

PROCUREMENT AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne L. Niederhauser

House Sponsor: _____

LONG TITLE

General Description:

This bill recodifies and amends the Utah Procurement Code.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ describes requirements and procedures relating to procurements and procurement processes by public entities;
- ▶ describes the applicability of the Utah Procurement Code;
- ▶ grants rulemaking authority;
- ▶ describes the duties and powers of the Division of Purchasing and General Services;
- ▶ provides for exemptions from certain provisions of the Utah Procurement Code;
- ▶ describes the duties and powers of the Utah State Procurement Policy Board and the procurement advisory councils;
- ▶ describes the duties and powers of the chief procurement officer;
- ▶ provides for exceptions to procurement process requirements;
- ▶ addresses cancellations, rejections, and debarment;
- ▶ addresses reciprocal preferences and purchase from community rehabilitation programs;
- ▶ describes the duties and powers of the Purchasing from Persons with Disabilities Advisory Board;



- 28 ▶ describes bid security and bond requirements;
- 29 ▶ describes requirements relating to contracts and change orders;
- 30 ▶ describes requirements relating to construction procurement and contracts;
- 31 ▶ describes requirements relating to architect-engineer services;
- 32 ▶ describes procedures, requirements, and limitations relating to controversies,
- 33 protests, appeals, and judicial action;
- 34 ▶ addresses the retention of records;
- 35 ▶ addresses interaction between public procurement units;
- 36 ▶ establishes ethical practice provisions relating to procurements;
- 37 ▶ amends existing, and enacts new, criminal provisions and penalties relating to
- 38 procurements; and
- 39 ▶ makes technical changes.

40 **Money Appropriated in this Bill:**

41 None

42 **Other Special Clauses:**

43 This bill takes effect on January 1, 2013.

44 **Utah Code Sections Affected:**

45 **AMENDS:**

- 46 **7-1-323**, as last amended by Laws of Utah 2008, Chapter 382
- 47 **7-2-21**, as last amended by Laws of Utah 2008, Chapter 382
- 48 **9-4-704**, as last amended by Laws of Utah 2011, Chapter 342
- 49 **9-4-906**, as last amended by Laws of Utah 2008, Chapter 382
- 50 **9-4-1602**, as enacted by Laws of Utah 2011, Chapter 217
- 51 **10-3-1304**, as last amended by Laws of Utah 2008, Chapter 382
- 52 **10-3-1305**, as last amended by Laws of Utah 2008, Chapter 382
- 53 **10-7-86**, as last amended by Laws of Utah 2008, Chapter 382
- 54 **11-17-20**, as last amended by Laws of Utah 2008, Chapter 382
- 55 **11-39-101**, as last amended by Laws of Utah 2008, Chapters 360 and 382
- 56 **11-39-107**, as last amended by Laws of Utah 2011, Chapter 387
- 57 **11-44-202**, as enacted by Laws of Utah 2010, Chapter 244
- 58 **11-44-301**, as enacted by Laws of Utah 2010, Chapter 244

- 59 **13-2-9**, as last amended by Laws of Utah 2008, Chapter 382
- 60 **14-1-18**, as last amended by Laws of Utah 2008, Chapter 382
- 61 **17-16a-4**, as last amended by Laws of Utah 2008, Chapter 382
- 62 **17-43-202**, as last amended by Laws of Utah 2008, Chapter 382
- 63 **17-43-302**, as last amended by Laws of Utah 2008, Chapter 382
- 64 **17-53-225**, as last amended by Laws of Utah 2008, Chapter 382
- 65 **17-53-313**, as last amended by Laws of Utah 2008, Chapter 382
- 66 **17B-1-108**, as last amended by Laws of Utah 2008, Chapter 382
- 67 **17B-2a-818**, as last amended by Laws of Utah 2010, Chapter 281
- 68 **17B-2a-818.5**, as last amended by Laws of Utah 2011, Chapters 297 and 400
- 69 **17D-1-106**, as last amended by Laws of Utah 2011, Chapters 40, 106, 205, and 209
- 70 **17D-2-108**, as enacted by Laws of Utah 2008, Chapter 360
- 71 **19-1-206**, as last amended by Laws of Utah 2011, Chapters 297 and 400
- 72 **20A-11-701**, as last amended by Laws of Utah 2011, Chapter 396
- 73 **26-8a-405.3**, as last amended by Laws of Utah 2011, Chapter 297
- 74 **26-8a-405.5**, as last amended by Laws of Utah 2011, Chapter 297
- 75 **26-10-8**, as enacted by Laws of Utah 2010, Chapter 413
- 76 **26-10b-102**, as last amended by Laws of Utah 2011, Chapter 297
- 77 **26-18-2.6**, as enacted by Laws of Utah 2011, Chapter 344
- 78 **26-40-110**, as last amended by Laws of Utah 2011, Chapter 297
- 79 **30-3-11.3**, as last amended by Laws of Utah 2011, Chapter 51
- 80 **30-3-11.4**, as last amended by Laws of Utah 2011, Chapter 51
- 81 **30-3-38**, as last amended by Laws of Utah 2008, Chapters 44 and 382
- 82 **31A-29-110**, as last amended by Laws of Utah 2008, Chapter 382
- 83 **31A-29-111**, as last amended by Laws of Utah 2008, Chapters 382 and 385
- 84 **31A-33-104**, as last amended by Laws of Utah 2008, Chapter 382
- 85 **31A-33-107**, as last amended by Laws of Utah 2008, Chapter 382
- 86 **34A-2-203**, as last amended by Laws of Utah 2008, Chapter 382
- 87 **35A-5-202**, as last amended by Laws of Utah 2008, Chapter 382
- 88 **38-1-30**, as last amended by Laws of Utah 2011, Chapter 299
- 89 **38-1-39**, as last amended by Laws of Utah 2008, Chapter 382

- 90 **41-12a-803**, as last amended by Laws of Utah 2011, Chapter 342
- 91 **53-2-404**, as last amended by Laws of Utah 2011, Chapter 342
- 92 **53A-1-706**, as last amended by Laws of Utah 2008, Chapter 382
- 93 **53A-1a-511**, as last amended by Laws of Utah 2008, Chapter 382
- 94 **53A-20-101**, as last amended by Laws of Utah 2008, Chapter 382
- 95 **53A-25b-105**, as enacted by Laws of Utah 2009, Chapter 294
- 96 **53C-1-201 (Effective 07/01/12)**, as last amended by Laws of Utah 2011, Chapters 247
- 97 and 353
- 98 **54-3-29**, as last amended by Laws of Utah 2011, Chapter 340
- 99 **54-8b-10**, as last amended by Laws of Utah 2011, Chapters 329 and 342
- 100 **62A-1-108.5**, as last amended by Laws of Utah 2011, Chapter 366
- 101 **62A-3-104**, as last amended by Laws of Utah 2008, Chapter 382
- 102 **62A-3-104.1**, as last amended by Laws of Utah 2008, Chapter 382
- 103 **62A-14-109**, as last amended by Laws of Utah 2008, Chapter 382
- 104 **63A-5-205**, as last amended by Laws of Utah 2011, Chapter 400
- 105 **63A-5-208**, as last amended by Laws of Utah 2008, Chapter 382
- 106 **63A-5-302**, as last amended by Laws of Utah 2010, Chapter 324
- 107 **63B-2-102**, as last amended by Laws of Utah 2008, Chapter 382
- 108 **63B-3-102**, as last amended by Laws of Utah 2008, Chapter 382
- 109 **63B-4-102**, as last amended by Laws of Utah 2008, Chapter 382
- 110 **63B-5-102**, as last amended by Laws of Utah 2008, Chapter 382
- 111 **63B-6-102**, as last amended by Laws of Utah 2008, Chapter 382
- 112 **63B-6-402**, as last amended by Laws of Utah 2008, Chapter 382
- 113 **63B-7-102**, as last amended by Laws of Utah 2008, Chapter 382
- 114 **63B-7-402**, as last amended by Laws of Utah 2008, Chapter 382
- 115 **63B-8-102**, as last amended by Laws of Utah 2008, Chapter 382
- 116 **63B-8-402**, as last amended by Laws of Utah 2008, Chapter 382
- 117 **63B-9-103**, as last amended by Laws of Utah 2008, Chapter 382
- 118 **63B-11-202**, as last amended by Laws of Utah 2008, Chapter 382
- 119 **63C-7-210**, as last amended by Laws of Utah 2008, Chapter 382
- 120 **63C-9-301**, as last amended by Laws of Utah 2008, Chapters 10 and 382

121 **63C-9-403**, as last amended by Laws of Utah 2011, Chapter 400
122 **63E-2-109**, as last amended by Laws of Utah 2008, Chapter 382
123 **63F-1-205**, as last amended by Laws of Utah 2011, Chapter 376
124 **63G-7-804**, as renumbered and amended by Laws of Utah 2008, Chapter 382
125 **63G-10-403**, as enacted by Laws of Utah 2011, Chapter 361
126 **63H-2-504**, as enacted by Laws of Utah 2009, Chapter 378
127 **63H-3-109**, as renumbered and amended by Laws of Utah 2011, Chapter 370
128 **63H-4-108**, as renumbered and amended by Laws of Utah 2011, Chapter 370
129 **63H-5-108**, as renumbered and amended by Laws of Utah 2011, Chapter 370
130 **63H-6-103**, as renumbered and amended by Laws of Utah 2011, Chapter 370
131 **63I-1-263**, as last amended by Laws of Utah 2011, Chapters 199, 370, 408, and 411
132 **63M-1-2602**, as enacted by Laws of Utah 2008, Chapter 352
133 **63M-1-2603**, as enacted by Laws of Utah 2008, Chapter 352
134 **63M-1-2605**, as enacted by Laws of Utah 2008, Chapter 352
135 **63M-1-2606**, as enacted by Laws of Utah 2008, Chapter 352
136 **63M-1-2607**, as enacted by Laws of Utah 2008, Chapter 352
137 **63M-1-2608**, as enacted by Laws of Utah 2008, Chapter 352
138 **63M-1-2610**, as enacted by Laws of Utah 2008, Chapter 352
139 **64-13a-13**, as last amended by Laws of Utah 2008, Chapter 382
140 **67-16-4**, as last amended by Laws of Utah 2008, Chapter 382
141 **67-16-5**, as last amended by Laws of Utah 2008, Chapter 382
142 **67-16-5.3**, as last amended by Laws of Utah 2008, Chapter 382
143 **67-16-6**, as last amended by Laws of Utah 2008, Chapter 382
144 **72-6-107**, as last amended by Laws of Utah 2010, Chapter 90
145 **72-6-107.5**, as last amended by Laws of Utah 2011, Chapter 400
146 **72-6-108**, as last amended by Laws of Utah 2009, Chapter 388
147 **72-6-205**, as last amended by Laws of Utah 2009, Chapter 183
148 **72-7-504**, as last amended by Laws of Utah 2008, Chapter 382
149 **73-10-27**, as last amended by Laws of Utah 2008, Chapters 267 and 382
150 **73-23-3**, as last amended by Laws of Utah 2008, Chapter 382
151 **76-10-1602**, as last amended by Laws of Utah 2011, Chapter 320

- 152 **78A-2-112**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 153 **79-2-404**, as last amended by Laws of Utah 2011, Chapter 400
- 154 **79-4-203**, as renumbered and amended by Laws of Utah 2009, Chapter 344

155 ENACTS:

- 156 **63G-6a-104**, Utah Code Annotated 1953
- 157 **63G-6a-110**, Utah Code Annotated 1953
- 158 **63G-6a-201**, Utah Code Annotated 1953
- 159 **63G-6a-301**, Utah Code Annotated 1953
- 160 **63G-6a-401**, Utah Code Annotated 1953
- 161 **63G-6a-402**, Utah Code Annotated 1953
- 162 **63G-6a-403**, Utah Code Annotated 1953
- 163 **63G-6a-404**, Utah Code Annotated 1953
- 164 **63G-6a-405**, Utah Code Annotated 1953
- 165 **63G-6a-406**, Utah Code Annotated 1953
- 166 **63G-6a-408**, Utah Code Annotated 1953
- 167 **63G-6a-501**, Utah Code Annotated 1953
- 168 **63G-6a-502**, Utah Code Annotated 1953
- 169 **63G-6a-503**, Utah Code Annotated 1953
- 170 **63G-6a-504**, Utah Code Annotated 1953
- 171 **63G-6a-601**, Utah Code Annotated 1953
- 172 **63G-6a-602**, Utah Code Annotated 1953
- 173 **63G-6a-603**, Utah Code Annotated 1953
- 174 **63G-6a-604**, Utah Code Annotated 1953
- 175 **63G-6a-605**, Utah Code Annotated 1953
- 176 **63G-6a-606**, Utah Code Annotated 1953
- 177 **63G-6a-607**, Utah Code Annotated 1953
- 178 **63G-6a-608**, Utah Code Annotated 1953
- 179 **63G-6a-609**, Utah Code Annotated 1953
- 180 **63G-6a-610**, Utah Code Annotated 1953
- 181 **63G-6a-611**, Utah Code Annotated 1953
- 182 **63G-6a-612**, Utah Code Annotated 1953

- 183 **63G-6a-701**, Utah Code Annotated 1953
- 184 **63G-6a-702**, Utah Code Annotated 1953
- 185 **63G-6a-703**, Utah Code Annotated 1953
- 186 **63G-6a-704**, Utah Code Annotated 1953
- 187 **63G-6a-705**, Utah Code Annotated 1953
- 188 **63G-6a-706**, Utah Code Annotated 1953
- 189 **63G-6a-707**, Utah Code Annotated 1953
- 190 **63G-6a-708**, Utah Code Annotated 1953
- 191 **63G-6a-709**, Utah Code Annotated 1953
- 192 **63G-6a-710**, Utah Code Annotated 1953
- 193 **63G-6a-801**, Utah Code Annotated 1953
- 194 **63G-6a-803**, Utah Code Annotated 1953
- 195 **63G-6a-901**, Utah Code Annotated 1953
- 196 **63G-6a-1001**, Utah Code Annotated 1953
- 197 **63G-6a-1101**, Utah Code Annotated 1953
- 198 **63G-6a-1201**, Utah Code Annotated 1953
- 199 **63G-6a-1204**, Utah Code Annotated 1953
- 200 **63G-6a-1301**, Utah Code Annotated 1953
- 201 **63G-6a-1401**, Utah Code Annotated 1953
- 202 **63G-6a-1501**, Utah Code Annotated 1953
- 203 **63G-6a-1601**, Utah Code Annotated 1953
- 204 **63G-6a-1701**, Utah Code Annotated 1953
- 205 **63G-6a-1801**, Utah Code Annotated 1953
- 206 **63G-6a-1901**, Utah Code Annotated 1953
- 207 **63G-6a-2001**, Utah Code Annotated 1953
- 208 **63G-6a-2101**, Utah Code Annotated 1953
- 209 **63G-6a-2201**, Utah Code Annotated 1953
- 210 **63G-6a-2202**, Utah Code Annotated 1953
- 211 **63G-6a-2301**, Utah Code Annotated 1953
- 212 **63G-6a-2303**, Utah Code Annotated 1953
- 213 **63G-6a-2304**, Utah Code Annotated 1953

214 **63G-6a-2305**, Utah Code Annotated 1953

215 **63G-6a-2306**, Utah Code Annotated 1953

216 **63G-6a-2307**, Utah Code Annotated 1953

217 RENUMBERS AND AMENDS:

218 **63G-6a-101**, (Renumbered from 63G-6-101, as enacted by Laws of Utah 2008, Chapter
219 382)

220 **63G-6a-102**, (Renumbered from 63G-6-102, as renumbered and amended by Laws of
221 Utah 2008, Chapter 382)

222 **63G-6a-103**, (Renumbered from 63G-6-103, as last amended by Laws of Utah 2011,
223 Chapter 376)

224 **63G-6a-105**, (Renumbered from 63G-6-104, as renumbered and amended by Laws of
225 Utah 2008, Chapter 382)

226 **63G-6a-106**, (Renumbered from 63G-6-207, as last amended by Laws of Utah 2008,
227 Chapter 3 and renumbered and amended by Laws of Utah 2008, Chapter 382)

228 **63G-6a-109**, (Renumbered from 63G-6-105, as renumbered and amended by Laws of
229 Utah 2008, Chapter 382)

230 **63G-6a-202**, (Renumbered from 63G-6-201, as last amended by Laws of Utah 2011,
231 Chapter 376)

232 **63G-6a-203**, (Renumbered from 63G-6-202, as last amended by Laws of Utah 2011,
233 Chapter 376)

234 **63G-6a-204**, (Renumbered from 63G-6-208, as last amended by Laws of Utah 2009,
235 Chapter 132)

236 **63G-6a-205**, (Renumbered from 63G-6-209, as renumbered and amended by Laws of
237 Utah 2008, Chapter 382)

238 **63G-6a-302**, (Renumbered from 63G-6-203, as renumbered and amended by Laws of
239 Utah 2008, Chapter 382)

240 **63G-6a-303**, (Renumbered from 63G-6-204, as last amended by Laws of Utah 2008,
241 Chapter 352 and renumbered and amended by Laws of Utah 2008, Chapter 382)

242 **63G-6a-304**, (Renumbered from 63G-6-205, as last amended by Laws of Utah 2008,
243 Chapter 352 and renumbered and amended by Laws of Utah 2008, Chapter 382)

244 **63G-6a-305**, (Renumbered from 63G-6-302, as last amended by Laws of Utah 2011,

245 Chapter 376)
246 **63G-6a-407**, (Renumbered from 63G-6-303, as renumbered and amended by Laws of
247 Utah 2008, Chapter 382)
248 **63G-6a-711**, (Renumbered from 63G-6-408.5, as enacted by Laws of Utah 2008,
249 Chapter 352)
250 **63G-6a-802**, (Renumbered from 63G-6-410, as renumbered and amended by Laws of
251 Utah 2008, Chapter 382)
252 **63G-6a-804**, (Renumbered from 63G-6-423, as renumbered and amended by Laws of
253 Utah 2008, Chapter 382)
254 **63G-6a-805**, (Renumbered from 63G-6-425, as renumbered and amended by Laws of
255 Utah 2008, Chapter 382)
256 **63G-6a-902**, (Renumbered from 63G-6-412, as renumbered and amended by Laws of
257 Utah 2008, Chapter 382)
258 **63G-6a-903**, (Renumbered from 63G-6-413, as renumbered and amended by Laws of
259 Utah 2008, Chapter 382)
260 **63G-6a-904**, (Renumbered from 63G-6-804, as renumbered and amended by Laws of
261 Utah 2008, Chapter 382)
262 **63G-6a-1002**, (Renumbered from 63G-6-404, as renumbered and amended by Laws of
263 Utah 2008, Chapter 382)
264 **63G-6a-1003**, (Renumbered from 63G-6-405, as renumbered and amended by Laws of
265 Utah 2008, Chapter 382)
266 **63G-6a-1102**, (Renumbered from 63G-6-504, as renumbered and amended by Laws of
267 Utah 2008, Chapter 382)
268 **63G-6a-1103**, (Renumbered from 63G-6-505, as renumbered and amended by Laws of
269 Utah 2008, Chapter 382)
270 **63G-6a-1104**, (Renumbered from 63G-6-506, as last amended by Laws of Utah 2011,
271 Chapter 299)
272 **63G-6a-1105**, (Renumbered from 63G-6-507, as renumbered and amended by Laws of
273 Utah 2008, Chapter 382)
274 **63G-6a-1202**, (Renumbered from 63G-6-601, as renumbered and amended by Laws of
275 Utah 2008, Chapter 382)

276 **63G-6a-1203**, (Renumbered from 63G-6-603, as enacted by Laws of Utah 2009,
277 Chapter 217)
278 **63G-6a-1205**, (Renumbered from 63G-6-416, as renumbered and amended by Laws of
279 Utah 2008, Chapter 382)
280 **63G-6a-1206**, (Renumbered from 63G-6-415, as renumbered and amended by Laws of
281 Utah 2008, Chapter 382)
282 **63G-6a-1207**, (Renumbered from 63G-6-602, as renumbered and amended by Laws of
283 Utah 2008, Chapter 382)
284 **63G-6a-1302**, (Renumbered from 63G-6-501, as renumbered and amended by Laws of
285 Utah 2008, Chapter 382)
286 **63G-6a-1303**, (Renumbered from 63G-6-604, as enacted by Laws of Utah 2010,
287 Chapter 18)
288 **63G-6a-1402**, (Renumbered from 63G-6-502, as last amended by Laws of Utah 2010,
289 Chapter 358)
290 **63G-6a-1403**, (Renumbered from 63G-6-503, as renumbered and amended by Laws of
291 Utah 2008, Chapter 382)
292 **63G-6a-1502**, (Renumbered from 63G-6-701, as renumbered and amended by Laws of
293 Utah 2008, Chapter 382)
294 **63G-6a-1503**, (Renumbered from 63G-6-702, as renumbered and amended by Laws of
295 Utah 2008, Chapter 382)
296 **63G-6a-1504**, (Renumbered from 63G-6-703, as renumbered and amended by Laws of
297 Utah 2008, Chapter 382)
298 **63G-6a-1505**, (Renumbered from 63G-6-704, as renumbered and amended by Laws of
299 Utah 2008, Chapter 382)
300 **63G-6a-1506**, (Renumbered from 63G-6-705, as renumbered and amended by Laws of
301 Utah 2008, Chapter 382)
302 **63G-6a-1602**, (Renumbered from 63G-6-805, as renumbered and amended by Laws of
303 Utah 2008, Chapter 382)
304 **63G-6a-1603**, (Renumbered from 63G-6-801, as last amended by Laws of Utah 2011,
305 Chapter 361)
306 **63G-6a-1604**, (Renumbered from 63G-6-806, as renumbered and amended by Laws of

307 Utah 2008, Chapter 382)
308 **63G-6a-1605**, (Renumbered from 63G-6-907, as renumbered and amended by Laws of
309 Utah 2008, Chapter 382)
310 **63G-6a-1606**, (Renumbered from 63G-6-802, as renumbered and amended by Laws of
311 Utah 2008, Chapter 382)
312 **63G-6a-1607**, (Renumbered from 63G-6-803, as renumbered and amended by Laws of
313 Utah 2008, Chapter 382)
314 **63G-6a-1702**, (Renumbered from 63G-6-807, as last amended by Laws of Utah 2010,
315 Chapter 286)
316 **63G-6a-1703**, (Renumbered from 63G-6-810, as renumbered and amended by Laws of
317 Utah 2008, Chapter 382)
318 **63G-6a-1704**, (Renumbered from 63G-6-808, as renumbered and amended by Laws of
319 Utah 2008, Chapter 382)
320 **63G-6a-1705**, (Renumbered from 63G-6-809, as renumbered and amended by Laws of
321 Utah 2008, Chapter 382)
322 **63G-6a-1706**, (Renumbered from 63G-6-811, as renumbered and amended by Laws of
323 Utah 2008, Chapter 382)
324 **63G-6a-1707**, (Renumbered from 63G-6-812, as renumbered and amended by Laws of
325 Utah 2008, Chapter 382)
326 **63G-6a-1708**, (Renumbered from 63G-6-813, as renumbered and amended by Laws of
327 Utah 2008, Chapter 382)
328 **63G-6a-1802**, (Renumbered from 63G-6-814, as renumbered and amended by Laws of
329 Utah 2008, Chapter 382)
330 **63G-6a-1803**, (Renumbered from 63G-6-815, as renumbered and amended by Laws of
331 Utah 2008, Chapter 382)
332 **63G-6a-1804**, (Renumbered from 63G-6-817, as renumbered and amended by Laws of
333 Utah 2008, Chapter 382)
334 **63G-6a-1805**, (Renumbered from 63G-6-816, as renumbered and amended by Laws of
335 Utah 2008, Chapter 382)
336 **63G-6a-1902**, (Renumbered from 63G-6-419, as renumbered and amended by Laws of
337 Utah 2008, Chapter 382)

338 **63G-6a-1903**, (Renumbered from 63G-6-818, as renumbered and amended by Laws of
339 Utah 2008, Chapter 382)

340 **63G-6a-1904**, (Renumbered from 63G-6-819, as renumbered and amended by Laws of
341 Utah 2008, Chapter 382)

342 **63G-6a-1905**, (Renumbered from 63G-6-820, as renumbered and amended by Laws of
343 Utah 2008, Chapter 382)

344 **63G-6a-2002**, (Renumbered from 63G-6-106, as renumbered and amended by Laws of
345 Utah 2008, Chapter 382)

346 **63G-6a-2003**, (Renumbered from 63G-6-421, as renumbered and amended by Laws of
347 Utah 2008, Chapter 382)

348 **63G-6a-2004**, (Renumbered from 63G-6-905, as renumbered and amended by Laws of
349 Utah 2008, Chapter 382)

350 **63G-6a-2102**, (Renumbered from 63G-6-901, as renumbered and amended by Laws of
351 Utah 2008, Chapter 382)

352 **63G-6a-2103**, (Renumbered from 63G-6-902, as renumbered and amended by Laws of
353 Utah 2008, Chapter 382)

354 **63G-6a-2104**, (Renumbered from 63G-6-904, as renumbered and amended by Laws of
355 Utah 2008, Chapter 382)

356 **63G-6a-2105**, (Renumbered from 63G-6-424, as renumbered and amended by Laws of
357 Utah 2008, Chapter 382)

358 **63G-6a-2302**, (Renumbered from 63G-6-420, as renumbered and amended by Laws of
359 Utah 2008, Chapter 382)

360 REPEALS:

361 **10-7-87**, as last amended by Laws of Utah 2008, Chapter 382

362 **11-37-101**, as last amended by Laws of Utah 2008, Chapter 382

363 **17-15-24**, as last amended by Laws of Utah 2008, Chapter 382

364 **17B-1-109**, as renumbered and amended by Laws of Utah 2007, Chapter 329

365 **26A-1-108.7**, as last amended by Laws of Utah 2008, Chapter 382

366 **63G-6-206**, as renumbered and amended by Laws of Utah 2008, Chapter 382

367 **63G-6-301**, as last amended by Laws of Utah 2011, Chapter 376

368 **63G-6-401**, as last amended by Laws of Utah 2009, Chapter 388

- 369 **63G-6-402**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 370 **63G-6-403**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 371 **63G-6-406**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 372 **63G-6-407**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 373 **63G-6-408**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 374 **63G-6-409**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 375 **63G-6-411**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 376 **63G-6-414**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 377 **63G-6-417**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 378 **63G-6-418**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 379 **63G-6-422**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 380 **63G-6-426**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 381 **63G-6-903**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 382 **63G-6-906**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 383 **63G-6-1001**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 384 **63G-6-1002**, as renumbered and amended by Laws of Utah 2008, Chapter 382



385
386 *Be it enacted by the Legislature of the state of Utah:*

387 Section 1. Section **7-1-323** is amended to read:

388 **7-1-323. Regulation of interstate operations -- Coordination of efforts.**

389 (1) The commissioner may:

390 (a) examine, supervise, and regulate a branch operated in this state by a depository
391 institution chartered by another state and take any action or issue any order with regard to that
392 branch;

393 (b) examine, supervise, and regulate a branch operated in another state by a depository
394 institution chartered by this state and take any action or issue any order with regard to that
395 branch; and

396 (c) coordinate these activities with any other state or federal agency that shares
397 jurisdiction over the institution.

398 (2) The commissioner may coordinate the examination, supervision, and regulation of
399 any depository institution chartered by this state with the examination, supervision, and

400 regulation of an affiliated depository institution operating in another state.

401 (3) The commissioner may take any reasonable and lawful action in furtherance of
402 coordinating the regulation of interstate operations, including:

403 (a) negotiating and entering into cooperative agreements with an agency of another
404 state or of the federal government;

405 (b) sharing information and reports in accordance with Section 7-1-802 with an agency
406 that shares jurisdiction over the institution;

407 (c) accepting as sufficient, if appropriate, examination reports and other information
408 compiled or generated by or for an agency that shares jurisdiction over the institution;

409 (d) contracting with an agency that shares jurisdiction over the institution to engage the
410 services of its examiners at a reasonable rate of compensation;

411 (e) offering the services of the department's examiners at a reasonable rate of
412 compensation to an agency that shares jurisdiction over the institution;

413 (f) collecting fees on behalf of, or receiving payment of fees through, an agency that
414 shares jurisdiction over the institution; and

415 (g) cooperating in any other way with other supervisory agencies and professional
416 associations to promote the efficient, safe, and sound operation and regulation of interstate
417 depository institution activities, including the formulation of interstate examination policies
418 and procedures and the drafting of model laws, rules, and agreements.

419 (4) A contract between the department and an agency that shares jurisdiction over a
420 depository institution to provide examiners to aid in interstate examination and regulation is
421 considered a sole source contract under Section [~~63G-6-410~~] 63G-6a-802.

422 Section 2. Section **7-2-21** is amended to read:

423 **7-2-21. Applicability of Utah Procurement Code.**

424 No action of the commissioner taken under this chapter or Chapter 19, Acquisition of
425 Failing Depository Institutions or Holding Companies, is subject to the provisions of Title 63G,
426 Chapter [~~6~~] 6a, Utah Procurement Code.

427 Section 3. Section **9-4-704** is amended to read:

428 **9-4-704. Distribution of fund money.**

429 (1) The executive director shall:

430 (a) make grants and loans from the fund for any of the activities authorized by Section

431 9-4-705, as directed by the board;

432 (b) establish the criteria with the approval of the board by which loans and grants will
433 be made; and

434 (c) determine with the approval of the board the order in which projects will be funded.

435 (2) The executive director shall distribute, as directed by the board, any federal money
436 contained in the fund according to the procedures, conditions, and restrictions placed upon the
437 use of the money by the federal government.

438 (3) (a) The executive director shall distribute, as directed by the board, any funds
439 received pursuant to Section 17C-1-412 to pay the costs of providing income targeted housing
440 within the community that created the community development and renewal agency under Title
441 17C, Limited Purpose Local Government Entities - Community Development and Renewal
442 Agencies Act.

443 (b) As used in Subsection (3)(a):

444 (i) "Community" has the meaning as defined in Section 17C-1-102.

445 (ii) "Income targeted housing" has the meaning as defined in Section 17C-1-102.

446 (4) Except federal money and money received under Section 17C-1-412, the executive
447 director shall distribute, as directed by the board, all other money from the fund according to
448 the following requirements:

449 (a) Not less than 30% of all fund money shall be distributed to rural areas of the state.

450 (b) At least 50% of the money in the fund shall be distributed as loans to be repaid to
451 the fund by the entity receiving them.

452 (i) (A) Of the fund money distributed as loans, at least 50% shall be distributed to
453 benefit persons whose annual income is at or below 50% of the median family income for the
454 state.

455 (B) The remaining loan money shall be distributed to benefit persons whose annual
456 income is at or below 80% of the median family income for the state.

457 (ii) The executive director or the executive director's designee shall lend money in
458 accordance with this Subsection (4) at a rate based upon the borrower's ability to pay.

459 (c) Any fund money not distributed as loans shall be distributed as grants.

460 (i) At least 90% of the fund money distributed as grants shall be distributed to benefit
461 persons whose annual income is at or below 50% of the median family income for the state.

462 (ii) The remaining fund money distributed as grants may be used by the executive
463 director to obtain federal matching funds or for other uses consistent with the intent of this part,
464 including the payment of reasonable loan servicing costs, but no more than 3% of the revenues
465 of the fund may be used to offset other department or board administrative expenses.

466 (5) The executive director may with the approval of the board:

467 (a) enact rules to establish procedures for the grant and loan process by following the
468 procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
469 and

470 (b) service or contract, pursuant to Title 63G, Chapter [6] 6a, Utah Procurement Code,
471 for the servicing of loans made by the fund.

472 Section 4. Section **9-4-906** is amended to read:

473 **9-4-906. Relation to certain acts.**

474 (1) The corporation is exempt from:

475 (a) Title 51, Chapter 5, Funds Consolidation Act;

476 (b) Title 51, Chapter 7, State Money Management Act;

477 (c) Title 63A, Utah Administrative Services Code; [~~and~~]

478 (d) Title 63G, Chapter [6] 6a, Utah Procurement Code;

479 (e) Title 63J, Chapter 1, Budgetary Procedures Act;

480 (f) Title 63J, Chapter 2, Revenue Procedures and Control Act; and

481 (g) Title 67, Chapter 19, Utah State Personnel Management Act.

482 (2) The corporation shall comply with:

483 (a) Title 52, Chapter 4, Open and Public Meetings Act; and

484 (b) Title 63G, Chapter 2, Government Records Access and Management Act.

485 Section 5. Section **9-4-1602** is amended to read:

486 **9-4-1602. Distribution of fund money.**

487 (1) (a) The director shall make loans and loan guarantees from the fund for the Small
488 Business Credit Initiative created under the federal government's Small Business Jobs Act of
489 2010, to use federal money for programs that leverage private lending to help finance small
490 businesses and manufacturers that are creditworthy but not receiving the loans needed to
491 expand and create jobs.

492 (b) In making loans and loan guarantees under this part, the director shall give due

493 consideration to small businesses in underserved communities throughout the state that have
494 been deeply impacted by recession and not seen a comparable resurgence in their economies.

495 (2) The director shall distribute any federal money in the fund according to the
496 procedures, conditions, and restrictions placed upon the use of the money by the federal
497 government.

498 (3) The director may, with the approval of the executive director of the department:

499 (a) enact rules to establish procedures for the loan and loan guarantee process by
500 following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative
501 Rulemaking Act; and

502 (b) service or contract, under Title 63G, Chapter [6] 6a, Utah Procurement Code, for
503 the servicing of loans made by the fund.

504 Section 6. Section **10-3-1304** is amended to read:

505 **10-3-1304. Use of office for personal benefit prohibited.**

506 (1) As used in this section, "economic benefit tantamount to a gift" includes:

507 (a) a loan at an interest rate that is substantially lower than the commercial rate then
508 currently prevalent for similar loans; and

509 (b) compensation received for private services rendered at a rate substantially
510 exceeding the fair market value of the services.

511 (2) It is an offense for an elected or appointed officer or municipal employee, under
512 circumstances not amounting to a violation of Section [~~63G-6-1001~~] 63G-6a-2304 or 76-8-105,
513 to:

514 (a) disclose or improperly use private, controlled, or protected information acquired by
515 reason of the officer's or employee's official position or in the course of official duties in order
516 to further substantially the officer's or employee's personal economic interest or to secure
517 special privileges or exemptions for the officer or employee or for others;

518 (b) use or attempt to use the officer's or employee's official position to:

519 (i) further substantially the officer's or employee's personal economic interest; or

520 (ii) secure special privileges for the officer or employee or for others; or

521 (c) knowingly receive, accept, take, seek, or solicit, directly or indirectly, for the officer
522 or employee or for another, a gift of substantial value or a substantial economic benefit
523 tantamount to a gift that:

524 (i) would tend improperly to influence a reasonable person in the person's position to
525 depart from the faithful and impartial discharge of the person's public duties; or

526 (ii) the person knows or that a reasonable person in that position should know under
527 the circumstances is primarily for the purpose of rewarding the person for official action taken.

528 (3) Subsection (2)(c) does not apply to:

529 (a) an occasional nonpecuniary gift having a value of less than \$50;

530 (b) an award publicly presented in recognition of public services;

531 (c) any bona fide loan made in the ordinary course of business; or

532 (d) a political campaign contribution.

533 Section 7. Section **10-3-1305** is amended to read:

534 **10-3-1305. Compensation for assistance in transaction involving municipality --**
535 **Public disclosure and filing required.**

536 (1) As used in this section, "municipal body" means any public board, commission,
537 committee, or other public group organized to make public policy decisions or to advise
538 persons who make public policy decisions.

539 (2) It is an offense for an elected officer, or appointed officer, who is a member of a
540 public body, under circumstances not amounting to a violation of Section [~~63G-6-1001~~]
541 63G-6a-2304 or 76-8-105, to receive or agree to receive compensation for assisting any person
542 or business entity in any transaction involving the municipality in which the member is an
543 officer unless the member:

544 (a) files with the mayor a sworn statement giving the information required by this
545 section; and

546 (b) discloses the information required by Subsection (5) in an open meeting to the
547 members of the body of which the officer is a member immediately before the discussion.

548 (3) It is an offense for an appointed officer who is not a member of a public body or a
549 municipal employee to receive or agree to receive compensation for assisting any person or
550 business entity in any transaction involving the municipality by which the person is employed
551 unless the officer or employee:

552 (a) files with the mayor a sworn statement giving the information required by this
553 section; and

554 (b) discloses the information required by Subsection (5) to:

555 (i) the officer or employee's immediate supervisor; and
556 (ii) any other municipal officer or employee who may rely upon the employee's
557 representations in evaluating or approving the transaction.

558 (4) (a) The officer or employee shall file the statement required to be filed by this
559 section 10 days before the date of any agreement between the elected or appointed officer or
560 municipal employee and the person or business entity being assisted or 10 days before the
561 receipt of compensation by the officer or employee, whichever is earlier.

562 (b) The statement is public information and shall be available for examination by the
563 public.

564 (5) The statement and disclosure shall contain:

565 (a) the name and address of the officer or municipal employee;

566 (b) the name and address of the person or business entity being or to be assisted or in
567 which the appointed or elected official or municipal employee has a substantial interest; and

568 (c) a brief description of the transaction as to which service is rendered or is to be
569 rendered and of the nature of the service performed or to be performed.

570 Section 8. Section **10-7-86** is amended to read:

571 **10-7-86. Municipality may adopt Utah Procurement Code -- Hiring of**
572 **professional architect, engineer, or surveyor.**

573 (1) The governing body of any municipality may adopt any or all of the provisions of
574 Title 63G, Chapter [6] 6a, Utah Procurement Code, or the rules promulgated pursuant to that
575 code.

576 (2) Notwithstanding Subsection (1), the governing body of each municipality that
577 engages the services of a professional architect, engineer, or surveyor and considers more than
578 one such professional for the engagement:

579 (a) shall consider, as a minimum, in the selection process:

580 (i) the qualifications, experience, and background of each firm submitting a proposal;

581 (ii) the specific individuals assigned to the project and the time commitments of each
582 to the project; and

583 (iii) the project schedule and the approach to the project that the firm will take; and

584 (b) may engage the services of a professional architect, engineer, or surveyor based on
585 the criteria under Subsection (2)(a) rather than solely on lowest cost.

586 Section 9. Section **11-17-20** is amended to read:

587 **11-17-20. Power of the State Charter School Finance Authority.**

588 (1) The State Charter School Finance Authority may exercise the powers granted to
589 municipalities and counties by this chapter, subject to the same limitations as that imposed on a
590 municipality or county under the chapter, except as provided by Title 53A, Chapter 20b, State
591 Charter School Finance Authority Act.

592 (2) As used in this chapter, "governing body" when applied to the State Charter School
593 Finance Authority means the authority's governing board as described in Section 53A-20b-103.

594 (3) Notwithstanding Section 11-17-15, a charter school that receives financing under
595 this chapter is subject to Title 63G, Chapter [6] 6a, Utah Procurement Code.

596 Section 10. Section **11-39-101** is amended to read:

597 **11-39-101. Definitions.**

598 As used in this chapter:

599 (1) "Bid limit" means:

600 (a) for a building improvement:

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

602 (ii) for each year after 2003, the amount of the bid limit for the previous year, plus an
603 amount calculated by multiplying the amount of the bid limit for the previous year by the lesser
604 of 3% or the actual percent change in the Consumer Price Index during the previous calendar
605 year; and

606 (b) for a public works project:

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

608 (ii) for each year after 2003, the amount of the bid limit for the previous year, plus an
609 amount calculated by multiplying the amount of the bid limit for the previous year by the lesser
610 of 3% or the actual percent change in the Consumer Price Index during the previous calendar
611 year.

612 (2) "Building improvement":

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

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

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

616 Consumers as published by the Bureau of Labor Statistics of the United States Department of

617 Labor.

618 (4) "Design-build project":

619 (a) means a building improvement or public works project costing over \$250,000 with
620 respect to which both the design and construction are provided for in a single contract with a
621 contractor or combination of contractors capable of providing design-build services; and

622 (b) does not include a building improvement or public works project:

623 (i) that is undertaken by a local entity under contract with a construction manager that
624 guarantees the contract price and is at risk for any amount over the contract price; and

625 (ii) each component of which is competitively bid.

626 (5) "Design-build services" means the engineering, architectural, and other services
627 necessary to formulate and implement a design-build project, including its actual construction.

628 (6) "Emergency repairs" means a building improvement or public works project
629 undertaken on an expedited basis to:

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

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

632 (c) reduce a substantial, imminent risk of interruption of an essential public service.

633 (7) "Governing body" means:

634 (a) for a county, city, or town, the legislative body of the county, city, or town;

635 (b) for a local district, the board of trustees of the local district; and

636 (c) for a special service district:

637 (i) the legislative body of the county, city, or town that established the special service
638 district, if no administrative control board has been appointed under Section 17D-1-301; or

639 (ii) the administrative control board of the special service district, if an administrative
640 control board has been appointed under Section 17D-1-301.

641 (8) "Local district" has the same meaning as defined in Section 17B-1-102.

642 (9) "Local entity" means a county, city, town, local district, or special service district.

643 (10) "Lowest responsive responsible bidder" means a prime contractor who:

644 (a) has submitted a bid in compliance with the invitation to bid and within the
645 requirements of the plans and specifications for the building improvement or public works
646 project;

647 (b) is the lowest bidder that satisfies the local entity's criteria relating to financial

648 strength, past performance, integrity, reliability, and other factors that the local entity uses to
649 assess the ability of a bidder to perform fully and in good faith the contract requirements;

650 (c) has furnished a bid bond or equivalent in money as a condition to the award of a
651 prime contract; and

652 (d) furnishes a payment and performance bond as required by law.

653 (11) "Procurement code" means the provisions of Title 63G, Chapter [6] 6a, Utah
654 Procurement Code.

655 (12) "Public works project":

656 (a) means the construction of:

657 (i) a park or recreational facility; or

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

660 (b) does not include:

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

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

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

664 (13) "Special service district" has the same meaning as defined in Section 17D-1-102.
665 Section 11. Section **11-39-107** is amended to read:

666 **11-39-107. Procurement code.**

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

668 (a) prohibit a county or municipal legislative body from adopting the procedures of the
669 procurement code; or

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

672 (2) A local entity may adopt procedures for the following construction contracting
673 methods:

674 (a) construction manager/general contractor, as defined in Section [~~63G-6-103~~]
675 63G-6a-103; or

676 (b) a method that requires that the local entity draft a plan, specifications, and an
677 estimate for the building improvement or public works project.

678 (3) For a public works project only and that costs \$10,000,000 or more, the following

679 may enter into a contract for design-build, as defined in Section [~~63G-6-103~~] 63G-6a-103, and
680 adopt the procedures and follow the provisions of the procurement code for the procurement of
681 and as the procedures and provisions relate to a design-build:

- 682 (a) a city of the first class;
683 (b) a local district; or
684 (c) a special service district.

685 (4) (a) In seeking bids and awarding a contract for a building improvement or public
686 works project, a county or a municipal legislative body may elect to follow the provisions of
687 the procurement code, as the county or municipal legislative body considers appropriate under
688 the circumstances, for specification preparation, source selection, or contract formation.

689 (b) A county or municipal legislative body's election to adopt the procedures of the
690 procurement code may not excuse the county or municipality, respectively, from complying
691 with the requirements to award a contract for work in excess of the bid limit and to publish
692 notice of the intent to award.

693 (c) An election under Subsection (4)(a) may be made on a case-by-case basis, unless
694 the county or municipality has previously adopted [~~the procurement code as permitted by~~
695 ~~Subsection 63G-6-104(3)(c)] the provisions of Title 63G, Chapter 6a, Utah Procurement Code.~~

696 (d) The county or municipal legislative body shall:

- 697 (i) make each election under Subsection (4)(a) in an open meeting; and
698 (ii) specify in its action the portions of the procurement code to be followed.

699 (5) If the estimated cost of the building improvement or public works project proposed
700 by a local district or special service district exceeds the bid limit, the governing body of the
701 local district or special service district may, if it determines to proceed with the building
702 improvement or public works project, use the competitive procurement procedures of the
703 procurement code in place of the comparable provisions of this chapter.

704 Section 12. Section **11-44-202** is amended to read:

705 **11-44-202. Types of agreements.**

706 Notwithstanding Section [~~63G-6-416~~] 63G-6a-1205, a political subdivision shall
707 structure an energy service agreement as a guaranteed energy savings performance contract,
708 which shall include:

- 709 (1) the design and installation of an energy efficiency measure, if applicable;

710 (2) operation and maintenance of any energy efficiency measure implemented; and
711 (3) guaranteed annual cost savings that meet or exceed the total annual contract
712 payments by the political subdivision under the contract, including financing charges incurred
713 by the political subdivision over the life of the contract.

714 Section 13. Section **11-44-301** is amended to read:

715 **11-44-301. Selection.**

716 (1) A political subdivision shall follow the procedures outlined in Title 63G, Chapter
717 [6] 6a, Utah Procurement Code, when selecting a qualified energy service provider.

718 (2) The Division of Purchasing shall maintain a list of qualified energy service
719 providers.

720 (3) The qualified energy service provider selected from the bid process shall prepare an
721 investment grade energy audit, which shall become part of the final contract between the
722 political subdivision and the qualified energy service provider.

723 (4) The audit shall include:

724 (a) a detailed description of the energy efficiency measure;

725 (b) an estimated cost; and

726 (c) a projected cost savings.

727 Section 14. Section **13-2-9** is amended to read:

728 **13-2-9. Internet -- Consumer education.**

729 (1) The Division of Consumer Protection shall, subject to appropriation, contract with
730 a person to make public service announcements advising consumers about the dangers of using
731 the Internet, especially:

732 (a) material harmful to minors;

733 (b) steps a consumer may take to learn more about the dangers of using the Internet;

734 (c) information about how a service provider can help a consumer learn more about the
735 dangers of using the Internet, including the service provider's duties created by this bill; and

736 (d) how a consumer can monitor the Internet usage of family members.

737 (2) Money appropriated under Subsection (1) shall be paid by the Division of

738 Consumer Protection to a person only if:

739 (a) the person is a nonprofit organization; and

740 (b) the person agrees to spend private money amounting to two times the amount of

741 money provided by the Division of Consumer Protection during each fiscal year in accordance
742 with Subsection (1).

743 (3) In administering any money appropriated for use under this section, the Division of
744 Consumer Protection shall comply with Title 63G, Chapter [6] 6a, Utah Procurement Code.

745 Section 15. Section **14-1-18** is amended to read:

746 **14-1-18. Definitions -- Application of Procurement Code to payment and**
747 **performance bonds.**

748 (1) (a) For purposes of this chapter, "political subdivision" means any county, city,
749 town, school district, local district, special service district, community development and
750 renewal agency, public corporation, institution of higher education of the state, public agency
751 of any political subdivision, and, to the extent provided by law, any other entity which expends
752 public funds for construction.

753 (b) For purposes of applying Section [~~63G-6-505~~] 63G-6a-1103 to a political
754 subdivision, "state" includes "political subdivision."

755 (2) [~~Section 63G-6-505~~] Notwithstanding any provision of Title 63G, Chapter 6a, Utah
756 Procurement Code, to the contrary, Section 63G-6a-1103 applies to all contracts for the
757 construction, alteration, or repair of any public building or public work of the state or a
758 political subdivision of the state.

759 Section 16. Section **17-16a-4** is amended to read:

760 **17-16a-4. Prohibited use of official position -- Exception.**

761 (1) Except as provided in Subsection (3), it is an offense for an elected or appointed
762 officer, under circumstances not amounting to a violation of Section [~~63G-6-1001~~]
763 63G-6a-2304 or 76-8-105, to:

764 (a) disclose confidential information acquired by reason of the officer's official position
765 or use that information to secure special privileges or exemptions for himself or others;

766 (b) use or attempt to use the officer's official position to secure special privileges for
767 the officer or for others; or

768 (c) knowingly receive, accept, take, seek or solicit, directly or indirectly, any gift or
769 loan for the officer or for another, if the gift or loan tends to influence the officer in the
770 discharge of the officer's official duties.

771 (2) This section is inapplicable to:

- 772 (a) an occasional nonpecuniary gift having a value of less than \$50;
- 773 (b) an award publicly presented;
- 774 (c) any bona fide loan made in the ordinary course of business; or
- 775 (d) political campaign contributions actually used in a political campaign.
- 776 (3) A member of a county legislative body who is also a member of the governing
- 777 board of a provider of mental health or substance abuse services under contract with the county
- 778 does not commit an offense under Subsection (1)(a) or (b) by discharging, in good faith, the
- 779 duties and responsibilities of each position, if the county legislative body member does not
- 780 participate in the process of selecting the mental health or substance abuse service provider.

781 Section 17. Section **17-43-202** is amended to read:

782 **17-43-202. Local substance abuse authorities -- Requirements prior to**
783 **distributing public funds.**

784 (1) Each local substance abuse authority shall award all public funds in compliance
785 with:

- 786 (a) the requirements of Title 63G, Chapter [6] 6a, Utah Procurement Code; or
- 787 (b) a county procurement ordinance that requires similar procurement practices.

788 (2) If all initial bids on the project are rejected, the authority shall publish a new
789 invitation to bid. If no satisfactory bid is received by the authority when the bids received from
790 the second invitation are opened, the authority may execute a contract without requiring
791 competitive bidding.

792 (3) A local substance abuse authority need not comply with the procurement provisions
793 of this section when it disburses public funds to another political subdivision of the state or an
794 institution of higher education of the state.

795 (4) Each contract awarded by a local substance abuse authority shall be for a fixed
796 amount and limited period. A contract may be modified due to changes in available funding
797 for the same contract purpose without competition.

798 Section 18. Section **17-43-302** is amended to read:

799 **17-43-302. Local mental health authorities -- Requirements prior to distributing**
800 **public funds.**

801 (1) Each local mental health authority shall award all public funds by complying with
802 the requirements of Title 63G, Chapter [6] 6a, Utah Procurement Code, or by complying with a

803 county procurement ordinance which requires similar procurement practices.

804 (2) If all initial bids on the project are rejected, the authority shall publish a new
805 invitation to bid in the manner specified in this section. If no satisfactory bid is received by the
806 authority when the bids received from the second invitation are opened, the authority may
807 execute a contract without requiring competitive bidding.

808 (3) The local mental health authority need not comply with the procurement provisions
809 of this section when it disburses public funds to another political subdivision of the state or an
810 institution of higher education of the state.

811 (4) Each contract awarded by a local mental health authority shall be for a fixed
812 amount and limited period. A contract may be modified due to changes in available funding
813 for the same contract purpose without competition.

814 Section 19. Section **17-53-225** is amended to read:

815 **17-53-225. County legislative body may adopt Utah Procurement Code --**
816 **Retention of records.**

817 (1) A county legislative body may adopt any or all of the provisions of Title 63G,
818 Chapter [6] 6a, Utah Procurement Code, or the rules promulgated pursuant to that code.

819 (2) Whenever any county is required by law to receive bids for purchases, construction,
820 repairs, or any other purpose requiring the expenditure of funds, that county shall keep on file
821 all bids received, together with proof of advertisement by publication or otherwise, for:

822 (a) at least three years following the letting of any contract pursuant to those bids; or

823 (b) three years following the first advertisement for the bids, if all bids pursuant to that
824 advertisement are rejected.

825 Section 20. Section **17-53-313** is amended to read:

826 **17-53-313. Hiring of professional architect, engineer, or surveyor.**

827 Notwithstanding the adoption of some or all of the provisions of Title 63G, Chapter [6]
828 6a, Utah Procurement Code, under Section 17-53-225, each county executive that engages the
829 services of a professional architect, engineer, or surveyor and considers more than one such
830 professional for the engagement:

831 (1) shall consider, as a minimum, in the selection process:

832 (a) the qualifications, experience, and background of each firm submitting a proposal;

833 (b) the specific individuals assigned to the project and the time commitments of each to

834 the project; and

835 (c) the project schedule and the approach to the project that the firm will take; and

836 (2) may engage the services of a professional architect, engineer, or surveyor based on
837 the criteria under Subsection (1) rather than solely on lowest cost.

838 Section 21. Section **17B-1-108** is amended to read:

839 **17B-1-108. Restrictions on local district procurement of architect-engineer**
840 **services.**

841 (1) As used in this section:

842 (a) "Architect-engineer services" means those professional services within the scope of
843 the practice of architecture as defined in Section 58-3a-102.

844 (b) "Engineer services" means those professional services within the scope of the
845 practice of professional engineering as defined in Section 58-22-102.

846 (2) When a local district elects to obtain architect services or engineering services by
847 using a competitive procurement process and has provided public notice of its competitive
848 procurement process:

849 (a) a higher education entity, or any part of one, may not submit a proposal in response
850 to the local district's competitive procurement process; and

851 (b) the local district may not award a contract to perform the architect services or
852 engineering services solicited in the competitive procurement process to a higher education
853 entity or any part of one.

854 (3) Notwithstanding Subsection [~~63G-6-104(3)(d)~~] 63G-6a-105(3), each local district
855 board that engages the services of a professional architect, engineer, or surveyor and considers
856 more than one such professional for the engagement:

857 (a) shall consider, as a minimum, in the selection process:

858 (i) the qualifications, experience, and background of each firm submitting a proposal;

859 (ii) the specific individuals assigned to the project and the time commitments of each
860 to the project; and

861 (iii) the project schedule and the approach to the project that the firm will take; and

862 (b) may engage the services of a professional architect, engineer, or surveyor based on
863 the criteria under Subsection (3)(a) rather than solely on lowest cost.

864 Section 22. Section **17B-2a-818** is amended to read:

865 **17B-2a-818. Requirements applicable to public transit district contracts.**

866 (1) A public transit district shall comply with the applicable provisions of Title 63G,
867 Chapter ~~[6]~~ 6a, Utah Procurement Code.

868 (2) If construction of a district facility or work exceeds \$750,000, the construction shall
869 be let as provided in:

870 (a) Title 63G, Chapter ~~[6]~~ 6a, Utah Procurement Code; and

871 (b) Section 17B-2a-818.5.

872 Section 23. Section **17B-2a-818.5** is amended to read:

873 **17B-2a-818.5. Contracting powers of public transit districts -- Health insurance**
874 **coverage.**

875 (1) For purposes of this section:

876 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
877 34A-2-104 who:

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

879 (ii) meets employer eligibility waiting requirements for health care insurance which
880 may not exceed the first day of the calendar month following 90 days from the date of hire.

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

882 (c) "Qualified health insurance coverage" is as defined in Section 26-40-115.

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

884 (2) (a) Except as provided in Subsection (3), this section applies to a design or
885 construction contract entered into by the public transit district on or after July 1, 2009, and to a
886 prime contractor or to a subcontractor in accordance with Subsection (2)(b).

887 (b) (i) A prime contractor is subject to this section if the prime contract is in the
888 amount of \$1,500,000 or greater.

889 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
890 \$750,000 or greater.

891 (3) This section does not apply if:

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

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

894 (c) the contract is an emergency procurement.

895 (4) (a) This section does not apply to a change order as defined in Section ~~[63G-6-103]~~

896 63G-6a-103, or a modification to a contract, when the contract does not meet the initial
897 threshold required by Subsection (2).

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

900 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the public transit
901 district that the contractor has and will maintain an offer of qualified health insurance coverage
902 for the contractor's employees and the employee's dependents during the duration of the
903 contract.

904 (b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor
905 shall demonstrate to the public transit district that the subcontractor has and will maintain an
906 offer of qualified health insurance coverage for the subcontractor's employees and the
907 employee's dependents during the duration of the contract.

908 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
909 the duration of the contract is subject to penalties in accordance with an ordinance adopted by
910 the public transit district under Subsection (6).

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

913 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
914 the duration of the contract is subject to penalties in accordance with an ordinance adopted by
915 the public transit district under Subsection (6).

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

918 (6) The public transit district shall adopt ordinances:

919 (a) in coordination with:

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

921 (ii) the Department of Natural Resources in accordance with Section 79-2-404;

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

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

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

925 (b) which establish:

926 (i) the requirements and procedures a contractor shall follow to demonstrate to the

927 public transit district compliance with this section which shall include:

928 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or
929 (b) more than twice in any 12-month period; and

930 (B) that the actuarially equivalent determination required for the qualified health
931 insurance coverage in Subsection (1) is met by the contractor if the contractor provides the
932 department or division with a written statement of actuarial equivalency from either:

933 (I) the Utah Insurance Department;

934 (II) an actuary selected by the contractor or the contractor's insurer; or

935 (III) an underwriter who is responsible for developing the employer group's premium
936 rates;

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

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

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

943 (C) an action for debarment of the contractor or subcontractor in accordance with
944 Section [~~63G-6-804~~] 63G-6a-904 upon the third or subsequent violation; and

945 (D) monetary penalties which may not exceed 50% of the amount necessary to
946 purchase qualified health insurance coverage for employees and dependents of employees of
947 the contractor or subcontractor who were not offered qualified health insurance coverage
948 during the duration of the contract; and

949 (iii) a website on which the district shall post the benchmark for the qualified health
950 insurance coverage identified in Subsection (1)(c).

951 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(b)(ii), a contractor
952 or subcontractor who intentionally violates the provisions of this section shall be liable to the
953 employee for health care costs that would have been covered by qualified health insurance
954 coverage.

955 (ii) An employer has an affirmative defense to a cause of action under Subsection
956 (7)(a)(i) if:

957 (A) the employer relied in good faith on a written statement of actuarial equivalency

958 provided by an:

959 (I) actuary; or

960 (II) underwriter who is responsible for developing the employer group's premium rates;

961 or

962 (B) a department or division determines that compliance with this section is not
963 required under the provisions of Subsection (3) or (4).

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

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

968 (9) The failure of a contractor or subcontractor to provide qualified health insurance
969 coverage as required by this section:

970 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
971 or contractor under Section [~~63G-6-801~~] 63G-6a-1603 or any other provision in Title 63G,
972 Chapter [~~6, Part 8, Legal and Contractual Remedies~~] 6a, Utah Procurement Code; and

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

976 Section 24. Section **17D-1-106** is amended to read:

977 **17D-1-106. Special service districts subject to other provisions.**

978 (1) A special service district is, to the same extent as if it were a local district, subject
979 to and governed by:

980 (a) Sections 17B-1-105, 17B-1-107, 17B-1-108, [~~17B-1-109~~], 17B-1-110, 17B-1-111,
981 17B-1-112, 17B-1-113, 17B-1-116, 17B-1-118, 17B-1-119, 17B-1-120, and 17B-1-121;

982 (b) Subsections 17B-1-301(3) and (4), Sections 17B-1-304, 17B-1-305, 17B-1-306,
983 17B-1-307, 17B-1-310, 17B-1-312, 17B-1-313, and 17B-1-314;

984 (c) Section 20A-1-512;

985 (d) Title 17B, Chapter 1, Part 6, Fiscal Procedures for Local Districts;

986 (e) Title 17B, Chapter 1, Part 7, Local District Budgets and Audit Reports;

987 (f) Title 17B, Chapter 1, Part 8, Local District Personnel Management; and

988 (g) Title 17B, Chapter 1, Part 9, Collection of Service Fees and Charges.

989 (2) For purposes of applying the provisions listed in Subsection (1) to a special service
990 district, each reference in those provisions to the local district board of trustees means the
991 governing body.

992 Section 25. Section **17D-2-108** is amended to read:

993 **17D-2-108. Other statutory provisions.**

994 (1) This chapter is supplemental to existing laws relating to a local entity's acquisition,
995 use, maintenance, management, or operation of a project.

996 (2) Except as provided in this chapter, a local entity or local building authority that
997 complies with the provisions of this chapter need not comply with any other statutory provision
998 concerning the acquisition, construction, use, or maintenance of a project, including:

999 (a) a statute relating to public bidding; and

1000 (b) Title 63G, Chapter [6] 6a, Utah Procurement Code.

1001 (3) A local building authority is, to the same extent as if it were a local district, subject
1002 to and governed by:

1003 (a) Title 17B, Chapter 1, Part 6, Fiscal Procedures for Local Districts;

1004 (b) Title 17B, Chapter 1, Part 8, Local District Personnel Management; and

1005 (c) Section 17B-1-108.

1006 Section 26. Section **19-1-206** is amended to read:

1007 **19-1-206. Contracting powers of department -- Health insurance coverage.**

1008 (1) For purposes of this section:

1009 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
1010 34A-2-104 who:

1011 (i) works at least 30 hours per calendar week; and

1012 (ii) meets employer eligibility waiting requirements for health care insurance which
1013 may not exceed the first day of the calendar month following 90 days from the date of hire.

1014 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

1015 (c) "Qualified health insurance coverage" is as defined in Section 26-40-115.

1016 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

1017 (2) (a) Except as provided in Subsection (3), this section applies to a design or
1018 construction contract entered into by or delegated to the department or a division or board of
1019 the department on or after July 1, 2009, and to a prime contractor or subcontractor in

1020 accordance with Subsection (2)(b).

1021 (b) (i) A prime contractor is subject to this section if the prime contract is in the
1022 amount of \$1,500,000 or greater.

1023 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
1024 \$750,000 or greater.

1025 (3) This section does not apply to contracts entered into by the department or a division
1026 or board of the department if:

1027 (a) the application of this section jeopardizes the receipt of federal funds;

1028 (b) the contract or agreement is between:

1029 (i) the department or a division or board of the department; and

1030 (ii) (A) another agency of the state;

1031 (B) the federal government;

1032 (C) another state;

1033 (D) an interstate agency;

1034 (E) a political subdivision of this state; or

1035 (F) a political subdivision of another state;

1036 (c) the executive director determines that applying the requirements of this section to a
1037 particular contract interferes with the effective response to an immediate health and safety
1038 threat from the environment; or

1039 (d) the contract is:

1040 (i) a sole source contract; or

1041 (ii) an emergency procurement.

1042 (4) (a) This section does not apply to a change order as defined in Section [~~63G-6-103~~]
1043 63G-6a-103, or a modification to a contract, when the contract does not meet the initial
1044 threshold required by Subsection (2).

1045 (b) A person who intentionally uses change orders or contract modifications to
1046 circumvent the requirements of Subsection (2) is guilty of an infraction.

1047 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive
1048 director that the contractor has and will maintain an offer of qualified health insurance
1049 coverage for the contractor's employees and the employees' dependents during the duration of
1050 the contract.

1051 (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall
1052 demonstrate to the executive director that the subcontractor has and will maintain an offer of
1053 qualified health insurance coverage for the subcontractor's employees and the employees'
1054 dependents during the duration of the contract.

1055 (c) (i) (A) A contractor who fails to comply with Subsection (5)(a) during the duration
1056 of the contract is subject to penalties in accordance with administrative rules adopted by the
1057 department under Subsection (6).

1058 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
1059 requirements of Subsection (5)(b).

1060 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
1061 the duration of the contract is subject to penalties in accordance with administrative rules
1062 adopted by the department under Subsection (6).

1063 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
1064 requirements of Subsection (5)(a).

