

1 **PROCUREMENT CODE RENUMBERING**

2 2005 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Ron Bigelow**

5

LONG TITLE

6 **General Description:**

7 This bill renumbers the Utah Procurement Code.

8 **Highlighted Provisions:**

9 This bill:

10 ▶ renumbers the Utah Procurement Code to comply with current numbering practices;

11 and

12 ▶ makes technical changes.

13 **Monies Appropriated in this Bill:**

14 None

15 **Other Special Clauses:**

16 None

17 **Utah Code Sections Affected:**

18 **AMENDS:**

19 **7-1-323**, as enacted by Chapter 49, Laws of Utah 1995

20 **10-3-1304**, as last amended by Chapter 92, Laws of Utah 1998

21 **10-3-1305**, as last amended by Chapter 92, Laws of Utah 1998

22 **10-7-87**, as enacted by Chapter 32, Laws of Utah 1992

23 **11-37-101**, as last amended by Chapter 90, Laws of Utah 2004

24 **11-39-107**, as enacted by Chapter 259, Laws of Utah 2003

25 **14-1-18**, as enacted by Chapter 218, Laws of Utah 1987

26 **17-15-24**, as enacted by Chapter 32, Laws of Utah 1992



- 28 **17-16a-4**, as last amended by Chapter 92, Laws of Utah 1998
- 29 **17A-1-801**, as enacted by Chapter 123, Laws of Utah 1997
- 30 **17A-2-328**, as last amended by Chapter 365, Laws of Utah 1999
- 31 **26-8a-405.2**, as last amended by Chapter 277, Laws of Utah 2004
- 32 **26A-1-108.7**, as enacted by Chapter 32, Laws of Utah 1992
- 33 **53A-20-101**, as last amended by Chapters 86 and 123, Laws of Utah 2000
- 34 **63A-5-208**, as last amended by Chapter 347, Laws of Utah 2004
- 35 **63B-2-102**, as enacted by Chapter 304, Laws of Utah 1993
- 36 **63B-3-102**, as last amended by Chapter 171, Laws of Utah 2003
- 37 **63B-4-102**, as last amended by Chapter 171, Laws of Utah 2003
- 38 **63B-5-102**, as last amended by Chapter 391, Laws of Utah 1997
- 39 **63B-6-102**, as last amended by Chapter 199, Laws of Utah 2002
- 40 **63B-6-402**, as enacted by Chapter 391, Laws of Utah 1997
- 41 **63B-7-102**, as last amended by Chapter 327, Laws of Utah 2000
- 42 **63B-7-402**, as enacted by Chapter 67, Laws of Utah 1998
- 43 **63B-8-102**, as enacted by Chapter 309, Laws of Utah 1999
- 44 **63B-8-402**, as last amended by Chapter 327, Laws of Utah 2000
- 45 **63B-9-103**, as last amended by Chapter 233, Laws of Utah 2003
- 46 **63B-11-202**, as enacted by Chapter 252, Laws of Utah 2002
- 47 **67-16-4**, as last amended by Chapter 276, Laws of Utah 2000
- 48 **67-16-5**, as last amended by Chapters 13 and 92, Laws of Utah 1998
- 49 **67-16-5.3**, as enacted by Chapter 108, Laws of Utah 2000
- 50 **67-16-6**, as last amended by Chapter 92, Laws of Utah 1998
- 51 **72-6-107**, as last amended by Chapter 28, Laws of Utah 2001
- 52 **73-10-27**, as last amended by Chapter 365, Laws of Utah 1999

53 **RENUMBERS AND AMENDS:**

- 54 **63-56-101**, (Renumbered from 63-56-1, as enacted by Chapter 75, Laws of Utah 1980)
- 55 **63-56-102**, (Renumbered from 63-56-2, as last amended by Chapter 80, Laws of Utah
- 56 2002)
- 57 **63-56-103**, (Renumbered from 63-56-3, as last amended by Chapter 365, Laws of Utah
- 58 1999)

59 **63-56-104**, (Renumbered from 63-56-4, as last amended by Chapter 252, Laws of Utah
60 1997)

61 **63-56-105**, (Renumbered from 63-56-5, as last amended by Chapters 159 and 178,
62 Laws of Utah 2002)

63 **63-56-201**, (Renumbered from 63-56-6, as last amended by Chapter 36, Laws of Utah
64 2003)

65 **63-56-202**, (Renumbered from 63-56-7, as last amended by Chapter 232, Laws of Utah
66 1993)

67 **63-56-203**, (Renumbered from 63-56-8, as last amended by Chapter 252, Laws of Utah
68 1997)

69 **63-56-204**, (Renumbered from 63-56-9, as last amended by Chapter 35, Laws of Utah
70 2004)

71 **63-56-205**, (Renumbered from 63-56-10, as enacted by Chapter 75, Laws of Utah 1980)

72 **63-56-206**, (Renumbered from 63-56-11, as last amended by Chapter 252, Laws of
73 Utah 1997)

74 **63-56-207**, (Renumbered from 63-56-13, as last amended by Chapter 35, Laws of Utah
75 2004)

76 **63-56-208**, (Renumbered from 63-56-14, as last amended by Chapter 232, Laws of
77 Utah 1993)

78 **63-56-209**, (Renumbered from 63-56-15, as enacted by Chapter 75, Laws of Utah 1980)

79 **63-56-301**, (Renumbered from 63-56-16, as enacted by Chapter 75, Laws of Utah 1980)

80 **63-56-302**, (Renumbered from 63-56-17, as enacted by Chapter 75, Laws of Utah 1980)

81 **63-56-303**, (Renumbered from 63-56-19, as enacted by Chapter 75, Laws of Utah 1980)

82 **63-56-401**, (Renumbered from 63-56-20, as last amended by Chapter 142, Laws of
83 Utah 1998)

84 **63-56-402**, (Renumbered from 63-56-20.1, as enacted by Chapter 305, Laws of Utah
85 2001)

86 **63-56-403**, (Renumbered from 63-56-20.3, as enacted by Chapter 32, Laws of Utah
87 1992)

88 **63-56-404**, (Renumbered from 63-56-20.5, as last amended by Chapter 2, Laws of Utah
89 1988, Second Special Session)

- 90 **63-56-405**, (Renumbered from 63-56-20.6, as enacted by Chapter 2, Laws of Utah
- 91 1988, Second Special Session)
- 92 **63-56-406**, (Renumbered from 63-56-20.7, as last amended by Chapter 13, Laws of
- 93 Utah 1998)
- 94 **63-56-407**, (Renumbered from 63-56-20.8, as enacted by Chapter 114, Laws of Utah
- 95 1996)
- 96 **63-56-408**, (Renumbered from 63-56-21, as last amended by Chapter 232, Laws of
- 97 Utah 1993)
- 98 **63-56-409**, (Renumbered from 63-56-22, as enacted by Chapter 75, Laws of Utah 1980)
- 99 **63-56-410**, (Renumbered from 63-56-23, as last amended by Chapter 342, Laws of
- 100 Utah 1998)
- 101 **63-56-411**, (Renumbered from 63-56-24, as enacted by Chapter 75, Laws of Utah 1980)
- 102 **63-56-412**, (Renumbered from 63-56-25, as enacted by Chapter 75, Laws of Utah 1980)
- 103 **63-56-413**, (Renumbered from 63-56-26, as enacted by Chapter 75, Laws of Utah 1980)
- 104 **63-56-414**, (Renumbered from 63-56-27, as enacted by Chapter 75, Laws of Utah 1980)
- 105 **63-56-415**, (Renumbered from 63-56-28, as last amended by Chapter 259, Laws of
- 106 Utah 1981)
- 107 **63-56-416**, (Renumbered from 63-56-29, as enacted by Chapter 75, Laws of Utah 1980)
- 108 **63-56-417**, (Renumbered from 63-56-30, as enacted by Chapter 75, Laws of Utah 1980)
- 109 **63-56-418**, (Renumbered from 63-56-31, as enacted by Chapter 75, Laws of Utah 1980)
- 110 **63-56-419**, (Renumbered from 63-56-32, as enacted by Chapter 75, Laws of Utah 1980)
- 111 **63-56-420**, (Renumbered from 63-56-33, as enacted by Chapter 75, Laws of Utah 1980)
- 112 **63-56-421**, (Renumbered from 63-56-34, as last amended by Chapter 259, Laws of
- 113 Utah 1991)
- 114 **63-56-422**, (Renumbered from 63-56-35.5, as last amended by Chapter 178, Laws of
- 115 Utah 1986)
- 116 **63-56-423**, (Renumbered from 63-56-35.6, as enacted by Chapter 201, Laws of Utah
- 117 1985)
- 118 **63-56-424**, (Renumbered from 63-56-35.7, as last amended by Chapter 232, Laws of
- 119 Utah 1993)
- 120 **63-56-425**, (Renumbered from 63-56-35.8, as last amended by Chapter 135, Laws of

121 Utah 1993)
122 **63-56-501**, (Renumbered from 63-56-36, as last amended by Chapter 167, Laws of
123 Utah 2004)
124 **63-56-502**, (Renumbered from 63-56-36.1, as last amended by Chapter 167, Laws of
125 Utah 2004)
126 **63-56-503**, (Renumbered from 63-56-37, as last amended by Chapter 80, Laws of Utah
127 2002)
128 **63-56-504**, (Renumbered from 63-56-38, as last amended by Chapter 80, Laws of Utah
129 2002)
130 **63-56-505 (Effective 05/01/05)**, (Renumbered from 63-56-38.1 (Effective 05/01/05), as
131 last amended by Chapters 30 and 250, Laws of Utah 2004)
132 **63-56-506**, (Renumbered from 63-56-39, as enacted by Chapter 75, Laws of Utah 1980)
133 **63-56-601**, (Renumbered from 63-56-40, as enacted by Chapter 75, Laws of Utah 1980)
134 **63-56-602**, (Renumbered from 63-56-41, as enacted by Chapter 75, Laws of Utah 1980)
135 **63-56-701**, (Renumbered from 63-56-42, as enacted by Chapter 75, Laws of Utah 1980)
136 **63-56-702**, (Renumbered from 63-56-43, as enacted by Chapter 75, Laws of Utah 1980)
137 **63-56-703**, (Renumbered from 63-56-43.1, as enacted by Chapter 89, Laws of Utah
138 1997)
139 **63-56-704**, (Renumbered from 63-56-44, as enacted by Chapter 75, Laws of Utah 1980)
140 **63-56-705**, (Renumbered from 63-56-44.5, as enacted by Chapter 21, Laws of Utah
141 2000)
142 **63-56-801**, (Renumbered from 63-56-45, as enacted by Chapter 75, Laws of Utah 1980)
143 **63-56-802**, (Renumbered from 63-56-46, as last amended by Chapter 92, Laws of Utah
144 1987)
145 **63-56-803**, (Renumbered from 63-56-47, as last amended by Chapter 178, Laws of
146 Utah 2002)
147 **63-56-804**, (Renumbered from 63-56-48, as enacted by Chapter 75, Laws of Utah 1980)
148 **63-56-805**, (Renumbered from 63-56-49, as enacted by Chapter 75, Laws of Utah 1980)
149 **63-56-806**, (Renumbered from 63-56-50, as enacted by Chapter 75, Laws of Utah 1980)
150 **63-56-807**, (Renumbered from 63-56-51, as last amended by Chapter 243, Laws of
151 Utah 1996)

- 152 **63-56-808**, (Renumbered from 63-56-52, as enacted by Chapter 75, Laws of Utah 1980)
 - 153 **63-56-809**, (Renumbered from 63-56-53, as enacted by Chapter 75, Laws of Utah 1980)
 - 154 **63-56-810**, (Renumbered from 63-56-54, as enacted by Chapter 75, Laws of Utah 1980)
 - 155 **63-56-811**, (Renumbered from 63-56-55, as enacted by Chapter 75, Laws of Utah 1980)
 - 156 **63-56-812**, (Renumbered from 63-56-56, as enacted by Chapter 75, Laws of Utah 1980)
 - 157 **63-56-813**, (Renumbered from 63-56-57, as enacted by Chapter 75, Laws of Utah 1980)
 - 158 **63-56-814**, (Renumbered from 63-56-58, as last amended by Chapter 47, Laws of Utah
 - 159 1986)
 - 160 **63-56-815**, (Renumbered from 63-56-59, as last amended by Chapter 267, Laws of
 - 161 Utah 2004)
 - 162 **63-56-816**, (Renumbered from 63-56-60, as last amended by Chapter 92, Laws of Utah
 - 163 1987)
 - 164 **63-56-817**, (Renumbered from 63-56-61, as last amended by Chapter 259, Laws of
 - 165 Utah 1981)
 - 166 **63-56-818**, (Renumbered from 63-56-62, as enacted by Chapter 75, Laws of Utah 1980)
 - 167 **63-56-819**, (Renumbered from 63-56-63, as enacted by Chapter 75, Laws of Utah 1980)
 - 168 **63-56-820**, (Renumbered from 63-56-64, as last amended by Chapter 79, Laws of Utah
 - 169 1989)
 - 170 **63-56-901**, (Renumbered from 63-56-65, as enacted by Chapter 75, Laws of Utah 1980)
 - 171 **63-56-902**, (Renumbered from 63-56-66, as enacted by Chapter 75, Laws of Utah 1980)
 - 172 **63-56-903**, (Renumbered from 63-56-67, as enacted by Chapter 75, Laws of Utah 1980)
 - 173 **63-56-904**, (Renumbered from 63-56-68, as enacted by Chapter 75, Laws of Utah 1980)
 - 174 **63-56-905**, (Renumbered from 63-56-69, as last amended by Chapter 92, Laws of Utah
 - 175 1987)
 - 176 **63-56-906**, (Renumbered from 63-56-70, as enacted by Chapter 75, Laws of Utah 1980)
 - 177 **63-56-907**, (Renumbered from 63-56-71, as enacted by Chapter 75, Laws of Utah 1980)
 - 178 **63-56-1001**, (Renumbered from 63-56-72, as enacted by Chapter 75, Laws of Utah
 - 179 1980)
 - 180 **63-56-1002**, (Renumbered from 63-56-73, as enacted by Chapter 75, Laws of Utah
 - 181 1980)
 - 182
-
-

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

184 Section 1. Section **7-1-323** is amended to read:

185 **7-1-323. Regulation of interstate operations -- Coordination of efforts.**

186 (1) The commissioner may:

187 (a) examine, supervise, and regulate a branch operated in this state by a depository
188 institution chartered by another state and take any action or issue any order with regard to that
189 branch;

190 (b) examine, supervise, and regulate a branch operated in another state by a depository
191 institution chartered by this state and take any action or issue any order with regard to that
192 branch; and

193 (c) coordinate these activities with any other state or federal agency that shares
194 jurisdiction over the institution.

195 (2) The commissioner may coordinate the examination, supervision, and regulation of
196 any depository institution chartered by this state with the examination, supervision, and
197 regulation of an affiliated depository institution operating in another state.

198 (3) The commissioner may take any reasonable and lawful action in furtherance of
199 coordinating the regulation of interstate operations, including:

200 (a) negotiating and entering into cooperative agreements with an agency of another
201 state or of the federal government;

202 (b) sharing information and reports in accordance with Section 7-1-802 with an agency
203 that shares jurisdiction over the institution;

204 (c) accepting as sufficient, if appropriate, examination reports and other information
205 compiled or generated by or for an agency that shares jurisdiction over the institution;

206 (d) contracting with an agency that shares jurisdiction over the institution to engage the
207 services of its examiners at a reasonable rate of compensation;

208 (e) offering the services of the department's examiners at a reasonable rate of
209 compensation to an agency that shares jurisdiction over the institution;

210 (f) collecting fees on behalf of, or receiving payment of fees through, an agency that
211 shares jurisdiction over the institution; and

212 (g) cooperating in any other way with other supervisory agencies and professional
213 associations to promote the efficient, safe, and sound operation and regulation of interstate

214 depository institution activities, including the formulation of interstate examination policies
215 and procedures and the drafting of model laws, rules, and agreements.

