

1 **RETENTION PROCEEDS FOR CONSTRUCTION**
2 **PROJECTS**

3 1999 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Susan J. Koehn**

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 BE
9 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; ADDRESSING PERIODIC
13 PAYMENTS; AND MAKING TECHNICAL CHANGES.

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

15 AMENDS:

16 **10-7-20**, as last amended by Chapter 270, Laws of Utah 1998

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 last amended by Chapter 16, Laws of Utah 1998

- 28 **17A-2-531**, as renumbered and amended by Chapter 186, Laws of Utah 1990
- 29 **17A-2-1016**, as last amended by Chapter 120, Laws of Utah 1994
- 30 **17A-3-209**, as renumbered and amended by Chapter 186, Laws of Utah 1990
- 31 **17A-3-309**, as renumbered and amended by Chapter 186, Laws of Utah 1990
- 32 **38-1-2**, Utah Code Annotated 1953
- 33 **58-55-602**, as renumbered and amended by Chapter 181, Laws of Utah 1994
- 34 **63-56-3**, as last amended by Chapter 232, Laws of Utah 1993
- 35 **63A-5-205**, as last amended by Chapter 99, Laws of Utah 1998
- 36 **72-6-107**, as renumbered and amended by Chapter 270, Laws of Utah 1998
- 37 **72-6-108**, as renumbered and amended by Chapter 270, Laws of Utah 1998
- 38 **73-10-8**, as last amended by Chapter 264, Laws of Utah 1996
- 39 **73-10-27**, as last amended by Chapter 218, Laws of Utah 1987

40 ENACTS:

41 **13-8-5**, Utah Code Annotated 1953

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

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

44 **10-7-20. Definition -- Necessity for contract -- Call for bids -- Acceptance or rejection**
45 **-- Retainage escrow.**

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

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

50 (b) is the low bidder;

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

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

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

58 (b) If the estimated cost of the improvement is less than \$25,000, the city or town may

59 make the improvement without calling for bids for making the same.

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

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

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

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

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

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

75 (3) ~~[(a)]~~ If any payment on a contract with a private person, firm, or corporation is retained
76 or withheld, it shall be ~~[placed in an interest-bearing account and the interest shall accrue for the~~
77 ~~benefit of the contractor and subcontractors to be paid after the project is completed and accepted~~
78 ~~by the board of commissioners or city council of the city, or the board of trustees of the town]~~
79 retained or withheld and released as provided in Section 13-8-5.

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

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

86 (b) Work excluded under this Subsection (4) shall comply with Section 72-6-108 as
87 applicable.

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

89 **10-8-14. Water, sewer, gas, electricity, telephone and public transportation -- Service**

90 **beyond city limits -- Retainage escrow.**

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

97 (2) If any payment on a contract with a private person, firm, or corporation to construct
98 waterworks, sewer collection, sewer treatment systems, gas works, electric light works, telephone
99 lines, or public transportation systems is retained or withheld, it shall be [~~placed in an interest
100 bearing account and the interest shall accrue for the benefit of the contractor and subcontractors
101 to be paid after the project is completed and accepted by the board of commissioners or city
102 council of the city. It is the responsibility of the contractor to ensure that any interest accrued on
103 the retainage is distributed by the contractor to subcontractors on a pro rata basis~~] retained or
104 withheld and released as provided in Section 13-8-5.

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

106 **10-8-18. Acquisition of water sources -- Retainage escrow.**

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

113 (2) If any payment on a contract with a private person, firm, or corporation to construct
114 canals, ditches, artesian wells, or reservoirs is retained or withheld, it shall be [~~placed in an interest
115 bearing account and the interest shall accrue for the benefit of the contractor and subcontractors
116 to be paid after the project is completed and accepted by the board of commissioners or city
117 council of the city. It is the responsibility of the contractor to ensure that any interest accrued on
118 the retainage is distributed by the contractor to subcontractors on a pro rata basis~~] retained or
119 withheld and released as provided in Section 13-8-5.

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

121 **10-8-20. Lighting works -- Contracts -- Retainage escrow.**

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

126 (2) If any payment on a contract with a private person, firm, or corporation to construct
 127 gas works, electric or other lighting works within the city is retained or withheld, it shall be [~~placed~~
 128 ~~in an interest bearing account and the interest shall accrue for the benefit of the contractor and~~
 129 ~~subcontractors to be paid after the project is completed and accepted by the board of~~
 130 ~~commissioners or city council of the city. It is the responsibility of the contractor to ensure that any~~
 131 ~~interest accrued on the retainage is distributed by the contractor to subcontractors on a pro rata~~
 132 ~~basis]~~ retained or withheld and released as provided in Section 13-8-5.