1065 (6) The department shall adopt administrative rules:

1066 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

1067 (b) in coordination with:

1068 (i) a public transit district in accordance with Section 17B-2a-818.5;

1069 (ii) the Department of Natural Resources in accordance with Section 79-2-404;

1070 (iii) the State Building Board in accordance with Section 63A-5-205;

1071 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

1072 (v) the Department of Transportation in accordance with Section 72-6-107.5; and

1073 (vi) the Legislature's Administrative Rules Review Committee; and

1074 (c) which establish:

1075 (i) the requirements and procedures a contractor shall follow to demonstrate to the
1076 public transit district compliance with this section that shall include:

1077 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or

1078 (b) more than twice in any 12-month period; and

1079 (B) that the actuarially equivalent determination required for the qualified health
1080 insurance coverage in Subsection (1) is met by the contractor if the contractor provides the
1081 department or division with a written statement of actuarial equivalency from either:

1082 (I) the Utah Insurance Department;

1083 (II) an actuary selected by the contractor or the contractor's insurer; or

1084 (III) an underwriter who is responsible for developing the employer group's premium

1085 rates;

1086 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally

1087 violates the provisions of this section, which may include:

1088 (A) a three-month suspension of the contractor or subcontractor from entering into

1089 future contracts with the state upon the first violation;

1090 (B) a six-month suspension of the contractor or subcontractor from entering into future

1091 contracts with the state upon the second violation;

1092 (C) an action for debarment of the contractor or subcontractor in accordance with

1093 Section [~~63G-6-804~~] 63G-6a-904 upon the third or subsequent violation; and

1094 (D) notwithstanding Section 19-1-303, monetary penalties which may not exceed 50%

1095 of the amount necessary to purchase qualified health insurance coverage for an employee and

1096 the dependents of an employee of the contractor or subcontractor who was not offered qualified

1097 health insurance coverage during the duration of the contract; and

1098 (iii) a website on which the department shall post the benchmark for the qualified

1099 health insurance coverage identified in Subsection (1)(c).

1100 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or

1101 subcontractor who intentionally violates the provisions of this section shall be liable to the

1102 employee for health care costs that would have been covered by qualified health insurance

1103 coverage.

1104 (ii) An employer has an affirmative defense to a cause of action under Subsection

1105 (7)(a)(i) if:

1106 (A) the employer relied in good faith on a written statement of actuarial equivalency

1107 provided by:

1108 (I) an actuary; or

1109 (II) an underwriter who is responsible for developing the employer group's premium

1110 rates; or

1111 (B) the department determines that compliance with this section is not required under

1112 the provisions of Subsection (3) or (4).

1113 (b) An employee has a private right of action only against the employee's employer to
1114 enforce the provisions of this Subsection (7).

1115 (8) Any penalties imposed and collected under this section shall be deposited into the
1116 Medicaid Restricted Account created in Section 26-18-402.

1117 (9) The failure of a contractor or subcontractor to provide qualified health insurance
1118 coverage as required by this section:

1119 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
1120 or contractor under Section [~~63G-6-804~~] 63G-6a-1603 or any other provision in Title 63G,

1121 Chapter [~~6, Part 8, Legal and Contractual Remedies~~] 6a, Utah Procurement Code; and

1122 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
1123 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
1124 or construction.

1125 Section 27. Section **20A-11-701** is amended to read:

1126 **20A-11-701. Campaign financial reporting by corporations -- Filing requirements**

1127 **-- Statement contents.**

1128 (1) (a) Each corporation that has made expenditures for political purposes that total at
1129 least \$750 during a calendar year shall file a verified financial statement with the lieutenant
1130 governor's office:

1131 (i) on January 10, reporting expenditures as of December 31 of the previous year;

1132 (ii) seven days before the regular primary election date;

1133 (iii) on August 31; and

1134 (iv) seven days before the regular general election date.

1135 (b) The corporation shall report:

1136 (i) a detailed listing of all expenditures made since the last statement;

1137 (ii) for financial statements filed under Subsections (1)(a)(ii) through (iv), all
1138 expenditures as of five days before the required filing date of the financial statement; and

1139 (iii) whether the corporation, including an officer of the corporation, director of the
1140 corporation, or person with at least 10% ownership in the corporation:

1141 (A) has bid since the last financial statement on a contract, as defined in Section
1142 [~~63G-6-103~~] 63G-6a-103, in excess of \$100,000;

1143 (B) is currently bidding on a contract, as defined in Section [~~63G-6-103~~] 63G-6a-103,

1144 in excess of \$100,000; or

1145 (C) is a party to a contract, as defined in Section [~~63G-6-103~~] 63G-6a-103, in excess of
1146 \$100,000.

1147 (c) The corporation need not file a financial statement under this section if the
1148 corporation made no expenditures during the reporting period.

1149 (2) The financial statement shall include:

1150 (a) the name and address of each reporting entity that received an expenditure from the
1151 corporation, and the amount of each expenditure;

1152 (b) the total amount of expenditures disbursed by the corporation; and

1153 (c) a statement by the corporation's treasurer or chief financial officer certifying the
1154 accuracy of the financial statement.

1155 Section 28. Section **26-8a-405.3** is amended to read:

1156 **26-8a-405.3. Use of competitive sealed proposals -- Procedure -- Appeal rights.**

1157 (1) (a) Competitive sealed proposals for paramedic or 911 ambulance services under
1158 Section 26-8a-405.2, or for non-911 services under Section 26-8a-405.4, shall be solicited
1159 through a request for proposal and the provisions of this section.

1160 (b) The governing body of the political subdivision shall approve the request for
1161 proposal prior to the notice of the request for proposals under Subsection (1)(c).

1162 (c) (i) Notice of the request for proposals shall be published:

1163 (A) at least once a week for three consecutive weeks in a newspaper of general
1164 circulation published in the county; or

1165 (B) if there is no such newspaper, then notice shall be posted for at least 20 days in at
1166 least five public places in the county; and

1167 (ii) in accordance with Section 45-1-101 for at least 20 days.

1168 (2) (a) Proposals shall be opened so as to avoid disclosure of contents to competing
1169 offerors during the process of negotiations.

1170 (b) (i) Subsequent to the published notice, and prior to selecting an applicant, the
1171 political subdivision shall hold a presubmission conference with interested applicants for the
1172 purpose of assuring full understanding of, and responsiveness to, solicitation requirements.

1173 (ii) A political subdivision shall allow at least 90 days from the presubmission
1174 conference for the proposers to submit proposals.

1175 (c) Subsequent to the presubmission conference, the political subdivision may issue
1176 addenda to the request for proposals. An addenda to a request for proposal shall be finalized
1177 and posted by the political subdivision at least 45 days before the day on which the proposal
1178 must be submitted.

1179 (d) Offerors to the request for proposals shall be accorded fair and equal treatment with
1180 respect to any opportunity for discussion and revisions of proposals, and revisions may be
1181 permitted after submission and before a contract is awarded for the purpose of obtaining best
1182 and final offers.

1183 (e) In conducting discussions, there shall be no disclosures of any information derived
1184 from proposals submitted by competing offerors.

1185 (3) (a) (i) A political subdivision may select an applicant approved by the department
1186 under Section 26-8a-404 to provide 911 ambulance or paramedic services by contract to the
1187 most responsible offeror as defined in [~~Subsection 63G-6-103(24)~~] Section 63G-6a-103.

1188 (ii) An award under Subsection (3)(a)(i) shall be made to the responsible offeror whose
1189 proposal is determined in writing to be the most advantageous to the political subdivision,
1190 taking into consideration price and the evaluation factors set forth in the request for proposal.

1191 (b) The applicants who are approved under Section 26-8a-405 and who are selected
1192 under this section may be the political subdivision issuing the request for competitive sealed
1193 proposals, or any other public entity or entities, any private person or entity, or any
1194 combination thereof.

1195 (c) A political subdivision may reject all of the competitive proposals.

1196 (4) In seeking competitive sealed proposals and awarding contracts under this section,
1197 a political subdivision:

1198 (a) shall apply the public convenience and necessity factors listed in Subsections
1199 26-8a-408(2) through (6);

1200 (b) shall require the applicant responding to the proposal to disclose how the applicant
1201 will meet performance standards in the request for proposal;

1202 (c) may not require or restrict an applicant to a certain method of meeting the
1203 performance standards, including:

1204 (i) requiring ambulance medical personnel to also be a firefighter; or

1205 (ii) mandating that offerors use fire stations or dispatch services of the political

1206 subdivision;

1207 (d) shall require an applicant to submit the proposal:

1208 (i) based on full cost accounting in accordance with generally accepted accounting
1209 principals; and

1210 (ii) if the applicant is a governmental entity, in addition to the requirements of
1211 Subsection (4)(e)(i), in accordance with generally accepted government auditing standards and
1212 in compliance with the State of Utah Legal Compliance Audit Guide; and

1213 (e) shall set forth in the request for proposal:

1214 (i) the method for determining full cost accounting in accordance with generally
1215 accepted accounting principles, and require an applicant to submit the proposal based on such
1216 full cost accounting principles;

1217 (ii) guidelines established to further competition and provider accountability; and

1218 (iii) a list of the factors that will be considered by the political subdivision in the award
1219 of the contract, including by percentage, the relative weight of the factors established under this
1220 Subsection (4)(e), which may include such things as:

1221 (A) response times;

1222 (B) staging locations;

1223 (C) experience;

1224 (D) quality of care; and

1225 (E) cost, consistent with the cost accounting method in Subsection (4)(e)(i).

1226 (5) (a) Notwithstanding [~~the provisions of Subsection 63G-6-104(3), the~~] any provision
1227 of Title 63G, Chapter 6a, Utah Procurement Code, to the contrary, the provisions of Title 63G,
1228 Chapter [6, Part 8, Legal and Contractual Remedies] 6a, Utah Procurement Code, apply to the
1229 procurement process required by this section, except as provided in Subsection (5)(c).

1230 (b) [~~The Procurement Appeals Board created in Section 63G-6-807~~] An appeals board,
1231 as defined in Section 63G-6a-103, shall have jurisdiction to review and determine an appeal of
1232 an offeror under this section in the same manner as provided in Section [~~63G-6-810~~]
1233 63G-6a-1703.

1234 (c) (i) An offeror may appeal the solicitation or award as provided by the political
1235 subdivision's procedures. After all political subdivision appeal rights are exhausted, the offeror
1236 may appeal under the provisions of Subsections (5)(a) and (b).

1237 (ii) The factual determination required by Subsection [~~63G-6-813~~] 63G-6a-1708(1)
1238 shall be based on whether the solicitation or award was made in accordance with the
1239 procedures set forth in this section and Section 26-8a-405.2.

1240 (d) The determination of an issue of fact by the appeals board shall be final and
1241 conclusive unless arbitrary and capricious or clearly erroneous as provided in Section
1242 [~~63G-6-813~~] 63G-6a-1708.

1243 Section 29. Section **26-8a-405.5** is amended to read:

1244 **26-8a-405.5. Use of competitive sealed proposals -- Procedure -- Appeal rights.**

1245 (1) (a) The department shall issue a request for proposal for non-911 services in a
1246 geographic service area if the department receives a request from a political subdivision under
1247 Subsection 26-8a-405.4(3)(a)(ii)(B) to issue a request for proposal for non-911 services.

1248 (b) Competitive sealed proposals for non-911 services under Subsection (1)(a) shall be
1249 solicited through a request for proposal and the provisions of this section.

1250 (c) (i) Notice of the request for proposals shall be published:

1251 (A) at least once a week for three consecutive weeks in a newspaper of general
1252 circulation published in the county; or

1253 (B) if there is no such newspaper, then notice shall be posted for at least 20 days in at
1254 least five public places in the county; and

1255 (ii) in accordance with Section 45-1-101 for at least 20 days.

1256 (2) (a) Proposals shall be opened so as to avoid disclosure of contents to competing
1257 offerors during the process of negotiations.

1258 (b) (i) Subsequent to the published notice, and prior to selecting an applicant, the
1259 department shall hold a presubmission conference with interested applicants for the purpose of
1260 assuring full understanding of, and responsiveness to, solicitation requirements.

1261 (ii) The department shall allow at least 90 days from the presubmission conference for
1262 the proposers to submit proposals.

1263 (c) Subsequent to the presubmission conference, the department may issue addenda to
1264 the request for proposals. An addenda to a request for proposal shall be finalized and posted by
1265 the department at least 45 days before the day on which the proposal must be submitted.

1266 (d) Offerors to the request for proposals shall be accorded fair and equal treatment with
1267 respect to any opportunity for discussion and revisions of proposals, and revisions may be

1268 permitted after submission and before a contract is awarded for the purpose of obtaining best
1269 and final offers.

1270 (e) In conducting discussions, there shall be no disclosures of any information derived
1271 from proposals submitted by competing offerors.

1272 (3) (a) (i) The department may select an applicant approved by the department under
1273 Section 26-8a-404 to provide non-911 services by contract to the most responsible offeror as
1274 defined in [~~Subsection 63G-6-103(24)~~] Section 63G-6a-103.

1275 (ii) An award under Subsection (3)(a)(i) shall be made to the responsible offeror whose
1276 proposal is determined in writing to be the most advantageous to the public, taking into
1277 consideration price and the evaluation factors set forth in the request for proposal.

1278 (b) The applicants who are approved under Section 26-8a-405 and who are selected
1279 under this section may be the political subdivision responding to the request for competitive
1280 sealed proposals, or any other public entity or entities, any private person or entity, or any
1281 combination thereof.

1282 (c) The department may reject all of the competitive proposals.

1283 (4) In seeking competitive sealed proposals and awarding contracts under this section,
1284 the department:

1285 (a) shall consider the public convenience and necessity factors listed in Subsections
1286 26-8a-408(2) through (6);

1287 (b) shall require the applicant responding to the proposal to disclose how the applicant
1288 will meet performance standards in the request for proposal;

1289 (c) may not require or restrict an applicant to a certain method of meeting the
1290 performance standards, including:

1291 (i) requiring ambulance medical personnel to also be a firefighter; or

1292 (ii) mandating that offerors use fire stations or dispatch services of the political
1293 subdivision;

1294 (d) shall require an applicant to submit the proposal:

1295 (i) based on full cost accounting in accordance with generally accepted accounting
1296 principals; and

1297 (ii) if the applicant is a governmental entity, in addition to the requirements of
1298 Subsection (4)(e)(i), in accordance with generally accepted government auditing standards and

1299 in compliance with the State of Utah Legal Compliance Audit Guide; and

1300 (e) shall set forth in the request for proposal:

1301 (i) the method for determining full cost accounting in accordance with generally
1302 accepted accounting principles, and require an applicant to submit the proposal based on such
1303 full cost accounting principles;

1304 (ii) guidelines established to further competition and provider accountability; and

1305 (iii) a list of the factors that will be considered by the department in the award of the
1306 contract, including by percentage, the relative weight of the factors established under this

1307 Subsection (4)(e), which may include such things as:

1308 (A) response times;

1309 (B) staging locations;

1310 (C) experience;

1311 (D) quality of care; and

1312 (E) cost, consistent with the cost accounting method in Subsection (4)(e)(i).

1313 (5) A license issued under this section:

1314 (a) is for the exclusive geographic service area approved by the department;

1315 (b) is valid for four years;

1316 (c) is not subject to a request for license from another applicant under the provisions of
1317 Sections 26-8a-406 through 26-8a-409 during the four-year term, unless the applicant's license
1318 is revoked under Section 26-8a-504;

1319 (d) is subject to supervision by the department under Sections 26-8a-503 and
1320 26-8a-504; and

1321 (e) except as provided in Subsection (4)(a), is not subject to the provisions of Sections
1322 26-8a-406 through 26-8a-409.

1323 Section 30. Section **26-10-8** is amended to read:

1324 **26-10-8. Request for proposal required for non-state supplied services.**

1325 (1) Funds provided to the department through Sections 51-9-201 and 59-14-204 to be
1326 used to provide services, shall be awarded to non-governmental entities based on a competitive
1327 process consistent with Title 63G, Chapter [6] 6a, Utah Procurement Code.

1328 (2) Beginning July 1, 2010, and not more than every five years thereafter, the
1329 department shall issue requests for proposals for new or renewing contracts to award funding

1330 for programs under Subsection (1).

1331 Section 31. Section **26-10b-102** is amended to read:

1332 **26-10b-102. Department to award grants and contracts -- Applications.**

1333 (1) (a) Within appropriations specified by the Legislature for this purpose, the
1334 department may make grants to public and nonprofit entities for the cost of operation of
1335 providing primary health care services to medically underserved populations.

1336 (b) The department may, as funding permits, contract with community based
1337 organizations for the purpose of developing culturally and linguistically appropriate programs
1338 and services for low income and medically underserved populations through a pilot program to
1339 accomplish one or more of the following:

1340 (i) to educate individuals:

1341 (A) to use private and public health care coverage programs, products, services, and
1342 resources in a timely, effective, and responsible manner;

1343 (B) to make prudent use of private and public health care resources;

1344 (C) to pursue preventive health care, health screenings, and disease management; and

1345 (D) to locate health care programs and services;

1346 (ii) to assist individuals to develop:

1347 (A) personal health management;

1348 (B) self-sufficiency in daily care; and

1349 (C) life and disease management skills;

1350 (iii) to support translation of health materials and information;

1351 (iv) to facilitate an individual's access to primary care services and providers, including
1352 mental health services; and

1353 (v) to measure and report empirical results of the pilot project.

1354 (2) (a) Grants by the department shall be awarded based on:

1355 (i) applications submitted to the department in the manner and form prescribed by the
1356 department; and

1357 (ii) the criteria established in Section 26-10b-103.

1358 (b) The application for a grant under Subsection (2)(a) shall contain:

1359 (i) a requested award amount;

1360 (ii) a budget; and

1361 (iii) a narrative plan of the manner in which the applicant intends to provide the
1362 primary health care services described in Subsection 26-10b-101(7).

1363 (c) A contract bid for a service under Subsection (1)(b):

1364 (i) shall be awarded in accordance with Title 63G, Chapter [6] 6a, Utah Procurement
1365 Code;

1366 (ii) shall include the information described in Section 26-10b-103; and

1367 (iii) is subject to Subsection (3) [~~of this section~~].

1368 (3) (a) An applicant under this chapter shall demonstrate to the department that the
1369 applicant will not deny services to a person because of the person's inability to pay for the
1370 services.

1371 (b) Subsection (3)(a) does not preclude an applicant from seeking payment from the
1372 person receiving services, a third party, or a government agency if:

1373 (i) the applicant is authorized to charge for the services; and

1374 (ii) the person, third party, or government agency is under legal obligation to pay the
1375 charges.

1376 (4) The department shall maximize the use of federal matching funds received for
1377 services under Subsection (1)(b) to fund additional contracts under Subsection (1)(b).

1378 Section 32. Section **26-18-2.6** is amended to read:

1379 **26-18-2.6. Dental benefits.**

1380 (1) (a) The division shall establish a competitive bid process to bid out Medicaid dental
1381 benefits under this chapter.

1382 (b) The division may bid out the Medicaid dental benefits separately from other
1383 program benefits.

1384 (2) The division shall use the following criteria to evaluate dental bids:

1385 (a) ability to manage dental expenses;

1386 (b) proven ability to handle dental insurance;

1387 (c) efficiency of claim paying procedures;

1388 (d) provider contracting, discounts, and adequacy of network; and

1389 (e) other criteria established by the department.

1390 (3) The division shall request bids for the program's benefits:

1391 (a) in 2011; and

- 1392 (b) at least once every five years thereafter.
- 1393 (4) The division's contract with dental plans for the program's benefits shall include
- 1394 risk sharing provisions in which the dental plan must accept 100% of the risk for any difference
- 1395 between the division's premium payments per client and actual dental expenditures.
- 1396 (5) The division may not award contracts to:
- 1397 (a) more than three responsive bidders under this section; or
- 1398 (b) an insurer that does not have a current license in the state.
- 1399 (6) (a) The division may cancel the request for proposals if:
- 1400 (i) there are no responsive bidders; or
- 1401 (ii) the division determines that accepting the bids would increase the program's costs.
- 1402 (b) If the division cancels the request for proposals under Subsection (6)(a), the
- 1403 division shall report to the Health and Human Services Committee regarding the reasons for
- 1404 the decision.
- 1405 (7) Title 63G, Chapter ~~[6]~~ 6a, Utah Procurement Code, shall apply to this section.
- 1406 Section 33. Section **26-40-110** is amended to read:
- 1407 **26-40-110. Managed care -- Contracting for services.**
- 1408 (1) Program benefits provided to enrollees under the program, as described in Section
- 1409 26-40-106, shall be delivered in a managed care system if the department determines that
- 1410 adequate services are available where the enrollee lives or resides.
- 1411 (2) (a) The department shall use the following criteria to evaluate bids from health
- 1412 plans:
- 1413 (i) ability to manage medical expenses, including mental health costs;
- 1414 (ii) proven ability to handle accident and health insurance;
- 1415 (iii) efficiency of claim paying procedures;
- 1416 (iv) proven ability for managed care and quality assurance;
- 1417 (v) provider contracting and discounts;
- 1418 (vi) pharmacy benefit management;
- 1419 (vii) an estimate of total charges for administering the pool;
- 1420 (viii) ability to administer the pool in a cost-efficient manner;
- 1421 (ix) the ability to provide adequate providers and services in the state; and
- 1422 (x) other criteria established by the department.

1423 (b) The dental benefits required by Section 26-40-106 may be bid out separately from
1424 other program benefits.

1425 (c) Except for dental benefits, the department shall request bids for the program's
1426 benefits in 2008. The department shall request bids for the program's dental benefits in 2009.
1427 The department shall request bids for the program's benefits at least once every five years
1428 thereafter.

1429 (d) The department's contract with health plans for the program's benefits shall include
1430 risk sharing provisions in which the health plan shall accept at least 75% of the risk for any
1431 difference between the department's premium payments per client and actual medical
1432 expenditures.

1433 (3) The executive director shall report to and seek recommendations from the Health
1434 Advisory Council created in Section 26-1-7.5:

1435 (a) if the division receives less than two bids or proposals under this section that are
1436 acceptable to the division or responsive to the bid; and

1437 (b) before awarding a contract to a managed care system.

1438 (4) (a) The department shall award contracts to responsive bidders if the department
1439 determines that a bid is acceptable and meets the criteria of Subsections (2)(a) and (d).

1440 (b) The department may contract with the Group Insurance Division within the Utah
1441 State Retirement Office to provide services under Subsection (1) if:

1442 (i) the executive director seeks the recommendation of the Health Advisory Council
1443 under Subsection (3); and

1444 (ii) the executive director determines that the bids were not acceptable to the
1445 department.

1446 (c) In accordance with Section 49-20-201, a contract awarded under Subsection (4)(b)
1447 is not subject to the risk sharing required by Subsection (2)(d).

1448 (5) Title 63G, Chapter [6] 6a, Utah Procurement Code, shall apply to this section.

1449 Section 34. Section 30-3-11.3 is amended to read:

1450 **30-3-11.3. Mandatory educational course for divorcing parents -- Purpose --**

1451 **Curriculum -- Exceptions.**

1452 (1) The Judicial Council shall approve and implement a mandatory course for
1453 divorcing parents in all judicial districts. The mandatory course is designed to educate and

1454 sensitize divorcing parties to their children's needs both during and after the divorce process.

1455 (2) The Judicial Council shall adopt rules to implement and administer this program.

1456 (3) As a prerequisite to receiving a divorce decree, both parties are required to attend a
1457 mandatory course on their children's needs after filing a complaint for divorce and receiving a
1458 docket number, unless waived under Section 30-3-4. If that requirement is waived, the court
1459 may permit the divorce action to proceed.

1460 (4) The court may require unmarried parents to attend this educational course when
1461 those parents are involved in a visitation or custody proceeding before the court.

1462 (5) The mandatory course shall instruct both parties:

1463 (a) about divorce and its impacts on:

1464 (i) their child or children;

1465 (ii) their family relationship; and

1466 (iii) their financial responsibilities for their child or children; and

1467 (b) that domestic violence has a harmful effect on children and family relationships.

1468 (6) The Administrative Office of the Courts shall administer the course pursuant to
1469 Title 63G, Chapter [6] 6a, Utah Procurement Code, through private or public contracts and
1470 organize the program in each of Utah's judicial districts. The contracts shall provide for the
1471 recoupment of administrative expenses through the costs charged to individual parties,
1472 pursuant to Subsection (8).

1473 (7) A certificate of completion constitutes evidence to the court of course completion
1474 by the parties.

1475 (8) (a) Each party shall pay the costs of the course to the independent contractor
1476 providing the course at the time and place of the course. A fee of \$8 shall be collected, as part
1477 of the course fee paid by each participant, and deposited in the Children's Legal Defense
1478 Account, described in Section 51-9-408.

1479 (b) Each party who is unable to pay the costs of the course may attend the course
1480 without payment upon a prima facie showing of impecuniosity as evidenced by an affidavit of
1481 impecuniosity filed in the district court. In those situations, the independent contractor shall be
1482 reimbursed for its costs from the appropriation to the Administrative Office of the Courts for
1483 "Mandatory Educational Course for Divorcing Parents Program." Before a decree of divorce
1484 may be entered, the court shall make a final review and determination of impecuniosity and

1485 may order the payment of the costs if so determined.

1486 (9) Appropriations from the General Fund to the Administrative Office of the Courts
1487 for the "Mandatory Educational Course for Divorcing Parents Program" shall be used to pay
1488 the costs of an indigent parent who makes a showing as provided in Subsection (8)(b).

1489 (10) The Administrative Office of the Courts shall adopt a program to evaluate the
1490 effectiveness of the mandatory educational course. Progress reports shall be provided if
1491 requested by the Judiciary Interim Committee.

1492 Section 35. Section **30-3-11.4** is amended to read:

1493 **30-3-11.4. Mandatory orientation course for divorcing parties -- Purpose --**
1494 **Curriculum -- Exceptions.**

1495 (1) There is established a mandatory divorce orientation course for all parties with
1496 minor children who file a petition for temporary separation or for a divorce. A couple with no
1497 minor children are not required, but may choose to attend the course. The purpose of the
1498 course shall be to educate parties about the divorce process and reasonable alternatives.

1499 (2) A petitioner shall attend a divorce orientation course no more than 60 days after
1500 filing a petition for divorce.

1501 (3) The respondent shall attend the divorce orientation course no more than 30 days
1502 after being served with a petition for divorce.

1503 (4) The clerk of the court shall provide notice to a petitioner of the requirement for the
1504 course, and information regarding the course shall be included with the petition or motion,
1505 when served on the respondent.

1506 (5) The divorce orientation course shall be neutral, unbiased, at least one hour in
1507 duration, and include:

1508 (a) options available as alternatives to divorce;

1509 (b) resources available from courts and administrative agencies for resolving custody
1510 and support issues without filing for divorce;

1511 (c) resources available to improve or strengthen the marriage;

1512 (d) a discussion of the positive and negative consequences of divorce;

1513 (e) a discussion of the process of divorce;

1514 (f) options available for proceeding with a divorce, including:

1515 (i) mediation;

1516 (ii) collaborative law; and

1517 (iii) litigation; and

1518 (g) a discussion of post-divorce resources.

1519 (6) The course may be provided in conjunction with the mandatory course for

1520 divorcing parents required by Section 30-3-11.3.

1521 (7) The Administrative Office of the Courts shall administer the course pursuant to

1522 Title 63G, Chapter [6] 6a, Utah Procurement Code, through private or public contracts.

1523 (8) Each participant shall pay the costs of the course, which may not exceed \$20, to the

1524 independent contractor providing the course at the time and place of the course.

1525 (a) A fee of \$5 shall be collected, as part of the course fee paid by each participant, and

1526 deposited in the Children's Legal Defense Account described in Section 51-9-408.

1527 (b) A participant who is unable to pay the costs of the course may attend without

1528 payment and request an Affidavit of Impecuniosity from the provider to be filed with the

1529 petition or motion. The provider shall be reimbursed for its costs by the Administrative Office

1530 of the Courts. A petitioner who is later determined not to meet the qualifications for

1531 impecuniosity may be ordered to pay the costs of the course.

1532 (9) Appropriations from the General Fund to the Administrative Office of the Courts

1533 for the divorce orientation course shall be used to pay the costs of an indigent petitioner who is

1534 determined to be impecunious as provided in Subsection (8)(b).

1535 (10) The Online Court Assistance Program shall include instructions with the forms for

1536 divorce which inform the petitioner of the requirement of this section.

1537 (11) Both parties shall attend a divorce orientation course before a divorce decree may

1538 be entered, unless waived by the court. A certificate of completion constitutes evidence to the

1539 court of course completion by the parties.

1540 (12) It shall be an affirmative defense in all divorce actions that the divorce orientation

1541 requirement was not complied with, and the action may not continue until a party has

1542 complied.

1543 (13) The Administrative Office of the Courts shall adopt a program to evaluate the

1544 effectiveness of the mandatory educational course. Progress reports shall be provided if

1545 requested by the Judiciary Interim Committee.

1546 Section 36. Section **30-3-38** is amended to read:

1547 **30-3-38. Expedited Parent-time Enforcement Program.**

1548 (1) There is established an Expedited Parent-time Enforcement Program in the third
1549 judicial district to be administered by the Administrative Office of the Courts.

1550 (2) As used in this section:

1551 (a) "Mediator" means a person who:

1552 (i) is qualified to mediate parent-time disputes under criteria established by the
1553 Administrative Office of the Courts; and

1554 (ii) agrees to follow billing guidelines established by the Administrative Office of the
1555 Courts and this section.

1556 (b) "Services to facilitate parent-time" or "services" means services designed to assist
1557 families in resolving parent-time problems through:

1558 (i) counseling;

1559 (ii) supervised parent-time;

1560 (iii) neutral drop-off and pick-up;

1561 (iv) educational classes; and

1562 (v) other related activities.

1563 (3) (a) If a parent files a motion in the third district court alleging that court-ordered
1564 parent-time rights are being violated, the clerk of the court, after assigning the case to a judge,
1565 shall refer the case to the administrator of this program for assignment to a mediator, unless a
1566 parent is incarcerated or otherwise unavailable. Unless the court rules otherwise, a parent
1567 residing outside of the state is not unavailable. The director of the program for the courts, the
1568 court, or the mediator may excuse either party from the requirement to mediate for good cause.

1569 (b) Upon receipt of a case, the mediator shall:

1570 (i) meet with the parents to address parent-time issues within 15 days of the motion
1571 being filed;

1572 (ii) assess the situation;

1573 (iii) facilitate an agreement on parent-time between the parents; and

1574 (iv) determine whether a referral to a service provider under Subsection (3)(c) is
1575 warranted.

1576 (c) While a case is in mediation, a mediator may refer the parents to a service provider
1577 designated by the Department of Human Services for services to facilitate parent-time if:

- 1578 (i) the services may be of significant benefit to the parents; or
- 1579 (ii) (A) a mediated agreement between the parents is unlikely; and
- 1580 (B) the services may facilitate an agreement.
- 1581 (d) At any time during mediation, a mediator shall terminate mediation and transfer the
- 1582 case to the administrator of the program for referral to the judge or court commissioner to
- 1583 whom the case was assigned under Subsection (3)(a) if:
 - 1584 (i) a written agreement between the parents is reached; or
 - 1585 (ii) the parents are unable to reach an agreement through mediation and:
 - 1586 (A) the parents have received services to facilitate parent-time;
 - 1587 (B) both parents object to receiving services to facilitate parent-time; or
 - 1588 (C) the parents are unlikely to benefit from receiving services to facilitate parent-time.
 - 1589 (e) Upon receiving a case from the administrator of the program, a judge or court
 - 1590 commissioner may:
 - 1591 (i) review the agreement of the parents and, if acceptable, sign it as an order;
 - 1592 (ii) order the parents to receive services to facilitate parent-time;
 - 1593 (iii) proceed with the case; or
 - 1594 (iv) take other appropriate action.
 - 1595 (4) (a) If a parent makes a particularized allegation of physical or sexual abuse of a
 - 1596 child who is the subject of a parent-time order against the other parent or a member of the other
 - 1597 parent's household to a mediator or service provider, the mediator or service provider shall
 - 1598 immediately report that information to:
 - 1599 (i) the judge assigned to the case who may immediately issue orders and take other
 - 1600 appropriate action to resolve the allegation and protect the child; and
 - 1601 (ii) the Division of Child and Family Services within the Department of Human
 - 1602 Services in the manner required by Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect
 - 1603 Reporting Requirements.
 - 1604 (b) If an allegation under Subsection (4)(a) is made against a parent with parent-time
 - 1605 rights or a member of that parent's household, parent-time by that parent shall, pursuant to an
 - 1606 order of the court, be supervised until:
 - 1607 (i) the allegation has been resolved; or
 - 1608 (ii) a court orders otherwise.

1609 (c) Notwithstanding an allegation under Subsection (4)(a), a mediator may continue to
1610 mediate parent-time problems and a service provider may continue to provide services to
1611 facilitate parent-time unless otherwise ordered by a court.

1612 (5) (a) The Department of Human Services may contract with one or more entities in
1613 accordance with Title 63G, Chapter [6] 6a, Utah Procurement Code, to provide:

1614 (i) services to facilitate parent-time;

1615 (ii) case management services; and

1616 (iii) administrative services.

1617 (b) An entity who contracts with the Department of Human Services under Subsection
1618 (5)(a) shall:

1619 (i) be qualified to provide one or more of the services listed in Subsection (5)(a); and

1620 (ii) agree to follow billing guidelines established by the Department of Human Services
1621 and this section.

1622 (6) (a) Except as provided in Subsection (6)(b), the cost of mediation shall be:

1623 (i) reduced to a sum certain;

1624 (ii) divided equally between the parents; and

1625 (iii) charged against each parent taking into account the ability of that parent to pay
1626 under billing guidelines adopted in accordance with this section.

1627 (b) A judge may order a parent to pay an amount in excess of that provided for in
1628 Subsection (6)(a) if the parent:

1629 (i) failed to participate in good faith in mediation or services to facilitate parent-time;

1630 or

1631 (ii) made an unfounded assertion or claim of physical or sexual abuse of a child.

1632 (c) (i) The cost of mediation and services to facilitate parent-time may be charged to
1633 parents at periodic intervals.

1634 (ii) Mediation and services to facilitate parent-time may only be terminated on the
1635 ground of nonpayment if both parents are delinquent.

1636 (7) (a) The Judicial Council may make rules to implement and administer the
1637 provisions of this program related to mediation.

1638 (b) The Department of Human Services may make rules to implement and administer
1639 the provisions of this program related to services to facilitate parent-time.

1640 (8) (a) The Administrative Office of the Courts shall adopt outcome measures to
1641 evaluate the effectiveness of the mediation component of this program. Progress reports shall
1642 be provided to the Judiciary Interim Committee as requested by the committee.

1643 (b) The Department of Human Services shall adopt outcome measures to evaluate the
1644 effectiveness of the services component of this program. Progress reports shall be provided to
1645 the Judiciary Interim Committee as requested by the committee.

1646 (c) The Administrative Office of the Courts and the Department of Human Services
1647 may adopt joint outcome measures and file joint reports to satisfy the requirements of
1648 Subsections (7)(a) and (b).

1649 (9) The Department of Human Services shall, by following the procedures and
1650 requirements of Title 63J, Chapter 5, Federal Funds Procedures, apply for federal funds as
1651 available.

1652 Section 37. Section **31A-29-110** is amended to read:

1653 **31A-29-110. Pool administrator -- Selection -- Powers.**

1654 (1) The board shall select a pool administrator in accordance with Title 63G, Chapter
1655 [6] 6a, Utah Procurement Code. The board shall evaluate bids based on criteria established by
1656 the board, which shall include:

- 1657 (a) ability to manage medical expenses;
- 1658 (b) proven ability to handle accident and health insurance;
- 1659 (c) efficiency of claim paying procedures;
- 1660 (d) marketing and underwriting;
- 1661 (e) proven ability for managed care and quality assurance;
- 1662 (f) provider contracting and discounts;
- 1663 (g) pharmacy benefit management;
- 1664 (h) an estimate of total charges for administering the pool; and
- 1665 (i) ability to administer the pool in a cost-efficient manner.

1666 (2) A pool administrator may be:

- 1667 (a) a health insurer;
- 1668 (b) a health maintenance organization;
- 1669 (c) a third-party administrator; or
- 1670 (d) any person or entity which has demonstrated ability to meet the criteria in

1671 Subsection (1).

1672 (3) (a) The pool administrator shall serve for a period of three years, with two one-year
1673 extension options, subject to the terms, conditions, and limitations of the contract between the
1674 board and the administrator.

1675 (b) At least one year prior to the expiration of the contract between the board and the
1676 pool administrator, the board shall invite all interested parties, including the current pool
1677 administrator, to submit bids to serve as the pool administrator.

1678 (c) Selection of the pool administrator for a succeeding period shall be made at least
1679 six months prior to the expiration of the period of service under Subsection (3)(a).

1680 (4) The pool administrator is responsible for all operational functions of the pool and
1681 shall:

1682 (a) have access to all nonpatient specific experience data, statistics, treatment criteria,
1683 and guidelines compiled or adopted by the Medicaid program, the Public Employees Health
1684 Plan, the Department of Health, or the Insurance Department, and which are not otherwise
1685 declared by statute to be confidential;

1686 (b) perform all marketing, eligibility, enrollment, member agreements, and
1687 administrative claim payment functions relating to the pool;

1688 (c) establish, administer, and operate a monthly premium billing procedure for
1689 collection of premiums from enrollees;

1690 (d) perform all necessary functions to assure timely payment of benefits to enrollees,
1691 including:

1692 (i) making information available relating to the proper manner of submitting a claim
1693 for benefits to the pool administrator and distributing forms upon which submission shall be
1694 made; and

1695 (ii) evaluating the eligibility of each claim for payment by the pool;

1696 (e) submit regular reports to the board regarding the operation of the pool, the
1697 frequency, content, and form of which reports shall be determined by the board;

1698 (f) following the close of each calendar year, determine net written and earned
1699 premiums, the expense of administration, and the paid and incurred losses for the year and
1700 submit a report of this information to the board, the commissioner, and the Division of Finance
1701 on a form prescribed by the commissioner; and

1702 (g) be paid as provided in the plan of operation for expenses incurred in the
1703 performance of the pool administrator's services.

1704 Section 38. Section **31A-29-111** is amended to read:

1705 **31A-29-111. Eligibility -- Limitations.**

1706 (1) (a) Except as provided in Subsection (1)(b), an individual who is not HIPAA
1707 eligible is eligible for pool coverage if the individual:

1708 (i) pays the established premium;

1709 (ii) is a resident of this state; and

1710 (iii) meets the health underwriting criteria under Subsection (5)(a).

1711 (b) Notwithstanding Subsection (1)(a), an individual who is not HIPAA eligible is not
1712 eligible for pool coverage if one or more of the following conditions apply:

1713 (i) the individual is eligible for health care benefits under Medicaid or Medicare,
1714 except as provided in Section 31A-29-112;

1715 (ii) the individual has terminated coverage in the pool, unless:

1716 (A) 12 months have elapsed since the termination date; or

1717 (B) the individual demonstrates that creditable coverage has been involuntarily
1718 terminated for any reason other than nonpayment of premium;

1719 (iii) the pool has paid the maximum lifetime benefit to or on behalf of the individual;

1720 (iv) the individual is an inmate of a public institution;

1721 (v) the individual is eligible for a public health plan, as defined in federal regulations
1722 adopted pursuant to 42 U.S.C. 300gg;

1723 (vi) the individual's health condition does not meet the criteria established under
1724 Subsection (5);

1725 (vii) the individual is eligible for coverage under an employer group that offers a health
1726 benefit plan or a self-insurance arrangement to its eligible employees, dependents, or members
1727 as:

1728 (A) an eligible employee;

1729 (B) a dependent of an eligible employee; or

1730 (C) a member;

1731 (viii) the individual is covered under any other health benefit plan;

1732 (ix) at the time of application, the individual has not resided in Utah for at least 12

- 1733 consecutive months preceding the date of application; or
- 1734 (x) the individual's employer pays any part of the individual's health benefit plan
- 1735 premium, either as an insured or a dependent, for pool coverage.
- 1736 (2) (a) Except as provided in Subsection (2)(b), an individual who is HIPAA eligible is
- 1737 eligible for pool coverage if the individual:
- 1738 (i) pays the established premium; and
- 1739 (ii) is a resident of this state.
- 1740 (b) Notwithstanding Subsection (2)(a), a HIPAA eligible individual is not eligible for
- 1741 pool coverage if one or more of the following conditions apply:
- 1742 (i) the individual is eligible for health care benefits under Medicaid or Medicare,
- 1743 except as provided in Section 31A-29-112;
- 1744 (ii) the individual is eligible for a public health plan, as defined in federal regulations
- 1745 adopted pursuant to 42 U.S.C. 300gg;
- 1746 (iii) the individual is covered under any other health benefit plan;
- 1747 (iv) the individual is eligible for coverage under an employer group that offers a health
- 1748 benefit plan or self-insurance arrangements to its eligible employees, dependents, or members
- 1749 as:
- 1750 (A) an eligible employee;
- 1751 (B) a dependent of an eligible employee; or
- 1752 (C) a member;
- 1753 (v) the pool has paid the maximum lifetime benefit to or on behalf of the individual;
- 1754 (vi) the individual is an inmate of a public institution; or
- 1755 (vii) the individual's employer pays any part of the individual's health benefit plan
- 1756 premium, either as an insured or a dependent, for pool coverage.
- 1757 (3) (a) Notwithstanding Subsection (1)(b)(ix), if otherwise eligible under Subsection
- 1758 (1)(a), an individual whose health care insurance coverage from a state high risk pool with
- 1759 similar coverage is terminated because of nonresidency in another state is eligible for coverage
- 1760 under the pool subject to the conditions of Subsections (1)(b)(i) through (viii).
- 1761 (b) Coverage sought under Subsection (3)(a) shall be applied for within 63 days after
- 1762 the termination date of the previous high risk pool coverage.
- 1763 (c) The effective date of this state's pool coverage shall be the date of termination of

1764 the previous high risk pool coverage.

1765 (d) The waiting period of an individual with a preexisting condition applying for
1766 coverage under this chapter shall be waived:

1767 (i) to the extent to which the waiting period was satisfied under a similar plan from
1768 another state; and

1769 (ii) if the other state's benefit limitation was not reached.

1770 (4) (a) If an eligible individual applies for pool coverage within 30 days of being
1771 denied coverage by an individual carrier, the effective date for pool coverage shall be no later
1772 than the first day of the month following the date of submission of the completed insurance
1773 application to the carrier.

1774 (b) Notwithstanding Subsection (4)(a), for individuals eligible for coverage under
1775 Subsection (3), the effective date shall be the date of termination of the previous high risk pool
1776 coverage.

1777 (5) (a) The board shall establish and adjust, as necessary, health underwriting criteria
1778 based on:

1779 (i) health condition; and

1780 (ii) expected claims so that the expected claims are anticipated to remain within
1781 available funding.

1782 (b) The board, with approval of the commissioner, may contract with one or more
1783 providers under Title 63G, Chapter [6] 6a, Utah Procurement Code, to develop underwriting
1784 criteria under Subsection (5)(a).

1785 (c) If an individual is denied coverage by the pool under the criteria established in
1786 Subsection (5)(a), the pool shall issue a certificate of insurability to the individual for coverage
1787 under Subsection 31A-30-108(3).

1788 Section 39. Section **31A-33-104** is amended to read:

1789 **31A-33-104. Workers' Compensation Fund exempted.**

1790 (1) The Workers' Compensation Fund is exempt from the provisions of:

1791 (a) Title 52, Chapter 4, Open and Public Meetings Act;

1792 (b) Title 63G, Chapter 2, Government Records Access and Management Act; and

1793 (c) Title 63A, Utah Administrative Services Code.

1794 (2) The board may specifically exempt the Workers' Compensation Fund from any

1795 provisions of:

1796 (a) Title 67, Chapter 19, Utah State Personnel Management Act; and

1797 (b) Title 63G, Chapter [6] 6a, Utah Procurement Code.

1798 (3) The provisions of Title 63G, Chapter 4, Administrative Procedures Act, do not
1799 govern the initial determination of any person's eligibility for benefits under Title 34A, Chapter
1800 2, Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act.

1801 Section 40. Section **31A-33-107** is amended to read:

1802 **31A-33-107. Duties of board -- Creation of subsidiaries -- Entering into joint**

1803 **enterprises.**

1804 (1) The board shall:

1805 (a) appoint a chief executive officer to administer the Workers' Compensation Fund;

1806 (b) receive and act upon financial, management, and actuarial reports covering the

1807 operations of the Workers' Compensation Fund;

1808 (c) ensure that the Workers' Compensation Fund is administered according to law;

1809 (d) examine and approve an annual operating budget for the Workers' Compensation

1810 Fund;

1811 (e) serve as investment trustees and fiduciaries of the Injury Fund;

1812 (f) receive and act upon recommendations of the chief executive officer;

1813 (g) develop broad policy for the long-term operation of the Workers' Compensation

1814 Fund, consistent with its mission and fiduciary responsibility;

1815 (h) subject to Chapter 19a, Part 4, Workers' Compensation Rates, approve any rating

1816 plans that would modify a policyholder's premium;

1817 (i) subject to Chapter 19a, Part 4, Workers' Compensation Rates, approve the amount

1818 of deviation, if any, from standard insurance rates;

1819 (j) approve the amount of the dividends, if any, to be returned to policyholders;

1820 (k) adopt a procurement policy consistent with the provisions of Title 63G, Chapter [6]

1821 6a, Utah Procurement Code;

1822 (l) develop and publish an annual report to policyholders, the governor, the Legislature,

1823 and interested parties that describes the financial condition of the Injury Fund, including a

1824 statement of expenses and income and what measures were taken or will be necessary to keep

1825 the Injury Fund actuarially sound;

- 1826 (m) establish a fiscal year;
- 1827 (n) determine and establish an actuarially sound price for insurance offered by the
- 1828 fund;
- 1829 (o) establish conflict of interest requirements that govern the board, officers, and
- 1830 employees;
- 1831 (p) establish compensation and reasonable expenses to be paid to directors on the board
- 1832 subject to the requirements of Section 31A-33-106, so that the board may not approve
- 1833 compensation that exceeds the amount described in Subsection 31A-33-106(18)(a)(i)(B); and
- 1834 (q) perform all other acts necessary for the policymaking and oversight of the Workers'
- 1835 Compensation Fund.
- 1836 (2) Subject to board review and its responsibilities under Subsection (1)(e), the board
- 1837 may delegate authority to make daily investment decisions.
- 1838 (3) The fund may form or acquire a subsidiary or enter into a joint enterprise:
- 1839 (a) only if that action is approved by the board; and
- 1840 (b) subject to the limitations in Section 31A-33-103.5.
- 1841 Section 41. Section **34A-2-203** is amended to read:
- 1842 **34A-2-203. Payment of premiums for workers' compensation.**
- 1843 (1) Until June 30, 2007, a department, commission, board, or other agency of the state
- 1844 shall pay the insurance premium on its employees direct to the Workers' Compensation Fund.
- 1845 (2) Beginning July 1, 2007, the state shall secure the payment of workers'
- 1846 compensation benefits for its employees:
- 1847 (a) by:
- 1848 (i) insuring, and keeping insured, the payment of this compensation with the Workers'
- 1849 Compensation Fund;
- 1850 (ii) insuring, and keeping insured, the payment of this compensation with any stock
- 1851 corporation or mutual association authorized to transact the business of workers' compensation
- 1852 insurance in this state; or
- 1853 (iii) paying direct compensation as a self-insured employer in the amount, in the
- 1854 manner, and when due as provided for in this chapter or Chapter 3, Utah Occupational Disease
- 1855 Act;
- 1856 (b) in accordance with Title 63A, Chapter 4, Risk Management; and

1857 (c) subject to Subsection (3).

1858 (3) (a) If the state determines to secure the payment of workers' compensation benefits
1859 for its employees by paying direct compensation as a self-insured employer in the amount, in
1860 the manner, and due as provided for in this chapter or Chapter 3, Utah Occupational Disease
1861 Act, the state is:

1862 (i) exempt from Section 34A-2-202.5 and Subsection 34A-2-704(14); and

1863 (ii) required to pay a premium assessment as provided in Section 34A-2-202.

1864 (b) If the state chooses to pay workers' compensation benefits for its employees
1865 through insuring under Subsection (2)(a)(i) or (ii), the state shall obtain that insurance in
1866 accordance with Title 63G, Chapter [6] 6a, Utah Procurement Code.

1867 Section 42. Section **35A-5-202** is amended to read:

1868 **35A-5-202. Contracts with providers.**

1869 (1) In compliance with Title 63G, Chapter [6] 6a, Utah Procurement Code, the
1870 department shall enter into a contract with one or more qualified providers to implement the
1871 workforce improvement plan created under Section 35A-5-201.

1872 (2) A contract entered into under this section shall be:

1873 (a) performance based; and

1874 (b) structured so that the provider receives reimbursement based on:

1875 (i) job development;

1876 (ii) participant placement in jobs;

1877 (iii) wages and benefits provided; and

1878 (iv) participant retention in jobs over at least a 12-month period.

1879 (3) If the department determines through the procurement process that there are no
1880 qualified providers to implement the workforce improvement plan, the department may
1881 implement the plan.

1882 Section 43. Section **38-1-30** is amended to read:

1883 **38-1-30. Third party contract -- Designated agent.**

1884 (1) The division shall contract in accordance with Title 63G, Chapter [6] 6a, Utah
1885 Procurement Code, with a third party to establish and maintain the database for the purposes
1886 established under this section, Section 38-1-27, and Sections 38-1-31 through 38-1-36.

1887 (2) (a) The third party under contract under this section is the division's designated

1888 agent, and shall develop and maintain a database from the information provided by:

1889 (i) local government entities issuing building permits;

1890 (ii) original contractors;

1891 (iii) subcontractors; and

1892 (iv) other interested persons.

1893 (b) The database shall accommodate filings by third parties on behalf of clients.

1894 (c) The division and the designated agent shall design, develop, and test the database
1895 for full implementation on May 1, 2005.

1896 (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1897 division shall make rules and develop procedures for:

1898 (a) the division to oversee and enforce this section, Section 38-1-27, and Sections
1899 38-1-31 through 38-1-36;

1900 (b) the designated agent to administer this section, Section 38-1-27, and Sections
1901 38-1-31 through 38-1-36; and

1902 (c) the form of submission of an alternate filing, which may include procedures for
1903 rejecting an illegible or incomplete filing.

1904 (4) (a) The designated agent shall archive computer data files at least semiannually for
1905 auditing purposes.

1906 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1907 division shall make rules to allow the designated agent to periodically archive projects from the
1908 database.

1909 (c) A project shall be archived no earlier than:

1910 (i) one year after the day on which a notice of completion is filed for a project;

1911 (ii) if no notice of completion is filed, two years after the last filing activity for a
1912 project; or

1913 (iii) one year after the day on which a filing is cancelled under Subsection
1914 38-1-32(6)(c) or 38-1-33(2)(c).

1915 (d) The division may audit the designated agent's administration of the database as
1916 often as the division considers necessary.

1917 (5) The designated agent shall carry errors and omissions insurance in the amounts
1918 established by rule made by the division in accordance with Title 63G, Chapter 3, Utah

1919 Administrative Rulemaking Act.

1920 (6) (a) The designated agent shall make reasonable efforts to assure the accurate entry
1921 into the database of information provided in alternate filings.

1922 (b) The designated agent shall meet or exceed standards established by the division for
1923 the accuracy of data entry for alternate filings.

1924 (7) The designated agent is not liable for the correctness of the information contained
1925 in an alternate filing it enters into the database.

1926 Section 44. Section **38-1-39** is amended to read:

1927 **38-1-39. Waiver or impairment of a lien right -- Forms -- Scope.**

1928 (1) As used in this section:

1929 (a) "Check" means a payment instrument on a depository institution including:

1930 (i) a check;

1931 (ii) a draft;

1932 (iii) an order; or

1933 (iv) other instrument.

1934 (b) "Depository institution" is as defined in Section 7-1-103.

1935 (c) "Lien claimant" means a person that claims a lien under this chapter.

1936 (d) "Receives payment" means, in the case of a restrictive endorsement, a payee has
1937 endorsed a check and the check is presented to and paid by the depository institution on which
1938 it is drawn.

1939 (2) Notwithstanding Section 38-1-29, a written consent given by a lien claimant that
1940 waives or limits the lien claimant's lien rights is enforceable only if the lien claimant:

1941 (a) (i) executes a waiver and release that is signed by the lien claimant or the lien
1942 claimant's authorized agent; or

1943 (ii) for a restrictive endorsement on a check, includes a restrictive endorsement on a
1944 check that is:

1945 (A) signed by the lien claimant or the lien claimant's authorized agent; and

1946 (B) in substantially the same form set forth in Subsection (4)(d); and

1947 (b) receives payment of the amount identified in the waiver and release or check that
1948 includes the restrictive endorsement:

1949 (i) including payment by a joint payee check; and

1950 (ii) for a progress payment, only to the extent of the payment.

1951 (3) (a) Notwithstanding the language of a waiver and release described in Subsection
1952 (2), Subsection (3)(b) applies if:

1953 (i) the payment given in exchange for any waiver and release of lien is made by check;
1954 and

1955 (ii) the check fails to clear the depository institution on which it is drawn for any
1956 reason.

1957 (b) If the conditions of Subsection (3)(a) are met:

1958 (i) the waiver and release described in Subsection (3)(a) is null, void, and of no legal
1959 effect; and

1960 (ii) the following will not be affected by the lien claimant's execution of the waiver and
1961 release:

1962 (A) any lien;

1963 (B) any lien right;

1964 (C) any bond right;

1965 (D) any contract right; or

1966 (E) any other right to recover payment afforded to the lien claimant in law or equity.

1967 (4) (a) A waiver and release given by a lien claimant meets the requirements of this
1968 section if it is in substantially the form provided in this Subsection (4) for the circumstance
1969 provided in this Subsection (4).

1970 (b) A waiver and release may be in substantially the following form if the lien claimant
1971 is required to execute a waiver and release in exchange for or to induce the payment of a
1972 progress billing:

1973 "UTAH CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

1974 Property Name: _____

1975 Property Location: _____

1976 Undersigned's Customer: _____

1977 Invoice/Payment Application Number: _____

1978 Payment Amount: _____

1979 Payment Period: _____

1980 To the extent provided below, this document becomes effective to release and the

1981 undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38,
1982 Chapter 1, Mechanics' Liens, or any bond right under Utah Code Ann., Title 14, Contractors'
1983 Bonds, or Section [~~63G-6-505~~] 63G-6a-1103 related to payment rights the undersigned has on
1984 the above described Property once:

1985 (1) the undersigned endorses a check in the above referenced Payment Amount payable
1986 to the undersigned; and

1987 (2) the check is paid by the depository institution on which it is drawn.

1988 This waiver and release applies to a progress payment for the work, materials,
1989 equipment, or a combination of work, materials, and equipment furnished by the undersigned
1990 to the Property or to the Undersigned's Customer which are the subject of the Invoice or
1991 Payment Application, but only to the extent of the Payment Amount. This waiver and release
1992 does not apply to any retention withheld; any items, modifications, or changes pending
1993 approval; disputed items and claims; or items furnished or invoiced after the Payment Period.

1994 The undersigned warrants that the undersigned either has already paid or will use the
1995 money the undersigned receives from this progress payment promptly to pay in full all the
1996 undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials,
1997 equipment, or combination of work, materials, and equipment that are the subject of this
1998 waiver and release.

1999 Dated: _____

2000 _____ (Company Name)

2001 _____ By: _____

2002 _____ Its: _____ "

2003 (c) A waiver and release may be in substantially the following form if the lien claimant
2004 is required to execute a waiver and release in exchange for or to induce the payment of a final
2005 billing:

2006 "UTAH WAIVER AND RELEASE UPON FINAL PAYMENT

2007 Property Name: _____

2008 Property Location: _____

2009 Undersigned's Customer: _____

2010 Invoice/Payment Application Number: _____

2011 Payment Amount: _____

2012 To the extent provided below, this document becomes effective to release and the
2013 undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38,
2014 Chapter 1, Mechanics' Liens, or any bond right under Utah Code Ann., Title 14, Contractors'
2015 Bonds, or Section [~~63G-6-505~~] 63G-6a-1103 related to payment rights the undersigned has on
2016 the above described Property once:

2017 (1) the undersigned endorses a check in the above referenced Payment Amount payable
2018 to the undersigned; and

2019 (2) the check is paid by the depository institution on which it is drawn.

2020 This waiver and release applies to the final payment for the work, materials, equipment,
2021 or combination of work, materials, and equipment furnished by the undersigned to the Property
2022 or to the Undersigned's Customer.

2023 The undersigned warrants that the undersigned either has already paid or will use the
2024 money the undersigned receives from the final payment promptly to pay in full all the
2025 undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials,
2026 equipment, or combination of work, materials, and equipment that are the subject of this
2027 waiver and release.

2028 Dated: _____

2029 _____ (Company Name)

2030 _____ By: _____

2031 _____ Its: _____ "

2032 (d) A restrictive endorsement placed on a check to effectuate a waiver and release
2033 described in this Subsection (4) meets the requirements of this section if it is in substantially
2034 the following form:

2035 "This check is a progress/ final payment for property described on this check sufficient
2036 for identification. Endorsement of this check is an acknowledgment by the endorser that the
2037 waiver and release to which the payment applies is effective to the extent provided in Utah
2038 Code Ann. Subsection 38-1-39(4)(b) or (c) respectively."

2039 (e) (i) If using a restrictive endorsement under Subsection (4)(d), the person preparing
2040 the check shall indicate whether the check is for a progress payment or a final payment by
2041 circling the word "progress" if the check is for a progress payment, or the word "final" if the
2042 check is for a final payment.

2043 (ii) If a restrictive endorsement does not indicate whether the check is for a progress
2044 payment or a final payment, it is considered to be for a progress payment.

2045 (5) (a) If the conditions of Subsection (5)(b) are met, this section does not affect the
2046 enforcement of:

2047 (i) an accord and satisfaction regarding a bona fide dispute; or

2048 (ii) an agreement made in settlement of an action pending in any court or arbitration.

2049 (b) Pursuant to Subsection (5)(a), this section does not affect enforcement of an accord
2050 and satisfaction or settlement described in Subsection (5)(a) if the accord and satisfaction or
2051 settlement:

2052 (i) is in a writing signed by the lien claimant; and

2053 (ii) specifically references the lien rights waived or impaired.

2054 Section 45. Section **41-12a-803** is amended to read:

2055 **41-12a-803. Program creation -- Administration -- Selection of designated agent**
2056 **-- Duties -- Rulemaking -- Audits.**

2057 (1) There is created the Uninsured Motorist Identification Database Program to:

2058 (a) establish an Uninsured Motorist Identification Database to verify compliance with
2059 motor vehicle owner's or operator's security requirements under Section 41-12a-301 and other
2060 provisions under this part;

2061 (b) assist in reducing the number of uninsured motor vehicles on the highways of the
2062 state;

2063 (c) assist in increasing compliance with motor vehicle registration and sales and use tax
2064 laws;

2065 (d) assist in protecting a financial institution's bona fide security interest in a motor
2066 vehicle; and

2067 (e) assist in the identification and prevention of identity theft and other crimes.

2068 (2) The program shall be administered by the department with the assistance of the
2069 designated agent and the Motor Vehicle Division.

2070 (3) (a) The department shall contract in accordance with Title 63G, Chapter [6] 6a,
2071 Utah Procurement Code, with a third party to establish and maintain an Uninsured Motorist
2072 Identification Database for the purposes established under this part.

2073 (b) The contract may not obligate the department to pay the third party more money

2074 than is available in the account.

2075 (4) (a) The third party under contract under this section is the department's designated
2076 agent, and shall develop and maintain a computer database from the information provided by:

2077 (i) insurers under Section 31A-22-315;

2078 (ii) the division under Subsection (6); and

2079 (iii) the Motor Vehicle Division under Section 41-1a-120.

2080 (b) (i) The database shall be developed and maintained in accordance with guidelines
2081 established by the department so that state and local law enforcement agencies and financial
2082 institutions as defined in Section 7-1-103 can efficiently access the records of the database,
2083 including reports useful for the implementation of the provisions of this part.

2084 (ii) (A) The reports shall be in a form and contain information approved by the
2085 department.

2086 (B) The reports may be made available through the Internet or through other electronic
2087 medium, if the department determines that sufficient security is provided to ensure compliance
2088 with Section 41-12a-805 regarding limitations on disclosure of information in the database.

2089 (5) With information provided by the department and the Motor Vehicle Division, the
2090 designated agent shall, at least monthly for submissions under Subsection 31A-22-315(2)(b) or
2091 at least twice a month for submissions under Subsection 31A-22-315(2)(a):

2092 (a) update the database with the motor vehicle insurance information provided by the
2093 insurers in accordance with Section 31A-22-315; and

2094 (b) compare all current motor vehicle registrations against the database.

2095 (6) The division shall provide the designated agent with the name, date of birth,
2096 address, and driver license number of all persons on the driver license database.

2097 (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2098 department shall make rules and develop procedures in cooperation with the Motor Vehicle
2099 Division to use the database for the purpose of administering and enforcing this part.

2100 (8) (a) The designated agent shall archive computer data files at least semi-annually for
2101 auditing purposes.

2102 (b) The internal audit unit of the tax commission provided under Section 59-1-206
2103 shall audit the program at least every three years.

2104 (c) The audit under Subsection (8)(b) shall include verification of:

2105 (i) billings made by the designated agent; and
2106 (ii) the accuracy of the designated agent's matching of vehicle registration with
2107 insurance data.

2108 Section 46. Section **53-2-404** is amended to read:

2109 **53-2-404. State costs for emergency disaster services.**

2110 (1) Subject to this section and Section 53-2-403, the division shall expend or commit to
2111 expend money described in Subsection 53-2-403(1)(d)(i) to fund costs to the state of
2112 emergency disaster services.

2113 (2) Money paid by the division under this section to government entities and private
2114 persons providing emergency disaster services are subject to Title 63G, Chapter [6] 6a, Utah
2115 Procurement Code.

2116 Section 47. Section **53A-1-706** is amended to read:

2117 **53A-1-706. Purchases of educational technology.**

2118 (1) (a) A school district or college of education shall comply with Title 63G, Chapter
2119 [6] 6a, Utah Procurement Code, in purchasing technology, except as otherwise provided in
2120 Subsection (1)(b).

2121 (b) A school district may purchase computers from, and contract for the repair or
2122 refurbishing of computers with, the Utah Correctional Industries without going through the
2123 bidding or competition procedures outlined in Title 63G, Chapter [~~6, Part 4, Source Selections~~
2124 ~~and Contract Formation~~] 6a, Utah Procurement Code.

2125 (2) A school district or college of education may purchase technology through
2126 cooperative purchasing contracts administered by the state Division of Purchasing or through
2127 its own established purchasing program.

2128 Section 48. Section **53A-1a-511** is amended to read:

2129 **53A-1a-511. Waivers from state board rules -- Application of statutes and rules**
2130 **to charter schools.**

2131 (1) A charter school shall operate in accordance with its charter and is subject to Title
2132 53A, State System of Public Education, and other state laws applicable to public schools,
2133 except as otherwise provided in this part.

2134 (2) (a) A charter school or any other public school or school district may apply to the
2135 State Board of Education for a waiver of any state board rule that inhibits or hinders the school

2136 or the school district from accomplishing its mission or educational goals set out in its strategic
2137 plan or charter.