216 (4) A contract between the department and an agency that shares jurisdiction over a
217 depository institution to provide examiners to aid in interstate examination and regulation is
218 considered a sole source contract under Section [~~63-56-23~~] 63-56-410.

219 Section 2. Section **10-3-1304** is amended to read:

220 **10-3-1304. Use of office for personal benefit prohibited.**

221 (1) As used in this section, "economic benefit tantamount to a gift" includes:

222 (a) a loan at an interest rate that is substantially lower than the commercial rate then
223 currently prevalent for similar loans; and

224 (b) compensation received for private services rendered at a rate substantially
225 exceeding the fair market value of the services.

226 (2) It is an offense for an elected or appointed officer or municipal employee, under
227 circumstances not amounting to a violation of Section [~~63-56-72~~] 63-56-1001 or 76-8-105, to:

228 (a) disclose or improperly use private, controlled, or protected information acquired by
229 reason of his official position or in the course of official duties in order to further substantially
230 the officer's or employee's personal economic interest or to secure special privileges or
231 exemptions for himself or others;

232 (b) use or attempt to use his official position to:

233 (i) further substantially the officer's or employee's personal economic interest; or

234 (ii) secure special privileges for himself or others; or

235 (c) knowingly receive, accept, take, seek, or solicit, directly or indirectly, for himself or
236 another a gift of substantial value or a substantial economic benefit tantamount to a gift that:

237 (i) would tend improperly to influence a reasonable person in the person's position to
238 depart from the faithful and impartial discharge of the person's public duties; or

239 (ii) the person knows or that a reasonable person in that position should know under
240 the circumstances is primarily for the purpose of rewarding the person for official action taken.

241 (3) Subsection (2)(c) does not apply to:

242 (a) an occasional nonpecuniary gift having a value of less than \$50;

243 (b) an award publicly presented in recognition of public services;

244 (c) any bona fide loan made in the ordinary course of business; or

245 (d) a political campaign contribution.

246 Section 3. Section **10-3-1305** is amended to read:

247 **10-3-1305. Compensation for assistance in transaction involving municipality --**
248 **Public disclosure and filing required.**

249 (1) As used in this section, "municipal body" means any public board, commission,
250 committee, or other public group organized to make public policy decisions or to advise
251 persons who make public policy decisions.

252 (2) It is an offense for an elected officer, or appointed officer, who is a member of a
253 public body, under circumstances not amounting to a violation of Section [~~63-56-72~~]
254 63-56-1001 or 76-8-105, to receive or agree to receive compensation for assisting any person or
255 business entity in any transaction involving the municipality in which he is an officer unless he:

256 (a) files with the mayor a sworn statement giving the information required by this
257 section; and

258 (b) discloses the information required by Subsection (5) in an open meeting to the
259 members of the body of which he is a member immediately before the discussion.

260 (3) It is an offense for an appointed officer who is not a member of a public body or a
261 municipal employee to receive or agree to receive compensation for assisting any person or
262 business entity in any transaction involving the municipality by which he is employed unless
263 the officer or employee:

264 (a) files with the mayor a sworn statement giving the information required by this
265 section; and

266 (b) discloses the information required by Subsection (5) to:

267 (i) his immediate supervisor; and

268 (ii) any other municipal officer or employee who may rely upon the employee's
269 representations in evaluating or approving the transaction.

270 (4) (a) The officer or employee shall file the statement required to be filed by this
271 section ten days before the date of any agreement between the elected or appointed officer or
272 municipal employee and the person or business entity being assisted or ten days before the
273 receipt of compensation by the officer or employee, whichever is earlier.

274 (b) The statement is public information and shall be available for examination by the
275 public.

- 276 (5) The statement and disclosure shall contain:
- 277 (a) the name and address of the officer or municipal employee;
- 278 (b) the name and address of the person or business entity being or to be assisted or in
- 279 which the appointed or elected official or municipal employee has a substantial interest; and
- 280 (c) a brief description of the transaction as to which service is rendered or is to be
- 281 rendered and of the nature of the service performed or to be performed.

282 Section 4. Section **10-7-87** is amended to read:

283 **10-7-87. Procurement -- Use of recycled goods.**

284 The procurement officer or other person responsible for purchasing supplies for each
285 municipality shall:

- 286 (1) maintain for reference a copy of the current listing of recycled items available on
- 287 state contracts as issued by the chief procurement officer under Section [~~63-56-9~~] 63-56-204;
- 288 and
- 289 (2) give recycled items consideration when inviting bids and purchasing supplies, in
- 290 compliance with Section 11-37-101.

291 Section 5. Section **11-37-101** is amended to read:

292 **11-37-101. Definition -- Procurement -- Use of recycled goods.**

- 293 (1) "Local government entity" means:
- 294 (a) municipalities, cities, and counties;
- 295 (b) entities created under Title 26A, Chapter 1, Local Health Departments; and
- 296 (c) political subdivisions created by cities or counties, including entities created under:
- 297 (i) Title 9, Chapter 4, Part 9, Utah Housing Corporation Act; and
- 298 (ii) Title 11, Chapter 13, Interlocal Cooperation Act.

299 (2) The procurement officer or other person responsible for purchasing supplies for
300 each local government entity shall:

- 301 (a) maintain for reference a copy of the current listing of recycled items available on
- 302 state contract as issued by the chief procurement officer under Section [~~63-56-9~~] 63-56-204;
- 303 and
- 304 (b) give recycled items consideration when inviting bids and purchasing supplies.

305 Section 6. Section **11-39-107** is amended to read:

306 **11-39-107. Procurement code.**

307 (1) This chapter may not be construed to:
308 (a) prohibit a county legislative body from adopting the procedures of the procurement
309 code; or

310 (b) limit the application of the procurement code to a special district or local district.

311 (2) (a) In seeking bids and awarding a contract for a building improvement or public
312 works project, a county legislative body may elect to follow the provisions of the procurement
313 code, as the county legislative body considers appropriate under the circumstances, for
314 specification preparation, source selection, or contract formation.

315 (b) A county legislative body's election to adopt the procedures of the procurement
316 code may not excuse the county from complying with the requirements to award a contract for
317 work in excess of the bid limit and to publish notice of the intent to award.

318 (c) An election under Subsection (2)(a) may be made on a case-by-case basis, unless
319 the county has previously adopted the procurement code as permitted by Subsection [~~63-56-2~~
320 63-56-102](3)(e).

321 (d) The county legislative body shall:

322 (i) make each election under Subsection (2)(a) in an open meeting; and

323 (ii) specify in its action the portions of the procurement code to be followed.

324 (3) If the estimated cost of the building improvement or public works project proposed
325 by a special district or local district exceeds the bid limit, the legislative body of the special
326 district or local district may, if it determines to proceed with the building improvement or
327 public works project, use the competitive procurement procedures of the procurement code in
328 place of the comparable provisions of this chapter.

329 Section 7. Section **14-1-18** is amended to read:

330 **14-1-18. Definitions -- Application of Procurement Code to payment and**
331 **performance bonds.**

332 (1) (a) For purposes of this chapter, "political subdivision" means any county, city,
333 town, school district, public transit district, special district, redevelopment agency, public
334 corporation, institution of higher education of the state, public agency of any political
335 subdivision, and, to the extent provided by law, any other entity which expends public funds
336 for construction.

337 (b) For purposes of applying Section [~~63-56-38~~] 63-56-504 to a political subdivision,

338 "state" includes "political subdivision."

339 (2) Section [~~63-56-38~~] 63-56-504 applies to all contracts for the construction,
340 alteration, or repair of any public building or public work of the state or a political subdivision
341 of the state.

342 Section 8. Section **17-15-24** is amended to read:

343 **17-15-24. Procurement -- Use of recycled goods.**

344 The procurement officer or other person responsible for purchasing supplies for each
345 county and each entity created by a county or joined by a county shall:

346 (1) maintain for reference a copy of the current listing of recycled items available on a
347 state contract as issued by the chief procurement officer appointed under Section [~~63-56-9~~]
348 63-56-204; and

349 (2) give recycled items consideration when inviting bids and purchasing supplies, in
350 compliance with Section 11-37-101.

351 Section 9. Section **17-16a-4** is amended to read:

352 **17-16a-4. Prohibited use of official position.**

353 (1) It is an offense for an elected or appointed officer, under circumstances not
354 amounting to a violation of Section [~~63-56-72~~] 63-56-1001 or 76-8-105, to:

355 (a) disclose confidential information acquired by reason of his official position or use
356 that information to secure special privileges or exemptions for himself or others;

357 (b) use or attempt to use his official position to secure special privileges for himself or
358 others; or

359 (c) knowingly receive, accept, take, seek or solicit, directly or indirectly, any gift or
360 loan for himself or another if the gift or loan tends to influence him in the discharge of his
361 official duties.

362 (2) This section is inapplicable to:

363 (a) an occasional nonpecuniary gift having a value of less than \$50;

364 (b) an award publicly presented;

365 (c) any bona fide loan made in the ordinary course of business; or

366 (d) political campaign contributions actually used in a political campaign.

367 Section 10. Section **17A-1-801** is amended to read:

368 **17A-1-801. Hiring of professional architect, engineer, or surveyor.**

369 Notwithstanding Subsection [63-56-2] 63-56-102(3)(d), each special district board that
370 engages the services of a professional architect, engineer, or surveyor and considers more than
371 one such professional for the engagement:

372 (1) shall consider, as a minimum, in the selection process:

373 (a) the qualifications, experience, and background of each firm submitting a proposal;

374 (b) the specific individuals assigned to the project and the time commitments of each to
375 the project; and

376 (c) the project schedule and the approach to the project that the firm will take; and

377 (2) may engage the services of a professional architect, engineer, or surveyor based on
378 the criteria under Subsection (1) rather than solely on lowest cost.

379 Section 11. Section **17A-2-328** is amended to read:

380 **17A-2-328. Powers of municipalities -- Collection -- System for collection,**
381 **retention, and disposition of storm and flood waters -- Power of district to make contracts**
382 **-- Retainage.**

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

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

388 (ii) require industrial and commercial establishments to pretreat certain wastes and
389 sewage when the wastes and sewage would otherwise impose an unreasonable burden upon the
390 collection system or the treatment facility of the improvement district.

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

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

399 (b) Some or all of the parties to a contract under Subsection (2)(a) may agree to joint

400 acquisition, ownership, construction, operation, or maintenance of all or part of the system for
401 the collection of storm and flood waters.

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

405 (ii) As a local public procurement unit as defined in Subsection [~~63-56-5~~
406 63-56-105(14), each improvement district contracting as provided in Subsection (2)(c)(i) shall
407 comply with the provisions applicable to local public procurement units under Title 63,
408 Chapter 56, Utah Procurement Code.

409 (3) If any payment on a contract with a private person, firm, or corporation to construct
410 storm sewers, drainage canals, dams, dikes, levees, reservoirs, and other pertinent
411 improvements is retained or withheld, it shall be retained or withheld and released as provided
412 in Section 13-8-5.

413 Section 12. Section ~~26-8a-405.2~~ is amended to read:

414 **26-8a-405.2. Selection of provider -- Public bid -- Public convenience and**
415 **necessity.**

416 (1) (a) A political subdivision may contract with an applicant approved under Section
417 26-8a-404 to provide 911 ambulance or paramedic services for the geographic service area that
418 is approved by the department in accordance with Subsection (2), if the political subdivision
419 complies with the provisions of this section.

420 (b) The provisions of this section and Section 26-8a-405.1 do not require a political
421 subdivision to issue a request for proposal for ambulance or paramedic services. If a political
422 subdivision does not contract with an applicant in accordance with this section, the provisions
423 of Sections 26-8a-406 through 26-8a-409 apply to the issuance of a license for ambulance or
424 paramedic services in the geographic service area that is within the boundaries of the political
425 subdivision.

426 (c) (i) For purposes of this Subsection (1)(c):

427 (A) "local district" and "county service area" are defined in Subsection
428 26-8a-405.1(1)(b)(iii);

429 (B) "participating municipality" means a city or town whose area is partly or entirely
430 included within a county service area or local district; and

431 (C) "participating county" means a county whose unincorporated area is partly or
432 entirely included within a county service area or local district.

433 (ii) A participating municipality or participating county may contract with a provider
434 for 911 ambulance or paramedic service as provided in this section.

435 (iii) If the participating municipality or participating county contracts with a provider
436 for 911 ambulance or paramedic services under this section:

437 (A) the county service area or local district is not obligated to provide the ambulance or
438 paramedic services that are included in the contract between the participating municipality or
439 the participating county and the 911 ambulance or paramedic provider;

440 (B) the county service area and local district may impose taxes and obligations within
441 the county service area or local district in the same manner as if the participating municipality
442 or participating county were receiving all services offered by the local district or county service
443 area; and

444 (C) the participating municipality's and participating county's obligations to the local
445 district or county service area are not diminished.

446 (2) (a) The political subdivision shall submit the request for proposal and the exclusive
447 geographic service area to be included in the request for proposal to the department for
448 approval prior to issuing the request for proposal. The department shall approve the request for
449 proposal and the exclusive geographic service area:

450 (i) unless the geographic service area creates an orphaned area; and

451 (ii) in accordance with Subsections (2)(b) and (c).

452 (b) The exclusive geographic service area may:

453 (i) include the entire geographic service area that is within the political subdivision's
454 boundaries;

455 (ii) include islands within or adjacent to other peripheral areas not included in the
456 political subdivision that governs the geographic service area; or

457 (iii) exclude portions of the geographic service area within the political subdivision's
458 boundaries if another political subdivision or licensed provider agrees to include the excluded
459 area within their license.

460 (c) The proposed geographic service area for 911 ambulance or paramedic service must
461 demonstrate that non-911 ambulance or paramedic service will be provided in the geographic

462 service area, either by the current provider, the applicant, or some other method acceptable to
463 the department. The department may consider the effect of the proposed geographic service
464 area on the costs to the non-911 provider and that provider's ability to provide only non-911
465 services in the proposed area.

466 (3) (a) (i) A political subdivision may select an applicant approved by the department
467 under Section 26-8a-404 to provide 911 ambulance or paramedic services by contract let to the
468 lowest, responsive, and responsible bidder after publication of notice at least once a week for
469 three consecutive weeks in a newspaper of general circulation published in the county, or if
470 there is no such newspaper, then after posting such notice for at least 20 days in at least five
471 public places in the county.

472 (ii) The applicants who are approved under Section 26-8a-405 and who are selected
473 under Subsection (3)(a)(i) may be the political subdivision issuing the request for proposal, or
474 any other public entity or entities, any private person or entity, or any combination thereof.

475 (b) A political subdivision may reject all of the bids.

476 (4) In seeking bids and awarding contracts under this section, a political subdivision:

477 (a) shall follow the provisions of Section [~~63-56-20~~] 63-56-401;

478 (b) shall consider the public convenience and necessity factors listed in Subsections
479 26-8a-408(2), (3), and (4);

480 (c) shall require the applicant responding to the bid to disclose how the applicant will
481 meet performance standards in the request for proposal;

482 (d) may not require or restrict an applicant to a certain method of meeting the
483 performance standards; and

484 (e) (i) shall require an applicant to submit the bid based on full cost accounting in
485 accordance with generally accepted accounting principals; and

486 (ii) if the applicant is a governmental entity, in addition to the requirements of
487 Subsection (4)(e)(i), in accordance with generally accepted government auditing standards and
488 in compliance with the State of Utah Legal Compliance Audit Guide.

489 Section 13. Section **26A-1-108.7** is amended to read:

490 **26A-1-108.7. Procurement -- Use of recycled goods.**

491 The procurement officer or other person responsible for purchasing supplies for each
492 local health department shall:

493 (1) maintain for reference a copy of the current listing of recycled items available on
494 state contract as issued by the chief procurement officer under Section [~~63-56-9~~] 63-56-204;
495 and

496 (2) give recycled items consideration when inviting bids and purchasing supplies, in
497 compliance with Section 11-37-101.

