

SB0114S01 compared with SB0114

~~{deleted text}~~ shows text that was in SB0114 but was deleted in SB0114S01.

inserted text shows text that was not in SB0114 but was inserted into SB0114S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will not be completely accurate. Therefore, you need to read the actual bill. This automatically generated document could experience abnormalities caused by: limitations of the compare program; bad input data; the timing of the compare; and other potential causes.

Senator Wayne L. Niederhauser proposes the following substitute bill:

CONTESTING PUBLIC PROCUREMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne L. Niederhauser

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions of the Utah Procurement Code relating to protests, legal action, and appeals.

Highlighted Provisions:

This bill:

- ▶ increases the number of members on the Procurement Policy Board;
- ▶ describes procedures and requirements for a protest before ~~{the chief procurement}~~a protest officer ~~{or the head of a purchasing agency}~~ and an appeal of a protest decision;
- ▶ makes the procedures and requirements described in the preceding paragraph applicable to state agencies, state purchasing agencies, and to most local public procurement units;

SB0114S01 compared with SB0114

- ▶ grants rulemaking authority to the Procurement Policy Board;
- ▶ requires a person who files an appeal of a protest decision to, subject to certain exceptions, pay a security deposit or post a bond;
- ▶ describes the requirements and procedures relating to paying a security deposit or posting a bond;
- ▶ provides for the forfeiture of a bond if an appeal or protest is frivolous or if its primary purpose is to harass or cause a delay;
- ▶ requires a person who desires to protest a procurement to exhaust administrative remedies ~~{ before appealing to district court }~~;
- ▶ establishes procedures and requirements relating to protests and appeals of state procurements, contracts, debarments, and suspensions;
- ▶ dissolves the procurement appeals board;
- ▶ provides for appeals to be made to the Procurement Policy Board and provides for appointment of procurement appeals panels from among the membership of the Procurement Policy Board or approved designees;
- ▶ provides for dismissal of appeals that are not filed in accordance with the requirements of this bill;
- ▶ amends provisions relating to the statute of limitations and the jurisdiction of the district court in procurement matters;
- ▶ prohibits the award of consequential damages in relation to an action brought under this bill;
- ▶ provides an uncodified transitions clause; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

26-8a-405.3, as last amended by Laws of Utah 2011, Chapter 297

63A-5-208, as last amended by Laws of Utah 2008, Chapter 382

SB0114S01 compared with SB0114

63G-6-104, as renumbered and amended by Laws of Utah 2008, Chapter 382

63G-6-201, as last amended by Laws of Utah 2011, Chapter 376

63G-6-202, as last amended by Laws of Utah 2011, Chapter 376

63G-6-801, as last amended by Laws of Utah 2011, Chapter 361

63G-6-802, as renumbered and amended by Laws of Utah 2008, Chapter 382

63G-6-803, as renumbered and amended by Laws of Utah 2008, Chapter 382

63G-6-805, as renumbered and amended by Laws of Utah 2008, Chapter 382

63G-6-806, as renumbered and amended by Laws of Utah 2008, Chapter 382

63G-6-812, as renumbered and amended by Laws of Utah 2008, Chapter 382

63G-6-813, as renumbered and amended by Laws of Utah 2008, Chapter 382

63G-6-816, as renumbered and amended by Laws of Utah 2008, Chapter 382

63G-6-817, as renumbered and amended by Laws of Utah 2008, Chapter 382

63G-6-819, as renumbered and amended by Laws of Utah 2008, Chapter 382

63G-10-403, as enacted by Laws of Utah 2011, Chapter 361

ENACTS:

63G-6-801.5, Utah Code Annotated 1953

63G-6-807.5, Utah Code Annotated 1953

63G-6-814.5, Utah Code Annotated 1953

REPEALS AND REENACTS:

63G-6-807, as last amended by Laws of Utah 2010, Chapter 286

63G-6-815, as renumbered and amended by Laws of Utah 2008, Chapter 382

63G-6-907, as renumbered and amended by Laws of Utah 2008, Chapter 382

REPEALS:

63G-6-808, as renumbered and amended by Laws of Utah 2008, Chapter 382

63G-6-809, as renumbered and amended by Laws of Utah 2008, Chapter 382

63G-6-810, as renumbered and amended by Laws of Utah 2008, Chapter 382

63G-6-811, as renumbered and amended by Laws of Utah 2008, Chapter 382

63G-6-814, as renumbered and amended by Laws of Utah 2008, Chapter 382

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

SB0114S01 compared with SB0114

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

Section 1. Section **26-8a-405.3** is amended to read:

26-8a-405.3. Use of competitive sealed proposals -- Procedure -- Appeal rights.

(1) (a) Competitive sealed proposals for paramedic or 911 ambulance services under Section 26-8a-405.2, or for non-911 services under Section 26-8a-405.4, shall be solicited through a request for proposal and the provisions of this section.

(b) The governing body of the political subdivision shall approve the request for proposal prior to the notice of the request for proposals under Subsection (1)(c).

(c) (i) Notice of the request for proposals shall be published:

(A) at least once a week for three consecutive weeks in a newspaper of general circulation published in the county; or

(B) if there is no such newspaper, then notice shall be posted for at least 20 days in at least five public places in the county; and

(ii) in accordance with Section 45-1-101 for at least 20 days.

(2) (a) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiations.

(b) (i) Subsequent to the published notice, and prior to selecting an applicant, the political subdivision shall hold a presubmission conference with interested applicants for the purpose of assuring full understanding of, and responsiveness to, solicitation requirements.

(ii) A political subdivision shall allow at least 90 days from the presubmission conference for the proposers to submit proposals.

(c) Subsequent to the presubmission conference, the political subdivision may issue addenda to the request for proposals. An addenda to a request for proposal shall be finalized and posted by the political subdivision at least 45 days before the day on which the proposal must be submitted.

(d) Offerors to the request for proposals shall be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals, and revisions may be permitted after submission and before a contract is awarded for the purpose of obtaining best and final offers.

(e) In conducting discussions, there shall be no disclosures of any information derived from proposals submitted by competing offerors.

SB0114S01 compared with SB0114

(3) (a) (i) A political subdivision may select an applicant approved by the department under Section 26-8a-404 to provide 911 ambulance or paramedic services by contract to the most responsible offeror as defined in Subsection 63G-6-103(24).

(ii) An award under Subsection (3)(a)(i) shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the political subdivision, taking into consideration price and the evaluation factors set forth in the request for proposal.