2138 (b) The state board may grant the waiver, unless:

2139 (i) the waiver would cause the school district or the school to be in violation of state or
2140 federal law; or

2141 (ii) the waiver would threaten the health, safety, or welfare of students in the district or
2142 at the school.

2143 (c) If the State Board of Education denies the waiver, the reason for the denial shall be
2144 provided in writing to the waiver applicant.

2145 (3) (a) Except as provided in Subsection (3)(b), State Board of Education rules
2146 governing the following do not apply to a charter school:

2147 (i) school libraries;

2148 (ii) required school administrative and supervisory services; and

2149 (iii) required expenditures for instructional supplies.

2150 (b) A charter school shall comply with rules implementing statutes that prescribe how
2151 state appropriations may be spent.

2152 (4) The following provisions of Title 53A, State System of Public Education, and rules
2153 adopted under those provisions, do not apply to a charter school:

2154 (a) Sections 53A-1a-108 and 53A-1a-108.5, requiring the establishment of a school
2155 community council and school improvement plan;

2156 (b) Sections 53A-3-413 and 53A-3-414, pertaining to the use of school buildings as
2157 civic centers;

2158 (c) Section 53A-3-420, requiring the use of activity disclosure statements;

2159 (d) Section 53A-12-207, requiring notification of intent to dispose of textbooks;

2160 (e) Section 53A-13-107, requiring annual presentations on adoption;

2161 (f) Chapter 19, Part 1, Fiscal Procedures, pertaining to fiscal procedures of school
2162 districts and local school boards; and

2163 (g) Section 53A-14-107, requiring an independent evaluation of instructional materials.

2164 (5) For the purposes of Title 63G, Chapter [6] 6a, Utah Procurement Code, a charter
2165 school shall be considered a local public procurement unit.

2166 (6) Each charter school shall be subject to:

2167 (a) Title 52, Chapter 4, Open and Public Meetings Act; and

2168 (b) Title 63G, Chapter 2, Government Records Access and Management Act.

2169 (7) (a) The State Charter School Board shall, in concert with the charter schools, study
2170 existing state law and administrative rules for the purpose of determining from which laws and
2171 rules charter schools should be exempt.

2172 (b) (i) The State Charter School Board shall present recommendations for exemption to
2173 the State Board of Education for consideration.

2174 (ii) The State Board of Education shall consider the recommendations of the State
2175 Charter School Board and respond within 60 days.

2176 Section 49. Section **53A-20-101** is amended to read:

2177 **53A-20-101. Construction and alteration of schools and plants -- Advertising for**
2178 **bids -- Payment and performance bonds -- Contracts -- Bidding limitations on local**
2179 **school boards -- Interest of local school board members.**

2180 (1) As used in this section, the word "sealed" does not preclude acceptance of
2181 electronically sealed and submitted bids or proposals in addition to bids or proposals manually
2182 sealed and submitted.

2183 (2) (a) Prior to the construction of any school or the alteration of any existing school
2184 plant, if the total estimated accumulative building project cost exceeds \$80,000, a local school
2185 board shall advertise for bids on the project at least 10 days before the bid due date.

2186 (b) The board shall have the advertisement published in a newspaper having general
2187 circulation throughout the state and in appropriate construction trade publications that offer
2188 free listings.

2189 (c) A similar advertisement is required in a newspaper published or having general
2190 circulation in any city or county that would be affected by the proposed project.

2191 (d) The advertisement shall:

2192 (i) require sealed proposals for the building project in accordance with plans and
2193 specifications furnished by the local school board;

2194 (ii) state where and when the proposals will be opened and shall reserve the right of the
2195 board to reject any and all proposals; and

2196 (iii) require a certified check or bid bond of not less than 5% of the bid to accompany
2197 the bid.

2198 (3) (a) The board shall meet at the time and place specified in the advertisement and
2199 publicly open and read all received proposals.

2200 (b) If satisfactory bids are received, the board shall award the contract to the lowest
2201 responsible bidder.

2202 (c) If none of the proposals are satisfactory, all shall be rejected.

2203 (d) The board shall again advertise in the manner provided in this section.

2204 (e) If, after advertising a second time no satisfactory bid is received, the board may
2205 proceed under its own direction with the required project.

2206 (4) (a) The check or bond required under Subsection (2)(d) shall be drawn in favor of
2207 the local school board.

2208 (b) If the successful bidder fails or refuses to enter into the contract and furnish the
2209 additional bonds required under this section, then the bidder's check or bond is forfeited to the
2210 district.

2211 (5) A local school board shall require payment and performance bonds of the
2212 successful bidder as required in Section [~~63G-6-505~~] 63G-6a-1103.

2213 (6) (a) A local school board may require in the proposed contract that at least 10% of
2214 the contract price be withheld until the project is completed and accepted by the board.

2215 (b) If money is withheld, the board shall place it in an interest bearing account, and the
2216 interest accrues for the benefit of the contractor and subcontractors.

2217 (c) This money shall be paid upon completion of the project and acceptance by the
2218 board.

2219 (7) (a) A local school board may not bid on projects within the district if the total
2220 accumulative estimated cost exceeds \$80,000.

2221 (b) The board may use its resources if no satisfactory bids are received under this
2222 section.

2223 (8) If the local school board determines in accordance with Section [~~63G-6-501~~]
2224 63G-6a-1302 to use a construction manager/general contractor as its method of construction
2225 contracting management on projects where the total estimated accumulative cost exceeds
2226 \$80,000, it shall select the construction manager/general contractor [~~using one of the source~~
2227 ~~selection methods provided for in Sections 63G-6-401 through 63G-6-501~~] in accordance with
2228 the requirements of Title 63G, Chapter 6a, Utah Procurement Code.

2229 (9) A local school board member may not have a direct or indirect financial interest in
2230 the construction project contract.

2231 Section 50. Section **53A-25b-105** is amended to read:

2232 **53A-25b-105. Applicability of statutes to the Utah Schools for the Deaf and the**
2233 **Blind.**

2234 (1) The Utah Schools for the Deaf and the Blind is subject to Title 53A, State System
2235 of Public Education, and other state laws applicable to public schools, except as otherwise
2236 provided by this chapter.

2237 (2) The following provisions of Title 53A, State System of Public Education, do not
2238 apply to the Utah Schools for the Deaf and the Blind:

2239 (a) provisions governing the budgets, funding, or finances of school districts or charter
2240 schools; and

2241 (b) provisions governing school construction.

2242 (3) Except as provided in this chapter, the Utah Schools for the Deaf and the Blind is
2243 subject to state laws governing state agencies, including:

2244 (a) Title 51, Chapter 5, Funds Consolidation Act;

2245 (b) Title 51, Chapter 7, State Money Management Act;

2246 (c) Title 52, Chapter 4, Open and Public Meetings Act;

2247 (d) Title 63A, Utah Administrative Services Code;

2248 (e) Title 63G, Chapter 2, Government Records Access and Management Act;

2249 (f) Title 63G, Chapter 4, Administrative Procedures Act;

2250 (g) Title 63G, Chapter [6] 6a, Utah Procurement Code;

2251 (h) Title 63J, Chapter 1, Budgetary Procedures Act;

2252 (i) Title 63J, Chapter 2, Revenue Procedures and Control Act; and

2253 (j) Title 67, Chapter 19, Utah State Personnel Management Act.

2254 Section 51. Section **53C-1-201 (Effective 07/01/12)** is amended to read:

2255 **53C-1-201 (Effective 07/01/12). Creation of administration -- Purpose -- Director.**

2256 (1) (a) There is established within state government the School and Institutional Trust
2257 Lands Administration.

2258 (b) The administration shall manage all school and institutional trust lands and assets
2259 within the state, except as otherwise provided in Title 53C, Chapter 3, Deposit and Allocation

2260 of Revenue from Trust Lands, and Sections 51-7a-201 and 51-7a-202.

2261 (2) The administration is an independent state agency and not a division of any other
2262 department.

2263 (3) (a) It is subject to the usual legislative and executive department controls except as
2264 provided in this Subsection (3).

2265 (b) (i) The director may make rules as approved by the board that allow the
2266 administration to classify a business proposal submitted to the administration as protected
2267 under Section 63G-2-305, for as long as is necessary to evaluate the proposal.

2268 (ii) The administration shall return the proposal to the party who submitted the
2269 proposal, and incur no further duties under Title 63G, Chapter 2, Government Records Access
2270 and Management Act, if the administration determines not to proceed with the proposal.

2271 (iii) The administration shall classify the proposal pursuant to law if it decides to
2272 proceed with the proposal.

2273 (iv) Section 63G-2-403 does not apply during the review period.

2274 (c) The director shall make rules in compliance with Title 63G, Chapter 3, Utah
2275 Administrative Rulemaking Act, except that the administration is not subject to Subsections
2276 63G-3-301(6) and (7) and Section 63G-3-601, and the director, with the board's approval, may
2277 establish a procedure for the expedited approval of rules, based on written findings by the
2278 director showing:

2279 (i) the changes in business opportunities affecting the assets of the trust;

2280 (ii) the specific business opportunity arising out of those changes which may be lost
2281 without the rule or changes to the rule;

2282 (iii) the reasons the normal procedures under Section 63G-3-301 cannot be met without
2283 causing the loss of the specific opportunity;

2284 (iv) approval by at least five board members; and

2285 (v) that the director has filed a copy of the rule and a rule analysis, stating the specific
2286 reasons and justifications for its findings, with the Division of Administrative Rules and
2287 notified interested parties as provided in Subsection 63G-3-301(10).

2288 (d) (i) The administration shall comply with Title 67, Chapter 19, Utah State Personnel
2289 Management Act, except as provided in this Subsection (3)(d).

2290 (ii) The board may approve, upon recommendation of the director, that exemption for

2291 specific positions under Subsections 67-19-12(2) and 67-19-15(1) is required in order to enable
2292 the administration to efficiently fulfill its responsibilities under the law. The director shall
2293 consult with the executive director of the Department of Human Resource Management prior
2294 to making such a recommendation.

2295 (iii) The positions of director, deputy director, associate director, assistant director,
2296 legal counsel appointed under Section 53C-1-305, administrative assistant, and public affairs
2297 officer are exempt under Subsections 67-19-12(2) and 67-19-15(1).

2298 (iv) Salaries for exempted positions, except for the director, shall be set by the director,
2299 after consultation with the executive director of the Department of Human Resource
2300 Management, within ranges approved by the board. The board and director shall consider
2301 salaries for similar positions in private enterprise and other public employment when setting
2302 salary ranges.

2303 (v) The board may create an annual incentive and bonus plan for the director and other
2304 administration employees designated by the board, based upon the attainment of financial
2305 performance goals and other measurable criteria defined and budgeted in advance by the board.

2306 (e) The administration shall comply with Title 63G, Chapter [6] 6a, Utah Procurement
2307 Code, except where the board approves, upon recommendation of the director, exemption from
2308 the Utah Procurement Code, and simultaneous adoption of rules under Title 63G, Chapter 3,
2309 Utah Administrative Rulemaking Act, for procurement, which enable the administration to
2310 efficiently fulfill its responsibilities under the law.

2311 (f) (i) Except as provided in Subsection (3)(f)(ii), the administration is not subject to
2312 the fee agency requirements of Section 63J-1-504.

2313 (ii) The following fees of the administration are subject to the requirements of Section
2314 63J-1-504: application, assignment, amendment, affidavit for lost documents, name change,
2315 reinstatement, grazing nonuse, extension of time, partial conveyance, patent reissue, collateral
2316 assignment, electronic payment, and processing.

2317 (4) The administration is managed by a director of school and institutional trust lands
2318 appointed by a majority vote of the board of trustees with the consent of the governor.

2319 (5) (a) The board of trustees shall provide policies for the management of the
2320 administration and for the management of trust lands and assets.

2321 (b) The board shall provide policies for the ownership and control of Native American

2322 remains that are discovered or excavated on school and institutional trust lands in consultation
2323 with the Division of Indian Affairs and giving due consideration to Title 9, Chapter 9, Part 4,
2324 Native American Grave Protection and Repatriation Act. The director may make rules in
2325 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement
2326 policies provided by the board regarding Native American remains.

2327 (6) In connection with joint ventures and other transactions involving trust lands and
2328 minerals approved under Sections 53C-1-303 and 53C-2-401, the administration, with board
2329 approval, may become a member of a limited liability company under Title 48, Chapter 3, Utah
2330 Revised Uniform Limited Liability Company Act, and is considered a person under Section
2331 48-3-102.

2332 Section 52. Section **54-3-29** is amended to read:

2333 **54-3-29. Removal, relocation, or alteration of utility facility in public highway**
2334 **construction or reconstruction -- Notice -- Cooperation.**

2335 (1) As used in this section:

2336 (a) "Design-build" means a design-build transportation project for which a design-build
2337 transportation project contract is issued, within the meaning of Section [~~63G-6-502~~]
2338 63G-6a-1402.

2339 (b) "Municipality" is as defined in Section 10-1-104.

2340 (c) "Political subdivision" means a:

2341 (i) county; or

2342 (ii) municipality.

2343 (d) "Public agency" means an entity of state government or a political subdivision.

2344 (e) "Public highway" means a highway, street, road, or alley constructed for public use
2345 in the state.

2346 (f) "Utility company" means a privately, cooperatively, or publicly owned utility,
2347 including a utility owned by a political subdivision, that provides service using a utility facility.

2348 (g) "Utility facility" means:

2349 (i) a telecommunications, gas, electricity, cable television, water, sewer, or data
2350 facility;

2351 (ii) a video transmission line;

2352 (iii) a drainage and irrigation system; or

2353 (iv) a facility similar to those listed in Subsections (1)(g)(i) through (iii) located in, on,
2354 along, across, over, through, or under any public highway.

2355 (2) If a public agency engages in or proposes to engage in a construction or
2356 reconstruction project on a public highway that may require the removal, relocation, or
2357 alteration of a utility facility, the public agency shall:

2358 (a) contact an association, established under Title 54, Chapter 8a, Damage to
2359 Underground Utility Facilities, to identify each utility company that may have a utility facility
2360 in the area of the construction or reconstruction project;

2361 (b) identify a utility company that has an above-ground utility facility in the area of the
2362 proposed construction or reconstruction project; and

2363 (c) electronically notify each utility company identified in accordance with Subsections
2364 (2)(a) and (b).

2365 (3) The notice required by Subsection (2)(c) shall:

2366 (a) be made as early as practicable and at least 30 days:

2367 (i) before the preliminary design or project development meeting;

2368 (ii) before issuance of a request for proposal for a design-build project; or

2369 (iii) after a change in scope of a design-build project;

2370 (b) include:

2371 (i) information concerning the proposed project design;

2372 (ii) the proposed date of a required removal, relocation, or alteration of a utility facility;

2373 (iii) the federal identifying project number, if applicable; and

2374 (c) advise the utility company if the proposed project may qualify for aid for the utility
2375 company's expense in removing, relocating, or altering a utility facility.

2376 (4) A public agency shall permit a utility company notified under Subsection (2) to
2377 participate in the preliminary design or project development meeting, or similar meeting at
2378 which the project design is addressed.

2379 (5) (a) A public agency shall, not less than 30 days after providing notice under
2380 Subsection (2) to each utility company, provide the utility company an opportunity to meet
2381 with the public agency to allow the utility company to:

2382 (i) review project plans;

2383 (ii) understand the objectives and funding sources for the proposed project;

2384 (iii) provide and discuss recommendations to the public agency that may reasonably
2385 eliminate or minimize utility removal, relocation, or alteration costs, limit the disruption of
2386 utility company services, or eliminate or reduce the need for present or future utility facility
2387 removal, relocation, or alteration; and

2388 (iv) provide reasonable schedules to enable coordination of the construction project
2389 and removal, relocation, or alteration of a utility facility.

2390 (b) If a public agency provides a utility company with reasonable opportunities to meet
2391 in accordance with Subsection (5)(a), the utility company's failure to meet does not affect the
2392 public agency's ability to proceed with the project.

2393 (6) While recognizing the essential goals and objectives of the public highway agency
2394 in proceeding with and completing a project, the parties shall use their best efforts to find ways
2395 to:

2396 (a) eliminate the cost to the utility of relocation of the utility facilities; or

2397 (b) if elimination of the costs is not feasible, minimize the relocation costs to the extent
2398 reasonably possible.

2399 (7) A utility company notified under Subsection (2) shall coordinate with the public
2400 agency concerning the utility facility removal, relocation, or alteration, including the
2401 scheduling of the utility facility removal, relocation, or alteration.

2402 (8) A public agency and a utility company may address the removal, relocation, or
2403 alteration of a utility facility in relation to a construction or reconstruction project on a public
2404 highway in a franchise agreement in lieu of this section, if the public agency is otherwise
2405 permitted to enter into the franchise agreement.

2406 (9) This chapter does not affect a public agency's authority over a public right-of-way,
2407 including any rule, ordinance, order to relocate a utility as provided in Section 72-6-116, or
2408 other valid provision governing the use of the public right-of-way.

2409 Section 53. Section **54-8b-10** is amended to read:

2410 **54-8b-10. Imposing a surcharge to provide hearing and speech impaired persons**
2411 **with telecommunication devices -- Definitions -- Procedures for establishing program --**
2412 **Surcharge -- Administration and disposition of surcharge money.**

2413 (1) As used in this section:

2414 (a) "Certified deaf or severely hearing or speech impaired person" means any state

2415 resident who:

2416 (i) is so certified by:

2417 (A) a licensed physician;

2418 (B) an otolaryngologist;

2419 (C) a speech language pathologist;

2420 (D) an audiologist; or

2421 (E) a qualified state agency; and

2422 (ii) qualifies for assistance under any low income public assistance program

2423 administered by a state agency.

2424 (b) "Certified interpreter" means a person who is a certified interpreter under Title

2425 53A, Chapter 26a, Interpreter Services for the Hearing Impaired Act.

2426 (c) (i) "Telecommunication device" means any mechanical adaptation device that

2427 enables a deaf or severely hearing or speech impaired person to use the telephone.

2428 (ii) "Telecommunication device" includes:

2429 (A) telecommunication devices for the deaf (TDD);

2430 (B) telephone amplifiers;

2431 (C) telephone signal devices;

2432 (D) artificial larynxes; and

2433 (E) adaptive equipment for TDD keyboard access.

2434 (2) The commission shall hold hearings to establish a program whereby a certified deaf

2435 or severely hearing or speech impaired customer of a telecommunications corporation that

2436 provides service through a local exchange or of a wireless telecommunications provider may

2437 obtain a telecommunication device capable of serving the customer at no charge to the

2438 customer beyond the rate for basic service.

2439 (3) (a) The program described in Subsection (2) shall provide a dual party relay system

2440 using third party intervention to connect a certified deaf or severely hearing or speech impaired

2441 person with a normal hearing person by way of telecommunication devices designed for that

2442 purpose.

2443 (b) The commission may, by rule, establish the type of telecommunications device to

2444 be provided to ensure functional equivalence.

2445 (4) (a) The commission shall impose a surcharge on each residential and business

2446 access line of each customer of local-exchange telephone service in this state, and each
2447 residential and business telephone number of each customer of mobile telephone service in this
2448 state, not including a telephone number used exclusively to transfer data to and from a mobile
2449 device, which shall be collected by the telecommunications corporation providing public
2450 telecommunications service to the customer, to cover the costs of:

2451 (i) the program described in Subsection (2); and

2452 (ii) payments made under Subsection (5).

2453 (b) The commission shall establish by rule the amount to be charged under this section,
2454 provided that:

2455 (i) the surcharge does not exceed 20 cents per month for each residential and business
2456 access line for local-exchange telephone service, and for each residential and business
2457 telephone number for mobile telephone service, not including a telephone number used
2458 exclusively to transfer data to and from a mobile device; and

2459 (ii) if the surcharge is related to a mobile telecommunications service, the surcharge
2460 may be imposed, billed, and collected only to the extent permitted by the Mobile
2461 Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

2462 (c) The telecommunications corporation shall collect the surcharge from its customers
2463 and transfer the money collected to the commission under rules adopted by the commission.

2464 (d) The surcharge shall be separately identified on each bill to a customer.

2465 (5) (a) Money collected from the surcharge imposed under Subsection (4) shall be
2466 deposited in the state treasury as dedicated credits to be administered as determined by the
2467 commission.

2468 (b) These dedicated credits may be used only:

2469 (i) for the purchase, maintenance, repair, and distribution of telecommunication
2470 devices;

2471 (ii) for the acquisition, operation, maintenance, and repair of a dual party relay system;

2472 (iii) to reimburse telephone corporations for the expenses incurred in collecting and
2473 transferring to the commission the surcharge imposed by the commission;

2474 (iv) for the general administration of the program;

2475 (v) to train persons in the use of telecommunications devices; and

2476 (vi) by the commission to contract, in compliance with Title 63G, Chapter [6] 6a, Utah

2477 Procurement Code, with:

2478 (A) an institution within the state system of higher education listed in Section
2479 53B-1-102 for a program approved by the Board of Regents that trains persons to qualify as
2480 certified interpreters; or

2481 (B) the Division of Services to the Deaf and Hard of Hearing for a program that trains
2482 persons to qualify as certified interpreters.

2483 (c) (i) The commission shall make rules under Title 63G, Chapter 3, Utah
2484 Administrative Rulemaking Act, for the administration of money under Subsection (5)(b)(vi).

2485 (ii) In the initial rulemaking to determine the administration of money under
2486 Subsection (5)(b)(vi), the commission shall give notice and hold a public hearing.

2487 (d) Money received by the commission under Subsection (4) is nonlapsing.

2488 (6) (a) The telephone surcharge need not be collected by a telecommunications
2489 corporation if the amount collected would be less than the actual administrative costs of the
2490 collection.

2491 (b) If Subsection (6)(a) applies, the telecommunications corporation shall submit to the
2492 commission, in lieu of the revenue from the surcharge collection, a breakdown of the
2493 anticipated costs and the expected revenue from the collection, showing that the costs exceed
2494 the revenue.

2495 (7) The commission shall solicit the advice, counsel, and physical assistance of
2496 severely hearing or speech impaired persons and the organizations serving them in the design
2497 and implementation of the program.

2498 Section 54. Section **62A-1-108.5** is amended to read:

2499 **62A-1-108.5. Mental illness and intellectual disability examinations --**
2500 **Responsibilities of the department.**

2501 (1) In accomplishing its duties to conduct mental illness and intellectual disability
2502 examinations under Title 77, Utah Code of Criminal Procedure, the department shall proceed
2503 as outlined in this section and within appropriations authorized by the Legislature. The
2504 executive director may delegate the executive director's responsibilities under this section to
2505 one or more divisions within the department.

2506 (2) When the department is ordered by the court to conduct a mental illness or
2507 intellectual disability examination, the executive director shall:

2508 (a) direct that the examination be performed at the Utah State Hospital; or
2509 (b) designate at least one examiner, selected under Subsection (3), to examine the
2510 defendant in the defendant's current custody or status.

2511 (3) The department shall establish criteria, in consultation with the Commission on
2512 Criminal and Juvenile Justice, and shall contract with persons or organizations to conduct
2513 mental illness and intellectual disability examinations under Subsection (2)(b). In making this
2514 selection, the department shall follow the provisions of Title 63G, Chapter [6] 6a, Utah
2515 Procurement Code.

2516 (4) Nothing in this section prohibits the executive director, at the request of defense
2517 counsel or a prosecuting attorney in a criminal proceeding under Title 77, Utah Code of
2518 Criminal Procedure, and for good cause shown, from proposing a person who has not been
2519 previously selected under Subsection (3) to contract with the department to conduct the
2520 examination. In selecting that person, the criteria of the department established under
2521 Subsection (3) and the provisions of Title 63G, Chapter [6] 6a, Utah Procurement Code, shall
2522 be met.

2523 Section 55. Section **62A-3-104** is amended to read:

2524 **62A-3-104. Authority of division.**

2525 (1) The division is the sole state agency, as defined by the Older Americans Act of
2526 1965, 42 U.S.C. 3001 et seq., to:

- 2527 (a) serve as an effective and visible advocate for the aging and adult population of this
2528 state;
- 2529 (b) develop and administer a state plan under the policy direction of the board; and
- 2530 (c) take primary responsibility for state activities relating to provisions of the Older
2531 Americans Act of 1965, as amended.

2532 (2) (a) The division has authority to designate:

- 2533 (i) planning and service areas for the state; and
- 2534 (ii) an area agency on aging within each planning and service area to design and
2535 implement a comprehensive and coordinated system of services and programs for the aged
2536 within appropriations from the Legislature.

2537 (b) Designation as an area agency on aging may be withdrawn:

- 2538 (i) upon request of the area agency on aging; or

- 2539 (ii) upon noncompliance with the provisions of the:
- 2540 (A) Older Americans Act of 1965, 42 U.S.C. 3001 et seq.;
- 2541 (B) federal regulations enacted under the Older Americans Act of 1965, 42 U.S.C.
- 2542 3001 et seq.;
- 2543 (C) provisions of this chapter; or
- 2544 (D) rules, policies, or procedures established by the division.
- 2545 (3) (a) The division has the authority to designate:
- 2546 (i) planning and service areas for the state; and
- 2547 (ii) subject to Subsection (3)(b), an area agency on high risk adults within each
- 2548 planning and service area to design and implement a comprehensive and coordinated system of
- 2549 case management and programs for high risk adults within appropriations from the Legislature.
- 2550 (b) For purposes of Subsection (3)(a)(ii), before October 1, 1998, the division shall
- 2551 designate as the area agency on high risk adults in a planning and service area:
- 2552 (i) the area agency on aging that operates within the same geographic area if that
- 2553 agency requests, before July 1, 1998, to expand that agency's current contract with the division
- 2554 to include the responsibility of:
- 2555 (A) being the area agency on high risk adults; or
- 2556 (B) operating the area agency on high risk adults:
- 2557 (I) through joint cooperation with one or more existing area agencies on aging; and
- 2558 (II) without reducing geographical coverage in any service area; or
- 2559 (ii) a public or private nonprofit agency or office if the area agency on aging that
- 2560 operates within the same geographic area has not made a request in accordance with Subsection
- 2561 (3)(b)(i).
- 2562 (c) (i) Area agencies on high risk adults shall be in operation before July 1, 1999.
- 2563 (ii) The division's efforts to establish area agencies on high risk adults shall start with
- 2564 counties with a population of more than 150,000 people.
- 2565 (d) Designation as an area agency on high risk adults may be withdrawn:
- 2566 (i) upon request by the area agency; or
- 2567 (ii) upon noncompliance with:
- 2568 (A) state law;
- 2569 (B) federal law; or

- 2570 (C) rules, policies, or procedures established by the division.
- 2571 (4) (a) The division may, by following the procedures and requirements of Title 63J,
2572 Chapter 5, Federal Funds Procedures:
- 2573 (i) seek federal grants, loans, or participation in federal programs; and
2574 (ii) receive and distribute state and federal funds for the division's programs and
2575 services to the aging and adult populations of the state.
- 2576 (b) The division may not disburse public funds to a personal care attendant as payment
2577 for personal services rendered to an aged person or high risk adult, except as provided in
2578 Section 62A-3-104.3.
- 2579 (5) The division has authority to establish, either directly or by contract, programs of
2580 advocacy, monitoring, evaluation, technical assistance, and public education to enhance the
2581 quality of life for aging and adult citizens of the state.
- 2582 (6) In accordance with the rules of the division and Title 63G, Chapter [6] 6a, Utah
2583 Procurement Code, the division may contract with:
- 2584 (a) the governing body of an area agency to provide a comprehensive program of
2585 services; or
2586 (b) public and private entities for special services.
- 2587 (7) The division has authority to provide for collection, compilation, and dissemination
2588 of information, statistics, and reports relating to issues facing aging and adult citizens.
- 2589 (8) The division has authority to prepare and submit reports regarding the operation
2590 and administration of the division to the department, the Legislature, and the governor, as
2591 requested.
- 2592 (9) The division shall:
- 2593 (a) implement and enforce policies established by the board governing all aspects of
2594 the division's programs for aging and adult persons in the state;
2595 (b) in order to ensure compliance with all applicable state and federal statutes, policies,
2596 and procedures, monitor and evaluate programs provided by or under contract with:
- 2597 (i) the division;
2598 (ii) area agencies; and
2599 (iii) an entity that receives funds from an area agency;
2600 (c) examine expenditures of public funds;

- 2601 (d) withhold funds from programs based on contract noncompliance;
- 2602 (e) review and approve plans of area agencies in order to ensure:
- 2603 (i) compliance with division policies; and
- 2604 (ii) a statewide comprehensive program;
- 2605 (f) in order to further programs for aging and adult persons and prevent duplication of
- 2606 services, promote and establish cooperative relationships with:
- 2607 (i) state and federal agencies;
- 2608 (ii) social and health agencies;
- 2609 (iii) education and research organizations; and
- 2610 (iv) other related groups;
- 2611 (g) advocate for the aging and adult populations;
- 2612 (h) promote and conduct research on the problems and needs of aging and adult
- 2613 persons;
- 2614 (i) submit recommendations for changes in policies, programs, and funding to the:
- 2615 (i) governor; and
- 2616 (ii) Legislature; and
- 2617 (j) (i) accept contributions to and administer the funds contained in the "Out and
- 2618 About" Homebound Transportation Assistance Fund created in Section 62A-3-110; and
- 2619 (ii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
- 2620 Rulemaking Act, to facilitate the administration of the "Out and About" Homebound
- 2621 Transportation Assistance Fund in accordance with Section 62A-3-110.
- 2622 Section 56. Section **62A-3-104.1** is amended to read:
- 2623 **62A-3-104.1. Powers and duties of area agencies.**
- 2624 (1) An area agency that provides services to an aged person, or a high risk adult shall
- 2625 within the area agency's respective jurisdiction:
- 2626 (a) advocate by monitoring, evaluating, and providing input on all policies, programs,
- 2627 hearings, and levies that affect a person described in this Subsection (1);
- 2628 (b) design and implement a comprehensive and coordinated system of services within a
- 2629 designated planning and service area;
- 2630 (c) conduct periodic reviews and evaluations of needs and services;
- 2631 (d) prepare and submit to the division plans for funding and service delivery for

2632 services within the designated planning and service area;

2633 (e) establish, either directly or by contract, programs licensed under Chapter 2,
2634 Licensure of Programs and Facilities;

2635 (f) (i) appoint an area director;

2636 (ii) prescribe the area director's duties; and

2637 (iii) provide adequate and qualified staff to carry out the area plan described in
2638 Subsection (1)(d);

2639 (g) establish rules not contrary to policies of the board and rules of the division,
2640 regulating local services and facilities;

2641 (h) operate other services and programs funded by sources other than those
2642 administered by the division;

2643 (i) establish mechanisms to provide direct citizen input, including an area agency
2644 advisory council with a majority of members who are eligible for services from the area
2645 agency;

2646 (j) establish fee schedules; and

2647 (k) comply with the requirements and procedures of:

2648 (i) Title 11, Chapter 13, Interlocal Cooperation Act; and

2649 (ii) Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal
2650 Organizations, and Other Local Entities Act.

2651 (2) Before disbursing any public funds, an area agency shall require that all entities
2652 receiving any public funds agree in writing that:

2653 (a) the division may examine the entity's program and financial records; and

2654 (b) the auditor of the local area agency may examine and audit the entity's program and
2655 financial records, if requested by the local area agency.

2656 (3) An area agency on aging may not disburse public funds to a personal care attendant
2657 as payment for personal services rendered to an aged person or high risk adult, except as
2658 provided in Section 62A-3-104.3.

2659 (4) (a) For the purpose of providing services pursuant to this part, a local area agency
2660 may receive:

2661 (i) property;

2662 (ii) grants;

- 2663 (iii) gifts;
- 2664 (iv) supplies;
- 2665 (v) materials;
- 2666 (vi) any benefit derived from the items described in Subsections (4)(a)(i) through (v);

2667 and

- 2668 (vii) contributions.

2669 (b) If a gift is conditioned upon the gift's use for a specified service or program, the gift
2670 shall be used for the specific service or program.

2671 (5) (a) Area agencies shall award all public funds in compliance with:

- 2672 (i) the requirements of Title 63G, Chapter [6] 6a, Utah Procurement Code; or
- 2673 (ii) a county procurement ordinance that requires procurement procedures similar to
2674 those described in Subsection (5)(a)(i).

2675 (b) (i) If all initial bids on a project are rejected, the area agency shall publish a new
2676 invitation to bid.

2677 (ii) If no satisfactory bid is received by the area agency described in Subsection
2678 (5)(b)(i), when the bids received from the second invitation are opened the area agency may
2679 execute a contract without requiring competitive bidding.

2680 (c) (i) An area agency need not comply with the procurement provisions of this section
2681 when it disburses public funds to another governmental entity.

2682 (ii) For purposes of this Subsection (5)(c), "governmental entity" means any political
2683 subdivision or institution of higher education of the state.

2684 (d) (i) Contracts awarded by an area agency shall be for a:

- 2685 (A) fixed amount; and
- 2686 (B) limited period.

2687 (ii) The contracts described in Subsection (5)(d)(i) may be modified due to changes in
2688 available funding for the same contract purpose without competition.

2689 (6) Local area agencies shall comply with:

2690 (a) applicable state and federal:

- 2691 (i) statutes;
- 2692 (ii) policies; and
- 2693 (iii) audit requirements; and

2694 (b) directives resulting from an audit described in Subsection (6)(a)(iii).

2695 Section 57. Section **62A-14-109** is amended to read:

2696 **62A-14-109. Contract for services.**

2697 (1) In accordance with Title 63G, Chapter [6] 6a, Utah Procurement Code, the office
2698 may contract with one or more providers to perform guardian and conservator duties.

2699 (2) The office shall review and monitor the services provided by a contract provider to
2700 a ward for whom the office has been appointed guardian or conservator.

2701 Section 58. Section **63A-5-205** is amended to read:

2702 **63A-5-205. Contracting powers of director -- Retainage -- Health insurance**
2703 **coverage.**

2704 (1) As used in this section:

2705 (a) "Capital developments" has the same meaning as provided in Section 63A-5-104.

2706 (b) "Capital improvements" has the same meaning as provided in Section 63A-5-104.

2707 (c) "Employee" means an "employee," "worker," or "operative" as defined in Section
2708 34A-2-104 who:

2709 (i) works at least 30 hours per calendar week; and

2710 (ii) meets employer eligibility waiting requirements for health care insurance which
2711 may not exceed the first day of the calendar month following 90 days from the date of hire.

2712 (d) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

2713 (e) "Qualified health insurance coverage" is as defined in Section 26-40-115.

2714 (f) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

2715 (2) In accordance with Title 63G, Chapter [6] 6a, Utah Procurement Code, the director
2716 may:

2717 (a) subject to Subsection (3), enter into contracts for any work or professional services
2718 which the division or the State Building Board may do or have done; and

2719 (b) as a condition of any contract for architectural or engineering services, prohibit the
2720 architect or engineer from retaining a sales or agent engineer for the necessary design work.

2721 (3) (a) Except as provided in Subsection (3)(b), this Subsection (3) applies to all design
2722 or construction contracts entered into by the division or the State Building Board on or after
2723 July 1, 2009, and:

2724 (i) applies to a prime contractor if the prime contract is in the amount of \$1,500,000 or

- 2725 greater; and
- 2726 (ii) applies to a subcontractor if the subcontract is in the amount of \$750,000 or greater.
- 2727 (b) This Subsection (3) does not apply:
- 2728 (i) if the application of this Subsection (3) jeopardizes the receipt of federal funds;
- 2729 (ii) if the contract is a sole source contract;
- 2730 (iii) if the contract is an emergency procurement; or
- 2731 (iv) to a change order as defined in Section [~~63G-6-103~~] 63G-6a-103, or a modification
- 2732 to a contract, when the contract does not meet the threshold required by Subsection (3)(a).
- 2733 (c) A person who intentionally uses change orders or contract modifications to
- 2734 circumvent the requirements of Subsection (3)(a) is guilty of an infraction.
- 2735 (d) (i) A contractor subject to Subsection (3)(a) shall demonstrate to the director that
- 2736 the contractor has and will maintain an offer of qualified health insurance coverage for the
- 2737 contractor's employees and the employees' dependents.
- 2738 (ii) If a subcontractor of the contractor is subject to Subsection (3)(a), the contractor
- 2739 shall demonstrate to the director that the subcontractor has and will maintain an offer of
- 2740 qualified health insurance coverage for the subcontractor's employees and the employees'
- 2741 dependents.
- 2742 (e) (i) (A) A contractor who fails to meet the requirements of Subsection (3)(d)(i)
- 2743 during the duration of the contract is subject to penalties in accordance with administrative
- 2744 rules adopted by the division under Subsection (3)(f).
- 2745 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
- 2746 requirements of Subsection (3)(d)(ii).
- 2747 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (3)(d)(ii)
- 2748 during the duration of the contract is subject to penalties in accordance with administrative
- 2749 rules adopted by the division under Subsection (3)(f).
- 2750 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
- 2751 requirements of Subsection (3)(d)(i).
- 2752 (f) The division shall adopt administrative rules:
- 2753 (i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- 2754 (ii) in coordination with:
- 2755 (A) the Department of Environmental Quality in accordance with Section 19-1-206;

2756 (B) the Department of Natural Resources in accordance with Section 79-2-404;

2757 (C) a public transit district in accordance with Section 17B-2a-818.5;

2758 (D) the State Capitol Preservation Board in accordance with Section 63C-9-403;

2759 (E) the Department of Transportation in accordance with Section 72-6-107.5; and

2760 (F) the Legislature's Administrative Rules Review Committee; and

2761 (iii) which establish:

2762 (A) the requirements and procedures a contractor must follow to demonstrate to the
2763 director compliance with this Subsection (3) which shall include:

2764 (I) that a contractor will not have to demonstrate compliance with Subsection (3)(d)(i)
2765 or (ii) more than twice in any 12-month period; and

2766 (II) that the actuarially equivalent determination required for the qualified health
2767 insurance coverage in Subsection (1) is met by the contractor if the contractor provides the
2768 department or division with a written statement of actuarial equivalency from either:

2769 (Aa) the Utah Insurance Department;

2770 (Bb) an actuary selected by the contractor or the contractor's insurer; or

2771 (Cc) an underwriter who is responsible for developing the employer group's premium
2772 rates;

2773 (B) the penalties that may be imposed if a contractor or subcontractor intentionally
2774 violates the provisions of this Subsection (3), which may include:

2775 (I) a three-month suspension of the contractor or subcontractor from entering into
2776 future contracts with the state upon the first violation;

2777 (II) a six-month suspension of the contractor or subcontractor from entering into future
2778 contracts with the state upon the second violation;

2779 (III) an action for debarment of the contractor or subcontractor in accordance with
2780 Section [~~63G-6-804~~] 63G-6a-904 upon the third or subsequent violation; and

2781 (IV) monetary penalties which may not exceed 50% of the amount necessary to
2782 purchase qualified health insurance coverage for an employee and the dependents of an
2783 employee of the contractor or subcontractor who was not offered qualified health insurance
2784 coverage during the duration of the contract; and

2785 (C) a website on which the department shall post the benchmark for the qualified
2786 health insurance coverage identified in Subsection (1)(e).

2787 (g) (i) In addition to the penalties imposed under Subsection (3)(f)(iii), a contractor or
2788 subcontractor who intentionally violates the provisions of this section shall be liable to the
2789 employee for health care costs that would have been covered by qualified health insurance
2790 coverage.

2791 (ii) An employer has an affirmative defense to a cause of action under Subsection
2792 (3)(g)(i) if:

2793 (A) the employer relied in good faith on a written statement of actuarial equivalency
2794 provided by:

2795 (I) an actuary; or

2796 (II) an underwriter who is responsible for developing the employer group's premium
2797 rates; or

2798 (B) the department determines that compliance with this section is not required under
2799 the provisions of Subsection (3)(b).

2800 (iii) An employee has a private right of action only against the employee's employer to
2801 enforce the provisions of this Subsection (3)(g).

2802 (h) Any penalties imposed and collected under this section shall be deposited into the
2803 Medicaid Restricted Account created by Section 26-18-402.

2804 (i) The failure of a contractor or subcontractor to provide qualified health insurance
2805 coverage as required by this section:

2806 (i) may not be the basis for a protest or other action from a prospective bidder, offeror,
2807 or contractor under Section [~~63G-6-801~~] 63G-6a-1603 or any other provision in Title 63G,
2808 Chapter [~~6, Part 8, Legal and Contractual Remedies~~] 6a, Utah Procurement Code; and

2809 (ii) may not be used by the procurement entity or a prospective bidder, offeror, or
2810 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
2811 or construction.

2812 (4) The judgment of the director as to the responsibility and qualifications of a bidder
2813 is conclusive, except in case of fraud or bad faith.

2814 (5) The division shall make all payments to the contractor for completed work in
2815 accordance with the contract and pay the interest specified in the contract on any payments that
2816 are late.

2817 (6) If any payment on a contract with a private contractor to do work for the division or

2818 the State Building Board is retained or withheld, it shall be retained or withheld and released as
2819 provided in Section 13-8-5.

2820 Section 59. Section **63A-5-208** is amended to read:

2821 **63A-5-208. Definitions -- Certain public construction bids to list subcontractors --**
2822 **Changing subcontractors -- Bidders as subcontractors -- Dispute resolution process --**
2823 **Penalties.**

2824 (1) As used in this section:

2825 (a) "First-tier subcontractor" means a subcontractor who contracts directly with the
2826 prime contractor.

2827 (b) "Subcontractor" means any person or entity under contract with a contractor or
2828 another subcontractor to provide services or labor for the construction, installation, or repair of
2829 an improvement to real property.

2830 (c) "Subcontractor" includes a trade contractor or specialty contractor.

2831 (d) "Subcontractor" does not include suppliers who provide only materials, equipment,
2832 or supplies to a contractor or subcontractor.

2833 (2) The director shall apply the provisions of this section to achieve fair and
2834 competitive bidding and to discourage bid-shopping by contractors.

2835 (3) (a) (i) (A) On each public construction project, the director shall require the
2836 apparent lowest three bidders to submit a list of their first-tier subcontractors indicating each
2837 subcontractor's name, bid amount, and other information required by rule.

2838 (B) Other bidders who are not one of the apparent lowest three bidders may also
2839 submit a list of their first-tier subcontractors containing the information required by this
2840 Subsection (3).

2841 (C) The director may not consider any bid submitted by a bidder if the bidder fails to
2842 submit a subcontractor list meeting the requirements of this section.

2843 (ii) On projects where the contractor's total bid is less than \$500,000, subcontractors
2844 whose bid is less than \$20,000 need not be listed.

2845 (iii) On projects where the contractor's total bid is \$500,000 or more, subcontractors
2846 whose bid is less than \$35,000 need not be listed.

2847 (b) (i) The bidders shall submit this list within 24 hours after the bid opening time, not
2848 including Saturdays, Sundays, and state holidays.

2849 (ii) This list does not limit the director's right to authorize a change in the listing of any
2850 subcontractor.

2851 (c) The bidders shall verify that all subcontractors listed as part of their bids are
2852 licensed as required by state law.

2853 (d) Twenty-four hours after the bid opening, the contractor may change the contractor's
2854 subcontractors only after:

2855 (i) receiving permission from the director; and

2856 (ii) establishing that:

2857 (A) the change is in the best interest of the state; and

2858 (B) the contractor establishes reasons for the change that meet the standards established
2859 by the State Building Board.

2860 (e) If the director approves any changes in subcontractors that result in a net lower
2861 contract price for subcontracted work, the total of the prime contract may be reduced to reflect
2862 the changes.

2863 (4) (a) A bidder may list himself as a subcontractor when the bidder is currently
2864 licensed to perform the portion of the work for which the bidder lists himself as a subcontractor
2865 and:

2866 (i) the bidder intends to perform the work of a subcontractor himself; or

2867 (ii) the bidder intends to obtain a subcontractor to perform the work at a later date
2868 because the bidder was unable to:

2869 (A) obtain a bid from a qualified subcontractor; or

2870 (B) obtain a bid from a qualified subcontractor at a cost that the bidder considers to be
2871 reasonable.

2872 (b) (i) When the bidder intends to perform the work of a subcontractor himself, the
2873 director may, by written request, require that the bidder provide the director with information
2874 indicating the bidder's:

2875 (A) previous experience in the type of work to be performed; and

2876 (B) qualifications for performing the work.

2877 (ii) The bidder must respond in writing within five business days of receiving the
2878 director's written request.

2879 (iii) If the bidder's submitted information causes the director to reasonably believe that

2880 self-performance of the portion of the work by the bidder is likely to yield a substandard
2881 finished product, the director shall:

2882 (A) require the bidder to use a subcontractor for the portion of the work in question and
2883 obtain the subcontractor bid under the supervision of the director; or

2884 (B) reject the bidder's bid.

2885 (c) (i) When the bidder intends to obtain a subcontractor to perform the work at a later
2886 date, the bidder shall provide documentation with the subcontractor list describing:

2887 (A) the bidder's efforts to obtain a bid of a qualified subcontractor at a reasonable cost;

2888 and

2889 (B) why the bidder was unable to obtain a qualified subcontractor bid.

2890 (ii) If the bidder who intends to obtain a subcontractor to perform the work at a later
2891 date is awarded a contract, the director shall supervise the bidder's efforts to obtain a qualified
2892 subcontractor bid.

2893 (iii) The director may not adjust the amount of the contract awarded in order to reflect
2894 the actual amount of the subcontractor's bid.

2895 (5) The division may not disclose any subcontractor bid amounts obtained under this
2896 section until the division has awarded the project to a contractor.

2897 (6) (a) The director shall, in consultation with the State Building Board, prepare draft
2898 rules establishing a process for resolving disputes involved with contracts under the division's
2899 procurement authority.

2900 (b) The draft rules shall be presented to the Government Operations Interim Committee
2901 for review, comment, and recommendations before August 31, 2004.

2902 (c) The director shall consider, and the rules may include:

2903 (i) requirements regarding preliminary resolution efforts between the parties directly
2904 involved with the dispute;

2905 (ii) requirements for the filing of claims, including notification, timeframes, and
2906 documentation;

2907 (iii) identification of the types of costs eligible for allocation and a method for
2908 allocating costs among the parties to the dispute;

2909 (iv) required time periods, not to exceed 60 days, for the resolution of the claim;

2910 (v) provision for an independent hearing officer, panel, or arbitrator to extend the time

2911 period for resolution of the claim by not to exceed 60 additional days for good cause;

2912 (vi) provision for the extension of required time periods if the claimant agrees;

2913 (vii) requirements that decisions be issued in writing;

2914 (viii) provisions for administrative appeals of the decision;

2915 (ix) provisions for the timely payment of claims after resolution of the dispute,

2916 including any appeals;

2917 (x) a requirement that the final determination resulting from the dispute resolution

2918 process provided for in the rules is a final agency action subject to judicial review as provided

2919 in Sections 63G-4-401 and 63G-4-402;

2920 (xi) a requirement that a claim or dispute that does not include a monetary claim

2921 against the division or its agents is not limited to the dispute resolution process provided for in

2922 this Subsection (6);

2923 (xii) requirements for claims and disputes to be eligible for this dispute resolution

2924 process;

2925 (xiii) the use of an independent hearing officer, panel, arbitration, or mediation; and

2926 (xiv) the circumstances under which a subcontractor may file a claim directly with the

2927 division.

2928 (d) Persons pursuing claims under the process required by this Subsection (6):

2929 (i) are bound by the decision reached under this process unless the decision is properly

2930 appealed; and

2931 (ii) may not pursue claims or disputes under the dispute resolution process established

2932 in Sections [~~63G-6-805 through 63G-6-814~~] 63G-6a-1602 through 63G-6a-1802.

2933 (7) In addition to all other reasons allowed by law or rule, the director may reject all

2934 bids if none of the bidders whose bid is within the budget of the project submit a subcontractor

2935 list that meets the requirements of this section.

2936 (8) Any violation of this section, or any fraudulent misrepresentation by a contractor,

2937 subcontractor, or supplier, may be grounds for:

2938 (a) the contractor, subcontractor, or supplier to be suspended or debarred by the

2939 director; or

2940 (b) the contractor or subcontractor to be disciplined by the Division of Professional and

2941 Occupational Licensing.

2942 Section 60. Section **63A-5-302** is amended to read:
2943 **63A-5-302. Leasing responsibilities of the director.**
2944 (1) The director shall:
2945 (a) lease, in the name of the division, all real property space to be occupied by an
2946 agency;
2947 (b) in leasing space, comply with:
2948 (i) Title 63G, Chapter [6] 6a, Utah Procurement Code; and
2949 (ii) any legislative mandates contained in the appropriations act or other specific
2950 legislation;
2951 (c) apply the criteria contained in Subsection (1)(e) to prepare a report evaluating each
2952 high-cost lease at least 12 months before it expires;
2953 (d) evaluate each lease under the division's control and apply the criteria contained in
2954 Subsection (1)(e), when appropriate, to evaluate those leases;
2955 (e) in evaluating leases:
2956 (i) determine whether or not the lease is cost-effective when the needs of the agency to
2957 be housed in the leased facilities are considered;
2958 (ii) determine whether or not another option such as construction, use of other
2959 state-owned space, or a lease-purchase agreement is more cost-effective than leasing;
2960 (iii) determine whether or not the significant lease terms are cost-effective and provide
2961 the state with sufficient flexibility and protection from liability;
2962 (iv) compare the proposed lease payments to the current market rates, and evaluate
2963 whether or not the proposed lease payments are reasonable under current market conditions;
2964 (v) compare proposed significant lease terms to the current market, and recommend
2965 whether or not these proposed terms are reasonable under current market conditions; and
2966 (vi) if applicable, recommend that the lease or modification to a lease be approved or
2967 disapproved;
2968 (f) based upon the evaluation, include in the report recommendations that identify
2969 viable alternatives to:
2970 (i) make the lease cost-effective; or
2971 (ii) meet the agency's needs when the lease expires; and
2972 (g) upon request, provide the information included in the report to:

2973 (i) the agency benefitted by the lease; and
2974 (ii) the Office of Legislative Fiscal Analyst.

2975 (2) The director may:

2976 (a) subject to legislative appropriation, enter into facility leases with terms of up to 10
2977 years when the length of the lease's term is economically advantageous to the state; and

2978 (b) with the approval of the State Building Board and subject to legislative
2979 appropriation, enter into facility leases with terms of more than 10 years when the length of the
2980 lease's term is economically advantageous to the state.

2981 Section 61. Section **63B-2-102** is amended to read:

2982 **63B-2-102. Maximum amount -- Projects authorized.**

2983 (1) The total amount of bonds issued under this part may not exceed \$80,000,000.

2984 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
2985 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
2986 Subsection (2).

2987 (b) These costs may include the cost of acquiring land, interests in land, easements and
2988 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
2989 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
2990 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
2991 covered by construction of the projects plus a period of six months after the end of the
2992 construction period and all related engineering, architectural, and legal fees.

2993 (c) For the division, proceeds shall be provided for the following:

2994 CAPITAL IMPROVEMENTS

2995 1 Alterations, Repairs, and Improvements \$8,413,900

2996 TOTAL IMPROVEMENTS \$8,413,900

2997 CAPITAL FACILITIES CONSTRUCTION

2998

ESTIMATED
OPERATIONS
AND
MAINTENANCE
COSTS

PROJECT
PRIORITY

PROJECT
DESCRIPTION

AMOUNT
FUNDED

2999	1	Corrections - Northern Utah Community Corrections Center Phase II	\$2,729,700	\$158,000
3000	2	University of Utah Marriot Library Phase II	\$10,200,000	\$881,600
3001	3	Ogden Courts Building Phase II	\$12,096,000	\$340,000
3002	4	Utah National Guard - Southeast Utah Armory Phase II	\$397,800	\$70,500
3003	5	Southern Utah University Library Phase II	\$7,004,400	\$427,000
3004	6	Utah Valley Special Events Center Phase II	\$11,845,300	\$536,900
3005	7	Salt Lake Community College - Land	\$1,300,000	\$0
3006	8	Tax Commission Building	\$14,224,000	\$812,000
3007	9	Dixie College Business Building	\$2,823,300	\$187,800
3008	10	Salt Lake Community College South City 3rd Floor and Boiler	\$4,009,500	\$257,600
3009	11	Public Education - Deaf and Blind Classrooms	\$3,456,100	\$124,800
3010		TOTAL CONSTRUCTION	\$70,086,100	
3011		TOTAL IMPROVEMENTS AND CONSTRUCTION	\$78,500,000	

3012 (d) For purposes of this section, operations and maintenance costs:

3013 (i) are estimates only;

3014 (ii) may include any operations and maintenance costs already funded in existing

3015 agency budgets; and

3016 (iii) are not commitments by this Legislature or future Legislatures to fund those
3017 operations and maintenance costs.

3018 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
3019 constitute a limitation on the amount that may be expended for any project.

3020 (b) The board may revise these estimates and redistribute the amount estimated for a
3021 project among the projects authorized.

3022 (c) The commission, by resolution and in consultation with the board, may delete one
3023 or more projects from this list if the inclusion of that project or those projects in the list could
3024 be construed to violate state law or federal law or regulation.

3025 (4) (a) The division may enter into agreements related to these projects before the
3026 receipt of proceeds of bonds issued under this chapter.

3027 (b) The division shall make those expenditures from unexpended and unencumbered
3028 building funds already appropriated to the Capital Projects Fund.

3029 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
3030 of bonds issued under this chapter.

3031 (d) The commission may, by resolution, make any statement of intent relating to that
3032 reimbursement that is necessary or desirable to comply with federal tax law.

3033 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
3034 it is the intent of the Legislature that the balance necessary to complete the projects be
3035 addressed by future Legislatures, either through appropriations or through the issuance or sale
3036 of bonds.

3037 (b) For those phased projects, the division may enter into contracts for amounts not to
3038 exceed the anticipated full project funding but may not allow work to be performed on those
3039 contracts in excess of the funding already authorized by the Legislature.

3040 (c) Those contracts shall contain a provision for termination of the contract for the
3041 convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

3042 (d) It is also the intent of the Legislature that this authorization to the division does not
3043 bind future Legislatures to fund projects initiated from this authorization.

3044 Section 62. Section **63B-3-102** is amended to read:

3045 **63B-3-102. Maximum amount -- Projects authorized.**

3046 (1) The total amount of bonds issued under this part may not exceed \$64,600,000.

3047 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
 3048 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
 3049 Subsection (2).

3050 (b) These costs may include the cost of acquiring land, interests in land, easements and
 3051 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
 3052 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
 3053 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
 3054 covered by construction of the projects plus a period of six months after the end of the
 3055 construction period and all related engineering, architectural, and legal fees.

3056 (c) For the division, proceeds shall be provided for the following:

CAPITAL IMPROVEMENTS

3058	1	Alterations, Repairs, and Improvements	\$5,000,000
3059		TOTAL IMPROVEMENTS	\$5,000,000

CAPITAL AND ECONOMIC DEVELOPMENT

			ESTIMATED OPERATIONS AND MAINTENANCE COSTS
PRIORITY PROJECT	PROJECT DESCRIPTION	AMOUNT FUNDED	COSTS
3062	1 University of Utah Marriott Library Phase III (Final)	\$13,811,500	\$881,600
3063	2 Bridgerland Applied Technology Center Utah State University Space	\$2,400,000	\$0
3064	3 Weber State University - Heat Plant	\$2,332,100	\$9,600

3065	4	Department of Human Services - Division of Youth Corrections renamed in 2003 to the Division of Juvenile Justice Services	\$4,180,000	\$400,000
3066	5	Snow College - Administrative Services/Student Center	\$3,885,100	\$224,500
3067	6	Ogden Weber Applied Technology Center - Metal Trades Building Design and Equipment Purchase	\$750,000	\$0
3068	7	Department of Corrections B-Block Remodel	\$1,237,100	\$72,000
3069	8	Utah State University - Old Main Phase III Design	\$550,000	\$0
3070	9	Department of Corrections - 144 bed Uintah Expansion	\$6,700,000	\$168,800
3071	10	Southern Utah University Administrative Services/Student Center	\$5,630,400	\$314,200
3072	11	Anasazi Museum	\$760,200	\$8,500
3073	12	Hill Air Force Base - Easements Purchase	\$9,500,000	\$0
3074	13	Signetics Building Remodel	\$2,000,000	\$0
3075	14	Antelope Island Visitors Center	\$750,000	\$30,000
3076	15	State Fair Park - Master Study	\$150,000	\$0
3077	16	Utah National Guard - Draper Land	\$380,800	\$0
3078	17	Davis Applied Technology Center - Design	\$325,000	\$0
3079	18	Palisade State Park - Land and Park Development	\$800,000	\$0

3080	19	Department of Human Services - Cedar City Land	\$80,000	\$0
3081	20	Department of Human Services - Clearfield Land	\$163,400	\$0
3082	21	Electronic technology, equipment, and hardware	\$2,500,000	\$0
3083		TOTAL CAPITAL AND ECONOMIC DEVELOPMENT	\$58,885,600	
3084		TOTAL IMPROVEMENTS AND CAPITAL AND ECONOMIC DEVELOPMENT	\$63,885,600	

- 3085 (d) For purposes of this section, operations and maintenance costs:
- 3086 (i) are estimates only;
- 3087 (ii) may include any operations and maintenance costs already funded in existing
- 3088 agency budgets; and
- 3089 (iii) are not commitments by this Legislature or future Legislatures to fund those
- 3090 operations and maintenance costs.
- 3091 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
- 3092 constitute a limitation on the amount that may be expended for any project.
- 3093 (b) The board may revise these estimates and redistribute the amount estimated for a
- 3094 project among the projects authorized.
- 3095 (c) The commission, by resolution and in consultation with the board, may delete one
- 3096 or more projects from this list if the inclusion of that project or those projects in the list could
- 3097 be construed to violate state law or federal law or regulation.
- 3098 (4) (a) The division may enter into agreements related to these projects before the
- 3099 receipt of proceeds of bonds issued under this chapter.
- 3100 (b) The division shall make those expenditures from unexpended and unencumbered
- 3101 building funds already appropriated to the Capital Projects Fund.
- 3102 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
- 3103 of bonds issued under this chapter.
- 3104 (d) The commission may, by resolution, make any statement of intent relating to that
- 3105 reimbursement that is necessary or desirable to comply with federal tax law.

3106 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
3107 it is the intent of the Legislature that the balance necessary to complete the projects be
3108 addressed by future Legislatures, either through appropriations or through the issuance or sale
3109 of bonds.

3110 (b) For those phased projects, the division may enter into contracts for amounts not to
3111 exceed the anticipated full project funding but may not allow work to be performed on those
3112 contracts in excess of the funding already authorized by the Legislature.

3113 (c) Those contracts shall contain a provision for termination of the contract for the
3114 convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

3115 (d) It is also the intent of the Legislature that this authorization to the division does not
3116 bind future Legislatures to fund projects initiated from this authorization.

3117 Section 63. Section **63B-4-102** is amended to read:

3118 **63B-4-102. Maximum amount -- Projects authorized.**

3119 (1) The total amount of bonds issued under this part may not exceed \$45,300,000.

3120 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
3121 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
3122 Subsection (2).

3123 (b) These costs may include the cost of acquiring land, interests in land, easements and
3124 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
3125 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
3126 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
3127 covered by construction of the projects plus a period of six months after the end of the
3128 construction period, and all related engineering, architectural, and legal fees.

3129 (c) For the division, proceeds shall be provided for the following:

3130	CAPITAL IMPROVEMENTS	
3131	Alterations, Repairs, and Improvements	\$7,200,000
3132	TOTAL IMPROVEMENTS	\$7,200,000

3133 CAPITAL AND ECONOMIC DEVELOPMENT

3134			ESTIMATED OPERATIONS AND MAINTENANCE COSTS
	PROJECT DESCRIPTION	AMOUNT FUNDED	
3135	Corrections - Uinta IVA	\$11,300,000	\$212,800
3136	Utah County Youth Correctional Facility	\$6,650,000	\$245,000
3137	Ogden Weber Applied Technology Center - Metal Trades	\$5,161,000	\$176,000
3138	Project Reserve Fund	\$3,500,000	None
3139	Weber State University - Browning Center Remodel	\$3,300,000	None
3140	Heber Wells Building Remodel	\$2,000,000	None
3141	Higher Education Davis County - Land Purchase	\$1,600,000	None
3142	National Guard -- Provo Armory	\$1,500,000	\$128,000
3143	Department of Natural Resources - Pioneer Trails Visitor Center	\$900,000	\$65,000
3144	Higher Education Design Projects	\$800,000	Varies depending upon projects selected
3145	Salt Lake Community College - South Valley Planning	\$300,000	None
3146	Division of Youth Corrections renamed in 2003 to the Division of Juvenile Justice Services - Logan Land Purchase	\$120,000	None
3147	TOTAL CAPITAL AND ECONOMIC DEVELOPMENT		\$37,131,000
3148	TOTAL IMPROVEMENTS AND CAPITAL AND ECONOMIC DEVELOPMENT		\$44,331,000

3149 (d) For purposes of this section, operations and maintenance costs:

3150 (i) are estimates only;

3151 (ii) may include any operations and maintenance costs already funded in existing
3152 agency budgets; and

3153 (iii) are not commitments by this Legislature or future Legislatures to fund those
3154 operations and maintenance costs.

3155 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
3156 constitute a limitation on the amount that may be expended for any project.

3157 (b) The board may revise these estimates and redistribute the amount estimated for a
3158 project among the projects authorized.

3159 (c) The commission, by resolution and in consultation with the board, may delete one
3160 or more projects from this list if the inclusion of that project or those projects in the list could
3161 be construed to violate state law or federal law or regulation.

3162 (4) (a) The division may enter into agreements related to these projects before the
3163 receipt of proceeds of bonds issued under this chapter.

3164 (b) The division shall make those expenditures from unexpended and unencumbered
3165 building funds already appropriated to the Capital Projects Fund.

3166 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
3167 of bonds issued under this chapter.

3168 (d) The commission may, by resolution, make any statement of intent relating to that
3169 reimbursement that is necessary or desirable to comply with federal tax law.

3170 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
3171 it is the intent of the Legislature that the balance necessary to complete the projects be
3172 addressed by future Legislatures, either through appropriations or through the issuance or sale
3173 of bonds.

3174 (b) For those phased projects, the division may enter into contracts for amounts not to
3175 exceed the anticipated full project funding but may not allow work to be performed on those
3176 contracts in excess of the funding already authorized by the Legislature.

3177 (c) Those contracts shall contain a provision for termination of the contract for the
3178 convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

3179 (d) It is also the intent of the Legislature that this authorization to the division does not
3180 bind future Legislatures to fund projects initiated from this authorization.

3181 Section 64. Section **63B-5-102** is amended to read:

3182 **63B-5-102. Maximum amount -- Projects authorized.**

3183 (1) The total amount of bonds issued under this part may not exceed \$32,000,000.

3184 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
 3185 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
 3186 Subsection (2).

3187 (b) These costs may include the cost of acquiring land, interests in land, easements and
 3188 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
 3189 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
 3190 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
 3191 covered by construction of the projects plus a period of six months after the end of the
 3192 construction period, and all related engineering, architectural, and legal fees.

