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State Facilities Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor:

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LONG TITLE

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General Description:

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This bill amends provisions regarding qualifications for an approved subcontractor for the
6 Division of Facilities Construction and Management.

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Highlighted Provisions:

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This bill:

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▸ defines terms related to subcontractors;

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▸ requires subcontractors to offer qualified health insurance to employees of the
11 subcontractor;

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▸ requires subcontractors to provide certain additional information to be a qualified vendor
13 with the Division of Facilities Construction and Management;

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▸ requires any subcontractor performing work under a contract with the Division of
15 Facilities Construction and Management to be a qualified vendor; and

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▸ makes technical changes.

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Money Appropriated in this Bill:

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None

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Other Special Clauses:

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None

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Utah Code Sections Affected:

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AMENDS:

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63A-5b-607, as last amended by Laws of Utah 2024, Chapter 439

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ENACTS:

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63A-5b-611, Utah Code Annotated 1953

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

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Section 1. Section **63A-5b-607** is amended to read:

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63A-5b-607 . Health insurance requirements -- Penalties.

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(1) As used in this section:

- 31 (a) "Aggregate amount" means the dollar sum of all contracts, change orders, and
32 modifications for a single project.
- 33 (b) "Change order" means the same as that term is defined in Section 63G-6a-103.
- 34 (c) "Eligible employee" means an employee, as defined in Section 34A-2-104, who:
35 (i) works at least 30 hours per calendar week; and
36 (ii) meets the employer eligibility waiting period for qualified health insurance
37 coverage provided by the employer.
- 38 (d) "First-tier subcontractor" means the same as that term is defined in Section
39 63A-5b-605.
- 40 ~~[(d)]~~ (e) "Health benefit plan" means:
41 (i) the same as that term is defined in Section 31A-1-301; or
42 (ii) an employee welfare benefit plan:
43 (A) established under the Employee Retirement Income Security Act of 1974, 29
44 U.S.C. Sec. 1001 et seq.;
45 (B) for an employer with 100 or more employees; and
46 (C) in which the employer establishes a self-funded or partially self-funded group
47 health plan to provide medical care for the employer's employees and
48 dependents of the employees.
- 49 ~~[(e)]~~ (f) "Qualified health insurance coverage" means the same as that term is defined in
50 Section 26B-3-909.
- 51 (g) "Second-tier subcontractor" means a subcontractor who contracts with a
52 subcontractor.
- 53 ~~[(f)]~~ ~~(h)~~(i) "Subcontractor" means the same as that term is defined in Section
54 63A-5b-605.
55 (ii) "Subcontractor" includes a first-tier subcontractor and a second-tier subcontractor.
- 56 ~~[(g)]~~ (i) "Third party administrator" or "administrator" means the same as that term is
57 defined in Section 31A-1-301.
- 58 (2) Except as provided in Subsection (3), the requirements of this section apply to:
59 (a) a contractor of a design or construction contract with the division if the prime
60 contract is in an aggregate amount of \$2,000,000 or more; and
61 (b) a subcontractor of a contractor of a design or construction contract with the division
62 if the subcontract is in an aggregate amount of \$1,000,000 or more.
- 63 (3) The requirements of this section do not apply to a contractor or subcontractor if:
64 (a) the application of this section jeopardizes the division's receipt of federal funds;

- 65 (b) the contract is a sole source contract, as defined in Section 63G-6a-103; or
66 (c) the contract is the result of an emergency procurement.
- 67 (4) A person who intentionally uses a change order, contract modification, or multiple
68 contracts to circumvent the requirements of this section is guilty of an infraction.
- 69 (5)(a) A contractor or a subcontractor that is subject to the requirements of this section
70 shall:
- 71 (i) make and maintain an offer of qualified health coverage for the contractor's or
72 subcontractor's eligible employees and the eligible employees' dependents; and
73 (ii) submit to the director a written statement demonstrating that the contractor or
74 subcontractor is in compliance with Subsection (5)(a)(i).
- 75 (b) A statement under Subsection (5)(a)(ii):
- 76 (i) shall be from:
- 77 (A) an actuary selected by the contractor or the contractor's insurer or the
78 subcontractor or the subcontractor's insurer;
- 79 (B) an underwriter who is responsible for developing the employer group's
80 premium rates; or
- 81 (C) if the contractor or subcontractor provides a health benefit plan described in
82 Subsection [~~(1)(d)(ii)~~] (1)(e)(ii), an actuary or underwriter selected by a third
83 party administrator; and
- 84 (ii) may not be created more than one year before the day on which the contractor or
85 subcontractor submits the statement to the director.
- 86 (c)(i) A contractor that provides a health benefit plan described in Subsection [
87 ~~(1)(d)(ii)~~] (1)(e)(ii) shall provide the actuary or underwriter selected by an
88 administrator, as described in Subsection (5)(b)(i)(C), sufficient information to
89 determine whether the contractor's or subcontractor's contribution to the health
90 benefit plan and the actuarial value of the health benefit plan meet the
91 requirements of qualified health coverage.
- 92 (ii) A contractor or subcontractor may not make a change to the contractor's or
93 subcontractor's contribution to the health benefit plan, unless the contractor or
94 subcontractor provides notice to:
- 95 (A) the actuary or underwriter selected by an administrator, as described in
96 Subsection (5)(b)(i)(C), for the actuary or underwriter to update the written
97 statement described in Subsection (5)(a) in compliance with this section; and
98 (B) the division.

