penalties in accordance with administrative rules adopted
252 by the department under Subsection (6).

253 (6) The department shall adopt administrative rules:

254 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

255 (b) in coordination with:

256 (i) a public transit district in accordance with Section 17B-2a-815.5;

257 (ii) the Department of Natural Resources in accordance with Section 63-34-22;

258 (iii) the State Building Board in accordance with Section 63A-5-205;

259 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

260 (v) the Department of Transportation in accordance with Section 72-6-107.5; and

261 (vi) the Legislature's Administrative Rules Review Committee; and

262 (c) which establish:

263 (i) the requirements and procedures a contractor must follow to demonstrate to the
264 public transit district compliance with this section which shall include:

265 (A) that a contractor will not have to demonstrate compliance with Section (5)(a) or (b)
266 more than twice in any twelve month period; and

267 (B) that the actuarially equivalent determination required in Subsections (1) is met by
268 the contractor if the contractor provides the department or division with a written statement of
269 actuarial equivalency from either the Utah Department of Insurance or an actuary selected by
270 the contractor or the contractor's insurer; and

271 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
272 violates the provisions of this section, which may include:

273 (A) a three-month suspension of the contractor or subcontractor from entering into

274 future contracts with the state upon the first violation;

275 (B) a six-month suspension of the contractor or subcontractor from entering into future
276 contracts with the state upon the second violation;

277 (C) an action for debarment of the contractor or subcontractor in accordance with
278 Section 63G-6-804 upon the third or subsequent violation; and

279 (D) notwithstanding Section 19-1-303, monetary penalties which may not exceed 50%
280 of the amount necessary to purchase qualified health insurance coverage for an employee and
281 the dependents of an employee of the contractor or subcontractor who was not offered qualified
282 health insurance coverage during the duration of the contract.

283 (7) (a) In addition to the penalties imposed under Subsection (6)(c), a contractor or
284 subcontractor who violates the provisions of this section shall be liable to the employee for
285 health care costs not covered by insurance.

286 (b) An employee has a private right of action against the employee's employer to
287 enforce the provisions of this Subsection (7).

288 (8) Any penalties imposed and collected under this section shall be deposited into the
289 Medicaid Restricted Account created in Section 26-18-402.

290 (9) The failure of a contractor or subcontractor to provide health insurance as required
291 by this section:

292 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
293 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
294 Legal and Contractual Remedies; and

295 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
296 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
297 or construction.

298 Section 4. Section **26-18-402** is amended to read:

299 **26-18-402. Medicaid Restricted Account.**

300 (1) There is created a restricted account in the General Fund known as the Medicaid
301 Restricted Account.

302 (2) (a) ~~[Any]~~ The following shall be deposited into the Medicaid Restricted Account:

303 (i) any general funds appropriated to the department for the state plan for medical
304 assistance or for the Division of Health Care Financing that are not expended by the

305 department in the fiscal year for which the general funds were appropriated and which are not
 306 otherwise designated as nonlapsing shall lapse into the Medicaid Restricted Account[-]; and

307 (ii) any penalties imposed and collected under:

308 (A) Section 17B-2a-818.5;

309 (B) Section 19-1-206;

310 (C) Section 63-34-22;

311 (D) Section 63A-5-205;

312 (E) Section 63C-9-403; or

313 (F) Section 72-6-107.5.

314 (b) The account shall earn interest and all interest earned shall be deposited into the
 315 account.

316 (c) The Legislature may appropriate monies in the restricted account to fund programs
 317 that expand medical assistance coverage and private health insurance plans to low income
 318 persons who have not traditionally been served by Medicaid, including the Utah Children's
 319 Health Insurance Program created in Chapter 40.

320 Section 5. Section **63-34-22** is enacted to read:

321 **63-34-22. Contracting powers of department -- Health insurance coverage.**

322 (1) For purposes of this section:

323 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
 324 34A-2-104 who works at least 30 hours per calendar week.

325 (b) "First tier subcontractor" has the same meaning as provided in Section 63A-5-208.