498 Section 14. Section **53A-20-101** is amended to read:

499 **53A-20-101. Construction and alteration of schools and plants -- Advertising for**
500 **bids -- Payment and performance bonds -- Contracts -- Bidding limitations on local**
501 **school boards -- Interest of local school board members.**

502 (1) As used in this section, the word "sealed" does not preclude acceptance of
503 electronically sealed and submitted bids or proposals in addition to bids or proposals manually
504 sealed and submitted.

505 (2) (a) Prior to the construction of any school or the alteration of any existing school
506 plant, if the total estimated accumulative building project cost exceeds \$80,000, a local school
507 board shall advertise for bids on the project at least ten days before the bid due date.

508 (b) The board shall have the advertisement published in a newspaper having general
509 circulation throughout the state and in appropriate construction trade publications that offer
510 free listings.

511 (c) A similar advertisement is required in a newspaper published or having general
512 circulation in any city or county that would be affected by the proposed project.

513 (d) The advertisement shall:

514 (i) require sealed proposals for the building project in accordance with plans and
515 specifications furnished by the local school board;

516 (ii) state where and when the proposals will be opened and shall reserve the right of the
517 board to reject any and all proposals; and

518 (iii) require a certified check or bid bond of not less than 5% of the bid to accompany
519 the bid.

520 (3) (a) The board shall meet at the time and place specified in the advertisement and
521 publicly open and read all received proposals.

522 (b) If satisfactory bids are received, the board shall award the contract to the lowest
523 responsible bidder.

- 524 (c) If none of the proposals are satisfactory, all shall be rejected.
- 525 (d) The board shall again advertise in the manner provided in this section.
- 526 (e) If, after advertising a second time no satisfactory bid is received, the board may
- 527 proceed under its own direction with the required project.
- 528 (4) (a) The check or bond required under Subsection (2)(d) shall be drawn in favor of
- 529 the local school board.
- 530 (b) If the successful bidder fails or refuses to enter into the contract and furnish the
- 531 additional bonds required under this section, then the bidder's check or bond is forfeited to the
- 532 district.
- 533 (5) A local school board shall require payment and performance bonds of the
- 534 successful bidder as required in Section [~~63-56-38~~] 63-56-504.
- 535 (6) (a) A local school board may require in the proposed contract that at least 10% of
- 536 the contract price be withheld until the project is completed and accepted by the board.
- 537 (b) If money is withheld, the board shall place it in an interest bearing account, and the
- 538 interest accrues for the benefit of the contractor and subcontractors.
- 539 (c) This money shall be paid upon completion of the project and acceptance by the
- 540 board.
- 541 (7) (a) A local school board may not bid on projects within the district if the total
- 542 accumulative estimated cost exceeds \$80,000.
- 543 (b) The board may use its resources if no satisfactory bids are received under this
- 544 section.
- 545 (8) If the local school board determines in accordance with Section [~~63-56-36~~]
- 546 63-56-501 to use a construction manager/general contractor as its method of construction
- 547 contracting management on projects where the total estimated accumulative cost exceeds
- 548 \$80,000, it shall select the construction manager/general contractor using one of the source
- 549 selection methods provided for in Sections [~~63-56-20~~] 63-56-401 through [~~63-56-36~~]
- 550 63-56-501.
- 551 (9) A local school board member may not have a direct or indirect financial interest in
- 552 the construction project contract.
- 553 Section 15. Section **63-56-101**, which is renumbered from Section 63-56-1 is
- 554 renumbered and amended to read:

555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585

Part 1. General Provisions

~~[63-56-1].~~ **63-56-101. Purpose of chapter.**

The underlying purposes and policies of this chapter are:

- (1) to simplify, clarify, and modernize the law governing procurement by this state;
- (2) to ensure the fair and equitable treatment of all persons who deal with the procurement system of this state;
- (3) to provide increased economy in state procurement activities; and
- (4) to foster effective broad-based competition within the free enterprise system.

Section 16. Section **63-56-102**, which is renumbered from Section 63-56-2 is renumbered and amended to read:

~~[63-56-2].~~ **63-56-102. Application of chapter.**

(1) This chapter applies only to contracts solicited or entered into after the effective date of this chapter unless the parties agree to its application to a contract solicited or entered into prior to the effective date.

(2) Except as provided in Section ~~[63-56-3]~~ 63-56-103, this chapter shall apply to every expenditure of public funds irrespective of their source, including federal assistance, by any state agency under any contract.

(3) (a) Only the following sections shall apply to local public procurement units: Sections ~~[63-56-3]~~ 63-56-103, ~~[63-56-5]~~ 63-56-105, ~~[63-56-16]~~ 63-56-301, ~~[63-56-19]~~ 63-56-303 through ~~[63-56-33]~~ 63-56-420, ~~[63-56-35.5]~~ 63-56-422, ~~[63-56-36]~~ 63-56-501 through ~~[63-56-41]~~ 63-56-602, ~~[63-56-45]~~ 63-56-801 through ~~[63-56-50]~~ 63-56-806, and ~~[63-56-59]~~ 63-56-815 through ~~[63-56-63]~~ 63-56-819; provided, however, that, except as provided in Sections ~~[63-56-70]~~ 63-56-906 and ~~[63-56-71]~~ 63-56-907, the jurisdiction of the procurement appeals board is limited to matters involving state agencies.

(b) Subsections ~~[63-56-14]~~ 63-56-208(1)(b), ~~[63-56-37]~~ 63-56-503(4), and ~~[63-56-38]~~ 63-56-504(2) also apply to local public procurement units.

(c) For the purpose of application of those sections and subsections to a local public procurement unit, "state" shall mean "local public procurement unit," "chief procurement officer" or "head of a purchasing agency" shall mean any person conducting procurement for a local public procurement unit, and "rules and regulations" shall mean ordinances and rules and regulations promulgated by a local public procurement unit to implement or supplement those

586 sections.

587 (d) In addition to the sections and subsections listed above and except as provided in
588 Section 17A-1-801 relating to special districts, each local public procurement unit shall adopt
589 ordinances relating to the procurement of architect-engineer services not inconsistent with the
590 provisions of Part ~~[G of this chapter]~~ 7.

591 (e) Any other section of this chapter, or its implementing regulations, may be adopted
592 by any local public procurement unit.

593 (f) Any other implementing regulations adopted by local public procurement units may
594 not be inconsistent with the provisions of this chapter.

595 (4) Unless otherwise provided by statute, this chapter does not apply to procurement of
596 real property.

597 Section 17. Section **63-56-103**, which is renumbered from Section 63-56-3 is
598 renumbered and amended to read:

599 ~~[63-56-3].~~ **63-56-103. Exemptions from chapter -- Compliance with federal**
600 **law.**

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

603 (2) This chapter is not applicable to grants awarded by the state or contracts between
604 the state and local public procurement units except as provided in Part ~~[F of this chapter]~~ 9,
605 Intergovernmental Relations.

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

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

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

614 Section 18. Section **63-56-104**, which is renumbered from Section 63-56-4 is
615 renumbered and amended to read:

616 ~~[63-56-4].~~ **63-56-104. Records.**

617 (1) All procurement records shall be retained and disposed of in accordance with Title
618 63, Chapter 2, Government Records Access and Management Act.

619 (2) Written determinations required by this chapter shall also be retained in the
620 appropriate official contract file of the Division of Purchasing and General Services or the
621 purchasing agency.

622 Section 19. Section **63-56-105**, which is renumbered from Section 63-56-5 is
623 renumbered and amended to read:

624 **~~63-56-5~~. 63-56-105. Definitions.**

625 As used in this chapter:

626 (1) "Architect-engineer services" are those professional services within the scope of the
627 practice of architecture as defined in Section 58-3a-102, or professional engineering as defined
628 in Section 58-22-102.

629 (2) "Business" means any corporation, partnership, individual, sole proprietorship,
630 joint stock company, joint venture, or any other private legal entity.

631 (3) "Change order" means a written order signed by the procurement officer, directing
632 the contractor to suspend work or make changes, which the appropriate clauses of the contract
633 authorize the procurement officer to order without the consent of the contractor or any written
634 alteration in specifications, delivery point, rate of delivery, period of performance, price,
635 quantity, or other provisions of any contract accomplished by mutual action of the parties to the
636 contract.

637 (4) (a) "Construction" means the process of building, renovation, alteration,
638 improvement, or repair of any public building or public work.

639 (b) "Construction" does not mean the routine operation, routine repair, or routine
640 maintenance of existing structures, buildings, or real property.

641 (5) (a) "Construction Manager/General Contractor" means any contractor who enters
642 into a contract for the management of a construction project when that contract allows the
643 contractor to subcontract for additional labor and materials that were not included in the
644 contractor's cost proposal submitted at the time of the procurement of the Construction
645 Manager/General Contractor's services.

646 (b) "Construction Manager/General Contractor" does not mean a contractor whose only
647 subcontract work not included in the contractor's cost proposal submitted as part of the

648 procurement of construction is to meet subcontracted portions of change orders approved
649 within the scope of the project.

650 (6) "Contract" means any state agreement for the procurement or disposal of supplies,
651 services, or construction.

652 (7) "Cooperative purchasing" means procurement conducted by, or on behalf of, more
653 than one public procurement unit, or by a public procurement unit with an external
654 procurement unit.

655 (8) "Cost-reimbursement contract" means a contract under which a contractor is
656 reimbursed for costs which are allowed and allocated in accordance with the contract terms and
657 the provisions of this chapter, and a fee, if any.

658 (9) (a) "Design-build" means the procurement of architect-engineer services and
659 construction by the use of a single contract with the design-build provider.

660 (b) This method of design and construction can include the design-build provider
661 supplying the site as part of the contract.

662 (10) "Established catalogue price" means the price included in a catalogue, price list,
663 schedule, or other form that:

664 (a) is regularly maintained by a manufacturer or contractor;

665 (b) is either published or otherwise available for inspection by customers; and

666 (c) states prices at which sales are currently or were last made to a significant number
667 of any category of buyers or buyers constituting the general buying public for the supplies or
668 services involved.

669 (11) "External procurement unit" means any buying organization not located in this
670 state which, if located in this state, would qualify as a public procurement unit. An agency of
671 the United States is an external procurement unit.

672 (12) "Grant" means the furnishing by the state or by any other public or private source
673 assistance, whether financial or otherwise, to any person to support a program authorized by
674 law. It does not include an award whose primary purpose is to procure an end product, whether
675 in the form of supplies, services, or construction. A contract resulting from the award is not a
676 grant but a procurement contract.

677 (13) "Invitation for bids" means all documents, whether attached or incorporated by
678 reference, utilized for soliciting bids.

679 (14) "Local public procurement unit" means any political subdivision or institution of
680 higher education of the state or public agency of any subdivision, public authority, educational,
681 health, or other institution, and to the extent provided by law, any other entity which expends
682 public funds for the procurement of supplies, services, and construction, but not counties,
683 municipalities, political subdivisions created by counties or municipalities under the Interlocal
684 Cooperation Act, the Utah Housing Corporation, the Utah Technology Finance Corporation, or
685 the Legislature and its staff offices. It includes two or more local public procurement units
686 acting under legislation which authorizes intergovernmental cooperation.

687 (15) "Person" means any business, individual, union, committee, club, other
688 organization, or group of individuals, not including a state agency or a local public
689 procurement unit.

690 (16) "Policy board" means the procurement policy board created by Section [~~63-56-6~~]
691 63-56-201.

692 (17) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference
693 under the requirements of this chapter.

694 (18) "Procurement" means buying, purchasing, renting, leasing, leasing with an option
695 to purchase, or otherwise acquiring any supplies, services, or construction. It also includes all
696 functions that pertain to the obtaining of any supply, service, or construction, including
697 description of requirements, selection, and solicitation of sources, preparation, and award of a
698 contract, and all phases of contract administration.

699 (19) "Procurement officer" means any person or board duly authorized to enter into and
700 administer contracts and make written determinations with respect thereto. It also includes an
701 authorized representative acting within the limits of authority.

702 (20) "Public procurement unit" means either a local public procurement unit or a state
703 public procurement unit.

704 (21) "Purchase description" means the words used in a solicitation to describe the
705 supplies, services, or construction to be purchased, and includes specifications attached to or
706 made a part of the solicitation.

707 (22) "Purchasing agency" means any state agency other than the Division of Purchasing
708 and General Services that is authorized by this chapter or its implementing regulations, or by
709 delegation from the chief procurement officer, to enter into contracts.

710 (23) "Request for proposals" means all documents, whether attached or incorporated by
711 reference, used for soliciting proposals.

712 (24) "Responsible bidder or offeror" means a person who has the capability in all
713 respects to perform fully the contract requirements and who has the integrity and reliability
714 which will assure good faith performance.

715 (25) "Responsive bidder" means a person who has submitted a bid which conforms in
716 all material respects to the invitation for bids.

717 (26) "Sealed" does not preclude acceptance of electronically sealed and submitted bids
718 or proposals in addition to bids or proposals manually sealed and submitted.

719 (27) "Services" means the furnishing of labor, time, or effort by a contractor, not
720 involving the delivery of a specific end product other than reports which are merely incidental
721 to the required performance. It does not include employment agreements or collective
722 bargaining agreements.

723 (28) "Specification" means any description of the physical or functional characteristics,
724 or of the nature of a supply, service, or construction item. It may include a description of any
725 requirement for inspecting, testing, or preparing a supply, service, or construction item for
726 delivery.

727 (29) "State agency" or "the state" means any department, division, commission,
728 council, board, bureau, committee, institution, government corporation, or other establishment,
729 official, or employee of this state.

730 (30) "State public procurement unit" means the Division of Purchasing and General
731 Services and any other purchasing agency of this state.

732 (31) "Supplies" means all property, including equipment, materials, and printing.

733 (32) "Using agency" means any state agency which utilizes any supplies, services, or
734 construction procured under this chapter.

735 Section 20. Section **63-56-201**, which is renumbered from Section 63-56-6 is
736 renumbered and amended to read:

737 **Part 2. Procurement Organization**

738 **[63-56-6]. 63-56-201. Creation of procurement policy board.**

739 (1) (a) There is created a state procurement policy board.

740 (b) The policy board shall consist of eight members who shall be appointed as follows:

- 741 (i) an employee of a state institution of higher education, appointed by the board of
742 regents;
- 743 (ii) an employee of the Department of Human Services, appointed by the executive
744 director of that department;
- 745 (iii) an employee of the Department of Transportation, appointed by the executive
746 director of that department;
- 747 (iv) an employee of a school district appointed by a cooperative purchasing entity for
748 school districts;
- 749 (v) an employee of the Division of Facilities Construction and Management appointed
750 by the director of that division;
- 751 (vi) an employee of a county, appointed by the Utah Association of Counties;
- 752 (vii) an employee of a city, appointed by the Utah League of Cities and Towns; and
- 753 (viii) an employee of a special district, appointed by the Utah Association of Special
754 Districts.
- 755 (c) Members of the policy board shall be knowledgeable and experienced in, and have
756 supervisory responsibility for, procurement in their official positions.
- 757 (2) Members shall be appointed to four-year staggered terms.
- 758 (3) When a vacancy occurs in the membership for any reason, the replacement shall be
759 appointed for the unexpired term.
- 760 (4) (a) The policy board shall:
- 761 (i) adopt rules of procedure for conducting its business; and
- 762 (ii) elect a chair to serve for one year.
- 763 (b) The chair may be elected to succeeding terms.
- 764 (c) The chief procurement officer shall serve as the nonvoting secretary to the policy
765 board.
- 766 (5) (a) (i) Members who are not government employees shall receive no compensation
767 or benefits for their services, but may receive per diem and expenses incurred in the
768 performance of the member's official duties at the rates established by the Division of Finance
769 under Sections 63A-3-106 and 63A-3-107.
- 770 (ii) Members may decline to receive per diem and expenses for their service.
- 771 (b) (i) State government officer and employee members who do not receive salary, per

772 diem, or expenses from their agency for their service may receive per diem and expenses
773 incurred in the performance of their official duties from the board at the rates established by the
774 Division of Finance under Sections 63A-3-106 and 63A-3-107.

