

1 **RETENTION PROCEEDS FOR CONSTRUCTION**

2 **PROJECTS**

3 1998 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: David Ure**

6 AN ACT RELATING TO COMMERCE AND TRADE; PROVIDING DEFINITIONS;
7 SPECIFYING LIMITS TO THE AMOUNT OF RETENTION PROCEEDS WITHHELD IN
8 CONSTRUCTION PROJECTS; REQUIRING ALLOWABLE RETENTION PROCEEDS TO
9 BE DEPOSITED IN AN INTEREST-BEARING ESCROW ACCOUNT; PROVIDING
10 STANDARDS FOR REQUIRING RELEASE OF ANY RETENTION PROCEEDS;
11 CLARIFYING APPLICABILITY OF PROVISIONS TO PUBLIC AGENCIES; PROVIDING
12 ATTORNEYS' FEES TO THE PREVAILING PARTY; AND MAKING TECHNICAL
13 CORRECTIONS.

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

15 AMENDS:

16 **10-7-20**, as last amended by Chapter 84, Laws of Utah 1997

17 **10-8-14**, as last amended by Chapter 60, Laws of Utah 1983

18 **10-8-18**, as last amended by Chapter 60, Laws of Utah 1983

19 **10-8-20**, as last amended by Chapter 60, Laws of Utah 1983

20 **10-8-37**, as last amended by Chapter 60, Laws of Utah 1983

21 **10-8-38**, as last amended by Chapter 60, Laws of Utah 1983

22 **10-8-71**, as last amended by Chapter 60, Laws of Utah 1983

23 **17-5-232**, as renumbered and amended by Chapter 147, Laws of Utah 1994

24 **17-5-237**, as renumbered and amended by Chapter 147, Laws of Utah 1994

25 **17-5-239**, as renumbered and amended by Chapter 147, Laws of Utah 1994

26 **17-15-3**, as last amended by Chapter 265, Laws of Utah 1995

27 **17A-2-328**, as renumbered and amended by Chapter 186, Laws of Utah 1990

1 17A-2-531, as renumbered and amended by Chapter 186, Laws of Utah 1990

2 17A-2-1016, as last amended by Chapter 120, Laws of Utah 1994

3 17A-3-209, as renumbered and amended by Chapter 186, Laws of Utah 1990

4 17A-3-309, as renumbered and amended by Chapter 186, Laws of Utah 1990

5 27-12-108, as last amended by Chapter 137, Laws of Utah 1991

6 27-12-108.1, as last amended by Chapter 227, Laws of Utah 1993

7 38-1-2, Utah Code Annotated 1953

8 58-55-602, as renumbered and amended by Chapter 181, Laws of Utah 1994

9 63-56-3, as last amended by Chapter 232, Laws of Utah 1993

10 63A-5-205, as renumbered and amended by Chapter 212, Laws of Utah 1993

11 73-10-8, as last amended by Chapter 264, Laws of Utah 1996

12 73-10-27, as last amended by Chapter 218, Laws of Utah 1987

13 ENACTS:

14 13-8-5, Utah Code Annotated 1953

15 13-8-6, Utah Code Annotated 1953

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

17 Section 1. Section 10-7-20 is amended to read:

18 **10-7-20. Definition -- Necessity for contract -- Call for bids -- Acceptance or rejection**

19 **-- Retainage escrow.**

20 (1) As used in this section, the term "lowest responsible bidder" means any prime
21 contractor who:

22 (a) has bid in compliance with the invitation to bid and within the requirements of the
23 plans and specifications for a construction project;

24 (b) is the low bidder;

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

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

28 (2) (a) Whenever the board of commissioners or city council of any city or the board of
29 trustees of any town contemplates making any new improvement to be paid for out of the general
30 funds of the city or town, the governing body shall cause plans and specifications for, and an
31 estimate of the cost of, the improvement to be made.

1 (b) If the estimated cost of the improvement is less than \$25,000, the city or town may
2 make the improvement without calling for bids for making the same.

3 (c) (i) If the estimated cost of the proposed improvement exceeds \$25,000, the city or town
4 shall, if it determines to make the improvement, do so by contract let to the lowest responsible
5 bidder after publication of notice at least twice in a newspaper published or of general circulation
6 in that city or town at least five days prior to the opening of bids.

7 (ii) If there is no newspaper published or of general circulation in the city or town, the
8 notice shall be posted at least five days prior to the opening of bids in at least five public places
9 in the city or town. The notice shall remain posted for at least three days.

10 (d) If the cost of a contemplated improvement exceeds the sum of \$25,000, the same shall
11 not be so divided as to permit the making of such improvement in several parts, except by contract.

12 (e) (i) The governing body has the right to reject any or all bids presented, and all notices
13 calling for bids shall so state.

14 (ii) If all bids are rejected and the governing body decides to make the improvement, it
15 shall advertise anew in the same manner as before.

16 (iii) If after twice advertising as provided in this section, no bid is received that is
17 satisfactory, the governing body may proceed under its own direction to make the improvement.

18 (3) [(a)] If any payment on a contract with a private person, firm, or corporation is retained
19 or withheld, it shall be [~~placed in an interest-bearing account and the interest shall accrue for the~~
20 ~~benefit of the contractor and subcontractors to be paid after the project is completed and accepted~~
21 ~~by the board of commissioners or city council of the city, or the board of trustees of the town]~~
22 retained or withheld and released as provided in Section 13-8-6.

23 [~~(b) It is the responsibility of the contractor to ensure that any interest accrued on the~~
24 ~~retainage is distributed by the contractor to subcontractors on a pro-rata basis.]~~

25 (4) (a) Cities and towns are not required to call for bids or let contracts for the conduct or
26 management of any of the departments, business, or property of the city or town, for lowering or
27 repairing water mains or sewers, making connections with water mains or sewers, or for grading,
28 repairing, or maintaining streets, sidewalks, bridges, culverts, or conduits in any city or town.

29 (b) Work excluded under this Subsection (4) shall comply with Section 27-12-108.1 as
30 applicable.

31 Section 2. Section **10-8-14** is amended to read:

1 **10-8-14. Water, sewer, gas, electricity, telephone and public transportation -- Service**
2 **beyond city limits -- Retainage escrow.**

3 (1) They may construct, maintain and operate waterworks, sewer collection, sewer
4 treatment systems, gas works, electric light works, telephone lines or public transportation
5 systems, or authorize the construction, maintenance and operation of the same by others, or
6 purchase or lease such works or systems from any person or corporation, and they may sell and
7 deliver the surplus product or service capacity of any such works, not required by the city or its
8 inhabitants, to others beyond the limits of the city.

9 (2) If any payment on a contract with a private person, firm, or corporation to construct
10 waterworks, sewer collection, sewer treatment systems, gas works, electric light works, telephone
11 lines, or public transportation systems is retained or withheld, it shall be [~~placed in an interest~~
12 ~~bearing account and the interest shall accrue for the benefit of the contractor and subcontractors~~
13 ~~to be paid after the project is completed and accepted by the board of commissioners or city~~
14 ~~council of the city. It is the responsibility of the contractor to ensure that any interest accrued on~~
15 ~~the retainage is distributed by the contractor to subcontractors on a pro-rata basis] retained or
16 withheld and released as provided in Section 13-8-6.~~

17 Section 3. Section **10-8-18** is amended to read:

18 **10-8-18. Acquisition of water sources -- Retainage escrow.**

19 (1) They may construct, purchase or lease and maintain canals, ditches, artesian wells and
20 reservoirs, may appropriate, purchase or lease springs, streams or sources of water supply for the
21 purpose of providing water for irrigation, domestic or other useful purposes; may prevent all waste
22 of water flowing from artesian wells, and if necessary to secure sources of water supply, may
23 purchase or lease land; they may also purchase, acquire or lease stock in canal companies and
24 water companies for the purpose of providing water for the city and the inhabitants thereof.