326 (c) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

327 (d) "Qualified health insurance coverage" means a health benefit plan that at the time
 328 the contract is entered into or renewed:

329 (i) (A) provides coverage that is actuarially equivalent to the current benefit plan
 330 determined by the Children's Health Insurance Program under Section 26-40-106; and

331 (B) under which the employer pays at least 50% of the premium for the employee and
 332 the dependents of the employee;

333 (ii) (A) is a federally qualified high deductible health plan that has:

334 (I) the lowest deductible permitted for a federally qualified high deductible health plan;

335 and

336 (II) an out of pocket maximum that does not exceed three times the amount of the
337 annual deductible; and

338 (B) under which the employer pays 75% of the premium for the employee and the
339 dependents of the employee; or

340 (iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan
341 determined under Subsection (1)(d)(i); and

342 (B) under which the employer pays at least 75% of the premium of the employee and
343 the dependents of the employee.

344 (e) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

345 (2) Except as provided in Subsection (3), this section applies to all contracts entered
346 into by, or delegated to the department or a division, board, or council of the department on or
347 after July 1, 2009, if:

348 (a) the contract is for design or construction; and

349 (b) (i) the prime contract is in the amount of \$500,000 or greater; or

350 (ii) a subcontract is in the amount of \$500,000 or greater.

351 (3) This section does not apply to contracts entered into by the department or a
352 division, board, or council of the department if:

353 (a) the application of this section jeopardizes the receipt of federal funds;

354 (b) the contract or agreement is between:

355 (i) the department or a division, board, or council of the department; and

356 (ii) (A) another agency of the state;

357 (B) the federal government;

358 (C) another state;

359 (D) an interstate agency;

360 (E) a political subdivision of this state; or

361 (F) a political subdivision of another state; or

362 (c) the contract or agreement is:

363 (i) for the purpose of disbursing grants or loans authorized by statute;

364 (ii) a sole source contract; or

365 (iii) an emergency procurement.

366 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,

367 or a modification to a contract, when the contract does not meet the initial threshold required
368 by Subsection (2).

369 (b) A person who intentionally uses change orders or contract modifications to
370 circumvent the requirements of Subsection (2) is guilty of an infraction.

371 (5) (a) A contractor subject to Subsection (2)(b)(i) shall demonstrate to the department
372 that the contractor has and will maintain an offer of qualified health insurance coverage for the
373 contractor's employees and the employee's dependents during the duration of the contract.

374 (b) If a subcontractor of the contractor is subject to Subsection (2)(b)(ii), the contractor
375 shall demonstrate to the department that the subcontractor has and will maintain an offer of
376 qualified health insurance coverage for the subcontractor's employees and the employee's
377 dependents during the duration of the contract.

378 (c) (i) A contractor who fails to meet the requirements of Subsection (5)(a) during the
379 duration of the contract is subject to penalties in accordance with administrative rules adopted
380 by the department under Subsection (6).

381 (ii) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the
382 duration of the contract is subject to penalties in accordance with administrative rules adopted
383 by the department under Subsection (6).

384 (6) The department shall adopt administrative rules:

385 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

386 (b) in coordination with:

387 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

388 (ii) a public transit district in accordance with Section 17B-2a-815.5;

389 (iii) the State Building Board in accordance with Section 63A-5-205;

390 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

391 (v) the Department of Transportation in accordance with Section 72-6-107.5; and

392 (vi) the Legislature's Administrative Rules Review Committee; and

393 (c) which establish:

394 (i) the requirements and procedures a contractor must follow to demonstrate

395 compliance with this section to the department which shall include:

396 (A) that a contractor will not have to demonstrate compliance with Section (5)(a) or (b)

397 more than twice in any twelve month period; and

398 (B) that the actuarially equivalent determination required in Subsections (1) is met by
399 the contractor if the contractor provides the department or division with a written statement of
400 actuarial equivalency from either the Utah Department of Insurance or an actuary selected by
401 the contractor or the contractor's insurer; and

402 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
403 violates the provisions of this section, which may include:

404 (A) a three-month suspension of the contractor or subcontractor from entering into
405 future contracts with the state upon the first violation;

406 (B) a six-month suspension of the contractor or subcontractor from entering into future
407 contracts with the state upon the second violation;

408 (C) an action for debarment of the contractor or subcontractor in accordance with
409 Section 63G-6-804 upon the third or subsequent violation; and

410 (D) monetary penalties which may not exceed 50% of the amount necessary to
411 purchase qualified health insurance coverage for an employee and a dependent of an employee
412 of the contractor or subcontractor who was not offered qualified health insurance coverage
413 during the duration of the contract.

414 (7) (a) In addition to the penalties imposed under Subsection (6), a contractor or
415 subcontractor who violates the provisions of this section shall be liable to the employee for
416 health care costs not covered by insurance.