3193 (c) For the division, proceeds shall be provided for the following:

3194 **CAPITAL IMPROVEMENTS**

3195	Alterations, Repairs, and Improvements	\$7,600,000
3196	TOTAL IMPROVEMENTS	\$7,600,000

3197 **CAPITAL AND ECONOMIC DEVELOPMENT**

3198		ESTIMATED OPERATIONS AND AMOUNT FUNDED	MAINTENANCE COSTS
	PROJECT DESCRIPTION		
3199	Corrections - Gunnison (192 Beds)	\$13,970,000	\$210,000
3200	University of Utah -- Gardner Hall	\$7,361,000	\$203,900
3201	Weber State University Davis Campus -- Land Purchase	\$771,000	None
3202	Department of Workforce Services Cedar City -- Land Purchase	\$148,000	None
3203	College of Eastern Utah Durrant School -- Land Purchase	\$400,000	None
3204	State Hospital - Forensic Design (200 beds)	\$750,000	\$575,000

3205 TOTAL CAPITAL AND ECONOMIC \$23,400,000
DEVELOPMENT

3206 TOTAL IMPROVEMENTS AND CAPITAL AND \$31,000,000
ECONOMIC DEVELOPMENT

3207 (d) For purposes of this section, operations and maintenance costs:

3208 (i) are estimates only;

3209 (ii) may include any operations and maintenance costs already funded in existing
3210 agency budgets; and

3211 (iii) are not commitments by this Legislature or future Legislatures to fund those
3212 operations and maintenance costs.

3213 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
3214 constitute a limitation on the amount that may be expended for any project.

3215 (b) The board may revise these estimates and redistribute the amount estimated for a
3216 project among the projects authorized.

3217 (c) The commission, by resolution and in consultation with the board, may delete one
3218 or more projects from this list if the inclusion of that project or those projects in the list could
3219 be construed to violate state law or federal law or regulation.

3220 (4) (a) The division may enter into agreements related to these projects before the
3221 receipt of proceeds of bonds issued under this chapter.

3222 (b) The division shall make those expenditures from unexpended and unencumbered
3223 building funds already appropriated to the Capital Projects Fund.

3224 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
3225 of bonds issued under this chapter.

3226 (d) The commission may, by resolution, make any statement of intent relating to that
3227 reimbursement that is necessary or desirable to comply with federal tax law.

3228 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
3229 it is the intent of the Legislature that the balance necessary to complete the projects be
3230 addressed by future Legislatures, either through appropriations or through the issuance or sale
3231 of bonds.

3232 (b) For those phased projects, the division may enter into contracts for amounts not to
3233 exceed the anticipated full project funding but may not allow work to be performed on those

3234 contracts in excess of the funding already authorized by the Legislature.

3235 (c) Those contracts shall contain a provision for termination of the contract for the
3236 convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

3237 (d) It is also the intent of the Legislature that this authorization to the division does not
3238 bind future Legislatures to fund projects initiated from this authorization.

3239 Section 65. Section **63B-6-102** is amended to read:

3240 **63B-6-102. Maximum amount -- Projects authorized.**

3241 (1) The total amount of bonds issued under this part may not exceed \$57,000,000.

3242 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
3243 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
3244 Subsection (2).

3245 (b) These costs may include the cost of acquiring land, interests in land, easements and
3246 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
3247 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
3248 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
3249 covered by construction of the projects plus a period of six months after the end of the
3250 construction period, and all related engineering, architectural, and legal fees.

3251 (c) For the division, proceeds shall be provided for the following:

3252 CAPITAL AND ECONOMIC DEVELOPMENT

	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE
PROJECT DESCRIPTION		
3254 Youth Corrections - Carbon / Emery (18 beds)	\$2,298,100	\$70,000
3255 State Hospital - 100 bed Forensic Facility	\$13,800,700	\$320,600
3256 Utah State University - Widtsoe Hall	\$23,986,700	\$750,200
3257 Davis Applied Technology Center - Medical/Health Tech Addition	\$6,344,900	\$144,000
3258 Southern Utah University -- Physical Education Building (Design)	\$1,100,000	\$456,100

3259	Salt Lake Community College -- High Technology Building, 90th So. Campus (Design)	\$1,165,000	\$718,500
3260	Department of Natural Resources - Antelope Island Road	\$3,600,000	None
3261	Youth Corrections - Region 1 72 Secured Bed Facility	\$1,500,000	None
3262	Department of Natural Resources - Dead Horse Point Visitors Center	\$1,350,000	\$5,700
3263	TOTAL CAPITAL AND ECONOMIC DEVELOPMENT	\$55,145,400	

3264 (d) For purposes of this section, operations and maintenance costs:

3265 (i) are estimates only;

3266 (ii) may include any operations and maintenance costs already funded in existing
3267 agency budgets; and

3268 (iii) are not commitments by this Legislature or future Legislatures to fund those
3269 operations and maintenance costs.

3270 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
3271 constitute a limitation on the amount that may be expended for any project.

3272 (b) The board may revise these estimates and redistribute the amount estimated for a
3273 project among the projects authorized.

3274 (c) The commission, by resolution and in consultation with the board, may delete one
3275 or more projects from this list if the inclusion of that project or those projects in the list could
3276 be construed to violate state law or federal law or regulation.

3277 (4) (a) The division may enter into agreements related to these projects before the
3278 receipt of proceeds of bonds issued under this chapter.

3279 (b) The division shall make those expenditures from unexpended and unencumbered
3280 building funds already appropriated to the Capital Projects Fund.

3281 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
3282 of bonds issued under this chapter.

3283 (d) The commission may, by resolution, make any statement of intent relating to that

3284 reimbursement that is necessary or desirable to comply with federal tax law.

3285 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
3286 it is the intent of the Legislature that the balance necessary to complete the projects be
3287 addressed by future Legislatures, either through appropriations or through the issuance or sale
3288 of bonds.

3289 (b) For those phased projects, the division may enter into contracts for amounts not to
3290 exceed the anticipated full project funding but may not allow work to be performed on those
3291 contracts in excess of the funding already authorized by the Legislature.

3292 (c) Those contracts shall contain a provision for termination of the contract for the
3293 convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

3294 (d) It is also the intent of the Legislature that this authorization to the division does not
3295 bind future Legislatures to fund projects initiated from this authorization.

3296 Section 66. Section **63B-6-402** is amended to read:

3297 **63B-6-402. Maximum amount -- Projects authorized.**

3298 (1) The total amount of bonds issued under this part may not exceed \$9,000,000.

3299 (2) (a) Proceeds from the issuance of bonds shall be provided to the State Tax
3300 Commission to provide funds to pay all or part of the cost of the project described in this
3301 Subsection (2).

3302 (b) These costs may include:

3303 (i) the cost of acquisition, development, and conversion of computer hardware and
3304 software for motor vehicle fee systems and tax collection and accounting systems of the state;

3305 (ii) interest estimated to accrue on these bonds during the period to be covered by that
3306 development and conversion, plus a period of six months following the completion of the
3307 development and conversion; and

3308 (iii) all related engineering, consulting, and legal fees.

3309 (c) For the State Tax Commission, proceeds shall be provided for the following:

3310	PROJECT	AMOUNT
	DESCRIPTION	FUNDED
3311	UTAX SYSTEMS ACQUISITION AND DEVELOPMENT	\$8,500,000

3312 (3) The commission, by resolution may decline to issue bonds if the project could be

3313 construed to violate state law or federal law or regulation.

3314 (4) (a) For this project, for which only partial funding is provided in Subsection (2), it
3315 is the intent of the Legislature that the balance necessary to complete the project be addressed
3316 by future Legislatures, either through appropriations or through the issuance or sale of bonds.

3317 (b) The State Tax Commission may enter into contracts for amounts not to exceed the
3318 anticipated full project funding but may not allow work to be performed on those contracts in
3319 excess of the funding already authorized by the Legislature.

3320 (c) Those contracts shall contain a provision for termination of the contract for the
3321 convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

3322 (d) It is also the intent of the Legislature that this authorization to the State Tax
3323 Commission does not bind future Legislatures to fund projects initiated from this authorization.

3324 Section 67. Section **63B-7-102** is amended to read:

3325 **63B-7-102. Maximum amount -- Projects authorized.**

3326 (1) The total amount of bonds issued under this part may not exceed \$33,600,000.

3327 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
3328 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
3329 Subsection (2).

3330 (b) These costs may include the cost of acquiring land, interests in land, easements and
3331 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
3332 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
3333 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
3334 covered by construction of the projects plus a period of six months after the end of the
3335 construction period, and all related engineering, architectural, and legal fees.

3336 (c) For the division, proceeds shall be provided for the following:

PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE
3338 Southern Utah University Land Purchase	\$4,600,000	\$0
3339 Salt Lake Community College High Tech Center - Jordan Campus	\$3,980,700	\$507,900

3340	Children's Special Health Care Needs Clinic	\$755,400	\$247,600
3341	Youth Corrections - 2 @ 32 beds (Vernal / Logan)	\$419,500	\$276,000
3342	Corrections - Gunnison 288 bed and Lagoon Expansion	\$8,425,600	\$0
3343	University of Utah - Cowles Building	\$445,500	\$101,700
3344	Utah Valley State College - Technical Building	\$1,166,300	\$391,000
3345	Sevier Valley Applied Technology Center - Shop Expansion	\$3,014,300	\$443,300
3346	Division of Parks and Recreation Statewide Restrooms	\$1,000,000	\$22,700
3347	Murray Highway Patrol Office	\$2,300,000	\$81,000
3348	Department of Workforce Services - Davis County Employment Center	\$2,780,000	\$128,100
3349	State Hospital - Rampton II	\$1,600,000	\$462,000
3350	Courts - 4th District Land - Provo	\$1,368,000	\$0
3351	Dixie College - Land	\$1,000,000	\$0
3352	TOTAL CAPITAL AND ECONOMIC DEVELOPMENT	\$32,855,300	

- 3353 (d) For purposes of this section, operations and maintenance costs:
- 3354 (i) are estimates only;
- 3355 (ii) may include any operations and maintenance costs already funded in existing
- 3356 agency budgets; and
- 3357 (iii) are not commitments by this Legislature or future Legislatures to fund those
- 3358 operations and maintenance costs.
- 3359 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
- 3360 constitute a limitation on the amount that may be expended for any project.
- 3361 (b) The board may revise these estimates and redistribute the amount estimated for a
- 3362 project among the projects authorized.
- 3363 (c) The commission, by resolution and in consultation with the board, may delete one

3364 or more projects from this list if the inclusion of that project or those projects in the list could
3365 be construed to violate state law or federal law or regulation.

3366 (4) (a) The division may enter into agreements related to these projects before the
3367 receipt of proceeds of bonds issued under this chapter.

3368 (b) The division shall make those expenditures from unexpended and unencumbered
3369 building funds already appropriated to the Capital Projects Fund.

3370 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
3371 of bonds issued under this chapter.

3372 (d) The commission may, by resolution, make any statement of intent relating to that
3373 reimbursement that is necessary or desirable to comply with federal tax law.

3374 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
3375 it is the intent of the Legislature that the balance necessary to complete the projects be
3376 addressed by future Legislatures, either through appropriations or through the issuance or sale
3377 of bonds.

3378 (b) For those phased projects, the division may enter into contracts for amounts not to
3379 exceed the anticipated full project funding but may not allow work to be performed on those
3380 contracts in excess of the funding already authorized by the Legislature.

3381 (c) Those contracts shall contain a provision for termination of the contract for the
3382 convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

3383 (d) It is also the intent of the Legislature that this authorization to the division does not
3384 bind future Legislatures to fund projects initiated from this authorization.

3385 Section 68. Section **63B-7-402** is amended to read:

3386 **63B-7-402. Maximum amount -- Projects authorized.**

3387 (1) The total amount of bonds issued under this part may not exceed \$16,500,000.

3388 (2) (a) Proceeds from the issuance of bonds shall be provided to the State Tax
3389 Commission to provide funds to pay all or part of the cost of the project described in this
3390 Subsection (2).

3391 (b) These costs may include:

3392 (i) the cost of acquisition, development, and conversion of computer hardware and
3393 software for motor vehicle fee systems and tax collection and accounting systems of the state;

3394 (ii) interest estimated to accrue on these bonds during the period to be covered by that

3395 development and conversion, plus a period of six months following the completion of the
3396 development and conversion; and

3397 (iii) all related engineering, consulting, and legal fees.

3398 (c) For the State Tax Commission, proceeds shall be provided for the following:

3399	PROJECT	AMOUNT
	DESCRIPTION	FUNDED
3400	UTAX SYSTEMS ACQUISITION AND DEVELOPMENT	\$15,650,000

3401 (3) The commission, by resolution may decline to issue bonds if the project could be
3402 construed to violate state law or federal law or regulation.

3403 (4) (a) For this project, for which only partial funding is provided in Subsection (2), it
3404 is the intent of the Legislature that the balance necessary to complete the project be addressed
3405 by future Legislatures, either through appropriations or through the issuance or sale of bonds.

3406 (b) The State Tax Commission may enter into contracts for amounts not to exceed the
3407 anticipated full project funding but may not allow work to be performed on those contracts in
3408 excess of the funding already authorized by the Legislature.

3409 (c) Those contracts shall contain a provision for termination of the contract for the
3410 convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

3411 (d) It is also the intent of the Legislature that this authorization to the State Tax
3412 Commission does not bind future Legislatures to fund projects initiated from this authorization.

3413 Section 69. Section **63B-8-102** is amended to read:

3414 **63B-8-102. Maximum amount -- Projects authorized.**

3415 (1) The total amount of bonds issued under this part may not exceed \$48,500,000.

3416 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
3417 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
3418 Subsection (2).

3419 (b) These costs may include the cost of acquiring land, interests in land, easements and
3420 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
3421 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
3422 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
3423 covered by construction of the projects plus a period of six months after the end of the

3424 construction period, and all related engineering, architectural, and legal fees.

3425 (c) For the division, proceeds shall be provided for the following:

3426	PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE
3427	Southern Utah University - Physical Education Building	\$2,493,200	\$447,744
3428	Utah Valley State College - Information Sciences Building	\$29,000,000	\$721,875
3429	University of Utah - Cowles Building Renovation	\$7,268,500	\$140,217
3430	Vernal District Court	\$4,539,500	\$149,989
3431	Salt Lake Community College - Applied Education Center	\$4,200,000	\$281,784
3432	TOTAL CAPITAL AND ECONOMIC DEVELOPMENT	\$47,501,200	

3433 (d) For purposes of this section, operations and maintenance costs:

3434 (i) are estimates only;

3435 (ii) may include any operations and maintenance costs already funded in existing
3436 agency budgets; and

3437 (iii) are not commitments by this Legislature or future Legislatures to fund those
3438 operations and maintenance costs.

3439 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
3440 constitute a limitation on the amount that may be expended for any project.

3441 (b) The board may revise these estimates and redistribute the amount estimated for a
3442 project among the projects authorized.

3443 (c) The commission, by resolution and in consultation with the board, may delete one
3444 or more projects from this list if the inclusion of that project or those projects in the list could
3445 be construed to violate state law or federal law or regulation.

3446 (4) (a) The division may enter into agreements related to these projects before the

3447 receipt of proceeds of bonds issued under this chapter.

3448 (b) The division shall make those expenditures from unexpended and unencumbered
3449 building funds already appropriated to the Capital Projects Fund.

3450 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
3451 of bonds issued under this chapter.

3452 (d) The commission may, by resolution, make any statement of intent relating to that
3453 reimbursement that is necessary or desirable to comply with federal tax law.

3454 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
3455 it is the intent of the Legislature that the balance necessary to complete the projects be
3456 addressed by future Legislatures, either through appropriations or through the issuance or sale
3457 of bonds.

3458 (b) For those phased projects, the division may enter into contracts for amounts not to
3459 exceed the anticipated full project funding but may not allow work to be performed on those
3460 contracts in excess of the funding already authorized by the Legislature.

3461 (c) Those contracts shall contain a provision for termination of the contract for the
3462 convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

3463 (d) It is also the intent of the Legislature that this authorization to the division does not
3464 bind future Legislatures to fund projects initiated from this authorization.

3465 Section 70. Section **63B-8-402** is amended to read:

3466 **63B-8-402. Maximum amount -- Projects authorized.**

3467 (1) The total amount of bonds issued under this part may not exceed \$7,400,000.

3468 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
3469 funds to pay all or part of the cost of acquiring and constructing the project listed in this
3470 Subsection (2).

3471 (b) These costs may include the cost of acquiring land, interests in land, easements and
3472 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
3473 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
3474 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
3475 covered by construction of the projects plus a period of six months after the end of the
3476 construction period, and all related engineering, architectural, and legal fees.

3477 (c) For the division, proceeds shall be provided for the following:

3478		ESTIMATED OPERATIONS AND MAINTENANCE
	PROJECT DESCRIPTION	AMOUNT FUNDED
3479	State Hospital - Rampton II	\$7,000,000 \$462,000

- 3480 (d) For purposes of this section, operations and maintenance costs:
- 3481 (i) are estimates only;
- 3482 (ii) may include any operations and maintenance costs already funded in existing
- 3483 agency budgets; and
- 3484 (iii) are not commitments by this Legislature or future Legislatures to fund those
- 3485 operations and maintenance costs.
- 3486 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
- 3487 constitute a limitation on the amount that may be expended for any project.
- 3488 (b) The board may revise these estimates and redistribute the amount estimated for a
- 3489 project among the projects authorized.
- 3490 (c) The commission, by resolution and in consultation with the board, may delete one
- 3491 or more projects from this list if the inclusion of that project or those projects in the list could
- 3492 be construed to violate state law or federal law or regulation.
- 3493 (4) (a) The division may enter into agreements related to these projects before the
- 3494 receipt of proceeds of bonds issued under this chapter.
- 3495 (b) The division shall make those expenditures from unexpended and unencumbered
- 3496 building funds already appropriated to the Capital Projects Fund.
- 3497 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
- 3498 of bonds issued under this chapter.
- 3499 (d) The commission may, by resolution, make any statement of intent relating to that
- 3500 reimbursement that is necessary or desirable to comply with federal tax law.
- 3501 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
- 3502 it is the intent of the Legislature that the balance necessary to complete the projects be
- 3503 addressed by future Legislatures, either through appropriations or through the issuance or sale
- 3504 of bonds.
- 3505 (b) For those phased projects, the division may enter into contracts for amounts not to

3506 exceed the anticipated full project funding but may not allow work to be performed on those
3507 contracts in excess of the funding already authorized by the Legislature.

3508 (c) Those contracts shall contain a provision for termination of the contract for the
3509 convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

3510 (d) It is also the intent of the Legislature that this authorization to the division does not
3511 bind future Legislatures to fund projects initiated from this authorization.

3512 Section 71. Section **63B-9-103** is amended to read:

3513 **63B-9-103. Other capital facility authorizations and intent language.**

3514 (1) It is the intent of the Legislature that:

3515 (a) Utah State University use institutional funds to plan, design, and construct a
3516 renovation and expansion of the Edith Bowen School under the direction of the director of the
3517 Division of Facilities Construction and Management unless supervisory authority has been
3518 delegated;

3519 (b) no state funds be used for any portion of this project; and

3520 (c) the university may request state funds for operations and maintenance to the extent
3521 that the university is able to demonstrate to the Board of Regents that the facility meets
3522 approved academic and training purposes under Board of Regents policy R710.

3523 (2) It is the intent of the Legislature that:

3524 (a) the University of Utah use institutional funds to plan, design, and construct a
3525 College of Science Math Center under the direction of the director of the Division of Facilities
3526 Construction and Management unless supervisory authority has been delegated;

3527 (b) no state funds be used for any portion of this project; and

3528 (c) the university may request state funds for operations and maintenance to the extent
3529 that the university is able to demonstrate to the Board of Regents that the facility meets
3530 approved academic and training purposes under Board of Regents policy R710.

3531 (3) It is the intent of the Legislature that:

3532 (a) the University of Utah use institutional funds to plan, design, and construct a
3533 Burbidge Athletics and Academics Building under the direction of the director of the Division
3534 of Facilities Construction and Management unless supervisory authority has been delegated;

3535 (b) no state funds be used for any portion of this project; and

3536 (c) the university may not request state funds for operations and maintenance.

- 3537 (4) It is the intent of the Legislature that:
- 3538 (a) the University of Utah use institutional funds to plan, design, and construct an
- 3539 expansion to the bookstore under the direction of the director of the Division of Facilities
- 3540 Construction and Management unless supervisory authority has been delegated;
- 3541 (b) no state funds be used for any portion of this project; and
- 3542 (c) the university may not request state funds for operations and maintenance.
- 3543 (5) It is the intent of the Legislature that:
- 3544 (a) the University of Utah use institutional funds to plan, design, and construct a Health
- 3545 Sciences/Basic Sciences Building under the direction of the director of the Division of
- 3546 Facilities Construction and Management unless supervisory authority has been delegated;
- 3547 (b) no state funds be used for any portion of this project; and
- 3548 (c) the university may request state funds for operations and maintenance to the extent
- 3549 that the university is able to demonstrate to the Board of Regents that the facility meets
- 3550 approved academic and training purposes under Board of Regents policy R710.
- 3551 (6) It is the intent of the Legislature that:
- 3552 (a) Weber State University use institutional funds to plan, design, and construct an
- 3553 expansion to the stadium under the direction of the director of the Division of Facilities
- 3554 Construction and Management unless supervisory authority has been delegated;
- 3555 (b) no state funds be used for any portion of this project; and
- 3556 (c) the university may not request state funds for operations and maintenance.
- 3557 (7) It is the intent of the Legislature that:
- 3558 (a) Utah Valley State College use institutional funds to plan, design, and construct a
- 3559 baseball stadium under the direction of the director of the Division of Facilities Construction
- 3560 and Management unless supervisory authority has been delegated;
- 3561 (b) no state funds be used for any portion of this project; and
- 3562 (c) the college may not request state funds for operations and maintenance.
- 3563 (8) It is the intent of the Legislature that:
- 3564 (a) Southern Utah University use institutional funds to plan, design, and construct a
- 3565 weight training room under the direction of the director of the Division of Facilities
- 3566 Construction and Management unless supervisory authority has been delegated;
- 3567 (b) no state funds be used for any portion of this project; and

- 3568 (c) the university may not request state funds for operations and maintenance.
- 3569 (9) It is the intent of the Legislature that:
- 3570 (a) Snow College may lease land at the Snow College Richfield campus to a private
- 3571 developer for the construction and operation of student housing;
- 3572 (b) the oversight and inspection of the construction comply with Section 63A-5-206;
- 3573 (c) no state funds be used for any portion of this project; and
- 3574 (d) the college may not request state funds for operations and maintenance.
- 3575 (10) It is the intent of the Legislature that:
- 3576 (a) Salt Lake Community College may lease land at the Jordan campus to Jordan
- 3577 School District for the construction and operation of an Applied Technology Education Center;
- 3578 (b) the oversight and inspection of the construction comply with Section 63A-5-206;
- 3579 (c) no state funds be used for any portion of this project; and
- 3580 (d) the college may not request state funds for operations and maintenance.
- 3581 (11) It is the intent of the Legislature that:
- 3582 (a) the Department of Transportation exchange its maintenance station at Kimball
- 3583 Junction for property located near Highway 40 in Summit County; and
- 3584 (b) the Department of Transportation use federal funds, rent paid by the Salt Lake
- 3585 Organizing Committee for the use of the maintenance station, and any net proceeds resulting
- 3586 from the exchange of property to construct a replacement facility under the direction of the
- 3587 director of the Division of Facilities Construction and Management unless supervisory
- 3588 authority has been delegated.
- 3589 (12) It is the intent of the Legislature that:
- 3590 (a) the Department of Transportation sell surplus property in Utah County;
- 3591 (b) the Department of Transportation use funds from that sale to remodel existing
- 3592 space and add an addition to the Region 3 Complex; and
- 3593 (c) the project cost not exceed the funds received through sale of property.
- 3594 (13) It is the intent of the Legislature that the Department of Workforce Services use
- 3595 proceeds from property sales to purchase additional property adjacent to its state-owned facility
- 3596 in Logan.
- 3597 (14) (a) It is the intent of the Legislature that, because only partial funding is provided
- 3598 for the Heat Plant/Infrastructure Project at Utah State University, the balance necessary to

3599 complete this project be addressed by future Legislatures, either through appropriations or
3600 through the issuance of bonds.

3601 (b) (i) In compliance with Section 63A-5-207, the division may enter into contracts for
3602 amounts not to exceed the anticipated full project funding but may not allow work to be
3603 performed on those contracts in excess of the funding already authorized by the Legislature.

3604 (ii) Those contracts shall contain a provision for termination of the contract for the
3605 convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

3606 (c) It is also the intent of the Legislature that this authorization to the division does not
3607 bind future Legislatures to fund the Heat Plant/Infrastructure Project at Utah State University.

3608 Section 72. Section **63B-11-202** is amended to read:

3609 **63B-11-202. Maximum amount -- Projects authorized.**

3610 (1) (a) The total amount of bonds issued under this part may not exceed \$21,250,000.

3611 (b) When Utah State University certifies to the commission that the university has
3612 obtained reliable commitments, convertible to cash, of \$5,000,000 or more in nonstate funds to
3613 construct an addition to the new engineering building and demolish the existing engineering
3614 classroom building, the commission may issue and sell general obligation bonds in a total
3615 amount not to exceed \$6,100,000.

3616 (c) When the University of Utah certifies to the commission that the university has
3617 obtained reliable commitments, convertible to cash, of \$13,000,000 or more in nonstate funds
3618 to construct a new engineering building, the commission may issue and sell general obligation
3619 bonds in a total amount not to exceed \$15,150,000.

3620 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
3621 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
3622 Subsection (2).

3623 (b) These costs may include the cost of acquiring land, interests in land, easements and
3624 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
3625 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
3626 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
3627 covered by construction of the projects plus a period of six months after the end of the
3628 construction period, and all related engineering, architectural, and legal fees.

3629 (c) For the division, proceeds shall be provided for the following:

3630	PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATING AND MAINTENANCE COSTS
3631	1. Utah State University Engineering Building Renovation	\$5,943,500	\$425,000
3632	2. University of Utah New Engineering Building	\$15,000,000	\$489,000
3633	COSTS OF ISSUANCE	\$306,500	
3634	TOTAL CAPITAL AND ECONOMIC DEVELOPMENT		\$21,250,000

- 3635 (d) For purposes of this section, operations and maintenance costs:
- 3636 (i) are estimates only;
- 3637 (ii) may include any operations and maintenance costs already funded in existing
- 3638 agency budgets; and
- 3639 (iii) are not commitments by this Legislature or future Legislatures to fund those
- 3640 operations and maintenance costs.
- 3641 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
- 3642 constitute a limitation on the amount that may be expended for any project.
- 3643 (b) The board may revise these estimates and redistribute the amount estimated for a
- 3644 project among the projects authorized.
- 3645 (c) The commission, by resolution and in consultation with the board, may delete one
- 3646 or more projects from this list if the inclusion of that project or those projects in the list could
- 3647 be construed to violate state law or federal law or regulation.
- 3648 (4) (a) The division may enter into agreements related to these projects before the
- 3649 receipt of proceeds of bonds issued under this chapter.
- 3650 (b) The division shall make those expenditures from unexpended and unencumbered
- 3651 building funds already appropriated to the Capital Projects Fund.
- 3652 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
- 3653 of bonds issued under this chapter.
- 3654 (d) The commission may, by resolution, make any statement of intent relating to that

3655 reimbursement that is necessary or desirable to comply with federal tax law.

3656 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
3657 it is the intent of the Legislature that the balance necessary to complete the projects be
3658 addressed by future Legislatures, either through appropriations or through the issuance or sale
3659 of bonds.

3660 (b) For those phased projects, the division may enter into contracts for amounts not to
3661 exceed the anticipated full project funding but may not allow work to be performed on those
3662 contracts in excess of the funding already authorized by the Legislature.

3663 (c) Those contracts shall contain a provision for termination of the contract for the
3664 convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

3665 (d) It is also the intent of the Legislature that this authorization to the division does not
3666 bind future Legislatures to fund projects initiated from this authorization.

3667 Section 73. Section **63C-7-210** is amended to read:

3668 **63C-7-210. Exemption from certain acts.**

3669 (1) The Utah Communications Agency Network is exempt from:

3670 (a) Title 63J, Chapter 1, Budgetary Procedures Act;

3671 (b) Title 63A, Utah Administrative Services Code, except as provided in Section
3672 63A-4-205.5;

3673 (c) Title 63G, Chapter [6] 6a, Utah Procurement Code;

3674 (d) Title 63G, Chapter 4, Administrative Procedures Act; and

3675 (e) Title 67, Chapter 19, Utah State Personnel Management Act.

3676 (2) The board shall adopt budgetary procedures, accounting, procurement, and
3677 personnel policies substantially similar to those from which they have been exempted in
3678 Subsection (1).

3679 Section 74. Section **63C-9-301** is amended to read:

3680 **63C-9-301. Board powers -- Subcommittees.**

3681 (1) The board shall:

3682 (a) except as provided in Subsection (2), exercise complete jurisdiction and
3683 stewardship over capitol hill facilities, capitol hill grounds, and the capitol hill complex;

3684 (b) preserve, maintain, and restore the capitol hill complex, capitol hill facilities,
3685 capitol hill grounds, and their contents;

- 3686 (c) before October 1 of each year, review and approve the executive director's annual
3687 budget request for submittal to the governor and Legislature;
- 3688 (d) by October 1 of each year, prepare and submit a recommended budget request for
3689 the upcoming fiscal year for the capitol hill complex to:
- 3690 (i) the governor, through the Governor's Office of Planning and Budget; and
3691 (ii) the Legislature's appropriations subcommittee responsible for capitol hill facilities,
3692 through the Office of Legislative Fiscal Analyst;
- 3693 (e) review and approve the executive director's:
- 3694 (i) annual work plan;
3695 (ii) long-range master plan for the capitol hill complex, capitol hill facilities, and
3696 capitol hill grounds; and
- 3697 (iii) furnishings plan for placement and care of objects under the care of the board;
- 3698 (f) approve all changes to the buildings and their grounds, including:
- 3699 (i) restoration, remodeling, and rehabilitation projects;
3700 (ii) usual maintenance program; and
3701 (iii) any transfers or loans of objects under the board's care;
- 3702 (g) define and identify all significant aspects of the capitol hill complex, capitol hill
3703 facilities, and capitol hill grounds, after consultation with the:
- 3704 (i) Division of Facilities Construction and Management;
3705 (ii) State Library Division;
3706 (iii) Division of Archives and Records Service;
3707 (iv) Division of State History;
3708 (v) Office of Museum Services; and
3709 (vi) Arts Council;
- 3710 (h) inventory, define, and identify all significant contents of the buildings and all
3711 state-owned items of historical significance that were at one time in the buildings, after
3712 consultation with the:
- 3713 (i) Division of Facilities Construction and Management;
3714 (ii) State Library Division;
3715 (iii) Division of Archives and Records Service;
3716 (iv) Division of State History;

- 3717 (v) Office of Museum Services; and
3718 (vi) Arts Council;
- 3719 (i) maintain archives relating to the construction and development of the buildings, the
3720 contents of the buildings and their grounds, including documents such as plans, specifications,
3721 photographs, purchase orders, and other related documents, the original copies of which shall
3722 be maintained by the Division of Archives and Records Service;
- 3723 (j) comply with federal and state laws related to program and facility accessibility; and
3724 (k) establish procedures for receiving, hearing, and deciding complaints or other issues
3725 raised about the capitol hill complex, capitol hill facilities, and capitol hill grounds, or their
3726 use.
- 3727 (2) (a) Notwithstanding Subsection (1)(a), the supervision and control of the legislative
3728 area, as defined in Section 36-5-1, is reserved to the Legislature; and
- 3729 (b) the supervision and control of the governor's area, as defined in Section 67-1-16, is
3730 reserved to the governor.
- 3731 (3) (a) The board shall make rules to govern, administer, and regulate the capitol hill
3732 complex, capitol hill facilities, and capitol hill grounds by following the procedures and
3733 requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 3734 (b) A person who violates a rule adopted by the board under the authority of this
3735 Subsection (3) is subject to a civil penalty not to exceed \$2,500 for each violation, plus the
3736 amount of any actual damages, expenses, and costs related to the violation of the rule that are
3737 incurred by the state.
- 3738 (c) The board may take any other legal action allowed by law.
- 3739 (d) If any violation of a rule adopted by the board is also an offense under Title 76,
3740 Utah Criminal Code, the violation is subject to the civil penalty, damages, expenses, and costs
3741 allowed under this Subsection (3) in addition to any criminal prosecution.
- 3742 (e) The board may not apply this section or rules adopted under the authority of this
3743 section in a manner that violates a person's rights under the Utah Constitution or the First
3744 Amendment to the United States Constitution, including the right of persons to peaceably
3745 assemble.
- 3746 (f) The board shall send proposed rules under this section to the legislative general
3747 counsel and the governor's general counsel for review and comment before the board adopts the

3748 rules.

3749 (4) The board is exempt from the requirements of Title 63G, Chapter [6] 6a, Utah
3750 Procurement Code, but shall adopt procurement rules substantially similar to the requirements
3751 of that chapter.

3752 (5) (a) The board may:

3753 (i) establish subcommittees made up of board members and members of the public to
3754 assist and support the executive director in accomplishing the executive director's duties;

3755 (ii) establish fees for the use of capitol hill facilities and capitol hill grounds;

3756 (iii) assign and allocate specific duties and responsibilities to any other state agency, if
3757 the other agency agrees to perform the duty or accept the responsibility;

3758 (iv) contract with another state agency to provide services;

3759 (v) delegate by specific motion of the board any authority granted to it by this section
3760 to the executive director;

3761 (vi) in conjunction with Salt Lake City, expend money to improve or maintain public
3762 property contiguous to East Capitol Boulevard and capitol hill;

3763 (vii) provide wireless Internet service to the public without a fee in any capitol hill
3764 facility; and

3765 (viii) when necessary, consult with the:

3766 (A) Division of Facilities Construction and Management;

3767 (B) State Library Division;

3768 (C) Division of Archives and Records Service;

3769 (D) Division of State History;

3770 (E) Office of Museum Services; and

3771 (F) Arts Council.

3772 (b) The board's provision of wireless Internet service under Subsection (5)(a)(vii) shall
3773 be discontinued in the legislative area if the president of the Senate and the speaker of the
3774 House of Representatives each submit a signed letter to the board indicating that the service is
3775 disruptive to the legislative process and is to be discontinued.

3776 (c) If a budget subcommittee is established by the board, the following shall serve as ex
3777 officio, nonvoting members of the budget subcommittee:

3778 (i) the legislative fiscal analyst, or the analyst's designee, who shall be from the Office

3779 of Legislative Fiscal Analyst; and

3780 (ii) the director of the Governor's Office of Planning and Budget, or the director's
3781 designee, who shall be from the Governor's Office of Planning and Budget.

3782 (d) If a preservation and maintenance subcommittee is established by the board, the
3783 board may, by majority vote, appoint one or each of the following to serve on the
3784 subcommittee as voting members of the subcommittee:

3785 (i) an architect, who shall be selected from a list of three architects submitted by the
3786 American Institute of Architects; or

3787 (ii) an engineer, who shall be selected from a list of three engineers submitted by the
3788 American Civil Engineers Council.

3789 (e) If the board establishes any subcommittees, the board may, by majority vote,
3790 appoint up to two people who are not members of the board to serve, at the will of the board, as
3791 nonvoting members of a subcommittee.

3792 (f) Members of each subcommittee shall, at the first meeting of each calendar year,
3793 select one individual to act as chair of the subcommittee for a one-year term.

3794 (6) (a) The board, and the employees of the board, may not move the office of the
3795 governor, lieutenant governor, president of the Senate, speaker of the House of
3796 Representatives, or a member of the Legislature from the State Capitol unless the removal is
3797 approved by:

3798 (i) the governor, in the case of the governor's office;

3799 (ii) the lieutenant governor, in the case of the lieutenant governor's office;

3800 (iii) the president of the Senate, in the case of the president's office or the office of a
3801 member of the Senate; or

3802 (iv) the speaker of the House of Representatives, in the case of the speaker's office or
3803 the office of a member of the House.

3804 (b) The board and the employees of the board have no control over the furniture,
3805 furnishings, and decorative objects in the offices of the governor, lieutenant governor, or the
3806 members of the Legislature except as necessary to inventory or conserve items of historical
3807 significance owned by the state.

3808 (c) The board and the employees of the board have no control over records and
3809 documents produced by or in the custody of a state agency, official, or employee having an

3810 office in a building on the capitol hill complex.

3811 (d) Except for items identified by the board as having historical significance, and
3812 except as provided in Subsection (6)(b), the board and the employees of the board have no
3813 control over moveable furnishings and equipment in the custody of a state agency, official, or
3814 employee having an office in a building on the capitol hill complex.

3815 Section 75. Section **63C-9-403** is amended to read:

3816 **63C-9-403. Contracting power of executive director -- Health insurance coverage.**

3817 (1) For purposes of this section:

3818 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
3819 34A-2-104 who:

3820 (i) works at least 30 hours per calendar week; and

3821 (ii) meets employer eligibility waiting requirements for health care insurance which
3822 may not exceed the first of the calendar month following 90 days from the date of hire.

3823 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

3824 (c) "Qualified health insurance coverage" is as defined in Section 26-40-115.

3825 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

3826 (2) (a) Except as provided in Subsection (3), this section applies to a design or
3827 construction contract entered into by the board or on behalf of the board on or after July 1,
3828 2009, and to a prime contractor or a subcontractor in accordance with Subsection (2)(b).

3829 (b) (i) A prime contractor is subject to this section if the prime contract is in the
3830 amount of \$1,500,000 or greater.

3831 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
3832 \$750,000 or greater.

3833 (3) This section does not apply if:

3834 (a) the application of this section jeopardizes the receipt of federal funds;

3835 (b) the contract is a sole source contract; or

3836 (c) the contract is an emergency procurement.

3837 (4) (a) This section does not apply to a change order as defined in Section [~~63G-6-103~~]
3838 63G-6a-103, or a modification to a contract, when the contract does not meet the initial
3839 threshold required by Subsection (2).

3840 (b) A person who intentionally uses change orders or contract modifications to

3841 circumvent the requirements of Subsection (2) is guilty of an infraction.

3842 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive
3843 director that the contractor has and will maintain an offer of qualified health insurance
3844 coverage for the contractor's employees and the employees' dependents during the duration of
3845 the contract.

3846 (b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor
3847 shall demonstrate to the executive director that the subcontractor has and will maintain an offer
3848 of qualified health insurance coverage for the subcontractor's employees and the employees'
3849 dependents during the duration of the contract.

3850 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
3851 the duration of the contract is subject to penalties in accordance with administrative rules
3852 adopted by the division under Subsection (6).

3853 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
3854 requirements of Subsection (5)(b).

3855 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
3856 the duration of the contract is subject to penalties in accordance with administrative rules
3857 adopted by the department under Subsection (6).

3858 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
3859 requirements of Subsection (5)(a).

3860 (6) The department shall adopt administrative rules:

3861 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

3862 (b) in coordination with:

3863 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

3864 (ii) the Department of Natural Resources in accordance with Section 79-2-404;

3865 (iii) the State Building Board in accordance with Section 63A-5-205;

3866 (iv) a public transit district in accordance with Section 17B-2a-818.5;

3867 (v) the Department of Transportation in accordance with Section 72-6-107.5; and

3868 (vi) the Legislature's Administrative Rules Review Committee; and

3869 (c) which establish:

3870 (i) the requirements and procedures a contractor must follow to demonstrate to the
3871 executive director compliance with this section which shall include:

3872 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or
3873 (b) more than twice in any 12-month period; and

3874 (B) that the actuarially equivalent determination required for the qualified health
3875 insurance coverage in Subsection (1) is met by the contractor if the contractor provides the
3876 department or division with a written statement of actuarial equivalency from either:

3877 (I) the Utah Insurance Department;

3878 (II) an actuary selected by the contractor or the contractor's insurer; or

3879 (III) an underwriter who is responsible for developing the employer group's premium
3880 rates;

3881 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
3882 violates the provisions of this section, which may include:

3883 (A) a three-month suspension of the contractor or subcontractor from entering into
3884 future contracts with the state upon the first violation;

3885 (B) a six-month suspension of the contractor or subcontractor from entering into future
3886 contracts with the state upon the second violation;

3887 (C) an action for debarment of the contractor or subcontractor in accordance with
3888 Section [~~63G-6-804~~] 63G-6a-904 upon the third or subsequent violation; and

3889 (D) monetary penalties which may not exceed 50% of the amount necessary to
3890 purchase qualified health insurance coverage for employees and dependents of employees of
3891 the contractor or subcontractor who were not offered qualified health insurance coverage
3892 during the duration of the contract; and

3893 (iii) a website on which the department shall post the benchmark for the qualified
3894 health insurance coverage identified in Subsection (1)(c).

3895 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or
3896 subcontractor who intentionally violates the provisions of this section shall be liable to the
3897 employee for health care costs that would have been covered by qualified health insurance
3898 coverage.

3899 (ii) An employer has an affirmative defense to a cause of action under Subsection
3900 (7)(a)(i) if:

3901 (A) the employer relied in good faith on a written statement of actuarial equivalency
3902 provided by:

3903 (I) an actuary; or
 3904 (II) an underwriter who is responsible for developing the employer group's premium
 3905 rates; or

3906 (B) the department determines that compliance with this section is not required under
 3907 the provisions of Subsection (3) or (4).

3908 (b) An employee has a private right of action only against the employee's employer to
 3909 enforce the provisions of this Subsection (7).

3910 (8) Any penalties imposed and collected under this section shall be deposited into the
 3911 Medicaid Restricted Account created in Section 26-18-402.

3912 (9) The failure of a contractor or subcontractor to provide qualified health insurance
 3913 coverage as required by this section:

3914 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
 3915 or contractor under Section [~~63G-6-801~~] 63G-6a-1603 or any other provision in Title 63G,
 3916 Chapter [~~6, Part 8, Legal and Contractual Remedies~~] 6a, Utah Procurement Code; and

3917 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
 3918 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
 3919 or construction.

3920 Section 76. Section **63E-2-109** is amended to read:

3921 **63E-2-109. State statutes.**

3922 (1) Except as specifically modified in its authorizing statute, each independent
 3923 corporation shall be exempt from the statutes governing state agencies, including:

3924 (a) Title 51, Chapter 5, Funds Consolidation Act;

3925 (b) Title 51, Chapter 7, State Money Management Act;

3926 (c) Title 63A, Utah Administrative Services Code;

3927 (d) Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

3928 (e) Title 63G, Chapter 4, Administrative Procedures Act;

3929 (f) Title 63G, Chapter [~~6~~] 6a, Utah Procurement Code;

3930 (g) Title 63J, Chapter 1, Budgetary Procedures Act;

3931 (h) Title 63J, Chapter 2, Revenue Procedures and Control Act; and

3932 (i) Title 67, Chapter 19, Utah Personnel Management Act.

3933 (2) Except as specifically modified in its authorizing statute, each independent

3934 corporation shall be subject to:

- 3935 (a) Title 52, Chapter 4, Open and Public Meetings Act; and
- 3936 (b) Title 63G, Chapter 2, Government Records Access and Management Act.
- 3937 (3) Each independent corporation board may adopt its own policies and procedures

3938 governing its:

- 3939 (a) funds management;
- 3940 (b) audits; and
- 3941 (c) personnel.

3942 Section 77. Section **63F-1-205** is amended to read:

3943 **63F-1-205. Approval of acquisitions of information technology.**

3944 (1) (a) Except as provided in Title 63M, Chapter 1, Part 26, Government Procurement
3945 Private Proposal Program, in accordance with Subsection (2), the chief information officer
3946 shall approve the acquisition by an executive branch agency of:

- 3947 (i) information technology equipment;
- 3948 (ii) telecommunications equipment;
- 3949 (iii) software;
- 3950 (iv) services related to the items listed in Subsections (1)(a)(i) through (iii); and
- 3951 (v) data acquisition.

3952 (b) The chief information officer may negotiate the purchase, lease, or rental of private
3953 or public information technology or telecommunication services or facilities in accordance with
3954 this section.

3955 (c) Where practical, efficient, and economically beneficial, the chief information
3956 officer shall use existing private and public information technology or telecommunication
3957 resources.

3958 (d) Notwithstanding another provision of this section, an acquisition authorized by this
3959 section shall comply with rules made by the [~~State Procurement Policy Board~~] applicable
3960 rulemaking authority under Title 63G, Chapter [6] 6a, Utah Procurement Code.

3961 (2) Before negotiating a purchase, lease, or rental under Subsection (1) for an amount
3962 that exceeds the value established by the chief information officer by rule in accordance with
3963 Section 63F-1-206, the chief information officer shall:

- 3964 (a) conduct an analysis of the needs of executive branch agencies and subscribers of

3965 services and the ability of the proposed information technology or telecommunications services
3966 or supplies to meet those needs; and

3967 (b) for purchases, leases, or rentals not covered by an existing statewide contract,
3968 provide in writing to the chief procurement officer in the Division of Purchasing and General
3969 Services that:

3970 (i) the analysis required in Subsection (2)(a) was completed; and

3971 (ii) based on the analysis, the proposed purchase, lease, rental, or master contract of
3972 services, products, or supplies is practical, efficient, and economically beneficial to the state
3973 and the executive branch agency or subscriber of services.

3974 (3) In approving an acquisition described in Subsections (1) and (2), the chief
3975 information officer shall:

3976 (a) establish by administrative rule, in accordance with Section 63F-1-206, standards
3977 under which an agency must obtain approval from the chief information officer before
3978 acquiring the items listed in Subsections (1) and (2);

3979 (b) for those acquisitions requiring approval, determine whether the acquisition is in
3980 compliance with:

3981 (i) the executive branch strategic plan;

3982 (ii) the applicable agency information technology plan;

3983 (iii) the budget for the executive branch agency or department as adopted by the
3984 Legislature; and

3985 (iv) Title 63G, Chapter [6] 6a, Utah Procurement Code; and

3986 (c) in accordance with Section 63F-1-207, require coordination of acquisitions between
3987 two or more executive branch agencies if it is in the best interests of the state.

3988 (4) (a) Each executive branch agency shall provide the chief information officer with
3989 complete access to all information technology records, documents, and reports:

3990 (i) at the request of the chief information officer; and

3991 (ii) related to the executive branch agency's acquisition of any item listed in Subsection
3992 (1).

3993 (b) Beginning July 1, 2006 and in accordance with administrative rules established by
3994 the department under Section 63F-1-206, no new technology projects may be initiated by an
3995 executive branch agency or the department unless the technology project is described in a

3996 formal project plan and the business case analysis has been approved by the chief information
 3997 officer and agency head. The project plan and business case analysis required by this
 3998 Subsection (4) shall be in the form required by the chief information officer, and shall include:

- 3999 (i) a statement of work to be done and existing work to be modified or displaced;
 4000 (ii) total cost of system development and conversion effort, including system analysis
 4001 and programming costs, establishment of master files, testing, documentation, special
 4002 equipment cost and all other costs, including overhead;
 4003 (iii) savings or added operating costs that will result after conversion;
 4004 (iv) other advantages or reasons that justify the work;
 4005 (v) source of funding of the work, including ongoing costs;
 4006 (vi) consistency with budget submissions and planning components of budgets; and
 4007 (vii) whether the work is within the scope of projects or initiatives envisioned when the
 4008 current fiscal year budget was approved.

4009 (5) (a) The chief information officer and the Division of Purchasing and General
 4010 Services shall work cooperatively to establish procedures under which the chief information
 4011 officer shall monitor and approve acquisitions as provided in this section.

4012 (b) The procedures established under this section shall include at least the written
 4013 certification required by Subsection [~~63G-6-204(8)~~] 63G-6a-303(5).

4014 Section 78. Section **63G-6a-101**, which is renumbered from Section 63G-6-101 is
 4015 renumbered and amended to read:

4016 **CHAPTER 6a. UTAH PROCUREMENT CODE**

4017 **Part 1. General Procurement Provisions**

4018 [~~63G-6-101~~]. **63G-6a-101. Title.**

4019 (1) This chapter is known as the "Utah Procurement Code."

4020 (2) This part is known as "General Procurement Provisions."

4021 Section 79. Section **63G-6a-102**, which is renumbered from Section 63G-6-102 is
 4022 renumbered and amended to read:

4023 [~~63G-6-102~~]. **63G-6a-102. Purpose of chapter.**

4024 The underlying purposes and policies of this chapter are:

- 4025 (1) to simplify, clarify, and modernize the law governing procurement by this state;
 4026 (2) to ensure the fair and equitable treatment of all persons who deal with the

4027 procurement system of this state;

4028 (3) to provide increased economy in state procurement activities; and

4029 (4) to foster effective broad-based competition within the free enterprise system.

4030 Section 80. Section **63G-6a-103**, which is renumbered from Section 63G-6-103 is

4031 renumbered and amended to read:

4032 ~~[63G-6-103]~~. **63G-6a-103. Definitions.**

4033 As used in this chapter:

4034 (1) "Appeals board" means:

4035 (a) the Procurement Appeals Board created under Subsection 63G-6a-1702(1); or

4036 (b) a board created under Subsection 63G-6a-1702(5).

4037 (2) "Applicable rulemaking authority" means:

4038 (a) as it relates to the state legislative branch, the Legislative Management Committee,

4039 except to the extent that the Legislature passes a rule that supercedes or conflicts with a rule

4040 made by the Legislative Management Committee;

4041 (b) as it relates to the state judicial branch, the Judicial Council;

4042 (c) as it relates to a local public procurement unit, other than a local public

4043 procurement unit described in Subsections (2)(d) through (f), the board; or

4044 (d) as it relates to a municipality or county that adopts this chapter, the legislative body

4045 of the municipality or county, not as a delegation of authority from the Legislature, but under

4046 the municipality's or county's own legislative authority;

4047 (e) as it relates to a school district or a public school, the Procurement Policy Board,

4048 except to the extent that a school district makes its own non-administrative rules, with respect

4049 to a particular subject, that do not conflict with the provisions of this chapter;

4050 (f) as it relates to a state institution of higher education, the State Board of Regents;

4051 (g) as it relates to the following entities, but only to the extent that the rules relate to

4052 procurement authority expressly granted to the entity by statute:

4053 (i) the State Building Board, created in Section 63A-5-101;

4054 (ii) the Division of Facilities Construction and Management created in Section

4055 63A-5-201;

4056 (iii) the attorney general's office; or

4057 (iv) the Department of Transportation, created in Section 72-1-201;

4058 (h) as it relates to the state executive branch and all public procurement units other than
 4059 those described in Subsections (2)(a) through (f), the board; or

4060 (i) as it relates to an entity described in Subsection (2)(g), except to the extent that the
 4061 rules relate to procurement authority expressly granted to the entity by statute, the board.

4062 [~~(1)~~] (3) "Architect-engineer services" [~~are those~~] means:

4063 (a) professional services within the scope of the practice of architecture as defined in
 4064 Section 58-3a-102[;] or

4065 (b) professional engineering as defined in Section 58-22-102.

4066 [~~(2)~~] "Business" means any corporation, partnership, individual, sole proprietorship,
 4067 joint stock company, joint venture, or any other private legal entity.]

4068 (4) "Bidder" means a person who responds to an invitation for bids.

4069 (5) "Board" means the Utah State Procurement Policy Board, created in Section
 4070 63G-6a-202.

4071 (6) "Building Board" means the State Building Board created in Section 63A-5-101.

4072 [~~(3)~~] (7) "Change order" means:

4073 (a) a written order signed by the procurement officer[~~, directing~~] that directs the
 4074 contractor to suspend work or make changes, [~~which the appropriate clauses of the contract~~
 4075 ~~authorize the procurement officer to order~~] as authorized by contract, without the consent of the
 4076 contractor; or [any]

4077 (b) a written alteration in specifications, delivery point, rate of delivery, period of
 4078 performance, price, quantity, or other provisions of [~~any contract accomplished by mutual~~
 4079 ~~action~~] a contract, upon mutual agreement of the parties to the contract.

4080 (8) "Chief procurement officer" means the chief procurement officer appointed under
 4081 Subsection 63G-6a-302(1).

4082 [~~(4)~~] (9) (a) "Construction" means the process of building, [~~renovation, alteration,~~
 4083 ~~improvement, or repair of any~~] renovating, altering, improving, or repairing a public building
 4084 or public work.

4085 (b) "Construction" does not [~~mean~~] include the routine operation, routine repair, or
 4086 routine maintenance of an existing [~~structures, buildings~~] structure, building, or real property.

4087 [~~(5)~~] (10) (a) "Construction manager/general contractor" means [~~any~~] a contractor who
 4088 enters into a contract for the management of a construction project when [~~that~~] the contract

4089 allows the contractor to subcontract for additional labor and materials that ~~[were]~~ are not
4090 included in the contractor's cost proposal submitted at the time of the procurement of the
4091 ~~[Construction Manager/General]~~ contractor's services.

4092 (b) "Construction manager/general contractor" does not ~~[mean]~~ include a contractor
4093 whose only subcontract work not included in the contractor's cost proposal submitted as part of
4094 the procurement of ~~[construction]~~ the contractor's services is to meet subcontracted portions of
4095 change orders approved within the scope of the project.

4096 ~~[(6)]~~ (11) "Contract" means ~~[any state]~~ an agreement for the procurement or disposal of
4097 ~~[supplies, services, or construction]~~ a procurement item.

4098 (12) "Contractor" means a person who is awarded a contract with a public procurement
4099 unit.

4100 ~~[(7)]~~ (13) "Cooperative purchasing" means procurement conducted by, or on behalf of,
4101 more than one public procurement unit, or by a public procurement unit ~~[with]~~ and an external
4102 procurement unit.

4103 ~~[(8)]~~ (14) "Cost-reimbursement contract" means a contract under which a contractor is
4104 reimbursed for costs which are allowed and allocated in accordance with the contract terms and
4105 the provisions of this chapter, and a fee, if any.

4106 (15) "Days" means calendar days, unless expressly provided otherwise.

4107 ~~[(9)-(a)]~~ (16) "Design-build" means the procurement of architect-engineer services and
4108 construction by the use of a single contract with the design-build provider.

4109 ~~[(b) This method of design and construction can include the design-build provider~~
4110 ~~supplying the site as part of the contract.]~~

4111 (17) "Director" means the director of the division.

4112 (18) "Division" means the Division of Purchasing and General Services.

4113 ~~[(10)]~~ (19) "Established catalogue price" means the price included in a catalogue, price
4114 list, schedule, or other form that:

4115 (a) is regularly maintained by a manufacturer or contractor;

4116 (b) is either published or otherwise available for inspection by customers; and

4117 (c) states prices at which sales are currently or were last made to a significant number
4118 of any category of buyers or buyers constituting the general buying public for the supplies or
4119 services involved.

4120 ~~[(11) "External procurement unit" means any buying organization not located in this~~
4121 ~~state which, if located in this state, would qualify as a public procurement unit. An agency of~~
4122 ~~the United States is an external procurement unit.]~~

4123 ~~[(12)]~~ (20) (a) "Grant" means [the] furnishing, by [the state] a public entity or by any
4124 other public or private source [assistance, whether financial or otherwise, to any], financial or
4125 other assistance to a person to support a program authorized by law. [It]

4126 (b) "Grant" does not include:

4127 (i) an award whose primary purpose is to procure an end product[, whether in the form
4128 of supplies, services, or construction. A contract resulting from the award is not a grant but a
4129 procurement contract:] or procurement item; or

4130 (ii) a contract that is awarded as a result of a procurement or a procurement process.

4131 ~~[(13) "Invitation for bids" means all documents, whether attached or incorporated by~~
4132 ~~reference, utilized for soliciting bids.]~~

4133 ~~[(14) "Local public procurement unit" means any political subdivision or institution of~~
4134 ~~higher education of the state or public agency of any subdivision, public authority, educational,~~
4135 ~~health, or other institution, and to the extent provided by law, any other entity which expends~~
4136 ~~public funds for the procurement of supplies, services, and construction, but not counties,~~
4137 ~~municipalities, political subdivisions created by counties or municipalities under the Interlocal~~
4138 ~~Cooperation Act, the Utah Housing Corporation, or the Legislature and its staff offices. It~~
4139 ~~includes two or more local public procurement units acting under legislation which authorizes~~
4140 ~~intergovernmental cooperation.]~~

4141 ~~[(15) "Person" means any business, individual, union, committee, club, other~~
4142 ~~organization, or group of individuals, not including a state agency or a local public~~
4143 ~~procurement unit.]~~

4144 ~~[(16) "Policy board" means the procurement policy board created by Section~~
4145 ~~63G-6-201.]~~

4146 (21) "Head of a public procurement unit" means:

4147 (a) as it relates to the state legislative branch, any person designated by legislative rule;

4148 (b) as it relates to the state executive branch:

4149 (i) the director of a division; or

4150 (ii) any other person designated by the board, by rule;

- 4151 (c) as it relates to the state judicial branch:
4152 (i) the Judicial Council; or
4153 (ii) any other person designated by the Judicial Council, by rule;
4154 (d) as it relates to a local public procurement unit, other than a local public
4155 procurement unit described in Subsections (21)(e) through (h):
4156 (i) the appointed or elected head of the local public procurement unit; or
4157 (ii) any other person designated by the board, by rule;
4158 (e) as it relates to a local public procurement unit that is a municipality or a county:
4159 (i) the legislative body of the municipality or county; or
4160 (ii) any other person designated by the municipality or county;
4161 (f) as it relates to a school district or any school or entity within a school district, the
4162 board of the school district, or the board's designee;
4163 (g) as it relates to a charter school, the individual or body with executive authority over
4164 the charter school, or the individual's or body's designee; or
4165 (h) as it relates to an institution of higher education of the state, the president of the
4166 institution of higher education, or the president's designee.
4167 (22) "Head of an authorized purchasing entity" means:
4168 (a) as it relates to the division, the chief procurement officer;
4169 (b) to the extent that the entities have express statutory authority to engage in a
4170 procurement without the involvement of the division:
4171 (i) as it relates to the State Building Board, created in Section 63A-5-101, the State
4172 Building Board;
4173 (ii) as it relates to the Division of Facilities Construction and Management created in
4174 Section 63A-5-201, the director of the Division of Facilities Construction and Management;
4175 (iii) as it relates to the attorney general's office, the attorney general;
4176 (iv) as it relates to the Department of Transportation, created in Section 72-1-201, the
4177 executive director of the Department of Transportation; or
4178 (v) as it relates to a district court, a person designated by the Judicial Council, by rule;
4179 (c) as it relates to an institution of higher education of the state, the president of the
4180 institution of higher education of the state;
4181 (d) as it relates to a school district, the board of the school district;

4182 (e) as it relates to a public school, including a local school board, the board of the
4183 school district;

4184 (f) as it relates to a charter school, a person designated by the charter school; or

4185 (g) as it relates to a non-executive state procurement unit, a person designated by the
4186 applicable rulemaking authority.

4187 (23) "Invitation for bids" includes all documents, including documents that are attached
4188 or incorporated by reference, used for soliciting bids to provide a procurement item to a public
4189 procurement unit.

4190 (24) "Multiple award contracts" means the award of a contract for an indefinite
4191 quantity of a procurement item to more than one bidder or offeror.

4192 (25) "Multiyear contract" means a contract that extends beyond a one-year period,
4193 including a contract that permits renewal of the contract, without competition, beyond the first
4194 year of the contract.

4195 (26) "Municipality" means a city or a town.

4196 (27) "Offeror" means a person who responds to a request for proposals.

4197 ~~[(17)]~~ (28) "Preferred bidder" means a bidder that is entitled to receive a reciprocal
4198 preference under the requirements of this chapter.

4199 ~~[(18)]~~ (29) (a) "Procure" or "procurement" means buying, purchasing, renting, leasing,
4200 leasing with an option to purchase, or otherwise acquiring [any supplies, services, or
4201 construction. It also] a procurement item.

4202 (b) "Procure" or "procurement" includes all functions that pertain to the obtaining of
4203 [any supply, service, or construction] a procurement item, including:

4204 (i) the description of requirements[;];

4205 (ii) the selection[; and] process;

4206 (iii) solicitation of sources[;];

4207 (iv) the preparation[; and] for soliciting a procurement item;

4208 (v) the award of a contract[;]; and

4209 (vi) all phases of contract administration.

4210 ~~[(19)]~~ "Procurement officer" means any person or board duly authorized to enter into
4211 and administer contracts and make written determinations with respect thereto. It also includes
4212 an authorized representative acting within the limits of authority.]

4213 ~~[(20) "Public procurement unit" means either a local public procurement unit or a state~~
4214 ~~public procurement unit.]~~

4215 ~~[(21) "Purchase description" means the words used in a solicitation to describe the~~
4216 ~~supplies, services, or construction to be purchased, and includes specifications attached to or~~
4217 ~~made a part of the solicitation.]~~

4218 ~~[(22) "Purchasing agency" means any state agency other than the Division of~~
4219 ~~Purchasing and General Services that is authorized by this chapter or its implementing~~
4220 ~~regulations, or by delegation from the chief procurement officer, to enter into contracts.]~~

4221 ~~[(23) "Request for proposals" means all documents, whether attached or incorporated~~
4222 ~~by reference, used for soliciting proposals.]~~

4223 ~~[(24) "Responsible bidder or offeror" means a person who has the capability in all~~
4224 ~~respects to perform fully the contract requirements and who has the integrity and reliability~~
4225 ~~which will assure good faith performance.]~~

4226 ~~[(25) "Responsive bidder" means a person who has submitted a bid which conforms in~~
4227 ~~all material respects to the invitation for bids.]~~

4228 (30) "Procurement item" means a supply, a service, construction, or technology.

4229 (31) "Procurement officer" means:

4230 (a) as it relates to the state legislative branch, the head of a public procurement unit in
4231 the legislative branch;

4232 (b) as it relates to the state judicial branch, the head of a public procurement unit in the
4233 state judicial branch;

4234 (c) as it relates to the state executive branch, the chief procurement officer;

4235 (d) as it relates to a local public procurement unit other than a local public procurement
4236 unit described in Subsection (31)(e) or (f), the chief procurement officer;

4237 (e) as it relates to a municipality or county that adopts this chapter, the legislative body
4238 of the municipality or county; or

4239 (f) as it relates to a state purchasing unit, the head of the state purchasing unit, or a
4240 designee of the head of the state purchasing unit.

4241 (32) "Professional service" means a service that requires a high degree of specialized
4242 knowledge and discretion in the performance of the service, including:

4243 (a) legal services;

4244 (b) consultation services;

4245 (c) architectural services;

4246 (d) engineering;

4247 (e) design;

4248 (f) underwriting;

4249 (g) bond counsel;

4250 (h) financial advice; or

4251 (i) construction management.

4252 (33) "Request for information" means a nonbinding process where a public
 4253 procurement unit requests information relating to a procurement item.

4254 (34) "Request for proposals" includes all documents, including documents that are
 4255 attached or incorporated by reference, used for soliciting proposals to provide a procurement
 4256 item to a public procurement unit.

4257 (35) "Responsible" means that a bidder or offeror:

4258 (i) is capable, in all respects, to fully perform the contract requirements solicited in an
 4259 invitation for bids or a request for proposals; and

4260 (ii) has the integrity and reliability to ensure good faith performance.

4261 (36) "Responsive" means that a bidder or offeror submits a response to an invitation for
 4262 bids or a request for proposals that conforms in all material respects to the invitation for bids or
 4263 request for proposals.