(b) The applicants who are approved under Section 26-8a-405 and who are selected under this section may be the political subdivision issuing the request for competitive sealed proposals, or any other public entity or entities, any private person or entity, or any combination thereof.

(c) A political subdivision may reject all of the competitive proposals.

(4) In seeking competitive sealed proposals and awarding contracts under this section, a political subdivision:

(a) shall apply the public convenience and necessity factors listed in Subsections 26-8a-408(2) through (6);

(b) shall require the applicant responding to the proposal to disclose how the applicant will meet performance standards in the request for proposal;

(c) may not require or restrict an applicant to a certain method of meeting the performance standards, including:

(i) requiring ambulance medical personnel to also be a firefighter; or

(ii) mandating that offerors use fire stations or dispatch services of the political subdivision;

(d) shall require an applicant to submit the proposal:

(i) based on full cost accounting in accordance with generally accepted accounting principals; and

(ii) if the applicant is a governmental entity, in addition to the requirements of Subsection (4)(e)(i), in accordance with generally accepted government auditing standards and in compliance with the State of Utah Legal Compliance Audit Guide; and

(e) shall set forth in the request for proposal:

(i) the method for determining full cost accounting in accordance with generally accepted accounting principles, and require an applicant to submit the proposal based on such

SB0114S01 compared with SB0114

full cost accounting principles;

(ii) guidelines established to further competition and provider accountability; and

(iii) a list of the factors that will be considered by the political subdivision in the award of the contract, including by percentage, the relative weight of the factors established under this Subsection (4)(e), which may include such things as:

(A) response times;

(B) staging locations;

(C) experience;

(D) quality of care; and

(E) cost, consistent with the cost accounting method in Subsection (4)(e)(i).

(5) (a) Notwithstanding the provisions of Subsection 63G-6-104(3), the provisions of Title 63G, Chapter 6, Part 8, Legal and Contractual Remedies, apply to the procurement process required by this section, except as provided in Subsection (5)(c).

(b) [~~The Procurement Appeals Board created~~] A procurement appeals panel described in Section 63G-6-807 shall have jurisdiction to review and determine an appeal of an offeror under this section [in the same manner as provided in Section 63G-6-810].

(c) (i) An offeror may appeal the solicitation or award as provided by the political subdivision's procedures. After all political subdivision appeal rights are exhausted, the offeror may appeal under the provisions of Subsections (5)(a) and (b).

(ii) [~~The factual determination required by Subsection 63G-6-813(1) shall be based on~~] A procurement appeals panel described in Section 63G-6-807 shall determine whether the solicitation or award was made in accordance with the procedures set forth in this section and Section 26-8a-405.2.

(d) The determination of an issue of fact by the appeals board shall be final and conclusive unless arbitrary and capricious or clearly erroneous as provided in Section 63G-6-813.

Section 2. Section **63A-5-208** is amended to read:

63A-5-208. Definitions -- Certain public construction bids to list subcontractors -- Changing subcontractors -- Bidders as subcontractors -- Dispute resolution process -- Penalties.

(1) As used in this section:

SB0114S01 compared with SB0114

(a) "First-tier subcontractor" means a subcontractor who contracts directly with the prime contractor.

(b) "Subcontractor" means any person or entity under contract with a contractor or another subcontractor to provide services or labor for the construction, installation, or repair of an improvement to real property.

(c) "Subcontractor" includes a trade contractor or specialty contractor.

(d) "Subcontractor" does not include suppliers who provide only materials, equipment, or supplies to a contractor or subcontractor.

(2) The director shall apply the provisions of this section to achieve fair and competitive bidding and to discourage bid-shopping by contractors.

(3) (a) (i) (A) On each public construction project, the director shall require the apparent lowest three bidders to submit a list of their first-tier subcontractors indicating each subcontractor's name, bid amount, and other information required by rule.

(B) Other bidders who are not one of the apparent lowest three bidders may also submit a list of their first-tier subcontractors containing the information required by this Subsection (3).

(C) The director may not consider any bid submitted by a bidder if the bidder fails to submit a subcontractor list meeting the requirements of this section.

(ii) On projects where the contractor's total bid is less than \$500,000, subcontractors whose bid is less than \$20,000 need not be listed.

(iii) On projects where the contractor's total bid is \$500,000 or more, subcontractors whose bid is less than \$35,000 need not be listed.

(b) (i) The bidders shall submit this list within 24 hours after the bid opening time, not including Saturdays, Sundays, and state holidays.

(ii) This list does not limit the director's right to authorize a change in the listing of any subcontractor.

(c) The bidders shall verify that all subcontractors listed as part of their bids are licensed as required by state law.

(d) Twenty-four hours after the bid opening, the contractor may change the contractor's subcontractors only after:

(i) receiving permission from the director; and

SB0114S01 compared with SB0114

(ii) establishing that:

(A) the change is in the best interest of the state; and

(B) the contractor establishes reasons for the change that meet the standards established by the State Building Board.

(e) If the director approves any changes in subcontractors that result in a net lower contract price for subcontracted work, the total of the prime contract may be reduced to reflect the changes.

(4) (a) A bidder may list himself as a subcontractor when the bidder is currently licensed to perform the portion of the work for which the bidder lists himself as a subcontractor and:

(i) the bidder intends to perform the work of a subcontractor himself; or

(ii) the bidder intends to obtain a subcontractor to perform the work at a later date

because the bidder was unable to:

(A) obtain a bid from a qualified subcontractor; or

(B) obtain a bid from a qualified subcontractor at a cost that the bidder considers to be reasonable.

(b) (i) When the bidder intends to perform the work of a subcontractor himself, the director may, by written request, require that the bidder provide the director with information indicating the bidder's:

(A) previous experience in the type of work to be performed; and

(B) qualifications for performing the work.

(ii) The bidder must respond in writing within five business days of receiving the director's written request.

(iii) If the bidder's submitted information causes the director to reasonably believe that self-performance of the portion of the work by the bidder is likely to yield a substandard finished product, the director shall:

(A) require the bidder to use a subcontractor for the portion of the work in question and obtain the subcontractor bid under the supervision of the director; or

(B) reject the bidder's bid.

(c) (i) When the bidder intends to obtain a subcontractor to perform the work at a later date, the bidder shall provide documentation with the subcontractor list describing:

SB0114S01 compared with SB0114

(A) the bidder's efforts to obtain a bid of a qualified subcontractor at a reasonable cost;
and

(B) why the bidder was unable to obtain a qualified subcontractor bid.

(ii) If the bidder who intends to obtain a subcontractor to perform the work at a later date is awarded a contract, the director shall supervise the bidder's efforts to obtain a qualified subcontractor bid.