417 (b) An employee has a private right of action against the employee's employer to
418 enforce the provisions of this Subsection (7).

419 (8) Any penalties imposed and collected under this section shall be deposited into the
420 Medicaid Restricted Account created in Section 26-18-402.

421 (9) The failure of a contractor or subcontractor to provide health insurance as required
422 by this section:

423 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
424 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
425 Legal and Contractual Remedies; and

426 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
427 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
428 or construction.

429 Section 6. Section **63A-5-205** is amended to read:

430 **63A-5-205. Contracting powers of director -- Retainage -- Health insurance**
431 **coverage.**

432 (1) As used in this section[~~,"capital developments" and "capital improvements" have~~];

433 (a) "Capital developments" has the same meaning as provided in Section 63A-5-104.

434 (b) "Capital improvements" has the same meaning as provided in Section 63A-5-104.

435 (c) "Employee" means an "employee," "worker," or "operative" as defined in Section
436 34A-2-104 who works at least 30 hours per calendar week.

437 (d) "First tier subcontractor" has the same meaning as provided in Section 63A-5-208.

438 (e) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

439 (f) "Qualified health insurance coverage" means a health benefit plan that at the time
440 the contract is entered into or renewed:

441 (i) (A) provides coverage that is actuarially equivalent to the current benefit plan
442 determined by the Children's Health Insurance Program under Section 26-40-106; and

443 (B) under which the employer pays at least 50% of the premium for the employee and
444 the dependents of the employee;

445 (ii) (A) is a federally qualified high deductible health plan that has:

446 (I) the lowest deductible permitted for a federally qualified high deductible health plan;

447 and

448 (II) an out of pocket maximum that does not exceed three times the amount of the
449 annual deductible; and

450 (B) under which the employer pays 75% of the premium for the employee and the
451 dependents of the employee; or

452 (iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan
453 determined under Subsection (1)(f)(i); and

454 (B) under which the employer pays at least 75% of the premium of the employee and
455 the dependents of the employee.

456 (g) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

457 (2) In accordance with Title 63G, Chapter 6, Utah Procurement Code, the director may:

458 (a) subject to Subsection (3), enter into contracts for any work or professional services
459 which the division or the State Building Board may do or have done; and

460 (b) as a condition of any contract for architectural or engineering services, prohibit the
461 architect or engineer from retaining a sales or agent engineer for the necessary design work.

462 (3) (a) Except as provided in Subsection (3)(b), this Subsection (3) applies to all
463 contracts entered into by the division or the State Building Board on or after July 1, 2009, if:

464 (i) the contract is for design or construction; and

465 (ii) (A) the prime contract is in the amount of \$500,000 or greater; or

466 (B) a subcontract is in the amount of \$500,000 or greater.

467 (b) This Subsection (3) does not apply:

468 (i) if the application of this Subsection (3) jeopardizes the receipt of federal funds;

469 (ii) if the contract is a sole source contract;

470 (iii) if the contract is an emergency procurement; or

471 (iv) to a change order as defined in Section 63G-6-102, or a modification to a contract,

472 when the contract does not meet the threshold required by Subsection (3)(a).

473 (c) A person who intentionally uses change orders or contract modifications to
474 circumvent the requirements of Subsection (3)(a) is guilty of an infraction.

475 (d) (i) A contractor subject to Subsection (3)(a) shall demonstrate to the director that
476 the contractor has and will maintain an offer of qualified health insurance coverage for the
477 contractor's employees and the employee's dependents.

478 (ii) If a subcontractor of the contractor is subject to Subsection (3)(a), the contractor
479 shall demonstrate to the director that the subcontractor has and will maintain an offer of
480 qualified health insurance coverage for the subcontractor's employees and the employee's
481 dependents.

482 (e) (i) A contractor who fails to meet the requirements of Subsection (3)(d)(i) during
483 the duration of the contract is subject to penalties in accordance with administrative rules
484 adopted by the division under Subsection (3)(f).

485 (ii) A subcontractor who fails to meet the requirements of Subsection (3)(d)(ii) during
486 the duration of the contract is subject to penalties in accordance with administrative rules
487 adopted by the division under Subsection (3)(f).