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

777 (c) (i) Higher education members who do not receive salary, per diem, or expenses
778 from the entity that they represent for their service may receive per diem and expenses incurred
779 in the performance of their official duties from the committee at the rates established by the
780 Division of Finance under Sections 63A-3-106 and 63A-3-107.

781 (ii) Higher education members may decline to receive per diem and expenses for their
782 service.

783 (d) (i) Local government members who do not receive salary, per diem, or expenses
784 from the entity that they represent for their service may receive per diem and expenses incurred
785 in the performance of their official duties at the rates established by the Division of Finance
786 under Sections 63A-3-106 and 63A-3-107.

787 (ii) Local government members may decline to receive per diem and expenses for their
788 service.

789 Section 21. Section **63-56-202**, which is renumbered from Section 63-56-7 is
790 renumbered and amended to read:

791 ~~[63-56-7]~~. **63-56-202. Powers and duties of board.**

792 (1) Except as otherwise provided in Sections ~~[63-56-2]~~ 63-56-102 and ~~[63-56-14]~~
793 63-56-208, the policy board shall:

794 (a) make rules, consistent with this chapter, governing the procurement, management,
795 and control of any and all supplies, services, and construction to be procured by the state; and

796 (b) consider and decide matters of policy within the provisions of this chapter,
797 including those referred to it by the chief procurement officer.

798 (2) (a) The policy board may:

799 (i) audit and monitor the implementation of its rules and the requirements of this
800 chapter;

801 (ii) upon the request of a local public procurement unit, review that procurement unit's
802 proposed rules to ensure that they are not inconsistent with the provisions of this chapter; and

803 (iii) approve the use of innovative procurement methods proposed by local public
804 procurement units.

805 (b) The policy board may not exercise authority over the award or administration of:

806 (i) any particular contact; or

807 (ii) over any dispute, claim, or litigation pertaining to any particular contract.

808 Section 22. Section **63-56-203**, which is renumbered from Section 63-56-8 is
809 renumbered and amended to read:

810 **[63-56-8]. 63-56-203. Chief procurement officer -- Appointment --**

811 **Qualifications.**

812 (1) The executive director of the Department of Administrative Services, with the
813 consent of the governor, shall appoint the chief procurement officer after considering
814 recommendations from the policy board.

815 (2) The chief procurement officer shall:

816 (a) have a minimum of eight years' experience in the large-scale procurement of
817 supplies and services or services and construction, at least five years of which shall have been
818 in public or comparable private procurement within 12 years preceding the date of
819 appointment; and

820 (b) be a person with demonstrated executive and organizational ability.

821 (3) The chief procurement officer is also the director of the Division of Purchasing and
822 General Services.

823 Section 23. Section **63-56-204**, which is renumbered from Section 63-56-9 is
824 renumbered and amended to read:

825 **[63-56-9]. 63-56-204. Duties of chief procurement officer.**

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

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

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

832 (3) exercise general supervision and control over all inventories or supplies belonging
833 to the state;

- 834 (4) establish and maintain programs for the inspection, testing, and acceptance of
835 supplies, services, and construction;
- 836 (5) prepare statistical data concerning the procurement and usage of all supplies,
837 services, and construction;
- 838 (6) before June 1, 1990, notify all public procurement units of the requirements of
839 Section [~~63-56-20.7~~] 63-56-406 regarding purchases of recycled paper and recycled paper
840 products, recycling requirements, and provide guidelines on the availability of recycled paper
841 and paper products, including the sources of supply and the potential uses of various grades of
842 recycled paper;
- 843 (7) before July 1, 1992:
- 844 (a) establish standards and specifications for determining which supplies are
845 considered recycled, based upon his review of current definitions and standards employed by
846 national procurement, product recycling, and other relevant organizations and the federal
847 Environmental Protection Agency;
- 848 (b) compile and update as necessary the specifications, a list of recycled supplies
849 available on state contract, and sources where the supplies may be obtained;
- 850 (c) make the compiled information under Subsection (7)(b) available to:
- 851 (i) all local government entities under Section 11-37-101;
- 852 (ii) all local health departments under Section 26A-1-108.7;
- 853 (iii) all procurement officers or other persons responsible for purchasing supplies
854 within the public school system under Title 53A, State System of Public Education;
- 855 (iv) all procurement officers or other persons responsible for purchasing supplies
856 within the state system of higher education under Title 53B, State System of Higher Education;
857 and
- 858 (v) all procurement officers or other persons responsible for purchasing supplies for all
859 public procurement units as defined in Section [~~63-56-5~~] 63-56-105; and
- 860 (d) present a written report to the Natural Resources, Agriculture, and Environment
861 Interim Committee annually prior to November 30 regarding the purchases of recycled goods
862 on state contracts during the prior fiscal year; and
- 863 (8) ensure that:
- 864 (a) before approving a purchase, lease, or rental not covered by an existing statewide

865 contract for information technology or telecommunications supplies or services under the
866 provisions of Section 63A-6-105, the director of the Division of Information Technology
867 Services has provided in writing to the chief procurement officer that the analysis required by
868 Subsection 63A-6-105(7) was completed; and

869 (b) the oversight authority required by Subsection (8)(a) is not delegated outside the
870 Division of Purchasing and General Services.

871 Section 24. Section **63-56-205**, which is renumbered from Section 63-56-10 is
872 renumbered and amended to read:

873 **~~[63-56-10]~~. 63-56-205. Delegation of authority.**

874 Subject to rules and regulations, the chief procurement officer may delegate authority to
875 designees or to any department, agency, or official.

876 Section 25. Section **63-56-206**, which is renumbered from Section 63-56-11 is
877 renumbered and amended to read:

878 **~~[63-56-11]~~. 63-56-206. Transfer of power to policy board.**

879 Except as otherwise provided in this chapter, all rights, powers, duties, and authority
880 relating to the procurement of supplies, services, and construction, and the management,
881 control, warehousing, and sale of supplies, services, and construction vested in or exercised by
882 any state agency on the effective date are transferred to the policy board as they relate to its
883 duties and to the Division of Purchasing and General Services as they relate to its duties.

884 Section 26. Section **63-56-207**, which is renumbered from Section 63-56-13 is
885 renumbered and amended to read:

886 **~~[63-56-13]~~. 63-56-207. Specific statutory authority.**

887 (1) The authority to procure certain supplies, services, and construction given the
888 public procurement units governed by the following provisions shall be retained:

889 (a) Title 53B, State System of Higher Education;

890 (b) Title 63A, Chapter 5, State Building Board - Division of Facilities Construction
891 and Management;

892 (c) Title 67, Chapter 5, Attorney General;

893 (d) Title 72, Transportation; and

894 (e) Title 78, Chapter 3, District Courts.

895 (2) This authority extends only to supplies, services, and construction to the extent

896 provided in the cited chapters. Except as otherwise provided in Sections [~~63-56-2~~] 63-56-102
897 and [~~63-56-3~~] 63-56-103, the respective purchasing agencies shall procure supplies, services,
898 and construction in accordance with this chapter.

899 (3) (a) The Department of Transportation may make rules governing the procurement
900 of highway construction or improvement.

901 (b) This Subsection (3) supersedes Subsections (1) and (2).

902 (4) The Legislature may procure supplies and services for its own needs.

903 Section 27. Section **63-56-208**, which is renumbered from Section 63-56-14 is
904 renumbered and amended to read:

905 ~~[63-56-14]~~. **63-56-208**. **Rules and regulations of policy board and building**
906 **board.**

907 (1) (a) Except as provided in Subsection (2), the policy board shall make rules
908 governing state procurement by complying with the procedures and requirements of Title 63,
909 Chapter 46a, the Utah Administrative Rulemaking Act.

910 (b) The procurement rules adopted by the policy board under this section apply to all
911 local public procurement units unless the local public procurement unit's legislative body has
912 adopted separate rules governing procurement.

913 (2) The State Building Board rules governing procurement of construction,
914 architect-engineer services, and leases apply to the procurement of construction,
915 architect-engineer services, and leases of real property by the Division of Facilities
916 Construction and Management.

917 Section 28. Section **63-56-209**, which is renumbered from Section 63-56-15 is
918 renumbered and amended to read:

919 ~~[63-56-15]~~. **63-56-209**. **Procurement Advisory Council.**

920 (1) The policy board may establish a Procurement Advisory Council, which shall meet
921 at least once a year for the discussion of problems and recommendations for improvement of
922 the procurement process. When requested by the policy board, the Procurement Advisory
923 Council may conduct studies, research, analyses, and make reports and recommendations with
924 respect to subjects or matters within the jurisdiction of the policy board. The Procurement
925 Advisory Council shall consist of representatives of state and local government and any other
926 persons the policy board [~~deems~~] considers desirable.

927 (2) The chief procurement officer may appoint advisory groups to provide advice
928 regarding any matters within the authority of the chief procurement officer.

929 (3) Members of the Procurement Advisory Council and other advisory groups may be
930 reimbursed for expenses incurred in the performance of their duties, as provided by the policy
931 board.

932 Section 29. Section **63-56-301**, which is renumbered from Section 63-56-16 is
933 renumbered and amended to read:

934 **Part 3. Specifications**

935 **[63-56-16]. 63-56-301. Rules and regulations for specifications of supplies.**

936 Rules and regulations shall be promulgated to govern the preparation, maintenance, and
937 content of specifications for supplies, services, and construction required by the state. Rules
938 and regulations shall determine the extent to which a nonemployee who has prepared
939 specifications for use by the state may participate in any state procurement using such
940 specifications.

941 Section 30. Section **63-56-302**, which is renumbered from Section 63-56-17 is
942 renumbered and amended to read:

943 **[63-56-17]. 63-56-302. Duty of chief procurement officer in maintaining**
944 **specifications of supplies.**

945 The chief procurement officer shall prepare, issue, revise, maintain, and monitor the use
946 of specifications for supplies, services, and construction required by the state. The chief
947 procurement officer shall obtain expert advice and assistance from personnel of using agencies
948 in the development of specifications and may delegate in writing to a using agency the
949 authority to prepare and utilize its own specifications.

950 Section 31. Section **63-56-303**, which is renumbered from Section 63-56-19 is
951 renumbered and amended to read:

952 **[63-56-19]. 63-56-303. Purpose of specifications.**

953 All specifications shall seek to promote overall economy and best use for the purposes
954 intended and encourage competition in satisfying the state's needs, and shall not be unduly
955 restrictive. The requirements of this part regarding the purposes and nonrestrictiveness of
956 specifications shall apply to all specifications, including, but not limited to, those prepared by
957 architects, engineers, designers, and draftsmen for public contracts.

958 Section 32. Section **63-56-401**, which is renumbered from Section 63-56-20 is
959 renumbered and amended to read:

960 **Part 4. Source Selections and Contract Formation**

961 **[63-56-20]. 63-56-401. Contracts awarded by sealed bidding -- Procedure.**

962 (1) Contracts shall be awarded by competitive sealed bidding except as otherwise
963 provided by this chapter.

964 (2) (a) An invitation for bids shall be issued when a contract is to be awarded by
965 competitive sealed bidding.

966 (b) The invitation shall include a purchase description and all contractual terms and
967 conditions applicable to the procurement.

968 (3) (a) Public notice of the invitation for bids shall be given a reasonable time before
969 the date set forth in the invitation for the opening of bids, in accordance with rules.

970 (b) The notice may include publication in a newspaper of general circulation a
971 reasonable time before bid opening.

972 (4) (a) Bids shall be opened publicly in the presence of one or more witnesses at the
973 time and place designated in the invitation for bids.

974 (b) The amount of each bid and any other relevant information specified by rules,
975 together with the name of each bidder, shall be recorded.

976 (c) The record and each bid shall be open to public inspection.

977 (5) (a) Bids shall be unconditionally accepted without alteration or correction, except
978 as authorized in this chapter.

979 (b) (i) Bids shall be evaluated based on the requirements set forth in the invitation for
980 bids, which may include criteria to determine acceptability such as inspection, testing, quality,
981 workmanship, delivery, and suitability for a particular purpose.

982 (ii) Those criteria that will affect the bid price and be considered in evaluation for
983 award shall be objectively measurable.

984 (iii) The criteria may include discounts, transportation costs, and total or life cycle
985 costs.

986 (c) No criteria may be used in bid evaluation that are not set forth in the invitation for
987 bids.

988 (6) (a) Correction or withdrawal of inadvertently erroneous bids before or after award,

989 or cancellation of awards or contracts based on the bid mistakes, shall be permitted in
990 accordance with rules.

991 (b) After bid opening, no changes in bid prices or other provisions of bids prejudicial
992 to the interest of the state or fair competition may be permitted.

993 (c) Except as otherwise provided by rule, all decisions to permit the correction or
994 withdrawal of bids or to cancel awards or contracts based on bid mistakes shall be supported by
995 a written determination made by the chief procurement officer or the head of a purchasing
996 agency.

997 (7) (a) The contract shall be awarded with reasonable promptness by written notice to
998 the lowest responsive and responsible bidder whose bid meets the requirements and criteria set
999 forth in the invitation for bids.

1000 (b) (i) If all bids for a construction project exceed available funds as certified by the
1001 appropriate fiscal officer, and the low responsive and responsible bid does not exceed those
1002 funds by more than 5%, the chief procurement officer or the head of a purchasing agency may,
1003 in situations where time or economic considerations preclude resolicitation of work of a
1004 reduced scope, negotiate an adjustment of the bid price, including changes in the bid
1005 requirements, with the low responsive and responsible bidder in order to bring the bid within
1006 the amount of available funds.

1007 (ii) If the State Building Board establishes alternative procedures by rule under Section
1008 63A-5-103, the Division of Facilities Construction and Management need not comply with the
1009 provisions of this Subsection (7) when a bid meets the requirements of the State Building
1010 Board's rule.

1011 (8) When it is considered impractical to prepare initially a purchase description to
1012 support an award based on price, an invitation for bids may be issued requesting the
1013 submission of unpriced offers to be followed by an invitation for bids limited to those bidders
1014 whose offers have been qualified under the criteria set forth in the first solicitation.

1015 Section 33. Section **63-56-402**, which is renumbered from Section 63-56-20.1 is
1016 renumbered and amended to read:

1017 ~~[63-56-20.1].~~ **63-56-402. Contracts awarded by reverse auction.**

1018 (1) As used in this section, "reverse auction" means a process where:

1019 (a) contracts are awarded in an open and interactive environment, which may include

1020 the use of electronic media; and

1021 (b) bids are opened and made public immediately, and bidders given opportunity to
1022 submit revised, lower bids, until the bidding process is complete.

1023 (2) (a) Notwithstanding the requirements of this chapter, contracts may be awarded
1024 through a reverse auction.

1025 (b) The policy board shall make rules, consistent with this chapter, governing a reverse
1026 auction process.

1027 Section 34. Section **63-56-403**, which is renumbered from Section 63-56-20.3 is
1028 renumbered and amended to read:

1029 ~~[63-56-20.3].~~ **63-56-403. Procurement -- Use of recycled goods.**

1030 The procurement officer or other person responsible for purchasing supplies for each
1031 public procurement unit shall:

1032 (1) comply with Section ~~[63-56-20.7]~~ 63-56-406; and

1033 (2) (a) maintain for reference a copy of the current listing of recycled items available
1034 on state contract as issued by the chief procurement officer under Section ~~[63-56-9]~~ 63-56-204;
1035 and

1036 (b) give recycled items consideration when inviting bids and purchasing supplies.

