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**MITIGATION TO BUSINESSES IMPACTED  
BY MAJOR HIGHWAY CONSTRUCTION**

1998 GENERAL SESSION

STATE OF UTAH

**Sponsor: David M. Jones**

AN ACT RELATING TO STATE AFFAIRS IN GENERAL; DEFINING SERIOUSLY  
IMPACTED BUSINESSES; CREATING BOARD; REQUIRING INVENTORY OF  
SUPPLIES AND SERVICES COVERED BY PREFERENCE; PROVIDING FOR  
TECHNICAL ASSISTANCE RELATED TO PROCUREMENT; AND MAKING  
TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**63-56-9**, as last amended by Chapter 252, Laws of Utah 1997

ENACTS:

**9-2-1801**, Utah Code Annotated 1953

**9-2-1802**, Utah Code Annotated 1953

**9-2-1803**, Utah Code Annotated 1953

**9-2-1804**, Utah Code Annotated 1953

**9-2-1805**, Utah Code Annotated 1953

**9-2-1806**, Utah Code Annotated 1953

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

Section 1. Section **9-2-1801** is enacted to read:

**Part 18. Major Highway Construction Business Impact**

**9-2-1801. Title.**

This part is known as the "Major Highway Construction Business Impact Act."

Section 2. Section **9-2-1802** is enacted to read:

**9-2-1802. Definitions.**

1 As used in this part:

2 (1) "Board" means the Major Highway Construction Business Impact Advisory Board  
3 created under Section 9-2-1803.

4 (2) "Branch" means a location of a business other than its main office at which the  
5 business conducts business activities.

6 (3) "Business" means a person that for compensation provides goods or services for lawful  
7 purposes.

8 (4) "Chief procurement officer" means the person appointed under Section 63-56-8.

9 (5) "Major highway construction" means construction, as defined by Section 27-12-2:

10 (a) on a state highway, as defined in Section 27-12-2; and

11 (b) having a total budget equal to or exceeding \$1,000,000.

12 (6) "Seriously impacted business" means a business designated as seriously impacted  
13 under Section 9-2-1804.

14 (7) "Threshold year" means the year specified under Subsection 9-2-1804(3).

15 Section 3. Section **9-2-1803** is enacted to read:

16 **9-2-1803. Major Highway Construction Business Impact Advisory Board.**

17 (1) There is created within the department the "Major Highway Construction Business  
18 Impact Advisory Board" consisting of:

19 (a) a representative of the Salt Lake Chamber of Commerce appointed by the Salt Lake  
20 Chapter of Commerce;

21 (b) a representative of seriously impacted businesses appointed by the governor;

22 (c) the executive director of the department or the executive director's designee; and

23 (d) the chief procurement officer.

24 (2) The governor shall appoint the chair of the board. The chair shall call and conduct the  
25 meetings of the board.

26 (3) (a) Except as required by Subsection (3)(b), a member appointed under Subsection  
27 (1)(a) or (b) shall serve for a four-year term.

28 (b) Notwithstanding Subsection (3)(a), the governor shall, at the time of appointment or  
29 reappointment, adjust the length of terms to ensure that the terms of board members are staggered  
30 so that at least one member of the board is appointed every two years.

31 (c) When a vacancy occurs in the membership for any reason, the replacement shall be

1 appointed for the unexpired term.

2 (4) (a) (i) Members who are not government employees shall receive no compensation or  
3 benefits for their services, but may receive per diem and expenses incurred in the performance of  
4 the member's official duties at the rates established by the Division of Finance under Sections  
5 63A-3-106 and 63A-3-107.

6 (ii) Members may decline to receive per diem and expenses for their service.

7 (b) (i) State government officer and employee members who do not receive salary, per  
8 diem, or expenses from their agency for their service may receive per diem and expenses incurred  
9 in the performance of their official duties from the board at the rates established by the Division  
10 of Finance under Sections 63A-3-106 and 63A-3-107.