488 (f) The division shall adopt administrative rules:

489 (i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

490 (ii) in coordination with:

491 (A) the Department of Environmental Quality in accordance with Section 19-1-206;

492 (B) the Department of Natural Resources in accordance with Section 63-34-22;

493 (C) a public transit district in accordance with Section 17B-2a-815.5;

494 (D) the State Capitol Preservation Board in accordance with Section 63C-9-403;

495 (E) the Department of Transportation in accordance with Section 72-6-107.5; and

496 (F) the Legislature's Administrative Rules Review Committee; and

497 (iii) which establish:

498 (A) the requirements and procedures a contractor must follow to demonstrate to the

499 director compliance with this Subsection (3) which shall include:

500 (I) that a contractor will not have to demonstrate compliance with Section (5)(a) or (b)

501 more than twice in any twelve month period; and

502 (II) that the actuarially equivalent determination required in Subsections (1) is met by

503 the contractor if the contractor provides the department or division with a written statement of

504 actuarial equivalency from either the Utah Department of Insurance or an actuary selected by

505 the contractor or the contractor's insurer; and

506 (B) the penalties that may be imposed if a contractor or subcontractor intentionally

507 violates the provisions of this Subsection (3), which may include:

508 (I) a three-month suspension of the contractor or subcontractor from entering into

509 future contracts with the state upon the first violation;

510 (II) a six-month suspension of the contractor or subcontractor from entering into future

511 contracts with the state upon the second violation;

512 (III) an action for debarment of the contractor or subcontractor in accordance with

513 Section 63G-6-804 upon the third or subsequent violation; and

514 (IV) monetary penalties which may not exceed 50% of the amount necessary to

515 purchase qualified health insurance coverage for an employee and the dependents of an

516 employee of the contractor or subcontractor who was not offered qualified health insurance

517 coverage during the duration of the contract.

518 (g) (i) In addition to the penalties imposed under Subsection (3)(f)(iii), a contractor or

519 subcontractor who violates the provisions of this section shall be liable to the employee for

520 health care costs not covered by insurance.

521 (ii) An employee has a private right of action against the employee's employer to

522 enforce the provisions of this Subsection (3)(g).

523 (h) Any penalties imposed and collected under this section shall be deposited into the
524 Medicaid Restricted Account created by Section 26-18-402.

525 (i) The failure of a contractor or subcontractor to provide health insurance as required
526 by this section:

527 (i) may not be the basis for a protest or other action from a prospective bidder, offeror,
528 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
529 Legal and Contractual Remedies; and

530 (ii) may not be used by the procurement entity or a prospective bidder, offeror, or
531 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
532 or construction.

533 ~~[(3)]~~ (4) The judgment of the director as to the responsibility and qualifications of a
534 bidder is conclusive, except in case of fraud or bad faith.

535 ~~[(4)]~~ (5) The division shall make all payments to the contractor for completed work in
536 accordance with the contract and pay the interest specified in the contract on any payments that
537 are late.

538 ~~[(5)]~~ (6) If any payment on a contract with a private contractor to do work for the
539 division or the State Building Board is retained or withheld, it shall be retained or withheld and
540 released as provided in Section 13-8-5.

541 Section 7. Section **63C-9-403** is enacted to read:

542 **63C-9-403. Contracting power of executive director -- Health insurance coverage.**

543 (1) For purposes of this section:

544 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
545 34A-2-104 who works at least 30 hours per calendar week.

546 (b) "First tier subcontractor" has the same meaning as provided in Section 63A-5-208.

547 (c) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

548 (d) "Qualified health insurance coverage" means a health benefit plan that at the time
549 the contract is entered into or renewed:

550 (i) (A) provides coverage that is actuarially equivalent to the current benefit plan
551 determined by the Children's Health Insurance Program under Section 26-40-106; and

552 (B) under which the employer pays at least 50% of the premium for the employee and

553 the dependents of the employee;

554 (ii) (A) is a federally qualified high deductible health plan that has:

555 (I) the lowest deductible permitted for a federally qualified high deductible health plan;

556 and

557 (II) an out of pocket maximum that does not exceed three times the amount of the
558 annual deductible; and

559 (B) under which the employer pays 75% of the premium for the employee and the
560 dependents of the employee; or

561 (iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan
562 determined under Subsection (1)(d)(i); and

563 (B) under which the employer pays at least 75% of the premium of the employee and
564 the dependents of the employee.

565 (e) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

566 (2) Except as provided in Subsection (3), this section applies to all contracts entered
567 into by the board or on behalf of the board on or after July 1, 2009, if:

568 (a) the contract is for design or construction; and

569 (b) (i) the prime contract is in the amount of \$500,000 or greater; or

570 (ii) a subcontract is in the amount of \$500,000 or greater.