1037 Section 35. Section **63-56-404**, which is renumbered from Section 63-56-20.5 is
1038 renumbered and amended to read:

1039 ~~[63-56-20.5].~~ **63-56-404. Preference for providers of state products.**

1040 (1) (a) All public procurement units shall, in all purchases of goods, supplies,
1041 equipment, materials, and printing, give a reciprocal preference to those bidders offering goods,
1042 supplies, equipment, materials, or printing produced, manufactured, mined, grown, or
1043 performed in Utah as against those bidders offering goods, supplies, equipment, materials, or
1044 printing produced, manufactured, mined, grown, or performed in any state that gives or
1045 requires a preference to goods, supplies, equipment, materials, or printing produced,
1046 manufactured, mined, grown, or performed in that state.

1047 (b) The amount of reciprocal preference shall be equal to the amount of the preference
1048 applied by the other state for that particular good, supply, equipment, material, or printing.

1049 (c) (i) The bidder shall certify on the bid that the goods, supplies, equipment, materials,
1050 or printing offered are produced, manufactured, mined, grown, or performed in Utah.

1051 (ii) The reciprocal preference is waived if that certification does not appear on the bid.

1052 (2) (a) If the bidder submitting the lowest responsive and responsible bid offers goods,
1053 supplies, equipment, materials, or printing produced, manufactured, mined, grown, or
1054 performed in a state that gives or requires a preference, and if another bidder has submitted a
1055 responsive and responsible bid offering goods, supplies, equipment, materials, or printing
1056 produced, manufactured, mined, grown, or performed in Utah, and with the benefit of the
1057 reciprocal preference, his bid is equal to or less than the original lowest bid, the procurement
1058 officer shall:

1059 (i) give notice to the bidder offering goods, supplies, equipment, materials, or printing
1060 produced, manufactured, mined, grown, or performed in Utah that he qualifies as a preferred
1061 bidder; and

1062 (ii) make the purchase from the preferred bidder if, within 72 hours after notification to
1063 him that he is a preferred bidder, he agrees, in writing, to meet the low bid.

1064 (b) The procurement officer shall include the exact price submitted by the lowest
1065 bidder in the notice he submits to the preferred bidder.

1066 (c) The procurement officer may not enter into a contract with any other bidder for the
1067 purchase until 72 hours have elapsed after notification to the preferred bidder.

1068 (3) (a) If there is more than one preferred bidder, the procurement officer shall award
1069 the contract to the willing preferred bidder who was the lowest preferred bidder originally.

1070 (b) If there were two or more equally low preferred bidders, the procurement officer
1071 shall comply with the rules adopted by the Procurement Policy Board to determine which
1072 bidder should be awarded the contract.

1073 (4) The provisions of this section do not apply if application of this section might
1074 jeopardize the receipt of federal funds.

1075 Section 36. Section **63-56-405**, which is renumbered from Section 63-56-20.6 is
1076 renumbered and amended to read:

1077 ~~[63-56-20.6].~~ **63-56-405. Preference for resident contractors.**

1078 (1) As used in this section, "resident contractor" means a person, partnership,
1079 corporation, or other business entity that:

1080 (a) either has its principal place of business in Utah or that employs workers who are
1081 residents of this state when available; and

1082 (b) was transacting business on the date when bids for the public contract were first
1083 solicited.

1084 (2) (a) When awarding contracts for construction, a public procurement unit shall grant
1085 a resident contractor a reciprocal preference as against a nonresident contractor from any state
1086 that gives or requires a preference to contractors from that state.

1087 (b) The amount of the reciprocal preference shall be equal to the amount of the
1088 preference applied by the state of the nonresident contractor.

1089 (3) (a) The bidder shall certify on the bid that he qualifies as a resident contractor.

1090 (b) The reciprocal preference is waived if that certification does not appear on the bid.

1091 (4) (a) If the contractor submitting the lowest responsive and responsible bid is not a
1092 resident contractor and has his principal place of business in any state that gives or requires a
1093 preference to contractors from that state, and if a resident contractor has also submitted a
1094 responsive and responsible bid, and, with the benefit of the reciprocal preference, the resident
1095 contractor's bid is equal to or less than the original lowest bid, the procurement officer shall:

1096 (i) give notice to the resident contractor that he qualifies as a preferred resident
1097 contractor; and

1098 (ii) issue the contract to the resident contractor if, within 72 hours after notification to
1099 him that he is a preferred resident contractor, he agrees, in writing, to meet the low bid.

1100 (b) The procurement officer shall include the exact price submitted by the lowest
1101 bidder in the notice he submits to the preferred resident contractor.

1102 (c) The procurement officer may not enter into a contract with any other bidder for the
1103 construction until 72 hours have elapsed after notification to the preferred resident contractor.

1104 (5) (a) If there is more than one preferred resident contractor, the procurement officer
1105 shall award the contract to the willing preferred resident contractor who was the lowest
1106 preferred resident contractor originally.

1107 (b) If there were two or more equally low preferred resident contractors, the
1108 procurement officer shall comply with the rules adopted by the Procurement Policy Board to
1109 determine which bidder should be awarded the contract.

1110 (6) The provisions of this section do not apply if application of this section might
1111 jeopardize the receipt of federal funds.

1112 Section 37. Section **63-56-406**, which is renumbered from Section 63-56-20.7 is

1113 renumbered and amended to read:

1114 ~~[63-56-20.7].~~ 63-56-406. **Preference for recycled paper and paper**

1115 **products.**

1116 (1) As used in this section:

1117 (a) "Chief procurement officer" is the chief procurement officer appointed under
1118 Section ~~[63-56-8]~~ 63-56-203.

1119 (b) "Paper" means any newspaper, high-grade office paper, fine paper, bond paper,
1120 offset paper, xerographic paper, mimeographic paper, duplicator paper, and related types of
1121 cellulosic material containing not more than 10% by weight or volume of noncellulosic
1122 material such as laminates, binders, coatings, or saturants.

1123 (c) "Paper product" means any paper items or commodities, including paper napkins,
1124 towels, corrugated and other cardboard, toilet tissue, paper and related types of cellulosic
1125 products containing not more than 10% by weight or volume of noncellulosic material such as
1126 laminates, binders, coatings, or saturants. "Paper product" does not include preprinted
1127 cellulosic products such as books, newspapers, calendars, and magazines.

1128 (d) "Postconsumer waste," "recycled paper," "recycled paper product," and "secondary
1129 waste paper material" are defined by rule made by the Division of Purchasing, Department of
1130 Administrative Services. The division rules shall be based on current definitions and standards
1131 employed by national procurement, product recycling, and other relevant organizations such as
1132 the federal Environmental Protection Agency.

1133 (2) Notwithstanding Section ~~[63-56-20]~~ 63-56-401, which requires public procurement
1134 units to purchase products from the lowest responsible bidder, and subject to Subsection (3),
1135 every public procurement unit shall give preference to the purchase of paper and paper
1136 products which are manufactured or produced from recycled materials.

1137 (3) A public procurement unit shall give preference to purchasing recycled paper and
1138 recycled paper products unless:

1139 (a) the bid or purchase price for recycled paper or paper products exceeds by more than
1140 5% the lowest responsive and responsible bidder whose bid meets the requirements and criteria
1141 set forth in the invitation for bids;

1142 (b) there is no recycled paper or paper product reasonably available that meets the
1143 requirements and criteria set forth in the invitation for bids; or

1144 (c) the public procurement unit has purchased at least the minimum percentage
1145 purchase requirement of recycled paper or recycled paper products as provided in Subsection
1146 (4).

1147 (4) (a) The minimum percentage purchase requirement for fiscal year 1990-91 is 10%
1148 of the public procurement unit's projected annual paper and paper product purchases.

1149 (b) The minimum percentage purchase requirement shall be increased by 5% each
1150 fiscal year until the minimum percentage purchase requirement is 50%.

1151 (5) Each public procurement unit shall provide the chief procurement officer with a
1152 report at the end of each fiscal year documenting:

1153 (a) the dollar amounts of paper and paper products purchased;

1154 (b) the dollar amounts of recycled paper and recycled paper products purchased; and

1155 (c) any additional costs resulting from purchasing recycled paper or recycled paper
1156 products.

1157 (6) The chief procurement officer shall provide a written report of the information
1158 received under Subsection (5) to the Natural Resources, Agriculture, and Environment Interim
1159 Committee prior to November 30 of each year.

1160 (7) (a) Each state agency shall separate and collect all types of recyclable paper for
1161 recycling, except under Subsection (7)(b). The chief procurement officer shall maintain an
1162 updated list of which papers are recyclable.

1163 (b) If the state agency conducts an evaluation under Subsection (8) and determines the
1164 cost of recycling a certain type of recyclable paper is more than 10% greater than the cost of the
1165 current disposal method, the entity is exempt from the requirements of Subsection (7)(a)
1166 regarding that type of paper.

1167 (8) A state agency's evaluation shall:

1168 (a) determine the types and quantities of recyclable paper in the state agency's current
1169 waste stream;

1170 (b) determine the market value of the recyclable paper;

1171 (c) determine and describe the alternatives for separating recyclable paper from the
1172 waste stream;

1173 (d) for each type of paper and for each method of separation, determine the cost of
1174 separating and collecting the recyclable paper for recycling;

- 1175 (e) determine the cost of the current disposal method for each type of recyclable paper;
- 1176 (f) for each type of paper, compare the cost of the current disposal method with the cost
- 1177 of separating and collecting the paper for recycling; and
- 1178 (g) determine the cost of producing the report required under Subsection (13)(b).
- 1179 (9) Each evaluation conducted under Subsection (8) shall:
- 1180 (a) be in writing;
- 1181 (b) justify all estimates;
- 1182 (c) be retained by the state agency;
- 1183 (d) be accessible to the public for review; and
- 1184 (e) be submitted to the chief procurement officer.
- 1185 (10) Each state agency conducting an evaluation shall revise the evaluation as
- 1186 necessary, at least every 30 months.
- 1187 (11) A state agency that is required to separate paper for recycling shall:
- 1188 (a) designate an existing employee as a recycling coordinator to organize and
- 1189 coordinate the state agency's recycling program;
- 1190 (b) establish procedures for separating each type of paper required to be separated for
- 1191 recycling;
- 1192 (c) establish a system for separating and collecting each type of paper to be recycled,
- 1193 which assures the recyclable paper is sold to appropriate industries for reuse or recycling; and
- 1194 (d) make participation in the recycling program as easy as practicable for state agency
- 1195 personnel by establishing clear policies.
- 1196 (12) The monies received from the sale of recyclable paper shall be retained by the
- 1197 agency for:
- 1198 (a) reimbursement to the state agency for program administration costs incurred as a
- 1199 result of recycling, if any; and
- 1200 (b) funding recycling incentives programs.
- 1201 (13) (a) The recycling coordinator designated in Subsection (11) shall keep records of:
- 1202 (i) the quantity of paper recycled by the state agency;
- 1203 (ii) the costs incurred by the state agency in recycling paper; and
- 1204 (iii) the monies received from the sale of recyclable paper.
- 1205 (b) Each recycling coordinator shall provide a written report of the state agency's

1206 recycling activities including the information required under Subsection (13)(a) before
1207 September 30 of each year to the chief procurement officer.

1208 (14) The chief procurement officer shall provide a written report of the information
1209 received under Subsection (13) to the Natural Resources, Agriculture, and Environment Interim
1210 Committee prior to November 30 of each year.

1211 Section 38. Section **63-56-407**, which is renumbered from Section 63-56-20.8 is
1212 renumbered and amended to read:

1213 ~~[63-56-20.8]~~. **63-56-407. Use of alkaline paper.**

1214 (1) As used in this section, "alkaline paper" means paper that is acid-free,
1215 manufactured with calcium carbonate as the principal filler, and meets standards for paper
1216 approved by the American National Standards Institute, National Information Standards
1217 Organization, and American Society for Testing and Materials.

1218 (2) (a) Notwithstanding Section ~~[63-56-20]~~ 63-56-401, which requires public
1219 procurement units to purchase products from the lowest responsible bidder, and except as
1220 provided in Subsection (2)(b), every public procurement unit shall purchase and use alkaline
1221 paper.

1222 (b) A public procurement unit shall purchase alkaline paper unless:

1223 (i) the bid or purchase price for alkaline paper or alkaline recycled paper exceeds the
1224 lowest responsive and responsible bidder whose bid meets the requirements and criteria set
1225 forth in the invitation for bids;

1226 (ii) there is no alkaline or alkaline recycled paper reasonably available that meets the
1227 requirements and criteria set forth in the invitation for bids; or

1228 (iii) other paper products have equal or better quality characteristics than alkaline paper
1229 and meet standards for paper approved by the American National Standards Institute, National
1230 Information Standards Organization, and American Society for Testing and Materials.

1231 (3) The state archivist shall promote the use of alkaline paper within state government,
1232 local units of government, and school districts.

1233 Section 39. Section **63-56-408**, which is renumbered from Section 63-56-21 is
1234 renumbered and amended to read:

1235 ~~[63-56-21]~~. **63-56-408. Use of competitive sealed proposals in lieu of bids --**
1236 **Procedure.**

1237 (1) (a) When, according to rules established by the Procurement Policy Board, the
1238 chief procurement officer, the head of a purchasing agency, or a designee of either officer
1239 above the level of procurement officer determines in writing that the use of competitive sealed
1240 bidding is either not practicable or not advantageous to the state, a contract may be entered into
1241 by competitive sealed proposals.

1242 (b) (i) Competitive sealed proposals may be used for the procurement of services of
1243 consultants, professionals, and providers as defined by the policy board by rule, whether or not
1244 the determination described in this subsection has been made.

1245 (ii) The policy board shall make rules establishing guidelines to assure maximum
1246 practicable competition in those procurements, including the relative importance, if any, of the
1247 fee to be charged by an offeror.

1248 (iii) The rules may provide that it is either not practicable or not advantageous to the
1249 state to procure certain types of supplies, services, or construction by competitive sealed
1250 bidding or competitive sealed proposals.

1251 (2) (a) Proposals shall be solicited through a request for proposals.

1252 (b) Public notice of the request for proposals shall be given in accordance with policy
1253 board rules.

1254 (3) (a) Proposals shall be opened so as to avoid disclosure of contents to competing
1255 offerors during the process of negotiation.

1256 (b) A register of proposals shall be prepared in accordance with policy board rules and
1257 shall be open for public inspection after the contract is awarded.

1258 (4) The request for proposals shall state the relative importance of price and other
1259 evaluating factors.

1260 (5) (a) As provided in the request for proposals and under policy board rules,
1261 discussions may be conducted with responsible offerors who submit proposals for the purpose
1262 of assuring full understanding of, and responsiveness to, solicitation requirements.

1263 (b) Offerors shall be accorded fair and equal treatment with respect to any opportunity
1264 for discussion and revision of proposals, and revisions may be permitted after submissions and
1265 before the contract is awarded for the purpose of obtaining best and final offers.

1266 (c) In conducting discussions, there shall be no disclosure of any information derived
1267 from proposals submitted by competing offerors.

1268 (6) (a) Award shall be made to the responsible offeror whose proposal is determined in
1269 writing to be the most advantageous to the state, taking into consideration price and the
1270 evaluation factors set forth in the request for proposals.

1271 (b) No other factors or criteria shall be used in the evaluation.

1272 (c) The contract file shall contain the basis on which the award is made.

1273 Section 40. Section **63-56-409**, which is renumbered from Section 63-56-22 is
1274 renumbered and amended to read:

1275 **~~[63-56-22]~~. 63-56-409. Small purchases.**

1276 Small purchases shall be defined in, and may be made in accordance with procedures
1277 established by rules and regulations; except that procurement requirement shall not be
1278 artificially divided so as to constitute a small purchase under this section.