25 (2) If any payment on a contract with a private person, firm, or corporation to construct
26 canals, ditches, artesian wells, or reservoirs is retained or withheld, it shall be [~~placed in an interest~~
27 ~~bearing account and the interest shall accrue for the benefit of the contractor and subcontractors~~
28 ~~to be paid after the project is completed and accepted by the board of commissioners or city~~
29 ~~council of the city. It is the responsibility of the contractor to ensure that any interest accrued on~~
30 ~~the retainage is distributed by the contractor to subcontractors on a pro-rata basis] retained or
31 withheld and released as provided in Section 13-8-6.~~

1 Section 4. Section **10-8-20** is amended to read:

2 **10-8-20. Lighting works -- Contracts -- Retainage escrow.**

3 (1) They may contract with and authorize any person, company or association to construct
4 gas works, electric or other lighting works within the city, and give such persons, company or
5 association the privilege of furnishing light for the public buildings, streets, sidewalks and alleys
6 of the city for any length of time not exceeding three years.

7 (2) If any payment on a contract with a private person, firm, or corporation to construct
8 gas works, electric or other lighting works within the city is retained or withheld, it shall be [~~placed~~
9 ~~in an interest bearing account and the interest shall accrue for the benefit of the contractor and~~
10 ~~subcontractors to be paid after the project is completed and accepted by the board of~~
11 ~~commissioners or city council of the city. It is the responsibility of the contractor to ensure that~~
12 ~~any interest accrued on the retainage is distributed by the contractor to subcontractors on a pro rata~~
13 ~~basis]~~ retained or withheld and released as provided in Section 13-8-6.

14 Section 5. Section **10-8-37** is amended to read:

15 **10-8-37. Construction, repair, and maintenance of bridges, viaducts, and tunnels --**
16 **Retainage escrow.**

17 (1) They may construct and keep in repair bridges, viaducts and tunnels, and regulate the
18 use thereof.

19 (2) If any payment on a contract with a private person, firm, or corporation to construct
20 bridges, viaducts, or tunnels is retained or withheld, it shall be [~~placed in an interest bearing~~
21 ~~account and the interest shall accrue for the benefit of the contractor and subcontractors to be paid~~
22 ~~after the project is completed and accepted by the board of commissioners or city council of the~~
23 ~~city. It is the responsibility of the contractor to ensure that any interest accrued on the retainage~~
24 ~~is distributed by the contractor to subcontractors on a pro rata basis]~~ retained or withheld and
25 released as provided in Section 13-8-6.

26 Section 6. Section **10-8-38** is amended to read:

27 **10-8-38. Drainage and sewage systems -- Construction regulation and control --**
28 **Retainage escrow -- Mandatory hookup -- Charges for use -- Collection of charges -- Service**
29 **to tenants -- Failure to pay for service -- Service outside municipality.**

30 (1) (a) Boards of commissioners, city councils and boards of trustees of cities and towns
31 may construct, reconstruct, maintain and operate, sewer systems, sewage treatment plants, culverts,

1 drains, sewers, catch basins, manholes, cesspools and all systems, equipment and facilities
2 necessary to the proper drainage, sewage and sanitary sewage disposal requirements of the city or
3 town and regulate the construction and use thereof.

4 (b) If any payment on a contract with a private person, firm, or corporation to construct
5 or reconstruct sewer systems, sewage treatment plants, culverts, drains, sewers, catch basins,
6 manholes, cesspools, and other drainage and sewage systems is retained or withheld, it shall be
7 ~~[placed in an interest bearing account and the interest shall accrue for the benefit of the contractor~~
8 ~~and subcontractors to be paid after the project is completed and accepted by the board of~~
9 ~~commissioners or city council of the city, or the board of trustees of the town. It is the~~
10 ~~responsibility of the contractor to ensure that any interest accrued on the retainage is distributed~~
11 ~~by the contractor to subcontractors on a pro rata basis]~~ retained or withheld and released as
12 provided in Section 13-8-6.

13 (2) (a) Any city or town may, for the purpose of defraying the cost of construction,
14 reconstruction, maintenance or operation of any sewer system or sewage treatment plant, provide
15 for mandatory hookup where the sewer is available and within 300 feet of any property line with
16 any building used for human occupancy and make a reasonable charge for the use thereof. In order
17 to enforce the mandatory hookup to the sewer where available and the collection of any such
18 charge, any city or town operating a waterworks system may make one charge for the combined
19 use of water and the services of the sewer system, including the services of any sewage treatment
20 plant operated by the city or town and may provide by ordinance that application for service from
21 such combined system shall be made in writing, signed by the owner desiring such service or his
22 authorized agent, in which application such owner shall agree that he will pay for all service
23 furnished such owner according to the rules and regulations enacted in the ordinance of such city
24 or town.

25 (b) In case an application for furnishing service from such combined systems shall be
26 made by a tenant of the owner, such city or town may require as a condition of granting the same
27 that such application contain an agreement signed by the owner or his duly authorized agent to the
28 effect that in consideration of granting such application the owner will pay for all service furnished
29 such tenant or any other occupant of the premises named in the application in case such tenant or
30 occupant shall fail to pay for the same according to the ordinance of such city or town.

31 (c) In case any person shall fail to hookup to the sewer where available and in case any

1 applicant shall fail to pay for the service furnished according to the rules and regulations
2 prescribed by the ordinances of such city or town, then the city or town may cause the water to be
3 shut off from such premises and shall not be required to turn the same on again until such person
4 has hooked up to the sewer at his own expense or all arrears for service furnished shall be paid in
5 full.

6 (d) Cities and towns may sell and deliver from the surplus capacity thereof, services of any
7 such system or facility not required by the municipality or its inhabitants to others beyond the
8 limits of the municipality.

9 Section 7. Section 10-8-71 is amended to read:

10 **10-8-71. Waterworks -- Police and fire signals -- Retainage escrow.**

11 (1) They may purchase, construct, lease, rent, manage and maintain any system or part of
12 any system of waterworks, hydrants and supplies of water, telegraphic or other police or fire
13 signals, and pass all ordinances, penal or otherwise, that shall be necessary for the full protection,
14 maintenance, management and control of the property so leased, purchased or constructed.