571 (3) This section does not apply if:

572 (a) the application of this section jeopardizes the receipt of federal funds;

573 (b) the contract is a sole source contract; or

574 (c) the contract is an emergency procurement.

575 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
576 or a modification to a contract, when the contract does not meet the initial threshold required
577 by Subsection (2).

578 (b) A person who intentionally uses change orders or contract modifications to
579 circumvent the requirements of Subsection (2) is guilty of an infraction.

580 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive
581 director that the contractor has and will maintain an offer of qualified health insurance
582 coverage for the contractor's employees and the employee's dependents during the duration of
583 the contract.

584 (b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor
585 shall demonstrate to the executive director that the subcontractor has and will maintain an offer
586 of qualified health insurance coverage for the subcontractor's employees and the employee's
587 dependents during the duration of the contract.

588 (c) (i) A contractor who fails to meet the requirements of Subsection (5)(a) during the
589 duration of the contract is subject to penalties in accordance with administrative rules adopted
590 by the division under Subsection (6).

591 (ii) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the
592 duration of the contract is subject to penalties in accordance with administrative rules adopted
593 by the department under Subsection (6).

594 (6) The department shall adopt administrative rules:

595 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

596 (b) in coordination with:

597 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

598 (ii) the Department of Natural Resources in accordance with Section 63-34-22;

599 (iii) the State Building Board in accordance with Section 63A-5-205;

600 (iv) a public transit district in accordance with Section 17B-2a-815.5;

601 (v) the Department of Transportation in accordance with Section 72-6-107.5; and

602 (vi) the Legislature's Administrative Rules Review Committee; and

603 (c) which establish:

604 (i) the requirements and procedures a contractor must follow to demonstrate to the
605 executive director compliance with this section which shall include:

606 (A) that a contractor will not have to demonstrate compliance with Section (5)(a) or (b)
607 more than twice in any twelve month period; and

608 (B) that the actuarially equivalent determination required in Subsections (1) is met by
609 the contractor if the contractor provides the department or division with a written statement of
610 actuarial equivalency from either the Utah Department of Insurance or an actuary selected by
611 the contractor or the contractor's insurer; and

612 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
613 violates the provisions of this section, which may include:

614 (A) a three-month suspension of the contractor or subcontractor from entering into

615 future contracts with the state upon the first violation;

616 (B) a six-month suspension of the contractor or subcontractor from entering into future
617 contracts with the state upon the second violation;

618 (C) an action for debarment of the contractor or subcontractor in accordance with
619 Section 63G-6-804 upon the third or subsequent violation; and

620 (D) monetary penalties which may not exceed 50% of the amount necessary to
621 purchase qualified health insurance coverage for employees and dependents of employees of
622 the contractor or subcontractor who were not offered qualified health insurance coverage
623 during the duration of the contract.

624 (7) (a) In addition to the penalties imposed under Subsection (6)(c), a contractor or
625 subcontractor who violates the provisions of this section shall be liable to the employee for
626 health care costs not covered by insurance.

627 (ii) An employee has a private right of action against the employee's employer to
628 enforce the provisions of this Subsection (7).

629 (8) Any penalties imposed and collected under this section shall be deposited into the
630 Medicaid Restricted Account created in Section 26-18-402.

631 (9) The failure of a contractor or subcontractor to provide health insurance as required
632 by this section:

633 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
634 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
635 Legal and Contractual Remedies; and

636 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
637 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
638 or construction.

639 Section 8. Section **72-6-107.5** is enacted to read:

640 **72-6-107.5. Construction of improvements of highway -- Contracts -- Health**
641 **insurance coverage.**

642 (1) For purposes of this section:

643 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
644 34A-2-104 who works at least 30 hours per calendar week.

645 (b) "First tier subcontractor" has the same meaning as provided in Section 63A-5-208.

646 (c) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

647 (d) "Qualified health insurance coverage" means a health benefit plan that at the time
648 the contract is entered into or renewed:

649 (i) (A) provides coverage that is actuarially equivalent to the current benefit plan
650 determined by the Children's Health Insurance Program under Section 26-40-106; and

651 (B) under which the employer pays at least 50% of the premium for the employee and
652 the dependents of the employee;

653 (ii) (A) is a federally qualified high deductible health plan that has:

654 (I) the lowest deductible permitted for a federally qualified high deductible health plan;
655 and

656 (II) an out of pocket maximum that does not exceed three times the amount of the
657 annual deductible; and

658 (B) under which the employer pays 75% of the premium for the employee and the
659 dependents of the employee; or

660 (iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan
661 determined under Subsection (1)(d)(i); and

662 (B) under which the employer pays at least 75% of the premium of the employee and
663 the dependents of the employee.