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

134 **10-8-37. Construction, repair, and maintenance of bridges, viaducts, and tunnels --**
 135 **Retainage escrow.**

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

138 (2) If any payment on a contract with a private person, firm, or corporation to construct
 139 bridges, viaducts, or tunnels is retained or withheld, it shall be [~~placed in an interest bearing~~
 140 ~~account and the interest shall accrue for the benefit of the contractor and subcontractors to be paid~~
 141 ~~after the project is completed and accepted by the board of commissioners or city council of the~~
 142 ~~city. It is the responsibility of the contractor to ensure that any interest accrued on the retainage is~~
 143 ~~distributed by the contractor to subcontractors on a pro rata basis]~~ retained or withheld and released
 144 as provided in Section 13-8-5.

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

146 **10-8-38. Drainage and sewage systems -- Construction regulation and control --**
 147 **Retainage escrow -- Mandatory hookup -- Charges for use -- Collection of charges -- Service**
 148 **to tenants -- Failure to pay for service -- Service outside municipality.**

149 (1) (a) Boards of commissioners, city councils and boards of trustees of cities and towns
 150 may construct, reconstruct, maintain and operate, sewer systems, sewage treatment plants, culverts,
 151 drains, sewers, catch basins, manholes, cesspools and all systems, equipment and facilities

152 necessary to the proper drainage, sewage and sanitary sewage disposal requirements of the city or
153 town and regulate the construction and use thereof.

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

163 (2) (a) Any city or town may, for the purpose of defraying the cost of construction,
164 reconstruction, maintenance or operation of any sewer system or sewage treatment plant, provide
165 for mandatory hookup where the sewer is available and within 300 feet of any property line with
166 any building used for human occupancy and make a reasonable charge for the use thereof. In order
167 to enforce the mandatory hookup to the sewer where available and the collection of any such
168 charge, any city or town operating a waterworks system may make one charge for the combined
169 use of water and the services of the sewer system, including the services of any sewage treatment
170 plant operated by the city or town and may provide by ordinance that application for service from
171 such combined system shall be made in writing, signed by the owner desiring such service or his
172 authorized agent, in which application such owner shall agree that he will pay for all service
173 furnished such owner according to the rules and regulations enacted in the ordinance of such city
174 or town.

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

181 (c) In case any person shall fail to hookup to the sewer where available and in case any
182 applicant shall fail to pay for the service furnished according to the rules and regulations prescribed

183 by the ordinances of such city or town, then the city or town may cause the water to be shut off
 184 from such premises and shall not be required to turn the same on again until such person has
 185 hooked up to the sewer at his own expense or all arrears for service furnished shall be paid in full.

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

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

190 **10-8-71. Waterworks -- Police and fire signals -- Retainage escrow.**

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

195 (2) If any payment on a contract with a private person, firm, or corporation to construct
 196 all or part of any waterworks system is retained or withheld, it shall be ~~[placed in an interest~~
 197 ~~bearing account and the interest shall accrue for the benefit of the contractor and subcontractors~~
 198 ~~to be paid after the project is completed and accepted by the board of commissioners or city~~
 199 ~~council of the city, or by the board of trustees of the town. It is the responsibility of the contractor~~
 200 ~~to ensure that any interest accrued on the retainage is distributed by the contractor to subcontractors~~
 201 ~~on a pro-rata basis]~~ retained or withheld and released as provided in Section 13-8-5.

202 Section 8. Section **13-8-5** is enacted to read:

203 **13-8-5. Definitions -- Limitation on retention proceeds withheld -- Deposit in**
 204 **interest-bearing escrow account -- Release of proceeds -- Payment to subcontractors --**
 205 **Penalty -- No waiver.**

206 (1) As used in this section:

207 (a) § (i) § "Construction contract" means a written agreement between the parties relative to the
 208 design, construction, alteration, repair, or maintenance of a building, structure, highway,
 209 appurtenance, appliance, or other improvements to real property, including moving, demolition,
 210 and excavating **h FOR NON-RESIDENTIAL h COMMERCIAL h OR INDUSTRIAL CONSTRUCTION**
 210a **PROJECTS h . § (ii) IF THE CONSTRUCTION CONTRACT IS FOR CONSTRUCTION OF A PROJECT**
 210b **THAT IS PART RESIDENTIAL AND PART NON-RESIDENTIAL, THIS SECTION APPLIES ONLY TO**
 210c **THAT**
 210d **PORTION OF THE CONSTRUCTION PROJECT THAT IS NON-RESIDENTIAL AS DETERMINED**
 210e **PRO-RATA BASED ON THE PERCENTAGE OF THE TOTAL SQUARE FOOTAGE OF THE PROJECT**
 210e **THAT IS NON-RESIDENTIAL. §**

211 (b) "Contractor" means a person who, for compensation other than wages as an employee,
 212 undertakes any work in a construction trade, as defined in Section 58-55-102 and includes:

213 (i) any person engaged as a maintenance person who regularly engages in activities set

214 forth in Section 58-55-102 as a construction trade; or

215 (ii) a construction manager who performs management and counseling services on a
216 construction project for a fee.