15 (2) If any payment on a contract with a private person, firm, or corporation to construct
16 all or part of any waterworks system is retained or withheld, it shall be ~~[placed in an interest~~
17 ~~bearing account and the interest shall accrue for the benefit of the contractor and subcontractors~~
18 ~~to be paid after the project is completed and accepted by the board of commissioners or city~~
19 ~~council of the city, or by the board of trustees of the town. It is the responsibility of the contractor~~
20 ~~to ensure that any interest accrued on the retainage is distributed by the contractor to~~
21 ~~subcontractors on a pro rata basis] retained or withheld and released as provided in Section 13-8-6.~~

22 Section 8. Section 13-8-5 is enacted to read:

23 **13-8-5. Definitions.**

24 As used in Section 13-8-6:

25 (1) "Construction contract" means a written agreement between the parties to perform or
26 superintend the construction of any residential or commercial construction project of:

27 (a) a single-family residence more than 6,000 finished square feet on one level;

28 (b) a multifamily residence of more than four units; or

29 (c) a building more than:

30 (i) three stories above ground; or

31 (ii) 10,000 square feet.

1 (2) "Contractor" means a person who, for compensation other than wages as an employee,
2 undertakes any work in a construction trade, as defined in Section 58-55-102, for which licensure
3 is required under Title 58, Occupations and Licensing, and includes:

4 (a) a person who builds any structure on the person's own property:

5 (i) for the purpose of sale; or

6 (ii) if the structure is intended for public use;

7 (b) any person who represents himself to be a contractor by advertising or any other
8 means;

9 (c) any person engaged as a maintenance person who regularly engages in activities set
10 forth in Section 58-55-102 as a construction trade; or

11 (d) a construction manager who performs management and counseling services on a
12 construction project for a fee.

13 (3) "Original contractor" is as provided in Section 38-1-2.

14 (4) "Owner" means the person who possesses title to the property.

15 (5) "Public agency" means any state agency or political subdivision of the state that:

16 (a) enters into a construction contract; or

17 (b) issues a permit to build or to occupy a newly constructed or remodeled building.

18 (6) "Retention payment" means release of retention proceeds as defined in Subsection (7).

19 (7) "Retention proceeds" means monies earned by a contractor or subcontractor but
20 retained by the owner or public agency to guarantee total completion of the construction contract.

21 (8) "Subcontractor" is as defined in Section 38-1-2.

22 (9) "Successful party" has the same meaning as it does under Section 38-1-18.

23 Section 9. Section **13-8-6** is enacted to read:

24 **13-8-6. Limitation on retention proceeds withheld -- Deposit in interest-bearing**
25 **escrow account -- Release of proceeds -- Payment to subcontractors -- Penalty -- No waiver.**

26 (1) This section is applicable to all construction contracts relating to construction work or
27 improvements entered into on or after May 4, 1998, between:

28 (a) an owner or public agency and an original contractor;

29 (b) an original contractor and a subcontractor; and

30 (c) subcontractors under a contract described in Subsection (1)(a) or (b).

31 (2) (a) Notwithstanding Section 58-55-603, the retention proceeds withheld and retained

1 from any payment may not exceed 5% of the payment:

2 (i) by the owner or public agency to the original contractor;

3 (ii) by the original contractor to any subcontractor; or

4 (iii) by a subcontractor.

5 (b) The total retention proceeds withheld may not exceed 5% of the total construction
6 price.

7 (c) If the retention percentage between an owner and the original contractor is less than
8 5%, the percentage of the retention proceeds withheld and retained in a construction contract
9 between the original contractor and a subcontractor or between subcontractors shall be the same
10 retention percentage as between the owner and the original contractor.

11 (3) (a) If any payment on a contract with a private contractor, firm, or corporation to do
12 work for an owner or public agency is retained or withheld by the owner or the public agency, it
13 shall be placed in an interest-bearing account.

14 (b) The interest accrued under Subsection (3)(a) shall be:

15 (i) for the benefit of the contractor and subcontractors; and

16 (ii) paid after the project is completed and accepted by the owner or the public agency.

17 (c) The contractor shall ensure that any interest accrued on the retainage is distributed by
18 the contractor to subcontractors on a pro rata basis.

19 (4) Any retention proceeds retained or withheld pursuant to this section and any accrued
20 interest shall be released pursuant to a billing statement from the contractor within 45 days from
21 the later of:

22 (a) the date the owner or public agency receives the billing statement from the contractor;

23 (b) the date that a certificate of occupancy is issued to:

24 (i) the original contractor who obtained the building permit from the building inspector
25 or public agency;

26 (ii) the owner or architect; or

27 (iii) the public agency; or

28 (c) the date that a public agency or building inspector having authority to issue its own
29 certificate of occupancy does not issue the certificate but permits partial or complete occupancy
30 of a newly constructed or remodeled building.

31 (5) If only partial occupancy of a building is permitted, any retention proceeds withheld

1 and retained pursuant to this section and any accrued interest shall be partially released within 45
2 days under the same conditions as provided in Subsection (4) in direct proportion to the value of
3 the part of the building occupied.

4 (6) The billing statement from the contractor as provided in Subsection (4)(a) shall include
5 documentation of lien releases or waivers.

6 (7) (a) Notwithstanding Subsection (2), if a project or a portion of the project has been
7 substantially completed, the owner or public agency may retain up to twice the fair market value
8 of the work of the original contractor or of any subcontractor who has not completed their portion
9 of the work according to:

10 (i) the plans and specifications; or

11 (ii) in the absence of plans and specifications, to generally accepted craft standards.

12 (b) An owner or public agency that refuses payment under Subsection (7)(a) shall describe
13 in writing what portion of the work was not completed according to the standards specified in
14 Subsection (7)(a).

15 (8) (a) Except as provided in Subsection (8)(b), an original contractor or subcontractor
16 who receives retention proceeds shall pay each of its subcontractors from whom retention has been
17 withheld each subcontractor's share of the retention received within ten days from the day that all
18 or any portion of the retention proceeds is received:

19 (i) by the original contractor from the owner or public agency; or

20 (ii) by the subcontractor from:

21 (A) the original contractor; or

22 (B) a subcontractor.

23 (b) Notwithstanding Subsection (8)(a), if a retention payment received by the original
24 contractor is specifically designated for a particular subcontractor, payment of the retention shall
25 be made to the designated subcontractor.

26 (9) (a) In any action for the collection of the retained proceeds withheld and retained in
27 violation of this section, the successful party is entitled to:

28 (i) attorney's fees; and

29 (ii) other allowable costs.

30 (b) Any owner, public agency, original contractor, or subcontractor who knowingly and
31 wrongfully withholds a retention shall be subject to a charge of 2% per month on the improperly

1 withheld amount, in addition to any interest otherwise due. This charge shall be paid to the
2 contractor or subcontractor from whom the retention proceeds have been wrongfully withheld.

3 (10) It shall be against public policy for any party to require any other party to waive any
4 provision of this section.

5 Section 10. Section **17-5-232** is amended to read:

6 **17-5-232. County roads and airports -- Acquisition and control -- Retainage escrow.**

7 (1) They may contract for, purchase or otherwise acquire when necessary rights of way
8 for county roads over private property, and may institute proceedings for acquiring such rights of
9 way as provided by law, and lay out, construct, maintain, control and manage county roads,
10 sidewalks, ferries and bridges within the county, outside of incorporated cities, may designate the
11 county roads to be maintained by the county within or extending through any incorporated city or
12 town, which in no case shall be more than three in the same direction, and may abolish or abandon
13 such county roads as are unnecessary for the use of the public in the manner provided by law.
14 They may also lay out, construct, maintain, control and manage landing fields and hangars for the
15 use of airplanes or other vehicles for aerial travel anywhere within the county.