- 99 (6)(a) A contractor or subcontractor that is subject to the requirements of this section
100 shall:
- 101 (i) ensure that each contract the contractor or subcontractor enters with a
102 subcontractor that is subject to the requirements of this section requires the
103 subcontractor to obtain and maintain an offer of qualified health coverage for the
104 subcontractor's eligible employees and the eligible employees' dependents during
105 the duration of the subcontract; and
- 106 (ii) obtain from a subcontractor referred to in Subsection (6)(a)(i) a written statement
107 demonstrating that the subcontractor offers qualified health coverage to eligible
108 employees and eligible employees' dependents.
- 109 (b) A statement under Subsection (6)(a)(ii):
- 110 (i) shall be from:
- 111 (A) an actuary selected by the subcontractor or the subcontractor's insurer;
- 112 (B) an underwriter who is responsible for developing the employer group's
113 premium rates; or
- 114 (C) if the subcontractor provides a health benefit plan described in Subsection [
115 ~~(1)(d)(ii)~~] (1)(e)(ii), an actuary or underwriter selected by an administrator; and
- 116 (ii) may not be created more than one year before the day on which the contractor or
117 subcontractor obtains the statement from the subcontractor.
- 118 (7)(a)(i) A contractor that fails to maintain an offer of qualified health coverage
119 during the duration of the contract as required in this section is subject to penalties
120 in accordance with administrative rules made by the division under this section, in
121 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 122 (ii) A contractor is not subject to penalties for the failure of a subcontractor to obtain
123 and maintain an offer of qualified health coverage as required in this section.
- 124 (b)(i) A subcontractor that fails to obtain and maintain an offer of qualified health
125 coverage during the duration of the subcontract as required in this section is
126 subject to penalties in accordance with administrative rules made by the division
127 under this section, in accordance with Title 63G, Chapter 3, Utah Administrative
128 Rulemaking Act.
- 129 (ii) A subcontractor is not subject to penalties for the failure of a contractor to
130 maintain an offer of qualified health coverage as required in this section.
- 131 (8) The division shall make rules:
- 132 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

- 133 (b) in coordination with:
- 134 (i) the Department of Environmental Quality in accordance with Section 19-1-206;
- 135 (ii) the Department of Natural Resources in accordance with Section 79-2-404;
- 136 (iii) a public transit district in accordance with Section 17B-2a-818.5;
- 137 (iv) the State Capitol Preservation Board in accordance with Section 63O-2-403;
- 138 (v) the Department of Transportation in accordance with Section 72-6-107.5; and
- 139 (vi) the Legislature's Rules Review and General Oversight Committee created under
- 140 Section 36-35-102; and
- 141 (c) that establish:
- 142 (i) the requirements and procedures for a contractor and a subcontractor to
- 143 demonstrate compliance with this section, including:
- 144 (A) a provision that a contractor or subcontractor's compliance with this section is
- 145 subject to an audit by the division or the Office of the Legislative Auditor
- 146 General;
- 147 (B) a provision that a contractor that is subject to the requirements of this section
- 148 obtain a written statement as provided in Subsection (5); and
- 149 (C) a provision that a subcontractor that is subject to the requirements of this
- 150 section obtain a written statement as provided in Subsection (6);
- 151 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
- 152 violates the provisions of this section, which may include:
- 153 (A) a three-month suspension of the contractor or subcontractor from entering into
- 154 a future contract with the state upon the first violation;
- 155 (B) a six-month suspension of the contractor or subcontractor from entering into a
- 156 future contract with the state upon the second violation;
- 157 (C) an action for debarment of the contractor or subcontractor in accordance with
- 158 Section 63G-6a-904 upon the third or subsequent violation; and
- 159 (D) monetary penalties which may not exceed 50% of the amount necessary to
- 160 purchase qualified health coverage for eligible employees and dependents of
- 161 eligible employees of the contractor or subcontractor who were not offered
- 162 qualified health coverage during the duration of the contract; and
- 163 (iii) a website for the department to post the commercially equivalent benchmark for
- 164 the qualified health coverage that is provided by the Department of Health and
- 165 Human Services in accordance with Subsection 26B-3-909(2).
- 166 (9) During the duration of a contract, the division may perform an audit to verify a