(iii) The director may not adjust the amount of the contract awarded in order to reflect the actual amount of the subcontractor's bid.

(5) The division may not disclose any subcontractor bid amounts obtained under this section until the division has awarded the project to a contractor.

(6) (a) The director shall, in consultation with the State Building Board, prepare draft rules establishing a process for resolving disputes involved with contracts under the division's procurement authority.

(b) The draft rules shall be presented to the Government Operations Interim Committee for review, comment, and recommendations before August 31, 2004.

(c) The director shall consider, and the rules may include:

(i) requirements regarding preliminary resolution efforts between the parties directly involved with the dispute;

(ii) requirements for the filing of claims, including notification, timeframes, and documentation;

(iii) identification of the types of costs eligible for allocation and a method for allocating costs among the parties to the dispute;

(iv) required time periods, not to exceed 60 days, for the resolution of the claim;

(v) provision for an independent hearing officer, panel, or arbitrator to extend the time period for resolution of the claim by not to exceed 60 additional days for good cause;

(vi) provision for the extension of required time periods if the claimant agrees;

(vii) requirements that decisions be issued in writing;

(viii) provisions for administrative appeals of the decision;

(ix) provisions for the timely payment of claims after resolution of the dispute, including any appeals;

(x) a requirement that the final determination resulting from the dispute resolution

SB0114S01 compared with SB0114

process provided for in the rules is a final agency action subject to judicial review as provided in Sections 63G-4-401 and 63G-4-402;

(xi) a requirement that a claim or dispute that does not include a monetary claim against the division or its agents is not limited to the dispute resolution process provided for in this Subsection (6);

(xii) requirements for claims and disputes to be eligible for this dispute resolution process;

(xiii) the use of an independent hearing officer, panel, arbitration, or mediation; and

(xiv) the circumstances under which a subcontractor may file a claim directly with the division.

(d) Persons pursuing claims under the process required by this Subsection (6):

(i) are bound by the decision reached under this process unless the decision is properly appealed; and

(ii) may not pursue claims or disputes under the dispute resolution process established in [~~Sections 63G-6-805 through 63G-6-814~~] Title 63G, Chapter 6, Part 8, Legal and Contractual Remedies.

(7) In addition to all other reasons allowed by law or rule, the director may reject all bids if none of the bidders whose bid is within the budget of the project submit a subcontractor list that meets the requirements of this section.

(8) Any violation of this section, or any fraudulent misrepresentation by a contractor, subcontractor, or supplier, may be grounds for:

(a) the contractor, subcontractor, or supplier to be suspended or debarred by the director; or

(b) the contractor or subcontractor to be disciplined by the Division of Professional and Occupational Licensing.

Section 3. Section **63G-6-104** is amended to read:

63G-6-104. Application of chapter.

(1) This chapter applies only to contracts solicited or entered into after the effective date of this chapter unless the parties agree to its application to a contract solicited or entered into prior to the effective date. This chapter does not apply to a city or a town.

(2) Except as provided in Section 63G-6-105, this chapter shall apply to every

SB0114S01 compared with SB0114

expenditure of public funds irrespective of their source, including federal assistance, by any state agency under any contract.

(3) (a) (i) ~~[Only the following sections shall]~~ Except as provided in Subsection (3)(a)(ii), the only sections of this chapter that apply to local public procurement units ~~[.]~~ are Sections 63G-6-103, 63G-6-105, 63G-6-301, 63G-6-303 through 63G-6-420, 63G-6-422, 63G-6-501 through 63G-6-602, 63G-6-801 through ~~[63G-6-806, and 63G-6-815 through 63G-6-819; provided, however, that, except as provided in Sections 63G-6-906 and 63G-6-907, the jurisdiction of the procurement appeals board is limited to matters involving state agencies]~~ 63G-6-820.

(ii) (A) Except as provided in Subsection (3)(a)(ii)(B), the only sections of this chapter that apply to the Utah Transit Authority are Sections 63G-6-103, 63G-6-105, 63G-6-301, 63G-6-303 through 63G-6-420, 63G-6-422, 63G-6-501 through 63G-6-602, 63G-6-801 through 63G-6-806, and 63G-6-815 through 63G-6-819.

(B) Except as provided in Section 63G-6-906, the jurisdiction of a procurement appeals panel is limited to matters involving state agencies.

(b) Subsections 63G-6-208(1)(b), 63G-6-504(4), and 63G-6-505(2) also apply to local public procurement units.

(c) For the purpose of application of those sections and subsections to a local public procurement unit, "state" shall mean "local public procurement unit," "chief procurement officer" or "head of a purchasing agency" shall mean any person conducting procurement for a local public procurement unit, and "rules and regulations" shall mean ordinances and rules and regulations promulgated by a local public procurement unit to implement or supplement those sections.

(d) In addition to the sections and subsections listed above and except as provided in Subsection 17B-1-108(3) relating to local districts, each local public procurement unit shall adopt ordinances relating to the procurement of architect-engineer services not inconsistent with the provisions of Part 7, Architect-Engineer Services.

(e) Any other section of this chapter, or its implementing regulations, may be adopted by any local public procurement unit.

(f) Any other implementing regulations adopted by local public procurement units may not be inconsistent with the provisions of this chapter.

SB0114S01 compared with SB0114

(4) Unless otherwise provided by statute, this chapter does not apply to procurement of real property.

Section 4. Section **63G-6-201** is amended to read:

63G-6-201. Creation of Procurement Policy Board.

(1) (a) There is created a state procurement policy board.

(b) The policy board shall consist of ~~[+0]~~ 15 members as follows:

(i) ~~[an employee of a state institution]~~ two {employees} representatives of state institutions of higher education, appointed by the board of regents;

(ii) ~~[an employee]~~ a representative of the Department of Human Services, appointed by the executive director of that department;

(iii) ~~[an employee]~~ a representative of the Department of Transportation, appointed by the executive director of that department;

(iv) ~~[an employee of a school district]~~ two {employees} representatives of school districts, appointed by ~~[a cooperative purchasing entity for school districts]~~ the State Office of Education;

(v) ~~[an employee]~~ a representative of the Division of Facilities Construction and Management appointed by the director of that division;

(vi) ~~[an employee of a county]~~ {two employees} one representative of ~~{counties}~~ a county, appointed by the Utah Association of Counties;

(vii) ~~[an employee of a city]~~ {two employees} one representative of ~~{cities}~~ a city or ~~{towns}~~ town, appointed by the Utah League of Cities and Towns;

(viii) ~~[an employee of a local district]~~ two representative of local districts or special service ~~[district]~~ districts, appointed by the Utah Association of Special Districts;

(ix) the executive director of the Department of Technology Services or the executive director's designee; ~~[and]~~

(x) the chief procurement officer or the chief procurement officer's designee~~[-];~~ and

(xi) ~~{an employee}~~ two representatives of ~~{a}~~ state ~~{agency}~~ agencies, other than a state agency already represented on the board, appointed by the executive director of the Department of Administrative Services, with the approval of the executive director of the state agency that employs the employee.

