

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: Gene Davis

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) \$750,000, 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:

93 (i) works at least 30 hours per calendar week; and

94 (ii) meets employer eligibility waiting requirements for health care insurance which
95 may not exceed 90 days from the date of hire.

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

97 (c) "Qualified health insurance coverage" means a health benefit plan that at the time
98 the contract is entered into or renewed:

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

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

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

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

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

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

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

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

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

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

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

118 (b) (i) the prime contract is in the amount of \$1.5 million or greater; or

- 119 (ii) a subcontract is in the amount of \$750,000 or greater.
- 120 (3) This section does not apply if:
- 121 (a) the application of this section jeopardizes the receipt of federal funds;
- 122 (b) the contract is a sole source contract; or
- 123 (c) the contract is an emergency procurement.
- 124 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
- 125 or a modification to a contract, when the contract does not meet the initial threshold required
- 126 by Subsection (2).
- 127 (b) A person who intentionally uses change orders or contract modifications to
- 128 circumvent the requirements of Subsection (2) is guilty of an infraction.
- 129 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the public transit
- 130 district that the contractor has and will maintain an offer of qualified health insurance coverage
- 131 for the contractor's employees and the employee's dependents during the duration of the
- 132 contract.
- 133 (b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor
- 134 shall demonstrate to the public transit district that the subcontractor has and will maintain an
- 135 offer of qualified health insurance coverage for the subcontractor's employees and the
- 136 employee's dependents during the duration of the contract.
- 137 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
- 138 the duration of the contract is subject to penalties in accordance with administrative rules
- 139 adopted by the public transit district under Subsection (6).
- 140 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
- 141 requirements of Subsection (5)(b).
- 142 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
- 143 the duration of the contract is subject to penalties in accordance with administrative rules
- 144 adopted by the public transit district under Subsection (6).
- 145 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
- 146 requirements of Subsection (5)(a).
- 147 (6) The public transit district shall adopt administrative rules:
- 148 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- 149 (b) in coordination with:

- 150 (i) the Department of Environmental Quality in accordance with Section 19-1-206;
- 151 (ii) the Department of Natural Resources in accordance with Section 63-34-22;
- 152 (iii) the State Building Board in accordance with Section 63A-5-205;
- 153 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;
- 154 (v) the Department of Transportation in accordance with Section 72-6-107.5; and
- 155 (vi) the Legislature's Administrative Rules Review Committee; and

156 (c) which establish:

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

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

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

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

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

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

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

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

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

180 (b) An employee has a private right of action only against the employee's employer to

181 enforce the provisions of this Subsection (7).

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

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

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

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

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

193 **19-1-206. Contracting powers of department -- Health insurance coverage.**

194 (1) For purposes of this section:

195 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
196 34A-2-104 who:

197 (i) works at least 30 hours per calendar week; and

198 (ii) meets employer eligibility waiting requirements for health care insurance which
199 may not exceed 90 days from the date of hire.

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

201 (c) "Qualified health insurance coverage" means a health benefit plan that at the time
202 the contract is entered into or renewed:

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

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

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

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

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

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

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

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

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

219 (2) Except as provided in Subsection (3), this section applies to all contracts entered
220 into by or delegated to the department or a division or board of the department on or after July
221 1, 2009, if:

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

223 (b) (i) the prime contract is in the amount of \$1.5 million or greater; or

224 (ii) a subcontract is in the amount of \$750,000 or greater.

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

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

228 (b) the contract or agreement is between:

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

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

231 (B) the federal government;

232 (C) another state;

233 (D) an interstate agency;

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

235 (F) a political subdivision of another state;

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

239 (d) the contract is:

240 (i) a sole source contract; or

241 (ii) an emergency procurement.

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

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

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

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

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

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

258 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
259 requirements of Subsection (5)(b).

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

263 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
264 requirements of Subsection (5)(a).

265 (6) The department shall adopt administrative rules:

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

267 (b) in coordination with:

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

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

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

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

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

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

274 (c) which establish:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

311 **26-18-402. Medicaid Restricted Account.**

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

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

315 (i) any general funds appropriated to the department for the state plan for medical
316 assistance or for the Division of Health Care Financing that are not expended by the
317 department in the fiscal year for which the general funds were appropriated and which are not
318 otherwise designated as nonlapsing shall lapse into the Medicaid Restricted Account[-]; and

319 (ii) any penalties imposed and collected under:

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

321 (B) Section 19-1-206;

322 (C) Section 63-34-22;

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

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

325 (F) Section 72-6-107.5.

