

Senator Ed P. Mayne proposes to substitute the following bill:

1 **PROCUREMENT CODE REQUIREMENT OF**
2 **HEALTH CARE BENEFITS**

3 1999 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Ed P. Mayne**

6 AN ACT RELATING TO STATE AFFAIRS IN GENERAL; REQUIRING A BUSINESS TO
7 PROVIDE HEALTH INSURANCE COVERAGE TO EMPLOYEES AS A CONDITION FOR
8 CONTRACTING WITH THE STATE UNDER CERTAIN CIRCUMSTANCES; AND MAKING
9 TECHNICAL CORRECTIONS.

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

11 AMENDS:

12 **63-56-40**, as enacted by Chapter 75, Laws of Utah 1980

13 **63-56-48**, as enacted by Chapter 75, Laws of Utah 1980

14 ENACTS:

15 **63-56-20.1**, Utah Code Annotated 1953

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

17 Section 1. Section **63-56-20.1** is enacted to read:

18 **63-56-20.1. Health insurance requirement.**

19 (1) As used in this section:

20 (a) "Contract" means a contract awarded by sealed bid as required by Section 63-56-20.

21 (b) "Employee" means an "employee," "worker," or "operative" as defined in Section
22 34A-2-104 who works at least 20 hours per calendar week.

23 (2) To be eligible to contract with a public procurement unit under Section 63-56-20, a
24 business shall provide health insurance coverage to each employee.

25 (3) Within ten days of a contract being awarded under Section 63-56-20, a business shall

26 submit documentation of current health insurance coverage for its employees to the public
27 procurement unit that awarded the contract.

28 (4) The public procurement unit shall terminate a contract it has awarded and may seek
29 debarment of the contractor under Section 63-56-48 if the contracting business:

30 (a) fails to submit documentation of current health insurance coverage as required by
31 Subsection (3); or

32 (b) submits documentation of current health insurance coverage when none exists.

33 (5) (a) If a business enters into a contract with the public procurement unit that is in effect
34 or is expected to be in effect for 60 or more days, the business shall inform the public procurement
35 unit if the business fails to provide health insurance coverage to its employees for 30 or more days
36 during the term of the contract.

37 (b) A public procurement unit that receives notice that a contractor is not providing health
38 insurance shall terminate the contract unless:

39 (i) termination would materially harm the interests of the public procurement unit; and

40 (ii) a comparable business to contract with is not readily available.

41 (c) A public procurement unit that receives notice that a contractor is not providing health
42 insurance may seek debarment of the contractor under Section 63-56-48.

43 (d) A business may not terminate a contract it has with the public procurement unit
44 because the business does not provide health insurance coverage to its employees.

45 Section 2. Section **63-56-40** is amended to read:

46 **63-56-40. Required contract clauses -- Computation of price adjustments -- Use of**
47 **rules and regulations.**

48 (1) Rules and regulations shall require for state construction contracts and may permit or
49 require for state contracts for supplies and services the inclusion of clauses providing for
50 adjustments in prices, time of performance, or other appropriate contract provisions, and covering
51 the following subjects:

52 (a) the unilateral right of the state to order in writing changes in the work within the scope
53 of the contract and changes in the time of performance of the contract that do not alter the scope
54 of the contract work;

55 (b) variations occurring between estimated quantities of work in a contract and actual
56 quantities;

57 (c) suspension of work ordered by the state; and

58 (d) site conditions differing from those indicated in the construction contract, or ordinarily
59 encountered, except that differing site conditions clauses required by the rules and regulations need
60 not be included in a construction contract when the contract is negotiated, when the contractor
61 provides the site or design, or when the parties have otherwise agreed with respect to the risk of
62 differing site conditions.

63 (2) Adjustments in price pursuant to clauses promulgated under Subsection (1) shall be
64 computed in one or more of the following ways:

65 (a) by agreement on a fixed price adjustment before commencement of the pertinent
66 performance or as soon thereafter as practicable;

67 (b) by unit prices specified in the contract or subsequently agreed upon;

68 (c) by the costs attributable to the events or situations under the clauses with adjustment
69 of profit or fee, all as specified in the contract or subsequently agreed upon;

70 (d) in any other manner as the contracting parties may mutually agree; or

71 (e) in the absence of agreement by the parties, by a unilateral determination by the state
72 of the costs attributable to the events or situations under the clauses with adjustment of profit or
73 fee, all as computed by the state in accordance with applicable sections of the rules and regulations
74 issued under Subsection 63-56-28(1) and subject to the provisions of Part H of this chapter.

75 (3) A contractor shall be required to submit cost or pricing data if any adjustment in
76 contract price is subject to the provisions of Section 63-56-28.

77 (4) Rules and regulations shall require for state construction contracts and may permit or
78 require for state contracts for supplies and services the inclusion of clauses providing for
79 appropriate remedies and covering at least the following subjects:

80 (a) liquidated damages as appropriate;

81 (b) specified excuses for delay or nonperformance;

82 (c) termination of the contract for default; and

83 (d) termination of the contract in whole or in part for the convenience of the state.

84 (5) A contract awarded under Section 63-56-20 shall include the health insurance
85 requirement of Section 63-56-20.1.

86 [~~5~~] (6) The contract clauses promulgated under this section shall be set forth in rules and
87 regulations. However, the chief procurement officer or the head of a purchasing agency may

88 modify the clauses for inclusion in any particular contract. Any variations shall be supported by
89 a written determination that describes the circumstances justifying the variations, and notice of any
90 material variation shall be included in the invitation for bids or request for proposals.

91 Section 3. Section **63-56-48** is amended to read:

92 **63-56-48. Debarment from consideration for award of contracts -- Causes for**
93 **debarment.**

94 (1) After reasonable notice to the person involved and reasonable opportunity for that
95 person to be heard, the chief procurement officer or the head of a purchasing agency, after
96 consultation with the using agency and the attorney general, shall have authority to debar a person
97 for cause from consideration for award of contracts. The debarment shall not be for a period
98 exceeding three years. The same officer, after consultation with the using agency and the attorney
99 general, shall have authority to suspend a person from consideration for award of contracts if there
100 is probable cause to believe that the person has engaged in any activity which might lead to
101 debarment. The suspension shall not be for a period exceeding three months unless an indictment
102 has been issued for an offense which would be a cause for debarment under subsection (2) of this
103 section, in which case the suspension shall, at the request of the attorney general, remain in effect
104 until after the trial of the suspended person.

105 (2) The causes for debarment include the following:

106 (a) conviction of a criminal offense as an incident to obtaining or attempting to obtain a
107 public or private contract or subcontract or in the performance of such contract or subcontract;

108 (b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery,
109 falsification or destruction of records, receiving stolen property, or any other offense indicating a
110 lack of business integrity or business honesty which currently, seriously, and directly affects
111 responsibility as a state contractor;

112 (c) conviction under state or federal antitrust statutes;

113 (d) failure without good cause to perform in accordance with the terms of the contract; [or]

114 (e) violation of the health insurance requirement of Section 63-56-20.1; or

115 [~~e~~] (f) any other cause the chief procurement officer, or the head of a purchasing agency
116 determines to be so serious and compelling as to affect responsibility as a state contractor,
117 including debarment by another governmental entity for any cause listed in rules and regulations.