



30 ENACTS:

31 **63A-5-223**, Utah Code Annotated 1953

32 **63G-6-603**, Utah Code Annotated 1953

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

35 Section 1. Section **63A-5-223** is enacted to read:

36 **63A-5-223. Contracts -- Certain indemnification provisions forbidden.**

37 (1) As used in this section, "design professional" means:

38 (a) an architect, licensed under Title 58, Chapter 3a, Architects Licensing Act;

39 (b) a landscape architect, licensed under Title 58, Chapter 53, Landscape Architects

40 Licensing Act; and

41 (c) a professional engineer or professional land surveyor, licensed under Title 58,

42 Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

43 (2) (a) Beginning May 12, 2009, a contract, including an amendment to an existing  
44 contract, entered into under authority of this chapter may not require that a design professional  
45 indemnify another from liability claims that arise out of the design professional's services,  
46 unless the liability claim arises from the design professional's negligent act, wrongful act, error  
47 or omission, or other liability imposed by law.

48 (b) Subsection (2)(a) may not be waived by contract.

49 (c) Notwithstanding Subsections (2)(a) and (b), a design professional may be required  
50 to indemnify a person for whom the design professional has direct or indirect control or  
51 responsibility.

52 Section 2. Section **63G-6-603** is enacted to read:

53 **63G-6-603. Contracts -- Certain indemnification provisions forbidden.**

54 (1) As used in this section, "design professional" means:

55 (a) an architect, licensed under Title 58, Chapter 3a, Architects Licensing Act;

56 (b) a landscape architect, licensed under Title 58, Chapter 53, Landscape Architects

57 Licensing Act; and

58 (c) a professional engineer or professional land surveyor, licensed under Title 58,  
59 Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

60 (2) (a) Beginning May 12, 2009, a contract, including an amendment to an existing  
61 contract, entered into under authority of this chapter may not require that a design professional  
62 indemnify another from liability claims that arise out of the design professional's services,  
63 unless the liability claim arises from the design professional's negligent act, wrongful act, error  
64 or omission, or other liability imposed by law.

65 (b) Subsection (2)(a) may not be waived by contract.

66 (c) Notwithstanding Subsections (2)(a) and (b), a design professional may be required  
67 to indemnify a person for whom the design professional has direct or indirect control or  
68 responsibility.

69 Section 3. Section **72-6-107** is amended to read:

70 **72-6-107. Construction or improvement of highway -- Contracts -- Retainage --**  
71 **Certain indemnification provisions forbidden.**

72 (1) As used in this section, "design professional" means:

73 (a) an architect, licensed under Title 58, Chapter 3a, Architects Licensing Act;

74 (b) a landscape architect, licensed under Title 58, Chapter 53, Landscape Architects  
75 Licensing Act; and

76 (c) a professional engineer or professional land surveyor, licensed under Title 58,  
77 Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

78 ~~[(+)]~~ (2) (a) The department shall make plans, specifications, and estimates prior to the  
79 construction or improvement of any state highway.

80 (b) Except as provided in Section 63G-6-502 and except for construction or  
81 improvements performed with state prison labor, a construction or improvement project with  
82 an estimated cost exceeding the bid limit as defined in Section 72-6-109 for labor and  
83 materials shall be performed under contract awarded to the lowest responsible bidder.

84 (c) The advertisement for bids shall be published in a newspaper of general circulation  
85 in the county in which the work is to be performed, at least once a week for two consecutive

86 weeks, with the last publication at least ten days before bids are opened.

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

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

92 [~~2~~] (3) If any payment on a contract with a private contractor for construction or  
93 improvement of a state highway is retained or withheld, the payment shall be retained or  
94 withheld and released as provided in Section 13-8-5.

95 [~~3~~] (4) If the department performs a construction or improvement project by force  
96 account, the department shall:

97 (a) provide an accounting of the costs and expenditures of the improvement including  
98 material and labor;

99 (b) disclose the costs and expenditures to any person upon request and allow the  
100 person to make a copy and pay for the actual cost of the copy; and

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

103 [~~4~~] (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking  
104 Act, the department shall establish procedures for:

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

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

107 (6) (a) Beginning May 12, 2009, a contract, including an amendment to an existing  
108 contract, entered into under authority of this chapter may not require that a design professional  
109 indemnify another from liability claims that arise out of the design professional's services,  
110 unless the liability claim arises from the design professional's negligent act, wrongful act, error  
111 or omission, or other liability imposed by law.

112 (b) Subsection (6)(a) may not be waived by contract.

113 (c) Notwithstanding Subsections (6)(a) and (b), a design professional may be required

114 to indemnify a person for whom the design professional has direct or indirect control or  
115 responsibility.