4264 ~~[(26)]~~ (37) "Sealed" [does not preclude acceptance of] means manually or
 4265 electronically sealed and submitted bids or proposals [in addition to bids or proposals manually
 4266 sealed and submitted].

4267 ~~[(27)]~~ (38) (a) "Services" means the furnishing of labor, time, or effort by a contractor,
 4268 not involving the delivery of a specific end product other than [reports which are merely] a
 4269 report that is incidental to the required performance. [It]

4270 (b) "Services" does not include an employment [agreements] agreement or a collective
 4271 bargaining [agreements] agreement.

4272 ~~[(28)]~~ (39) "Specification" means any description of the physical or functional
 4273 characteristics, or [of the] nature of a [supply, service, technology, or construction item. It may
 4274 include] procurement item included in an invitation for bids or a request for proposals, or

4275 otherwise specified or agreed to by a public procurement unit, including a description of [any]:

4276 (a) a requirement for inspecting~~[-testing,]~~ or testing a procurement item; or

4277 (b) preparing a [supply, service, technology, or construction] procurement item for
4278 delivery.

4279 ~~[(29) "State agency" or "the state" means any department, division, commission,~~
4280 ~~council, board, bureau, committee, institution, government corporation, or other establishment,~~
4281 ~~official, or employee of this state.]~~

4282 ~~[(30) "State public procurement unit" means the Division of Purchasing and General~~
4283 ~~Services and any other purchasing agency of this state.]~~

4284 (40) "Standard procurement process" means one of the following methods of obtaining
4285 a procurement item:

4286 (a) bidding, as described in Part 6, Bidding;

4287 (b) request for proposals, as described in Part 7, Request for Proposals; or

4288 (c) small purchases, in accordance with the requirements established under Section
4289 63G-6a-408.

4290 (41) (a) "Subcontractor" means a person under contract with a contractor or another
4291 subcontractor to provide services or labor for design or construction.

4292 (b) "Subcontractor" includes a trade contractor or specialty contractor.

4293 (c) "Subcontractor" does not include a supplier who provides only materials,
4294 equipment, or supplies to a contractor or subcontractor.

4295 ~~[(31)]~~ (42) "Supplies" means all property, including equipment, materials, and printing.

4296 ~~[(32) "Using agency" means any state agency which utilizes any supplies, services, or~~
4297 ~~construction procured under this chapter.]~~

4298 (43) "Tie bid" means that the lowest responsive and responsible bids are identical in
4299 price.

4300 Section 81. Section **63G-6a-104** is enacted to read:

4301 **63G-6a-104. Definitions of government entities.**

4302 As used in this chapter:

4303 (1) "Authorized purchasing entity" means:

4304 (a) a non-executive state procurement unit; or

4305 (b) a state purchasing unit.

- 4306 (2) "External procurement unit" means:
4307 (a) a buying organization not located in this state which, if located in this state, would
4308 qualify as a public procurement unit; or
4309 (b) an agency of the United States.
4310 (3) "Local government unit" means:
4311 (a) a county;
4312 (b) a municipality;
4313 (c) a political subdivision created by counties or municipalities under Title 11, Chapter
4314 13, Interlocal Cooperation Act; or
4315 (d) the Utah Housing Corporation.
4316 (4) "Local public procurement unit" means:
4317 (a) a local district, as defined in Section 17B-1-102;
4318 (b) a special service district, as defined in Section 17D-1-102;
4319 (c) a local building authority, as defined in Section 17D-2-102;
4320 (d) a conservation district, as described in Title 17D, Chapter 3, Conservation District
4321 Act;
4322 (e) a public corporation, other than the Utah Housing Corporation;
4323 (f) a community development and renewal agency;
4324 (g) a school district;
4325 (h) a public school, including a local school board or a charter school;
4326 (i) Utah Schools for the Deaf and Blind;
4327 (j) the Utah Education Network;
4328 (k) an institution of higher education of the state;
4329 (l) a county or municipality, and each office or agency of the county or municipality,
4330 unless the county or municipality adopts its own procurement code by ordinance;
4331 (m) a county or municipality, and each office or agency of the county or municipality,
4332 that has adopted this entire chapter by ordinance;
4333 (n) a county or municipality, and each office or agency of the county or municipality,
4334 that has adopted a portion of this chapter by ordinance, to the extent that the term is used in the
4335 adopted portion of this chapter; or
4336 (o) two or more of the entities described in this Subsection (4), acting under legislation

- 4337 that authorizes intergovernmental cooperation.
- 4338 (5) "Non-executive state procurement unit" means:
- 4339 (a) the state legislative branch;
- 4340 (b) a public procurement unit in the state legislative branch;
- 4341 (c) the state judicial branch; or
- 4342 (d) a public procurement unit in the state judicial branch.
- 4343 (6) "Public entity" means any state or local government entity, located in Utah,
- 4344 including:
- 4345 (a) the state legislative branch, including the Legislature and each house, staff office,
- 4346 committee, subcommittee, or other part of the state legislative branch;
- 4347 (b) the state executive branch, including the governor's office and each department,
- 4348 division, agency, office, and bureau in the state executive branch;
- 4349 (c) the state judicial branch, including the Utah Supreme Court, the Utah Court of
- 4350 Appeals, the Judicial Council, and each court, office, and other part of the state judicial branch;
- 4351 (d) a municipality or county, regardless of whether the municipality or county has
- 4352 adopted this chapter or any part of this chapter;
- 4353 (e) a public procurement unit; and
- 4354 (f) any other entity that expends public funds.
- 4355 (7) "Public procurement unit" means:
- 4356 (a) the Senate;
- 4357 (b) the House of Representatives;
- 4358 (c) a staff office of the state legislative branch;
- 4359 (d) a state executive branch department, division, office, bureau, or agency;
- 4360 (e) the Utah State Supreme Court;
- 4361 (f) the Judicial Council;
- 4362 (g) a state judicial district; or
- 4363 (h) a local public procurement unit.
- 4364 (8) "State purchasing unit" means:
- 4365 (a) the division;
- 4366 (b) the following entities, to the extent that the entities have express statutory authority
- 4367 to engage in a procurement without the involvement of the division:

- 4368 (i) the State Building Board, created in Section 63A-5-101;
4369 (ii) the Division of Facilities Construction and Management, created in Section
4370 63A-5-201;
4371 (iii) the attorney general's office;
4372 (iv) the Department of Transportation, created in Section 72-1-201; or
4373 (v) a district court;
4374 (c) an institution of higher education of the state;
4375 (d) a school district; or
4376 (e) a public school, including a local school board or a charter school.

4377 Section 82. Section **63G-6a-105**, which is renumbered from Section 63G-6-104 is
4378 renumbered and amended to read:

4379 **~~[63G-6-104].~~ 63G-6a-105. Application of chapter.**

4380 ~~[(1) This chapter applies only to contracts solicited or entered into after the effective~~
4381 ~~date of this chapter unless the parties agree to its application to a contract solicited or entered~~
4382 ~~into prior to the effective date.]~~

4383 (1) The provisions of this chapter that are enacted on July 1, 2012, apply only to a
4384 procurement advertised, or begun on or after July 1, 2012, unless the parties agree to have the
4385 provisions apply with respect to a procurement that was advertised or begun before July 1,
4386 2012, but is not completed before July 1, 2012.

4387 (2) Except as provided in Section ~~[63G-6-105]~~ 63G-6a-109, this chapter shall apply to
4388 every expenditure of public funds irrespective of ~~[their source]~~ the source of the funds,
4389 including federal assistance, by any ~~[state agency]~~ public procurement unit, under any contract.

4390 ~~[(3) (a) Only the following sections shall apply to local public procurement units:~~
4391 ~~Sections 63G-6-103, 63G-6-105, 63G-6-301, 63G-6-303 through 63G-6-420, 63G-6-422,~~
4392 ~~63G-6-501 through 63G-6-602, 63G-6-801 through 63G-6-806, and 63G-6-815 through~~
4393 ~~63G-6-819; provided, however, that, except as provided in Sections 63G-6-906 and~~
4394 ~~63G-6-907, the jurisdiction of the procurement appeals board is limited to matters involving~~
4395 ~~state agencies.]~~

4396 ~~[(b) Subsections 63G-6-208(1)(b), 63G-6-504(4), and 63G-6-505(2) also apply to local~~
4397 ~~public procurement units.]~~

4398 ~~[(c) For the purpose of application of those sections and subsections to a local public~~

4399 procurement unit, "state" shall mean "local public procurement unit," "chief procurement
 4400 officer" or "head of a purchasing agency" shall mean any person conducting procurement for a
 4401 local public procurement unit, and "rules and regulations" shall mean ordinances and rules and
 4402 regulations promulgated by a local public procurement unit to implement or supplement those
 4403 sections.]

4404 ~~[(d) In addition to the sections and subsections listed above and except]~~

4405 (3) Except as provided in Subsection 17B-1-108(3) relating to local districts, each local
 4406 public procurement unit shall adopt ordinances relating to the procurement of
 4407 architect-engineer services not inconsistent with the provisions of Part [7] 15,
 4408 Architect-Engineer Services.

4409 ~~[(e)]~~ (4) Any ~~[other]~~ section of this chapter, or its implementing regulations, may be
 4410 adopted by any local ~~[public procurement]~~ government unit.

4411 ~~[(f) Any other implementing regulations adopted by local public procurement units~~
 4412 ~~may not be inconsistent with the provisions of this chapter.]~~

4413 (5) Rules adopted under this chapter shall be consistent with the provisions of this
 4414 chapter.

4415 (6) A state purchasing unit or a public procurement unit may not adopt rules, policies,
 4416 or regulations that are inconsistent with this chapter.

4417 ~~[(4)]~~ (7) Unless otherwise provided by statute, this chapter does not apply to
 4418 procurement of real property.

4419 Section 83. Section **63G-6a-106**, which is renumbered from Section 63G-6-207 is
 4420 renumbered and amended to read:

4421 ~~[63G-6-207].~~ **63G-6a-106. Specific statutory authority -- Limitations on**
 4422 **authority of chief procurement officer and division.**

4423 (1) The ~~[authority to procure certain supplies, services, and construction given the~~
 4424 ~~public procurement units governed by]~~ procurement authority given to a public entity under the
 4425 following provisions shall be retained, and shall be applied only to the extent described in those
 4426 provisions:

4427 (a) Title 53B, State System of Higher Education;

4428 (b) Title 63A, Chapter 5, State Building Board - Division of Facilities Construction
 4429 and Management;

4430 (c) Title 67, Chapter 5, Attorney General;

4431 (d) Title 72, Transportation Code; and

4432 (e) Title 78A, Chapter 5, District Courts.

4433 (2) [~~This authority extends only to supplies, services, and construction to the extent~~
4434 ~~provided in the cited chapters.~~] Except as otherwise provided in Sections [~~63G-6-104 and~~
4435 ~~63G-6-105, the respective purchasing agencies shall procure supplies, services, and~~
4436 ~~construction~~] 63G-6a-105 and 63G-6a-109, a public procurement unit shall conduct a
4437 procurement in accordance with this chapter.

4438 (3) (a) The Department of Transportation may make rules governing the procurement
4439 of highway construction or improvement.

4440 (b) This Subsection (3) supersedes Subsections (1) and (2).

4441 [~~(4) The Legislature may procure supplies and services for its own needs.~~]

4442 (4) Except to the extent otherwise agreed to in a memorandum of understanding
4443 between the division and the following entities, the authority of the chief procurement officer
4444 and of the division does not extend to:

4445 (a) a non-executive state procurement unit;

4446 (b) a local government unit; or

4447 (c) a state purchasing unit, other than the division.

4448 (5) An entity described in Subsection (4) or a state purchasing unit, other than the
4449 division, may, without supervision, interference, or involvement by the chief procurement
4450 officer or the division, but consistent with the requirements of this chapter:

4451 (a) engage in a procurement process;

4452 (b) procure an item under an exception, as provided in this chapter, to the requirement
4453 to use a procurement process; or

4454 (c) otherwise engage in an act authorized or required by this chapter.

4455 (6) The attorney general may, in accordance with the provisions of this chapter, but
4456 without involvement by the division or the chief procurement officer:

4457 (a) retain outside counsel; or

4458 (b) procure litigation support services, including retaining an expert witness.

4459 Section 84. Section **63G-6a-109**, which is renumbered from Section 63G-6-105 is
4460 renumbered and amended to read:

4461 ~~[63G-6-105].~~ **63G-6a-109.** Exemptions from chapter -- Compliance with
 4462 **federal law.**

4463 (1) ~~[This chapter is]~~ Except for Part 23, Unlawful Conduct and Penalties, the
 4464 provisions of this chapter are not applicable to:

4465 (a) funds administered under the Percent-for-Art Program of the Utah Percent-for-Art
 4466 Act[-];

4467 ~~[(2) This chapter is not applicable to]~~

4468 (b) grants awarded by the state or contracts between the state and a local public
 4469 procurement [units] unit, except as provided in Part [9] 21, Intergovernmental Relations[-]; or

4470 (c) any action taken by a majority of both houses of the Legislature.

4471 ~~[(3)]~~ (2) This chapter ~~[shall]~~ does not prevent the state or a local public procurement
 4472 unit from complying with the terms and conditions of any grant, gift, or bequest that is
 4473 otherwise consistent with law.

4474 ~~[(4)]~~ (3) When a procurement involves the expenditure of federal assistance or contract
 4475 funds, the ~~[chief]~~ procurement officer or head of ~~[a purchasing agency]~~ an authorized
 4476 purchasing entity shall comply with mandatory applicable federal law and regulations not
 4477 reflected in this chapter.

4478 ~~[(5)]~~ (4) This chapter ~~[may]~~ does not supersede the requirements for retention or
 4479 withholding of construction proceeds and release of construction proceeds as provided in
 4480 Section 13-8-5.

4481 Section 85. Section **63G-6a-110** is enacted to read:

4482 **63G-6a-110. Procurements under direction and control of division -- Exception.**

4483 (1) Except as provided in Subsection (2), a public procurement unit may not engage in
 4484 a procurement unless:

4485 (a) the procurement is made under the direction and control of the division; or

4486 (b) the division, pursuant to rules made by the board, permits the public procurement
 4487 unit to make the procurement on its own.

4488 (2) Subsection (1) does not apply to a public procurement unit that is:

4489 (a) a non-executive state procurement unit;

4490 (b) a local government unit; or

4491 (c) a state purchasing unit, other than the division.

4492 Section 86. Section **63G-6a-201** is enacted to read:

4493 **Part 2. Procurement Policy Board**

4494 **63G-6a-201. Title.**

4495 This part is known as "Procurement Policy Board."

4496 Section 87. Section **63G-6a-202**, which is renumbered from Section 63G-6-201 is
4497 renumbered and amended to read:

4498 ~~[63G-6-201].~~ **63G-6a-202. Creation of procurement policy board.**

4499 (1) ~~[(a)]~~ There is created ~~[a state procurement policy board]~~ the Utah State
4500 Procurement Policy Board.

4501 ~~[(b)]~~ (2) The ~~[policy board shall consist of]~~ board consists of up to 10 members as
4502 follows:

4503 ~~[(i)]~~ (a) an employee of a state institution of higher education, appointed by the board
4504 of regents;

4505 ~~[(ii)]~~ (b) an employee of the Department of Human Services, appointed by the
4506 executive director of that department;

4507 ~~[(iii)]~~ (c) an employee of the Department of Transportation, appointed by the executive
4508 director of that department;

4509 ~~[(iv)]~~ (d) an employee of a school district appointed by a cooperative purchasing entity
4510 for school districts;

4511 ~~[(v)]~~ (e) an employee of the Division of Facilities Construction and Management
4512 appointed by the director of that division;

4513 ~~[(vi)]~~ (f) an employee of a county, appointed by the Utah Association of Counties;

4514 ~~[(vii)]~~ (g) an employee of a city, appointed by the Utah League of Cities and Towns;

4515 ~~[(viii)]~~ (h) an employee of a local district or special service district, appointed by the
4516 Utah Association of Special Districts;

4517 ~~[(ix)]~~ (i) the executive director of the Department of Technology Services or the
4518 executive director's designee; and

4519 ~~[(x)]~~ (j) the chief procurement officer or the chief procurement officer's designee.

4520 ~~[(e)]~~ (3) Members of the ~~[policy]~~ board shall be knowledgeable and experienced in,
4521 and have supervisory responsibility for, procurement in their official positions.

4522 ~~[(2)]~~ (4) A board member ~~[shall]~~ may serve as long as the member meets the

4523 description in Subsection ~~[(1)(b)]~~ (2) unless removed by the person or entity ~~[who appointed]~~
 4524 with the authority to appoint the board member.

4525 ~~[(3)]~~ (5) (a) The ~~[policy]~~ board shall:

4526 (i) adopt rules of procedure for conducting its business; and

4527 (ii) elect a chair to serve for one year.

4528 (b) The chair of the board shall be selected by a majority of the members of the board
 4529 and may be elected to succeeding terms.

4530 (c) The chief procurement officer shall designate an employee of the ~~[Division of~~
 4531 ~~Purchasing and General Services]~~ division to serve as the nonvoting secretary to the policy
 4532 board.

4533 ~~[(4)]~~ (6) A member of the board may not receive compensation or benefits for the
 4534 member's service, but may receive per diem and travel expenses in accordance with:

4535 (a) Section 63A-3-106;

4536 (b) Section 63A-3-107; and

4537 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
 4538 63A-3-107.

4539 Section 88. Section **63G-6a-203**, which is renumbered from Section 63G-6-202 is
 4540 renumbered and amended to read:

4541 ~~[63G-6-202].~~ **63G-6a-203. Powers and duties of board.**

4542 ~~[(1) Except as otherwise provided in Section 63G-6-104 and Subsection~~
 4543 ~~63G-6-208(1)(b), the policy board shall:]~~

4544 ~~[(a) make rules, consistent with this chapter, governing the procurement, management,~~
 4545 ~~and control of any and all supplies, services, technology, and construction to be procured by the~~
 4546 ~~state; and]~~

4547 ~~[(b)]~~ (1) In addition to making rules in accordance with Section 63G-6a-402 and the
 4548 other provisions of this chapter, the board shall consider and decide matters of policy within
 4549 the provisions of this chapter, including those referred to it by the chief procurement officer.

4550 (2) (a) The ~~[policy]~~ board may:

4551 (i) audit and monitor the implementation of its rules and the requirements of this
 4552 chapter;

4553 (ii) upon the request of a local public procurement unit, review that local public

4554 procurement unit's proposed rules to ensure that they are not inconsistent with the provisions of
4555 this chapter or rules made by the board; and

4556 (iii) approve the use of innovative procurement [~~methods~~] processes proposed by local
4557 public procurement units.

4558 (b) The [~~policy~~] board may not exercise authority over the award or administration of:

4559 (i) any particular [~~contact~~] contract; or

4560 (ii) [~~over~~] any dispute, claim, or litigation pertaining to any particular contract.

4561 (3) The board does not have authority over a matter involving:

4562 (a) a non-executive state procurement unit; or

4563 (b) a local government unit.

4564 Section 89. Section ~~63G-6a-204~~, which is renumbered from Section 63G-6-208 is
4565 renumbered and amended to read:

4566 ~~[63G-6-208].~~ **63G-6a-204. Applicability of rules and regulations of Utah**
4567 **State Procurement Policy Board and State Building Board -- Report to interim**
4568 **committee.**

4569 [~~(1) (a) Except as provided in Subsection (2), the policy board shall make rules~~
4570 ~~governing state procurement by complying with the procedures and requirements of Title 63G,~~
4571 ~~Chapter 3, the Utah Administrative Rulemaking Act.]~~

4572 [~~(b) Except for rules made under Subsection (1)(c), the procurement rules adopted by~~
4573 ~~the policy board under this section apply to all local public procurement units unless the local~~
4574 ~~public procurement unit's legislative body has adopted separate rules governing procurement.]~~

4575 [~~(c) The rules shall include provisions consistent with federal contract prohibition~~
4576 ~~provisions of the Sudan Accountability and Divestment Act of 2007 (Pub. L. No. 110-174) that~~
4577 ~~prohibit a state agency from contracting with a person doing business in Sudan.]~~

4578 (1) Except as provided in Subsection (2), rules made by the board under this chapter
4579 shall govern all public procurement units for which the board is the applicable rulemaking
4580 authority.

4581 (2) The [~~State Building Board~~] building board rules governing procurement of
4582 construction, architect-engineer services, and leases apply to the procurement of construction,
4583 architect-engineer services, and leases of real property by the Division of Facilities
4584 Construction and Management.

4616 (1) The executive director of the Department of Administrative Services, with the
4617 consent of the governor, shall appoint the chief procurement officer after considering
4618 recommendations from the ~~[policy]~~ board.

4619 (2) The chief procurement officer shall:

4620 (a) have a minimum of eight years' experience in the large-scale procurement of
4621 supplies and services or services and construction, at least five years of which shall have been
4622 in public or comparable private procurement within 12 years preceding the date of
4623 appointment; and

4624 (b) be a person with demonstrated executive and organizational ability.

4625 (3) The chief procurement officer appointed under Subsection (1) is also the director of
4626 the Division of Purchasing and General Services.

4627 (4) Except as otherwise expressly provided in this chapter, the chief procurement
4628 officer has authority over procurements by a public procurement unit, other than:

4629 (a) a non-executive procurement unit;

4630 (b) a local government unit; or

4631 (c) a state purchasing unit, other than the division.

4632 Section 93. Section ~~63G-6a-303~~, which is renumbered from Section 63G-6-204 is
4633 renumbered and amended to read:

4634 ~~[63G-6-204].~~ **63G-6a-303. Duties of chief procurement officer.**

4635 Except as otherwise specifically provided in this chapter, the chief procurement officer
4636 serves as the central procurement officer of the state and shall:

4637 (1) adopt office policies governing the internal functions of the ~~[Division of Purchasing~~
4638 ~~and General Services]~~ division;

4639 (2) procure or supervise ~~[the]~~ each procurement ~~[of all supplies, services, and~~
4640 ~~construction needed by the state]~~ over which the chief procurement officer has authority;

4641 ~~[(3) exercise general supervision and control over all inventories or supplies belonging~~
4642 ~~to the state;]~~

4643 ~~[(4)]~~ (3) establish and maintain programs for the inspection, testing, and acceptance of
4644 ~~[supplies, services, and construction]~~ each procurement item over which the chief procurement
4645 officer has authority;

4646 ~~[(5)]~~ (4) prepare statistical data concerning ~~[the procurement and usage of all supplies,~~

4647 services, and construction] each procurement and procurement usage of a state procurement
4648 unit;

4649 ~~[(6) before June 1, 1990, notify all public procurement units of the requirements of~~
4650 ~~Section 63G-6-406 regarding purchases of recycled paper and recycled paper products;~~
4651 ~~recycling requirements, and provide guidelines on the availability of recycled paper and paper~~
4652 ~~products, including the sources of supply and the potential uses of various grades of recycled~~
4653 ~~paper;]~~

4654 ~~[(7) before July 1, 1992:]~~

4655 ~~[(a) establish standards and specifications for determining which supplies are~~
4656 ~~considered recycled, based upon the chief procurement officer's review of current definitions~~
4657 ~~and standards employed by national procurement, product recycling, and other relevant~~
4658 ~~organizations and the federal Environmental Protection Agency;]~~

4659 ~~[(b) compile and update as necessary the specifications, a list of recycled supplies~~
4660 ~~available on state contract, and sources where the supplies may be obtained;]~~

4661 ~~[(c) make the compiled information under Subsection (7)(b) available to:]~~

4662 ~~[(i) all local government entities under Section 11-37-101;]~~

4663 ~~[(ii) all local health departments under Section 26A-1-108.7;]~~

4664 ~~[(iii) all procurement officers or other persons responsible for purchasing supplies~~
4665 ~~within the public school system under Title 53A, State System of Public Education;]~~

4666 ~~[(iv) all procurement officers or other persons responsible for purchasing supplies~~
4667 ~~within the state system of higher education under Title 53B, State System of Higher Education;~~
4668 ~~and]~~

4669 ~~[(v) all procurement officers or other persons responsible for purchasing supplies for~~
4670 ~~all public procurement units as defined in Section 63G-6-103; and]~~

4671 ~~[(d) present a written report to the Natural Resources, Agriculture, and Environment~~
4672 ~~Interim Committee annually prior to November 30 regarding the purchases of recycled goods~~
4673 ~~on state contracts during the prior fiscal year; and]~~

4674 ~~[(8)]~~ (5) ensure that:

4675 (a) before approving a [~~purchase, lease, or rental~~] procurement not covered by an
4676 existing statewide contract for information technology or telecommunications supplies or
4677 services, the chief information officer and the agency have [~~provided~~] stated in writing to the

4678 division[;] that the needs analysis required in Section 63F-1-205 was completed, unless the
4679 [~~purchase, lease, or rental~~] procurement is approved in accordance with Title 63M, Chapter 1,
4680 Part 26, Government Procurement Private Proposal Program; and

4681 (b) the oversight authority required by Subsection [~~(8)~~](5)(a) is not delegated outside
4682 the [~~Division of Purchasing and General Services.~~] division; and

4683 (6) provide training to public procurement units and to persons who do business with
4684 public procurement units.

4685 Section 94. Section **63G-6a-304**, which is renumbered from Section 63G-6-205 is
4686 renumbered and amended to read:

4687 ~~[63G-6-205].~~ **63G-6a-304. Delegation of authority.**

4688 [~~Subject to rules and regulations~~]

4689 (1) In accordance with rules made by the board, the chief procurement officer may
4690 delegate authority to designees or to any department, agency, or official.

4691 (2) For a procurement [~~process~~] under Title 63M, Chapter 1, Part 26, Government
4692 Procurement Private Proposal Program, any delegation by the chief procurement officer under
4693 this section shall be made to the Governor's Office of Economic Development.

4694 Section 95. Section **63G-6a-305**, which is renumbered from Section 63G-6-302 is
4695 renumbered and amended to read:

4696 ~~[63G-6-302].~~ **63G-6a-305. Duty of chief procurement officer in**
4697 **maintaining specifications.**

4698 (1) The chief procurement officer [~~shall~~] may prepare, issue, revise, maintain, and
4699 monitor the use of specifications for [~~supplies, services, construction, and technology required~~
4700 ~~by the state~~] each procurement over which the chief procurement officer has authority.

4701 (2) The chief procurement officer shall obtain expert advice and assistance from
4702 personnel of [~~using agencies~~] public procurement units in the development of specifications
4703 and may delegate in writing to a [~~using agency~~] public procurement unit the authority to
4704 prepare and utilize its own specifications.

4705 (3) For a procurement [~~process~~] under Title 63M, Chapter 1, Part 26, Government
4706 Procurement Private Proposal Program, any delegation by the chief procurement officer under
4707 this section shall be made to the Governor's Office of Economic Development.

4708 Section 96. Section **63G-6a-401** is enacted to read:

4709 **Part 4. General Procurement Provisions**4710 **63G-6a-401. Title.**4711 This part is known as "General Procurement Provisions."4712 Section 97. Section **63G-6a-402** is enacted to read:4713 **63G-6a-402. Public procurement unit required to comply with Utah Procurement**
4714 **Code and applicable rules -- Rulemaking authority -- Reporting.**4715 (1) Except as otherwise provided in Section 63G-6a-109, Section 63G-6a-403, Part 8,
4716 Exceptions to Procurement Requirements, or elsewhere in this chapter, a public procurement
4717 unit may not obtain a procurement item, unless:4718 (a) if the public procurement unit is an authorized purchasing entity, the public
4719 procurement unit:4720 (i) uses a procurement process; and4721 (ii) complies with:4722 (A) the requirements of this chapter; and4723 (B) the rules made pursuant to this chapter by the applicable rulemaking authority;4724 (b) if the public procurement unit is a local government unit, the public procurement
4725 unit complies with:4726 (i) the requirements of this chapter that are adopted by the local government unit; and4727 (ii) all other procurement requirements that the local government unit is required to
4728 comply with; or4729 (c) if the public procurement unit is not a public procurement unit described in
4730 Subsections (1)(a) or (b), the public procurement unit:4731 (i) obtains the procurement item under the direction and approval of the division,
4732 unless otherwise provided by a rule made by the board;4733 (ii) uses a procurement process; and4734 (iii) complies with:4735 (A) the requirements of this chapter; and4736 (B) the rules made pursuant to this chapter by the applicable rulemaking authority.4737 (2) Subject to Subsection (3), the applicable rulemaking authority shall make rules
4738 relating to the management and control of procurements and procurement procedures by a
4739 public procurement unit.

4740 (3) (a) Rules made under Subsection (2) shall ensure compliance with the federal
4741 contract prohibition provisions of the Sudan Accountability and Divestment Act of 2007 (Pub.
4742 L. No. 110-174) that prohibit contracting with a person doing business in Sudan.

4743 (b) The State Building Board rules governing procurement of construction,
4744 architect-engineer services, and leases apply to the procurement of construction,
4745 architect-engineer services, and leases of real property by the Division of Facilities
4746 Construction and Management.

4747 (4) An applicable rulemaking authority that is subject to Title 63G, Chapter 3, Utah
4748 Administrative Rulemaking Act, shall make the rules described in this chapter in accordance
4749 with the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

4750 (5) The State Building Board shall make a report on or before July 1 of each year to a
4751 legislative interim committee, designated by the Legislative Management Committee created
4752 under Section 36-12-6, on the establishment, implementation, and enforcement of the rules
4753 made by the State Building Board under this chapter.

4754 Section 98. Section **63G-6a-403** is enacted to read:

4755 **63G-6a-403. Prequalification of potential bidders or offerors.**

4756 (1) A public procurement unit may, in accordance with this section:

4757 (a) prequalify potential bidders or offerors to provide any type of procurement item
4758 specified by the public procurement unit; and

4759 (b) limit participation in an invitation for bids or a request for proposals to the
4760 prequalified potential bidders or offerors for the specified type of procurement item.

4761 (2) To prequalify potential bidders or offerors to provide a specified type of
4762 procurement item, a public procurement unit shall issue a request for qualifications.

4763 (3) A public procurement unit that issues a request for qualifications shall:

4764 (a) publish the request for qualifications in accordance with the requirements of
4765 Section 63G-6a-402;

4766 (b) state in the request for qualifications:

4767 (i) the type of procurement item to which the request for qualifications relates;

4768 (ii) the scope of work to be performed;

4769 (iii) the instructions and the deadline for providing information in response to the
4770 request for qualifications;

4771 (iv) the minimum criteria for prequalification;
4772 (v) the period of time during which the list of prequalified potential bidders or offerors
4773 will remain in effect, which may not be longer than 18 months after the list of prequalified
4774 potential bidders or offerors is made available to the public under Subsection (8)(b); and
4775 (vi) that a public procurement unit may limit participation in an invitation for bids or a
4776 request for proposals, during the time period described in Subsection (3)(b)(v), to the potential
4777 bidders or offerors that are prequalified to provide the specified type of procurement item.
4778 (4) The minimum criteria described in Subsection (3)(b)(iv):
4779 (a) shall include the prequalification requirements unique to the procurement;
4780 (b) may include performance rating criteria; and
4781 (c) may not be so restrictive that the criteria unreasonably limit competition.
4782 (5) A public procurement unit may, before making a final list of prequalified bidders or
4783 offerors, request additional information to clarify responses made to the request for
4784 prequalifications.
4785 (6) A potential bidder or offeror shall be included on the list of prequalified potential
4786 bidders or offerors if the bidder or offeror:
4787 (a) submits a timely, responsive response to the request for prequalifications; and
4788 (b) meets the minimum criteria for qualification described in Subsection (3)(b)(iv).
4789 (7) If a request for qualifications will result in only one potential bidder or offeror
4790 being placed on the list of prequalified potential bidders or offerors:
4791 (a) the public procurement unit shall cancel the request for qualifications; and
4792 (b) the list may not be used by the public procurement unit.
4793 (8) The public procurement unit shall:
4794 (a) before making the list of prequalified potential bidders or offerors available to the
4795 public, provide each potential bidder or offeror who provided information in response to the
4796 request, but who did not meet the minimum qualifications for placement on the list, a written
4797 justification statement describing why the potential bidder or offeror did not meet the criteria
4798 for inclusion on the list; and
4799 (b) within 30 days after the day of the deadline described in Subsection (3)(b)(iii),
4800 make the list of prequalified potential bidders or offerors available to the public.
4801 Section 99. Section **63G-6a-404** is enacted to read:

4802 **63G-6a-404. Approved contractor list.**

4803 (1) An authorized purchasing entity may compile a list of approved contractors from
4804 which procurement items may be obtained.

4805 (2) An approved contractor list may only be compiled from:

4806 (a) timely, responsive bids or responses received in response to:

4807 (i) an invitation for bids; or

4808 (ii) a request for proposals; or

4809 (b) timely, responsive responses to:

4810 (i) the prequalification process described in Section 63G-6a-403; or

4811 (ii) the process described in Part 15, Architect-Engineer Services.

4812 (3) In order to ensure equal treatment of all contractors on a contractor list, an
4813 authorized purchasing entity shall use one of the following methods in an unbiased manner:

4814 (a) a rotation system, organized alphabetically, numerically, or randomly;

4815 (b) assigning contractors to a specified geographical area; or

4816 (c) classifying each contractor based on each contractor's particular expertise or field.

4817 Section 100. Section **63G-6a-405** is enacted to read:

4818 **63G-6a-405. Multiple award contracts.**

4819 (1) An authorized purchasing entity may enter into multiple award contracts with
4820 bidders or offerors.

4821 (2) Multiple award contracts may be in an authorized purchasing entity's best interest if
4822 award to two or more bidders or offerors for similar procurement items is needed or desired for
4823 adequate delivery, service, availability, or product compatibility.

4824 (3) An authorized purchasing entity shall:

4825 (a) exercise care to protect and promote competition among bidders or offerors when
4826 seeking to enter into multiple award contracts;

4827 (b) name all eligible users of the multiple award contracts in the invitation for bids or
4828 request for proposals; and

4829 (c) if the authorized purchasing entity anticipates entering into multiple award
4830 contracts before issuing the invitation for bids or request for proposals, state in the invitation
4831 for bids or request for proposals that the authorized purchasing entity may enter into multiple
4832 award contracts at the end of the procurement process.

4833 (4) An authorized purchasing entity that enters into multiple award contracts shall:

4834 (a) obtain all of its normal, recurring requirements for the procurement items that are
4835 the subject of the contracts until the contracts terminate; and

4836 (b) reserve the right to obtain the procurement items described in Subsection (4)(a)
4837 separately from the contracts if:

4838 (i) there is a need to obtain a quantity of the procurement items that exceeds the
4839 amount specified in the contracts; or

4840 (ii) the procurement officer makes a written finding that the procurement items
4841 available under the contract will not effectively or efficiently meet a nonrecurring special need
4842 of a public procurement unit.

4843 (5) Notwithstanding Subsection (3)(b), if an authorized purchasing entity enters into a
4844 multiple award contract under this section, another authorized purchasing entity that is not a
4845 signatory to the contract may, but is not required to, obtain a procurement item under the
4846 contract.

4847 (6) An applicable rulemaking authority may make rules to further regulate a
4848 procurement under this section.

4849 Section 101. Section **63G-6a-406** is enacted to read:

4850 **63G-6a-406. Public notice of procurement process.**

4851 (1) An authorized purchasing entity that issues an invitation for bids or a request for
4852 proposals shall provide public notice that includes:

4853 (a) the name of the authorized purchasing entity and the public procurement unit
4854 acquiring the procurement item;

4855 (b) information on how to contact the authorized purchasing entity in relation to the
4856 invitation for bids or request for proposals;

4857 (c) the date of the opening and closing of the invitation for bids or request for
4858 proposals;

4859 (d) information on how to obtain a copy of the invitation for bids or request for
4860 proposals; and

4861 (e) a general description of the procurement items that will be obtained through the
4862 procurement process.

4863 (2) Except as provided in Subsection (3), the authorized purchasing entity shall publish

4864 the notice described in Subsection (1), using at least one of the following methods:

4865 (a) at least 10 days before the day of the deadline for submission of a bid or other
4866 response, publish the notice:

4867 (i) in a newspaper of general circulation in the state; or

4868 (ii) in a newspaper of local circulation in the area:

4869 (A) directly impacted by the procurement; or

4870 (B) over which the public procurement unit has jurisdiction; or

4871 (b) at least 10 consecutive days before the day of the deadline for submission of a bid

4872 or other response, publish the notice:

4873 (i) on the main website for the authorized purchasing entity or public procurement unit;

4874 or

4875 (ii) on a state website that is owned, managed by, or provided under contract with, the
4876 division for posting a public procurement notice.

4877 (3) An authorized purchasing entity may reduce the 10-day period described in

4878 Subsection (2), if the procurement officer or the procurement officer's designee signs a written
4879 statement that:

4880 (a) states that a shorter time is needed; and

4881 (b) determines that competition from multiple sources may be obtained within the
4882 shorter period of time.

4883 (4) An authorized purchasing entity shall make a copy of an invitation for bids or a

4884 request for proposals available for public inspection at the main office of the authorized
4885 purchasing entity or on the website described in Subsection (2)(b).

4886 Section 102. Section **63G-6a-407**, which is renumbered from Section 63G-6-303 is
4887 renumbered and amended to read:

4888 **[63G-6-303].** **63G-6a-407. Purpose of specifications.**

4889 (1) All specifications shall seek to promote the overall economy and best use for the
4890 purposes intended and encourage competition in satisfying the [state's] needs of the public
4891 procurement unit, and [shall] may not be unduly restrictive.

4892 (2) The requirements of this part regarding the purposes and nonrestrictiveness of
4893 specifications shall apply to all specifications, including[~~, but not limited to,~~] those prepared by
4894 architects, engineers, designers, and draftsmen for public contracts.

4895 Section 103. Section **63G-6a-408** is enacted to read:

4896 **63G-6a-408. Small purchases.**

4897 (1) The applicable rulemaking authority may make rules governing small purchases,
4898 including:

4899 (a) establishing the maximum expenditure that may qualify as a small purchase, unless
4900 otherwise provided by statute;

4901 (b) establishing expenditure thresholds and procurement requirements related to those
4902 thresholds; and

4903 (c) the use of electronic, telephone, or written quotes.

4904 (2) (a) Except as provided in Subsection (2)(b), a public procurement unit may not
4905 obtain a procurement item through a small purchase procurement process if the procurement
4906 item may be obtained through a state contract.

4907 (b) Subsection (2)(a) does not apply:

4908 (i) to a non-executive state procurement unit;

4909 (ii) if the procurement officer or the head of the state purchasing unit authorizes an
4910 exception to the requirement;

4911 (iii) to an institution of higher education of the state; or

4912 (iv) to a school district or a public school.

4913 (c) An entity that is exempt from the requirements of Subsection (2)(a) is encouraged,
4914 but not required, to comply with Subsection (2)(a).

4915 (3) A public procurement unit:

4916 (a) may not use the small purchase procurement process described in this section for
4917 ongoing, continuous, or regularly scheduled procurements; and

4918 (b) shall make its ongoing, continuous, or regularly scheduled procurements through:

4919 (i) a state contract; or

4920 (ii) if there is not an existing state contract for the procurement item, through a contract
4921 awarded through a procurement process described in this chapter or an applicable exception to
4922 a procurement process.

4923 (4) It is unlawful for a person to intentionally or knowingly divide a procurement into
4924 one or more smaller procurements with the intent to make a procurement:

4925 (a) qualify as a small purchase, if, before dividing the procurement, it would not have

4926 qualified as a small purchase; or

4927 (b) meet a threshold established by rule made by the applicable rulemaking authority,
4928 if, before dividing the procurement, it would not have met the threshold.

4929 (5) A division of a procurement that is prohibited under Subsection (4) includes doing
4930 any of the following with the intent or knowledge described in Subsection (4):

4931 (a) making two or more separate purchases;

4932 (b) dividing an invoice or purchase order into two or more invoices or purchase orders;

4933 or

4934 (c) making smaller purchases over a period of time.

4935 (6) A person who violates Subsection (4) is subject to the criminal penalties described
4936 in Section 63G-6a-2305.

4937 (7) The Division of Finance within the Department of Administrative Services may
4938 conduct an audit of a public procurement unit in the state executive branch to verify
4939 compliance with the requirements of this section.

4940 (8) A public procurement unit in the state executive branch may not make a small
4941 purchase after January 1, 2013, unless the chief procurement officer certifies that the person
4942 responsible for procurements in the public procurement unit has satisfactorily completed
4943 training on this section and the rules made under this section.

4944 Section 104. Section **63G-6a-501** is enacted to read:

4945 **Part 5. Request for Information**

4946 **63G-6a-501. Title.**

4947 This part is known as "Request for Information."

4948 Section 105. Section **63G-6a-502** is enacted to read:

4949 **63G-6a-502. Purpose of request for information.**

4950 (1) The purpose of a request for information is to:

4951 (a) obtain information, comments, or suggestions from potential bidders or offerors
4952 before issuing an invitation for bids or request for proposals;

4953 (b) determine whether to issue an invitation for bids or a request for proposals; and

4954 (c) generate interest in a potential invitation for bids or a request for proposals.

4955 (2) A request for information may be useful in order to:

4956 (a) prepare to issue an invitation for bids or request for proposals for an unfamiliar or

4957 complex procurement;

4958 (b) determine the market availability of a procurement item; or

4959 (c) determine best practices, industry standards, performance standards, product
4960 specifications, and innovations relating to a procurement item.

4961 Section 106. Section **63G-6a-503** is enacted to read:

4962 **63G-6a-503. Request for information and response nonbinding.**

4963 (1) A request for information is not a procurement process and may not be used to
4964 make a purchase or enter into a contract. A public procurement unit is required to use a
4965 procurement process, or comply with an exception to the requirement to use a procurement
4966 process, in order to make a purchase or enter into a contract.

4967 (2) A response to a request for information is not an offer and may not be accepted to
4968 form a binding contract.

4969 Section 107. Section **63G-6a-504** is enacted to read:

4970 **63G-6a-504. Contents of request for information -- Public notice.**

4971 A request for information may seek a wide range of information, including:

4972 (1) availability of a procurement item;

4973 (2) delivery schedules;

4974 (3) industry standards and practices;

4975 (4) product specifications;

4976 (5) training;

4977 (6) new technologies;

4978 (7) capabilities of potential providers of a procurement item; and

4979 (8) alternate solutions.

4980 Section 108. Section **63G-6a-601** is enacted to read:

4981 **Part 6. Bidding**

4982 **63G-6a-601. Title.**

4983 This part is known as "Bidding."

4984 Section 109. Section **63G-6a-602** is enacted to read:

4985 **63G-6a-602. Contracts awarded by bidding.**

4986 (1) Except as otherwise provided in this chapter, an authorized purchasing entity shall
4987 award a contract for a procurement by bidding, in accordance with the rules of the applicable

4988 rulemaking authority.

4989 (2) The bidding procurement process is appropriate to use when cost is the major factor
4990 in determining the award of a procurement.

4991 Section 110. Section **63G-6a-603** is enacted to read:

4992 **63G-6a-603. Invitation for bids -- Contents -- Notice.**

4993 (1) The bidding procurement process begins when the authorized purchasing entity
4994 issues an invitation for bids.

4995 (2) An invitation for bids shall:

4996 (a) state the period of time during which bids will be accepted;

4997 (b) describe the manner in which a bid shall be submitted;

4998 (c) state the place where a bid shall be submitted; and

4999 (d) include, or incorporate by reference:

5000 (i) a description of the procurement items sought;

5001 (ii) the objective criteria that will be used to evaluate the bids; and

5002 (iii) the required contractual terms and conditions.

5003 (3) An authorized purchasing entity shall publish an invitation for bids in accordance
5004 with the requirements of Section 63G-6a-406.

5005 Section 111. Section **63G-6a-604** is enacted to read:

5006 **63G-6a-604. Bid opening and acceptance.**

5007 (1) Bids shall be opened:

5008 (a) publicly, except as provided in Section 63G-6a-611;

5009 (b) in the presence of one or more witnesses, unless an electronic bid opening process
5010 is used where bidders may see the opening of the bid electronically; and

5011 (c) at the time and place indicated in the invitation for bids.

5012 (2) Bids shall be accepted unconditionally, without alteration or correction, except as
5013 otherwise authorized by this chapter.

5014 (3) (a) The procurement officer shall reject a bid that is not responsive or responsible.

5015 (b) A bid that is not responsive includes a bid that:

5016 (i) is conditional;

5017 (ii) attempts to modify the bid requirements;

5018 (iii) contains additional terms or conditions; or

5019 (iv) fails to conform with the requirements or specifications of the invitation for bids.

5020 (c) A bid that is not responsible includes a bid where the procurement officer
5021 reasonably concludes that the bidder or an employee, agent, or subcontractor of the bidder, at
5022 any tier, is unable to satisfactorily fulfill the bid requirements.

5023 (4) An authorized purchasing entity may not accept a bid after the time for submission
5024 of a bid has expired.

5025 (5) The procurement officer shall:

5026 (a) record the name of each bidder and the amount of each bid; and

5027 (b) after the bid is awarded, make the information described in Subsection (5)(a)
5028 available for public disclosure.

5029 Section 112. Section **63G-6a-605** is enacted to read:

5030 **63G-6a-605. Correction or withdrawal of bids -- Cancellation of award.**

5031 (1) Correction or withdrawal of inadvertently erroneous bids, or the cancellation of an
5032 award or a contract that is based on an unintentionally erroneous bid, may be made in
5033 accordance with the rules of the applicable rulemaking authority.

5034 (2) Notwithstanding Subsection (1), the following changes may not be made to a bid
5035 after the bid opening:

5036 (a) changes in bid pricing;

5037 (b) changes in the cost evaluation formula; or

5038 (c) changes in other provisions that are prejudicial to fair competition or to the interest
5039 of the public procurement unit.

5040 (3) A decision to permit the correction or withdrawal of a bid or the cancellation of an
5041 award or a contract under Subsection (1) shall be supported in a written document, signed by
5042 the procurement officer or the head of the authorized purchasing entity.

5043 Section 113. Section **63G-6a-606** is enacted to read:

5044 **63G-6a-606. Evaluation of bids -- Award -- Cancellation -- Disqualification.**

5045 (1) An authorized purchasing entity shall evaluate each bid using the objective criteria
5046 described in the invitation for bids, which may include:

5047 (a) experience;

5048 (b) performance ratings;

5049 (c) inspection;

- 5050 (d) testing;
- 5051 (e) quality;
- 5052 (f) workmanship;
- 5053 (g) time and manner of delivery;
- 5054 (h) references;
- 5055 (i) financial stability;
- 5056 (j) cost;
- 5057 (k) suitability for a particular purpose; or
- 5058 (l) other objective criteria specified in the invitation for bids.
- 5059 (2) Criteria not described in the invitation for bids may not be used to evaluate a bid.
- 5060 (3) The authorized purchasing entity shall:
- 5061 (a) award the contract as soon as practicable to:
- 5062 (i) the lowest responsive and responsible bidder who meets the objective criteria
- 5063 described in the invitation for bids; or
- 5064 (ii) if, in accordance with Subsection (4), the procurement officer or the head of the
- 5065 authorized purchasing entity disqualifies the bidder described in Subsection (3)(a)(i), the next
- 5066 lowest responsive and responsible bidder who meets the objective criteria described in the
- 5067 invitation for bids; or
- 5068 (b) cancel the invitation for bids without awarding a contract.
- 5069 (4) In accordance with Subsection (5), the procurement officer or the head of the
- 5070 authorized purchasing entity may disqualify a bidder for:
- 5071 (a) a violation of this chapter;
- 5072 (b) a violation of a requirement of the invitation for bids;
- 5073 (c) unlawful or unethical conduct; or
- 5074 (d) a change in circumstance that, had the change been known at the time the bid was
- 5075 submitted, would have caused the bidder to not be the lowest responsive and responsible bidder
- 5076 who meets the objective criteria described in the invitation for bids.
- 5077 (5) A procurement officer or head of an authorized purchasing entity who disqualifies a
- 5078 bidder under Subsection (4) shall:
- 5079 (a) make a written finding, stating the reasons for disqualification; and
- 5080 (b) provide a copy of the written finding to the disqualified bidder.

5081 (6) If an authorized purchasing entity cancels an invitation for bids without awarding a
5082 contract, the authorized purchasing entity shall make available for public inspection a written
5083 justification for the cancellation.

5084 Section 114. Section **63G-6a-607** is enacted to read:

5085 **63G-6a-607. Action when all bids are over budget.**

5086 (1) Except as provided in Subsection (2) or (3), if the fiscal officer for the public
5087 procurement unit certifies that all accepted bids exceed available funds and that the lowest
5088 responsive and responsible bidder does not exceed the available funds by more than 5%, the
5089 procurement officer may negotiate an adjustment of the bid price and bid requirements with the
5090 lowest responsive and responsible bidder in order to bring the bid within the amount of
5091 available funds.

5092 (2) A procurement officer may not adjust the bid requirements under Subsection (1) if
5093 there is a substantial likelihood that, had the adjustment been included in the invitation for
5094 bids, a person that did not submit a bid would have submitted a responsive, responsible, and
5095 competitive bid.

5096 (3) The Division of Facilities Construction and Management is exempt from the
5097 requirements of this section if:

5098 (a) the building board adopts rules governing procedures when all accepted bids exceed
5099 available funds; and

5100 (b) the Division of Facilities Construction and Management complies with the rules
5101 described in Subsection (3)(a).

5102 Section 115. Section **63G-6a-608** is enacted to read:

5103 **63G-6a-608. Tie bids -- Resolution -- Copies provided to attorney general.**

5104 (1) A procurement officer shall resolve a tie bid in accordance with a method
5105 established by rule made by the applicable rulemaking authority. The method may include
5106 awarding the tie bid:

5107 (a) to the tie bidder who:

5108 (i) is provider of state products, if no other tie bidder is a responsive provider of state
5109 products;

5110 (ii) is closest to the point of delivery;

5111 (iii) received the previous award; or

- 5112 (iv) will provide the earliest delivery date;
- 5113 (b) by drawing lots; or
- 5114 (c) by any other reasonable method of resolving a tie bid.
- 5115 (2) The method chosen by the procurement officer to resolve a tie bid shall be at the
- 5116 sole discretion of the procurement officer, subject to the rules established under Subsection (1).
- 5117 (3) A public procurement unit in the state executive branch shall provide a copy of the
- 5118 procurement to the attorney general if an award of a contract to a tie bidder exceeds \$100,000
- 5119 in expenditures.

5120 Section 116. Section **63G-6a-609** is enacted to read:

5121 **63G-6a-609. Multiple stage bidding process.**

- 5122 (1) An authorized purchasing entity may conduct a bid in multiple stages, to:
- 5123 (a) narrow the number of bidders who will progress to a subsequent stage;
- 5124 (b) prequalify bidders for subsequent stages, in accordance with Section 63G-6a-403;
- 5125 (c) enter into a contract for a single procurement; or
- 5126 (d) award multiple contracts for a series of upcoming procurements.
- 5127 (2) The invitation for bids for a multiple stage bidding process shall:
- 5128 (a) describe the requirements for, and purpose of, each stage of the process;
- 5129 (b) indicate whether the authorized purchasing entity intends to award:
- 5130 (i) a single contract; or
- 5131 (ii) multiple contracts for a series of upcoming procurements; and
- 5132 (c) state that:
- 5133 (i) the first stage is for prequalification only;
- 5134 (ii) a bidder may not submit any pricing information in the first stage of the process;
- 5135 and
- 5136 (iii) bids in the second stage will only be accepted from a person who prequalifies in
- 5137 the first stage.
- 5138 (3) During the first stage, the authorized purchasing entity:
- 5139 (a) shall prequalify bidders to participate in subsequent stages, in accordance with
- 5140 Section 63G-6a-403;
- 5141 (b) shall prohibit the submission of pricing information until the final stage; and
- 5142 (c) may, before beginning the second stage, request additional information to clarify

5143 the qualifications of the bidders who submit timely responses.

5144 (4) Contracts may only be awarded for a procurement item described in stage one of
5145 the invitation for bids.

5146 (5) An authorized purchasing entity may conduct a bid in as many stages as it
5147 determines to be appropriate.

5148 (6) Except as otherwise expressly provided in this section, an authorized purchasing
5149 entity shall conduct a multiple stage process in accordance with this part.

5150 (7) The applicable rulemaking authority may make rules governing the use of a
5151 multiple stage process described in this section.

5152 Section 117. Section **63G-6a-610** is enacted to read:

5153 **63G-6a-610. Contracts awarded by reverse auction.**

5154 (1) Reverse auction bidding may be used if the procurement officer determines, in
5155 writing, that reverse auction bidding will provide the best value to the public procurement unit.

5156 (2) Reverse auction bidding is appropriate to use when there are multiple prequalified
5157 providers of a procurement item.

5158 Section 118. Section **63G-6a-611** is enacted to read:

5159 **63G-6a-611. Invitation for bids for reverse auction -- Notice contents --**
5160 **Agreement to terms and conditions.**

5161 (1) The reverse auction bidding process begins when an authorized purchasing entity
5162 issues an invitation for bids to prequalify bidders to participate in the reverse auction.

5163 (2) The invitation for bids shall:

5164 (a) state the period of time during which bids will be accepted;

5165 (b) state that the bid will be conducted by reverse auction;

5166 (c) describe the procurement items sought;

5167 (d) describe the minimum requirements to become prequalified;

5168 (e) state the required contractual terms and conditions; and

5169 (f) describe the procedure that the authorized purchasing entity will follow in
5170 conducting the reverse auction.

5171 (3) In order to participate in a reverse auction, a bidder shall agree to:

5172 (a) the specifications, and contractual terms and conditions, of the procurement; and

5173 (b) be trained in, and abide by, the procedure that the authorized purchasing entity will

5174 follow in conducting the reverse auction.

5175 (4) An authorized purchasing entity shall publish an invitation for bids for a reverse
5176 auction in accordance with the requirements of Section 63G-6a-406.

5177 Section 119. Section **63G-6a-612** is enacted to read:

5178 **63G-6a-612. Conduct of reverse auction.**

5179 (1) When conducting a reverse auction, an authorized purchasing entity:

5180 (a) may conduct the reverse auction at a physical location or by electronic means;

5181 (b) shall permit all prequalified bidders to participate in the reverse auction;

5182 (c) may not permit a bidder to participate in the reverse auction if the bidder did not
5183 prequalify to participate in the reverse auction;

5184 (d) may not accept a bid after the time for submission of a bid has expired;

5185 (e) shall update the bids on a real time basis; and

5186 (f) shall conduct the reverse auction in a manner that permits each bidder to:

5187 (i) bid against each other; and

5188 (ii) lower the bidder's price below the lowest bid before the reverse auction closes.

5189 (2) At the end of the reverse auction, the authorized purchasing entity shall:

5190 (a) award the contract as soon as practicable to the lowest responsive and responsible
5191 bidder who meets the objective criteria described in the invitation for bids; or

5192 (b) cancel the reverse auction without awarding a contract.

5193 (3) After the reverse auction is finished, the procurement officer shall make publicly
5194 available:

5195 (a) (i) the amount of the final bid submitted by each bidder during the reverse auction;
5196 and

5197 (ii) the identity of the bidder that submitted each final bid; and

5198 (b) if practicable:

5199 (i) the amount of each bid submitted during the reverse auction; and

5200 (ii) the identity of the bidder that submitted each bid.

5201 Section 120. Section **63G-6a-701** is enacted to read:

5202 **Part 7. Request for Proposals**

5203 **63G-6a-701. Title.**

5204 This part is known as "Request for Proposals."

5205 Section 121. Section **63G-6a-702** is enacted to read:

5206 **63G-6a-702. Contracts awarded by request for proposals.**

5207 (1) A request for proposals procurement process may be used instead of bidding if the
5208 procurement officer determines, in writing, that the request for proposals procurement process
5209 will provide the best value to the public procurement unit.

5210 (2) The request for proposals procurement process is appropriate to use for:

5211 (a) the procurement of professional services;

5212 (b) a design-build procurement;

5213 (c) when cost is not the most important factor to be considered in making the selection
5214 that is most advantageous to the public procurement unit; or

5215 (d) when factors, in addition to cost, are highly significant in making the selection that
5216 is most advantageous to the public procurement unit.

5217 Section 122. Section **63G-6a-703** is enacted to read:

5218 **63G-6a-703. Request for proposals -- Notice -- Contents.**

5219 (1) The request for proposals procurement process begins when the authorized
5220 purchasing entity issues a request for proposals.

5221 (2) A request for proposals shall:

5222 (a) state the period of time during which a proposal will be accepted;

5223 (b) describe the manner in which a proposal shall be submitted;

5224 (c) state the place where a proposal shall be submitted;

5225 (d) include, or incorporate by reference:

5226 (i) a description of the procurement items sought;

5227 (ii) a description of the subjective and objective criteria that will be used to evaluate
5228 the proposal; and

5229 (iii) the required contractual terms and conditions;

5230 (e) state the relative weight that will be given to each score awarded for the criteria
5231 described in Subsection (2)(d)(ii), including cost;

5232 (f) state the formula that will be used to determine the score awarded for the cost of
5233 each proposal;

5234 (g) if the request for proposals will be conducted in multiple stages, as described in

5235 Section 63G-6a-710, include a description of the stages and the criteria and scoring that will be

5236 used to screen offerors at each stage; and

5237 (h) state that discussions may be conducted with offerors who submit proposals
5238 determined to be reasonably susceptible of being selected for award, followed by an
5239 opportunity to make best and final offers, but that proposals may be accepted without
5240 discussions.

5241 (3) An authorized purchasing entity shall publish a request for proposals in accordance
5242 with the requirements of Section 63G-6a-406.

5243 Section 123. Section **63G-6a-704** is enacted to read:

5244 **63G-6a-704. Opening of proposals and acceptance.**

5245 (1) An authorized purchasing entity shall ensure that proposals are opened in a manner
5246 that avoids disclosing the contents to competing offerors during the evaluation process.

5247 (2) An authorized purchasing entity may not accept a proposal:

5248 (a) after the time for submission of a proposal has expired; or

5249 (b) that is not responsive to the request for proposals.

5250 Section 124. Section **63G-6a-705** is enacted to read:

5251 **63G-6a-705. Discussions -- Best and final offers.**

5252 (1) After proposals are received and opened, the authorized purchasing entity may
5253 conduct discussions with the offerors and allow the offerors to make best and final offers after
5254 the discussions.

5255 (2) The authorized purchasing entity shall:

5256 (a) ensure that each offeror receives fair and equal treatment with respect to the other
5257 offerors;

5258 (b) establish a schedule and procedures for conducting discussions;

5259 (c) ensure that information in each proposal and information gathered during
5260 discussions is not shared with other offerors until the contract is awarded;

5261 (d) ensure that auction tactics are not used in the discussion process, including
5262 discussing and comparing the costs and features of other proposals; and

5263 (e) set a common date and time for the submission of best and final offers.

5264 (3) If an offeror chooses not to participate in a discussion or does not make a timely
5265 best and final offer, the offer submitted by the offerors before the conduct of discussions shall
5266 be treated as the offeror's best and final offer.

5267 Section 125. Section **63G-6a-706** is enacted to read:

5268 **63G-6a-706. Correction or withdrawal of proposal -- Cancellation of award.**

5269 (1) Correction or withdrawal of an unintentionally erroneous proposal, or the
5270 cancellation of an award or contract that is based on an unintentionally erroneous proposal,
5271 may be made in accordance with the rules of the applicable rulemaking authority.

5272 (2) A decision to permit the correction or withdrawal of a proposal or the cancellation
5273 of an award or a contract under Subsection (1) shall be supported in a written document, signed
5274 by the procurement officer.

5275 Section 126. Section **63G-6a-707** is enacted to read:

5276 **63G-6a-707. Evaluation of proposals -- Evaluation committee.**

5277 (1) Each proposal shall be evaluated using the criteria described in the request for
5278 proposals, which may include:

5279 (a) experience;

5280 (b) performance ratings;

5281 (c) inspection;

5282 (d) testing;

5283 (e) quality;

5284 (f) workmanship;

5285 (g) time, manner, or schedule of delivery;

5286 (h) references;

5287 (i) financial stability;

5288 (j) suitability for a particular purpose;

5289 (k) management plans;

5290 (l) cost; or

5291 (m) other subjective or objective criteria specified in the request for proposals.

5292 (2) Criteria not described in the request for proposals may not be used to evaluate a
5293 proposal.

5294 (3) The authorized purchasing entity shall:

5295 (a) appoint an evaluation committee consisting of at least three individuals; and

5296 (b) ensure that the evaluation committee and each member of the evaluation

5297 committee:

5298 (i) does not have a conflict of interest with any of the offerors;
5299 (ii) can fairly evaluate each proposal;
5300 (iii) does not contact or communicate with an offeror for any reason other than
5301 conducting the procurement process; and
5302 (iv) conducts the evaluation in a manner that ensures a fair and competitive process
5303 and avoids the appearance of impropriety.
5304 (4) The evaluation committee may conduct interviews with, or participate in
5305 presentations by, the offerors.
5306 (5) Except as provided in Subsection (6) or (7), each member of the evaluation
5307 committee is prohibited from knowing, or having access to, any information relating to the
5308 cost, or the scoring of the cost, of a proposal until after the evaluation committee submits its
5309 final recommended scores on all other criteria to the authorized purchasing entity.
5310 (6) When selecting a construction manager/general contractor for a construction
5311 project, the evaluation committee:
5312 (a) may, at any time after the opening of the responses to the request for proposals,
5313 have access to, and consider, the management fee proposed by the offerors; and
5314 (b) except as provided in Subsection (7), may not know or have access to any other
5315 information relating to the cost of construction submitted by the offerors, until after the
5316 evaluation committee submits its final recommended scores on all other criteria to the
5317 authorized purchasing entity.
5318 (7) An authorized purchasing entity is not required to comply with Subsection (5) if,
5319 before opening the responses to the request for proposals, the head of the authorized purchasing
5320 entity or a person designated by rule made by the applicable rulemaking authority:
5321 (a) signs a written statement:
5322 (i) indicating that, due to the nature of the proposal or other circumstances, it is in the
5323 best interest of the state to waive compliance with Subsection (5); and
5324 (ii) describing the nature of the proposal and the other circumstances relied upon to
5325 wave compliance with Subsection (5); and
5326 (b) makes the written statement available to the public, upon request.
5327 Section 127. Section **63G-6a-708** is enacted to read:
5328 **63G-6a-708. Publication of award and scores -- Cost-benefit analysis.**

5329 (1) The authorized purchasing entity shall, on the day on which the selection is
5330 announced, make available to each offeror and to the public a written statement that includes:

5331 (a) the name of the offeror found by the authorized purchasing entity to provide the
5332 greatest overall value to the public procurement unit, taking into account the cost and the other
5333 evaluation criteria described in the request for proposals; and

5334 (b) the scores awarded to each offeror by the evaluation committee for each evaluation
5335 criteria category described in the request for proposals.