(c) Members of the policy board shall be knowledgeable and experienced in, and have

SB0114S01 compared with SB0114

supervisory responsibility for, procurement in their official positions.

(2) A board member shall serve as long as the member meets the description in Subsection (1)(b) unless removed by the person or entity who appointed the board member.

(3) (a) The policy board shall:

(i) adopt rules of procedure for conducting its business; and

(ii) elect a chair to serve for one year.

(b) The chair may be elected to succeeding terms.

(c) The chief procurement officer shall designate an employee of the Division of Purchasing and General Services to serve as the nonvoting secretary to the policy board.

(4) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section 5. Section **63G-6-202** is amended to read:

63G-6-202. Powers and duties of board.

(1) Except as otherwise provided in Section 63G-6-104 and Subsection 63G-6-208(1)(b), the policy board shall:

(a) make rules, consistent with this chapter, governing the procurement, management, and control of any and all supplies, services, technology, and construction to be procured by the state; and

(b) consider and decide matters of policy within the provisions of this chapter, including those referred to it by the chief procurement officer.

(2) (a) The policy board may:

(i) audit and monitor the implementation of its rules and the requirements of this chapter;

(ii) upon the request of a local public procurement unit, review that procurement unit's proposed rules to ensure that they are not inconsistent with the provisions of this chapter; and

(iii) approve the use of innovative procurement methods proposed by local public procurement units.

SB0114S01 compared with SB0114

(b) ~~[The]~~ Except as provided in Section 63G-6-807, the policy board may not exercise authority over the award or administration of:

- (i) any particular contract; or
- (ii) over any dispute, claim, or litigation pertaining to any particular contract.

Section 6. Section **63G-6-801** is amended to read:

63G-6-801. Definitions -- Protest to chief procurement officer or head of a purchasing agency -- Time -- Authority to resolve protest.

(1) As used in this part, "protest officer" means:

(a) as it relates to a purchasing agency, the head of the purchasing agency or a designee of the head of the purchasing agency;

(b) as it relates to a local public procurement unit, the purchasing officer or the governing body of the local public procurement, or a designee of either;

(c) as it relates to a public procurement unit other than a public procurement unit described in Subsection (1) (a) or (b), the chief procurement officer or the chief procurement officer's designee.

~~[(1) ~~{}~~Any] ~~{A}~~(2) Except as provided in Subsection (3), a person who is an actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the chief procurement officer or, if the solicitation or award of the contract is the responsibility of a purchasing agency, the head of [a] the purchasing agency[~~:- A protest~~], by filing the protest in writing, with the chief procurement officer or the head of the purchasing agency as follows:~~

~~(a) with respect to an invitation for bids or a request for proposals [~~shall be submitted in writing prior to~~]:~~

~~(i) before the opening of bids or the closing date for proposals[~~, unless~~]; or~~

~~(ii) if the [~~aggrieved~~] person did not know and should not have known of the facts giving rise to the protest [~~prior to~~] before the bid opening or the closing date for proposals[~~:- The protest shall be submitted in writing within five working days after the aggrieved person knows or should have known of the facts giving rise thereto~~], within seven days after the day on which the person knows or should have known of the facts giving rise to the protest; or~~

~~[(2) Subject to the applicable requirements in Section 63G-10-403, the chief procurement officer, the head of a purchasing agency, or a designee of either officer shall have~~

SB0114S01 compared with SB0114

the authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve the protest.]

(b) if Subsection (112)(a) does not apply, within seven days after the day on which the person knows or should have known of the facts giving rise to the protest.

(3) As it relates to a solicitation or award by a local public procurement unit, the aggrieved actual or prospective bidder, offeror, or contractor shall:

(a) file the protest, in writing, with the procurement officer or governing body of the public procurement unit; and

(b) comply with the requirements described in Subsections (2)(a) and (b).

(124) A person who is debarred or suspended under this chapter may protest the debarment or suspension to the chief procurement officer or the head of the purchasing agency that ordered the debarment, as applicable, within seven days after the day on which the debarment or suspension is ordered.

(135) A person who files a protest under this section shall include in the filing document:

(a) the person's address of record and email address of record; and

(b) a concise statement of the grounds upon which the protest is made.

(146) A person described in Subsection (112), (3), or (124) who fails to timely file a protest under this section may not bring a protest, action, or appeal challenging a solicitation or award of a contract, or a debarment or suspension, before the chief procurement officer, the head of a purchasing agency, an appeals panel, a court, or any other forum.

(157) Subject to the applicable requirements of Section 63G-10-403, the chief procurement officer, the head of a purchasing agency, or a designee of either, may enter into a settlement agreement to resolve a protest.

Section 7. Section **63G-6-801.5** is enacted to read:

63G-6-801.5. Requirement to exhaust administrative remedies --

{Appeals}Protests and appeals.

(1) A person may not challenge a procurement, a procurement process, the award of a contract relating to a procurement, a debarment, or a suspension, in a court, before an administrative officer or body, or in any other forum other than the forum permitted in this chapter.

SB0114S01 compared with SB0114

(2) A person who desires to challenge a procurement, a procurement process, the award of a contract relating to a procurement, a debarment, or a suspension, shall bring the challenge, in accordance with the requirements of this chapter, by timely filing:

(a) a protest in accordance with Section 63G-6-801;

(b) any appeal of the protest decision in accordance with Section 63G-6-807; and

(c) any appeal from a procurement appeals panel in accordance with Section 63G-6-815.

(3) A person who files a protest or appeal under this chapter is limited to protesting or appealing on the grounds specified in the filing document described in Subsection 63G-6-801(3)(b).

(4) In hearing a protest or an appeal under this chapter relating to an expenditure of federal assistance, federal contract funds, or a federal grant, the person who hears the appeal shall ensure compliance with federal law and regulations relating to the expenditure.

Section 8. Section **63G-6-802** is amended to read:

63G-6-802. Effect of timely protest or appeal.