11 (ii) State government officer and employee members may decline to receive per diem and  
12 expenses for their service.

13 (5) The department shall provide clerical and professional staff and services to the board.

14 (6) The board shall:

15 (a) advise the department concerning issues unique to seriously impacted businesses;

16 (b) recommend any regulatory or statutory changes needed to encourage the stability of  
17 seriously impacted businesses; and

18 (c) provide a public forum at which the views of seriously impacted businesses may be  
19 represented to state government.

20 Section 4. Section **9-2-1804** is enacted to read:

21 **9-2-1804. Designation of business as seriously impacted.**

22 (1) (a) A business seeking designation of the business as a whole or any of its branches  
23 as a seriously impacted business shall file an application with the department that:

24 (i) specifies whether the business is seeking designation as a seriously impacted business  
25 of:

26 (A) the business as a whole; or

27 (B) a branch of the business;

28 (ii) verifies that:

29 (A) if the business seeks designation of the business as whole, the business meets the  
30 criteria described in Subsection (2); or

31 (B) if the business seeks designation of a branch of the business, the branch meets the

1 criteria described in Subsection (3):

2 (iii) is in the form and filed in accordance with procedures established by the department;

3 (iv) lists the products and services that the business or branch can provide the state; and

4 (v) includes any information required by the department.

5 (b) A business that under Subsection (1)(a) applies for designation of the business as a  
6 whole or any of its branches as a seriously impacted business shall pay to the department an  
7 application fee determined under Section 63-38-3.2.

8 (2) The department shall designate a business as a seriously impacted business if the  
9 business meets the following criteria:

10 (a) the gross revenue of the business for the 12-month period preceeding the month in  
11 which the business files its application is 30% lower than the gross revenue of the business for the  
12 threshold year;

13 (b) the traffic count on the road that provides access to the business or a branch of the  
14 business is reduced by 50% from the traffic count as of the beginning of the threshold year; and

15 (c) the reduction in traffic count is likely the result of major highway construction.

16 (3) The department shall designate a branch of a business as a seriously impacted business  
17 if the branch meets the following criteria:

18 (a) the branch files an individual income tax or a corporate franchise or income tax return  
19 separate from the business;

20 (b) the gross revenue of the branch for the 12-month period preceeding the month in which  
21 the business files its application is 30% lower than the gross revenue of the branch for the  
22 threshold year;

23 (c) the traffic count on the road that provides access to the branch is reduced by 50% from  
24 the traffic count as a beginning of the threshold year; and

25 (d) the reduction in traffic count is likely the result of major highway construction.

26 (4) (a) If a business seeks designation as a seriously impacted business because of a major  
27 highway construction project, the department shall designate a 12-month period as the threshold  
28 year for the major highway construction project.

29 (b) The threshold year shall be the 12-month period preceding substantial commencement  
30 of construction on the major highway construction project.

31 (c) The department shall use the identical threshold year for all applicants seeking

1 designation as a seriously impacted business because of the same major highway construction  
2 project.

3 Section 5. Section **9-2-1805** is enacted to read:

4 **9-2-1805. List of products and services provided by seriously impacted businesses.**

5 (1) The department shall:

6 (a) compile the information provided to the department under Subsection  
7 9-2-1804(1)(a)(iii) by seriously impacted businesses into a single document or database;

8 (b) update the document or database compiled under Subsection (1)(a) at least quarterly;  
9 and

10 (c) provide the document or database as updated to the chief procurement officer.

11 (2) The department and the chief procurement officer shall jointly develop the format of  
12 the document or database described in Subsection (1).

13 Section 6. Section **9-2-1806** is enacted to read:

14 **9-2-1806. Technical assistance related to procurement.**

15 (1) The department shall provide seriously impacted businesses technical assistance related  
16 to bidding or offering supplies, services, or construction to state, local, and federal governments  
17 as part of government procurement programs.