217 (c) "Original contractor" is as provided in Section 38-1-2.

218 (d) "Owner" means the person who holds any legal or equitable title or interest in property.

219 (e) "Public agency" means any state agency or political subdivision of the state that enters
220 into a construction contract for an improvement of public property.

221 (f) "Retention payment" means release of retention proceeds as defined in Subsection
222 (1)(g).

223 (g) "Retention proceeds" means monies earned by a contractor or subcontractor but
224 retained by the owner or public agency pursuant to the terms of a construction contract to
225 guarantee ~~h~~ [total completion] PAYMENT OR PERFORMANCE BY THE CONTRACTOR OR
225a SUBCONTRACTOR ~~h~~ of the construction contract.

226 (h) "Subcontractor" is as defined in Section 38-1-2.

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

228 (2) This section is applicable to all construction contracts relating to construction work or
229 improvements entered into on or after ~~h~~ [May 3, 1999] JULY 1, 1999 ~~h~~ , between:

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

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

232 (c) subcontractors under a contract described in Subsection (2)(a) or (b).

233 (3) (a) Notwithstanding Section 58-55-603, the retention proceeds withheld and retained
234 from any payment due under the terms of the construction contract may not exceed 5% of the
235 payment:

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

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

238 (iii) by a subcontractor.

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

241 (c) The percentage of the retention proceeds withheld and retained pursuant to a
242 construction contract between the original contractor and a subcontractor or between
243 subcontractors shall be the same retention percentage as between the owner and the original
244 contractor if:

245 (i) the retention percentage in the original construction contract between an owner and the
 246 original contractor is less than 5%; or

247 (ii) after the original construction contract is executed but before completion of the
 248 construction contract the retention percentage is reduced to less than 5%.

249 (4) (a) If any payment on a contract with a private contractor, firm, or corporation to do
 250 work for an owner or public agency is retained or withheld by the owner or the public agency, ~~it~~ AS

250a **RETENTION PROCEEDS, ~~it~~**

251 shall be placed in an interest-bearing account.

252 (b) The interest accrued under Subsection (4)(a) shall be:

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

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

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

257 (5) Any retention proceeds retained or withheld pursuant to this section and any accrued
 258 interest shall be released pursuant to a billing statement from the contractor within 45 days from
 259 the later of:

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

261 (b) the date that a certificate of occupancy ~~is~~ OR FINAL ACCEPTANCE NOTICE ~~is~~ issued

261a to:

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

264 (ii) the owner or architect; or

265 (iii) the public agency; ~~it~~ [or] ~~it~~

266 (c) the date that a public agency or building inspector having authority to issue its own
 267 certificate of occupancy does not issue the certificate but permits partial or complete occupancy
 268 of a newly constructed or remodeled building ~~is~~; OR

268a **(d) THE DATE THE CONTRACTOR ACCEPTS THE FINAL PAY QUANTITIES ~~is~~**

269 (6) If only partial occupancy of a building is permitted, any retention proceeds withheld
 270 and retained pursuant to this section and any accrued interest shall be partially released within 45
 271 days under the same conditions as provided in Subsection (5) in direct proportion to the value of
 272 the part of the building occupied.

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

275 ~~(8) (a) ~~it~~ [IF] NOTWITHSTANDING SUBSECTION (3), IF ~~it~~ a contractor or subcontractor~~