In the event of a timely protest under [~~Subsection 63G-6-801(1), 63G-6-810(1), or 63G-6-815(1), the state shall~~] Subsection 63G-6-801(1), or a timely appeal of the protest under Section 63G-6-807 or 63G-6-815, a state executive branch agency or a local public procurement unit may not proceed further with the solicitation or with the award of the contract until:

(1) all administrative and judicial remedies [~~have been~~] are exhausted [~~or until~~];

(2) for a protest under Section 63G-6-801 or an appeal under Section 63G-6-807:

(a) the chief procurement officer, after consultation with the Attorney General's Office and the head of the using agency [~~or the head of a purchasing agency~~], makes a written determination that [~~the~~] award of the contract without delay is necessary to protect substantial interests of the state[~~;~~]; ~~for~~

(b) the head of the purchasing agency, after consultation with the Attorney General's Office, makes a written determination that award of the contract without delay is necessary to protect substantial interests of the state; or

(c) for a local public procurement unit that is not represented by the attorney general's office, the local public procurement unit, after consulting with the attorney for the local public

SB0114S01 compared with SB0114

procurement unit, makes a written determination that award of the contract without delay is necessary to protect substantial interests of the local public procurement unit; or

(3) for an appeal under Section 63G-6-815, or an appeal to a higher court than district court:

(a) the chief procurement officer, after consultation with the Attorney General's Office and the head of the using agency, makes a written determination that award of the contract without delay is in the best interest of the state; ~~for~~

(b) the head of the purchasing agency, after consultation with the Attorney General's Office, makes a written determination that award of the contract without delay is in the best interest of the state; ~~for~~; or

(c) for a local public procurement unit that is not represented by the attorney general's office, the local public procurement unit, after consulting with the attorney for the local public procurement unit, makes a written determination that award of the contract without delay is necessary to protect the best interest of the local public procurement unit.

Section 9. Section **63G-6-803** is amended to read:

63G-6-803. Costs to or against protestor.

(1) When a protest is sustained administratively or upon administrative or judicial review and the protesting bidder or offeror should have been awarded the contract under the solicitation but is not, the protestor shall be entitled to the following relief as a claim against the state:

(a) the reasonable costs incurred in connection with the solicitation, including bid preparation and appeal costs; and

(b) any equitable relief determined to be appropriate by the reviewing administrative or judicial body.

(2) When a protest is not sustained by [~~the Procurement Appeals Board~~] a procurement appeals panel, the protestor shall reimburse the Division of Purchasing and General Services for the per diem and expenses paid by the division to witnesses or appeals [~~board~~] panel members and any additional expenses incurred by the state agency staff who have provided materials and administrative services to the [~~board~~] procurement appeals panel for that case.

(3) The provisions of Title 63G, Chapter 7, Part 4, Notice of Claim Against a Governmental Entity or a Government Employee, and Section 63G-7-601 do not apply to

SB0114S01 compared with SB0114

actions brought under this chapter by an aggrieved party for equitable relief or reasonable costs incurred in preparing or appealing an unsuccessful bid or offer.

Section 10. Section **63G-6-805** is amended to read:

63G-6-805. Authority to resolve controversy between state and contractor.

The chief procurement officer, the head of a purchasing agency, or a designee of either [officer] is authorized, [~~prior to~~] before commencement of an action in court concerning [~~the controversy, to settle and resolve~~] a controversy [~~which~~] that arises between the state and a contractor [~~under or by virtue of a contract between them. This includes, without limitation,~~] in relation to an existing contract between the state and the contractor, including controversies based upon breach of contract, [~~mistakes~~] mistake, misrepresentation, or other cause for contract modification or rescission, to settle and resolve the controversy.

Section 11. Section **63G-6-806** is amended to read:

63G-6-806. Decisions of {~~chief procurement officer~~}protest officer{~~or head of a purchasing agency~~} to be in writing -- Effect of no writing.

(1) After a timely protest is filed in accordance with Section 63G-6-801, the {~~chief procurement officer, the head of the purchasing agency, or a designee of either~~}protest officer:

- (a) shall consider the protest; and
- (b) may hold a hearing on the protest.

(2) (a) The {~~chief procurement officer, the head of the purchasing agency, or a designee of either~~}protest officer may:

- (i) subpoena witnesses and compel their attendance at a protest hearing; or
- (ii) subpoena documents for production at a protest hearing.
- (b) The Rules of Evidence do not apply to a protest hearing.
- (c) The Procurement Policy Board shall make rules relating to intervention in a protest, including designating:

- (i) who may intervene; and
- (ii) the time and manner of intervention.

(d) If a hearing on a protest is held under this section, the protest officer shall:

- (i) record the hearing;
- (ii) preserve all evidence presented at the hearing; and
- (iii) preserve all records and other evidence relied upon in reaching the written decision

SB0114S01 compared with SB0114

described in this section.

(e) Regardless of whether a hearing on a protest is held under this section, the protest officer shall preserve all records and other evidence relied upon in reaching the written decision.

(f) The records described in Subsections (2)(e) and (f) may not be destroyed until the decision, and any appeal of the decision, becomes final.

(g) A protest officer who holds a hearing, considers a protest, or issues a written decision under this section does not waive the right to, at a later date, question or challenge the protest officer's jurisdiction to hold the hearing, consider the protest, or render the decision.

~~[(1)]~~ (3) The chief procurement officer, the head of a purchasing agency, or the designee of either ~~[officer]~~, shall promptly issue a written decision regarding any protest, debarment ~~[or]~~, suspension, or contract controversy if it is not settled by ~~[a]~~ mutual agreement. The decision shall state the reasons for the action taken and inform the protestor, contractor, or prospective contractor of the right to judicial or administrative review as provided in this chapter.

~~[(2)]~~ (4) A decision shall be effective until stayed or reversed on appeal, except to the extent provided in Section 63G-6-802. A copy of the decision ~~[under]~~ described in Subsection (1) shall be mailed, emailed, or otherwise furnished immediately to the protestor, prospective contractor, or contractor. The decision shall be final and conclusive unless the protestor, prospective contractor, or contractor ~~[appeals administratively to the procurement appeals board in accordance with Subsection 63G-6-810(2) or the protestor, prospective contractor, or contractor]~~:

(a) for a controversy described in Section 63G-6-805, commences an action in district court in accordance with ~~[Section 63G-6-815:]~~ Subsection 63G-6-815(5);

(b) for a controversy related to a solicitation or the award of a contract, files an appeal under Section 63G-6-807; or

(c) for a debarment or suspension, files an appeal under Section 63G-6-807.