16 (2) If any payment on a contract with a private contractor to construct county roads,
17 sidewalks, ferries, and bridges under this section is retained or withheld, it shall be [~~placed in an~~
18 ~~interest bearing account and the interest shall accrue for the benefit of the contractor and~~
19 ~~subcontractors to be paid after the project is completed and accepted by the county executive. It~~
20 ~~is the responsibility of the contractor to ensure that any interest accrued on the retainage is~~
21 ~~distributed by the contractor to subcontractors on a pro rata basis] retained or withheld and
22 released as provided in Section 13-8-6.~~

23 Section 11. Section **17-5-237** is amended to read:

24 **17-5-237. Water and water rights -- Acquisition and control -- Retainage escrow.**

25 (1) They may purchase, receive by donation, or lease any real or personal property or
26 water rights necessary for the use of the county; may purchase or otherwise acquire the necessary
27 real estate upon which to sink wells to obtain water for sprinkling roads and for other county
28 purposes and may erect thereon pumping apparatus, tanks, and reservoirs for the obtaining and
29 storage of water for such purposes; may preserve, take care of, manage, and control the same; may
30 purchase, receive by donation, or lease any water rights or stock or rights in reservoirs or storage
31 companies or associations for the use of citizens of the county; may construct dams and canals for

1 the storage and distribution of such waters; and may fix the price for and sell such water, water
2 rights, stock, or rights in reservoir or storage companies or associations, with the dams and canals,
3 as are not required for public use to citizens of the county.

4 (2) If any payment on a contract with a private contractor to construct dams and canals
5 under this section is retained or withheld, it shall be [~~placed in an interest bearing account and the~~
6 ~~interest shall accrue for the benefit of the contractor and subcontractors to be paid after the project~~
7 ~~is completed and accepted by the county executive. It is the responsibility of the contractor to~~
8 ~~ensure that any interest accrued on the retainage is distributed by the contractor to subcontractors~~
9 ~~on a pro-rata basis]~~ retained or withheld and released as provided in Section 13-8-6.

10 Section 12. Section **17-5-239** is amended to read:

11 **17-5-239. Courthouse, jail, hospital, and other public buildings -- Acquisition and**
12 **control -- Retainage escrow.**

13 (1) They may erect, repair or rebuild, and furnish a courthouse, jail, hospital, and such
14 other public buildings as may be necessary, and join with cities and towns in the construction,
15 ownership, and operation of hospitals.

16 (2) If any payment on a contract with a private contractor to erect, repair, or rebuild public
17 buildings under this section is retained or withheld, it shall be [~~placed in an interest-bearing~~
18 ~~account and the interest shall accrue for the benefit of the contractor and subcontractors to be paid~~
19 ~~after the project is completed and accepted by the county executive. It is the responsibility of the~~
20 ~~contractor to ensure that any interest accrued on the retainage is distributed by the contractor to~~
21 ~~subcontractors on a pro-rata basis]~~ retained or withheld and released as provided in Section 13-8-6.

22 Section 13. Section **17-15-3** is amended to read:

23 **17-15-3. Repair, alteration, or construction of public buildings -- Contracts -- Bids**
24 **-- Payment and performance bonds -- Retainage escrow.**

25 (1) (a) Whenever the county legislative body considers the repair, alteration, or
26 construction of any courthouse, jail, hospital, or other public building to be paid for out of the
27 general funds of the county, the county executive shall require plans and specifications to be drawn
28 up and an estimate of the cost to be made. If the estimated cost exceeds \$25,000, the county may
29 not repair, alter, or construct any building except through contract let to the low responsive and
30 responsible bidder.

31 (b) All buildings for which the estimated cost exceeds \$25,000 shall be repaired, altered,

1 or constructed by contract let to the low responsive and responsible bidder after publication of
 2 notice at least once a week for three consecutive weeks in a newspaper of general circulation
 3 published in the county, or, if there is no such newspaper, then after posting such notice for at least
 4 20 days in at least five public places in the county.

5 (c) The county executive may reject any or all bids.

6 (d) In seeking bids and awarding a contract for the repair, alteration, or construction work,
 7 the county legislative body may elect to follow the provisions of Title 63, Chapter 56, Utah
 8 Procurement Code, as the county legislative body considers appropriate under the circumstances
 9 for specification preparation, source selection, or contract formation. The election may be made
 10 on a case-by-case basis, unless the county has previously adopted the Utah Procurement Code as
 11 permitted by Subsection 63-56-2(3)(e). If an election is made, it shall be done in an open meeting
 12 of the county legislative body and the portions of the Utah Procurement Code to be followed for
 13 the work under consideration shall be specified in the legislative body's action.

14 (e) This chapter may not be construed to prohibit the county legislative body from
 15 adopting the procedures of the Utah Procurement Code; however, an election to adopt the
 16 procedures of the code may not excuse the county from complying with the requirements to award
 17 a contract for work in excess of \$25,000 and to publish notice of the intent to award.

18 (f) The person to whom any contract to erect or repair buildings is awarded shall execute
 19 bonds under Sections 14-1-18 and 63-56-38.

20 (2) [(a)] Any payment on a contract with a private contractor to erect or repair buildings
 21 under this section that is retained or withheld shall be retained or withheld and released as provided in Section 13-8-6.
 22

23 ~~[(b) The interest shall accrue for the benefit of the contractor and subcontractors to be paid
 24 after the project is completed and accepted by the county executive.]~~

25 ~~[(c) The contractor shall ensure that any interest accrued on the retainage is distributed by
 26 the contractor to subcontractors on a pro rata basis.]~~

27 Section 14. Section **17A-2-328** is amended to read:

28 **17A-2-328. Powers of municipalities -- Collection -- System for collection, retention
 29 and disposition of storm and flood waters -- Power of district to make contracts -- Retainage
 30 escrow.**

31 (1) When any municipal corporation shall contract with any district operating under

1 Chapter 2, Part 3 for the supplying of sewage treatment or disposal service, or both, by such
2 district to such municipal corporation, such municipal corporation shall have authority to make
3 therefor such appropriate service charge to each party connected with its sewer system, as it shall
4 deem reasonable and proper. The municipal corporation shall also have the power to require
5 industrial and commercial establishments to pre-treat certain wastes and sewage when these wastes
6 and sewage would otherwise impose an unreasonable burden upon the collection system or the
7 treatment facility of the district. If such municipal corporation operates a waterworks system, the
8 charge aforesaid may be combined with the charge made for water furnished by the water system
9 and may be collected and the collection thereof secured in the same manner as that specified in
10 Section 10-8-38.

11 (2) Any improvement district acquiring a system for the collection, retention and
12 disposition of storm and flood waters shall have the power to contract with any one or more
13 municipal corporations or other political subdivisions or persons, firms or corporations, and each
14 such municipal corporation or other political subdivision or person, firm or corporation shall have
15 the power to contract with such improvement district for the collection by the district or municipal
16 corporation or other political subdivision, person, firm or corporation, of storm and flood waters
17 from such other contracting party or parties and to pay for such service, and any parties to any such
18 contract may agree to joint acquisition, ownership, construction, operation or maintenance, any
19 or all, of all or part of any such system. In exercising the power to acquire and operate such
20 system, a district may construct storm sewers, drainage channels, dams, dikes, levees, reservoirs
21 and other pertinent improvements.