1279 Section 41. Section **63-56-410**, which is renumbered from Section 63-56-23 is
1280 renumbered and amended to read:

1281 **~~[63-56-23]~~. 63-56-410. Circumstances justifying award of contract without
1282 competition.**

1283 A contract may be awarded for a supply, service, or construction item without
1284 competition when, under rules and regulations, the chief procurement officer, the head of a
1285 purchasing agency, or a designee of either officer above the level of procurement officer
1286 determines in writing that:

- 1287 (1) there is only one source for the required supply, service, or construction item; or
1288 (2) the award to a specific supplier, service provider, or contractor is a condition of a
1289 donation that will fund the full cost of the supply, service, or construction item.

1290 Section 42. Section **63-56-411**, which is renumbered from Section 63-56-24 is
1291 renumbered and amended to read:

1292 **~~[63-56-24]~~. 63-56-411. Emergency procurements.**

1293 Notwithstanding any other provision of this chapter, when there exists a threat to public
1294 health, welfare, or safety under emergency conditions as defined in rules and regulations, the
1295 chief procurement officer, the head of a purchasing agency, or a designee of either officer may
1296 make or authorize others to make emergency procurements; provided that emergency
1297 procurements shall be made with as much competition as practicable under the circumstances.
1298 A written determination of the basis for the emergency and for the selection of the particular

1299 contractor shall be included in the contract file.

1300 Section 43. Section **63-56-412**, which is renumbered from Section 63-56-25 is
1301 renumbered and amended to read:

1302 **[63-56-25]. 63-56-412. Cancellation and rejection of bids.**

1303 An invitation for bids, a request for proposals, or other solicitation may be cancelled, or
1304 any or all bids or proposals may be rejected, in whole or in part, as may be specified in the
1305 solicitation, when it is in the best interests of the state in accordance with rules and regulations.
1306 The reasons shall be made part of the contract file.

1307 Section 44. Section **63-56-413**, which is renumbered from Section 63-56-26 is
1308 renumbered and amended to read:

1309 **[63-56-26]. 63-56-413. Determination of nonresponsibility of bidder.**

1310 A written determination of nonresponsibility of a bidder or offeror shall be made in
1311 accordance with rules and regulations. The unreasonable failure of a bidder or offeror to
1312 promptly supply information in connection with an inquiry with respect to responsibility may
1313 be grounds for a determination of nonresponsibility with respect to the bidder or offeror.
1314 Information furnished by a bidder or offeror pursuant to this section shall not be disclosed
1315 outside of the purchasing division or the purchasing agency without prior written consent by
1316 the bidder or offeror.

1317 Section 45. Section **63-56-414**, which is renumbered from Section 63-56-27 is
1318 renumbered and amended to read:

1319 **[63-56-27]. 63-56-414. Prequalification of suppliers.**

1320 Prospective suppliers may be prequalified for particular types of supplies, services, and
1321 construction. Solicitation mailing lists of potential contractors shall include but shall not be
1322 limited to prequalified suppliers.

1323 Section 46. Section **63-56-415**, which is renumbered from Section 63-56-28 is
1324 renumbered and amended to read:

1325 **[63-56-28]. 63-56-415. Rules and regulations to determine allowable incurred**
1326 **costs -- Required information -- Auditing of books.**

1327 (1) Rules and regulations may be promulgated to set forth cost principles to be used to
1328 determine the allowability of incurred costs for the purpose of reimbursing costs under contract
1329 provisions which provide for the reimbursement of costs; provided that if a written

1330 determination is approved at a level above the procurement officer, the cost principles may be
1331 modified by contract.

1332 (2) A person shall, except as provided in Subsection (4), submit cost or pricing data
1333 and shall certify that, to the best of the person's knowledge and belief, the cost or pricing data
1334 submitted were accurate, complete, and current as of a mutually determined specified date prior
1335 to the date of:

1336 (a) the pricing of any contract awarded by competitive sealed proposals or pursuant to
1337 the sole source procurement authority, where the total contract price is expected to exceed an
1338 amount established by rules and regulations; or

1339 (b) the pricing of any change order which is expected to exceed an amount established
1340 by rules and regulations.

1341 (3) Any contract or change order under which a certificate is required shall contain a
1342 provision that the price to the state, including profit or fee, shall be adjusted to exclude any
1343 significant sums by which the state finds that the price was increased because the
1344 contractor-furnished cost or pricing data were inaccurate, incomplete, or not current as of the
1345 date agreed upon between the parties.

1346 (4) The requirements of Subsections (2) and (3) need not be applied to contracts:

1347 (a) where the contract price is based on adequate price competition;

1348 (b) where the contract price is based on established catalogue prices or market prices;

1349 (c) where contract prices are set by law or regulation; or

1350 (d) where it is determined in writing in accordance with rules and regulations that the
1351 requirements of this section may be waived, and the reasons for such waiver are stated in
1352 writing.

1353 (5) The state may, at reasonable times and places, audit the books and records of any
1354 person who has submitted cost or pricing data pursuant to this section or any contractor or
1355 subcontractor under any negotiated contract or subcontract other than a firm fixed-price
1356 contract to the extent that the books and records relate to the cost or pricing data, contract, or
1357 subcontract. The books and records shall be maintained by the contractor for three years
1358 following the end of the fiscal year in which final payment is made under the prime contract
1359 and by the subcontractor for three years following the end of the fiscal year in which final
1360 payment is made under the subcontract, unless a shorter period is otherwise authorized in

1361 writing.

1362 Section 47. Section **63-56-416**, which is renumbered from Section 63-56-29 is
1363 renumbered and amended to read:

1364 **[63-56-29]. 63-56-416. Cost-plus-a-percentage-of-cost contract prohibited.**

1365 (1) Subject to the limitations of this section, any type of contract which will promote
1366 the best interests of the state may be used; provided that the use of a
1367 cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be
1368 used only when a determination is made in writing that such contract is likely to be less costly
1369 to the state than any other type or that it is impracticable to obtain the supplies, services, or
1370 construction required except under such a contract.

1371 (2) Except with respect to firm fixed-price contracts, no contract type shall be used
1372 unless it has been determined in writing by the chief procurement officer, the head of a
1373 purchasing agency, or a designee of either officer that:

1374 (a) the proposed contractor's accounting system will permit timely development of all
1375 necessary cost data in the form required by the specific contract type contemplated; and

1376 (b) the proposed contractor's accounting system is adequate to allocate costs in
1377 accordance with generally accepted accounting principles.

1378 Section 48. Section **63-56-417**, which is renumbered from Section 63-56-30 is
1379 renumbered and amended to read:

1380 **[63-56-30]. 63-56-417. Period of time for contract of supplies.**

1381 (1) Unless otherwise provided by law, a contract for supplies or services may be entered
1382 into for any period of time [~~deemed~~] considered to be in the best interests of the state; provided
1383 that the term of the contract and conditions of renewal or extension, if any, are included in the
1384 solicitation and funds are available for the first fiscal period at the time of contracting. Payment
1385 and performance obligations for succeeding fiscal periods shall be subject to the availability
1386 and appropriation of funds.

1387 (2) Prior to the utilization of a multiyear contract, it shall be determined in writing that
1388 estimated requirements cover the period of the contract and are reasonably firm and continuing
1389 and that such a contract will serve the best interests of the state by encouraging effective
1390 competition or otherwise promoting economies in state procurement.

1391 (3) When funds are not appropriated or otherwise made available to support

1392 continuation of performance in a subsequent fiscal period, the contract shall be cancelled and
1393 the contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred
1394 but not amortized in the price of the supplies or services delivered under the contract. The cost
1395 of cancellation may be paid from any appropriations available for that purpose.

1396 Section 49. Section **63-56-418**, which is renumbered from Section 63-56-31 is
1397 renumbered and amended to read:

1398 **[63-56-31]. 63-56-418. Right of state to inspect place of business of contractor**
1399 **or subcontractor.**

1400 The state may, at reasonable times, inspect the part of the plant or place of business of a
1401 contractor or any subcontractor which is related to the performance of any contract awarded or
1402 to be awarded by the state.

1403 Section 50. Section **63-56-419**, which is renumbered from Section 63-56-32 is
1404 renumbered and amended to read:

1405 **[63-56-32]. 63-56-419. Determinations final except when arbitrary and**
1406 **capricious.**

1407 The determinations required by Subsections [~~63-56-20~~] 63-56-401(6), [~~63-56-21~~]
1408 63-56-408(1) and (6), Sections [~~63-56-23~~] 63-56-410, [~~63-56-24~~] 63-56-411, [~~63-56-26~~]
1409 63-56-413, Subsection [~~63-56-28~~] 63-56-415(4), Section [~~63-56-29~~] 63-56-416, and
1410 Subsection [~~63-56-30~~] 63-56-417(2) are final and conclusive unless they are arbitrary and
1411 capricious or clearly erroneous.

1412 Section 51. Section **63-56-420**, which is renumbered from Section 63-56-33 is
1413 renumbered and amended to read:

1414 **[63-56-33]. 63-56-420. Factual information to attorney general if collusion**
1415 **suspected.**

1416 When for any reason collusion or other anticompetitive practices are suspected among
1417 bidders or offerors, a notice of the relevant facts shall be transmitted to the attorney general.

1418 Section 52. Section **63-56-421**, which is renumbered from Section 63-56-34 is
1419 renumbered and amended to read:

1420 **[63-56-34]. 63-56-421. Records of contracts made.**

1421 The chief procurement officer or the head of a purchasing agency shall maintain a
1422 record listing all contracts made under Section [~~63-56-23~~] 63-56-410 or [~~63-56-24~~] 63-56-411

1423 and shall maintain the record in accordance with Title 63, Chapter 2, Government Records
1424 Access and Management Act. The record shall contain each contractor's name, the amount and
1425 type of each contract, and a listing of the supplies, services, or construction procured under
1426 each contract.

1427 Section 53. Section **63-56-422**, which is renumbered from Section 63-56-35.5 is
1428 renumbered and amended to read:

1429 ~~[63-56-35.5].~~ **63-56-422. Exemptions from source selection and contract**
1430 **requirements -- Violation penalty.**

1431 The policy board may, by rule, exempt a public procurement unit from the source
1432 selection and contract award provisions of this part, if it [~~deems~~] considers that to be in the best
1433 economic interest of the state.

1434 On projects where public funds or political subdivisions are involved, the owner shall
1435 follow the procedures outlined in the Utah Procurement Code when determining or selecting
1436 their agent or construction manager. However, no exemption shall be permitted that allows
1437 any political subdivision of this state to negotiate, enter into, or cause to be negotiated prior to
1438 open bidding for the prime contracting agent any predetermined agreement or arrangement
1439 which causes interference with the traditional fair competitive bidding process or the rights of
1440 employees under state and federal law. Any agreement or arrangement entered into in violation
1441 of this section is unenforceable and void ab initio and the parties to such an agreement or
1442 arrangement are subject to a class B misdemeanor penalty.

1443 This provision shall not apply to any political subdivision, agency, or department of this
1444 state, if, as a condition of a federal grant, there is a requirement that a schedule of
1445 predetermined wages be included in the contract.

1446 Section 54. Section **63-56-423**, which is renumbered from Section 63-56-35.6 is
1447 renumbered and amended to read:

1448 ~~[63-56-35.6].~~ **63-56-423. Purchase of prison industry goods.**

1449 (1) All public procurement units shall purchase goods and services produced by the
1450 Utah Correctional Industries Division as provided by this section, which is an exemption from
1451 this chapter. All political subdivisions of the state may purchase these goods and services and
1452 are encouraged to do so when feasible.

1453 (2) By July 1 of each year, the director of the Utah Correctional Industries shall publish

1454 and distribute to all state agencies and interested political subdivisions a catalog of goods and
1455 services provided by the Correctional Industries Division. The catalog shall include a
1456 description and price of each item offered for sale. The catalog shall be updated and revised
1457 during the year as the director [~~deems~~] considers necessary.

1458 (3) (a) State departments, agencies, and institutions may not purchase any goods or
1459 services provided by the Correctional Industries Division from any other source unless it has
1460 been determined in writing by the director of Correctional Industries and the state procurement
1461 officer or in the case of institutions of higher education, the institutional procurement officer,
1462 that purchase from the Correctional Industries Division is not feasible due to one of the
1463 following circumstances:

1464 [~~(a)~~] (i) the good or service offered by the division does not meet the reasonable
1465 requirements of the purchasing agency;

1466 [~~(b)~~] (ii) the good or service cannot be supplied within a reasonable time by the
1467 division; or

1468 [~~(c)~~] (iii) the cost of the good or service, including basic price, transportation costs, and
1469 other expenses of acquisition, is not competitive with the cost of procuring the item from
1470 another source.

1471 (b) In cases of disagreement, the decision may be appealed to a board consisting of the
1472 director of the Department of Corrections, the director of Administrative Services, and a
1473 neutral third party agreed upon by the other two members or, in the case of institutions of
1474 higher education, the president of the involved institution shall make the final decision.

1475 Section 55. Section **63-56-424**, which is renumbered from Section 63-56-35.7 is
1476 renumbered and amended to read:

1477 [~~63-56-35.7~~]. **63-56-424. Counties and municipalities eligible to participate**
1478 **in state agreements, contracts, and surplus property program.**

1479 Utah counties, municipalities, and local public procurement units may purchase from or
1480 otherwise participate in state public procurement unit agreements and contracts.

1481 Section 56. Section **63-56-425**, which is renumbered from Section 63-56-35.8 is
1482 renumbered and amended to read:

1483 [~~63-56-35.8~~]. **63-56-425. Purchase from sheltered workshops.**

1484 (1) As used in this section, "sheltered workshop" means a nonprofit organization

1485 operated in the interest of severely disabled individuals that:

1486 (a) is certified as a sheltered workshop or sheltered work activity center by the United
1487 States Department of Labor; or

1488 (b) is a supported employment program approved by the Utah State Office of
1489 Rehabilitation if:

1490 (i) the program has as its principal purpose the development of employment
1491 opportunities for individuals with severe disabilities; and

1492 (ii) at least 75% of the program employees under the procurement contract in question
1493 have severe disabilities.

1494 (2) Notwithstanding any provision in this chapter to the contrary, each public
1495 procurement unit shall purchase goods and services produced by a sheltered workshop if:

1496 (a) the good or service offered for sale by a sheltered workshop reasonably conforms to
1497 the needs and specifications of the public procurement unit;

1498 (b) the sheltered workshop can supply the good or service within a reasonable time;

1499 (c) the price of the good or service is reasonably competitive with the cost of procuring
1500 the good or service from another source;

1501 (d) the sheltered workshop has provided the public procurement unit with a written bid
1502 fairly identifying the good or service and naming its price; and

1503 (e) (i) the sheltered workshop has its principal place of business in Utah;

1504 (ii) the good was produced by the sheltered workshop in Utah; or

1505 (iii) the service is provided by individuals, the majority of whom are domiciled in
1506 Utah.

1507 (3) The cost of a good or service is considered reasonably competitive under
1508 Subsection (2)(c) if it is within 5% of the lowest responsive and responsible bid offer for that
1509 good or service.

1510 (4) Each sheltered workshop shall certify on any bid it submits to a public procurement
1511 unit under this section that it is claiming a preference under this section.

1512 (5) In the case of conflict between a purchase under this section and a purchase under
1513 Section [~~63-56-35.6;~~ 63-56-423, this section [~~63-56-35.8]~~ prevails.

1514 Section 57. Section **63-56-501**, which is renumbered from Section 63-56-36 is
1515 renumbered and amended to read:

1516 **Part 5. Procurement of Construction**

1517 ~~[63-56-36]~~. 63-56-501. **Alternative methods of construction contracting**
1518 **management.**

1519 (1) (a) Rules shall provide as many alternative methods of construction contracting
1520 management as determined to be feasible.