~~[(3)]~~ (5) If the ~~[chief procurement officer, the head of a purchasing agency, or the designee of either { }]~~ protest officer ~~{ }~~ does not issue the written decision regarding a protest or a contract controversy within ~~[60]~~ 30 calendar days after the day on which a written request for a final decision is filed with the ~~{ chief procurement officer, the head of the purchasing~~

SB0114S01 compared with SB0114

~~agency, or the designee of either;~~ protest officer, or within [such] a longer period as may be agreed upon by the parties, [then] the protester, prospective contractor, or contractor may proceed as if an adverse decision had been received.

(6) Except for a controversy described in Section 63G-6-805, a determination under this section by the ~~chief procurement officer, the head of a purchasing agency, or the designee of either;~~ protest officer regarding an issue of fact may not be overturned on appeal unless the decision is arbitrary and capricious or clearly erroneous.

Section 12. Section **63G-6-807** is repealed and reenacted to read:

63G-6-807. Appeal to procurement policy board -- Appointment of procurement appeals panel -- Proceedings.

(1) A party to a protest may appeal the protest decision to the procurement policy board by:

(a) filing a written notice of appeal with the chair of the procurement policy board within seven days after:

(i) the day on which the written decision described in Section 63G-6-806 is:

(A) personally served on the party or the party's representative; or

(B) emailed or mailed to the address or email address of record provided by the party under Subsection 63G-6-801(2); or

(ii) the day on which the 30-day period described in Subsection 63G-6-806(5) ends, if a written decision is not issued before the end of the 30-day period;

(b) including in the filing document the person's address of record and email address of record; and

(c) at the time that the notice of appeal described in Subsection (1)(a) is filed, complying with the requirements of Section 63G-6-807.5 regarding the posting of a security deposit or a bond.

(2) A person may not appeal from a protest described in Section 63G-6-801, unless:

(a) a decision on the protest has been issued; or

(b) a decision is not issued and the 30-day period described in Subsection 63G-6-806(5) has passed.

(3) The chair of the procurement policy board or a designee of the chair who is not employed by the public entity responsible for the solicitation, contract award, or other action

SB0114S01 compared with SB0114

complained of:

(a) shall, within seven days after the day on which the chair receives a timely written notice of appeal under Subsection (1), appoint:

(i) a procurement appeals panel ~~{, made up}~~ ~~to hear and decide the appeal, consisting~~ of at least three ~~{members}~~ ~~individuals, each of whom shall be:~~

~~(A) a member~~ of the Procurement Policy Board ~~{, to hear and decide the appeal}; or~~

~~(B) a designee of a member appointed under Subsection (3)(a)(i)(A), if the designee is approved by the chair; and~~

(ii) one of the members of the procurement appeals panel to be the chair of the panel;

(b) may:

(i) appoint the same procurement appeals panel to hear more than one appeal; or

(ii) appoint a separate procurement appeals panel for each appeal; and

(c) may not appoint a person to a procurement appeals panel if the person is employed by the public entity responsible for the solicitation, contract award, or other action complained of.

(4) A procurement appeals panel described in Subsection (3) shall:

(a) consist of an odd number of members;

(b) except as provided in Subsection (5), conduct an informal proceeding on the appeal within ~~{30}~~60 days after the day on which the procurement appeals panel is appointed, unless all parties stipulate to a later date;

(c) at least seven days before the proceeding, mail, email, or hand-deliver a written notice of the proceeding to the parties to the appeal; and

(d) within seven days after the day on which the proceeding ends:

(i) issue a written decision on the appeal; and

(ii) mail, email, or hand-deliver the written decision on the appeal to the parties to the appeal, the chief procurement officer, and the head of the applicable purchasing agency.

(5) A procurement appeals panel may continue a procurement appeals proceeding beyond the ~~{30-day}~~60-day period described in Subsection (4)(b) if the procurement appeals panel ~~{receives permission from:~~

~~— (a) the chief procurement officer; or~~

~~— (b) if the proceeding relates to a purchasing agency, the head of the purchasing agency.~~

SB0114S01 compared with SB0114

}{determines that the continuance is in the interests of justice.

(6) A procurement appeals panel:

(a) shall consider the appeal based solely on:

(i) the protest decision;

(ii) the record considered by the person who issued the protest decision; and

(iii) if a protest hearing was held, the record of the protest hearing;

(b) may not take additional evidence; and

(c) shall uphold the decision of the chief procurement officer or the head of the purchasing agency, unless the decision is arbitrary and capricious or clearly erroneous.

(7) If a procurement appeals panel determines that the decision of the chief procurement officer or the head of the purchasing agency is arbitrary and capricious or clearly erroneous, the procurement appeals panel:

(a) shall remand the matter to the chief procurement officer or the head of the purchasing agency, as applicable, to cure the problem or render a new decision;

(b) may recommend action that the chief procurement officer or the head of the purchasing agency should take; and

(c) may not order that:

(i) a contract be awarded to a certain person;

(ii) a contract or solicitation be cancelled; or

(iii) any other action be taken other than the action described in Subsection (7)(a).

(8) The Procurement Policy Board shall make rules relating to the conduct of an appeals proceeding, including rules that provide for:

(a) expedited proceedings; and

(b) electronic participation in the proceedings by panel members and participants.

(9) The Rules of Evidence do not apply to an appeals proceeding.

Section 13. Section **63G-6-807.5** is enacted to read:

63G-6-807.5. Requirement to post a security deposit or bond -- Exceptions -- Forfeiture of security deposit or bond.

(1) Except as provided by rule made under Subsection (2)(a), a person who files an appeal under Section 63G-6-807 shall, at the time that the appeal is filed, pay a security deposit or post a bond with the ~~{chief procurement}~~ protest officer ~~{or the head of the purchasing~~

SB0114S01 compared with SB0114

agency in an amount that is the greater of:

(a) for the appeal of a debarment or suspension, \$1,000;

(b) for any type of procurement, \$1,000;

(c) for an invitation for bids, 5% of:

(i) the lowest bid amount, if the bid opening has occurred; or

(ii) the estimated contract cost, established in accordance with Subsection (2)(b), if the

bid opening has not yet occurred;

(d) for a request for proposals, 5% of:

(i) the lowest cost proposed in a response to a request for proposals, if the opening of proposals has occurred; or

(ii) the estimated contract cost, established in accordance with Subsection (2)(b), if the opening of proposals has not occurred; or

(e) for a type of procurement other than an invitation for bids or a request for proposals, the amount established in accordance with Subsection (2).