664 (e) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

665 (2) Except as provided in Subsection (3), this section applies to all contracts entered
666 into by the department on or after July 1, 2009, for construction or design of highways if:

667 (a) the prime contract is in the amount of \$500,000 or greater; or

668 (b) a subcontract is in the amount of \$500,000 or greater.

669 (3) This section does not apply if:

670 (a) the application of this section jeopardizes the receipt of federal funds;

671 (b) the contract is a sole source contract; or

672 (c) the contract is an emergency procurement.

673 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
674 or a modification to a contract, when the contract does not meet the initial threshold required
675 by Subsection (2).

676 (b) A person who intentionally uses change orders or contract modifications to

677 circumvent the requirements of Subsection (2) is guilty of an infraction.

678 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the department that
679 the contractor has and will maintain an offer of qualified health insurance coverage for the
680 contractor's employees and the employee's dependents during the duration of the contract.

681 (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall
682 demonstrate to the department that the subcontractor has and will maintain an offer of qualified
683 health insurance coverage for the subcontractor's employees and the employee's dependents
684 during the duration of the contract.

685 (c) (i) A contractor who fails to meet the requirements of Subsection (5)(a) during the
686 duration of the contract is subject to penalties in accordance with administrative rules adopted
687 by the department under Subsection (6).

688 (ii) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the
689 duration of the contract is subject to penalties in accordance with administrative rules adopted
690 by the department under Subsection (6).

691 (6) The department shall adopt administrative rules:

692 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

693 (b) in coordination with:

694 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

695 (ii) the Department of Natural Resources in accordance with Section 63-34-22;

696 (iii) the State Building Board in accordance with Section 63A-5-205;

697 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

698 (v) a public transit district in accordance with Section 17B-2a-815.5; and

699 (vi) the Legislature's Administrative Rules Review Committee; and

700 (c) which establish:

701 (i) the requirements and procedures a contractor must follow to demonstrate to the
702 department compliance with this section which shall include:

703 (A) that a contractor will not have to demonstrate compliance with Section (5)(a) or (b)
704 more than twice in any twelve month period; and

705 (B) that the actuarially equivalent determination required in Subsections (1) is met by
706 the contractor if the contractor provides the department or division with a written statement of
707 actuarial equivalency from either the Utah Department of Insurance or an actuary selected by

708 the contractor or the contractor's insurer; and

709 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
710 violates the provisions of this section, which may include:

711 (A) a three-month suspension of the contractor or subcontractor from entering into
712 future contracts with the state upon the first violation;

713 (B) a six-month suspension of the contractor or subcontractor from entering into future
714 contracts with the state upon the second violation;

715 (C) an action for debarment of the contractor or subcontractor in accordance with
716 Section 63G-6-804 upon the third or subsequent violation; and

717 (D) monetary penalties which may not exceed 50% of the amount necessary to
718 purchase qualified health insurance coverage for an employee and a dependent of the employee
719 of the contractor or subcontractor who was not offered qualified health insurance coverage
720 during the duration of the contract.

721 (7) (a) In addition to the penalties imposed under Subsection (6), a contractor or
722 subcontractor who violates the provisions of this section shall be liable to the employee for
723 health care costs not covered by insurance.

724 (ii) An employee has a private right of action against the employee's employer to
725 enforce the provisions of this Subsection (7).

726 (8) Any penalties imposed and collected under this section shall be deposited into the
727 Medicaid Restricted Account created in Section 26-18-402.

728 (9) The failure of a contractor or subcontractor to provide health insurance as required
729 by this section:

730 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
731 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
732 Legal and Contractual Remedies; and

733 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
734 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
735 or construction.

Fiscal Note**H.B. 331 1st Sub. (Buff) - Health Reform - Health Insurance Coverage in
State Contracts**

2009 General Session

State of Utah

State Impact

Enactment of this bill may indirectly increase the cost of state construction projects depending upon the contractor. The extent of such increases is currently unknown.

Individual, Business and/or Local Impact

Enactment of this bill may result in certain cost increases to private contractors, but may benefit individuals working for such contractors. Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.