18 (2) The technical assistance described in Subsection (1) shall include educating seriously  
19 impacted businesses concerning:

20 (a) what procurement opportunities are available on a state, local, and federal level; and

21 (b) the process a seriously impacted businesses can follow in bidding or offering supplies,  
22 services, or construction as part of state, local, and federal procurement programs.

23 Section 7. Section **63-56-9** is amended to read:

24 **63-56-9. Duties of chief procurement officer.**

25 Except as otherwise specifically provided in this chapter, the chief procurement officer  
26 serves as the central procurement officer of the state and shall:

27 (1) adopt office policies governing the internal functions of the Division of Purchasing and  
28 General Services;

29 (2) procure or supervise the procurement of all supplies, services, and construction needed  
30 by the state;

31 (3) exercise general supervision and control over all inventories or supplies belonging to

1 the state;

2 (4) establish and maintain programs for the inspection, testing, and acceptance of supplies,  
3 services, and construction;

4 (5) prepare statistical data concerning the procurement and usage of all supplies, services,  
5 and construction;

6 (6) before June 1, 1990, notify all public procurement units of the requirements of Section  
7 63-56-20.7 regarding purchases of recycled paper and recycled paper products, recycling  
8 requirements, and provide guidelines on the availability of recycled paper and paper products,  
9 including the sources of supply and the potential uses of various grades of recycled paper; [and]

10 (7) before July 1, 1992:

11 (a) establish standards and specifications for determining which supplies are considered  
12 recycled, based upon his review of current definitions and standards employed by national  
13 procurement, product recycling, and other relevant organizations and the federal Environmental  
14 Protection Agency;

15 (b) compile and update as necessary the specifications, a list of recycled supplies available  
16 on state contract, and sources where the supplies may be obtained;

17 (c) make the compiled information under Subsection (7)(b) available to:

18 (i) all local government entities under Section 11-37-101;

19 (ii) all local health departments under Section 26A-1-108.7;

20 (iii) all procurement officers or other persons responsible for purchasing supplies within  
21 the public school system under Title 53A, State System of Public Education;

22 (iv) all procurement officers or other persons responsible for purchasing supplies within  
23 the state system of higher education under Title 53B, State System of Higher Education; and

24 (v) all procurement officers or other persons responsible for purchasing supplies for all  
25 public procurement units as defined in Section 63-56-5; and

26 (d) present a written report to the Health and Environment Interim Committee annually  
27 prior to November 30 regarding the purchases of recycled goods on state contracts during the prior  
28 fiscal year[-]; and

29 (8) by no later than January 1, 1999:

30 (a) compile and update as necessary:

31 (i) a list of supplies and products of seriously impacted businesses, as defined in Title 9,

1 Chapter 2, Part 18, Major Highway Construction Business Impact Act, available on state contract;  
2 and  
3 (ii) sources where the supplies and services listed under Subsection (8)(a)(i) may be  
4 obtained;  
5 (b) make the information compiled under Subsection (8)(a) available to:  
6 (i) all local government entities under Section 11-37-101;  
7 (ii) all local health departments under Section 26A-1-108.7;  
8 (iii) all procurement officers or other persons responsible for purchasing supplies and  
9 services within the public school system under Title 53A, State System of Public Education;  
10 (iv) all procurement officers or other persons responsible for purchasing supplies and  
11 services within the state system of higher education under Title 53B, State System of Higher  
12 Education; and  
13 (v) all procurement officers or other persons responsible for purchasing supplies and  
14 services for all public procurement units as defined in Section 63-56-5; and  
15 (c) beginning in 1999, present a written report to the Business, Labor, and Economic  
16 Development Interim Committee by no later than November 30 regarding state purchases of  
17 supplies and services from seriously impacted businesses.

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**Legislative Review Note**  
**as of 2-2-98 4:39 PM**

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**