(2) The Procurement Policy Board shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that establish:

(a) circumstances and procedures under which the requirement for paying a security deposit or posting a bond may be waived or reduced on grounds, including:

(i) that the person filing the appeal is impecunious;

(ii) circumstances where certain small purchases are involved; or

(iii) other grounds determined by the Division of Purchasing and General Services to be appropriate; and

(b) the method used to determine:

(i) the estimated contract cost described in Subsections (1)(c)(ii) and (1)(d)(ii); and

(ii) the amount described in Subsection (1)(e).

(3) The chair of the procurement policy board shall dismiss a protest filed under Section 63G-6-807 if the actual or prospective bidder, offeror, or contractor fails to timely pay the security deposit or post the bond required under Subsection (1).

(4) The chair of the procurement policy board shall:

(a) retain the security deposit or bond until the protest and any appeal of the protest decision is final;

SB0114S01 compared with SB0114

(b) as it relates to a security deposit:

(i) deposit the security deposit into an interest-bearing account; and

(ii) after any appeal of the protest decision becomes final, return the security deposit and the interest it accrues to the person who paid the security deposit, unless the security deposit is forfeited to the general fund under Subsection (5); and

(c) as it relates to a bond:

(i) retain the bond until the protest and any appeal of the protest decision becomes final; and

(ii) after the protest and any appeal of the protest decision becomes final, return the bond to the person who posted the bond, unless the bond is forfeited to the general fund under Subsection (5).

(5) A security deposit that is paid, or a bond that is posted, under this section shall forfeit to the general fund if:

(a) the person who paid the security deposit or posted the bond fails to ultimately prevail on appeal; and

(b) the procurement appeals panel finds that the protest or appeal is frivolous or that its primary purpose is to harass or cause a delay.

Section 14. Section **63G-6-812** is amended to read:

63G-6-812. Discontinued appeal with prejudice, except as authorized.

After notice of an appeal [~~has been filed with the Procurement Appeals Board~~] to the procurement policy board is filed under Section 63G-6-807, no party may discontinue the appeal without prejudice, except as authorized by the [~~Procurement Appeals Board~~] procurement appeals panel appointed for the appeal.

Section 15. Section **63G-6-813** is amended to read:

63G-6-813. Factual determination of procurement appeals panel final and conclusive.

~~[(1) On any protest or appeal under Section 63G-6-810, the Procurement Appeals Board shall promptly decide the contract controversy or whether the solicitation or award was in accordance with this chapter. Any prior determinations by administrative officials regarding protests of solicitations or awards, suspension or debarments, contract controversies, or breach of contract controversies shall not be final or conclusive.]~~

SB0114S01 compared with SB0114

~~[(2)] A determination of an issue of fact by [the Procurement Appeals Board under Subsection (1) shall be final and conclusive unless]~~ a procurement appeals panel may not be overturned on appeal, unless the determination is arbitrary and capricious or clearly erroneous.
~~[No determination on an issue of law shall be final or conclusive.]~~

Section 16. Section **63G-6-814.5** is enacted to read:

63G-6-814.5. Dismissal of an appeal not filed in compliance with requirements.

(1) The ~~{chief procurement officer, the head of a purchasing agency, or the designee of either,}~~ **protest officer** may dismiss a protest described in Section 63G-6-801 that is not filed in accordance with the requirements of this chapter.

(2) A procurement appeals panel may dismiss an appeal that is assigned to the procurement appeals panel if the appeal is not filed in accordance with the requirements of this chapter.

Section 17. Section **63G-6-815** is repealed and reenacted to read:

63G-6-815. Appeal to ~~{district court}~~ **Utah Court of Appeals -- Jurisdiction of ~~{district court -- Appeal from}~~ district court.**

(1) Subject to Subsection (2), a person who receives an adverse decision, or the state, may appeal a decision of a procurement appeals panel to the ~~{district court}~~ **Utah Court of Appeals** within seven days after the day on which the decision is issued.

(2) An agency in the state executive branch or a local public procurement unit may not appeal the decision of a procurement appeals panel, unless the appeal is:

(a) recommended by the chief procurement officer or the head of the purchasing agency involved; and

(b) except for a local public procurement unit that is not represented by the attorney general's office, approved by the attorney general.

(3) ~~{A district court to which an appeal is made under Subsection (1)}~~ **The Utah Court of Appeals:**

(a) shall consider the appeal as an appellate court;

(b) may not hear the matter as a trial de novo; and

(c) may not overturn a finding or decision of the ~~{chief procurement}~~ **protest officer** ~~{the head of a purchasing agency,}~~ or a procurement appeals panel, unless the finding or decision is arbitrary and capricious or clearly erroneous.

SB0114S01 compared with SB0114

(4) ~~{A district court}~~ The Utah Court of Appeals is encouraged to:

(a) give an appeal made under Subsection (1) priority; and

(b) consider the appeal and render a decision in an expeditious manner.

(5) The district court shall also have original jurisdiction in a cause of action between a contractor and the state for any cause of action that arises under, or in relation to, an existing contract between the contractor and the state.

~~{~~ (6) Subject to Subsection (7), a person who receives an adverse decision from a district court after an appeal described in Subsection (1), or the state, may appeal the decision of the district court to the Utah Court of Appeals within seven days after the day on which the decision of the district court is issued.

~~——~~ (7) An agency in the state executive branch or a local public procurement unit may not appeal the decision of a district court after an appeal described in Subsection (1), unless the appeal is:

~~——~~ (a) recommended by the chief procurement officer or the head of the purchasing agency involved; and

~~——~~ (b) approved by the attorney general.

‡ Section 18. Section **63G-6-816** is amended to read:

63G-6-816. Effect of prior determination by agents of state.

In any judicial action under Section 63G-6-815, determinations by employees, agents, or other persons appointed by the state shall be final and conclusive only as provided in Sections 63G-6-419 [and], 63G-6-806, and [Subsection] 63G-6-813[~~(2)~~].

Section 19. Section **63G-6-817** is amended to read:

63G-6-817. Statutes of limitations.