275a **is in**

275a **default or breach of the terms and conditions] ~~it~~**

276 ~~h [of the construction contract documents, plans, or specifications governing construction of the~~
 277 ~~project h OR IF A PROJECT OR A PORTION OF THE PROJECT HAS BEEN SUBSTANTIALLY~~
 277a ~~COMPLETED h , the owner or public agency may:~~
 278 ~~—— (i) withhold from payment an amount necessary to:~~
 279 ~~—— (A) complete the work; or~~
 280 ~~—— (B) cure the breach or default of the contractor or subcontractor; and~~
 281 ~~—— (ii) retain the amount described in Subsection (8)(a)(i) for as long as is necessary to assure~~
 282 ~~completion:~~
 283 ~~—— (A) in accordance with the construction contract documents, plans, and specifications; or~~
 284 ~~—— (B) in absence of plans and specifications, to generally accepted craft standards.]~~
 284a ~~(8)(a) NOTWITHSTANDING SUBSECTION (3):~~
 284b ~~(i) IF A CONTRACTOR OR SUBCONTRACTOR IS IN DEFAULT OR BREACH OF THE TERMS~~
 284c ~~AND CONDITIONS OF THE CONSTRUCTION CONTRACT DOCUMENTS, PLANS, OR~~
 284d ~~SPECIFICATIONS GOVERNING CONSTRUCTION OF THE PROJECT, THE OWNER OR PUBLIC~~
 284e ~~AGENCY MAY WITHHOLD FROM PAYMENT FOR AS LONG AS REASONABLY NECESSARY AN~~
 284f ~~AMOUNT NECESSARY TO CURE THE BREACH OR DEFAULT OF THE CONTRACTOR OR~~
 284g ~~SUBCONTRACTOR; OR~~
 284h ~~(ii) IF A PROJECT OR A PORTION OF THE PROJECT HAS BEEN SUBSTANTIALLY~~
 284i ~~COMPLETED, THE OWNER OR PUBLIC AGENCY MAY RETAIN UNTIL COMPLETION UP TO TWICE~~
 284j ~~THE FAIR MARKET VALUE OF THE WORK OF THE ORIGINAL CONTRACTOR OR OF ANY~~
 284k ~~SUBCONTRACTOR THAT HAS NOT BEEN COMPLETED:~~
 284l ~~(A) IN ACCORDANCE WITH THE CONSTRUCTION CONTRACT DOCUMENTS, PLANS, AND~~
 284m ~~SPECIFICATIONS; OR~~
 284n ~~(B) IN THE ABSENCE OF PLANS AND SPECIFICATIONS, TO GENERALLY ACCEPTED CRAFT~~
 284o ~~STANDARDS. h~~
 285 ~~(b) An owner or public agency that refuses payment under Subsection (8)(a) shall describe~~
 286 ~~in writing h WITHIN 45 DAYS OF WITHHOLDING SUCH AMOUNTS h what portion of the work was~~
 286a ~~not completed according to the standards specified in~~
 287 ~~Subsection (8)(a).~~
 288 ~~(9) (a) Except as provided in Subsection (9)(b), an original contractor or subcontractor~~
 289 ~~who receives retention proceeds shall pay each of its subcontractors from whom retention has been~~
 290 ~~withheld each subcontractor's share of the retention received within ten days from the day that all~~
 291 ~~or any portion of the retention proceeds is received:~~
 292 ~~(i) by the original contractor from the owner or public agency; or~~
 293 ~~(ii) by the subcontractor from:~~
 294 ~~(A) the original contractor; or~~
 295 ~~(B) a subcontractor.~~
 296 ~~(b) Notwithstanding Subsection (9)(a), if a retention payment received by the original~~
 297 ~~contractor is specifically designated for a particular subcontractor, payment of the retention shall~~
 298 ~~be made to the designated subcontractor.~~

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

301 (i) attorney's fees; and

302 (ii) other allowable costs.

303 (b) (i) Any owner, public agency, original contractor, or subcontractor who knowingly and
304 wrongfully withholds a retention shall be subject to a charge of 2% per month on the improperly
305 withheld amount, in addition to any interest otherwise due.

306 (ii) The charge described in Subsection ~~h (9)(b)(i)~~ (10)(b)(i) h shall be paid to the
306a contractor or

307 subcontractor from whom the retention proceeds have been wrongfully withheld.

308 (11) It is against public policy for any party to require any other party to waive any
309 provision of this section.

310 Section 9. Section **17-5-232** is amended to read:

311 **17-5-232. County roads and airports -- Acquisition and control -- Retainage escrow.**

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

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

328 Section 10. Section **17-5-237** is amended to read:

329 **17-5-237. Water and water rights -- Acquisition and control -- Retainage escrow.**

330 (1) They may purchase, receive by donation, or lease any real or personal property or water
331 rights necessary for the use of the county; may purchase or otherwise acquire the necessary real
332 estate upon which to sink wells to obtain water for sprinkling roads and for other county purposes
333 and may erect thereon pumping apparatus, tanks, and reservoirs for the obtaining and storage of
334 water for such purposes; may preserve, take care of, manage, and control the same; may purchase,
335 receive by donation, or lease any water rights or stock or rights in reservoirs or storage companies
336 or associations for the use of citizens of the county; may construct dams and canals for the storage
337 and distribution of such waters; and may fix the price for and sell such water, water rights, stock,

338 or rights in reservoir or storage companies or associations, with the dams and canals, as are not
339 required for public use to citizens of the county.