1521 (b) These rules shall:

1522 (i) grant to the chief procurement officer or the head of the purchasing agency
1523 responsible for carrying out the construction project the discretion to select the appropriate
1524 method of construction contracting management for a particular project; and

1525 (ii) require the procurement officer to execute and include in the contract file a written
1526 statement setting forth the facts which led to the selection of a particular method of
1527 construction contracting management for each project.

1528 (c) Before choosing a construction contracting management method, the chief
1529 procurement officer or the head of the purchasing agency responsible for carrying out the
1530 construction project shall consider the following factors:

1531 (i) when the project must be ready to be occupied;

1532 (ii) the type of project;

1533 (iii) the extent to which the requirements of the procuring agencies and the ways in
1534 which they are to be met are known;

1535 (iv) the location of the project;

1536 (v) the size, scope, complexity, and economics of the project;

1537 (vi) the source of funding and any resulting constraints necessitated by the funding
1538 source;

1539 (vii) the availability, qualification, and experience of state personnel to be assigned to
1540 the project and how much time the state personnel can devote to the project; and

1541 (viii) the availability, qualifications, and experience of outside consultants and
1542 contractors to complete the project under the various methods being considered.

1543 (2) (a) Rules adopted by state public procurement units and local public procurement
1544 units to implement this section may authorize the use of a Construction Manager/General
1545 Contractor as one method of construction contracting management.

1546 (b) Those rules shall require that:

1547 (i) the Construction Manager/General Contractor shall be selected using one of the
 1548 source selection methods provided for in [~~Sections 63-56-20 through 63-56-35.8~~] Part 4,
 1549 Source Selections and Contract Formation, and Section [~~63-56-36.1~~] 63-56-502; and

1550 (ii) when entering into any subcontract that was not specifically included in the
 1551 Construction Manager/General Contractor's cost proposal submitted under the requirements of
 1552 Subsection (2)(b)(i), the Construction Manager/General Contractor shall procure that
 1553 subcontractor by using one of the source selection methods provided for in [~~Sections 63-56-20~~
 1554 ~~through 63-56-35.8~~] Part 4, Source Selections and Contract Formation, in the same manner as
 1555 if the subcontract work was procured directly by the state.

1556 (3) Procurement rules adopted by the State Building Board under Subsection (1) for
 1557 state building construction projects may authorize the use of a design-build provider as one
 1558 method of construction contracting management.

1559 Section 58. Section **63-56-502**, which is renumbered from Section 63-56-36.1 is
 1560 renumbered and amended to read:

1561 ~~[63-56-36.1].~~ **63-56-502. Procurement of design-build transportation**
 1562 **project contracts.**

1563 (1) As used in this section:

1564 (a) "Design-build transportation project contract" means the procurement of both the
 1565 design and construction of a transportation project in a single contract with a company or
 1566 combination of companies capable of providing the necessary engineering services and
 1567 construction.

1568 (b) "Transportation agency" means:

1569 (i) the Department of Transportation;

1570 (ii) a county of the first or second class, as defined in Section 17-50-501;

1571 (iii) a municipality of the first class, as defined in Section 10-2-301;

1572 (iv) a public transit district that has more than 200,000 people residing within its
 1573 boundaries; and

1574 (v) a public airport authority[~~, as defined in Section 72-10-102~~].

1575 (2) Except as provided in Subsection (3), a transportation agency may award a
 1576 design-build transportation project contract for any transportation project that has an estimated
 1577 cost of at least \$50,000,000 by following the requirements of this section.

- 1578 (3) (a) The Department of Transportation:
- 1579 (i) may award a design-build transportation project contract for any transportation
- 1580 project by following the requirements of this section; and
- 1581 (ii) shall make rules, by following the procedures and requirements of Title 63, Chapter
- 1582 46a, Utah Administrative Rulemaking Act, establishing requirements for the procurement of its
- 1583 design-build transportation project contracts in addition to those required by this section.
- 1584 (b) A public transit district that has more than 200,000 people residing within its
- 1585 boundaries:
- 1586 (i) may award a design-build transportation project contract for any transportation
- 1587 project by following the requirements of this section; and
- 1588 (ii) shall pass ordinances or a resolution establishing requirements for the procurement
- 1589 of its design-build transportation project contracts in addition to those required by this section.
- 1590 (c) A design-build transportation project contract authorized under this Subsection (3)
- 1591 is not subject to the estimated cost threshold under Subsection (2).
- 1592 (4) (a) Before entering a design-build transportation project contract, a transportation
- 1593 agency may issue a request for qualifications to prequalify potential contractors.
- 1594 (b) Public notice of the request for qualifications shall be given in accordance with
- 1595 policy board rules.
- 1596 (c) A transportation agency shall require, as part of the qualifications specified in the
- 1597 request for qualifications, that potential contractors at least demonstrate their:
- 1598 (i) construction experience;
- 1599 (ii) design experience;
- 1600 (iii) financial, manpower, and equipment resources available for the project; and
- 1601 (iv) experience in other design-build transportation projects with attributes similar to
- 1602 the project being procured.
- 1603 (d) The request for qualifications shall identify the number of eligible competing
- 1604 proposers that the transportation agency will select to submit a proposal, which must be at least
- 1605 two.
- 1606 (5) (a) The transportation agency shall:
- 1607 (i) evaluate the responses received from the request for qualifications;
- 1608 (ii) select from their number those qualified to submit proposals; and

1609 (iii) invite those respondents to submit proposals based upon the transportation
1610 agency's request for proposals.

1611 (b) If the transportation agency fails to receive at least two qualified eligible competing
1612 proposers, the transportation agency shall readvertise the project.

1613 (6) The transportation agency shall issue a request for proposals to those qualified
1614 respondents that:

1615 (a) includes a scope of work statement constituting an information for proposal that
1616 may include:

- 1617 (i) preliminary design concepts;
- 1618 (ii) design criteria, needs, and objectives;
- 1619 (iii) warranty and quality control requirements;
- 1620 (iv) applicable standards;
- 1621 (v) environmental documents;
- 1622 (vi) constraints;
- 1623 (vii) time expectations or limitations;
- 1624 (viii) incentives or disincentives; and
- 1625 (ix) other special considerations;

1626 (b) requires submitters to provide:

- 1627 (i) a sealed cost proposal;
- 1628 (ii) a critical path matrix schedule, including cash flow requirements;
- 1629 (iii) proposal security; and
- 1630 (iv) other items required by the department for the project; and

1631 (c) may include award of a stipulated fee to be paid to submitters who submit
1632 unsuccessful proposals.

1633 (7) The transportation agency shall:

1634 (a) evaluate the submissions received in response to the request for proposals from the
1635 prequalified proposers;

1636 (b) comply with rules relating to discussion of proposals, best and final offers, and
1637 evaluations of the proposals submitted; and

1638 (c) after considering price and other identified factors, award the contract to the
1639 responsible proposer whose proposal is most advantageous to the state.

1640 Section 59. Section **63-56-503**, which is renumbered from Section 63-56-37 is
1641 renumbered and amended to read:

1642 **[63-56-37]. 63-56-503. Bid security requirements -- Directed suretyship**
1643 **prohibited -- Penalty.**

1644 (1) Bid security in amount equal to at least 5% of the amount of the bid shall be
1645 required for all competitive sealed bidding for construction contracts. Bid security shall be a
1646 bond provided by a surety company authorized to do business in this state, the equivalent in
1647 cash, or any other form satisfactory to the state.

1648 (2) When a bidder fails to comply with the requirement for bid security set forth in the
1649 invitation for bids, the bid shall be rejected unless, pursuant to rules, it is determined that the
1650 failure to comply with the security requirements is nonsubstantial.

1651 (3) After the bids are opened, they shall be irrevocable for the period specified in the
1652 invitation for bids, except as provided in Subsection ~~[63-56-20]~~ 63-56-401(6). If a bidder is
1653 permitted to withdraw a bid before award, no action shall be taken against the bidder or the bid
1654 security.

1655 (4) (a) When issuing an invitation for a bid under this chapter, the chief procurement
1656 officer or the head of the purchasing agency responsible for carrying out a construction project
1657 may not require a person or entity who is bidding for a contract to obtain a bond of the type
1658 referred to in Subsection (1) from a specific insurance or surety company, producer, agent, or
1659 broker.

1660 (b) A person who violates Subsection (4)(a) is guilty of an infraction.

1661 Section 60. Section **63-56-504**, which is renumbered from Section 63-56-38 is
1662 renumbered and amended to read:

1663 **[63-56-38]. 63-56-504. Bonds necessary when contract is awarded -- Waiver --**
1664 **Action -- Attorneys' fees.**

1665 (1) When a construction contract is awarded under this chapter, the contractor to whom
1666 the contract is awarded shall deliver the following bonds or security to the state, which shall
1667 become binding on the parties upon the execution of the contract:

1668 (a) a performance bond satisfactory to the state that is in an amount equal to 100% of
1669 the price specified in the contract and is executed by a surety company authorized to do
1670 business in this state or any other form satisfactory to the state; and

1671 (b) a payment bond satisfactory to the state that is in an amount equal to 100% of the
1672 price specified in the contract and is executed by a surety company authorized to do business in
1673 this state or any other form satisfactory to the state, which is for the protection of each person
1674 supplying labor, service, equipment, or material for the performance of the work provided for
1675 in the contract.

1676 (2) (a) When a construction contract is awarded under this chapter, the chief
1677 procurement officer or the head of the purchasing agency responsible for carrying out a
1678 construction project may not require a contractor to whom a contract is awarded to obtain a
1679 bond of the types referred to in ~~[Subsections]~~ Subsection (1)~~[(a) and (b)]~~ from a specific
1680 insurance or surety company, producer, agent, or broker.

1681 (b) A person who violates Subsection (2)(a) is guilty of an infraction.

1682 (3) Rules may provide for waiver of the requirement of a bid, performance, or payment
1683 bond for circumstances in which the state considers any or all of the bonds to be unnecessary to
1684 protect the state.

1685 (4) A person shall have a right of action on a payment bond under this section for any
1686 unpaid amount due him if:

1687 (a) he has furnished labor, service, equipment, or material for the work provided for in
1688 the contract for which the payment bond is furnished under this section; and

1689 (b) he has not been paid in full within 90 days after the last date on which he performed
1690 the labor or service or supplied the equipment or material for which the claim is made.

1691 (5) An action upon a payment bond shall be brought in a court of competent
1692 jurisdiction in any county where the construction contract was to be performed and not
1693 elsewhere. The action is barred if not commenced within one year after the last day on which
1694 the claimant performed the labor or service or supplied the equipment or material on which the
1695 claim is based. The obligee named in the bond need not be joined as a party to the action.

1696 (6) In any suit upon a payment bond, the court shall award reasonable attorneys' fees to
1697 the prevailing party, which fees shall be taxed as costs in the action.

1698 Section 61. Section **63-56-505 (Effective 05/01/05)**, which is renumbered from Section
1699 63-56-38.1 (Effective 05/01/05) is renumbered and amended to read:

1700 ~~[63-56-38.1 (Effective 05/01/05)].~~ **63-56-505 (Effective 05/01/05). Preliminary**
1701 **notice requirement.**

1702 (1) Any person furnishing labor, service, equipment, or material for which a payment
1703 bond claim may be made under this chapter shall provide preliminary notice to the designated
1704 agent as prescribed by Section 38-1-32, except that this section does not apply:

1705 (a) to a person performing labor for wages; or

1706 (b) if a notice of commencement is not filed as prescribed in Section 38-1-31 for the
1707 project or improvement for which labor, service, equipment, or material is furnished.

1708 (2) Any person who fails to provide the preliminary notice required by Subsection (1)
1709 may not make a payment bond claim under this chapter.

1710 (3) The preliminary notice required by Subsection (1) must be provided prior to
1711 commencement of any action on the payment bond.

1712 Section 62. Section ~~63-56-506~~, which is renumbered from Section 63-56-39 is
1713 renumbered and amended to read:

1714 ~~[63-56-39].~~ **63-56-506. Form of bonds -- Effect of certified copy.**

1715 The form of the bonds required by this part shall be established by rules and
1716 regulations. Any person may obtain from the state a certified copy of a bond upon payment of
1717 the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be
1718 prima facie evidence of the contents, execution, and delivery of the original.

1719 Section 63. Section ~~63-56-601~~, which is renumbered from Section 63-56-40 is
1720 renumbered and amended to read:

1721 **Part 6. Contract Clauses**

1722 ~~[63-56-40].~~ **63-56-601. Required contract clauses -- Computation of price**
1723 **adjustments -- Use of rules and regulations.**

1724 (1) Rules and regulations shall require for state construction contracts and may permit
1725 or require for state contracts for supplies and services the inclusion of clauses providing for
1726 adjustments in prices, time of performance, or other appropriate contract provisions, and
1727 covering the following subjects:

1728 (a) the unilateral right of the state to order in writing changes in the work within the
1729 scope of the contract and changes in the time of performance of the contract that do not alter
1730 the scope of the contract work;

1731 (b) variations occurring between estimated quantities of work in a contract and actual
1732 quantities;

1733 (c) suspension of work ordered by the state; and
1734 (d) site conditions differing from those indicated in the construction contract, or
1735 ordinarily encountered, except that differing site conditions clauses required by the rules and
1736 regulations need not be included in a construction contract when the contract is negotiated,
1737 when the contractor provides the site or design, or when the parties have otherwise agreed with
1738 respect to the risk of differing site conditions.

1739 (2) Adjustments in price pursuant to clauses promulgated under Subsection (1) shall be
1740 computed in one or more of the following ways:

1741 (a) by agreement on a fixed price adjustment before commencement of the pertinent
1742 performance or as soon thereafter as practicable;

1743 (b) by unit prices specified in the contract or subsequently agreed upon;

1744 (c) by the costs attributable to the events or situations under the clauses with
1745 adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

1746 (d) in any other manner as the contracting parties may mutually agree; or

1747 (e) in the absence of agreement by the parties, by a unilateral determination by the state
1748 of the costs attributable to the events or situations under the clauses with adjustment of profit
1749 or fee, all as computed by the state in accordance with applicable sections of the rules and
1750 regulations issued under Subsection [~~63-56-28~~] 63-56-415(1) and subject to the provisions of
1751 Part [~~H of this chapter~~] 8, Legal and Contractual Remedies.

1752 (3) A contractor shall be required to submit cost or pricing data if any adjustment in
1753 contract price is subject to the provisions of Section [~~63-56-28~~] 63-56-415.

1754 (4) Rules and regulations shall require for state construction contracts and may permit
1755 or require for state contracts for supplies and services the inclusion of clauses providing for
1756 appropriate remedies and covering at least the following subjects:

1757 (a) liquidated damages as appropriate;

1758 (b) specified excuses for delay or nonperformance;

1759 (c) termination of the contract for default; and

1760 (d) termination of the contract in whole or in part for the convenience of the state.

1761 (5) The contract clauses promulgated under this section shall be set forth in rules and
1762 regulations. However, the chief procurement officer or the head of a purchasing agency may
1763 modify the clauses for inclusion in any particular contract. Any variations shall be supported by

1764 a written determination that describes the circumstances justifying the variations, and notice of
1765 any material variation shall be included in the invitation for bids or request for proposals.

1766 Section 64. Section **63-56-602**, which is renumbered from Section 63-56-41 is
1767 renumbered and amended to read:

1768 **[63-56-41]. 63-56-602. Certification of change order.**

1769 Under a construction contract, any change order which increases the contract amount
1770 shall be subject to prior written certification that the change order is within the determined
1771 project or contract budget. The certification shall be made by the fiscal officer of the entity
1772 responsible for funding the project or the contract or other official responsible for monitoring
1773 and reporting upon the status of the costs of the total project or contract budget. If the
1774 certification discloses a resulting increase in the total project or contract budget, the
1775 procurement officer shall not execute or make the change order unless sufficient funds are
1776 available or the scope of the project or contract is adjusted to permit the degree of completion
1777 feasible within the total project or contract budget as it existed prior to the change order under
1778 consideration. However, with respect to the validity, as to the contractor, of any executed
1779 change order upon which the contractor has reasonably relied, it shall be presumed that there
1780 has been compliance with the provisions of this section.