22 (3) If any payment on a contract with a private person, firm, or corporation to construct
23 storm sewers, drainage canals, dams, dikes, levees, reservoirs, and other pertinent improvements
24 is retained or withheld, it shall be ~~[placed in an interest bearing account and the interest shall~~
25 ~~accrue for the benefit of the contractor and subcontractors to be paid after the project is completed~~
26 ~~and accepted by the board of trustees. It is the responsibility of the contractor to ensure that any~~
27 ~~interest accrued on the retainage is distributed by the contractor to subcontractors on a pro rata~~
28 ~~basis]~~ retained or withheld and released as provided in Section 13-8-6.

29 Section 15. Section 17A-2-531 is amended to read:

30 **17A-2-531. Bids for construction -- Contracts -- Payment and performance bonds**
31 **-- Retainage escrow.**

1 (1) After adopting a plan and making an estimate of the cost of any drainage canal or
2 canals, drains, drain ditches, and works, the board of supervisors shall give notice by publication
3 for at least 20 days in at least one newspaper published or having a general circulation in each of
4 the counties comprising the district, and in any other publication they deem advisable, calling for
5 bids for the construction of such work or of any portion of it. If less than the whole work is
6 advertised, then the portion so advertised shall be particularly described in such notice. Such
7 notice shall state:

8 (a) that plans and specifications can be seen at the office of the board of supervisors;

9 (b) that the board of supervisors will receive sealed proposals for the work;

10 (c) that the contract will be let to the lowest responsible bidder; and

11 (d) the time and place appointed for opening bids. The bids shall be opened in public, and
12 as soon as convenient thereafter the supervisors shall let the work, either in portions or as a whole,
13 to the lowest responsible bidder, or they may reject any or all bids. Contracts for the purchase of
14 material shall be awarded to the lowest responsible bidder. Any person or persons to whom a
15 contract is awarded shall provide the board with bonds under Sections 14-1-18 and 63-56-38. The
16 work shall be done under the direction and to the satisfaction of the engineer, and subject to the
17 approval of the board of supervisors. This section does not apply in the case of any contract with
18 the United States.

19 (2) If any payment on a contract with a private contractor for the construction of works
20 under this section is retained or withheld, it shall be ~~[placed in an interest bearing account and the~~
21 ~~interest shall accrue for the benefit of the contractor and subcontractors to be paid after the project~~
22 ~~is completed and accepted by the board of supervisors. It is the responsibility of the contractor to~~
23 ~~ensure that any interest accrued on the retainage is distributed by the contractor to subcontractors~~
24 ~~on a pro-rata basis] retained or withheld and released as provided in Section 13-8-6.~~

25 Section 16. Section **17A-2-1016** is amended to read:

26 **17A-2-1016. Powers of incorporated district -- Bidding -- Eminent domain.**

27 (1) As used in this section, "operator" means any city, public agency, person, firm, or
28 private corporation engaged in the transportation of passengers for hire.

29 (2) Any district incorporated under this part may:

30 (a) have perpetual succession;

31 (b) sue and be sued in all actions and proceedings and in all courts and tribunals of

- 1 competent jurisdiction;
- 2 (c) adopt a corporate seal and alter it at pleasure;
- 3 (d) levy and collect taxes only for paying:
 - 4 (i) the principal and interest of bonded indebtedness of the district; or
 - 5 (ii) any final judgment obtained against the district beyond the amount of any collectable
 - 6 insurance or indemnity policy if the district is required by final order of any court of competent
 - 7 jurisdiction to levy a tax to pay the judgment;
- 8 (e) take by grant, purchase, bequest, devise, or lease, and to hold, enjoy, lease, sell,
- 9 encumber, alien, or otherwise dispose of real or personal property of every kind within the district;
- 10 (f) make contracts and enter into stipulations of any nature, including contracts and
- 11 stipulations:
 - 12 (i) to indemnify and save harmless; [and]
 - 13 (ii) to do all acts to exercise the powers granted in this part; and
 - 14 (iii) with any department or agency of the United States of America, of the state, or with
 - 15 any public agency or private person, firm, or corporation upon terms and conditions the board of
 - 16 directors finds are in the best interests of the district;
- 17 (g) (i) insure against:
 - 18 (A) loss of revenues from accident or destruction of the system or any part of the system,
 - 19 from any cause whatsoever; or
 - 20 (B) public liability or property damage, or against all other types of events, acts, or
 - 21 omissions; and
 - 22 (ii) provide in the proceedings authorizing the issuance of any bonds for the carrying of
 - 23 any other insurance, in an amount and of such character as may be specified, and for the payment
 - 24 of the premiums on the insurance;
- 25 (h) provide a public transit system for the transportation of passengers and their incidental
- 26 baggage;
- 27 (i) purchase all supplies, equipment, and materials;
- 28 (j) construct facilities and works, but when the expenditure required exceeds \$25,000
- 29 construction shall be let by contract to the lowest responsible bidder or proposer;
- 30 (k) acquire, contract for, lease, construct, own, operate, control, or use rights-of-way, rail
- 31 lines, monorails, bus lines, stations, platforms, switches, yards, terminals, parking lots, any

1 facilities necessary or convenient for public transit service, and all structures necessary for access
2 by persons and vehicles;

3 (l) hire, lease, or contract for the supplying of, or management of, any facilities,
4 operations, equipment, services, employees, or management staff of any operator and provide for
5 subleases or subcontracts by the operator upon terms that are in the public interest; and

6 (m) operate feeder bus lines and other feeder services as necessary.

7 (3) (a) Bids or proposals shall be advertised through public notice as determined by the
8 board.

9 (b) The notice may include publication in a newspaper of general circulation in the district,
10 trade journal, or other method determined by the board at least once and not less than ten days
11 prior to the expiration of the period within which bids or proposals are received.

12 (c) The board may reject any and all bids or proposals and readvertise or give renote at
13 its discretion.

14 (d) If, after rejecting bids or proposals, the board determines and declares by vote of
15 two-thirds of all its members present that in its opinion the supplies, equipment, and materials may
16 be purchased at a lower price in the open market, the board may proceed to purchase the same in
17 the open market without further observance of the provisions requiring contracts, bids or
18 proposals, advertisement, or notice.

19 (e) Contracts, in writing or otherwise, may be let without advertising for or inviting bids
20 when any repairs, alterations, or other work or the purchase of materials, supplies, equipment, or
21 other property is found by the board upon a two-thirds vote of its members present to be of urgent
22 necessity, or where the general manager certifies by affidavit that there is only one source for the
23 required supplies, equipment, and materials, or construction items.

24 (f) If any payment on a contract with a private contractor to construct facilities under this
25 section is retained or withheld, it shall be ~~[placed in an interest bearing account and the interest~~
26 ~~shall accrue for the benefit of the contractor and subcontractors to be paid after the project is~~
27 ~~completed and accepted by the board]~~ retained or withheld and released as provided in Section
28 13-8-6.

29 ~~[(g) It is the responsibility of the contractor to ensure that any interest accrued on the~~
30 ~~retainage is distributed by the contractor to subcontractors on a pro rata basis.]~~

31 (4) (a) Installations in state highways or freeways are subject to the approval of the

1 Department of Transportation.

2 (b) It is presumed that the use of the streets, roads, highways, and other public places by
3 the district for any of the purposes permitted in this section constitutes no greater burden on
4 adjoining properties than the uses existing on July 9, 1969.