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

346 Section 11. Section **17-5-239** is amended to read:

347 **17-5-239. Courthouse, jail, hospital, and other public buildings -- Acquisition and**
348 **control -- Retainage escrow.**

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

352 (2) If any payment on a contract with a private contractor to erect, repair, or rebuild public
353 buildings under this section is retained or withheld, it shall be [~~placed in an interest-bearing~~
354 ~~account and the interest shall accrue for the benefit of the contractor and subcontractors to be paid~~
355 ~~after the project is completed and accepted by the county executive. It is the responsibility of the~~
356 ~~contractor to ensure that any interest accrued on the retainage is distributed by the contractor to~~
357 ~~subcontractors on a pro rata basis]~~ retained or withheld and released as provided in Section 13-8-5.

358 Section 12. Section **17-15-3** is amended to read:

359 **17-15-3. Repair, alteration, or construction of public buildings -- Contracts -- Bids**
360 **-- Payment and performance bonds -- Retainage escrow.**

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

367 (b) All buildings for which the estimated cost exceeds \$25,000 shall be repaired, altered,
368 or constructed by contract let to the low responsive and responsible bidder after publication of

369 notice at least once a week for three consecutive weeks in a newspaper of general circulation
370 published in the county, or, if there is no such newspaper, then after posting such notice for at least
371 20 days in at least five public places in the county.

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

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

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

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

387 (2) ~~(a)~~ Any payment on a contract with a private contractor to erect or repair buildings
388 under this section that is retained or withheld shall be ~~[placed in an interest-bearing account]~~
389 retained or withheld and released as provided in Section 13-8-5.

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

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

394 Section 13. Section **17A-2-328** is amended to read:

395 **17A-2-328. Powers of municipalities -- Collection -- System for collection, retention,**
396 **and disposition of storm and flood waters -- Power of district to make contracts -- Retainage**
397 **escrow.**

398 (1) (a) If an improvement district under this part contracts with a municipality to supply
399 sewage treatment or disposal service, the municipality's legislative body may:

400 (i) impose an appropriate service charge to each party connected with the municipality's
401 sewer system for the services provided by the improvement district, as the municipality's
402 legislative body considers reasonable and proper; and

403 (ii) require industrial and commercial establishments to pre-treat certain wastes and
404 sewage when the wastes and sewage would otherwise impose an unreasonable burden upon the
405 collection system or the treatment facility of the improvement district.

406 (b) If the municipality operates a waterworks system, the charge under Subsection (1)(a)(i)
407 may be combined with the charge made for water furnished by the water system and may be
408 collected and the collection thereof secured in the same manner as that specified in Section
409 10-8-38.

410 (2) (a) An improvement district acquiring a system for the collection, retention, and
411 disposition of storm and flood waters may contract with a municipality or other political
412 subdivision or a person, firm, or corporation for the collection of storm and flood waters by any
413 of the contracting parties.

414 (b) Some or all of the parties to a contract under Subsection (2)(a) may agree to joint
415 acquisition, ownership, construction, operation, or maintenance of all or part of the system for the
416 collection of storm and flood waters.

417 (c) (i) In exercising the power to acquire and operate a system for the collection of storm
418 and flood waters, an improvement district may contract for the construction of storm sewers,
419 drainage channels, dams, dikes, levees, reservoirs, and other pertinent improvements.

420 (ii) As a local public procurement unit as defined in Subsection 63-56-5(14), each
421 improvement district contracting as provided in Subsection (2)(c)(i) shall comply with the
422 provisions applicable to local public procurement units under Title 63, Chapter 56, Utah
423 Procurement Code.

424 (3) ~~(a)~~ If any payment on a contract with a private person, firm, or corporation to
425 construct storm sewers, drainage canals, dams, dikes, levees, reservoirs, and other pertinent
426 improvements is retained or withheld, it shall be ~~[placed in an interest bearing account and the
427 interest shall accrue for the benefit of the contractor and subcontractors to be paid after the project
428 is completed and accepted by the board of trustees]~~ retained or withheld and released as provided
429 in Section 13-8-5.

430 ~~[(b) The contractor shall distribute any interest accrued on the retainage to subcontractors~~

431 ~~on a pro rata basis.]~~

432 Section 14. Section **17A-2-531** is amended to read:

433 **17A-2-531. Bids for construction -- Contracts -- Payment and performance bonds**
434 **-- Retainage escrow.**

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

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

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

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

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

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

459 Section 15. Section **17A-2-1016** is amended to read:

460 **17A-2-1016. Powers of incorporated district -- Bidding -- Eminent domain.**

461 (1) As used in this section, "operator" means any city, public agency, person, firm, or

462 private corporation engaged in the transportation of passengers for hire.