5336 (2) If the contract is awarded to an offeror other than the lowest cost offeror, and the
5337 difference between the cost of the accepted proposal and the lowest proposal exceeds \$10,000,
5338 an authorized purchasing entity shall include, with the statement described in Subsection (1),
5339 an informal written cost-benefit analysis that:

5340 (a) explains, in general terms, the advantage to the public procurement unit of
5341 awarding the contract to the higher cost offeror;

5342 (b) includes, except as provided in Subsection (2)(c), the estimated added financial
5343 value to the public procurement unit of each criteria that justifies awarding the contract to the
5344 higher cost offeror;

5345 (c) includes, to the extent that assigning a financial value to a particular criteria is not
5346 practicable, a statement describing:

5347 (i) why it is not practicable to assign a financial value to the criteria; and

5348 (ii) in nonfinancial terms, the advantage to the public procurement unit, based on the
5349 particular criteria, of awarding the contract to the higher cost offeror;

5350 (d) demonstrates that the value of the advantage to the public procurement unit of
5351 awarding the contract to the higher cost offeror exceeds the value of the difference between the
5352 cost of the higher cost offeror and the cost of the lower cost offerors; and

5353 (e) includes any other information required by rule made by the applicable rulemaking
5354 authority.

5355 Section 128. Section **63G-6a-709** is enacted to read:

5356 **63G-6a-709. Award of contract -- Cancellation -- Disqualification.**

5357 (1) After the evaluation and scoring of proposals is completed, the authorized
5358 purchasing entity shall:

5359 (a) award the contract as soon as practicable to:

5360 (i) the responsive and responsible offeror with the highest total score; or
5361 (ii) if, in accordance with Subsection (2), the procurement officer or the head of the
5362 authorized purchasing entity disqualifies the offeror described in Subsection (1)(a)(i), the
5363 responsive and responsible offeror with the next highest total score; or
5364 (b) cancel the request for proposals without awarding a contract.
5365 (2) In accordance with Subsection (3), the procurement officer or the head of the
5366 authorized purchasing entity may disqualify an offeror for:
5367 (a) a violation of this chapter;
5368 (b) a violation of a requirement of the request for proposals;
5369 (c) unlawful or unethical conduct; or
5370 (d) a change in circumstance that, had the change been known at the time the proposal
5371 was submitted, would have caused the proposal to not have the highest score.
5372 (3) A procurement officer or head of an authorized purchasing entity who disqualifies
5373 an offeror under Subsection (2) shall:
5374 (a) make a written finding, stating the reasons for disqualification; and
5375 (b) provide a copy of the written finding to the disqualified offeror.
5376 (4) If an authorized purchasing entity cancels a request for proposals without awarding
5377 a contract, the authorized purchasing entity shall make available for public inspection a written
5378 justification for the cancellation.
5379 Section 129. Section **63G-6a-710** is enacted to read:
5380 **63G-6a-710. Multiple stage process.**
5381 (1) An authorized purchasing entity may conduct a request for proposals in stages,
5382 where an earlier stage is used to qualify offerors for subsequent stages or to narrow the number
5383 of offerors that will move on to subsequent stages.
5384 (2) Except as otherwise expressly provided in this section, an authorized purchasing
5385 entity shall conduct a multiple stage process in accordance with this part.
5386 Section 130. Section **63G-6a-711**, which is renumbered from Section 63G-6-408.5 is
5387 renumbered and amended to read:
5388 **[63G-6-408.5]. 63G-6a-711. Procurement for submitted proposal.**
5389 (1) As used in this section:
5390 (a) "Committee" is as defined in Section 63M-1-2602.

5391 (b) "Initial proposal" is a proposal submitted by a private entity under Section
5392 63M-1-2605.

5393 (2) After receipt by the chief procurement officer of a copy of an initial proposal from
5394 the committee in accordance with Subsection 63M-1-2606(5), including any comment,
5395 suggestion, or modification to the initial proposal, the chief procurement officer shall initiate a
5396 procurement process in compliance with [~~Title 63G, Chapter 6, Utah Procurement Code~~] this
5397 chapter.

5398 (3) The chief procurement officer or designee shall:

5399 (a) review each detailed proposal received in accordance with Title 63M, Chapter 1,
5400 Part 26, Government Procurement Private Proposal Program; and

5401 (b) submit all detailed proposals that meet the guidelines established under Subsection
5402 63M-1-2608(1) to the committee for review under Section 63M-1-2609.

5403 (4) For purposes of this chapter, the Governor's Office of Economic Development is
5404 considered the state purchasing [~~agency~~] unit for a procurement process under Title 63M,
5405 Chapter 1, Part 26, Government Procurement Private Proposal Program.

5406 Section 131. Section ~~63G-6a-801~~ is enacted to read:

5407 **Part 8. Exceptions to Procurement Requirements**

5408 **63G-6a-801. Title.**

5409 This part is known as "Exceptions to Procurement Requirements."

5410 Section 132. Section ~~63G-6a-802~~, which is renumbered from Section 63G-6-410 is
5411 renumbered and amended to read:

5412 [~~63G-6-410~~]. **63G-6a-802. Sole source -- Award of contract without**
5413 **competition -- Notice.**

5414 (1) A contract may be awarded for a [~~supply, service, or construction~~] procurement
5415 item without competition [when, under rules and regulations, the chief] if the procurement
5416 officer, the head of [a purchasing agency, or a designee of either officer above the level of
5417 procurement officer] an authorized purchasing entity, or a designee of either who is senior to
5418 the procurement officer or the head of the authorized purchasing entity, determines in writing
5419 that:

5420 [(+)] (a) there is only one source for the [~~required supply, service, or construction~~]
5421 procurement item; or

5422 ~~[(2)]~~ (b) the award to a specific supplier, service provider, or contractor is a condition
5423 of a donation that will fund the full cost of the supply, service, or construction item.

5424 (2) Circumstances under which there is only one source for a procurement item may
5425 include:

5426 (a) where the most important consideration in obtaining a procurement item is the
5427 compatibility of equipment, technology, software, accessories, replacement parts, or service;

5428 (b) where a procurement item is needed for trial use or testing;

5429 (c) where an item is procured for resale; or

5430 (d) procurement of public utility services.

5431 (3) The applicable rulemaking authority may make rules regarding the publication of
5432 notice for a sole source procurement.

5433 (4) An authorized purchasing entity who awards a sole source contract on behalf of a
5434 public procurement unit shall negotiate with the contractor to ensure that the terms of the
5435 contract, including price and delivery, are in the best interest of the state.

5436 Section 133. Section **63G-6a-803** is enacted to read:

5437 **63G-6a-803. Emergency procurement.**

5438 (1) Notwithstanding any other provision of this chapter, a procurement officer or the
5439 procurement officer's designee may authorize an emergency procurement without using a
5440 standard procurement process when an emergency condition exists.

5441 (2) A procurement officer who authorizes an emergency procurement under Subsection
5442 (1) shall:

5443 (a) make the authorization in writing, stating the emergency condition upon which the
5444 emergency procurement is made; and

5445 (b) ensure that the procurement is made with as much competition as reasonably
5446 practicable while avoiding harm, or a risk of harm, to the public health, safety, welfare, or
5447 property.

5448 Section 134. Section **63G-6a-804**, which is renumbered from Section 63G-6-423 is
5449 renumbered and amended to read:

5450 ~~[63G-6-423].~~ **63G-6a-804. Purchase of prison industry goods.**

5451 (1) [AH] (a) A public procurement [units] unit that is not a political subdivision shall
5452 purchase goods and services produced by the Utah Correctional Industries Division as provided

5453 ~~[by] in~~ this section~~[-, which is an exemption from this chapter. All political subdivisions],~~

5454 (b) A political subdivision of the state may, and is encouraged to, purchase [these]
5455 goods and services [and are encouraged to do so when feasible] under this section.

5456 (c) A public procurement unit is not required to use a procurement process to purchase
5457 goods or services under this section.

5458 (2) ~~[By]~~ On or before July 1 of each year, the director of the Utah Correctional
5459 Industries shall:

5460 (a) publish and distribute to all [state agencies and interested political subdivisions]
5461 public procurement units and other interested public entities a catalog of goods and services
5462 provided by the Correctional Industries Division[-. The catalog shall include], including a
5463 description and price of each item offered for sale[-. The catalog shall be updated and revised];
5464 and

5465 (b) update and revise the catalog described in Subsection (2)(a) during the year as the
5466 director considers necessary.

5467 (3) (a) ~~[State departments, agencies, and institutions]~~ A procurement unit that is not a
5468 political subdivision of the state may not purchase any goods or services provided by the
5469 Correctional Industries Division from any other source unless it has been determined in writing
5470 by the director of Correctional Industries and by the [state] procurement officer [or in the case
5471 of institutions of higher education, the institutional procurement officer,] that purchase from
5472 the Correctional Industries Division is not feasible due to one of the following circumstances:

5473 (i) the good or service offered by the division does not meet the reasonable
5474 requirements of the ~~[purchasing agency]~~ public procurement unit;

5475 (ii) the good or service cannot be supplied within a reasonable time by the division; or

5476 (iii) the cost of the good or service, including basic price, transportation costs, and
5477 other expenses of acquisition, is not competitive with the cost of procuring the item from
5478 another source.

5479 (b) In cases of disagreement~~[-]~~ under Subsection (3)(a):

5480 (i) the decision may be appealed to a board consisting of:

5481 (A) the director of the Department of Corrections[-];

5482 (B) the director of Administrative Services[-]; and

5483 (C) a neutral third party agreed upon by the other two members [or,] of the board;

5484 (ii) in the case of [~~institutions~~] an institution of higher education of the state, the
5485 president of the [~~involved~~] institution, or the president's designee, shall make the final
5486 decision[-];

5487 (iii) in the case of a non-executive state procurement unit, a person designated by the
5488 applicable rulemaking authority shall make the final decision.

5489 Section 135. Section **63G-6a-805**, which is renumbered from Section 63G-6-425 is
5490 renumbered and amended to read:

5491 ~~[63G-6-425].~~ **63G-6a-805. Purchase from community rehabilitation**
5492 **programs.**

5493 (1) As used in this section:

5494 (a) [~~"Board"~~] "Advisory board" means the Purchasing from Persons with Disabilities
5495 Advisory Board created under this section.

5496 (b) "Central not-for-profit association" means a group of experts designated by the
5497 advisory board to do the following, under guidelines established by the advisory board:

5498 (i) assist the advisory board with its functions; and

5499 (ii) facilitate the implementation of advisory board policies.

5500 (c) (i) "Community rehabilitation program" means a program that is operated primarily
5501 for the purpose of the employment and training of persons with a disability by a government
5502 agency or qualified nonprofit organization which is an income tax exempt organization under
5503 26 U.S.C. Sec. 501(c)(3) of the Internal Revenue Code.

5504 (ii) A community rehabilitation program:

5505 (A) maintains an employment ratio of at least 75% of the program employees under the
5506 procurement contract in question have severe disabilities;

5507 (B) (I) complies with any applicable occupational health and safety standards
5508 prescribed by the United States Department of Labor; or

5509 (II) is a supported employment program approved by the Utah State Office of
5510 Rehabilitation;

5511 (C) has its principal place of business in Utah;

5512 (D) produces any good provided under this section in Utah; and

5513 (E) provides any service that is provided by individuals with a majority of whom
5514 domiciled in Utah.

5515 (d) "Person with a disability" means a person with any disability as defined by and
5516 covered under the Americans with Disabilities Act of 1990, 42 U.S.C. 12102.

5517 (2) ~~[(a)]~~ There is created within the division the Purchasing from Persons with
5518 Disabilities Advisory Board ~~[within the Division of Purchasing and General Services of the~~
5519 ~~Department of Administrative Services. The board shall be composed of the following three~~
5520 ~~members:]~~.

5521 (3) The advisory board shall consist of three members, as follows:

5522 ~~[(i)]~~ (a) the director of the ~~[Division of Purchasing and General Services created under~~
5523 ~~Section 63A-2-101 or a]~~ division or the director's designee;

5524 ~~[(ii)]~~ (b) the executive director of the Utah State Office of Rehabilitation, created under
5525 Section 53A-24-103, or ~~[a]~~ the executive director's designee; and

5526 ~~[(iii)]~~ (c) a representative of the private business community who shall be appointed to
5527 a three-year term by the governor with the advice and consent of the Senate.

5528 ~~[(b)]~~ (4) The advisory board shall meet, as needed, to facilitate the procurement of
5529 goods and services from community rehabilitation programs by a public procurement unit
5530 under this chapter by:

5531 ~~[(i)]~~ (a) identifying goods and services that are available from community rehabilitation
5532 programs ~~[according to the requirements under Subsection (4)]~~ in accordance with the
5533 requirements of Subsection (7);

5534 ~~[(ii)]~~ (b) approving prices in accordance with Subsection ~~[(4)]~~ (7)(c) for goods and
5535 services that are identified under Subsection ~~[(2)(b)(i)]~~ (4)(a);

5536 ~~[(iii)]~~ (c) developing, maintaining, and approving a preferred procurement contract list
5537 of goods and services identified and priced under Subsections ~~[(2)(b)(i) and (ii)]~~ (4)(a) and (b);

5538 ~~[(iv)]~~ (d) reviewing bids received by a community rehabilitation program; and

5539 ~~[(v)]~~ (e) awarding and renewing specified contracts for set contract times, without
5540 competitive bidding, for the purchase of goods and services under Subsection ~~[(4)]~~ (7).

5541 ~~[(e)]~~ (5) The provisions of Subsections ~~[(2)(b)]~~ (4) and ~~[(4)]~~ (7)(a) are an exception to
5542 the procurement provisions under this chapter.

5543 ~~[(3)]~~ (6) (a) The advisory board may designate a central not-for-profit association,
5544 appoint its members, and establish guidelines for its duties.

5545 (b) The designated central not-for-profit association serves at the pleasure of the

5546 advisory board ~~[and the]~~. The central not-for-profit association or its individual members may
5547 be removed by the advisory board at any time by a majority vote of the advisory board.

5548 (c) Subject to the board guidelines and discretion, a designated central not-for-profit
5549 association may be assigned to perform the following duties:

5550 (i) identify qualified community rehabilitation programs and the goods and services
5551 that they provide or have the potential to provide;

5552 (ii) help ensure that goods and services are provided at reasonable quality and delivery
5553 levels;

5554 (iii) recommend pricing for goods and services;

5555 (iv) ~~[reviewing]~~ review bids and ~~[recommending]~~ recommend the award of contracts
5556 under the board's direction;

5557 (v) ~~[collecting and reporting]~~ collect and report program data to the advisory board and
5558 to the division; and

5559 (vi) other duties specified by the advisory board.

5560 ~~[(4)]~~ (7) Except as provided under Subsection ~~[(6)]~~ (9), notwithstanding any provision
5561 ~~[in]~~ of this chapter to the contrary, each public procurement unit shall purchase goods and
5562 services produced by a community rehabilitation program using the preferred procurement
5563 contract list approved under Subsection ~~[(2)(b)(iii)]~~ (4)(c) if:

5564 (a) the good or service offered for sale by a community rehabilitation program
5565 reasonably conforms to the needs and specifications of the public procurement unit;

5566 (b) the community rehabilitation program can supply the good or service within a
5567 reasonable time; and

5568 (c) the price of the good or service is reasonably competitive with the cost of procuring
5569 the good or service from another source.

5570 ~~[(5)]~~ (8) Each community rehabilitation program:

5571 (a) may submit a bid to the advisory board at any time and not necessarily in response
5572 to ~~[a request]~~ an invitation for bids; and

5573 (b) shall certify on any bid it submits to the advisory board or to a public procurement
5574 unit under this section that it is claiming a preference under this section.

5575 ~~[(6)]~~ (9) During a fiscal year, the requirement for a public procurement unit to purchase
5576 goods and services produced by a community rehabilitation program under the preferred

5577 procurement list under Subsection [~~(4)~~] (7) does not apply if the [~~Division of Purchasing and~~
 5578 ~~General Services~~] division determines that the total amount of procurement contracts with
 5579 community rehabilitation programs has reached \$5 million for that fiscal year.

5580 [~~(7)~~] (10) In the case of conflict between a purchase under this section and a purchase
 5581 under Section [~~63G-6-423~~] 63G-6a-804, this section prevails.

5582 Section 136. Section **63G-6a-901** is enacted to read:

5583 **Part 9. Cancellations, Rejections, and Debarment**

5584 **63G-6a-901. Title.**

5585 This part is known as "Cancellations, Rejections, and Debarment."

5586 Section 137. Section **63G-6a-902**, which is renumbered from Section 63G-6-412 is
 5587 renumbered and amended to read:

5588 [~~63G-6-412~~]. **63G-6a-902. Cancellation and rejection of bids and**
 5589 **proposals.**

5590 [~~An~~] (1) An authorized purchasing entity may cancel an invitation for bids, a request
 5591 for proposals, or other solicitation [~~may be cancelled, or any or all bids or proposals may be~~
 5592 ~~rejected~~] or reject any or all bids or proposal responses, in whole or in part, as may be specified
 5593 in the solicitation, when it is in the best interests of the [~~state~~] public procurement unit in
 5594 accordance with [~~rules and regulations~~] the rules of the applicable rulemaking authority.

5595 (2) The reasons for a cancellation or rejection described in Subsection (1) shall be
 5596 made part of the contract file.

5597 Section 138. Section **63G-6a-903**, which is renumbered from Section 63G-6-413 is
 5598 renumbered and amended to read:

5599 [~~63G-6-413~~]. **63G-6a-903. Determination of nonresponsibility of bidder or**
 5600 **offeror.**

5601 (1) A [~~written~~] determination of nonresponsibility of a bidder or offeror made by an
 5602 authorized purchasing entity shall be made in writing, in accordance with [~~rules and~~
 5603 ~~regulations~~] the rules of the applicable rulemaking authority.

5604 (2) The unreasonable failure of a bidder or offeror to promptly supply information in
 5605 connection with an inquiry with respect to responsibility may be grounds for a determination of
 5606 nonresponsibility with respect to the bidder or offeror. [~~Information~~]

5607 (3) Subject to Title 63G, Chapter 2, Government Records Access and Management

5608 Act, information furnished by a bidder or offeror pursuant to this section [~~shall~~] may not be
5609 disclosed outside of the [~~purchasing division or the purchasing agency~~] public procurement
5610 unit or authorized purchasing entity without prior written consent by the bidder or offeror.

5611 Section 139. Section **63G-6a-904**, which is renumbered from Section 63G-6-804 is
5612 renumbered and amended to read:

5613 ~~[63G-6-804].~~ **63G-6a-904. Debarment from consideration for award of**
5614 **contracts -- Causes for debarment.**

5615 (1) After reasonable notice to the person involved and reasonable opportunity for that
5616 person to be heard, [~~the chief procurement officer or the head of a purchasing agency;~~] a
5617 procurement officer or the head of an authorized purchasing entity may, after consultation with
5618 the [~~using agency and~~] public procurement unit and, if the public procurement unit is in the
5619 state executive branch, the attorney general[~~, shall have authority to~~];

5620 (a) debar a person for cause from consideration for award of contracts[~~. The debarment~~
5621 ~~shall not be for a period exceeding three years. The same officer, after consultation with the~~
5622 ~~using agency and the attorney general, shall have authority to~~] for a period not to exceed three
5623 years; or

5624 (b) suspend a person from consideration for award of contracts if there is probable
5625 cause to believe that the person has engaged in any activity [~~which~~] that might lead to
5626 debarment. [~~The suspension shall~~]

5627 (2) A suspension described in Subsection (1)(b) may not be for a period exceeding
5628 three months, unless an indictment has been issued for an offense which would be a cause for
5629 debarment under Subsection [~~(2)~~] (3), in which case the suspension shall, at the request of the
5630 attorney general, remain in effect until after the trial of the suspended person.

5631 [~~(2)~~] (3) The causes for debarment include the following:

5632 (a) conviction of a criminal offense as an incident to obtaining or attempting to obtain a
5633 public or private contract or subcontract or in the performance of [~~such~~] a public or private
5634 contract or subcontract;

5635 (b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery,
5636 falsification or destruction of records, receiving stolen property, or any other offense indicating
5637 a lack of business integrity or business honesty which currently, seriously, and directly affects
5638 responsibility as a state contractor;

5639 (c) conviction under state or federal antitrust statutes;
 5640 (d) failure without good cause to perform in accordance with the terms of the contract;

5641 [~~or~~]

5642 (e) a violation of this chapter, including Part 22, Ethical Requirements; or

5643 [~~(e)~~] (f) any other cause the [chief] procurement officer, or the head of [a purchasing
 5644 agency] an authorized purchasing entity determines to be so serious and compelling as to affect
 5645 responsibility as a state contractor, including debarment by another governmental entity [for
 5646 any cause listed in rules and regulations].

5647 Section 140. Section **63G-6a-1001** is enacted to read:

5648 **Part 10. Preferences**

5649 **63G-6a-1001. Title.**

5650 This part is known as "Preferences."

5651 Section 141. Section **63G-6a-1002**, which is renumbered from Section 63G-6-404 is
 5652 renumbered and amended to read:

5653 [~~63G-6-404~~]. **63G-6a-1002. Reciprocal preference for providers of state**
 5654 **products.**

5655 (1) (a) [~~All public procurement units shall, in all purchases of goods, supplies,~~
 5656 ~~equipment, materials, and printing]~~ An authorized purchasing entity shall, for all procurements,
 5657 give a reciprocal preference to those bidders offering [goods, supplies, equipment, materials, or
 5658 printing] procurement items that are produced, manufactured, mined, grown, or performed in
 5659 Utah [as against] over those bidders offering [goods, supplies, equipment, materials, or
 5660 printing] procurement items that are produced, manufactured, mined, grown, or performed in
 5661 any state that gives or requires a preference to [goods, supplies, equipment, materials, or
 5662 printing] procurement items that are produced, manufactured, mined, grown, or performed in
 5663 that state.

5664 (b) The amount of reciprocal preference shall be equal to the amount of the preference
 5665 applied by the other state for that particular [~~good, supply, equipment, material, or printing]~~
 5666 procurement item.

5667 (c) [~~(f) The~~] In order to receive a reciprocal preference under this section, the bidder
 5668 shall certify on the bid that the [goods, supplies, equipment, materials, or printing] procurement
 5669 items offered are produced, manufactured, mined, grown, or performed in Utah.

5670 [(it)] (d) The reciprocal preference is waived if [that] the certification described in
5671 Subsection (1)(c) does not appear on the bid.

5672 (2) (a) If the bidder submitting the lowest responsive and responsible bid offers [~~goods,~~
5673 ~~supplies, equipment, materials, or printing~~] procurement items that are produced,
5674 manufactured, mined, grown, or performed in a state that gives or requires a preference, and if
5675 another bidder has submitted a responsive and responsible bid offering [~~goods, supplies,~~
5676 ~~equipment, materials, or printing~~] procurement items that are produced, manufactured, mined,
5677 grown, or performed in Utah, and with the benefit of the reciprocal preference, [his] the bid of
5678 the other bidder is equal to or less than the original lowest bid, the [~~procurement officer~~]
5679 authorized purchasing entity shall:

5680 (i) give notice to the bidder offering [~~goods, supplies, equipment, materials, or~~
5681 ~~printing~~] procurement items that are produced, manufactured, mined, grown, or performed in
5682 Utah that the bidder qualifies as a preferred bidder; and

5683 (ii) make the purchase from the preferred bidder if[;] the bidder agrees, in writing, to
5684 meet the low bid within 72 hours after notification that the bidder is a preferred bidder.

5685 (b) The [~~procurement officer~~] authorized purchasing entity shall include the exact price
5686 submitted by the lowest bidder in the notice the [~~procurement officer~~] authorized purchasing
5687 entity submits to the preferred bidder.

5688 (c) The [~~procurement officer~~] authorized purchasing entity may not enter into a
5689 contract with any other bidder for the purchase until 72 hours have elapsed after notification to
5690 the preferred bidder.

5691 (3) (a) If there is more than one preferred bidder, the [~~procurement officer~~] authorized
5692 purchasing entity shall award the contract to the willing preferred bidder who was the lowest
5693 preferred bidder originally.

5694 (b) If there were two or more equally low preferred bidders, the [~~procurement officer~~]
5695 authorized purchasing entity shall comply with the rules [~~adopted by the Procurement Policy~~
5696 ~~Board~~] of the applicable rulemaking authority to determine which bidder should be awarded
5697 the contract.

5698 (4) The provisions of this section do not apply if application of this section might
5699 jeopardize the receipt of federal funds.

5700 Section 142. Section **63G-6a-1003**, which is renumbered from Section 63G-6-405 is

5701 renumbered and amended to read:

5702 ~~[63G-6-405].~~ **63G-6a-1003. Preference for resident contractors.**

5703 (1) As used in this section, "resident contractor" means a person, partnership,
5704 corporation, or other business entity that:

5705 (a) either has its principal place of business in Utah or that employs workers who are
5706 residents of this state when available; and

5707 (b) was transacting business on the date when bids for the public contract were first
5708 solicited.

5709 (2) (a) When awarding contracts for construction, ~~[a public procurement unit]~~ an
5710 authorized purchasing entity shall grant a resident contractor a reciprocal preference ~~[as~~
5711 ~~against]~~ over a nonresident contractor from any state that gives or requires a preference to
5712 contractors from that state.

5713 (b) The amount of the reciprocal preference shall be equal to the amount of the
5714 preference applied by the state of the nonresident contractor.

5715 (3) (a) ~~[The]~~ In order to receive the reciprocal preference under this section, the bidder
5716 shall certify on the bid that the bidder qualifies as a resident contractor.

5717 (b) The reciprocal preference is waived if ~~[that]~~ the certification described in
5718 Subsection (2)(a) does not appear on the bid.

5719 (4) (a) If the contractor submitting the lowest responsive and responsible bid is not a
5720 resident contractor ~~[and has his]~~ whose principal place of business ~~[in any]~~ is in a state that
5721 gives or requires a preference to contractors from that state, and if a resident contractor has also
5722 submitted a responsive and responsible bid, and, with the benefit of the reciprocal preference,
5723 the resident contractor's bid is equal to or less than the original lowest bid, the ~~[procurement~~
5724 ~~officer]~~ authorized purchasing entity shall:

5725 (i) give notice to the resident contractor that the resident contractor qualifies as a
5726 preferred resident contractor; and

5727 (ii) issue the contract to the resident contractor if the resident contractor agrees, in
5728 writing, to meet the low bid within 72 hours after notification that the resident contractor is a
5729 preferred resident contractor.

5730 (b) The ~~[procurement officer]~~ authorized purchasing entity shall include the exact price
5731 submitted by the lowest bidder in the notice ~~[the procurement officer]~~ that the authorized

5732 purchasing entity submits to the preferred resident contractor.

5733 (c) The [~~procurement officer~~] authorized purchasing entity may not enter into a
5734 contract with any other bidder for the construction until 72 hours have elapsed after notification
5735 to the preferred resident contractor.

5736 (5) (a) If there is more than one preferred resident contractor, the [~~procurement officer~~]
5737 authorized purchasing entity shall award the contract to the willing preferred resident
5738 contractor who was the lowest preferred resident contractor originally.

5739 (b) If there were two or more equally low preferred resident contractors, the
5740 [~~procurement officer~~] authorized purchasing entity shall comply with the rules [~~adopted by the~~
5741 ~~Procurement Policy Board~~] of the applicable rulemaking authority to determine which bidder
5742 should be awarded the contract.

5743 (6) The provisions of this section do not apply if application of this section might
5744 jeopardize the receipt of federal funds.

5745 Section 143. Section **63G-6a-1101** is enacted to read:

5746 **Part 11. Bonds**

5747 **63G-6a-1101. Title.**

5748 This part is known as "Bonds."

5749 Section 144. Section **63G-6a-1102**, which is renumbered from Section 63G-6-504 is
5750 renumbered and amended to read:

5751 ~~[63G-6-504].~~ **63G-6a-1102. Bid security requirements -- Directed**
5752 **suretyship prohibited -- Penalty.**

5753 (1) Bid security in an amount equal to at least 5% of the amount of the bid shall be
5754 required for all competitive [~~sealed~~] bidding for construction contracts. Bid security shall be a
5755 bond provided by a surety company authorized to do business in this state, the equivalent in
5756 cash, or any other form satisfactory to the state.

5757 (2) When a bidder fails to comply with the requirement for bid security [~~set forth~~]
5758 described in the invitation for bids, the bid shall be rejected unless, pursuant to rules[~~, it is~~
5759 ~~determined~~] of the applicable rulemaking authority, the authorized purchasing entity
5760 determines that the failure to comply with the security requirements is nonsubstantial.

5761 (3) After the bids are opened, they shall be irrevocable for the period specified in the
5762 invitation for bids, except as provided in [~~Subsection 63G-6-401(6)~~] Section 63G-6a-605. If a

5763 bidder is permitted to withdraw a bid before award, no action shall be taken against the bidder
5764 or the bid security.

5765 (4) (a) When issuing an invitation for a bid under this chapter, the [~~chief~~] procurement
5766 officer or the head of [~~the purchasing agency~~] an authorized purchasing entity responsible for
5767 carrying out a construction project may not require a person or entity who is bidding for a
5768 contract to obtain a bond of the type [~~referred to~~] described in Subsection (1) from a specific
5769 insurance or surety company, producer, agent, or broker.

5770 (b) A person who violates Subsection (4)(a) is guilty of an infraction.

5771 Section 145. Section **63G-6a-1103**, which is renumbered from Section 63G-6-505 is
5772 renumbered and amended to read:

5773 ~~[63G-6-505]~~. **63G-6a-1103**. **Bonds necessary when contract is awarded --**
5774 **Waiver -- Action -- Attorney fees.**

5775 (1) When a construction contract is awarded under this chapter, the contractor to whom
5776 the contract is awarded shall deliver the following bonds or security to the state, which shall
5777 become binding on the parties upon the execution of the contract:

5778 (a) a performance bond satisfactory to the state that is in an amount equal to 100% of
5779 the price specified in the contract and is executed by a surety company authorized to do
5780 business in this state or any other form satisfactory to the state; and

5781 (b) a payment bond satisfactory to the state that is in an amount equal to 100% of the
5782 price specified in the contract and is executed by a surety company authorized to do business in
5783 this state or any other form satisfactory to the state, which is for the protection of each person
5784 supplying labor, service, equipment, or material for the performance of the work provided for
5785 in the contract.

5786 (2) (a) When a construction contract is awarded under this chapter, the [~~chief~~]
5787 procurement officer or the head of the [~~purchasing agency~~] authorized purchasing entity
5788 responsible for carrying out [a] the construction project may not require a contractor to whom a
5789 contract is awarded to obtain a bond of the types referred to in Subsection (1) from a specific
5790 insurance or surety company, producer, agent, or broker.

5791 (b) A person who violates Subsection (2)(a) is guilty of an infraction.

5792 (3) Rules of the applicable rulemaking authority may provide for waiver of the
5793 requirement of a bid, performance, or payment bond for circumstances in which the [~~state~~]

5794 procurement officer considers any or all of the bonds to be unnecessary to protect the [state]
5795 public procurement unit.

5796 (4) A person shall have a right of action on a payment bond under this section for any
5797 unpaid amount due [him] to the person if:

5798 (a) the person has furnished labor, service, equipment, or material for the work
5799 provided for in the contract for which the payment bond is furnished under this section; and

5800 (b) the person has not been paid in full within 90 days after the last [date] day on which
5801 the person performed the labor or service or supplied the equipment or material for which the
5802 claim is made.

5803 (5) An action upon a payment bond [~~shall~~] may only be brought in a court of
5804 competent jurisdiction in [~~any~~] a county where the construction contract was to be performed
5805 [~~and not elsewhere~~]. The action is barred if not commenced within one year after the last day
5806 on which the claimant performed the labor or service or supplied the equipment or material on
5807 which the claim is based. The obligee named in the bond need not be joined as a party to the
5808 action.

5809 (6) In any suit upon a payment bond, the court shall award reasonable attorney fees to
5810 the prevailing party, which fees shall be taxed as costs in the action.

5811 Section 146. Section **63G-6a-1104**, which is renumbered from Section 63G-6-506 is
5812 renumbered and amended to read:

5813 [~~63G-6-506~~]. **63G-6a-1104. Preliminary notice requirement.**

5814 (1) Any person furnishing labor, service, equipment, or material for which a payment
5815 bond claim may be made under this chapter shall provide preliminary notice to the designated
5816 agent as prescribed by Section 38-1-32.5, except that this section does not apply:

5817 (a) to a person performing labor for wages; or

5818 (b) if a notice of commencement is not filed as prescribed in Section 38-1-31.5 for the
5819 project or improvement for which labor, service, equipment, or material is furnished.

5820 (2) Any person who fails to provide the preliminary notice required by Subsection (1)
5821 may not make a payment bond claim under this chapter.

5822 (3) The preliminary notice required by Subsection (1) must be provided before
5823 commencement of any action on the payment bond.

5824 Section 147. Section **63G-6a-1105**, which is renumbered from Section 63G-6-507 is

5825 renumbered and amended to read:

5826 ~~[63G-6-507].~~ **63G-6a-1105. Form of bonds -- Effect of certified copy.**

5827 The form of the bonds required by this part shall be established by ~~[rules and~~
5828 ~~regulations]~~ rule made by the applicable rulemaking authority. Any person may obtain from
5829 the state a certified copy of a bond upon payment of the cost of reproduction of the bond and
5830 postage, if any. A certified copy of a bond shall be prima facie evidence of the contents,
5831 execution, and delivery of the original.

5832 Section 148. Section **63G-6a-1201** is enacted to read:

5833 **Part 12. Contracts and Change Orders**

5834 **63G-6a-1201. Title.**

5835 This part is known as "Contracts and Change Orders."

5836 Section 149. Section **63G-6a-1202**, which is renumbered from Section 63G-6-601 is
5837 renumbered and amended to read:

5838 ~~[63G-6-601].~~ **63G-6a-1202. Required contract clauses -- Computation of**
5839 **price adjustments -- Use of rules and regulations.**

5840 (1) ~~[Rules and regulations]~~ The rules of the applicable rulemaking authority shall
5841 require for state construction contracts, and may permit or require for ~~[state]~~ contracts for
5842 supplies and services, the inclusion of clauses providing for adjustments in prices, time of
5843 performance, or other appropriate contract provisions, and covering the following subjects:

5844 (a) the unilateral right of the ~~[state]~~ procurement officer to order in writing changes in
5845 the work within the scope of the contract and changes in the time of performance of the
5846 contract that do not alter the scope of the contract work;

5847 (b) variations occurring between estimated quantities of work in a contract and actual
5848 quantities;

5849 (c) suspension of work ordered by the ~~[state]~~ procurement officer; and

5850 (d) site conditions differing from those indicated in the construction contract, or
5851 ordinarily encountered, except that differing site conditions clauses required by the rules ~~[and~~
5852 ~~regulations]~~ need not be included in a construction contract when:

5853 (i) the contract is negotiated~~[, when]~~;

5854 (ii) the contractor provides the site or design~~[, or when]~~; or

5855 (iii) the parties have otherwise agreed with respect to the risk of differing site

5856 conditions.

5857 (2) Adjustments in price pursuant to clauses [~~promulgated under~~] described in

5858 Subsection (1) shall be computed in one or more of the following ways:

5859 (a) by agreement on a fixed price adjustment before commencement of the pertinent

5860 performance or as soon thereafter as practicable;

5861 (b) by unit prices specified in the contract or subsequently agreed upon;

5862 (c) by the costs attributable to the events or situations under the clauses with

5863 adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

5864 (d) in any other manner as the contracting parties may mutually agree; or

5865 (e) in the absence of agreement by the parties, by a unilateral determination by the

5866 [~~state~~] procurement officer of the costs attributable to the events or situations under the clauses

5867 with adjustment of profit or fee, all as computed by the [~~state~~] procurement officer in

5868 accordance with applicable [~~sections of the~~] rules and [~~regulations issued under Subsection~~

5869 ~~63G-6-415(1) and~~] subject to the provisions of Part [~~8, Legal and Contractual Remedies~~] 17,

5870 Procurement Appeals Board, and Part 18, Appeals to Court and Court Proceedings.

5871 (3) A contractor shall be required to submit cost or pricing data if any adjustment in

5872 contract price is subject to the provisions of Section [~~63G-6-415~~] 63G-6a-1206.

5873 (4) [~~Rules and regulations~~] The rules of the applicable rulemaking authority shall

5874 require for [~~state~~] construction contracts, and may permit or require for [~~state~~] contracts for

5875 supplies and services, the inclusion of clauses providing for appropriate remedies and covering

5876 at least the following subjects:

5877 (a) liquidated damages as appropriate;

5878 (b) specified excuses for delay or nonperformance;

5879 (c) termination of the contract for default; and

5880 (d) termination of the contract in whole or in part for the convenience of the [~~state~~]

5881 public procurement unit.

5882 (5) The contract clauses [~~promulgated under~~] described in this section shall be [~~set~~

5883 ~~forth in rules and regulations~~] established by rule. However, the [~~chief~~] procurement officer or

5884 the head of [~~a purchasing agency~~] an authorized purchasing entity may modify the clauses for

5885 inclusion in any particular contract. [~~Any~~] The applicable rulemaking authority may, by rule,

5886 require that:

5887 (a) variations [~~shall~~] be supported by a written determination that describes the
5888 circumstances justifying the variations[;]; and

5889 (b) notice of any material variation shall be included in the invitation for bids or
5890 request for proposals.

5891 Section 150. Section **63G-6a-1203**, which is renumbered from Section 63G-6-603 is
5892 renumbered and amended to read:

5893 ~~[63G-6-603].~~ **63G-6a-1203. Contracts -- Certain indemnification**
5894 **provisions forbidden.**

5895 (1) As used in this section, "design professional" means:

5896 (a) an architect, licensed under Title 58, Chapter 3a, Architects Licensing Act;

5897 (b) a landscape architect, licensed under Title 58, Chapter 53, Landscape Architects
5898 Licensing Act; and

5899 (c) a professional engineer or professional land surveyor, licensed under Title 58,
5900 Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

5901 (2) (a) [~~Beginning May 12, 2009, a~~] A contract, including an amendment to an existing
5902 contract, entered into under [authority of] this chapter may not require that a design
5903 professional indemnify another from liability claims that arise out of the design professional's
5904 services, unless the liability claim arises from the design professional's negligent act, wrongful
5905 act, error or omission, or other liability imposed by law.

5906 (b) Subsection (2)(a) may not be waived by contract.

5907 (c) Notwithstanding Subsections (2)(a) and (b), a design professional may be required
5908 to indemnify a person for whom the design professional has direct or indirect control or
5909 responsibility.

5910 Section 151. Section **63G-6a-1204** is enacted to read:

5911 **63G-6a-1204. Multiyear contracts.**

5912 (1) Except as provided in Subsection (7), a public procurement unit may enter into a
5913 multiyear contract resulting from an invitation for bids or a request for proposals, if:

5914 (a) the procurement officer determines, in the discretion of the procurement officer,
5915 that entering into a multiyear contract is in the best interest of the public procurement unit; and

5916 (b) the invitation for bids or request for proposals:

5917 (i) states the term of the contract, including all possible renewals of the contract;

5918 (ii) states the conditions for renewal of the contract; and
5919 (iii) includes the provisions of Subsections (3) through (5) that are applicable to the
5920 contract.

5921 (2) In making the determination described in Subsection (1)(a), the procurement officer
5922 shall consider whether entering into a multiyear contract will:

5923 (a) result in significant savings to the public procurement unit, including:

5924 (i) reduction of the administrative burden in procuring, negotiating, or administering
5925 contracts;

5926 (ii) continuity in operations of the public procurement unit; or

5927 (iii) the ability to obtain a volume or term discount;

5928 (b) encourage participation by a person who might not otherwise be willing or able to
5929 compete for a shorter term contract; or

5930 (c) provide an incentive for a bidder or offeror to improve productivity through capital
5931 investment or better technology.

5932 (3) (a) The determination described in Subsection (1)(a) is discretionary and is not
5933 required to be in writing or otherwise recorded.

5934 (b) Except as provided in Subsections (4) and (5), notwithstanding any provision of an
5935 invitation for bids, a request for proposals, or a contract to the contrary, a multiyear contract,
5936 including a contract that was awarded outside of an invitation for bids or request for proposals
5937 process, may not continue or be renewed for any year after the first year of the multiyear
5938 contract if adequate funds are not appropriated to continue or renew the contract.

5939 (4) A multiyear contract that is funded solely by federal funds may be continued or
5940 renewed for any year after the first year of the multiyear contract if:

5941 (a) adequate funds to continue or renew the contract have not been, but are expected to
5942 be appropriated by, and received from, the federal government;

5943 (b) continuation or renewal of the contract before the money is appropriated or
5944 received is permitted by the federal government; and

5945 (c) the contract states that it may be cancelled, without penalty, if the anticipated
5946 federal funds are not appropriated or received.

5947 (5) A multiyear contract that is funded in part by federal funds may be continued or
5948 renewed for any year after the first year of the multiyear contract if:

5949 (a) the portion of the contract that is to be funded by funds of a public entity are
5950 appropriated;

5951 (b) adequate federal funds to continue or renew the contract have not been, but are
5952 expected to be, appropriated by, and received from, the federal government;

5953 (c) continuation or renewal of the contract before the federal money is appropriated or
5954 received is permitted by the federal government; and

5955 (d) the contract states that it may be cancelled, without penalty, if the anticipated
5956 federal funds are not appropriated or received.

5957 (6) A public procurement unit may not continue or renew a multiyear contract after the
5958 end of the multiyear contract term or the renewal periods described in the contract, unless the
5959 public procurement unit engages in a new procurement process or complies with an exception,
5960 described in this chapter, to using a standard procurement process.

5961 (7) A multiyear contract, including any renewal periods, may not exceed a period of
5962 five years, unless:

5963 (a) the procurement officer determines, in writing, that:

5964 (i) a longer period is necessary in order to obtain the procurement item;

5965 (ii) a longer period is customary for industry standards; or

5966 (iii) a longer period is in the best interest of the public procurement unit; and

5967 (b) the written determination described in subsection (7)(a) is included in the file
5968 relating to the procurement.

5969 (8) This section does not apply to a contract for the design or construction of a facility
5970 or a road.

5971 Section 152. Section **63G-6a-1205**, which is renumbered from Section 63G-6-416 is
5972 renumbered and amended to read:

5973 **[63G-6-416].** **63G-6a-1205. Cost-plus-a-percentage-of-cost contract**
5974 **prohibited.**

5975 (1) [~~Subject to the limitations of~~] Except as otherwise provided in this section, a public
5976 procurement unit may use any type of contract [which] that will promote the best interests of
5977 the state [may be used; provided that the use of].

5978 (2) A public procurement unit may not use a cost-plus-a-percentage-of-cost contract [is
5979 prohibited. A].

5980 (3) A public procurement unit may not use a cost-reimbursement contract [~~may be used~~
5981 ~~only when a determination is made in writing that such~~] unless the procurement officer makes a
5982 written determination that:

5983 (a) the contract is likely to be less costly to the [~~state~~] public procurement unit than any
5984 other type of contract; or [~~that~~]

5985 (b) it is impracticable to obtain the [~~supplies, services, or construction required except~~
5986 ~~under such a~~] procurement item under another type of contract.

5987 [~~(2) Except with respect to firm fixed-price contracts, no contract type shall be used~~
5988 ~~unless it has been determined in writing by the chief procurement officer, the head of a~~
5989 ~~purchasing agency, or a designee of either officer that:~~]

5990 (4) A procurement officer, the head of an authorized procurement entity, or a designee
5991 of either, may not use a type of contract, other than a firm fixed-price contract, unless the
5992 procurement officer makes a written determination that:

5993 (a) the proposed contractor's accounting system will permit timely development of all
5994 necessary cost data in the form required by the specific contract type contemplated; and

5995 (b) the proposed contractor's accounting system is adequate to allocate costs in
5996 accordance with generally accepted accounting principles.

5997 Section 153. Section **63G-6a-1206**, which is renumbered from Section 63G-6-415 is
5998 renumbered and amended to read:

5999 ~~[63G-6-415].~~ **63G-6a-1206. Rules and regulations to determine allowable**
6000 **incurred costs -- Required information -- Auditing of books.**

6001 [~~(1) Rules and regulations may be promulgated to set forth cost principles to be used to~~
6002 ~~determine the allowability of incurred costs for the purpose of reimbursing costs under contract~~
6003 ~~provisions which provide for the reimbursement of costs; provided that if a written~~
6004 ~~determination is approved at a level above the procurement officer, the cost principles may be~~
6005 ~~modified by contract.~~]

6006 [~~(2) A person shall, except as provided in Subsection (4), submit cost or pricing data~~
6007 ~~and shall certify that, to the best of the person's knowledge and belief, the cost or pricing data~~
6008 ~~submitted were accurate, complete, and current as of a mutually determined specified date prior~~
6009 ~~to the date of:~~]

6010 (1) (a) The applicable rulemaking authority may, by rule, establish the cost principles

6011 to be included in a cost-reimbursement contract to determine incurred costs for the purpose of
6012 calculating a reimbursement.

6013 (b) The cost principles established by rule under Subsection (1)(a) may be modified, by
6014 contract, if the procurement officer or head of the authorized procurement entity approves the
6015 modification.

6016 (2) Except as provided in Subsection (5), a person who seeks to be, or is, a party in a
6017 cost-based contract with a public procurement unit shall:

6018 (a) submit cost or pricing data relating to determining the cost or pricing amount; and

6019 (b) certify that, to the best of the contractor's knowledge and belief, the cost or pricing
6020 data submitted is accurate and complete as of the date specified by the public procurement unit.

6021 (3) The procurement officer shall ensure that the date specified under Subsection (2)(b)
6022 is before:

6023 (a) the pricing of any contract awarded by [~~competitive sealed proposals~~] a
6024 procurement process or pursuant to [~~the~~] a sole source procurement [~~authority, where~~], if the
6025 total contract price is expected to exceed an amount established by [~~rules and regulations~~] rule
6026 made by the applicable rulemaking authority; or

6027 (b) the pricing of any change order [~~which~~] that is expected to exceed an amount
6028 established by [~~rules and regulations~~] rule made by the applicable rulemaking authority.

6029 [~~(3) Any~~] (4) A contract or change order [~~under which a certificate is required shall~~
6030 contain] that requires a certification described in Subsection (2) shall include a provision that
6031 the price to the [~~state~~] public procurement unit, including profit or fee, shall be adjusted to
6032 exclude any significant sums by which the [~~state~~] public procurement unit finds that the price
6033 was increased because the [~~contractor-furnished~~] contractor provided cost or pricing data
6034 [~~were~~] that was inaccurate, incomplete, or not current as of the date [~~agreed upon between the~~
6035 parties] specified by the procurement officer.

6036 [~~(4) The requirements of Subsections (2) and (3) need not be applied to contracts:]~~

6037 (5) A public procurement unit is not required to comply with Subsection (2) if:

6038 (a) [~~where~~] the contract price is based on adequate price competition;

6039 (b) [~~where~~] the contract price is based on established catalogue prices or market prices;

6040 (c) [~~where contract prices are~~] the contract price is set by law or [~~regulation~~] rule; or

6041 (d) [~~where it is determined~~] the procurement states, in writing;

6042 (i) that, in accordance with rules ~~[and regulations that]~~ made by the applicable
 6043 rulemaking authority, the requirements of ~~[this section]~~ Subsection (2) may be waived~~[-]~~; and

6044 (ii) the reasons for ~~[such]~~ the waiver ~~[are stated in writing]~~.

6045 ~~[(5)]~~ (6) The ~~[state]~~ procurement officer may, at reasonable times and places, only to
 6046 the extent that the books and records relate to the applicable cost or pricing data, audit the
 6047 books and records of ~~[any]~~:

6048 (a) a person who has submitted cost or pricing data pursuant to this section; or ~~[any]~~

6049 (b) a contractor or subcontractor under ~~[any negotiated]~~ a contract or subcontract other
 6050 than a firm fixed-price contract ~~[to the extent that the books and records relate to the cost or~~
 6051 pricing data, contract, or subcontract. The].

6052 (7) Unless a shorter time is provided for by contract:

6053 (a) a person described in Subsection (6)(a) shall maintain the books and records ~~[shall~~
 6054 be maintained by the contractor] described in Subsection (6) for three years ~~[following the end~~
 6055 of] after the day on which the fiscal year in which final payment is made under the ~~[prime~~
 6056 contract and by the subcontractor for three years following the end of the] contract ends;

6057 (b) a contractor shall maintain the books and records described in Subsection (6) for
 6058 three years after the day on which the fiscal year in which final payment under the prime
 6059 contract ends; and

6060 (c) a subcontractor shall maintain the books and records described in Subsection (6) for
 6061 three years after the day on which the fiscal year in which final payment is made under the
 6062 subcontract~~[-, unless a shorter period is otherwise authorized in writing]~~ ends.

6063 Section 154. Section **63G-6a-1207**, which is renumbered from Section 63G-6-602 is
 6064 renumbered and amended to read:

6065 ~~[63G-6-602].~~ **63G-6a-1207. Certification of change order.**

6066 (1) Under a construction contract, ~~[any]~~ a change order ~~[which]~~ that increases the
 6067 contract amount ~~[shall be subject to]~~ may not be made without prior written certification that
 6068 the change order is within the determined project or contract budget~~[-. The certification shall be~~
 6069 made] by:

6070 (a) the fiscal officer of the entity responsible for funding the project or ~~[the]~~ contract;
 6071 or ~~[other]~~

6072 (b) the official responsible for monitoring and reporting upon the status of the costs of

6073 the total project or contract budget. [~~If the certification discloses a resulting~~]

6074 (2) If a change order will result in an increase in the total project or contract budget,
6075 [~~the procurement officer shall not execute or make~~] the change order may not be made, unless:

6076 (a) sufficient funds are [available] added to the project contract or budget; or

6077 (b) the scope of the project or contract is adjusted to permit the degree of completion
6078 feasible within the total project or contract budget as it existed [prior to] before the change
6079 order under consideration. [However, with respect to the validity, as to the contractor, of any
6080 executed change order upon which the contractor has reasonably relied, it shall be presumed
6081 that there has been compliance with the provisions of this section.]

6082 (3) Notwithstanding any other provision of this section, it shall be presumed that this
6083 section has been complied with if the contractor reasonably relies on an executed change order.

6084 Section 155. Section **63G-6a-1301** is enacted to read:

6085 **Part 13. General Construction Provisions**

6086 **63G-6a-1301. Title.**

6087 This part is known as "General Construction Provisions."

6088 Section 156. Section **63G-6a-1302**, which is renumbered from Section 63G-6-501 is
6089 renumbered and amended to read:

6090 ~~[63G-6-501].~~ **63G-6a-1302. Alternative methods of construction**
6091 **contracting management.**

6092 (1) [~~(a) Rules shall~~] The applicable rulemaking authority shall, by rule provide as many
6093 alternative methods of construction contracting management as determined to be feasible.

6094 [~~(b) These rules shall:~~]

6095 (2) The rules described in Subsection (1) shall:

6096 [(i)] (a) grant to the [chief] procurement officer or the head of the state purchasing
6097 [agency] unit responsible for carrying out the construction project the discretion to select the
6098 appropriate method of construction contracting management for a particular project; and

6099 [(ii)] (b) require the procurement officer to execute and include in the contract file a
6100 written statement [setting forth] describing the facts [which] that led to the selection of a
6101 particular method of construction contracting management for each project.

6102 [(c)] (3) Before choosing a construction contracting management method, the [chief]
6103 procurement officer or the head of the state purchasing [agency] unit responsible for carrying

6104 out the construction project shall consider the following factors:

6105 [(†)] (a) when the project must be ready to be occupied;

6106 [(††)] (b) the type of project;

6107 [(†††)] (c) the extent to which the requirements of the [~~procuring agencies~~] public
6108 procurement unit, and the [~~ways in which~~] way they are to be met are known;

6109 [(††††)] (d) the location of the project;

6110 [(†††††)] (e) the size, scope, complexity, and economics of the project;

6111 [(††††††)] (f) the source of funding and any resulting constraints necessitated by the funding
6112 source;

6113 [(†††††††)] (g) the availability, qualification, and experience of [~~state~~] public personnel to
6114 be assigned to the project and [~~how much time the state~~] the amount of time that the public
6115 personnel can devote to the project; and

6116 [(††††††††)] (h) the availability, qualifications, and experience of outside consultants and
6117 contractors to complete the project under the various methods being considered.

6118 [~~(2)(a) Rules adopted by state public procurement units and local public procurement~~
6119 ~~units to implement this section may authorize the use of a Construction Manager/General~~
6120 ~~Contractor as one method of construction contracting management.]~~

6121 [(b) ~~Those rules shall require that:~~]

6122 [(i) ~~the Construction Manager/General Contractor shall be selected using one of the~~
6123 ~~source selection methods provided for in Part 4, Source Selections and Contract Formation,~~
6124 ~~and Section 63G-6-502; and]~~

6125 [(ii) ~~when entering into any subcontract that was not specifically included in the~~
6126 ~~Construction Manager/General Contractor's cost proposal submitted under the requirements of~~
6127 ~~Subsection (2)(b)(i), the Construction Manager/General Contractor shall procure that~~
6128 ~~subcontractor by using one of the source selection methods provided for in Part 4, Source~~
6129 ~~Selections and Contract Formation, in the same manner as if the subcontract work was~~
6130 ~~procured directly by the state.]~~

6131 (4) An applicable rulemaking authority may make rules that authorize the use of a
6132 construction manager/general contractor as one method of construction contracting
6133 management.

6134 (5) The rules described in Subsection (2) shall require that:

6135 (a) the construction manager/general contractor be selected using:
 6136 (i) a procurement process; or
 6137 (ii) an exception to the requirement to use a procurement process; and
 6138 (b) when entering into a subcontract that was not specifically included in the
 6139 construction manager/general contractor's cost proposal, the construction manager/general
 6140 contractor shall procure the subcontractor by using a procurement process, or an exception to
 6141 the requirement to use a procurement process, in the same manner as if the subcontract work
 6142 was procured directly by the public procurement unit.

6143 ~~[(3)]~~ (6) Procurement rules adopted by the State Building Board under ~~[Subsection (1)]~~
 6144 Subsections (1) through (3) for state building construction projects may authorize the use of a
 6145 design-build provider as one method of construction contracting management.

6146 (7) A design-build contract may include a provision for obtaining the site for the
 6147 construction project.

6148 (8) A design-build contract or a construction manager/general contractor contract may
 6149 include provision by the contractor of operations, maintenance, or financing.

6150 Section 157. Section **63G-6a-1303**, which is renumbered from Section 63G-6-604 is
 6151 renumbered and amended to read:

6152 ~~**[63G-6-604].**~~ **63G-6a-1303. Drug and alcohol testing required for state**
 6153 **construction contracts.**

6154 (1) As used in this section:

6155 (a) "Contractor" means a person who is or may be awarded a state construction
 6156 contract.

6157 (b) "Covered individual" means an individual who:

6158 (i) on behalf of a contractor or subcontractor provides services directly related to
 6159 design or construction under a state construction contract; and

6160 (ii) is in a safety sensitive position, including a design position that has responsibilities
 6161 that directly affect the safety of an improvement to real property that is the subject of a state
 6162 construction contract.

6163 (c) "Drug and alcohol testing policy" means a policy under which a contractor or
 6164 subcontractor tests a covered individual to establish, maintain, or enforce the prohibition of:

6165 (i) the manufacture, distribution, dispensing, possession, or use of drugs or alcohol,

6166 except the medically prescribed possession and use of a drug; or
6167 (ii) the impairment of judgment or physical abilities due to the use of drugs or alcohol.
6168 (d) "Random testing" means that a covered individual is subject to periodic testing for
6169 drugs and alcohol:
6170 (i) in accordance with a drug and alcohol testing policy; and
6171 (ii) on the basis of a random selection process.
6172 ~~[(e) For purposes of Subsection (6), "state" includes any of the following of the state:]~~
6173 (e) "State executive entity" means:
6174 (i) a state executive branch:
6175 ~~[(i)-a] (A) department;~~
6176 ~~[(ii)-a] (B) division;~~
6177 ~~[(iii)-a] (C) agency;~~
6178 ~~[(iv)-a] (D) board;~~
6179 ~~[(v)-a] (E) commission;~~
6180 ~~[(vi)-a] (F) council;~~
6181 ~~[(vii)-a] (G) committee; [and] or~~
6182 ~~[(viii)-a] (H) institution[, including a state institution of higher education, as defined~~
6183 ~~under Section 53B-3-102.]; or~~
6184 (ii) a state institution of higher education, as defined in Section 53B-3-102.
6185 (f) "State construction contract" means a contract for design or construction entered
6186 into by a state ~~[public procurement unit]~~ executive entity.
6187 ~~[(g) (i) "Subcontractor" means a person under contract with a contractor or another~~
6188 ~~subcontractor to provide services or labor for design or construction.]~~
6189 ~~[(ii) "Subcontractor" includes a trade contractor or specialty contractor.]~~
6190 ~~[(iii) "Subcontractor" does not include a supplier who provides only materials,~~
6191 ~~equipment, or supplies to a contractor or subcontractor.]~~
6192 (2) Except as provided in Subsection (7), ~~[on and after July 1, 2010,]~~ a state ~~[public~~
6193 ~~procurement unit]~~ executive entity may not enter into a state construction contract unless the
6194 ~~[state]~~ public construction contract requires ~~[the following]~~ that the contractor demonstrate to
6195 the state executive entity that the contractor:
6196 ~~[(a) A contractor shall demonstrate to the state public procurement unit that the~~

6197 ~~contractor:]~~

6198 [(i)] (a) has and will maintain a drug and alcohol testing policy during the period of the
6199 state construction contract that applies to the covered individuals hired by the contractor;

6200 [(ii)] (b) posts in one or more conspicuous places notice to covered individuals hired
6201 by the contractor that the contractor has the drug and alcohol testing policy described in
6202 Subsection (2)(a)[(i)]; ~~and~~;

6203 [(iii)] (c) subjects the covered individuals to random testing under the drug and alcohol
6204 testing policy described in Subsection (2)(a)[(i)] if at any time during the period of the state
6205 construction contract there are 10 or more individuals who are covered individuals hired by the
6206 contractor[-]; and

6207 ~~(b) A contractor shall demonstrate to the state public procurement unit that the~~
6208 ~~contractor]~~

6209 (d) requires that as a condition of contracting with the contractor, a subcontractor:

6210 (i) has and will maintain a drug and alcohol testing policy during the period of the state
6211 construction contract that applies to the covered individuals hired by the subcontractor;

6212 (ii) posts in one or more conspicuous places notice to covered individuals hired by the
6213 subcontractor that the subcontractor has the drug and alcohol testing policy described in
6214 Subsection (2)[(b)](d)(i); and

6215 (iii) subjects the covered individuals hired by the subcontractor to random testing under
6216 the drug and alcohol testing policy described in Subsection (2)[(b)](d)(i) if at any time during
6217 the period of the state construction contract there are 10 or more individuals who are covered
6218 individuals hired by the subcontractor.

6219 (3) (a) Except as otherwise provided in this Subsection (3), if a contractor or
6220 subcontractor fails to comply with Subsection (2), the contractor or subcontractor may be
6221 suspended or debarred in accordance with this chapter.

6222 (b) ~~[On and after July 1, 2010, a]~~ A state ~~[public procurement unit]~~ executive entity
6223 shall include in a state construction contract:

6224 (i) a reference to the rules described in Subsection (4)(b); or

6225 (ii) if the ~~[state public procurement unit]~~ applicable rulemaking authority has not made
6226 the rules described in Subsection (4)(b), a process that provides a contractor or subcontractor
6227 reasonable notice and opportunity to cure a violation of this section before suspension or

6228 debarment of the contractor or subcontractor in light of the circumstances of the state
6229 construction contract or the violation.

6230 (c) (i) A contractor is not subject to penalties for the failure of a subcontractor to
6231 comply with Subsection (2).

6232 (ii) A subcontractor is not subject to penalties for the failure of a contractor to comply
6233 with Subsection (2).

6234 [~~(4) If otherwise authorized to make rules, in accordance with Title 63G, Chapter 3,
6235 Utah Administrative Rulemaking Act, a state public procurement unit:]~~

6236 (4) An authorized rulemaking authority:

6237 (a) may make rules that establish the requirements and procedures a contractor [~~shall~~]
6238 is required to follow to comply with Subsection (2); and

6239 (b) shall make rules that establish:

6240 (i) the penalties that may be imposed in accordance with Subsection (3); and

6241 (ii) a process that provides a contractor or subcontractor reasonable notice and
6242 opportunity to cure a violation of this section before suspension or debarment of the contractor
6243 or subcontractor in light of the circumstances of the state construction contract or the violation.

6244 (5) The failure of a contractor or subcontractor to meet the requirements of Subsection
6245 (2):

6246 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
6247 or contractor under Part [~~8, Legal and Contractual Remedies~~] 17, Procurement Appeals Board,
6248 or Part 18, Appeals to Court and Court Proceedings; and

6249 (b) may not be used by a state public procurement unit, a prospective bidder, an
6250 offeror, a contractor, or a subcontractor as a basis for an action that would suspend, disrupt, or
6251 terminate the design or construction under a state construction contract.

6252 (6) (a) After a state [~~public procurement unit~~] executive entity enters into a state
6253 construction contract in compliance with this section, the state is not required to audit, monitor,
6254 or take any other action to ensure compliance with this section.

6255 (b) The state is not liable in any action related to this section, including not being liable
6256 in relation to:

6257 (i) a contractor or subcontractor having or not having a drug and alcohol testing policy;

6258 (ii) failure to test for a drug or alcohol under a contractor's or subcontractor's drug and

- 6259 alcohol testing policy;
- 6260 (iii) the requirements of a contractor's or subcontractor's drug and alcohol testing
- 6261 policy;
- 6262 (iv) a contractor's or subcontractor's implementation of a drug and alcohol testing
- 6263 policy, including procedures for:
- 6264 (A) collection of a sample;
- 6265 (B) testing of a sample;
- 6266 (C) evaluation of a test; or
- 6267 (D) disciplinary or rehabilitative action on the basis of a test result;
- 6268 (v) an individual being under the influence of drugs or alcohol; or
- 6269 (vi) an individual under the influence of drugs or alcohol harming another person or
- 6270 causing property damage.
- 6271 (7) This section does not apply if the state [~~public procurement unit~~] executive entity
- 6272 determines that the application of this section would severely disrupt the operation of a [~~state~~
- 6273 ~~agency~~] public entity to the detriment of the [~~state agency~~] public entity or the general public,
- 6274 including:
- 6275 (a) jeopardizing the receipt of federal funds;
- 6276 (b) causing the state construction contract [~~being~~] to be a sole source contract; or
- 6277 (c) causing the state construction contract [~~being~~] to be an emergency procurement.
- 6278 (8) If a contractor or subcontractor meets the requirements of this section, this section
- 6279 may not be construed to restrict the contractor's or subcontractor's ability to impose or
- 6280 implement an otherwise lawful provision as part of a drug and alcohol testing policy.

6281 Section 158. Section **63G-6a-1401** is enacted to read:

6282 **Part 14. Transportation Contracts**

6283 **63G-6a-1401. Title.**

6284 This part is known as "Transportation Contracts."

6285 Section 159. Section **63G-6a-1402**, which is renumbered from Section 63G-6-502 is

6286 renumbered and amended to read:

6287 ~~[63G-6-502].~~ **63G-6a-1402. Procurement of design-build transportation**

6288 **project contracts.**

6289 (1) As used in this section:

6290 (a) "Design-build transportation project contract" means the procurement of both the
6291 design and construction of a transportation project in a single contract with a company or
6292 combination of companies capable of providing the necessary engineering services and
6293 construction.