5 (c) If facilities, other than state highways or freeways referred to in Subsection (2),
6 including streets, roads, highways, pipelines, sewers, water mains, storm drains, poles, and
7 communications wires of another public agency of the state, or of a private owner must be
8 relocated, replaced, or altered in order for the district to construct or operate its system, or to
9 preserve and maintain already constructed district facilities, the facilities shall be relocated,
10 replaced, or altered with reasonable promptness by the respective public corporation, state, or
11 private owner and the district shall by prior agreement reimburse the public corporation, state, or
12 private owner for the reasonable cost incurred in relocation, replacement, or alteration.

13 (d) The district may enter into an agreement with any city or county having jurisdiction
14 over the street, road, or highway involved and, as may be provided by agreement, close any city
15 street or county road at or near the point of its interception with any district facility or provide for
16 carrying the city street or county road over or under or to a connection with the district facility and
17 may do any and all work on the city street or county road as is necessary. A city street or county
18 road may not be closed directly or indirectly by the construction of district facilities except:

- 19 (i) pursuant to agreement; or
- 20 (ii) while temporarily necessary during the construction of district facilities.

21 (5) The state, a municipality, or a county may acquire private property interests by eminent
22 domain pursuant to Title 78, Chapter 34, Eminent Domain, including fee simple, easements, air
23 rights, rights-of-way, and other private property interests necessary to the establishment and
24 operation of a public transit district.

25 Section 17. Section **17A-3-209** is amended to read:

26 **17A-3-209. Payment of contracts -- Progress payments -- Retainage escrow.**

27 (1) (a) Any contract for work in any special improvement district and any contract for the
28 purchase or exchange of property necessary to be acquired in order to make improvements in any
29 special improvement district may provide that the contract price or property price shall be paid,
30 or, at the option of the governing entity, may be paid, in whole or in part, by the issuance of special
31 improvement bonds issued against the funds created by assessments levied to pay the costs and

1 expenses of improvements in the special improvement district or by interim warrants issued as
2 authorized by this part at the time the special improvement bonds or interim warrants, as the case
3 may be, may be legally issued and delivered. If any contract is not paid from these sources in
4 whole or in part, or if paid in part, to the extent not so paid from these sources, the governing entity
5 shall be responsible for advancing funds for payment of the contract price or property price from
6 the general funds of the governing entity or from other funds legally available for this purpose as
7 provided in the contract.

8 (b) From the proceeds of the sale of interim warrants or special improvement bonds, or
9 from funds paid on assessments not pledged for the payment of the bonds or warrants, the
10 governing entity may reimburse itself for the amount paid from its general funds or other funds,
11 except that the governing entity may not reimburse itself for any of the costs of making the
12 improvements properly chargeable to the governing entity for which assessments may not be
13 levied.

14 (2) Any contract for work in a special improvement district may provide for payments to
15 the contractor as the work progresses. If the contract so provides, payments may be made from
16 time to time to the extent of not to exceed [90%] 95% of the value of the work done to the date of
17 payment, as determined by estimates of the project engineer, with final payment to be made only
18 after completion of the work by the contractor and acceptance of the work by the governing entity.
19 If moneys payable to the contractor as the work progresses are retained [~~pursuant to this~~
20 ~~subsection~~], they shall be [~~placed in an interest-bearing account and the interest shall accrue for~~
21 ~~the benefit of the contractor and subcontractors. It is the responsibility of the contractor to ensure~~
22 ~~that any interest accrued on the retainage is distributed by the contractor to subcontractors on a pro~~
23 ~~rata basis~~] retained or withheld and released as provided in Section 13-8-6.

24 Section 18. Section **17A-3-309** is amended to read:

25 **17A-3-309. Payment of contracts.**

26 (1) (a) Any contract for work in any special improvement district, and any contract for the
27 purchase of property that must be acquired in order to make improvements in any special
28 improvement district, may provide that the contract price or property price shall be paid, or, at the
29 option of the municipality, may be paid, in whole or in part, from:

- 30 (i) proceeds of the sale of special improvement bonds issued as provided in this part; or
31 (ii) proceeds of the sale of interim warrants issued as authorized by this part.

1 (b) If any contract is not paid from those sources in whole or in part or, if paid in part, to
2 the extent that it is not paid from those sources, the municipality shall advance funds for payment
3 of the contract price or property price from the general fund of the municipality or from other
4 funds legally available, according to the requirements of the contract.

5 (c) The municipality may reimburse itself for the amount paid from its general fund or
6 other funds from:

- 7 (i) the proceeds of the sale of interim warrants;
- 8 (ii) the proceeds of the sale of special improvement bonds;
- 9 (iii) funds paid on assessments that are not pledged for the payment of the bonds or
10 warrants; or
- 11 (iv) improvement revenues not pledged for the payment of the bonds or warrants.

12 (d) The municipality may not reimburse itself for any of the costs of making the
13 improvements that are properly chargeable to the municipality or for which assessments may not
14 be levied.

15 (2) (a) Any contract for work in a special improvement district may provide for payments
16 to the contractor as the work progresses.

17 (b) When the contract provides for periodic payments, payments may be made as follows:

- 18 (i) periodic payments not to exceed [90%] 95% of the value of the work done to the date
19 of payment as determined by estimates of the engineer for the municipality; and
- 20 (ii) a final payment to be made only after completion of the work by the contractor and
21 acceptance of the work by the municipality.

22 (c) [(†)] Any payment on a contract that is retained shall be [placed in an interest bearing
23 account] retained or withheld and released as provided in Section 13-8-6.

24 [(ii) The interest shall accrue for the benefit of the contractor and subcontractors.]

25 [(iii) The contractor shall ensure that any interest accrued on the retainage is distributed
26 by the contractor to subcontractors on a pro rata basis.]

27 Section 19. Section **27-12-108** is amended to read:

28 **27-12-108. Construction or improvement of highway -- Contracts -- Retainage**
29 **escrow.**

30 (1) (a) The department shall make plans, specifications, and estimates preparatory to the
31 construction or improvement of any state highway.

1 (b) Except for construction or improvements performed with state prison labor, a
2 construction or improvement project with an estimated cost exceeding \$40,000 for labor and
3 materials shall be performed under contract awarded to the lowest responsible bidder.

4 (c) The advertisement for bids shall be published in a newspaper of general circulation in
5 the county in which the work is to be performed, at least once a week for two consecutive weeks,
6 last publication to be at least ten days before bids are opened.

7 (d) Sealed bids shall be received by the department and opened at the time and place
8 designated in the advertisement and the contract awarded; however, the department may reject any
9 and all bids.

10 (e) If the estimates are substantially lower than any responsible bid received, the
11 department may perform any work by force account.

12 (2) ~~[(a)]~~ If any payment on a contract with a private contractor for construction or
13 improvement of state highways is retained or withheld, it shall be ~~[placed in an interest bearing~~
14 ~~account and the interest shall accrue for the benefit of the contractor and subcontractors to be paid~~
15 ~~after the project is completed and accepted by the department]~~ retained or withheld and released
16 as provided in Section 13-8-6.