~~[(1) Any action under Subsection 63G-6-815(1)(a) shall be initiated as follows:]~~

~~[(a) within 20 calendar days after the aggrieved person knows or should have known of the facts giving rise to the action; provided, however, that an action with respect to an invitation for bids or request for proposals shall be initiated prior to the opening of bids or the closing date for proposals unless the aggrieved person did not know and should not have known of the facts giving rise to the action prior to bid opening or the closing date for proposals; or]~~

~~[(b) within 14 calendar days after receipt of a final administrative decision pursuant to~~

SB0114S01 compared with SB0114

~~either Section 63G-6-806 or Section 63G-6-813, whichever is applicable.]~~

~~[(2) Any] (1) An action [under] described in Subsection 63G-6-815[(1)(b)](5) shall be commenced within six months after [receipt of a final administrative decision pursuant to Section 63G-6-806 or Section 63G-6-813, whichever is applicable] the person bringing the action knew or should have known of the circumstances upon which the action is based.~~

~~[(3)] (2) The statutory limitations on an action between private persons on a contract or for breach of contract shall apply to any action commenced pursuant to Subsection 63G-6-815[(1)(c)](2)[, except notice of appeals from the Procurement Appeals Board pursuant to Section 63G-6-814 concerning actions on a contract or for breach of contract shall be filed within one year after the date of the Procurement Appeals Board decision].~~

Section 20. Section **63G-6-819** is amended to read:

63G-6-819. Effect of violation after award of contract.

(1) If after ~~[an]~~ award of a contract it is determined administratively or upon administrative or judicial review that a solicitation or award of a contract is in violation of law:

~~[(1) If] (a) (i) if the person awarded the contract [has not acted] did not act fraudulently or in bad faith:~~

~~[(a) The] (A) the contract may be ratified and affirmed if it [is determined that doing so] is in the best interests of the state; or~~

~~[(b) The] (B) the contract may be terminated; and~~

~~(ii) the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract [prior to] before the termination, plus a reasonable profit; or~~

~~[(2) If] (b) if the person awarded the contract [has] acted fraudulently or in bad faith:~~

~~[(a) The] (i) the contract may be declared null and void; or~~

~~[(b) The] (ii) the contract may be ratified and affirmed if [such action] it is in the best interests of the state, without prejudice to the state's rights to any appropriate damages.~~

(2) Under no circumstances is a person entitled to consequential damages in relation to a solicitation or award of a contract under this chapter, including consequential damages for lost profits, loss of business opportunities, or damage to reputation.

Section 21. Section **63G-6-907** is repealed and reenacted to read:

63G-6-907. Resolution of local public procurement controversies.

SB0114S01 compared with SB0114

(1) The provisions of this chapter relating to protests and appeals apply to a local public procurement unit.

(2) An agreement is not required for Subsection (1) to apply.

Section 22. Section **63G-10-403** is amended to read:

63G-10-403. Department of Transportation bid or request for proposal protest settlement agreement approval and review.

(1) As used in this section:

(a) "Department" means the Department of Transportation created in Section 72-1-201.

(b) "Settlement agreement" includes stipulations, consent decrees, settlement agreements, or other legally binding documents or representations resolving a dispute between the department and another party when the department is required to pay money or required to take legally binding action.

(2) The department shall obtain the approval of the Transportation Commission or the governor or review by the Legislative Management Committee of a settlement agreement that involves a bid or request for proposal protest in accordance with this section.

(3) A settlement agreement that is being settled by the department as part of a bid or request for proposal protest, in accordance with [~~Section 63G-6-801~~] Subsection 63G-6-801(9), that might cost government entities more than \$100,000 to implement shall be presented to the Transportation Commission for approval or rejection.

(4) A settlement agreement that is being settled by the department as part of a bid or request for proposal protest, in accordance with [~~Section 63G-6-801~~] Subsection 63G-6-801(9), that might cost government entities more than \$500,000 to implement shall be presented:

(a) to the Transportation Commission for approval or rejection; and

(b) to the governor for approval or rejection.

(5) (a) A settlement agreement that is being settled by the department as part of a bid or request for proposal protest, in accordance with [~~Section 63G-6-801~~] Subsection 63G-6-801(9), that might cost government entities more than \$1,000,000 to implement shall be presented:

(i) to the Transportation Commission for approval or rejection;

(ii) to the governor for approval or rejection; and

(iii) if the settlement agreement is approved by the Transportation Commission and the governor, to the Legislative Management Committee.

SB0114S01 compared with SB0114

(b) The Legislative Management Committee may recommend approval or rejection of the settlement agreement.

(6) (a) The department may not enter into a settlement agreement that resolves a bid or request for proposal protest, in accordance with [~~Section 63G-6-801~~] Subsection 63G-6-801(9), that might cost government entities more than \$100,000 to implement until the Transportation Commission has approved the agreement.

(b) The department may not enter into a settlement agreement that resolves a bid or request for proposal protest, in accordance with [~~Section 63G-6-801~~] Subsection 63G-6-801(9), that might cost government entities more than \$500,000 to implement until the Transportation Commission and the governor have approved the agreement.

(c) The department may not enter into a settlement agreement that resolves a bid or request for proposal protest in accordance with [~~Section 63G-6-801~~] Subsection 63G-6-801(9) that might cost government entities more than \$1,000,000 to implement until:

- (i) the Transportation Commission has approved the agreement;
- (ii) the governor has approved the agreement; and
- (iii) the Legislative Management Committee has reviewed the agreement.

Section 23. **Repealer.**

This bill repeals:

Section **63G-6-808, Rules of procedure to be adopted.**

Section **63G-6-809, Decisions to be in writing.**

Section **63G-6-810, Jurisdiction of Procurement Appeals Board.**

Section **63G-6-811, Time limits to file protest or appeal -- Effect of filing.**

Section **63G-6-814, Right to appeal to Court of Appeals.**

Section 24. **Transition.**

(1) The Procurement Appeals Board is dissolved after all cases pending before the Procurement Appeals Board on February 1, 2012 are heard and become final.

(2) All ~~{cases pending before}~~ appeals made to the Procurement Appeals Board on ~~{the day that this bill becomes law}~~ or after February 2, 2012 shall be assigned to a procurement appeals panel by the chair of the Procurement Policy Board within 30 days after the day on which this bill becomes law.

(3) Payment of a security deposit or the posting of a bond required in this bill is not

SB0114S01 compared with SB0114

required for:

(a) an appeal that is pending before the Procurement Appeals Board on ~~{the day that this bill becomes law}~~February 1, 2012; or

(b) a case that is pending before a district court or an appellate court on ~~{the day that this bill becomes law}~~February 1, 2012.

(4) Until the rules described in Subsections 63G-6-807.5(1)(c)(ii), (d)(ii), and (e) are made and in effect, the amount of a security deposit or bond described in this bill shall be the lesser of:

(a) \$1,000; or

(b) an amount set by the chief procurement officer.

(5) Uncodified Section 24, Transition, is repealed on July 1, ~~{2012}~~2014.

Section 25. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

†

Legislative Review Note

~~as of 1-17-12 10:51 AM~~

~~Office of Legislative Research and General Counsel}~~