6294 (b) "Transportation agency" means:

6295 (i) the Department of Transportation;

6296 (ii) a county of the first or second class, as defined in Section 17-50-501;

6297 (iii) a municipality of the first class, as defined in Section 10-2-301;

6298 (iv) a public transit district that has more than 200,000 people residing within its
6299 boundaries; and

6300 (v) a public airport authority.

6301 (2) Except as provided in Subsection (3), a transportation agency may award a
6302 design-build transportation project contract for any transportation project that has an estimated
6303 cost of at least \$50,000,000 by following the requirements of this section.

6304 (3) (a) The Department of Transportation:

6305 (i) may award a design-build transportation project contract for any transportation
6306 project by following the requirements of this section; and

6307 (ii) shall make rules, [~~by following the procedures and requirements of~~] in accordance
6308 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing requirements for
6309 the procurement of its design-build transportation project contracts in addition to those required
6310 by this section.

6311 (b) A public transit district that has more than 200,000 people residing within its
6312 boundaries:

6313 (i) may award a design-build transportation project contract for any transportation
6314 project by following the requirements of this section; and

6315 (ii) shall pass ordinances or a resolution establishing requirements for the procurement
6316 of its design-build transportation project contracts in addition to those required by this section.

6317 (c) A design-build transportation project contract authorized under this Subsection (3)
6318 is not subject to the estimated cost threshold [~~under~~] described in Subsection (2).

6319 (d) A design-build transportation project contract may include provision by the
6320 contractor of operations, maintenance, or financing.

6321 (4) (a) Before entering into a design-build transportation project contract, a
 6322 transportation agency may issue a request for qualifications to prequalify potential contractors.

6323 (b) Public notice of the request for qualifications shall be given in accordance with
 6324 [~~policy~~] board rules.

6325 (c) A transportation agency shall require, as part of the qualifications specified in the
 6326 request for qualifications, that potential contractors at least demonstrate their:

6327 (i) construction experience;

6328 (ii) design experience;

6329 (iii) financial, manpower, and equipment resources available for the project; and

6330 (iv) experience in other design-build transportation projects with attributes similar to
 6331 the project being procured.

6332 (d) The request for qualifications shall identify the number of eligible competing
 6333 proposers that the transportation agency will select to submit a proposal, which [~~must be at~~
 6334 ~~least~~] may not be less than two.

6335 (5) [~~(a)~~] The transportation agency shall:

6336 [(~~i~~)] (a) evaluate the responses received from the request for qualifications;

6337 [(~~ii~~)] (b) select from their number those qualified to submit proposals; and

6338 [(~~iii~~)] (c) invite those respondents to submit proposals based upon the transportation
 6339 agency's request for proposals.

6340 [(~~b~~)] [(~~i~~)] (6) Except as provided in Subsection [(~~5~~)] [(~~b~~)] [(~~ii~~)] (7), if the transportation
 6341 agency fails to receive at least two qualified eligible competing [~~proposers~~] proposals, the
 6342 transportation agency shall readvertise the project.

6343 [(~~ii~~)] (7) A transportation agency may award a contract for a transportation project that
 6344 has an estimated cost of \$5,000,000 or less to a qualified eligible proposer if:

6345 [(~~A~~)] (a) only a single proposal is received; and

6346 [(~~B~~)] (b) the transportation agency determines that:

6347 [(~~1~~)] (i) the proposal is advantageous to the state; and

6348 [(~~2~~)] (ii) the proposal price is reasonable.

6349 [(~~6~~)] (8) The transportation agency shall issue a request for proposals to those qualified
 6350 respondents that:

6351 (a) includes a scope of work statement constituting an information for proposal that

6352 may include:

- 6353 (i) preliminary design concepts;
- 6354 (ii) design criteria, needs, and objectives;
- 6355 (iii) warranty and quality control requirements;
- 6356 (iv) applicable standards;
- 6357 (v) environmental documents;
- 6358 (vi) constraints;
- 6359 (vii) time expectations or limitations;
- 6360 (viii) incentives or disincentives; and
- 6361 (ix) other special considerations;
- 6362 (b) requires submitters to provide:
 - 6363 (i) a sealed cost proposal;
 - 6364 (ii) a critical path matrix schedule, including cash flow requirements;
 - 6365 (iii) proposal security; and
 - 6366 (iv) other items required by the department for the project; and
- 6367 (c) may include award of a stipulated fee to be paid to ~~submitters~~ offerors who submit
- 6368 unsuccessful proposals.

6369 ~~[(7)]~~ (9) The transportation agency shall:

- 6370 (a) evaluate the submissions received in response to the request for proposals from the
- 6371 prequalified ~~proposers~~ offerors;
- 6372 (b) comply with rules relating to discussion of proposals, best and final offers, and
- 6373 evaluations of the proposals submitted; and
- 6374 (c) after considering price and other identified factors, award the contract to the
- 6375 responsive and responsible ~~proposer~~ offeror whose proposal is most advantageous to the
- 6376 state.

6377 Section 160. Section **63G-6a-1403**, which is renumbered from Section 63G-6-503 is
6378 renumbered and amended to read:

6379 ~~[63G-6-503]~~. **63G-6a-1403. Procurement of tollway development**
6380 **agreements.**

6381 (1) As used in this section~~[(a) "Department" means the Department of~~
6382 ~~Transportation. (b) "Tollway", "tollway development agreement" [has the same meaning] is~~ as

6383 defined in Section 72-6-202.

6384 (2) The [department] Department of Transportation and the Transportation
6385 Commission:

6386 (a) may solicit a tollway development agreement proposal by following the
6387 requirements of this section;

6388 (b) may award a solicited tollway development agreement contract for any tollway
6389 project by following the requirements of this section; and

6390 (c) shall make rules, [~~by following the procedures and requirements of~~] in accordance
6391 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing requirements for
6392 the procurement of tollway development agreement proposals in addition to those required by
6393 this section.

6394 (3) (a) Before entering into a tollway development agreement, the [department]
6395 Department of Transportation may issue a request for qualifications to prequalify potential
6396 contractors.

6397 (b) Public notice of the request for qualifications shall be given in accordance with
6398 [~~policy~~] board rules.

6399 (c) The [department] Department of Transportation shall require, as part of the
6400 qualifications specified in the request for qualifications, that potential contractors at least
6401 provide:

6402 (i) a demonstration of their experience with other transportation concession projects
6403 with attributes similar to the project being procured;

6404 (ii) a financial statement of the firm or consortium of firms making the proposal;

6405 (iii) a conceptual project development plan and financing plan;

6406 (iv) the legal structure of the firm or consortium of firms making the proposal;

6407 (v) the organizational structure for the project; and

6408 (vi) a statement describing why the firm or consortium of firms is best qualified for the
6409 project.

6410 (d) The request for qualifications shall identify the number of eligible competing
6411 [~~proposers~~] offerors that the [department] Department of Transportation will select to submit a
6412 proposal.

6413 (4) The [department] Department of Transportation shall:

- 6414 (a) evaluate the responses received from the request for qualifications;
- 6415 (b) select from their number those qualified to submit proposals; and
- 6416 (c) invite those respondents to submit proposals based upon the [~~department's~~
- 6417 Department of Transportation's request for proposals.
- 6418 (5) The [~~department~~] Department of Transportation shall issue a request for proposals
- 6419 to those qualified respondents that may require, as appropriate for the procurement:
- 6420 (a) a description of the proposed project or projects;
- 6421 (b) a financial plan for the project, including:
- 6422 (i) the anticipated financial commitment of all parties;
- 6423 (ii) equity, debt, and other financing mechanisms;
- 6424 (iii) an analysis of the projected return, rate of return, or both; and
- 6425 (iv) the monetary benefit and other value to a government entity;
- 6426 (c) assumptions about user fees or toll rates;
- 6427 (d) a project development and management plan, including:
- 6428 (i) the contracting structure;
- 6429 (ii) the plan for quality management;
- 6430 (iii) the proposed toll enforcement plan; and
- 6431 (iv) the plan for safety management; and
- 6432 (e) that the proposal to comply with the minimum guidelines for tollway development
- 6433 agreement proposals under Section 72-6-204.
- 6434 (6) The [~~department~~] Department of Transportation and the Transportation
- 6435 Commission:
- 6436 (a) shall evaluate the submissions received in response to the request for proposals
- 6437 from the prequalified [~~proposers~~] offerors;
- 6438 (b) shall comply with rules relating to discussion of proposals, best and final offers,
- 6439 and evaluations of the proposals submitted; and
- 6440 (c) may, after considering price and other identified factors and complying with the
- 6441 requirements of Section 72-6-206, award the contract to the responsive and responsible
- 6442 [~~proposer~~] offeror whose proposal is most advantageous to the state.
- 6443 Section 161. Section **63G-6a-1501** is enacted to read:

Part 15. Architect-Engineer Services

6445 **63G-6a-1501. Title.**

6446 This part is known as "Architect-Engineer Services."

6447 Section 162. Section **63G-6a-1502**, which is renumbered from Section 63G-6-701 is
6448 renumbered and amended to read:

6449 ~~[63G-6-701].~~ **63G-6a-1502. Policy regarding architect-engineer services.**

6450 (1) It is the policy of this state to publicly announce all requirements for
6451 architect-engineer services and to negotiate contracts for architect-engineer services on the
6452 basis of demonstrated competence and qualification for the type of services required, and at fair
6453 and reasonable prices.

6454 (2) Architect-engineer services shall be procured as provided in this part except as
6455 authorized by Sections ~~[63G-6-409 through 63G-6-411]~~ 63G-6a-408, 63G-6a-802, and
6456 63G-6a-803.

6457 (3) This part does not affect the authority of, and does not apply to procedures
6458 undertaken by, a public procurement unit to obtain the services of architects or engineers in the
6459 capacity of employees of ~~[such]~~ the public procurement unit.

6460 Section 163. Section **63G-6a-1503**, which is renumbered from Section 63G-6-702 is
6461 renumbered and amended to read:

6462 ~~[63G-6-702].~~ **63G-6a-1503. Selection committee for architect-engineer**
6463 **services.**

6464 (1) In the procurement of architect-engineer services, the ~~[chief]~~ procurement officer or
6465 the head of a state purchasing [agency] unit shall encourage firms engaged in the lawful
6466 practice of their profession to submit annually a statement of qualifications and performance
6467 data.

6468 (2) The Building Board shall be the ~~[selection]~~ evaluation committee for
6469 architect-engineer services contracts under its authority. ~~[Selection committees]~~

6470 (3) An evaluation committee for architect-engineer services contracts not under the
6471 authority of the Building Board shall be established in accordance with rules ~~[and regulations~~
6472 ~~promulgated by the policy board. Selection committees shall]~~ made by the applicable
6473 rulemaking authority.

6474 (4) An evaluation committee shall:

6475 (a) evaluate current statements of qualifications and performance data on file with the

6476 state, together with those that may be submitted by other firms in response to the
6477 announcement of the proposed contract~~[- Selection committees shall];~~

6478 (b) consider no less than three firms ~~[and then shall select therefrom,];~~ and

6479 (c) based upon criteria established and published by the ~~[selection committees,]~~
6480 authorized purchasing entity, select no less than three of the firms considered to be the most
6481 highly qualified to provide the services required.

6482 Section 164. Section **63G-6a-1504**, which is renumbered from Section 63G-6-703 is
6483 renumbered and amended to read:

6484 ~~[63G-6-703].~~ **63G-6a-1504. Selection as part of design-build or lease.**

6485 Notwithstanding any other provision of this chapter, architect-engineer services may be
6486 procured under Title 63A, Chapter 5, State Building Board - Division of Facilities Construction
6487 and Management, as part of the services obtained in a design-build contract or as part of the
6488 services obtained in a lease contract for real property, ~~[provided that]~~ if the qualifications of
6489 those providing the architect-engineer services are part of the consideration in the selection
6490 process.

6491 Section 165. Section **63G-6a-1505**, which is renumbered from Section 63G-6-704 is
6492 renumbered and amended to read:

6493 ~~[63G-6-704].~~ **63G-6a-1505. Determination of compensation for**
6494 **architect-engineer services.**

6495 (1) The procurement officer shall award a contract to a qualified firm at compensation
6496 ~~[which]~~ that the procurement officer determines, in writing, to be fair and reasonable to the
6497 state.

6498 (2) In making ~~[this decision,]~~ the determination described in Subsection (1), the
6499 procurement officer shall take into account the services':

6500 (a) estimated value~~[- the];~~

6501 (b) scope~~[- and];~~

6502 (c) complexity~~[-];~~ and ~~[the]~~

6503 (d) professional nature ~~[of the services to be rendered. Should].~~

6504 (3) If the procurement officer ~~[be]~~ is unable to agree to a satisfactory contract with the
6505 firm first selected, at a price the procurement officer determines to be fair and reasonable to the
6506 state, ~~[discussions with that firm shall be formally terminated. The]~~ the procurement officer

6507 shall ~~then~~:

6508 (a) formally terminate discussions with that firm; and

6509 (b) undertake discussions with a second qualified firm. ~~[Failing accord with the~~
6510 ~~second firm, the procurement officer shall formally terminate discussions. The procurement~~
6511 ~~officer shall then]~~

6512 (4) If the procurement officer is unable to agree to a satisfactory contract with the
6513 second firm selected, at a price the procurement officer determines to be fair and reasonable to
6514 the state, the procurement officer shall:

6515 (a) formally terminate discussions with that firm; and

6516 (b) undertake discussions with a third qualified firm. ~~[Should the procurement officer~~
6517 ~~be]~~

6518 (5) If the procurement officer is unable to award a contract at a fair and reasonable
6519 price ~~[with]~~ to any of the selected firms, the procurement officer shall:

6520 (a) select additional firms[;]; and ~~[the procurement officer shall]~~

6521 (b) continue discussions in accordance with this part until an agreement is reached.

6522 Section 166. Section **63G-6a-1506**, which is renumbered from Section 63G-6-705 is
6523 renumbered and amended to read:

6524 ~~[63G-6-705].~~ **63G-6a-1506. Restrictions on procurement of**
6525 **architect-engineer services.**

6526 (1) Except as provided in Subsection (2), when ~~[a public procurement unit]~~ an
6527 authorized purchasing entity, in accordance with Section ~~[63G-6-704]~~ 63G-6a-1502, elects to
6528 obtain architect or engineering services by using a competitive procurement process and has
6529 provided public notice of its competitive procurement process:

6530 (a) a higher education entity, or any part of one, may not submit a proposal in response
6531 to the ~~[public procurement unit's]~~ authorized purchasing entity's competitive procurement
6532 process; and

6533 (b) the ~~[public procurement unit]~~ authorized purchasing entity may not award a
6534 contract to perform the architect or engineering services solicited in the competitive
6535 procurement process to a higher education entity or any part of one.

6536 (2) ~~[A public procurement unit need not comply with the requirements of]~~ Subsection
6537 (1) does not apply when the ~~[public procurement unit]~~ authorized purchasing entity is

6538 procuring architect or engineer services for contracts related to research activities and
6539 technology transfer.

6540 Section 167. Section **63G-6a-1601** is enacted to read:

6541 **Part 16. Controversies and Protests**

6542 **63G-6a-1601. Title.**

6543 This part is known as "Controversies and Protests."

6544 Section 168. Section **63G-6a-1602**, which is renumbered from Section 63G-6-805 is
6545 renumbered and amended to read:

6546 ~~[63G-6-805].~~ **63G-6a-1602. Authority to resolve controversy between**
6547 **public procurement unit and contractor.**

6548 The [~~chief~~] procurement officer, the head of [~~a purchasing agency~~] an authorized
6549 purchasing entity, or a designee of either [~~officer is authorized, prior to~~] may, before
6550 commencement of an action in court concerning the controversy, [~~to~~] settle and resolve a
6551 controversy [~~which~~] that arises between [~~the state~~] a public procurement unit or an authorized
6552 purchasing entity and a contractor [~~under or by virtue of a contract between them. This~~
6553 ~~includes, without limitation, controversies~~] in relation to a contract or a procurement, including
6554 a controversy based upon breach of contract, [~~mistakes~~] a mistake, misrepresentation, or other
6555 cause for contract modification or rescission.

6556 Section 169. Section **63G-6a-1603**, which is renumbered from Section 63G-6-801 is
6557 renumbered and amended to read:

6558 ~~[63G-6-801].~~ **63G-6a-1603. Protest to procurement officer -- Time --**
6559 **Authority to resolve protest.**

6560 (1) Any actual or prospective bidder, offeror, or contractor who is aggrieved in
6561 connection with the solicitation or award of a contract may protest to the [~~chief~~] procurement
6562 officer or the head of [~~a purchasing agency~~] an authorized purchasing entity. A protest with
6563 respect to an invitation for bids or a request for proposals shall be submitted in writing [~~prior~~
6564 ~~to~~] before the opening of bids or the closing date for proposals, unless the aggrieved person did
6565 not know and should not have known of the facts giving rise to the protest [~~prior to~~] before the
6566 bid opening or the closing date for proposals. [~~The protest shall be submitted~~] An aggrieved
6567 person shall submit a protest in writing within [~~five working~~] seven days after the aggrieved
6568 person knows or should have known of the facts giving rise [~~thereto~~] to the protest.

6569 (2) Subject to the applicable requirements in Section 63G-10-403, the [chief]
 6570 procurement officer, the head of [~~a purchasing agency~~] an authorized purchasing entity, or a
 6571 designee of either [~~officer shall have the authority, prior to~~], may, before the commencement of
 6572 an action in court concerning the controversy, [~~to~~] settle and resolve the protest.

6573 Section 170. Section **63G-6a-1604**, which is renumbered from Section 63G-6-806 is
 6574 renumbered and amended to read:

6575 ~~[63G-6-806].~~ **63G-6a-1604. Decisions to be in writing -- Effect of no**
 6576 **writing.**

6577 (1) The [~~chief procurement officer, the head of a purchasing agency, or the designee of~~
 6578 ~~either officer~~] person who conducts a hearing under Section 63G-6a-1603 shall promptly issue
 6579 a written decision regarding any protest, debarment [~~or~~], suspension, or contract controversy if
 6580 it is not settled by a mutual agreement.

6581 (2) The decision shall state the reasons for the action taken and inform the protestor,
 6582 contractor, or prospective contractor of the right to judicial or administrative review as
 6583 provided in this chapter.

6584 [~~(2)~~] (3) A decision [~~shall be~~] described in this section is effective until stayed or
 6585 reversed on appeal, except to the extent provided in Section [63G-6-802] 63G-6a-1607. [~~A~~
 6586 ~~copy of the decision under Subsection (1) shall be mailed~~]

6587 (4) A person who issues a decision under this section shall mail or otherwise
 6588 [~~furnished~~] immediately furnish a copy of the decision to the protestor, prospective contractor,
 6589 or contractor.

6590 (5) The decision shall be final and conclusive unless the protestor, prospective
 6591 contractor, or contractor;

6592 (a) appeals administratively to the [~~procurement~~] applicable appeals board, if any, in
 6593 accordance with Subsection [~~63G-6-810~~] 63G-6a-1703(2); or [~~the protestor, prospective~~
 6594 ~~contractor, or contractor~~]

6595 (b) if there is not an applicable appeals board, commences an action in district court in
 6596 accordance with Section [~~63G-6-815~~] 63G-6a-1803.

6597 [~~(3)~~] (6) If the [chief] procurement officer, the head of [~~a purchasing agency~~] an
 6598 authorized purchasing entity, or the designee of either [~~officer~~] does not issue the written
 6599 decision [~~regarding a contract controversy~~] as required by this section within 60 [~~calendar~~] days

6600 after the day on which a written request for a final decision is made, or within [~~such~~] a longer
6601 period as may be agreed upon by the parties, then the protestor, contractor, or prospective
6602 contractor may proceed as if an adverse decision had been received.

6603 Section 171. Section **63G-6a-1605**, which is renumbered from Section 63G-6-907 is
6604 renumbered and amended to read:

6605 [~~63G-6-907~~]. **63G-6a-1605. Resolution of local public procurement**
6606 **controversies.**

6607 [~~Any~~] A local public procurement unit [~~is authorized to~~] may enter into an agreement
6608 with the State Procurement Appeals Board to resolve controversies between the local public
6609 procurement unit and its bidders, offerors, contractors, regardless of whether [~~or not such~~] the
6610 controversy arose from a cooperative purchasing agreement.

6611 Section 172. Section **63G-6a-1606**, which is renumbered from Section 63G-6-802 is
6612 renumbered and amended to read:

6613 [~~63G-6-802~~]. **63G-6a-1606. Effect of timely protest.**

6614 In the event of a timely protest under Subsection [~~63G-6-801(1), 63G-6-810(1), or~~
6615 ~~63G-6-815(1), the state shall~~] 63G-6a-1603(1), 63G-6a-1703(1), or 63G-6a-1803(1), an
6616 authorized purchasing entity may not proceed further with the solicitation or with the award of
6617 the contract until all administrative and judicial remedies [~~have been~~] are exhausted or until the
6618 [~~chief~~] procurement officer, after consultation with the head of the [~~using agency~~] public
6619 procurement unit or the head of [~~a purchasing agency~~] an authorized purchasing entity, makes a
6620 written determination that the award of the contract without delay is necessary to protect
6621 substantial interests of the state.

6622 Section 173. Section **63G-6a-1607**, which is renumbered from Section 63G-6-803 is
6623 renumbered and amended to read:

6624 [~~63G-6-803~~]. **63G-6a-1607. Costs to or against protestor.**

6625 (1) When a protest is sustained administratively or upon administrative or judicial
6626 review and the protesting bidder or offeror should have been awarded the contract under the
6627 solicitation but is not, the protestor shall be entitled to the following relief as a claim against
6628 the state:

6629 (a) the reasonable costs incurred in connection with the solicitation, including bid
6630 preparation and appeal costs; and

6631 (b) any equitable relief determined to be appropriate by the reviewing administrative or
6632 judicial body.

6633 (2) When a protest is not sustained by the [~~Procurement Appeals Board~~] appeals board,
6634 the protestor shall reimburse the [~~Division of Purchasing and General Services~~] public entity
6635 for the per diem and expenses paid by the [~~division~~] public entity to witnesses or appeals board
6636 members and any additional expenses incurred by the [~~state agency~~] staff of the public entity
6637 who have provided materials and administrative services to the appeals board for that case.

6638 Section 174. Section **63G-6a-1701** is enacted to read:

6639 **Part 17. Procurement Appeals Board**

6640 **63G-6a-1701. Title.**

6641 This part is known as "Procurement Appeals Board."

6642 Section 175. Section **63G-6a-1702**, which is renumbered from Section 63G-6-807 is
6643 renumbered and amended to read:

6644 [~~63G-6-807~~]. **63G-6a-1702. Creation of Procurement Appeals Board --**
6645 **Creation of other appeals boards.**

6646 (1) (a) A Procurement Appeals Board is created in the executive branch. The
6647 Procurement Appeals Board shall be composed of a chair and one other member, to be
6648 appointed by the governor, and a third member to be designated by the two appointed members
6649 on a case-by-case basis.

6650 (b) None of the members of the Procurement Appeals Board shall otherwise be
6651 full-time employees of the state.

6652 (c) The appointed members of the Procurement Appeals Board shall have been
6653 members in good standing of the state bar for at least five years and shall be experienced in
6654 contract or commercial matters.

6655 (d) The designated member shall possess the technical expertise and experience needed
6656 for the proper disposition of the factual issues presented by the case.

6657 (2) (a) Except as required by Subsection (2)(b), as terms of current [~~board~~] members
6658 expire, the governor shall appoint each new member or reappointed member to a four-year
6659 term.

6660 (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the
6661 time of appointment or reappointment, adjust the length of terms to ensure that the terms of

6662 [~~board~~] members are staggered so that approximately half of the [~~board is~~] members of the
 6663 Procurement Appeals Board are appointed every two years.

6664 (c) The designated member shall serve for the case on which designated until the final
 6665 disposition of the case.

6666 (d) Appointed members may be reappointed for succeeding terms and may continue to
 6667 serve after the expiration of their terms until a successor takes office.

6668 (e) Qualified persons may be redesignated as members.

6669 (3) When a vacancy occurs in the membership for any reason, the replacement shall be
 6670 appointed for the unexpired term.

6671 (4) A member may not receive compensation or benefits for the member's service, but
 6672 may receive per diem and travel expenses in accordance with:

6673 (a) Section 63A-3-106;

6674 (b) Section 63A-3-107; and

6675 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
 6676 63A-3-107.

6677 (5) A local public procurement unit, a non-executive state procurement unit, or a state
 6678 institution of higher education may form its own appeals board to hear procurement protests.

6679 Section 176. Section **63G-6a-1703**, which is renumbered from Section 63G-6-810 is
 6680 renumbered and amended to read:

6681 ~~[63G-6-810].~~ **63G-6a-1703. Jurisdiction of appeals board.**

6682 Unless an action has been initiated previously in district courts for essentially the same
 6683 cause of action, ~~[the]~~ an appeals board shall have jurisdiction to review and determine de novo:

6684 (1) any protest of a solicitation or award of a contract addressed to the appeals board by
 6685 an aggrieved actual or prospective bidder or offeror, or a contractor; and

6686 (2) any appeal by an aggrieved party from a decision rendered or considered to have
 6687 been rendered pursuant to Section ~~[63G-6-806]~~ 63G-6a-1604.

6688 Section 177. Section **63G-6a-1704**, which is renumbered from Section 63G-6-808 is
 6689 renumbered and amended to read:

6690 ~~[63G-6-808].~~ **63G-6a-1704. Rules of procedure to be adopted.**

6691 The Procurement Appeals Board:

6692 (1) shall adopt rules of procedure ~~[which]~~ that, to the fullest extent possible, ~~[with]~~

6693 provide for the expeditious resolution of controversies, including procedures to encourage
6694 agreements between the parties to a controversy prior to a hearing[~~.-The board~~]; and

6695 (2) may adopt small claims procedures for the resolution of controversies involving
6696 claims of less than \$15,000.

6697 Section 178. Section **63G-6a-1705**, which is renumbered from Section 63G-6-809 is
6698 renumbered and amended to read:

6699 ~~[63G-6-809].~~ **63G-6a-1705. Decisions of appeals board to be in writing.**

6700 ~~[The Procurement Appeals Board shall]~~

6701 An appeals board shall:

6702 (1) issue a decision in writing or take other appropriate action of each appeal

6703 submitted[~~.-A~~]; and

6704 (2) provide a copy of any decision [~~shall be provided~~] to all parties and the [~~chief~~]

6705 procurement officer or the head of [~~a purchasing agency~~] an authorized purchasing entity.

6706 Section 179. Section **63G-6a-1706**, which is renumbered from Section 63G-6-811 is
6707 renumbered and amended to read:

6708 ~~[63G-6-811].~~ **63G-6a-1706. Time limits to file protest or appeal -- Effect of**
6709 **filing.**

6710 (1) For a protest under Subsection [~~63G-6-810~~] 63G-6a-1703(1), the aggrieved person
6711 shall file a protest with the appeals board within [~~five working~~] seven days after the aggrieved
6712 person knows or should have known of the facts and circumstances upon which the protest is
6713 based[~~;- provided, however,;~~] except that a protest with respect to an invitation for bids or
6714 request for proposals shall be filed [~~prior to~~] before the opening of bids or the closing date for
6715 proposals unless the aggrieved person did not know and should not have known of the facts
6716 giving rise to the protest [~~prior to~~] before the bid opening or the closing date for proposals.

6717 (2) For an appeal from a decision regarding a protested solicitation or award, the
6718 aggrieved person shall file an appeal within seven [~~calendar days of receipt of a~~] days after the
6719 day on which the decision is rendered or considered to have been rendered [~~pursuant to Section~~
6720 ~~63G-6-806~~] under Section 63G-6a-1604.

6721 (3) For an appeal from a decision regarding a debarment, suspension, or contract
6722 controversy, the aggrieved person shall file an appeal within 60 [~~calendar days of receipt of~~]
6723 days after the day on which the person receives a decision rendered or considered to have been

6724 rendered [~~pursuant to Section 63G-6-806~~] under Section 63G-6a-1604.

6725 Section 180. Section **63G-6a-1707**, which is renumbered from Section 63G-6-812 is
6726 renumbered and amended to read:

6727 ~~[63G-6-812].~~ **63G-6a-1707. Discontinued appeal with prejudice, except as**
6728 **authorized.**

6729 After notice of an appeal [~~has been~~] is filed with the [~~Procurement Appeals Board~~]
6730 applicable appeals board, no party may discontinue the appeal without prejudice, except as
6731 authorized by the [~~Procurement Appeals Board~~] applicable appeals board.

6732 Section 181. Section **63G-6a-1708**, which is renumbered from Section 63G-6-813 is
6733 renumbered and amended to read:

6734 ~~[63G-6-813].~~ **63G-6a-1708. Factual determination of appeals board final**
6735 **and conclusive.**

6736 (1) On any protest or appeal under Section [~~63G-6-810~~] 63G-6a-1703, the
6737 [~~Procurement Appeals Board~~] applicable appeals board shall promptly decide the contract
6738 controversy or whether the [~~solicitation~~] procurement or award was in accordance with this
6739 chapter. Any prior determinations by administrative officials regarding protests of
6740 [~~solicitations~~] procurements or awards, suspension or debarments, contract controversies, or
6741 breach of contract controversies [~~shall not be~~] are not final or conclusive.

6742 (2) A determination of an issue of fact by the [~~Procurement Appeals Board~~] applicable
6743 appeals board under Subsection (1) [~~shall be~~] is final and conclusive unless arbitrary and
6744 capricious or clearly erroneous. No determination on an issue of law [~~shall be~~] by the
6745 applicable appeals board is final or conclusive.

6746 (3) The applicable appeals board may, without a hearing, determine, in writing, that a
6747 protest is without merit.

6748 Section 182. Section **63G-6a-1801** is enacted to read:

6749 **Part 18. Appeals to Court and Court Proceedings**

6750 **63G-6a-1801. Title.**

6751 This part is known as "Appeals to Court and Court Proceedings."

6752 Section 183. Section **63G-6a-1802**, which is renumbered from Section 63G-6-814 is
6753 renumbered and amended to read:

6754 ~~[63G-6-814].~~ **63G-6a-1802. Right to appeal to Court of Appeals.**

6755 Any person receiving an adverse decision, or the state, may appeal a decision of [~~the~~
6756 ~~Procurement Appeals Board~~] an appeals board to the Court of Appeals. [~~However, no appeal~~
6757 ~~may be made by the state~~] The state may not appeal a decision of an appeals board unless:

6758 (1) recommended by the chief procurement officer or the head of the state purchasing
6759 [~~agency~~] unit involved, and approved by the attorney general[-]; or

6760 (2) for a non-executive state procurement unit, approved by a person authorized by rule
6761 made by the applicable rulemaking authority.

6762 Section 184. Section **63G-6a-1803**, which is renumbered from Section 63G-6-815 is
6763 renumbered and amended to read:

6764 ~~[63G-6-815].~~ **63G-6a-1803. Jurisdiction of district court.**

6765 (1) The district court shall have jurisdiction over an action, whether the action is at law
6766 or in equity, between the state and:

6767 (a) a bidder, offeror, or contractor, prospective or actual, who is aggrieved in
6768 connection with the [~~solicitation~~] procurement or award of a contract;

6769 (b) a person who is subject to a suspension or debarment proceeding; and

6770 (c) a contractor, for any cause of action [~~which~~] that arises under, or [~~by virtue of~~] or in
6771 relation to a contract.

6772 (2) The provisions of Title 63G, Chapter 7, Part 4, Notice of Claim Against a
6773 Governmental Entity or a Government Employee, and Section 63G-7-601 do not apply to
6774 actions brought under this chapter by an aggrieved party for equitable relief or reasonable costs
6775 incurred in preparing or appealing an unsuccessful bid or offer.

6776 Section 185. Section **63G-6a-1804**, which is renumbered from Section 63G-6-817 is
6777 renumbered and amended to read:

6778 ~~[63G-6-817].~~ **63G-6a-1804. Statutes of limitations.**

6779 (1) [~~Any~~] An action under Subsection [~~63G-6-815~~] 63G-6a-1803(1)(a) shall be
6780 initiated [~~as follows~~]:

6781 (a) within 20 [~~calendar~~] days after the day on which the aggrieved person knows or
6782 should have known of the facts giving rise to the action; [~~provided, however, that an action~~

6783 (b) with respect to an invitation for bids or request for proposals [~~shall be initiated~~
6784 ~~prior to~~], before the opening of bids or the closing date for proposals unless the aggrieved
6785 person did not know and should not have known of the facts giving rise to the action [~~prior to~~

6786 bid opening or the closing date for proposals]; or

6787 ~~[(b)]~~ (c) within 14 ~~[calendar]~~ days after receipt of a final administrative decision
 6788 pursuant to either Section ~~[63G-6-806 or Section 63G-6-813]~~ 63G-6a-1604 or 63G-6a-1708,
 6789 whichever is applicable.

6790 (2) ~~[Any]~~ An action under Subsection ~~[63G-6-815]~~ 63G-6a-1803(1)(b) shall be
 6791 commenced within six months after receipt of a final administrative decision, pursuant to
 6792 Section ~~[63G-6-806 or Section 63G-6-813, whichever is applicable]~~ 63G-6a-1604 or
 6793 63G-6a-1708.

6794 (3) The statutory limitations on an action between private persons on a contract or for
 6795 breach of contract shall apply to any action commenced pursuant to Subsection ~~[63G-6-815]~~
 6796 63G-6a-1803(1)(c), except notice of appeals from ~~[the Procurement Appeals Board]~~ an appeals
 6797 board pursuant to Section ~~[63G-6-814]~~ 63G-6a-1802 concerning actions on a contract or for
 6798 breach of contract, shall be filed within one year after the ~~[date of the Procurement Appeals~~
 6799 Board decision] day on which the decision of the appeals board is made.

6800 Section 186. Section **63G-6a-1805**, which is renumbered from Section 63G-6-816 is
 6801 renumbered and amended to read:

6802 ~~[63G-6-816]~~. **63G-6a-1805. Effect of prior determination by agents of**
 6803 **state.**

6804 In any judicial action under Section ~~[63G-6-815]~~ 63G-6a-1803, determinations by
 6805 employees, agents, or other persons appointed by the state shall be final and conclusive only as
 6806 provided in Sections ~~[63G-6-419 and 63G-6-806]~~ 63G-6a-1604 and 63G-6a-1902, and
 6807 Subsection ~~[63G-6-813]~~ 63G-6a-1708(2).

6808 Section 187. Section **63G-6a-1901** is enacted to read:

Part 19. General Provisions Related to Protest or Appeal

6810 **63G-6a-1901. Title.**

6811 This part is known as "General Provisions Related to Protest or Appeal."

6812 Section 188. Section **63G-6a-1902**, which is renumbered from Section 63G-6-419 is
 6813 renumbered and amended to read:

6814 ~~[63G-6-419]~~. **63G-6a-1902. Determinations final except when arbitrary**
 6815 **and capricious.**

6816 The determinations required ~~[by Subsections 63G-6-401(6), 63G-6-408(1) and (6),~~

6817 Sections ~~63G-6-410, 63G-6-411, 63G-6-413, Subsection 63G-6-415(4), Section 63G-6-416,~~
 6818 ~~and Subsection 63G-6-417(2)]~~ under the following provisions are final and conclusive unless
 6819 they are arbitrary and capricious or clearly erroneous[-];

- 6820 (1) Section 63G-6a-605;
 6821 (2) Section 63G-6a-702;
 6822 (3) Subsection 63G-6a-708(1)(a);
 6823 (4) Subsection 63G-6a-709(1);
 6824 (5) Section 63G-6a-803;
 6825 (6) Section 63G-6a-804;
 6826 (7) Section 63G-6a-903;
 6827 (8) Subsection 63G-6a-1204(1) or (2);
 6828 (9) Subsection 63G-6a-1204(5);
 6829 (10) Section 63G-6a-1205; or
 6830 (11) Subsection 63G-6a-1206(5).

6831 Section 189. Section **63G-6a-1903**, which is renumbered from Section 63G-6-818 is
 6832 renumbered and amended to read:

6833 ~~[63G-6-818].~~ **63G-6a-1903. Effect of violation prior to award of contract.**

6834 If ~~[prior to]~~, before award of a contract, it is determined administratively or upon
 6835 administrative or judicial review that a ~~[solicitation]~~ procurement or proposed award of a
 6836 contract is in violation of law, the ~~[solicitation]~~ procurement or proposed award shall be
 6837 cancelled or revised to comply with the law.

6838 Section 190. Section **63G-6a-1904**, which is renumbered from Section 63G-6-819 is
 6839 renumbered and amended to read:

6840 ~~[63G-6-819].~~ **63G-6a-1904. Effect of violation after award of contract.**

6841 If, after ~~[an]~~ award of a contract, it is determined administratively or upon
 6842 administrative or judicial review that a ~~[solicitation]~~ procurement or award of a contract is in
 6843 violation of law:

6844 (1) if the person awarded the contract ~~[has not acted]~~ did not act fraudulently or in bad
 6845 faith:

6846 (a) the contract may be ratified and affirmed if it is ~~[determined that doing so is]~~ in the
 6847 best interests of the state; or

6848 (b) (i) the contract may be terminated; and
 6849 (ii) the person awarded the contract shall be compensated for the actual expenses
 6850 reasonably incurred under the contract [~~prior to~~] before the termination, plus a reasonable
 6851 profit;

6852 (2) if the person awarded the contract has acted fraudulently or in bad faith:
 6853 (a) the contract may be declared null and void; or
 6854 (b) the contract may be ratified and affirmed if [~~such action~~] it is in the best interests of
 6855 the state, without prejudice to the state's rights to any appropriate damages.

6856 Section 191. Section **63G-6a-1905**, which is renumbered from Section 63G-6-820 is
 6857 renumbered and amended to read:

6858 ~~[63G-6-820].~~ **63G-6a-1905. Interest rate.**

6859 (1) Except as provided in Subsection (2), in controversies between the state and
 6860 contractors under this part, Part 16, Controversies and Protests, Part 17, Procurement Appeals
 6861 Board, or Part 18, Appeals to Court and Court Proceedings, interest on amounts ultimately
 6862 determined to be due to a contractor or [~~to~~] the state are payable at the rate applicable to
 6863 judgments from the date the claim arose through the date of decision or judgment, whichever is
 6864 later.

6865 (2) This section does not apply to public assistance benefits programs.

6866 Section 192. Section **63G-6a-2001** is enacted to read:

6867 **Part 20. Records**

6868 **63G-6a-2001. Title.**

6869 This part is known as "Records."

6870 Section 193. Section **63G-6a-2002**, which is renumbered from Section 63G-6-106 is
 6871 renumbered and amended to read:

6872 ~~[63G-6-106].~~ **63G-6a-2002. Records -- Retention.**

6873 (1) All procurement records shall be retained and disposed of in accordance with Title
 6874 63G, Chapter 2, Government Records Access and Management Act.

6875 (2) Written determinations required by this chapter shall [~~also~~] be retained in the
 6876 appropriate official contract file of [~~the Division of Purchasing and General Services or the~~
 6877 ~~purchasing agency~~];

6878 (a) the division;

6879 (b) the state purchasing unit; or
 6880 (c) for a non-executive state procurement unit, the person designated by rule made by
 6881 the applicable rulemaking authority.

6882 (3) A public procurement unit shall keep, and make available to the public, upon
 6883 request, a written record of all procurements made under this section for which an expenditure
 6884 of \$50 or more is made, for the longer of:

6885 (a) four years;
 6886 (b) the time otherwise required by law; or
 6887 (c) the time period provided by rule made by the applicable rulemaking authority.

6888 (4) The written record described in Subsection (3) shall include:

6889 (a) the name of the provider from whom the procurement was made;
 6890 (b) a description of the procurement item;
 6891 (c) the date of the procurement; and
 6892 (d) the expenditure made for the procurement.

6893 Section 194. Section **63G-6a-2003**, which is renumbered from Section 63G-6-421 is
 6894 renumbered and amended to read:

6895 ~~[63G-6-421].~~ **63G-6a-2003. Records of contracts made -- Audits --**
 6896 **Contract requirements.**

6897 The [chief] procurement officer or the head of [a purchasing agency] an authorized
 6898 purchasing entity shall maintain a record listing all contracts made under Section [~~63G-6-410~~
 6899 ~~or 63G-6-411 and shall maintain the record~~] 63G-6a-408, 63G-6a-802, or 63G-6a-803, in
 6900 accordance with Title 63G, Chapter 2, Government Records Access and Management Act.
 6901 The record shall contain each contractor's name, the amount and type of each contract, and a
 6902 listing of the [~~supplies, services, or construction procured under each contract~~] procurement
 6903 items to which the contract relates.

6904 Section 195. Section **63G-6a-2004**, which is renumbered from Section 63G-6-905 is
 6905 renumbered and amended to read:

6906 ~~[63G-6-905].~~ **63G-6a-2004. Chief procurement officer's collection of**
 6907 **information on procurement items.**

6908 (1) To the extent possible, the chief procurement officer may collect information
 6909 concerning the type, cost, quality, and quantity of commonly used [supplies, services, or

6910 ~~construction being~~ procurement items procured or used by [state] public procurement units
 6911 [~~and local public procurement units~~].

6912 (2) The chief procurement officer may make the information described in Subsection
 6913 (1) available to any public procurement unit upon request.

6914 Section 196. Section **63G-6a-2101** is enacted to read:

6915 **Part 21. Interaction Between Public Procurement Units**

6916 **63G-6a-2101. Title.**

6917 This part is known as "Interaction Between Public Procurement Units."

6918 Section 197. Section **63G-6a-2102**, which is renumbered from Section 63G-6-901 is
 6919 renumbered and amended to read:

6920 ~~[63G-6-901].~~ **63G-6a-2102. Agreements between public procurement**
 6921 **units.**

6922 [~~Under the terms agreed upon among the parties, any~~]

6923 (1) For purposes of this section only, "public procurement unit" includes an external
 6924 procurement unit.

6925 (2) A public procurement unit may enter into [agreements] an agreement with one or
 6926 more other public procurement units to:

6927 [~~(1)~~] (a) sponsor, conduct, or administer a cooperative agreement for the procurement
 6928 or disposal of [~~any supplies, services, or construction~~] a procurement item;

6929 [~~(2)~~] (b) cooperatively use [~~supplies or services~~] a procurement item;

6930 [~~(3)~~] (c) commonly use or share warehousing facilities, capital equipment, and other
 6931 facilities;

6932 [~~(4)~~] (d) provide personnel [~~; provided that the requesting~~], if the receiving public
 6933 procurement unit [~~shall pay~~] pays the public procurement unit providing the personnel the
 6934 direct and indirect cost of providing the personnel, in accordance with the agreement; or

6935 [~~(5)~~] (e) make available informational, technical, and other services, [~~provided that~~], if:

6936 (i) the requirements of the public procurement unit tendering the services [~~shall~~] have
 6937 precedence over the [~~requesting~~] public procurement unit that receives the services; and [~~that~~]

6938 (ii) the [~~requesting~~] receiving public procurement unit [~~shall pay for~~] pays the expenses
 6939 of the services [~~so~~] provided, in accordance with the agreement.

6940 (3) If a public procurement unit does not have the expertise necessary to administer a

6941 particular procurement, the public procurement unit may enter into an agreement for
 6942 administration of the procurement with:

6943 (a) another public procurement unit; or

6944 (b) a person that is under contract to administer procurements.

6945 Section 198. Section **63G-6a-2103**, which is renumbered from Section 63G-6-902 is
 6946 renumbered and amended to read:

6947 ~~[63G-6-902].~~ **63G-6a-2103. Services between public procurement units.**

6948 (1) Upon request, ~~[any]~~ a public procurement unit may make services available to
 6949 ~~[other]~~ another public procurement ~~[units the following services, among others]~~ unit, including:

6950 (a) standard forms;

6951 (b) printed manuals;

6952 (c) qualified products lists;

6953 (d) source information;

6954 (e) common use commodities listings;

6955 (f) supplier prequalification information;

6956 (g) supplier performance ratings;

6957 (h) debarred and suspended bidders lists;

6958 (i) forms for invitation for bids, requests for proposals, instructions to bidders, general
 6959 contract provisions, and ~~[other]~~ contract forms; ~~[and]~~ or

6960 (j) contracts or published summaries ~~[thereof]~~ of contracts, including price and time of
 6961 delivery information.

6962 (2) ~~[Any]~~ A public procurement unit may provide ~~[the following]~~ technical services~~;~~
 6963 ~~[among others, to other]~~ to another public procurement ~~[units;]~~ unit, including:

6964 (a) development of specifications;

6965 (b) development of quality assurance test methods, including receiving, inspection, and
 6966 acceptance procedures;

6967 (c) use of testing and inspection facilities; ~~[and]~~ or

6968 (d) use of personnel training programs.

6969 (3) Public procurement units may enter into contractual arrangements and publish a
 6970 schedule of fees for the services provided under Subsections (1) and (2).

6971 Section 199. Section **63G-6a-2104**, which is renumbered from Section 63G-6-904 is

6972 renumbered and amended to read:

6973 ~~[63G-6-904].~~ **63G-6a-2104. Compliance by one public procurement unit**
 6974 **pursuant to agreement considered compliance by others to agreement.**

6975 ~~[Where the]~~ (1) When a public procurement unit [administering] that administers a
 6976 cooperative purchase complies with the requirements of this chapter, any public procurement
 6977 unit participating in [such a] the purchase [shall be] is considered to have complied with this
 6978 chapter. [Public procurement units]

6979 (2) A public procurement unit may not enter into a cooperative purchasing agreement
 6980 for the purpose of circumventing this chapter.

6981 Section 200. Section **63G-6a-2105**, which is renumbered from Section 63G-6-424 is
 6982 renumbered and amended to read:

6983 ~~[63G-6-424].~~ **63G-6a-2105. Participation of counties, municipalities, and**
 6984 **public procurement units in agreements or contracts of public procurement units.**

6985 ~~[Utah counties, municipalities, and local public procurement units]~~

6986 (1) A Utah county or municipality may purchase [from] under or otherwise participate
 6987 in [state public procurement unit agreements and contracts.] an agreement or contract of a Utah
 6988 public procurement unit.

6989 (2) A state purchasing unit or a Utah public procurement unit may:

6990 (a) contract with the federal government without going through a procurement process
 6991 or an exception to a procurement process;

6992 (b) purchase under, or otherwise participate in, an agreement or contract of another
 6993 Utah public procurement unit; or

6994 (c) purchase under, or otherwise participate in, an agreement or contract of an external
 6995 public procurement unit, if:

6996 (i) the procurement was conducted in accordance with the requirements of this chapter;
 6997 and

6998 (ii) the Utah participating addendum to the contract contains the terms and conditions
 6999 required by the applicable rulemaking authority that enters into the Utah participating
 7000 addendum.

7001 Section 201. Section **63G-6a-2201** is enacted to read:

7002 **Part 22. Ethical Requirements**

7003 **63G-6a-2201. Title.**

7004 This part is known as "Ethical Requirements."

7005 Section 202. Section **63G-6a-2202** is enacted to read:

7006 **63G-6a-2202. Ethical requirements for public procurement.**

7007 (1) As used in this section, "interested person" means a person who is interested in
7008 providing a procurement item to a public entity in response to an anticipated or pending
7009 acquisition of a procurement item by an invitation for bids, a request for proposals, a request
7010 for quotes, or another process.

7011 (2) A person acting on behalf of a public entity in a procurement by the public entity,
7012 regardless of whether the person is a public employee, shall conduct and participate in the
7013 procurement in an ethical manner.

7014 (3) Ethical conduct and participation by a person described in Subsection (2) includes:

7015 (a) acting as a fiduciary and trustee of public money;

7016 (b) remaining independent from a person who is interested in providing a procurement
7017 item to the public entity, including an actual or prospective bidder, offeror, or contractor;

7018 (c) acting only in the public interest;

7019 (d) abiding by all applicable law and rules relating to a procurement by the public
7020 entity;

7021 (e) avoiding the appearance of unethical behavior;

7022 (f) except as provided in Subsection (4), not engaging in a social interaction with an
7023 interested person of the public entity, if engaging in the social interaction would lead a
7024 reasonable person to believe that the interested person is receiving an unfair advantage in an
7025 anticipated or pending procurement by the public entity;

7026 (g) subject to the provisions of the Government Records Access and Management Act,
7027 maintaining confidentiality in a manner that ensures a fair procurement process; and

7028 (h) identifying and eliminating any conflict of interest.

7029 (4) Subsection (3)(f) does not prohibit a chance meeting.

7030 (5) An interested person, or any other person that may benefit from a procurement by a
7031 public entity, shall act in an ethical manner with respect to the procurement, including:

7032 (a) refraining from engaging in any conduct with the intent to gain an unfair advantage
7033 in a procurement from a public entity;

7034 (b) refraining from engaging in any conduct that would lead a reasonable person to
7035 believe that the interested person will, or is, receiving an unfair advantage in a procurement
7036 from a public entity;

7037 (c) refraining from any activity that would create the appearance of impropriety or
7038 conflict of interest with respect to the procurement by the public entity;

7039 (d) identifying and eliminating any conflicts of interest with respect to the procurement
7040 by the public entity;

7041 (e) not interfering with efforts by the public entity to ensure that all interested persons
7042 are afforded an equal opportunity to compete in a fair and open environment;

7043 (f) not engaging in a social interaction with a person acting on behalf of a public entity
7044 in a procurement, if engaging in the social interaction would lead a reasonable person to
7045 believe that the interested person is receiving an unfair advantage in an anticipated or pending
7046 procurement by the public entity; and

7047 (g) not entering into collusion with other interested buyers with the intent to unfairly
7048 manipulate the price or other terms of a procurement by a public entity.

7049 (6) The applicable rulemaking authority may make rules to further define and regulate
7050 the ethical requirements described in this section.

7051 (7) The provisions of this section are in addition to, and not in lieu of, Title 67, Chapter
7052 16, Utah Public Officers' and Employees' Ethics Act.

7053 Section 203. Section **63G-6a-2301** is enacted to read:

7054 **Part 23. Unlawful Conduct and Penalties**

7055 **63G-6a-2301. Title.**

7056 This part is known as "Unlawful Conduct and Penalties."

7057 Section 204. Section **63G-6a-2302**, which is renumbered from Section 63G-6-420 is
7058 renumbered and amended to read:

7059 ~~[63G-6-420].~~ **63G-6a-2302. Factual information to attorney general if**
7060 **collusion suspected.**

7061 ~~[When for any reason]~~ If a public procurement unit suspects collusion or other
7062 anticompetitive practices ~~[are suspected]~~ among bidders or offerors, the public procurement
7063 unit shall transmit a notice of the relevant facts ~~[shall be transmitted]~~ to the attorney general.

7064 Section 205. Section **63G-6a-2303** is enacted to read:

7065 63G-6a-2303. Offering a gratuity.7066 (1) As used in this section, "interested person" means a person who is interested in any
7067 way in the sale of a procurement item, real property, or insurance to a public entity.7068 (2) Except as provided in Subsection (5), it is unlawful for an interested person to give,
7069 offer, or promise to give an emolument, gratuity, contribution, loan, or reward to:7070 (a) a procurement officer of the public entity that is seeking to obtain the procurement
7071 item;7072 (b) any employee, official, or agent of the public entity that is seeking to obtain the
7073 procurement item; or7074 (c) another person or entity on behalf of a person described in Subsection (2)(a) or (b).7075 (3) The conduct described in Subsection (2) is unlawful, regardless of whether the
7076 emolument, gratuity, contribution, loan, or reward is given for:7077 (a) the person's own use; or7078 (b) the use or benefit of any other person.7079 (4) A person who violates this section is guilty of:7080 (a) a felony of the second degree if the total value of the emolument, gratuity,
7081 contribution, loan, or reward is \$1,000 or more;7082 (b) a felony of the third degree if the total value of the emolument, gratuity,
7083 contribution, loan, or reward is \$250 or more, but less than \$1,000;7084 (c) a class A misdemeanor if the value of the emolument, gratuity, contribution, loan,
7085 or reward is \$100 or more, but less than \$250; or7086 (d) a class B misdemeanor if the value of the emolument, gratuity, contribution, loan,
7087 or reward is less than \$100.7088 (5) A person is not guilty of a violation of this section if:7089 (a) (i) the gift is an item of less than \$10 in value;7090 (ii) the total value of all gifts given by the person to a person described in Subsection
7091 (2), or another person in that person's behalf, during that calendar year does not exceed \$50;7092 and7093 (iii) the gift is not given with the intent to induce a person to make a procurement
7094 decision in reciprocation for the gift; or7095 (b) the gift:

7096 (i) is a philanthropic donation to a government entity; and
7097 (ii) is not given with the intent to induce a person to make a procurement decision in
7098 reciprocation for the gift.

7099 Section 206. Section **63G-6a-2304** is enacted to read:

7100 **63G-6a-2304. Accepting or requesting a gratuity.**

7101 (1) As used in this section, "associate" means any of the following:

7102 (a) the chief procurement officer;

7103 (b) a procurement officer;

7104 (c) a public employee;

7105 (d) a public official; or

7106 (e) an agent of a public entity.

7107 (2) Except as provided in Subsection (4), it is unlawful for an associate of a public
7108 entity that is engaged in obtaining a procurement item, real property, or insurance to ask,
7109 receive, offer to receive, accept, or ask for a promise to receive, an emolument, gratuity,
7110 contribution, loan, or reward for the associate's own use or benefit, or the use or benefit of any
7111 other person interested in the procurement item, real property, or insurance.

7112 (3) A person who violates this section is guilty of:

7113 (a) a felony of the second degree if the total value of the emolument, gratuity,
7114 contribution, loan, or reward is \$1,000 or more;

7115 (b) a felony of the third degree if the total value of the emolument, gratuity,
7116 contribution, loan, or reward is \$250 or more, but less than \$1,000;

7117 (c) a class A misdemeanor if the value of the emolument, gratuity, contribution, loan,
7118 or reward is \$100 or more, but less than \$250; or

7119 (d) a class B misdemeanor if the value of the emolument, gratuity, contribution, loan,
7120 or reward is less than \$100.

7121 (4) A person is not guilty of a violation of this section if:

7122 (a) (i) the associate receives a gift of less than \$10 in value;

7123 (ii) the total value of all gifts received by the associate from the same person during
7124 that calendar year does not exceed \$50; and

7125 (iii) the associate does not make a procurement decision, or intend to make a
7126 procurement decision, in reciprocation for the gift; or

7127 (b) the associate:
7128 (i) receives a philanthropic donation on behalf of a government entity; and
7129 (ii) does not make a procurement decision, or intend to make a procurement decision,
7130 in reciprocation for the donation.

7131 Section 207. Section **63G-6a-2305** is enacted to read:

7132 **63G-6a-2305. Penalties for artificially dividing a purchase.**

7133 (1) Except as described in Subsection (2), a person who violates Subsection
7134 63G-6a-408(3), (4), or (5) is guilty of:

7135 (a) a felony of the second degree if the total value of the divided procurements is
7136 \$1,000,000 or more;

7137 (b) a felony of the third degree if the total value of the divided procurements is
7138 \$250,000 or more, but less than \$1,000,000;

7139 (c) a class A misdemeanor if the total value of the divided procurements is \$100,000 or
7140 more, but less than \$250,000; or

7141 (d) a class B misdemeanor if the total value of the divided procurements is less than
7142 \$100,000.

7143 (2) A person who violates Subsection 63G-6a-408(3) with the intent to financially
7144 benefit himself, herself, or another, is guilty of:

7145 (a) a felony of the second degree if the total value of the divided procurements is
7146 \$250,000 or more; or

7147 (b) a felony of the third degree if the total value of the divided procurements is less
7148 than \$250,000.

7149 Section 208. Section **63G-6a-2306** is enacted to read:

7150 **63G-6a-2306. Penalties.**

7151 (1) Except as provided in Subsection (2), in addition to any penalty contained in any
7152 other provision of law, a public officer or public employee who intentionally violates a
7153 provision of Section 63G-6a-2303, Section 63G-6a-2304, or Section 63G-6a-2305 shall be
7154 dismissed from employment or removed from office.

7155 (2) An elected official who intentionally violates a provision of Section 63G-6a-2303,
7156 Section 63G-6a-2304, or Section 63G-6a-2305 may only be removed from office in accordance
7157 with the requirements of law relating to removal of the elected official from office.

7158 (3) Except as provided in Subsection (4), a public officer or public employee who
7159 intentionally violates a provision of this chapter, including Part 22, Ethical Requirements, is
7160 subject to disciplinary action, up to and including dismissal from employment or dismissal
7161 from office.

7162 (4) An elected official who intentionally violates a provision of this chapter, including
7163 Part 22, Ethical Requirements, may only be disciplined or removed from office in accordance
7164 with the requirements of law relating to discipline of the elected official or removal of the
7165 elected official from office.

7166 Section 209. Section **63G-6a-2307** is enacted to read:

7167 **63G-6a-2307. Contract awarded in relation to criminal conduct void.**

7168 If a person who is awarded a contract intentionally violates a provision of Section
7169 63G-6a-2303 or Section 63G-6a-2304 in relation to the contract, the contract is void and
7170 unenforceable.

7171 Section 210. Section **63G-7-804** is amended to read:

7172 **63G-7-804. Liability insurance -- Methods for purchase or renewal.**

7173 (1) Except as provided in Subsection (2), a contract or policy of insurance may be
7174 purchased or renewed under this chapter only upon public bid to be let to the lowest and best
7175 bidder.

7176 (2) The purchase or renewal of insurance by the state shall be conducted in accordance
7177 with the provisions of Title 63G, Chapter [6] 6a, Utah Procurement Code.

7178 Section 211. Section **63G-10-403** is amended to read:

7179 **63G-10-403. Department of Transportation bid or request for proposals protest**
7180 **settlement agreement approval and review.**

7181 (1) As used in this section:

7182 (a) "Department" means the Department of Transportation created in Section 72-1-201.

7183 (b) "Settlement agreement" includes stipulations, consent decrees, settlement
7184 agreements, or other legally binding documents or representations resolving a dispute between
7185 the department and another party when the department is required to pay money or required to
7186 take legally binding action.

7187 (2) The department shall obtain the approval of the Transportation Commission or the
7188 governor or review by the Legislative Management Committee of a settlement agreement that

7189 involves a bid or request for proposal protest in accordance with this section.

7190 (3) A settlement agreement that is being settled by the department as part of a bid or
7191 request for proposal protest, in accordance with Section [~~63G-6-801~~] 63G-6a-1603, that might
7192 cost government entities more than \$100,000 to implement shall be presented to the
7193 Transportation Commission for approval or rejection.

7194 (4) A settlement agreement that is being settled by the department as part of a bid or
7195 request for proposal protest, in accordance with Section [~~63G-6-801~~] 63G-6a-1603, that might
7196 cost government entities more than \$500,000 to implement shall be presented:

7197 (a) to the Transportation Commission for approval or rejection; and

7198 (b) to the governor for approval or rejection.

7199 (5) (a) A settlement agreement that is being settled by the department as part of a bid or
7200 request for proposal protest, in accordance with Section [~~63G-6-801~~] 63G-6a-1603, that might
7201 cost government entities more than \$1,000,000 to implement shall be presented:

7202 (i) to the Transportation Commission for approval or rejection;

7203 (ii) to the governor for approval or rejection; and

7204 (iii) if the settlement agreement is approved by the Transportation Commission and the
7205 governor, to the Legislative Management Committee.

7206 (b) The Legislative Management Committee may recommend approval or rejection of
7207 the settlement agreement.

7208 (6) (a) The department may not enter into a settlement agreement that resolves a bid or
7209 request for proposal protest, in accordance with Section [~~63G-6-801~~] 63G-6a-1603, that might
7210 cost government entities more than \$100,000 to implement until the Transportation
7211 Commission has approved the agreement.

7212 (b) The department may not enter into a settlement agreement that resolves a bid or
7213 request for proposal protest, in accordance with Section [~~63G-6-801~~] 63G-6a-1603, that might
7214 cost government entities more than \$500,000 to implement until the Transportation
7215 Commission and the governor have approved the agreement.

7216 (c) The department may not enter into a settlement agreement that resolves a bid or
7217 request for proposal protest, in accordance with Section [~~63G-6-801~~] 63G-6a-1603, that might
7218 cost government entities more than \$1,000,000 to implement until:

7219 (i) the Transportation Commission has approved the agreement;

7220 (ii) the governor has approved the agreement; and
7221 (iii) the Legislative Management Committee has reviewed the agreement.
7222 Section 212. Section **63H-2-504** is amended to read:
7223 **63H-2-504. Relation to other state statutes.**
7224 (1) The authority is subject to review by the Retirement and Independent Entities
7225 Committee in accordance with Title 63E, Chapter 1, Independent Entities Act.
7226 (2) The authority is subject to:
7227 (a) Title 51, Chapter 5, Funds Consolidation Act;
7228 (b) Title 51, Chapter 7, State Money Management Act;
7229 (c) Title 52, Chapter 4, Open and Public Meetings Act;
7230 (d) Title 63A, Utah Administrative Services Code;
7231 (e) Title 63G, Chapter 2, Government Records Access and Management Act;
7232 (f) Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
7233 (g) Title 63G, Chapter 4, Administrative Procedures Act;
7234 (h) Title 63G, Chapter [6] 6a, Utah Procurement Code;
7235 (i) Title 63J, Chapter 1, Budgetary Procedures Act;
7236 (j) Title 63J, Chapter 2, Revenue Procedures and Control Act; and
7237 (k) Title 67, Chapter 19, Utah State Personnel Management Act.
7238 Section 213. Section **63H-3-109** is amended to read:
7239 **63H-3-109. Relation to certain acts.**
7240 (1) The authority is exempt from:
7241 (a) Title 51, Chapter 5, Funds Consolidation Act;
7242 (b) Title 63A, Chapter 1, Department of Administrative Services;
7243 (c) Title 63G, Chapter [6] 6a, Utah Procurement Code;
7244 (d) Title 63J, Chapter 1, Budgetary Procedures Act; and
7245 (e) Title 67, Chapter 19, Utah State Personnel Management Act.
7246 (2) The authority is subject to audit by:
7247 (a) the state auditor pursuant to Title 67, Chapter 3, Auditor; and
7248 (b) the legislative auditor general pursuant to Section 36-12-15.
7249 (3) The authority shall annually report to the Retirement and Independent Entities
7250 Committee created under Section 63E-1-201 concerning the authority's implementation of this

7251 part.

7252 Section 214. Section **63H-4-108** is amended to read:

7253 **63H-4-108. Relation to certain acts.**

7254 (1) The authority is exempt from:

7255 (a) Title 51, Chapter 5, Funds Consolidation Act;

7256 (b) Title 63A, Utah Administrative Services Code;

7257 (c) Title 63G, Chapter [6] 6a, Utah Procurement Code;

7258 (d) Title 63J, Chapter 1, Budgetary Procedures Act; and

7259 (e) Title 67, Chapter 19, Utah State Personnel Management Act.

7260 (2) The authority is subject to audit by the state auditor pursuant to Title 67, Chapter 3,

7261 Auditor, and by the legislative auditor general pursuant to Section 36-12-15.

7262 Section 215. Section **63H-5-108** is amended to read:

7263 **63H-5-108. Relation to certain acts.**

7264 (1) The authority is exempt from:

7265 (a) Title 51, Chapter 5, Funds Consolidation Act;

7266 (b) Title 63A, Chapter 1, Department of Administrative Services;

7267 (c) Title 63G, Chapter [6] 6a, Utah Procurement Code;

7268 (d) Title 63J, Chapter 1, Budgetary Procedures Act; and

7269 (e) Title 67, Chapter 19, Utah State Personnel Management Act.