17 ~~[(b) The contractor shall ensure that any interest accrued on the money retained is~~
18 ~~distributed by the contractor to subcontractors on a pro rata basis.]~~

19 Section 20. Section **27-12-108.1** is amended to read:

20 **27-12-108.1. Class B and C roads -- Improvement projects -- Contracts -- Retainage**
21 **escrow.**

22 (1) The county executive of the counties with respect to class B roads and the governing
23 officials of the cities and towns with respect to class C roads shall cause to be made plans,
24 specifications, and estimates preparatory to the construction of any improvement project, as
25 defined in Section 27-12-108.2, on a class B or C road; the estimated cost of which for any one
26 project exceeds the bid limit for labor, equipment, and materials. All projects in excess of the bid
27 limit shall be performed under contract to be let to the lowest responsible bidder. Whenever the
28 estimated cost of the improvement project exceeds the bid limit for labor, equipment, and
29 materials, the same shall not be so divided as to permit the construction in several parts, except by
30 contract. The advertisement on bids for such work shall be published in a newspaper of general
31 circulation in the county in which such work is to be performed at least once a week for three

1 consecutive weeks, or if there is no such newspaper, then after posting such notice for at least 20
2 days in at least five public places in the county. Sealed bids shall be received by the county
3 executive or governing officials, as the case may be, and opened at the time and place designated
4 in the advertisement, and the contract awarded; provided, that the county executive or governing
5 officials, as the case may be, shall have the right to reject any and all bids; provided further, that
6 the person, firm or corporation to whom any such contract is awarded shall be subject to all the
7 provisions of Title 63, Chapter 56, Utah Procurement Code.

8 (2) If any payment on a contract with a private contractor for construction or improvement
9 of class B and C roads is retained or withheld, it shall be ~~[placed in an interest-bearing account and~~
10 ~~the interest shall accrue for the benefit of the contractor and subcontractors to be paid after the~~
11 ~~project is completed and accepted by the governing officials of the county, city, or town. It is the~~
12 ~~responsibility of the contractor to ensure that any interest accrued on the retainage is distributed~~
13 ~~by the contractor to subcontractors on a pro rata basis]~~ retained or withheld and released as
14 provided in Section 13-8-6.

15 Section 21. Section ~~38-1-2~~ is amended to read:

16 **38-1-2. "Contractors" and "subcontractors" defined.**

17 ~~[Whoever shall do]~~ Any person who does work or ~~[furnish]~~ furnishes materials by contract,
18 express or implied, with the owner, as provided in this chapter ~~[provided]~~, shall be ~~[deemed]~~
19 considered an original contractor, and all other persons doing work or furnishing materials shall
20 be ~~[deemed]~~ considered subcontractors.

21 Section 22. Section ~~58-55-602~~ is amended to read:

22 **58-55-602. Payment of construction funds -- Interest.**

23 (1) ~~[Except as otherwise may be agreed to in writing between the parties, all]~~ All unpaid
24 construction funds are payable to the contractor ~~[within 30 days after:]~~ as provided in Section
25 13-8-6.

26 ~~[(a) occupancy by the owner or by a party acting through authority of the owner; or]~~

27 ~~[(b) the availability of a constructed or remodeled building for its intended use.]~~

28 ~~[(2) Construction funds, except those withheld on account of disputed or uncompleted~~
29 ~~items by the owner or the owner's representative, not paid within the time established in~~

30 ~~Subsection (1) shall accrue interest at the rate of 1% per month. The owner may withhold payment~~
31 ~~for the amount of any disputed or uncompleted items and may require, as a condition to payment~~

1 of any amount under the construction contract, that lien waivers be furnished by the contractor's
2 subcontractors, suppliers, or employees. The owner may also at his option issue joint checks. No
3 payment may be withheld unless the contractor is notified, in writing, at the time of withholding
4 the payment as to any disputed item.]

5 ~~[(3)]~~ (2) On projects involving multiple buildings, each building shall be considered
6 individually in determining the amount to be paid the contractor.

7 ~~[(4)]~~ (3) Partial occupancy of a building requires payment in direct proportion to the value
8 of the part of the building occupied.

9 (4) If any payment is retained or withheld, it shall be retained or withheld and released as
10 provided in Section 13-8-6.

11 ~~[(5)]~~ Any money paid the contractor under Subsection (1), including interest, shall be
12 disbursed to subcontractors and suppliers within 30 days after receipt of that money. Payment by
13 the contractor shall be in direct proportion to the subcontractors' and suppliers' basis in the total
14 contract between the contractor and the owner.]

15 Section 23. Section **63-56-3** is amended to read:

16 **63-56-3. Exemptions from chapter -- Compliance with federal law.**

17 (1) This chapter is not applicable to funds administered under the Percent-for-Art Program
18 of the Utah Percent-for-Art Act.

19 (2) This chapter is not applicable to grants awarded by the state or contracts between the
20 state and local public procurement units except as provided in Part I of this chapter.

21 (3) This chapter shall not prevent the state or a local public procurement unit from
22 complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent
23 with law.

24 (4) When a procurement involves the expenditure of federal assistance or contract funds,
25 the chief procurement officer or head of a purchasing agency shall comply with mandatory
26 applicable federal law and regulations not reflected in this chapter.

27 (5) This chapter may not supersede the requirements for retention or withholding of
28 construction proceeds and release of construction proceeds as provided in Section 13-8-6.

29 Section 24. Section **63A-5-205** is amended to read:

30 **63A-5-205. Contracting powers of director -- Retainage escrow.**

31 (1) In accordance with Title 63, Chapter 56, Utah Procurement Code, the director:

1 (a) may enter into contracts for any work or professional services which the division or
2 the State Building Board may do or have done;

3 (b) may, as a condition of any contract for architectural or engineering services, prohibit
4 the architect or engineer from retaining a sales or agent engineer for the necessary design work;

5 (c) shall let to the lowest responsible and qualified bidder any contract, except those for
6 professional services.

7 (2) The judgment of the director as to the responsibility and qualifications of a bidder is
8 conclusive, except in case of fraud or bad faith.

9 (3) If any payment on a contract with a private contractor to do work for the division or
10 the State Building Board is retained or withheld, it shall be [~~placed in an interest bearing account
11 and the interest shall accrue for the benefit of the contractor and subcontractors to be paid after the
12 project is completed and accepted by the director. The contractor shall ensure that any interest
13 accrued on the retainage is distributed by the contractor to subcontractors on a pro rata basis]~~
14 retained or withheld and released as provided in Section 13-8-6.

15 Section 25. Section **73-10-8** is amended to read:

16 **73-10-8. Water Resources Construction Fund -- Creation and contents of fund -- Use**
17 **-- Investigation Account created -- Interest -- Retainage escrow -- Loans and grants for dam**
18 **safety work.**

19 (1) There is created the Water Resources Construction Fund, which consists of:

20 (a) money appropriated or otherwise made available to it by the Legislature;

21 (b) money from the sale or management of the 500,000 acres of land selected for the
22 establishment of reservoirs under Section 12 of the Utah Enabling Act;

23 (c) charges assessed against water and power users pursuant to Section 73-10-6; and

24 (d) interest accrued pursuant to Subsection (5).