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

464 (a) have perpetual succession;

465 (b) sue and be sued in all actions and proceedings and in all courts and tribunals of
466 competent jurisdiction;

467 (c) adopt a corporate seal and alter it at pleasure;

468 (d) levy and collect taxes only for paying:

469 (i) the principal and interest of bonded indebtedness of the district; or

470 (ii) any final judgment obtained against the district beyond the amount of any collectable
471 insurance or indemnity policy if the district is required by final order of any court of competent
472 jurisdiction to levy a tax to pay the judgment;

473 (e) take by grant, purchase, bequest, devise, or lease, and to hold, enjoy, lease, sell,
474 encumber, alien, or otherwise dispose of real or personal property of every kind within the district;

475 (f) make contracts and enter into stipulations of any nature, including contracts and
476 stipulations:

477 (i) to indemnify and save harmless; [~~and~~]

478 (ii) to do all acts to exercise the powers granted in this part; and

479 (iii) with any department or agency of the United States of America, of the state, or with
480 any public agency or private person, firm, or corporation upon terms and conditions the board of
481 directors finds are in the best interests of the district;

482 (g) (i) insure against:

483 (A) loss of revenues from accident or destruction of the system or any part of the system,
484 from any cause whatsoever; or

485 (B) public liability or property damage, or against all other types of events, acts, or
486 omissions; and

487 (ii) provide in the proceedings authorizing the issuance of any bonds for the carrying of
488 any other insurance, in an amount and of such character as may be specified, and for the payment
489 of the premiums on the insurance;

490 (h) provide a public transit system for the transportation of passengers and their incidental
491 baggage;

492 (i) purchase all supplies, equipment, and materials;

493 (j) construct facilities and works, but when the expenditure required exceeds \$25,000
494 construction shall be let by contract to the lowest responsible bidder or proposer;

495 (k) acquire, contract for, lease, construct, own, operate, control, or use rights-of-way, rail
496 lines, monorails, bus lines, stations, platforms, switches, yards, terminals, parking lots, any
497 facilities necessary or convenient for public transit service, and all structures necessary for access
498 by persons and vehicles;

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

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

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

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

508 (c) The board may reject any and all bids or proposals and readvertise or give renounce at
509 its discretion.

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

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

520 (f) If any payment on a contract with a private contractor to construct facilities under this
521 section is retained or withheld, it shall be ~~[placed in an interest bearing account and the interest~~
522 ~~shall accrue for the benefit of the contractor and subcontractors to be paid after the project is~~
523 ~~completed and accepted by the board]~~ retained or withheld and released as provided in Section

524 13-8-5.

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

527 (4) (a) Installations in state highways or freeways are subject to the approval of the
528 Department of Transportation.

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

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

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

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

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

552 Section 16. Section **17A-3-209** is amended to read:

553 **17A-3-209. Payment of contracts -- Progress payments -- Retainage escrow.**

554 (1) (a) Any contract for work in any special improvement district and any contract for the

555 purchase or exchange of property necessary to be acquired in order to make improvements in any
556 special improvement district may provide that the contract price or property price shall be paid,
557 or, at the option of the governing entity, may be paid, in whole or in part, by the issuance of special
558 improvement bonds issued against the funds created by assessments levied to pay the costs and
559 expenses of improvements in the special improvement district or by interim warrants issued as
560 authorized by this part at the time the special improvement bonds or interim warrants, as the case
561 may be, may be legally issued and delivered. If any contract is not paid from these sources in
562 whole or in part, or if paid in part, to the extent not so paid from these sources, the governing entity
563 shall be responsible for advancing funds for payment of the contract price or property price from
564 the general funds of the governing entity or from other funds legally available for this purpose as
565 provided in the contract.

566 (b) From the proceeds of the sale of interim warrants or special improvement bonds, or
567 from funds paid on assessments not pledged for the payment of the bonds or warrants, the
568 governing entity may reimburse itself for the amount paid from its general funds or other funds,
569 except that the governing entity may not reimburse itself for any of the costs of making the
570 improvements properly chargeable to the governing entity for which assessments may not be
571 levied.

572 (2) Any contract for work in a special improvement district may provide for payments to
573 the contractor as the work progresses. If the contract so provides, payments may be made from
574 time to time to the extent of not to exceed ~~[90%]~~ 95% of the value of the work done to the date of
575 payment, as determined by estimates of the project engineer, with final payment to be made only
576 after completion of the work by the contractor and acceptance of the work by the governing entity.
577 If moneys payable to the contractor as the work progresses are retained [~~pursuant to this~~
578 ~~subsection~~], they shall be [~~placed in an interest bearing account and the interest shall accrue for~~
579 ~~the benefit of the contractor and subcontractors. It is the responsibility of the contractor to ensure~~
580 ~~that any interest accrued on the retainage is distributed by the contractor to subcontractors on a pro~~
581 ~~rata basis]~~ retained or withheld and released as provided in Section 13-8-5.