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

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

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

333 **63-34-22. Contracting powers of department -- Health insurance coverage.**

334 (1) For purposes of this section:

335 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section

336 34A-2-104 who:

337 (i) works at least 30 hours per calendar week; and

338 (ii) meets employer eligibility waiting requirements for health care insurance which
339 may not exceed 90 days from the date of hire.

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

341 (c) "Qualified health insurance coverage" means a health benefit plan that at the time
342 the contract is entered into or renewed:

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

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

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

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

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

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

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

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

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

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

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

363 (b) (i) the prime contract is in the amount of \$1.5 million or greater; or

364 (ii) a subcontract is in the amount of \$750,000 or greater.

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

- 367 (a) the application of this section jeopardizes the receipt of federal funds;
368 (b) the contract or agreement is between:
369 (i) the department or a division, board, or council of the department; and
370 (ii) (A) another agency of the state;
371 (B) the federal government;
372 (C) another state;
373 (D) an interstate agency;
374 (E) a political subdivision of this state; or
375 (F) a political subdivision of another state; or
376 (c) the contract or agreement is:
377 (i) for the purpose of disbursing grants or loans authorized by statute;
378 (ii) a sole source contract; or
379 (iii) an emergency procurement.
380 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
381 or a modification to a contract, when the contract does not meet the initial threshold required
382 by Subsection (2).
383 (b) A person who intentionally uses change orders or contract modifications to
384 circumvent the requirements of Subsection (2) is guilty of an infraction.
385 (5) (a) A contractor subject to Subsection (2)(b)(i) shall demonstrate to the department
386 that the contractor has and will maintain an offer of qualified health insurance coverage for the
387 contractor's employees and the employee's dependents during the duration of the contract.
388 (b) If a subcontractor of the contractor is subject to Subsection (2)(b)(ii), the contractor
389 shall demonstrate to the department that the subcontractor has and will maintain an offer of
390 qualified health insurance coverage for the subcontractor's employees and the employee's
391 dependents during the duration of the contract.
392 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
393 the duration of the contract is subject to penalties in accordance with administrative rules
394 adopted by the department under Subsection (6).
395 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
396 requirements of Subsection (5)(b).
397 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during

398 the duration of the contract is subject to penalties in accordance with administrative rules
399 adopted by the department under Subsection (6).

400 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
401 requirements of Subsection (5)(a).

402 (6) The department shall adopt administrative rules:

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

404 (b) in coordination with:

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

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

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

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

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

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

411 (c) which establish:

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

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

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

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

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

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

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

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

428 (D) monetary penalties which may not exceed 50% of the amount necessary to

429 purchase qualified health insurance coverage for an employee and a dependent of an employee
430 of the contractor or subcontractor who was not offered qualified health insurance coverage
431 during the duration of the contract.

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

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

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

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

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

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

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

448 **63A-5-205. Contracting powers of director -- Retainage -- Health insurance**
449 **coverage.**

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

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

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

453 (c) "Employee" means an "employee," "worker," or "operative" as defined in Section
454 34A-2-104 who:

455 (i) works at least 30 hours per calendar week; and

456 (ii) meets employer eligibility waiting requirements for health care insurance which
457 may not exceed 90 days from the date of hire.

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

459 (e) "Qualified health insurance coverage" means a health benefit plan that at the time

460 the contract is entered into or renewed:

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

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

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

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

467 and

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

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

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

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

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

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

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

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

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

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

485 (ii) (A) the prime contract is in the amount of \$1.5 million or greater; or

486 (B) a subcontract is in the amount of \$750,000 or greater.

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

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

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

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

491 (iv) to a change order as defined in Section 63G-6-102, or a modification to a contract,
492 when the contract does not meet the threshold required by Subsection (3)(a).

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

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

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

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

505 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
506 requirements of Subsection (3)(d)(ii).

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

510 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
511 requirements of Subsection (3)(d)(i).