25 (2) The board may authorize the use of money in the fund for the following purposes:

26 (a) to develop water conservation projects, including paying the costs of construction,
27 engineering, investigation, inspection, and other related expenses;

28 (b) to provide loans and grants to dam owners to conduct dam safety studies;

29 (c) to provide loans and grants to dam owners:

30 (i) to upgrade dams in conformance with the minimum standards established by the state
31 engineer in rules; or

1 (ii) for nonstructural solutions developed to meet minimum standards or lower hazard
2 ratings that are approved by the state engineer, including the purchase of habitable structures,
3 purchase of flood easements, and installation of early warning systems; or

4 (d) as otherwise provided by law.

5 (3) The board may provide for the repayment of the costs of investigation, engineering,
6 and inspection out of the first monies to be paid under a contract for the construction of a water
7 project. Those monies repaid shall be deposited into a subaccount within the Water Resources
8 Construction Fund known as the Investigation Account, to be used by the board for the purpose
9 of making investigations for the development and use of the water resources of the state.

10 (4) Contributions of money, property, or equipment may be received from any political
11 subdivision of the state, federal agency, water users' association, person, or corporation for use in
12 making investigations, constructing projects, or otherwise carrying out the purposes of this section.

13 (5) All monies deposited into the Water Resources Construction Fund shall be invested
14 by the state treasurer with interest accruing to the Water Resources Construction Fund.

15 (6) ~~[(a)]~~ If any payment on a contract with a private contractor to construct a project
16 funded by the Water Resources Construction Fund is retained or withheld, it shall be ~~[placed in~~
17 ~~an interest-bearing account. The interest shall accrue for the benefit of the contractor and~~
18 ~~subcontractors. The payment with interest shall be made after the project is completed and~~
19 ~~accepted by the board]~~ retained or withheld and released as provided in Section 13-8-6.

20 ~~[(b) It is the responsibility of the contractor to ensure that any interest accrued on the~~
21 ~~retainage is distributed by the contractor to subcontractors on a pro rata basis.]~~

22 (7) Loans to dam owners for dam safety studies and to upgrade dams in conformance with
23 minimum standards shall be secured by taking water rights associated with the dam.

24 (8) The following restrictions apply to any grant made to a dam owner for a dam safety
25 study:

26 (a) only a nonprofit mutual irrigation company or a water users association is eligible to
27 receive a grant;

28 (b) the dam safety study shall be required by the state engineer pursuant to Section
29 73-5a-503; and

30 (c) the amount of any grant shall be limited to up to 50% of the costs of the dam safety
31 study.

1 (9) (a) The board may provide grants to mutual irrigation companies and water users
2 associations to upgrade dams in conformance with minimum standards of the state engineer. Each
3 grant authorized by the board for the upgrade of a dam of a mutual irrigation company or water
4 users association in conformance with the minimum standards shall be sufficient to pay for 80%
5 of the costs to upgrade the dam.

6 (b) (i) Pursuant to guidelines specified in Subsection (9)(b)(ii), the board may provide
7 loans or grants, or both, to entities other than mutual irrigation companies and water users
8 associations to upgrade dams in conformance with minimum standards of the state engineer.

9 (ii) In determining the type of financial assistance to be provided to an entity other than
10 a mutual irrigation company or water users association, the board shall consider the dam owner's
11 ability to pay and may consider other factors including:

- 12 (A) the degree of hazard;
- 13 (B) the threat to public safety;
- 14 (C) the state engineer's priority list of dams;
- 15 (D) the cost effectiveness of the restoration;
- 16 (E) the number of potential and actual applications for financial assistance; and
- 17 (F) the funds available.

18 (10) The amount of money in the fund that may be used for grants for dam safety studies
19 shall be limited to the amount of money appropriated to the fund for that purpose.

20 (11) The board shall consult with the state engineer in establishing a priority list of dams
21 to be upgraded with money in the fund.

22 (12) A dam owner who has initiated or completed construction approved by the state
23 engineer to upgrade the dam in conformance with minimum standards may apply for a grant or
24 loan from the board as reimbursement for those construction expenditures.

25 Section 26. Section **73-10-27** is amended to read:

26 **73-10-27. Project priorities -- Considerations -- Determinations of feasibility -- Bids**
27 **and contracts -- Definitions -- Retainage escrow.**

28 (1) In considering the priorities for projects to be built with funds made available under
29 Section 73-10-24, the board shall give preference to those projects which:

- 30 (a) are sponsored by the state or a political subdivision of the state;
- 31 (b) meet a critical local need;

1 (c) have greater economic feasibility;

2 (d) will yield revenue to the state within a reasonable time or will return a reasonable rate
3 of interest, based on financial feasibility; and

4 (e) meet other considerations deemed necessary by the board, including, but not limited
5 to, wildlife management and recreational needs.

6 (2) In determining the economic feasibility the board shall establish a benefit-to-cost ratio
7 for each project, using a uniform standard of procedure for all projects. In considering whether
8 a project should be built, the benefit-to-cost ratio for each project shall be weighted based on the
9 relative cost of the project. A project, when considered in total with all other projects constructed
10 under this chapter and still the subject of a repayment contract, may not cause the accumulative
11 benefit-to-cost ratio of the projects to be less than one to one.

12 (3) Under no circumstances may a project be built that is not in the public interest as
13 determined by the Board of Water Resources, and no project may be built which is not adequately
14 designed based on sound engineering and geologic considerations.

15 (4) The board in the preparation of a project for construction shall comply with the
16 following:

17 (a) All flood control projects involving cities and counties costing in excess of \$35,000,
18 and all contracts for the construction of a storage reservoir in excess of 100 acre-feet or for the
19 construction of a hydroelectric generating facility, shall be awarded on the basis of competitive
20 bid. Advertisement for competitive bids shall be published by the board at least once a week for
21 three consecutive weeks in a newspaper with general circulation in the state. The advertisement
22 shall indicate that the board will award the contract to the lowest responsible bidder but that it
23 reserves to itself the right to reject any and all bids. The date of last publication shall appear at
24 least five days before the scheduled bid opening.

25 (b) If all initial bids on the project are rejected, the board shall readvertise the project in
26 the manner specified in Subsection (4)(a). If no satisfactory bid is received by the board upon the
27 readvertisement of the project, it may proceed to construct the project but only in accordance with
28 the plans and specifications used to calculate the estimated cost of the project.

29 (c) The board shall keep an accurate record of all facts and representations relied upon in
30 preparing its estimated cost for any project which is subject to the competitive bidding
31 requirements of this section.

1 (d) For the purposes of this Subsection (4):

2 (i) "Estimated cost" means the cost of all labor, material, and equipment necessary for
3 construction of the contemplated project.

4 (ii) "Lowest responsible bidder" means any licensed contractor who submits the lowest
5 bid, whose bid is in compliance with the invitation for bids, whose bid meets the plans and
6 specifications, and who furnishes bonds under Sections 14-1-18 and 63-56-38.

7 (5) If any payment on a contract with a private contractor for construction of projects
8 under this section is retained or withheld, it shall be [~~placed in an interest bearing account and the
9 interest shall accrue for the benefit of the contractor and subcontractors to be paid after the project
10 is completed and accepted by the board. It is the responsibility of the contractor to ensure that any
11 interest accrued on the retainage is distributed by the contractor to subcontractors on a pro rata
12 basis] retained or withheld and released as provided in Section 13-8-6.~~

Legislative Review Note

as of 2-4-98 12:27 PM

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

Office of Legislative Research and General Counsel