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

583 **17A-3-309. Payment of contracts.**

584 (1) (a) Any contract for work in any special improvement district, and any contract for the
585 purchase of property that must be acquired in order to make improvements in any special

586 improvement district, may provide that the contract price or property price shall be paid, or, at the
587 option of the municipality, may be paid, in whole or in part, from:

588 (i) proceeds of the sale of special improvement bonds issued as provided in this part; or

589 (ii) proceeds of the sale of interim warrants issued as authorized by this part.

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

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

596 (i) the proceeds of the sale of interim warrants;

597 (ii) the proceeds of the sale of special improvement bonds;

598 (iii) funds paid on assessments that are not pledged for the payment of the bonds or
599 warrants; or

600 (iv) improvement revenues not pledged for the payment of the bonds or warrants.

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

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

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

607 (i) periodic payments not to exceed ~~[90%]~~ 95% of the value of the work done to the date
608 of payment as determined by estimates of the engineer for the municipality; and

609 (ii) a final payment to be made only after completion of the work by the contractor and
610 acceptance of the work by the municipality.

611 (c) ~~[(i)]~~ Any payment on a contract that is retained shall be ~~[placed in an interest bearing~~
612 ~~account]~~ retained or withheld and released as provided in Section 13-8-5.

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

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

616 Section 18. Section **38-1-2** is amended to read:

617 **38-1-2. "Contractors" and "subcontractors" defined.**

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

622 Section 19. Section **58-55-602** is amended to read:

623 **58-55-602. Payment of construction funds -- Interest.**

624 (1) ~~[Except as otherwise may be agreed to in writing between the parties, all]~~ All unpaid
625 construction funds are payable to the contractor [within 30 days after:] as provided in Section
626 13-8-5.

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

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

629 ~~[(2) Construction funds, except those withheld on account of disputed or uncompleted~~
630 ~~items by the owner or the owner's representative, not paid within the time established in Subsection~~
631 ~~(1) shall accrue interest at the rate of 1% per month. The owner may withhold payment for the~~
632 ~~amount of any disputed or uncompleted items and may require, as a condition to payment of any~~
633 ~~amount under the construction contract, that lien waivers be furnished by the contractor's~~
634 ~~subcontractors, suppliers, or employees. The owner may also at his option issue joint checks. No~~
635 ~~payment may be withheld unless the contractor is notified, in writing, at the time of withholding~~
636 ~~the payment as to any disputed item.]~~

637 ~~[(3)]~~ (2) On projects involving multiple buildings, each building shall be considered
638 individually in determining the amount to be paid the contractor.

639 ~~[(4)]~~ (3) Partial occupancy of a building requires payment in direct proportion to the value
640 of the part of the building occupied.

641 (4) If any payment is retained or withheld, it shall be retained or withheld and released as
642 provided in Section 13-8-5.

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

647 Section 20. Section **63-56-3** is amended to read:

648 **63-56-3. Exemptions from chapter -- Compliance with federal law.**

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

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

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

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

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

661 Section 21. Section **63A-5-205** is amended to read:

662 **63A-5-205. Contracting powers of director -- Retainage escrow.**

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

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

666 (b) as a condition of any contract for architectural or engineering services, prohibit the
667 architect or engineer from retaining a sales or agent engineer for the necessary design work.

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

670 (3) [~~(a)~~] If any payment on a contract with a private contractor to do work for the division
671 or the State Building Board is retained or withheld, it shall be [~~placed in an interest bearing~~
672 ~~account and the interest shall accrue for the benefit of the contractor and subcontractors to be paid~~
673 ~~after the project is completed and accepted by the director~~] retained or withheld and released as
674 provided in Section 13-8-5.

675 [~~(b) The contractor shall ensure that any interest accrued on the retainage is distributed by~~
676 ~~the contractor to subcontractors on a pro-rata basis.~~]

677 Section 22. Section **72-6-107** is amended to read:

678 **72-6-107. Construction or improvement of highway -- Contracts -- Retainage escrow.**

679 (1) (a) The department shall make plans, specifications, and estimates prior to the
680 construction or improvement of any state highway.

681 (b) Except as provided in Section 63-56-36.1 and except for construction or improvements
682 performed with state prison labor, a construction or improvement project with an estimated cost
683 exceeding \$40,000 for labor and materials shall be performed under contract awarded to the lowest
684 responsible bidder.

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

688 (d) The department shall receive sealed bids and open the bids at the time and place
689 designated in the advertisement. The department may then award the contract but may reject any
690 and all bids.

691 (e) If the department's estimates are substantially lower than any responsible bid received,
692 the department may perform any work by force account.