512 (f) The division shall adopt administrative rules:

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

514 (ii) in coordination with:

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

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

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

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

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

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

521 (iii) which establish:

522 (A) the requirements and procedures a contractor must follow to demonstrate to the
523 director compliance with this Subsection (3) which shall include:

524 (I) that a contractor will not have to demonstrate compliance with Section (5)(a) or (b)
525 more than twice in any twelve-month period; and

526 (II) that the actuarially equivalent determination required in Subsection (1) is met by
527 the contractor if the contractor provides the department or division with a written statement of
528 actuarial equivalency from either the Utah Department of Insurance or an actuary selected by
529 the contractor or the contractor's insurer; and

530 (B) the penalties that may be imposed if a contractor or subcontractor intentionally
531 violates the provisions of this Subsection (3), which may include:

532 (I) a three-month suspension of the contractor or subcontractor from entering into
533 future contracts with the state upon the first violation;

534 (II) a six-month suspension of the contractor or subcontractor from entering into future
535 contracts with the state upon the second violation;

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

538 (IV) monetary penalties which may not exceed 50% of the amount necessary to
539 purchase qualified health insurance coverage for an employee and the dependents of an
540 employee of the contractor or subcontractor who was not offered qualified health insurance
541 coverage during the duration of the contract.

542 (g) (i) In addition to the penalties imposed under Subsection (3)(f)(iii), a contractor or
543 subcontractor who violates the provisions of this section shall be liable to the employee for
544 health care costs not covered by insurance.

545 (ii) An employee has a private right of action only against the employee's employer to
546 enforce the provisions of this Subsection (3)(g).

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

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

551 (i) may not be the basis for a protest or other action from a prospective bidder, offeror,
552 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,

553 Legal and Contractual Remedies; and

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

557 [~~(3)~~] (4) The judgment of the director as to the responsibility and qualifications of a
558 bidder is conclusive, except in case of fraud or bad faith.

559 [~~(4)~~] (5) The division shall make all payments to the contractor for completed work in
560 accordance with the contract and pay the interest specified in the contract on any payments that
561 are late.

562 [~~(5)~~] (6) If any payment on a contract with a private contractor to do work for the
563 division or the State Building Board is retained or withheld, it shall be retained or withheld and
564 released as provided in Section 13-8-5.

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

566 **63C-9-403. Contracting power of executive director -- Health insurance coverage.**

567 (1) For purposes of this section:

568 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
569 34A-2-104 who:

570 (i) works at least 30 hours per calendar week; and

571 (ii) meets employer eligibility waiting requirements for health care insurance which
572 may not exceed 90 days from the date of hire.

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

574 (c) "Qualified health insurance coverage" means a health benefit plan that at the time
575 the contract is entered into or renewed:

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

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

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

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

582 and

583 (II) an out of pocket maximum that does not exceed three times the amount of the

584 annual deductible; and

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

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

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

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

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

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

595 (b) (i) the prime contract is in the amount of \$1.5 million or greater; or

596 (ii) a subcontract is in the amount of \$750,000 or greater.

597 (3) This section does not apply if:

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

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

600 (c) the contract is an emergency procurement.

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

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

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

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

614 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during

615 the duration of the contract is subject to penalties in accordance with administrative rules
616 adopted by the division under Subsection (6).

617 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
618 requirements of Subsection (5)(b).

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

622 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
623 requirements of Subsection (5)(a).

624 (6) The department shall adopt administrative rules:

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

626 (b) in coordination with:

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

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

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

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

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

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

633 (c) which establish:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

670 **72-6-107.5. Construction of improvements of highway -- Contracts -- Health**
671 **insurance coverage.**

672 (1) For purposes of this section:

673 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
674 34A-2-104 who:

675 (i) works at least 30 hours per calendar week; and

676 (ii) meets employer eligibility waiting requirements for health care insurance which

677 may not exceed 90 days from the date of hire.

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

679 (c) "Qualified health insurance coverage" means a health benefit plan that at the time
680 the contract is entered into or renewed:

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

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

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

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

687 and

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

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

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

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

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

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

699 (a) the prime contract is in the amount of \$1.5 million or greater; or

700 (b) a subcontract is in the amount of \$750,000 or greater.

701 (3) This section does not apply if:

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

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

704 (c) the contract is an emergency procurement.

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

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

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

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

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

720 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
721 requirements of Subsection (5)(b).

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

725 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
726 requirements of Subsection (5)(a).

727 (6) The department shall adopt administrative rules:

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

729 (b) in coordination with:

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

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

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

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

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

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

736 (c) which establish:

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

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

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

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

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

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

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

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

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

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

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

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

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

769 (b) may not be used by the procurement entity or a prospective bidder, offeror, or

770 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
771 or construction.

Fiscal Note**H.B. 331 2nd Sub. (Gray) - 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.