7270 (2) The authority is subject to audit by the state auditor pursuant to Title 67, Chapter 3,

7271 Auditor, and by the legislative auditor general pursuant to Section 36-12-15.

7272 Section 216. Section **63H-6-103** is amended to read:

7273 **63H-6-103. Utah State Fair Corporation -- Legal status -- Powers.**

7274 (1) There is created an independent public nonprofit corporation known as the "Utah

7275 State Fair Corporation."

7276 (2) The board shall file articles of incorporation for the corporation with the Division

7277 of Corporations and Commercial Code.

7278 (3) The corporation, subject to this chapter, has all powers and authority permitted

7279 nonprofit corporations by law.

7280 (4) The corporation shall, subject to approval of the board:

7281 (a) have general management, supervision, and control over all activities relating to the

7282 state fair and have charge of all state expositions except as otherwise provided by statute;

7283 (b) for public entertainment, displays, and exhibits or similar events:

7284 (i) provide, sponsor, or arrange the events;

7285 (ii) publicize and promote the events; and

7286 (iii) secure funds to cover the cost of the exhibits from:

7287 (A) private contributions;

7288 (B) public appropriations;

7289 (C) admission charges; and

7290 (D) other lawful means;

7291 (c) establish the time, place, and purpose of state expositions; and

7292 (d) acquire and designate exposition sites.

7293 (5) (a) The corporation shall:

7294 (i) use generally accepted accounting principals in accounting for its assets, liabilities,

7295 and operations;

7296 (ii) seek corporate sponsorships for the state fair park and for individual buildings or

7297 facilities within the fair park;

7298 (iii) work with county and municipal governments, the Salt Lake Convention and

7299 Visitor's Bureau, the Utah Travel Council, and other entities to develop and promote

7300 expositions and the use of the state fair park;

7301 (iv) develop and maintain a marketing program to promote expositions and the use of

7302 the state fair park;

7303 (v) in cooperation with the Division of Facilities Construction and Management,

7304 maintain the physical appearance and structural integrity of the state fair park and the buildings

7305 located at the state fair park;

7306 (vi) hold an annual exhibition that:

7307 (A) is called the state fair or a similar name;

7308 (B) includes expositions of livestock, poultry, agricultural, domestic science,

7309 horticultural, floricultural, mineral, and industrial products, manufactured articles, and

7310 domestic animals that, in the corporation's opinion will best stimulate agricultural, industrial,

7311 artistic, and educational pursuits and the sharing of talents among the people of Utah;

7312 (C) includes the award of premiums for the best specimens of the exhibited articles and

7313 animals;

7314 (D) permits competition by livestock exhibited by citizens of other states and territories
7315 of the United States; and

7316 (E) is arranged according to plans approved by the board;

7317 (vii) fix the conditions of entry to the exposition described in Subsection (5)(a)(vi); and
7318 (viii) publish a list of premiums that will be awarded at the exhibition described in
7319 Subsection (5)(a)(vi) for the best specimens of exhibited articles and animals.

7320 (b) In addition to the state fair to be held in accordance with Subsection (5)(a)(vi), the
7321 corporation may hold other exhibitions of livestock, poultry, agricultural, domestic science,
7322 horticultural, floricultural, mineral, and industrial products, manufactured articles, and
7323 domestic animals that, in its opinion, will best stimulate agricultural, industrial, artistic, and
7324 educational pursuits and the sharing of talents among the people of Utah.

7325 (6) The corporation may:

7326 (a) employ advisers, consultants, and agents, including financial experts and
7327 independent legal counsel, and fix their compensation;

7328 (b) procure insurance against any loss in connection with its property and other assets,
7329 including mortgage loans;

7330 (c) receive and accept aid or contributions of money, property, labor, or other things of
7331 value from any source, including any grants or appropriations from any department, agency, or
7332 instrumentality of the United States or Utah;

7333 (d) hold, use, loan, grant, and apply that aid and those contributions to carry out the
7334 purposes of the corporation, subject to the conditions, if any, upon which the aid and
7335 contributions were made;

7336 (e) enter into management agreements with any person or entity for the performance of
7337 its functions or powers;

7338 (f) establish whatever accounts and procedures as necessary to budget, receive, and
7339 disburse, account for, and audit all funds received, appropriated, or generated;

7340 (g) enter into agreements for the leasing of any of the facilities at the state fair park, if
7341 approved by the board; and

7342 (h) sponsor events as approved by the board.

7343 (7) (a) Except as provided in Subsection (7)(c), as an independent agency of Utah, the

7344 corporation is exempt from:

- 7345 (i) Title 51, Chapter 5, Funds Consolidation Act;
- 7346 (ii) Title 51, Chapter 7, State Money Management Act;
- 7347 (iii) Title 63A, Utah Administrative Services Code;
- 7348 (iv) Title 63G, Chapter [6] 6a, Utah Procurement Code;
- 7349 (v) Title 63J, Chapter 1, Budgetary Procedures Act; and
- 7350 (vi) Title 67, Chapter 19, Utah State Personnel Management Act.

7351 (b) The board shall adopt policies parallel to and consistent with:

- 7352 (i) Title 51, Chapter 5, Funds Consolidation Act;
- 7353 (ii) Title 51, Chapter 7, State Money Management Act;
- 7354 (iii) Title 63A, Utah Administrative Services Code;
- 7355 (iv) Title 63G, Chapter [6] 6a, Utah Procurement Code; and
- 7356 (v) Title 63J, Chapter 1, Budgetary Procedures Act.

7357 (c) The corporation shall comply with the legislative approval requirements for new
7358 facilities established in Subsection 63A-5-104(3).

7359 Section 217. Section **63I-1-263** is amended to read:

7360 **63I-1-263. Repeal dates, Titles 63A to 63M.**

7361 (1) Section 63A-4-204, authorizing the Risk Management Fund to provide coverage to
7362 any public school district which chooses to participate, is repealed July 1, 2016.

7363 (2) Section 63A-5-603, State Facility Energy Efficiency Fund, is repealed July 1, 2016.

7364 (3) Section 63C-8-106, rural residency training program, is repealed July 1, 2015.

7365 (4) Title 63C, Chapter 13, Prison Relocation and Development Authority Act, is
7366 repealed July 1, 2014.

7367 (5) Subsection [~~63G-6-502(5)(b)(ii)~~] 63G-6a-1402(7) authorizing certain transportation
7368 agencies to award a contract for a design-build transportation project in certain circumstances,
7369 is repealed July 1, 2015.

7370 (6) Title 63H, Chapter 4, Heber Valley Historic Railroad Authority, is repealed July 1,
7371 2020.

7372 (7) The Resource Development Coordinating Committee, created in Section
7373 63J-4-501, is repealed July 1, 2015.

7374 (8) Title 63M, Chapter 1, Part 4, Enterprise Zone Act, is repealed July 1, 2018.

7375 (9) (a) Title 63M, Chapter 1, Part 11, Recycling Market Development Zone Act, is
7376 repealed January 1, 2021.

7377 (b) Subject to Subsection (9)(c), Sections 59-7-610 and 59-10-1007 regarding tax
7378 credits for certain persons in recycling market development zones, are repealed for taxable
7379 years beginning on or after January 1, 2012.

7380 (c) A person may not claim a tax credit under Section 59-7-610 or 59-10-1007:

7381 (i) for the purchase price of machinery or equipment described in Section 59-7-610 or
7382 59-10-1007, if the machinery or equipment is purchased on or after January 1, 2012; or

7383 (ii) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), if
7384 the expenditure is made on or after January 1, 2012.

7385 (d) Notwithstanding Subsections (9)(b) and (c), a person may carry forward a tax credit
7386 in accordance with Section 59-7-610 or 59-10-1007 if:

7387 (i) the person is entitled to a tax credit under Section 59-7-610 or 59-10-1007; and

7388 (ii) (A) for the purchase price of machinery or equipment described in Section
7389 59-7-610 or 59-10-1007, the machinery or equipment is purchased on or before December 31,
7390 2011; or

7391 (B) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), the
7392 expenditure is made on or before December 31, 2011.

7393 (10) The Crime Victim Reparations and Assistance Board, created in Section
7394 63M-7-504, is repealed July 1, 2017.

7395 (11) Title 63M, Chapter 8, Utah Commission for Women and Families Act, is repealed
7396 July 1, 2011.

7397 (12) Title 63M, Chapter 9, Families, Agencies, and Communities Together for
7398 Children and Youth At Risk Act, is repealed July 1, 2016.

7399 (13) Title 63M, Chapter 11, Utah Commission on Aging, is repealed July 1, 2012.
7400 Section 218. Section **63M-1-2602** is amended to read:

7401 **63M-1-2602. Definitions.**

7402 As used in this part:

7403 (1) "Affected department" means, as applicable, the Board of Education or the
7404 Department of Technology Services.

7405 (2) "Board" means the Board of Business and Economic Development created under

7406 Section 63M-1-301.

7407 (3) "Board of Education" means the Utah State Board of Education.

7408 (4) "Chief procurement officer" means the chief procurement officer appointed under

7409 Section [~~63G-6-203~~] 63G-6a-302.

7410 (5) "Committee" means the proposal review committee created under Section

7411 63M-1-2604.

7412 (6) "Day" means a calendar day.

7413 (7) "Director" is as defined in Section 63M-1-102.

7414 (8) "Executive Appropriations Committee" means the Legislature's Executive

7415 Appropriations Committee.

7416 (9) "Information technology" is as defined in Section 63F-1-102.

7417 (10) "Office" means the Governor's Office of Economic Development created under

7418 Section 63M-1-201.

7419 (11) "Private entity" means a person submitting a proposal under this part for the

7420 purpose of entering into a project.

7421 (12) "Project" means the subject of a proposal or an agreement for the procurement or

7422 disposal of:

7423 (a) information technology or telecommunications products or services; or

7424 (b) supplies or services for or on behalf of the Department of Technology Services or

7425 the Board of Education.

7426 (13) "Proposal" means an unsolicited offer by a private entity to undertake a project,

7427 including an initial proposal under Section 63M-1-2605 and a detailed proposal under Section

7428 63M-1-2608.

7429 (14) "Services" is as defined in Section [~~63G-6-103~~] 63G-6a-103.

7430 (15) "Supplies" is as defined in Section [~~63G-6-103~~] 63G-6a-103.

7431 (16) "Telecommunications" is as defined in Section 63F-1-102.

7432 Section 219. Section **63M-1-2603** is amended to read:

7433 **63M-1-2603. Government Procurement Private Proposal Program -- Proposals --**

7434 **Rulemaking.**

7435 (1) There is created within the office the Government Procurement Private Proposal

7436 Program.

- 7437 (2) In accordance with this part, the board may:
- 7438 (a) accept a proposal for a project;
- 7439 (b) solicit comments, suggestions, and modifications to a project in accordance with
- 7440 Section [~~63G-6-408.5~~] 63G-6a-711; and
- 7441 (c) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
- 7442 Rulemaking Act, establishing requirements, including time limits for any action required by the
- 7443 affected department, a directly affected state entity or school district, or the Governor's Office
- 7444 of Planning and Budget, for the procurement of a project to the extent not governed by Title
- 7445 63G, Chapter [6] 6a, Utah Procurement Code.
- 7446 Section 220. Section **63M-1-2605** is amended to read:
- 7447 **63M-1-2605. Initial proposal -- Requirements.**
- 7448 (1) In accordance with this part, a private entity may at any time submit to the
- 7449 committee an initial proposal for a project.
- 7450 (2) An initial proposal shall include:
- 7451 (a) a conceptual description of the project;
- 7452 (b) a description of the economic benefit of the project to the state and the affected
- 7453 department;
- 7454 (c) information concerning the products, services, and supplies currently being
- 7455 provided by the state, that are similar to the project;
- 7456 (d) an estimate of the following costs associated with the project:
- 7457 (i) design;
- 7458 (ii) implementation;
- 7459 (iii) operation and maintenance; and
- 7460 (iv) any other related project cost; and
- 7461 (e) the name and address of a person who may be contacted for further information
- 7462 concerning the initial proposal.
- 7463 (3) A private entity submitting an initial proposal under this section shall pay the fee
- 7464 required by Section 63M-1-2612 when the initial proposal is submitted.
- 7465 (4) An initial proposal submitted under this section is a protected record under Title
- 7466 63G, Chapter 2, Government Records Access and Management Act, until the chief
- 7467 procurement officer initiates a procurement process in accordance with Section [~~63G-6-408.5~~]

7468 63G-6a-711.

7469 (5) The board shall make rules in accordance with Title 63G, Chapter 3, Utah
7470 Administrative Rulemaking Act, detailing the portions of an initial proposal that remain
7471 protected after the chief procurement officer initiates a procurement process.

7472 Section 221. Section **63M-1-2606** is amended to read:

7473 **63M-1-2606. Review of initial proposal -- Affected department review.**

7474 (1) The committee shall review and evaluate an initial proposal submitted in
7475 accordance with:

7476 (a) this part; and

7477 (b) any rule established by the board under Section 63M-1-2603.

7478 (2) If the committee, in its sole discretion, determines to proceed with the project, the
7479 committee shall submit a copy of the initial proposal to:

7480 (a) the affected department; and

7481 (b) the Governor's Office of Planning and Budget.

7482 (3) (a) An affected department, directly affected state entity, and school district
7483 receiving a copy of the initial proposal under Subsection (2) or (4) shall review the initial
7484 proposal and provide the committee with any comment, suggestion, or modification to the
7485 project.

7486 (b) After receiving an initial proposal, the Governor's Office of Planning and Budget
7487 shall prepare an economic feasibility report containing:

7488 (i) information concerning the economic feasibility and effectiveness of the project
7489 based upon competent evidence;

7490 (ii) a dollar amount representing the total estimated fiscal impact of the project to the
7491 affected department and the state; and

7492 (iii) any other matter the committee requests or is required by the board by rule.

7493 (4) In reviewing an initial proposal, the affected department shall share the initial
7494 proposal with any other state entity or school district that will be directly affected if the
7495 proposal is ultimately adopted, if the confidentiality of the initial proposal is maintained.

7496 (5) If the committee determines to proceed with the project, the committee shall submit
7497 a copy of the initial proposal, including any comment, suggestion, or modification to the initial
7498 proposal, to:

- 7499 (a) the chief procurement officer in accordance with Section [~~63G-6-408.5~~
7500 63G-6a-711; and
- 7501 (b) the Executive Appropriations Committee, for informational purposes.
- 7502 (6) Before taking any action under Subsection (5), the committee shall consider:
- 7503 (a) any comment, suggestion, or modification to the initial proposal submitted in
7504 accordance with Subsection (3);
- 7505 (b) the extent to which the project is practical, efficient, and economically beneficial to
7506 the state and the affected department;
- 7507 (c) the economic feasibility report prepared by the Governor's Office of Planning and
7508 Budget; and
- 7509 (d) any other reasonable factor identified by the committee or required by the board by
7510 rule.

7511 Section 222. Section **63M-1-2607** is amended to read:

7512 **63M-1-2607. Acceptance of initial proposal -- Obtaining detailed proposals.**

7513 (1) If an initial proposal is accepted under Section 63M-1-2606, the chief procurement
7514 officer shall:

- 7515 (a) take action under Section [~~63G-6-408.5~~] 63G-6a-711 to initiate a procurement
7516 process to obtain one or more detailed proposals using information from portions of the initial
7517 proposal that are not protected records under Title 63G, Chapter 2, Government Records [~~and~~]
7518 Access and Management Act;
- 7519 (b) consult with the committee during the procurement process; and
- 7520 (c) submit all detailed proposals that meet the guidelines established under Subsection
7521 63M-1-2608(1), including the detailed proposal submitted by the private entity that submitted
7522 the initial proposal for the project, to:
- 7523 (i) the committee; and
- 7524 (ii) the Governor's Office of Planning and Budget.
- 7525 (2) The office is considered the purchasing agency for a procurement process initiated
7526 under this part.

7527 Section 223. Section **63M-1-2608** is amended to read:

7528 **63M-1-2608. Detailed proposal -- Requirements -- Cooperation of affected**
7529 **department.**

7530 (1) A detailed proposal submitted in response to a procurement process initiated under
7531 Section 63M-1-2607 shall include:

7532 (a) a conceptual description of the project, including the scope of the work;

7533 (b) a description of the economic benefit of the project to the state and the affected
7534 department;

7535 (c) an estimate of the design, implementation, operation, maintenance, or other costs
7536 associated with the project;

7537 (d) information concerning the information technology or telecommunication product
7538 and service or other supply or service currently provided by the state that is similar to the
7539 project being proposed, if applicable;

7540 (e) a statement setting forth the private entity's general plan for financing the project,
7541 including any appropriation by the Legislature or other public money and, if applicable, the
7542 sources of the private entity's funds and identification of any dedicated revenue source or
7543 proposed debt or equity investment on behalf of the private entity;

7544 (f) the name and address of the person who may be contacted for further information
7545 concerning the detailed proposal;

7546 (g) a statement describing the private entity's experience with other similar projects and
7547 a description of why the private entity is best qualified for the project; and

7548 (h) any other information:

7549 (i) reasonably requested by the affected department or the committee, or required by
7550 the board by rule; or

7551 (ii) that the private entity considers necessary or appropriate to complete or describe
7552 the detailed proposal.

7553 (2) To assist each private entity in preparing a detailed proposal:

7554 (a) the affected department shall provide each private entity with access to all
7555 information, records, documents, and reports related to the proposal and the project that are
7556 designated public records under Title 63G, Chapter 2, Government Records Access and
7557 Management Act; and

7558 (b) the affected department and the committee shall cooperate with each private entity
7559 to assist the private entity in the development of a detailed proposal that is:

7560 (i) practical;

- 7561 (ii) efficient; and
- 7562 (iii) economically beneficial to the state and the affected department.
- 7563 (3) The committee or any private entity may choose to terminate the development of
- 7564 the detailed proposal at any time before the submission of the detailed proposal to the chief
- 7565 procurement officer under Section [~~63G-6-408.5~~] 63G-6a-711.
- 7566 Section 224. Section **63M-1-2610** is amended to read:
- 7567 **63M-1-2610. Project agreement.**
- 7568 (1) If the board accepts the detailed proposal, the director shall:
- 7569 (a) prepare a project agreement in consultation with the affected department and any
- 7570 other state entity directly impacted by the detailed proposal; and
- 7571 (b) enter into the project agreement with the private entity.
- 7572 (2) A project agreement shall be signed by the director, the affected department, a
- 7573 directly affected state entity or school district, and the private entity.
- 7574 (3) A project agreement shall include provisions concerning:
- 7575 (a) the scope of the project;
- 7576 (b) the pricing method of the project;
- 7577 (c) the director's or the state's ability to terminate for convenience or for default, and
- 7578 any termination compensation to be paid to the private entity, if applicable;
- 7579 (d) the ability to monitor performance under the project agreement;
- 7580 (e) the appropriate limits of liability;
- 7581 (f) the appropriate transition of services, if applicable;
- 7582 (g) the exceptions from applicable rules and procedures for the implementation and
- 7583 administration of the project by the affected department, if any;
- 7584 (h) the clauses and remedies applicable to state contracts under Title 63G, Chapter [6,
- 7585 ~~Part 6, Contract Clauses~~] 6a, Part 12, Contracts and Change Orders; and
- 7586 (i) any other matter reasonably requested by the committee or required by the board by
- 7587 rule.
- 7588 (4) A copy of the signed project agreement shall be submitted to:
- 7589 (a) the affected department; and
- 7590 (b) the Executive Appropriations Committee.
- 7591 (5) A project agreement is considered a contract under Title 63G, Chapter [6] 6a, Utah

7592 Procurement Code.

7593 (6) The affected department shall implement and administer the project agreement in
7594 accordance with rules made under Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
7595 except as modified by the project agreement under Subsection (3)(g).

7596 Section 225. Section **64-13a-13** is amended to read:

7597 **64-13a-13. Purchases of material -- Exemption.**

7598 (1) The Division of Correctional Industries is exempt from the provisions of Title 63G,
7599 Chapter [6] 6a, Utah Procurement Code, in respect to goods or services purchased by or sold to
7600 the department.

7601 (2) The purchase of raw materials for use by the division in manufacturing or
7602 processing products for resale is exempt from the powers and duties of the state purchasing
7603 agent.

7604 Section 226. Section **67-16-4** is amended to read:

7605 **67-16-4. Improperly disclosing or using private, controlled, or protected**
7606 **information -- Using position to secure privileges or exemptions -- Accepting employment**
7607 **which would impair independence of judgment or ethical performance -- Exceptions.**

7608 (1) Except as provided in Subsection (3), it is an offense for a public officer, public
7609 employee, or legislator, under circumstances not amounting to a violation of Section
7610 [~~63G-6-100~~] 63G-6a-2304 or 76-8-105, to:

7611 (a) accept employment or engage in any business or professional activity that he might
7612 reasonably expect would require or induce him to improperly disclose controlled information
7613 that he has gained by reason of his official position;

7614 (b) disclose or improperly use controlled, private, or protected information acquired by
7615 reason of his official position or in the course of official duties in order to further substantially
7616 the officer's or employee's personal economic interest or to secure special privileges or
7617 exemptions for himself or others;

7618 (c) use or attempt to use his official position to:

7619 (i) further substantially the officer's or employee's personal economic interest; or

7620 (ii) secure special privileges or exemptions for himself or others;

7621 (d) accept other employment that he might expect would impair his independence of
7622 judgment in the performance of his public duties; or

7623 (e) accept other employment that he might expect would interfere with the ethical
7624 performance of his public duties.

7625 (2) (a) Subsection (1) does not apply to the provision of education-related services to
7626 public school students by public education employees acting outside their regular employment.

7627 (b) The conduct referred to in Subsection (2)(a) is subject to Section 53A-1-402.5.

7628 (3) A county legislative body member who does not participate in the process of
7629 selecting a mental health or substance abuse service provider does not commit an offense under
7630 Subsection (1)(a) or (b) by:

7631 (a) serving also as a member of the governing board of the provider of mental health or
7632 substance abuse services under contract with the county; or

7633 (b) discharging, in good faith, the duties and responsibilities of each position.

7634 Section 227. Section **67-16-5** is amended to read:

7635 **67-16-5. Accepting gift, compensation, or loan -- When prohibited.**

7636 (1) As used in this section, "economic benefit tantamount to a gift" includes:

7637 (a) a loan at an interest rate that is substantially lower than the commercial rate then
7638 currently prevalent for similar loans; and

7639 (b) compensation received for private services rendered at a rate substantially
7640 exceeding the fair market value of the services.

7641 (2) It is an offense for a public officer or public employee, under circumstances not
7642 amounting to a violation of Section [~~63G-6-100+~~] 63G-6a-2304 or 76-8-105, to knowingly
7643 receive, accept, take, seek, or solicit, directly or indirectly for himself or another a gift of
7644 substantial value or a substantial economic benefit tantamount to a gift:

7645 (a) that would tend improperly to influence a reasonable person in the person's position
7646 to depart from the faithful and impartial discharge of the person's public duties;

7647 (b) that the public officer or public employee knows or that a reasonable person in that
7648 position should know under the circumstances is primarily for the purpose of rewarding the
7649 public officer or public employee for official action taken; or

7650 (c) if the public officer or public employee recently has been, is now, or in the near
7651 future may be involved in any governmental action directly affecting the donor or lender,
7652 unless a disclosure of the gift, compensation, or loan and other relevant information has been
7653 made in the manner provided in Section 67-16-6.

7654 (3) Subsection (2) does not apply to:

7655 (a) an occasional nonpecuniary gift, having a value of not in excess of \$50;

7656 (b) an award publicly presented in recognition of public services;

7657 (c) any bona fide loan made in the ordinary course of business; or

7658 (d) a political campaign contribution.

7659 Section 228. Section **67-16-5.3** is amended to read:

7660 **67-16-5.3. Requiring donation, payment, or service to government agency in**
7661 **exchange for approval -- When prohibited.**

7662 (1) It is an offense for a public officer, public employee, or legislator, under
7663 circumstances not amounting to a violation of Section [~~63G-6-1001~~] 63G-6a-2304 or 76-8-105,
7664 to demand from any person as a condition of granting any application or request for a permit,
7665 approval, or other authorization, that the person donate personal property, money, or services to
7666 any agency.

7667 (2) (a) Subsection (1) does not apply to any donation of property, funds, or services to
7668 an agency that is:

7669 (i) expressly required by statute, ordinance, or agency rule;

7670 (ii) mutually agreed to between the applicant and the entity issuing the permit,
7671 approval, or other authorization;

7672 (iii) made voluntarily by the applicant; or

7673 (iv) a condition of a consent decree, settlement agreement, or other binding instrument
7674 entered into to resolve, in whole or in part, an actual or threatened agency enforcement action.

7675 (b) If a person donates property, funds, or services to an agency, the agency shall, as
7676 part of the permit or other written authorization:

7677 (i) identify that a donation has been made;

7678 (ii) describe the donation;

7679 (iii) certify, in writing, that the donation was voluntary; and

7680 (iv) place that information in its files.

7681 Section 229. Section **67-16-6** is amended to read:

7682 **67-16-6. Receiving compensation for assistance in transaction involving an**
7683 **agency -- Filing sworn statement.**

7684 (1) It is an offense for a public officer or public employee, under circumstances not

7685 amounting to a violation of Section [~~63G-6-1001~~] 63G-6a-2304 or 76-8-105, to receive or
 7686 agree to receive compensation for assisting any person or business entity in any transaction
 7687 involving an agency unless the public officer or public employee files a sworn, written
 7688 statement containing the information required by Subsection (2) with:

- 7689 (a) the head of the officer or employee's own agency;
 7690 (b) the agency head of the agency with which the transaction is being conducted; and
 7691 (c) the state attorney general.

7692 (2) The statement shall contain:

- 7693 (a) the name and address of the public officer or public employee involved;
 7694 (b) the name of the public officer's or public employee's agency;
 7695 (c) the name and address of the person or business entity being or to be assisted; and
 7696 (d) a brief description of:
 7697 (i) the transaction as to which service is rendered or is to be rendered; and
 7698 (ii) the nature of the service performed or to be performed.

7699 (3) The statement required to be filed under Subsection (1) shall be filed within 10
 7700 days after the date of any agreement between the public officer or public employee and the
 7701 person or business entity being assisted or the receipt of compensation, whichever is earlier.

7702 (4) The statement is public information and shall be available for examination by the
 7703 public.

7704 Section 230. Section **72-6-107** is amended to read:

7705 **72-6-107. Construction or improvement of highway -- Contracts -- Retainage --**
 7706 **Certain indemnification provisions forbidden.**

7707 (1) As used in this section, "design professional" means:

- 7708 (a) an architect, licensed under Title 58, Chapter 3a, Architects Licensing Act;
 7709 (b) a landscape architect, licensed under Title 58, Chapter 53, Landscape Architects
 7710 Licensing Act; and

7711 (c) a professional engineer or professional land surveyor, licensed under Title 58,
 7712 Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

7713 (2) (a) The department shall make plans, specifications, and estimates prior to the
 7714 construction or improvement of any state highway.

7715 (b) Except as provided in Section [~~63G-6-502~~] 63G-6a-1402 and except for

7716 construction or improvements performed with state prison labor, a construction or
7717 improvement project with an estimated cost exceeding the bid limit as defined in Section
7718 72-6-109 for labor and materials shall be performed under contract awarded to the lowest
7719 responsible bidder.

7720 (c) (i) The department:

7721 (A) shall publish an advertisement for bids in accordance with Section 45-1-101, for a
7722 period of two weeks ending no more than 10 days before bids are opened; and

7723 (B) may publish an advertisement for bids in a newspaper of general circulation in the
7724 county in which the work is to be performed.

7725 (ii) If the department publishes an advertisement for bids in a newspaper under
7726 Subsection (2)(c)(i)(B), the department shall publish the advertisement at least once a week for
7727 two consecutive weeks, with the last publication at least 10 days before bids are opened.

7728 (d) The department shall receive sealed bids and open the bids at the time and place
7729 designated in the advertisement. The department may then award the contract but may reject
7730 any and all bids.

7731 (e) If the department's estimates are substantially lower than any responsible bid
7732 received, the department may perform any work by force account.

7733 (3) If any payment on a contract with a private contractor for construction or
7734 improvement of a state highway is retained or withheld, the payment shall be retained or
7735 withheld and released as provided in Section 13-8-5.

7736 (4) If the department performs a construction or improvement project by force account,
7737 the department shall:

7738 (a) provide an accounting of the costs and expenditures of the improvement including
7739 material and labor;

7740 (b) disclose the costs and expenditures to any person upon request and allow the person
7741 to make a copy and pay for the actual cost of the copy; and

7742 (c) perform the work using the same specifications and standards that would apply to a
7743 private contractor.

7744 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
7745 department shall establish procedures for:

7746 (a) hearing evidence that a region within the department violated this section; and

- 7747 (b) administering sanctions against the region if the region is found in violation.
- 7748 (6) (a) Beginning May 12, 2009, a contract, including an amendment to an existing
7749 contract, entered into under authority of this chapter may not require that a design professional
7750 indemnify another from liability claims that arise out of the design professional's services,
7751 unless the liability claim arises from the design professional's negligent act, wrongful act, error
7752 or omission, or other liability imposed by law.
- 7753 (b) Subsection (6)(a) may not be waived by contract.
- 7754 (c) Notwithstanding Subsections (6)(a) and (b), a design professional may be required
7755 to indemnify a person for whom the design professional has direct or indirect control or
7756 responsibility.
- 7757 Section 231. Section **72-6-107.5** is amended to read:
- 7758 **72-6-107.5. Construction of improvements of highway -- Contracts -- Health**
7759 **insurance coverage.**
- 7760 (1) For purposes of this section:
- 7761 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
7762 34A-2-104 who:
- 7763 (i) works at least 30 hours per calendar week; and
- 7764 (ii) meets employer eligibility waiting requirements for health care insurance which
7765 may not exceed the first day of the calendar month following 90 days from the date of hire.
- 7766 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
- 7767 (c) "Qualified health insurance coverage" is as defined in Section 26-40-115.
- 7768 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
- 7769 (2) (a) Except as provided in Subsection (3), this section applies to contracts entered
7770 into by the department on or after July 1, 2009, for construction or design of highways and to a
7771 prime contractor or to a subcontractor in accordance with Subsection (2)(b).
- 7772 (b) (i) A prime contractor is subject to this section if the prime contract is in the
7773 amount of \$1,500,000 or greater.
- 7774 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
7775 \$750,000 or greater.
- 7776 (3) This section does not apply if:
- 7777 (a) the application of this section jeopardizes the receipt of federal funds;

7778 (b) the contract is a sole source contract; or

7779 (c) the contract is an emergency procurement.

7780 (4) (a) This section does not apply to a change order as defined in Section [~~63G-6-103~~]

7781 63G-6a-103, or a modification to a contract, when the contract does not meet the initial

7782 threshold required by Subsection (2).

7783 (b) A person who intentionally uses change orders or contract modifications to

7784 circumvent the requirements of Subsection (2) is guilty of an infraction.

7785 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the department that

7786 the contractor has and will maintain an offer of qualified health insurance coverage for the

7787 contractor's employees and the employees' dependents during the duration of the contract.

7788 (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall

7789 demonstrate to the department that the subcontractor has and will maintain an offer of qualified

7790 health insurance coverage for the subcontractor's employees and the employees' dependents

7791 during the duration of the contract.

7792 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during

7793 the duration of the contract is subject to penalties in accordance with administrative rules

7794 adopted by the department under Subsection (6).

7795 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the

7796 requirements of Subsection (5)(b).

7797 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during

7798 the duration of the contract is subject to penalties in accordance with administrative rules

7799 adopted by the department under Subsection (6).

7800 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the

7801 requirements of Subsection (5)(a).

7802 (6) The department shall adopt administrative rules:

7803 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

7804 (b) in coordination with:

7805 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

7806 (ii) the Department of Natural Resources in accordance with Section 79-2-404;

7807 (iii) the State Building Board in accordance with Section 63A-5-205;

7808 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

7809 (v) a public transit district in accordance with Section 17B-2a-818.5; and
7810 (vi) the Legislature's Administrative Rules Review Committee; and
7811 (c) which establish:
7812 (i) the requirements and procedures a contractor must follow to demonstrate to the
7813 department compliance with this section which shall include:
7814 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or
7815 (b) more than twice in any 12-month period; and
7816 (B) that the actuarially equivalent determination required for qualified health insurance
7817 coverage in Subsection (1) is met by the contractor if the contractor provides the department or
7818 division with a written statement of actuarial equivalency from either:
7819 (I) the Utah Insurance Department;
7820 (II) an actuary selected by the contractor or the contractor's insurer; or
7821 (III) an underwriter who is responsible for developing the employer group's premium
7822 rates;
7823 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
7824 violates the provisions of this section, which may include:
7825 (A) a three-month suspension of the contractor or subcontractor from entering into
7826 future contracts with the state upon the first violation;
7827 (B) a six-month suspension of the contractor or subcontractor from entering into future
7828 contracts with the state upon the second violation;
7829 (C) an action for debarment of the contractor or subcontractor in accordance with
7830 Section [~~63G-6-804~~] 63G-6a-904 upon the third or subsequent violation; and
7831 (D) monetary penalties which may not exceed 50% of the amount necessary to
7832 purchase qualified health insurance coverage for an employee and a dependent of the employee
7833 of the contractor or subcontractor who was not offered qualified health insurance coverage
7834 during the duration of the contract; and
7835 (iii) a website on which the department shall post the benchmark for the qualified
7836 health insurance coverage identified in Subsection (1)(c).
7837 (7) (a) (i) In addition to the penalties imposed under Subsection (6), a contractor or
7838 subcontractor who intentionally violates the provisions of this section shall be liable to the
7839 employee for health care costs that would have been covered by qualified health insurance

7840 coverage.

7841 (ii) An employer has an affirmative defense to a cause of action under Subsection

7842 (7)(a)(i) if:

7843 (A) the employer relied in good faith on a written statement of actuarial equivalency

7844 provided by:

7845 (I) an actuary; or

7846 (II) an underwriter who is responsible for developing the employer group's premium

7847 rates; or

7848 (B) the department determines that compliance with this section is not required under

7849 the provisions of Subsection (3) or (4).

7850 (b) An employee has a private right of action only against the employee's employer to

7851 enforce the provisions of this Subsection (7).

7852 (8) Any penalties imposed and collected under this section shall be deposited into the

7853 Medicaid Restricted Account created in Section 26-18-402.

7854 (9) The failure of a contractor or subcontractor to provide qualified health insurance

7855 coverage as required by this section:

7856 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,

7857 or contractor under Section [~~63G-6-801~~] 63G-6a-1603 or any other provision in Title 63G,

7858 Chapter [~~6, Part 8, Legal and Contractual Remedies~~] 6a, Utah Procurement Code; and

7859 (b) may not be used by the procurement entity or a prospective bidder, offeror, or

7860 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design

7861 or construction.

7862 Section 232. Section **72-6-108** is amended to read:

7863 **72-6-108. Class B and C roads -- Improvement projects -- Contracts -- Retainage.**

7864 (1) A county executive for class B roads and the municipal executive for class C roads

7865 shall cause plans, specifications, and estimates to be made prior to the construction of any

7866 improvement project, as defined in Section 72-6-109, on a class B or C road if the estimated

7867 cost for any one project exceeds the bid limit as defined in Section 72-6-109 for labor,

7868 equipment, and materials.

7869 (2) (a) All projects in excess of the bid limit shall be performed under contract to be let

7870 to the lowest responsible bidder.

7871 (b) If the estimated cost of the improvement project exceeds the bid limit for labor,
7872 equipment, and materials, the project may not be divided to permit the construction in parts,
7873 unless each part is done by contract.

7874 (3) (a) The advertisement on bids shall be published:

7875 (i) in a newspaper of general circulation in the county in which the work is to be
7876 performed at least once a week for three consecutive weeks; and

7877 (ii) in accordance with Section 45-1-101 for three weeks.

7878 (b) If there is no newspaper of general circulation as described in Subsection (3)(a)(i),
7879 the notice shall be posted for at least 20 days in at least five public places in the county.

7880 (4) The county or municipal executive or their designee shall receive sealed bids and
7881 open the bids at the time and place designated in the advertisement. The county or municipal
7882 executive or their designee may then award the contract but may reject any and all bids.

7883 (5) The person, firm, or corporation that is awarded a contract under this section is
7884 subject to the provisions of Title 63G, Chapter [6] 6a, Utah Procurement Code.

7885 (6) If any payment on a contract with a private contractor for construction or
7886 improvement of a class B or C road is retained or withheld, the payment shall be retained or
7887 withheld and released as provided in Section 13-8-5.

7888 Section 233. Section **72-6-205** is amended to read:

7889 **72-6-205. Solicited and unsolicited tollway development agreement proposals.**

7890 (1) In accordance with this section, the department may:

7891 (a) accept unsolicited tollway development agreement proposals; or

7892 (b) solicit tollway development agreement proposals for a proposed project.

7893 (2) The department shall solicit tollway development agreement proposals in
7894 accordance with Section [~~63G-6-503~~] 63G-6a-1403.

7895 (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
7896 department and the commission shall establish rules and procedures for accepting unsolicited
7897 proposals that require the:

7898 (a) private entity that submits the unsolicited proposal to comply with the minimum
7899 requirements for tollway development agreement proposals under Section 72-6-204;

7900 (b) department to issue a request for competing proposals and qualifications that
7901 includes:

7902 (i) a description of the proposed tollway development facility and the terms and
7903 conditions of a tollway development agreement;

7904 (ii) submittal requirements;

7905 (iii) the criteria to be used to evaluate the proposals;

7906 (iv) the relative weight given to the criteria; and

7907 (v) the deadline by which competing proposals must be received; and

7908 (c) department to publish a notice advertising the request for competing proposals and
7909 providing information regarding how to obtain a copy of the request.

7910 (4) (a) The department may establish a fee in accordance with Section 63J-1-504 for
7911 reviewing unsolicited proposals and competing proposals submitted under this section.

7912 (b) The department may waive the fee under Subsection (4)(a) if it determines that it is
7913 reasonable and in the best interest of the state.

7914 Section 234. Section **72-7-504** is amended to read:

7915 **72-7-504. Advertising prohibited near interstate or primary system -- Exceptions**
7916 **-- Logo advertising -- Department rules.**

7917 (1) Outdoor advertising that is capable of being read or comprehended from any place
7918 on the main-traveled way of an interstate or primary system may not be erected or maintained,
7919 except:

7920 (a) directional and other official signs and notices authorized or required by law,
7921 including signs and notices pertaining to natural wonders and scenic and historic attractions,
7922 informational or directional signs regarding utility service, emergency telephone signs, buried
7923 or underground utility markers, and above ground utility closure signs;

7924 (b) signs advertising the sale or lease of property upon which they are located;

7925 (c) signs advertising activities conducted on the property where they are located,
7926 including signs on the premises of a public assembly facility as provided in Section 72-7-504.5;

7927 (d) signs located in a commercial or industrial zone;

7928 (e) signs located in unzoned industrial or commercial areas as determined from actual
7929 land uses; and

7930 (f) logo advertising under Subsection (2).

7931 (2) (a) The department may itself or by contract erect, administer, and maintain
7932 informational signs on the main-traveled way of an interstate or primary system for the display

7933 of logo advertising and information of interest to the traveling public if:

7934 (i) the department complies with Title 63G, Chapter [6] 6a, Utah Procurement Code, in
7935 the lease or other contract agreement with a private party for the sign or sign space; and

7936 (ii) the private party for the lease of the sign or sign space pays an amount set by the
7937 department to be paid to the department or the party under contract with the department under
7938 this Subsection (2).

7939 (b) The amount shall be sufficient to cover the costs of erecting, administering, and
7940 maintaining the signs or sign spaces.

7941 (c) The department may consult the Governor's Office of Economic Development in
7942 carrying out this Subsection (2).

7943 (3) (a) Revenue generated under Subsection (2) shall be:

7944 (i) applied first to cover department costs under Subsection (2); and

7945 (ii) deposited in the Transportation Fund.

7946 (b) Revenue in excess of costs under Subsection (2)(a) shall be deposited in the
7947 General Fund as a dedicated credit for use by the Governor's Office of Economic Development
7948 no later than the following fiscal year.

7949 (4) Outdoor advertising under Subsections (1)(a), (d), (e), and (f) shall conform to the
7950 rules made by the department under Sections 72-7-506 and 72-7-507.

7951 Section 235. Section **73-10-27** is amended to read:

7952 **73-10-27. Definitions -- Project priorities -- Considerations -- Determinations of**
7953 **feasibility -- Bids and contracts -- Definitions -- Retainage.**

7954 (1) As used in this section:

7955 (a) "Board" means the Board of Water Resources created in Section 73-10-1.5.

7956 (b) "Estimated cost" means the cost of the labor, material, and equipment necessary for
7957 construction of the contemplated project.

7958 (c) "Lowest responsible bidder" means a licensed contractor:

7959 (i) who:

7960 (A) submits the lowest bid; and

7961 (B) furnishes a payment bond and a performance bond under Sections 14-1-18 and
7962 [~~63G-6-505~~] 63G-6a-1103; and

7963 (ii) whose bid:

- 7964 (A) is in compliance with the invitation for a bid; and
- 7965 (B) meets the plans and specifications.
- 7966 (2) In considering the priority for a project to be built or financed with funds made
- 7967 available under Section 73-10-24, the board shall give preference to a project that:
- 7968 (a) is sponsored by, or for the benefit of, the state or a political subdivision of the state;
- 7969 (b) meets a critical local need;
- 7970 (c) has greater economic feasibility;
- 7971 (d) will yield revenue to the state within a reasonable time or will return a reasonable
- 7972 rate of interest, based on financial feasibility; and
- 7973 (e) meets other considerations deemed necessary by the board, including wildlife
- 7974 management and recreational needs.
- 7975 (3) (a) In determining the economic feasibility, the board shall establish a
- 7976 benefit-to-cost ratio for each project, using a uniform standard of procedure for all projects.
- 7977 (b) In considering whether a project should be built, the benefit-to-cost ratio for each
- 7978 project shall be weighted based on the relative cost of the project.
- 7979 (c) A project, when considered in total with all other projects constructed under this
- 7980 chapter and still the subject of a repayment contract, may not cause the accumulative
- 7981 benefit-to-cost ratio of the projects to be less than one to one.
- 7982 (4) A project may not be built if the project is not:
- 7983 (a) in the public interest, as determined by the board; or
- 7984 (b) adequately designed based on sound engineering and geologic considerations.
- 7985 (5) In preparing a project constructed by the board, the board shall:
- 7986 (a) based on a competitive bid, award a contract for:
- 7987 (i) a flood control project:
- 7988 (A) involving a city or county; and
- 7989 (B) costing in excess of \$35,000;
- 7990 (ii) the construction of a storage reservoir in excess of 100 acre-feet; or
- 7991 (iii) the construction of a hydroelectric generating facility;
- 7992 (b) publish an advertisement for a competitive bid:
- 7993 (i) at least once a week for three consecutive weeks in a newspaper with general
- 7994 circulation in the state, with the last date of publication appearing at least five days before the

7995 schedule bid opening; and
7996 (ii) indicating that the board:
7997 (A) will award the contract to the lowest responsible bidder; and
7998 (B) reserves the right to reject any and all bids;
7999 (c) readvertise the project in the manner specified in Subsection (5)(b) if the board
8000 rejects all of the initial bids on the project; and
8001 (d) keep an accurate record of all facts and representations relied upon in preparing the
8002 board's estimated cost for a project that is subject to the competitive bidding requirements of
8003 this section.
8004 (6) If no satisfactory bid is received by the board upon the readvertisement of the
8005 project in accordance with Subsection (5), the board may proceed to construct the project in
8006 accordance with the plan and specifications used to calculate the estimated cost of the project.
8007 (7) If a payment on a contract with a private contractor for construction of a project
8008 under this section is retained or withheld, it shall be retained or withheld and released as
8009 provided in Section 13-8-5.

8010 Section 236. Section **73-23-3** is amended to read:
8011 **73-23-3. Duties and powers of Division of Water Resources.**

8012 For purposes of this chapter, the Division of Water Resources:
8013 (1) shall provide for the construction, operation, and maintenance of the West Desert
8014 Pumping Project;
8015 (2) may enter into agreements as necessary to provide for all or any portion of the West
8016 Desert Pumping Project, including any indemnification agreements required by the federal
8017 government;
8018 (3) may acquire land or any other property right by any lawful means, including
8019 eminent domain;
8020 (4) is exempt from Title 63G, Chapter [~~6, the~~] 6a, Utah Procurement Code; and
8021 (5) may proceed without obtaining water right approval from the state engineer.

8022 Section 237. Section **76-10-1602** is amended to read:

8023 **76-10-1602. Definitions.**

8024 As used in this part:

8025 (1) "Enterprise" means any individual, sole proprietorship, partnership, corporation,

8026 business trust, association, or other legal entity, and any union or group of individuals
8027 associated in fact although not a legal entity, and includes illicit as well as licit entities.

8028 (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the
8029 commission of at least three episodes of unlawful activity, which episodes are not isolated, but
8030 have the same or similar purposes, results, participants, victims, or methods of commission, or
8031 otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall
8032 demonstrate continuing unlawful conduct and be related either to each other or to the
8033 enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have
8034 occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful
8035 activity as defined by this part shall have occurred within five years of the commission of the
8036 next preceding act alleged as part of the pattern.

8037 (3) "Person" includes any individual or entity capable of holding a legal or beneficial
8038 interest in property, including state, county, and local governmental entities.

8039 (4) "Unlawful activity" means to directly engage in conduct or to solicit, request,
8040 command, encourage, or intentionally aid another person to engage in conduct which would
8041 constitute any offense described by the following crimes or categories of crimes, or to attempt
8042 or conspire to engage in an act which would constitute any of those offenses, regardless of
8043 whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor
8044 or a felony:

8045 (a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized
8046 Recording Practices Act;

8047 (b) any act prohibited by the criminal provisions of Title 19, Environmental Quality
8048 Code, Sections 19-1-101 through 19-7-109;

8049 (c) taking, destroying, or possessing wildlife or parts of wildlife for the primary
8050 purpose of sale, trade, or other pecuniary gain, in violation of Title 23, Wildlife Resources
8051 Code of Utah, or Section 23-20-4;

8052 (d) false claims for medical benefits, kickbacks, and any other act prohibited by Title
8053 26, Chapter 20, Utah False Claims Act, Sections 26-20-1 through 26-20-12;

8054 (e) any act prohibited by the criminal provisions of Title 32B, Chapter 4, Criminal
8055 Offenses and Procedure Act;

8056 (f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform

8057 Land Sales Practices Act;

8058 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah

8059 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,

8060 Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,

8061 Clandestine Drug Lab Act;

8062 (h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform

8063 Securities Act;

8064 (i) any act prohibited by the criminal provisions of Title 63G, Chapter [6] 6a, Utah

8065 Procurement Code;

8066 (j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;

8067 (k) a threat of terrorism, Section 76-5-107.3;

8068 (l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;

8069 (m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;

8070 (n) sexual exploitation of a minor, Section 76-5b-201;

8071 (o) arson or aggravated arson, Sections 76-6-102 and 76-6-103;

8072 (p) causing a catastrophe, Section 76-6-105;

8073 (q) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;

8074 (r) burglary of a vehicle, Section 76-6-204;

8075 (s) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;

8076 (t) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;

8077 (u) theft, Section 76-6-404;

8078 (v) theft by deception, Section 76-6-405;

8079 (w) theft by extortion, Section 76-6-406;

8080 (x) receiving stolen property, Section 76-6-408;

8081 (y) theft of services, Section 76-6-409;

8082 (z) forgery, Section 76-6-501;

8083 (aa) fraudulent use of a credit card, Sections 76-6-506.2, 76-6-506.3, 76-6-506.5, and

8084 76-6-506.6;

8085 (bb) deceptive business practices, Section 76-6-507;

8086 (cc) bribery or receiving bribe by person in the business of selection, appraisal, or

8087 criticism of goods, Section 76-6-508;

- 8088 (dd) bribery of a labor official, Section 76-6-509;
- 8089 (ee) defrauding creditors, Section 76-6-511;
- 8090 (ff) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- 8091 (gg) unlawful dealing with property by fiduciary, Section 76-6-513;
- 8092 (hh) bribery or threat to influence contest, Section 76-6-514;
- 8093 (ii) making a false credit report, Section 76-6-517;
- 8094 (jj) criminal simulation, Section 76-6-518;
- 8095 (kk) criminal usury, Section 76-6-520;
- 8096 (ll) fraudulent insurance act, Section 76-6-521;
- 8097 (mm) retail theft, Section 76-6-602;
- 8098 (nn) computer crimes, Section 76-6-703;
- 8099 (oo) identity fraud, Section 76-6-1102;
- 8100 (pp) mortgage fraud, Section 76-6-1203;
- 8101 (qq) sale of a child, Section 76-7-203;
- 8102 (rr) bribery to influence official or political actions, Section 76-8-103;
- 8103 (ss) threats to influence official or political action, Section 76-8-104;
- 8104 (tt) receiving bribe or bribery by public servant, Section 76-8-105;
- 8105 (uu) receiving bribe or bribery for endorsement of person as public servant, Section
- 8106 76-8-106;
- 8107 (vv) official misconduct, Sections 76-8-201 and 76-8-202;
- 8108 (ww) obstruction of justice, Section 76-8-306;
- 8109 (xx) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;
- 8110 (yy) false or inconsistent material statements, Section 76-8-502;
- 8111 (zz) false or inconsistent statements, Section 76-8-503;
- 8112 (aaa) written false statements, Section 76-8-504;
- 8113 (bbb) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- 8114 (ccc) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- 8115 (ddd) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- 8116 (eee) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or
- 8117 76-8-1205;
- 8118 (fff) unemployment insurance fraud, Section 76-8-1301;

- 8119 (ggg) intentionally or knowingly causing one animal to fight with another, Subsection
8120 76-9-301(2)(d) or (e), or Section 76-9-301.1;
- 8121 (hhh) possession, use, or removal of explosives, chemical, or incendiary devices or
8122 parts, Section 76-10-306;
- 8123 (iii) delivery to common carrier, mailing, or placement on premises of an incendiary
8124 device, Section 76-10-307;
- 8125 (jjj) possession of a deadly weapon with intent to assault, Section 76-10-507;
- 8126 (kkk) unlawful marking of pistol or revolver, Section 76-10-521;
- 8127 (lll) alteration of number or mark on pistol or revolver, Section 76-10-522;
- 8128 (mmm) forging or counterfeiting trademarks, trade name, or trade device, Section
8129 76-10-1002;
- 8130 (nnn) selling goods under counterfeited trademark, trade name, or trade devices,
8131 Section 76-10-1003;
- 8132 (ooo) sales in containers bearing registered trademark of substituted articles, Section
8133 76-10-1004;
- 8134 (ppp) selling or dealing with article bearing registered trademark or service mark with
8135 intent to defraud, Section 76-10-1006;
- 8136 (qqq) gambling, Section 76-10-1102;
- 8137 (rrr) gambling fraud, Section 76-10-1103;
- 8138 (sss) gambling promotion, Section 76-10-1104;
- 8139 (ttt) possessing a gambling device or record, Section 76-10-1105;
- 8140 (uuu) confidence game, Section 76-10-1109;
- 8141 (vvv) distributing pornographic material, Section 76-10-1204;
- 8142 (www) inducing acceptance of pornographic material, Section 76-10-1205;
- 8143 (xxx) dealing in harmful material to a minor, Section 76-10-1206;
- 8144 (yyy) distribution of pornographic films, Section 76-10-1222;
- 8145 (zzz) indecent public displays, Section 76-10-1228;
- 8146 (aaaa) prostitution, Section 76-10-1302;
- 8147 (bbbb) aiding prostitution, Section 76-10-1304;
- 8148 (cccc) exploiting prostitution, Section 76-10-1305;
- 8149 (dddd) aggravated exploitation of prostitution, Section 76-10-1306;

8150 (eeee) communications fraud, Section 76-10-1801;
 8151 (ffff) any act prohibited by the criminal provisions of [~~Chapter 10;~~ Part 19, Money
 8152 Laundering and Currency Transaction Reporting Act;
 8153 (gggg) vehicle compartment for contraband, Section 76-10-2801;
 8154 (hhhh) any act prohibited by the criminal provisions of the laws governing taxation in
 8155 this state; and
 8156 (iii) any act illegal under the laws of the United States and enumerated in 18 U.S.C.
 8157 Sec. 1961 (1)(B), (C), and (D).

Section 238. Section **78A-2-112** is amended to read:

78A-2-112. Grants to nonprofit legal assistance organization.

Subject to legislative appropriation, the state court administrator shall, in accordance with Title 63G, Chapter [6] 6a, Utah Procurement Code, solicit requests for proposals and award grants to nonprofit legal assistance providers to provide legal assistance throughout the state to:

- (1) low to moderate income victims of domestic violence; and
- (2) low to moderate income individuals in family law matters.

Section 239. Section **79-2-404** is amended to read:

79-2-404. Contracting powers of department -- Health insurance coverage.

(1) For purposes of this section:

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

- (i) works at least 30 hours per calendar week; and
- (ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 90 days from the date of hire.

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

(c) "Qualified health insurance coverage" is as defined in Section 26-40-115.

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

(2) (a) Except as provided in Subsection (3), this section applies a design or construction contract entered into by, or delegated to, the department or a division, board, or council of the department on or after July 1, 2009, and to a prime contractor or to a subcontractor in accordance with Subsection (2)(b).

8181 (b) (i) A prime contractor is subject to this section if the prime contract is in the
8182 amount of \$1,500,000 or greater.

8183 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
8184 \$750,000 or greater.

8185 (3) This section does not apply to contracts entered into by the department or a
8186 division, board, or council of the department if:

8187 (a) the application of this section jeopardizes the receipt of federal funds;

8188 (b) the contract or agreement is between:

8189 (i) the department or a division, board, or council of the department; and

8190 (ii) (A) another agency of the state;

8191 (B) the federal government;

8192 (C) another state;

8193 (D) an interstate agency;

8194 (E) a political subdivision of this state; or

8195 (F) a political subdivision of another state; or

8196 (c) the contract or agreement is:

8197 (i) for the purpose of disbursing grants or loans authorized by statute;

8198 (ii) a sole source contract; or

8199 (iii) an emergency procurement.

8200 (4) (a) This section does not apply to a change order as defined in Section [~~63G-6-103~~]
8201 63G-6a-103, or a modification to a contract, when the contract does not meet the initial
8202 threshold required by Subsection (2).

8203 (b) A person who intentionally uses change orders or contract modifications to
8204 circumvent the requirements of Subsection (2) is guilty of an infraction.

8205 (5) (a) A contractor subject to Subsection (2)(b)(i) shall demonstrate to the department
8206 that the contractor has and will maintain an offer of qualified health insurance coverage for the
8207 contractor's employees and the employees' dependents during the duration of the contract.

8208 (b) If a subcontractor of the contractor is subject to Subsection (2)(b)(ii), the contractor
8209 shall demonstrate to the department that the subcontractor has and will maintain an offer of
8210 qualified health insurance coverage for the subcontractor's employees and the employees'
8211 dependents during the duration of the contract.

8212 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
8213 the duration of the contract is subject to penalties in accordance with administrative rules
8214 adopted by the department under Subsection (6).

8215 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
8216 requirements of Subsection (5)(b).

8217 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
8218 the duration of the contract is subject to penalties in accordance with administrative rules
8219 adopted by the department under Subsection (6).

8220 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
8221 requirements of Subsection (5)(a).

8222 (6) The department shall adopt administrative rules:

8223 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

8224 (b) in coordination with:

8225 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

8226 (ii) a public transit district in accordance with Section 17B-2a-818.5;

8227 (iii) the State Building Board in accordance with Section 63A-5-205;

8228 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

8229 (v) the Department of Transportation in accordance with Section 72-6-107.5; and

8230 (vi) the Legislature's Administrative Rules Review Committee; and

8231 (c) which establish:

8232 (i) the requirements and procedures a contractor must follow to demonstrate
8233 compliance with this section to the department which shall include:

8234 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or
8235 (b) more than twice in any 12-month period; and

8236 (B) that the actuarially equivalent determination required for qualified health insurance
8237 coverage in Subsection (1) is met by the contractor if the contractor provides the department or
8238 division with a written statement of actuarial equivalency from either:

8239 (I) the Utah Insurance Department;

8240 (II) an actuary selected by the contractor or the contractor's insurer; or

8241 (III) an underwriter who is responsible for developing the employer group's premium
8242 rates;

8243 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
8244 violates the provisions of this section, which may include:

8245 (A) a three-month suspension of the contractor or subcontractor from entering into
8246 future contracts with the state upon the first violation;

8247 (B) a six-month suspension of the contractor or subcontractor from entering into future
8248 contracts with the state upon the second violation;

8249 (C) an action for debarment of the contractor or subcontractor in accordance with
8250 Section [~~63G-6-804~~] 63G-6a-904 upon the third or subsequent violation; and

8251 (D) monetary penalties which may not exceed 50% of the amount necessary to
8252 purchase qualified health insurance coverage for an employee and a dependent of an employee
8253 of the contractor or subcontractor who was not offered qualified health insurance coverage
8254 during the duration of the contract; and

8255 (iii) a website on which the department shall post the benchmark for the qualified
8256 health insurance coverage identified in Subsection (1)(c).

8257 (7) (a) (i) In addition to the penalties imposed under Subsection (6), a contractor or
8258 subcontractor who intentionally violates the provisions of this section shall be liable to the
8259 employee for health care costs that would have been covered by qualified health insurance
8260 coverage.

8261 (ii) An employer has an affirmative defense to a cause of action under Subsection
8262 (7)(a)(i) if:

8263 (A) the employer relied in good faith on a written statement of actuarial equivalency
8264 provided by:

8265 (I) an actuary; or

8266 (II) an underwriter who is responsible for developing the employer group's premium
8267 rates; or

8268 (B) the department determines that compliance with this section is not required under
8269 the provisions of Subsection (3) or (4).

8270 (b) An employee has a private right of action only against the employee's employer to
8271 enforce the provisions of this Subsection (7).

8272 (8) Any penalties imposed and collected under this section shall be deposited into the
8273 Medicaid Restricted Account created in Section 26-18-402.

8274 (9) The failure of a contractor or subcontractor to provide qualified health insurance
8275 coverage as required by this section:

8276 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
8277 or contractor under Section [~~63G-6-801~~] 63G-6a-1603 or any other provision in Title 63G,
8278 Chapter [~~6, Part 8, Legal and Contractual Remedies~~] 6a, Utah Procurement Code; and

8279 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
8280 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
8281 or construction.

8282 Section 240. Section **79-4-203** is amended to read:

8283 **79-4-203. Powers and duties of division.**

8284 (1) As used in this section, "real property" includes land under water, upland, and all
8285 other property commonly or legally defined as real property.

8286 (2) The Division of Wildlife Resources shall retain the power and jurisdiction
8287 conferred upon it by law within state parks and on property controlled by the Division of Parks
8288 and Recreation with reference to fish and game.

8289 (3) The division shall permit multiple use of state parks and property controlled by it
8290 for purposes such as grazing, fishing, hunting, mining, and the development and utilization of
8291 water and other natural resources.

8292 (4) (a) The division may acquire real and personal property in the name of the state by
8293 all legal and proper means, including purchase, gift, devise, eminent domain, lease, exchange,
8294 or otherwise, subject to the approval of the executive director and the governor.

8295 (b) In acquiring any real or personal property, the credit of the state may not be pledged
8296 without the consent of the Legislature.

8297 (5) (a) Before acquiring any real property, the division shall notify the county
8298 legislative body of the county where the property is situated of its intention to acquire the
8299 property.

8300 (b) If the county legislative body requests a hearing within 10 days of receipt of the
8301 notice, the division shall hold a public hearing in the county concerning the matter.

8302 (6) Acceptance of gifts or devises of land or other property is at the discretion of the
8303 division, subject to the approval of the executive director and the governor.

8304 (7) The division shall acquire property by eminent domain in the manner authorized by

8305 Title 78B, Chapter 6, Part 5, Eminent Domain.

8306 (8) (a) The division may make charges for special services and use of facilities, the
8307 income from which is available for park and recreation purposes.

8308 (b) The division may conduct and operate those services necessary for the comfort and
8309 convenience of the public.

8310 (9) (a) The division may lease or rent concessions of all lawful kinds and nature in state
8311 parks and property to persons, partnerships, and corporations for a valuable consideration upon
8312 the recommendation of the board.

8313 (b) The division shall comply with Title 63G, Chapter [6] 6a, Utah Procurement Code,
8314 in selecting concessionaires.

8315 (10) The division shall proceed without delay to negotiate with the federal government
8316 concerning the Weber Basin and other recreation and reclamation projects.

8317 (11) The division shall receive and distribute voluntary contributions collected under
8318 Section 41-1a-422 in accordance with Section 79-4-404.

8319 Section 241. **Repealer.**

8320 This bill repeals:

8321 Section **10-7-87, Procurement -- Use of recycled goods.**

8322 Section **11-37-101, Definition -- Procurement -- Use of recycled goods.**

8323 Section **17-15-24, Procurement -- Use of recycled goods.**

8324 Section **17B-1-109, Procurement -- Use of recycled goods.**

8325 Section **26A-1-108.7, Procurement -- Use of recycled goods.**

8326 Section **63G-6-206, Transfer of power to policy board.**

8327 Section **63G-6-301, Rules for specifications.**

8328 Section **63G-6-401, Contracts awarded by sealed bidding -- Procedure.**

8329 Section **63G-6-402, Contracts awarded by reverse auction.**

8330 Section **63G-6-403, Procurement -- Use of recycled goods.**

8331 Section **63G-6-406, Preference for recycled paper and paper products.**

8332 Section **63G-6-407, Use of alkaline paper.**

8333 Section **63G-6-408, Use of competitive sealed proposals in lieu of bids -- Procedure.**

8334 Section **63G-6-409, Small purchases.**

8335 Section **63G-6-411, Emergency procurements.**

- 8336 Section **63G-6-414, Prequalification of suppliers.**
- 8337 Section **63G-6-417, Period of time for contract of supplies.**
- 8338 Section **63G-6-418, Right of state to inspect place of business of contractor or**
- 8339 **subcontractor.**
- 8340 Section **63G-6-422, Exemptions from source selection and contract requirements --**
- 8341 **Violation penalty.**
- 8342 Section **63G-6-426, Tie bids -- Preference for providers of state products --**
- 8343 **Resolution of tie bids -- Record of tie bids.**
- 8344 Section **63G-6-903, Payments between public procurement units.**
- 8345 Section **63G-6-906, Resolving controversy arising under a cooperative purchasing**
- 8346 **agreement.**
- 8347 Section **63G-6-1001, Felony to accept emolument.**
- 8348 Section **63G-6-1002, Felony to offer emolument.**
- 8349 Section 242. **Effective date.**
- 8350 This bill takes effect on January 1, 2013.

Legislative Review Note
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Office of Legislative Research and General Counsel