693 (2) ~~[(a)]~~ If any payment on a contract with a private contractor for construction or
694 improvement of a state highway is retained or withheld, the payment shall be ~~[placed in an interest~~
695 ~~bearing account. The interest shall accrue for the benefit and payment to the contractor and~~
696 ~~subcontractors after the project is completed and accepted by the department]~~ retained or withheld
697 and released as provided in Section 13-8-5.

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

700 Section 23. Section **72-6-108** is amended to read:

701 **72-6-108. Class B and C roads -- Improvement projects -- Contracts -- Retainage**
702 **escrow.**

703 (1) A county executive for class B roads and the municipal executive for class C roads
704 shall cause plans, specifications, and estimates to be made prior to the construction of any
705 improvement project, as defined in Section 72-6-109, on a class B or C road if the estimated cost
706 for any one project exceeds the bid limit as defined in Section 72-6-109 for labor, equipment, and
707 materials.

708 (2) (a) All projects in excess of the bid limit shall be performed under contract to be let
709 to the lowest responsible bidder.

710 (b) If the estimated cost of the improvement project exceeds the bid limit for labor,
711 equipment, and materials, the project may not be divided to permit the construction in parts, unless
712 each part is done by contract.

713 (3) The advertisement on bids shall be published in a newspaper of general circulation in
714 the county in which the work is to be performed at least once a week for three consecutive weeks.
715 If there is no newspaper of general circulation, the notice shall be posted for at least 20 days in at
716 least five public places in the county.

717 (4) The county or municipal executive or their designee shall receive sealed bids and open
718 the bids at the time and place designated in the advertisement. The county or municipal executive
719 or their designee may then award the contract but may reject any and all bids.

720 (5) The person, firm, or corporation that is awarded a contract under this section is subject
721 to the provisions of Title 63, Chapter 56, Utah Procurement Code.

722 (6) ~~[(a)]~~ If any payment on a contract with a private contractor for construction or
723 improvement of a class B or C road is retained or withheld, the payment shall be ~~[placed in an~~
724 ~~interest-bearing account. The interest shall accrue for the benefit and payment to the contractor~~
725 ~~and subcontractors after the project is completed and accepted by the county or municipal~~
726 ~~executive]~~ retained or withheld and released as provided in Section 13-8-5.

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

729 Section 24. Section **73-10-8** is amended to read:

730 **73-10-8. Water Resources Construction Fund -- Creation and contents of fund -- Use**
731 **-- Investigation Account created -- Interest -- Retainage escrow -- Loans and grants for dam**
732 **safety work.**

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

- 734 (a) money appropriated or otherwise made available to it by the Legislature;
735 (b) money from the sale or management of the 500,000 acres of land selected for the
736 establishment of reservoirs under Section 12 of the Utah Enabling Act;
737 (c) charges assessed against water and power users pursuant to Section 73-10-6; and
738 (d) interest accrued pursuant to Subsection (5).

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

- 740 (a) to develop water conservation projects, including paying the costs of construction,

741 engineering, investigation, inspection, and other related expenses;

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

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

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

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

749 (d) as otherwise provided by law.

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

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

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

760 (6) ~~[(a)]~~ If any payment on a contract with a private contractor to construct a project
761 funded by the Water Resources Construction Fund is retained or withheld, it shall be ~~[placed in~~
762 ~~an interest-bearing account. The interest shall accrue for the benefit of the contractor and~~
763 ~~subcontractors. The payment with interest shall be made after the project is completed and~~
764 ~~accepted by the board]~~ retained or withheld and released as provided in Section 13-8-5.

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

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

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

771 (a) only a nonprofit mutual irrigation company or a water users association is eligible to

772 receive a grant;

773 (b) the dam safety study shall be required by the state engineer pursuant to Section
774 73-5a-503; and

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

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

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

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

788 (A) the degree of hazard;

789 (B) the threat to public safety;

790 (C) the state engineer's priority list of dams;

791 (D) the cost effectiveness of the restoration;

792 (E) the number of potential and actual applications for financial assistance; and

793 (F) the funds available.

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

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

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

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

802 **73-10-27. Project priorities -- Considerations -- Determinations of feasibility -- Bids**

803 **and contracts -- Definitions -- Retainage escrow.**

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

806 (a) are sponsored by the state or a political subdivision of the state;

807 (b) meet a critical local need;

808 (c) have greater economic feasibility;

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

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

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

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

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

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

832 (b) If all initial bids on the project are rejected, the board shall readvertise the project in
833 the manner specified in Subsection (4)(a). If no satisfactory bid is received by the board upon the

834 readvertisement of the project, it may proceed to construct the project but only in accordance with
835 the plans and specifications used to calculate the estimated cost of the project.

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

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

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

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

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

Legislative Review Note
as of 2-10-99 6:45 AM

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

Office of Legislative Research and General Counsel