- 167 contractor or subcontractor's compliance with this section.
- 168 (10)(a) Upon the division's request, a contractor or subcontractor shall provide the
169 division:
- 170 (i) a signed actuarial certification that the coverage the contractor or subcontractor
171 offers is qualified health coverage; or
- 172 (ii) all relevant documents and information necessary for the division to determine
173 compliance with this section.
- 174 (b) If a contractor or subcontractor provides the documents and information described in
175 Subsection (10)(a)(i), the Insurance Department shall assist the division in
176 determining if the coverage the contractor or subcontractor offers is qualified health
177 coverage.
- 178 (11)(a)(i) In addition to the penalties imposed under Subsection (7), a contractor or
179 subcontractor that intentionally violates the provisions of this section is liable to
180 an eligible employee for health care costs that would have been covered by
181 qualified health coverage.
- 182 (ii) An employer has an affirmative defense to a cause of action under Subsection
183 (11)(a)(i) if:
- 184 (A) the employer relied in good faith on a written statement described in
185 Subsection (5) or (6); or
- 186 (B) the department determines that compliance with this section is not required
187 under the provisions of Subsection (3).
- 188 (b) An eligible employee has a private right of action against the employee's employer
189 only as provided in this Subsection (11).
- 190 (12) The director shall cause money collected from the imposition and collection of a
191 penalty under this section to be deposited into the Medicaid Growth Reduction and
192 Budget Stabilization Account created by Section 63J-1-315.
- 193 (13) The failure of a contractor or subcontractor to provide qualified health coverage as
194 required by this section:
- 195 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
196 or contractor under:
- 197 (i) Section 63G-6a-1602; or
- 198 (ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and
- 199 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
200 contractor as a basis for any action or suit that would suspend, disrupt, or terminate

201 the design or construction.

202 (14) An employer's waiting period for an employee to become eligible for qualified health
203 coverage may not extend beyond the first day of the calendar month following 60 days
204 after the day on which the employee is hired.

205 (15) An administrator, including an administrator's actuary or underwriter, who provides a
206 written statement under Subsection (5)(a) or (c) regarding the qualified health coverage
207 of a contractor or subcontractor who provides a health benefit plan described in
208 Subsection [~~(1)(d)(ii)~~] (1)(e)(ii):

209 (a) subject to Subsection (11)(b), is not liable for an error in the written statement, unless
210 the administrator commits gross negligence in preparing the written statement;

211 (b) is not liable for any error in the written statement if the administrator relied in good
212 faith on information from the contractor or subcontractor; and

213 (c) may require as a condition of providing the written statement that a contractor or
214 subcontractor hold the administrator harmless for an action arising under this section.

215 Section 2. Section **63A-5b-611** is enacted to read:

216 **63A-5b-611 . Requirements for subcontractors.**

217 (1) As used in this section, "subcontractor" means the same as that term is defined in
218 Section 63A-5b-605.

219 (2)(a) In addition to the requirements described in Section 63G-6a-410, in order to
220 qualify for an approved vendor list for the division under Section 63G-6a-507, a
221 subcontractor shall provide the information described in Subsection (2)(b) at least
222 annually, and whenever an application for prequalification is being filed.

223 (b) A subcontractor shall provide the following for each employee of the subcontractor
224 as required in Subsection (2)(a):

225 (i) the name of the employee;

226 (ii) the last four digits of the social security number of the employee;

227 (iii) if the employee possesses a professional license, the professional license
228 number; and

229 (iv) the written statements regarding qualified health coverage for employees as
230 required in Subsections 63A-5b-607(5) and (6).

231 (3) A subcontractor may not contract for or perform work under a prime contract with the
232 division unless the subcontractor is on an approved qualified vendor list under Section
233 63G-6a-507.

234 (4) The division shall ensure that the list of qualified subcontractors is publicly available.

235 Section 3. **Effective Date.**

236 This bill takes effect on May 7, 2025.