1781 Section 65. Section **63-56-701**, which is renumbered from Section 63-56-42 is
1782 renumbered and amended to read:

1783 **Part 7. Architect-Engineer Services**

1784 **[63-56-42]. 63-56-701. Policy regarding architect-engineer services.**

1785 It is the policy of this state to publicly announce all requirements for architect-engineer
1786 services and to negotiate contracts for architect-engineer services on the basis of demonstrated
1787 competence and qualification for the type of services required, and at fair and reasonable
1788 prices. Architect-engineer services shall be procured as provided in this part except as
1789 authorized by Sections ~~[63-56-22]~~ 63-56-409 through ~~[63-56-24]~~ 63-56-411. This part does not
1790 affect the authority of, and does not apply to procedures undertaken by, a public procurement
1791 unit to obtain the services of architects or engineers in the capacity of employees of such unit.

1792 Section 66. Section **63-56-702**, which is renumbered from Section 63-56-43 is
1793 renumbered and amended to read:

1794 **[63-56-43]. 63-56-702. Selection committee for architect-engineer services.**

1795 In the procurement of architect-engineer services, the chief procurement officer or the
1796 head of a purchasing agency shall encourage firms engaged in the lawful practice of their
1797 profession to submit annually a statement of qualifications and performance data. The Building
1798 Board shall be the selection committee for architect-engineer services contracts under its
1799 authority. Selection committees for architect-engineer services contracts not under the authority
1800 of the Building Board shall be established in accordance with rules and regulations
1801 promulgated by the policy board. Selection committees shall evaluate current statements of
1802 qualifications and performance data on file with the state, together with those that may be
1803 submitted by other firms in response to the announcement of the proposed contract. Selection
1804 committees shall consider no less than three firms and then shall select therefrom, based upon
1805 criteria established and published by the selection committees, no less than three of the firms
1806 [~~deemed~~] considered to be the most highly qualified to provide the services required.

1807 Section 67. Section **63-56-703**, which is renumbered from Section 63-56-43.1 is
1808 renumbered and amended to read:

1809 ~~[63-56-43.1].~~ **63-56-703. Selection as part of design-build or lease.**

1810 Notwithstanding any other provision of this chapter, architect-engineer services may be
1811 procured under Title 63A, Chapter 5, State Building Board[?] - Division of Facilities
1812 Construction and Management, as part of the services obtained in a design-build contract or as
1813 part of the services obtained in a lease contract for real property, provided that the
1814 qualifications of those providing the architect-engineer services are part of the consideration in
1815 the selection process.

1816 Section 68. Section **63-56-704**, which is renumbered from Section 63-56-44 is
1817 renumbered and amended to read:

1818 ~~[63-56-44].~~ **63-56-704. Determination of compensation for architect-engineer
1819 services.**

1820 The procurement officer shall award a contract to a qualified firm at compensation
1821 which the procurement officer determines in writing to be fair and reasonable to the state. In
1822 making this decision, the procurement officer shall take into account the estimated value, the
1823 scope, and complexity, and the professional nature of the services to be rendered. Should the
1824 procurement officer be unable to agree to a satisfactory contract with the firm first selected, at a
1825 price the procurement officer determines to be fair and reasonable to the state, discussions with

1826 that firm shall be formally terminated. The procurement officer shall then undertake
 1827 discussions with a second qualified firm. Failing accord with the second firm, the procurement
 1828 officer shall formally terminate discussions. The procurement officer shall then undertake
 1829 discussions with a third qualified firm. Should the procurement officer be unable to award a
 1830 contract at a fair and reasonable price with any of the selected firms, the procurement officer
 1831 shall select additional firms, and the procurement officer shall continue discussions in
 1832 accordance with this part until an agreement is reached.

1833 Section 69. Section **63-56-705**, which is renumbered from Section 63-56-44.5 is
 1834 renumbered and amended to read:

1835 ~~[63-56-44.5].~~ **63-56-705. Restrictions on state agency procurement of**
 1836 **architect-engineer services.**

1837 (1) Except as provided in Subsection (2), when a public procurement unit, in
 1838 accordance with Section ~~[63-56-42]~~ 63-56-701, elects to obtain architect or engineering
 1839 services by using a competitive procurement process and has provided public notice of its
 1840 competitive procurement process:

1841 (a) a higher education entity, or any part of one, may not submit a proposal in response
 1842 to the public procurement unit's competitive procurement process; and

1843 (b) the public procurement unit may not award a contract to perform the architect or
 1844 engineering services solicited in the competitive procurement process to a higher education
 1845 entity or any part of one.

1846 (2) A public procurement unit need not comply with the requirements of Subsection (1)
 1847 when the public procurement unit is procuring architect or engineer services for contracts
 1848 related to research activities and technology transfer.

1849 Section 70. Section **63-56-801**, which is renumbered from Section 63-56-45 is
 1850 renumbered and amended to read:

1851 **Part 8. Legal and Contractual Remedies**

1852 ~~[63-56-45].~~ **63-56-801. Protest to chief procurement officer -- Time -- Authority**
 1853 **to resolve protest.**

1854 (1) Any actual or prospective bidder, offeror, or contractor who is aggrieved in
 1855 connection with the solicitation or award of a contract may protest to the chief procurement
 1856 officer or the head of a purchasing agency. A protest with respect to an invitation for bids or a

1857 request for proposals shall be submitted in writing prior to the opening of bids or the closing
1858 date for proposals, unless the aggrieved person did not know and should not have known of the
1859 facts giving rise to the protest prior to bid opening or the closing date for proposals. The protest
1860 shall be submitted in writing within five working days after the aggrieved person knows or
1861 should have known of the facts giving rise thereto.

1862 (2) The chief procurement officer, the head of a purchasing agency, or a designee of
1863 either officer shall have the authority, prior to the commencement of an action in court
1864 concerning the controversy, to settle and resolve the protest.

1865 Section 71. Section **63-56-802**, which is renumbered from Section 63-56-46 is
1866 renumbered and amended to read:

1867 **~~[63-56-46]~~. 63-56-802. Effect of timely protest.**

1868 In the event of a timely protest under Subsection ~~[63-56-45]~~ 63-56-801(1), ~~[63-56-54]~~
1869 63-56-810(1), or ~~[63-56-59]~~ 63-56-815(1), the state shall not proceed further with the
1870 solicitation or with the award of the contract until all administrative and judicial remedies have
1871 been exhausted or until the chief procurement officer, after consultation with the head of the
1872 using agency or the head of a purchasing agency, makes a written determination that the award
1873 of the contract without delay is necessary to protect substantial interests of the state.

1874 Section 72. Section **63-56-803**, which is renumbered from Section 63-56-47 is
1875 renumbered and amended to read:

1876 **~~[63-56-47]~~. 63-56-803. Costs to or against protestor.**

1877 (1) When a protest is sustained administratively or upon administrative or judicial
1878 review and the protesting bidder or offeror should have been awarded the contract under the
1879 solicitation but is not, the protestor shall be entitled to the following relief as a claim against
1880 the state:

1881 (a) the reasonable costs incurred in connection with the solicitation, including bid
1882 preparation and appeal costs; and

1883 (b) any equitable relief determined to be appropriate by the reviewing administrative or
1884 judicial body.

1885 (2) When a protest is not sustained by the Procurement Appeals Board, the protestor
1886 shall reimburse the Division of Purchasing and General Services for the per diem and expenses
1887 paid by the division to witnesses or appeals board members and any additional expenses

1888 incurred by the state agency staff who have provided materials and administrative services to
1889 the board for that case.

1890 Section 73. Section ~~63-56-804~~, which is renumbered from Section 63-56-48 is
1891 renumbered and amended to read:

1892 ~~[63-56-48]~~. 63-56-804. **Debarment from consideration for award of contracts --**
1893 **Causes for debarment.**

1894 (1) After reasonable notice to the person involved and reasonable opportunity for that
1895 person to be heard, the chief procurement officer or the head of a purchasing agency, after
1896 consultation with the using agency and the attorney general, shall have authority to debar a
1897 person for cause from consideration for award of contracts. The debarment shall not be for a
1898 period exceeding three years. The same officer, after consultation with the using agency and the
1899 attorney general, shall have authority to suspend a person from consideration for award of
1900 contracts if there is probable cause to believe that the person has engaged in any activity which
1901 might lead to debarment. The suspension shall not be for a period exceeding three months
1902 unless an indictment has been issued for an offense which would be a cause for debarment
1903 under Subsection (2) [~~of this section~~], in which case the suspension shall, at the request of the
1904 attorney general, remain in effect until after the trial of the suspended person.

1905 (2) The causes for debarment include the following:

1906 (a) conviction of a criminal offense as an incident to obtaining or attempting to obtain a
1907 public or private contract or subcontract or in the performance of such contract or subcontract;

1908 (b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery,
1909 falsification or destruction of records, receiving stolen property, or any other offense indicating
1910 a lack of business integrity or business honesty which currently, seriously, and directly affects
1911 responsibility as a state contractor;

1912 (c) conviction under state or federal antitrust statutes;

1913 (d) failure without good cause to perform in accordance with the terms of the contract;

1914 or

1915 (e) any other cause the chief procurement officer, or the head of a purchasing agency
1916 determines to be so serious and compelling as to affect responsibility as a state contractor,
1917 including debarment by another governmental entity for any cause listed in rules and
1918 regulations.

1919 Section 74. Section **63-56-805**, which is renumbered from Section 63-56-49 is
1920 renumbered and amended to read:

1921 ~~[63-56-49]~~. **63-56-805**. **Authority to resolve controversy between state and**
1922 **contractor.**

1923 The chief procurement officer, the head of a purchasing agency, or a designee of either
1924 officer is authorized, prior to commencement of an action in court concerning the controversy,
1925 to settle and resolve a controversy which arises between the state and a contractor under or by
1926 virtue of a contract between them. This includes, without limitation, controversies based upon
1927 breach of contract, mistakes, misrepresentation, or other cause for contract modification or
1928 rescission.

1929 Section 75. Section **63-56-806**, which is renumbered from Section 63-56-50 is
1930 renumbered and amended to read:

1931 ~~[63-56-50]~~. **63-56-806**. **Decisions of chief procurement officer to be in writing --**
1932 **Effect of no writing.**

1933 (1) The chief procurement officer, the head of a purchasing agency, or the designee of
1934 either officer shall promptly issue a written decision regarding any protest, debarment or
1935 suspension, or contract controversy if it is not settled by a mutual agreement. The decision shall
1936 state the reasons for the action taken and inform the protestor, contractor, or prospective
1937 contractor of the right to judicial or administrative review as provided in this chapter.

1938 (2) A decision shall be effective until stayed or reversed on appeal, except to the extent
1939 provided in Section ~~[63-56-46]~~ 63-56-802. A copy of the decision under Subsection (1) shall
1940 be mailed or otherwise furnished immediately to the protestor, prospective contractor, or
1941 contractor. The decision shall be final and conclusive unless the protestor, prospective
1942 contractor, or contractor appeals administratively to the procurement appeals board in
1943 accordance with Subsection ~~[63-56-54]~~ 63-45-810(2) or the protestor, prospective contractor,
1944 or contractor commences an action in court in accordance with Section ~~[63-56-59]~~ 63-56-815.

1945 (3) If the chief procurement officer, the head of a purchasing agency, or the designee of
1946 either officer does not issue the written decision regarding a contract controversy within 60
1947 calendar days after written request for a final decision, or within such longer period as may be
1948 agreed upon by the parties, then the contractor may proceed as if an adverse decision had been
1949 received.

1950 Section 76. Section **63-56-807**, which is renumbered from Section 63-56-51 is
1951 renumbered and amended to read:

1952 **[63-56-51]. 63-56-807. Creation of Procurement Appeals Board.**

1953 (1) (a) A Procurement Appeals Board is created in the executive branch. The
1954 Procurement Appeals Board shall be composed of a chair and one other member, to be
1955 appointed by the governor, and a third member to be designated by the two appointed members
1956 on a case-by-case basis.

1957 (b) None of the members of the Procurement Appeals Board shall otherwise be
1958 full-time employees of the state.

1959 (c) The appointed members of the Procurement Appeals Board shall have been
1960 members in good standing of the state bar for at least five years and shall be experienced in
1961 contract or commercial matters.

1962 (d) The designated member shall possess the technical expertise and experience needed
1963 for the proper disposition of the factual issues presented by the case.

1964 (2) (a) Except as required by Subsection (2)(b), as terms of current board members
1965 expire, the governor shall appoint each new member or reappointed member to a four-year
1966 term.

1967 (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the
1968 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
1969 board members are staggered so that approximately half of the board is appointed every two
1970 years.

1971 (c) The designated member shall serve for the case on which designated until the final
1972 disposition of the case.

1973 (d) Appointed members may be reappointed for succeeding terms and may continue to
1974 serve after the expiration of their terms until a successor takes office.

1975 (e) Qualified persons may be redesignated as members.

1976 (3) When a vacancy occurs in the membership for any reason, the replacement shall be
1977 appointed for the unexpired term.

1978 (4) (a) Members shall receive no compensation or benefits for their services, but may
1979 receive per diem and expenses incurred in the performance of the member's official duties at
1980 the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

1981 (b) Members may decline to receive per diem and expenses for their service.

1982 Section 77. Section **63-56-808**, which is renumbered from Section 63-56-52 is
1983 renumbered and amended to read:

1984 **[63-56-52]. 63-56-808. Rules of procedure to be adopted.**

1985 The Procurement Appeals Board shall adopt rules of procedure which, to the fullest
1986 extent possible, will provide for the expeditious resolution of controversies, including
1987 procedures to encourage agreements between the parties to a controversy prior to a hearing.
1988 The board may adopt small claims procedures for the resolution of controversies involving
1989 claims of less than \$15,000.

1990 Section 78. Section **63-56-809**, which is renumbered from Section 63-56-53 is
1991 renumbered and amended to read:

1992 **[63-56-53]. 63-56-809. Decisions to be in writing.**

1993 The Procurement Appeals Board shall issue a decision in writing or take other
1994 appropriate action of each appeal submitted. A copy of any decision shall be provided to all
1995 parties and the chief procurement officer or the head of a purchasing agency.

1996 Section 79. Section **63-56-810**, which is renumbered from Section 63-56-54 is
1997 renumbered and amended to read:

1998 **[63-56-54]. 63-56-810. Jurisdiction of Procurement Appeals Board.**

1999 Unless an action has been initiated previously in district courts for essentially the same
2000 cause of action, the board shall have jurisdiction to review and determine de novo:

2001 (1) any protest of a solicitation or award of a contract addressed to the board by an
2002 aggrieved actual or prospective bidder or offeror, or a contractor; and

2003 (2) any appeal by an aggrieved party from a decision rendered or ~~[deemed]~~ considered
2004 to have been rendered pursuant to Section ~~[63-56-50]~~ 63-56-806.

2005 Section 80. Section **63-56-811**, which is renumbered from Section 63-56-55 is
2006 renumbered and amended to read:

2007 **[63-56-55]. 63-56-811. Time limits to file protest or appeal -- Effect of filing.**

2008 (1) For a protest under Subsection ~~[63-56-54]~~ 63-56-810(1), the aggrieved person shall
2009 file a protest with the board within five working days after the aggrieved person knows or
2010 should have known of the facts and circumstances upon which the protest is based; provided,
2011 however, that a protest with respect to an invitation for bids or request for proposals shall be

2012 filed prior to the opening of bids or the closing date for proposals unless the aggrieved person
2013 did not know and should not have known of the facts giving rise to the protest prior to bid
2014 opening or the closing date for proposals.

2015 (2) For an appeal from a decision regarding a protested solicitation or award, the
2016 aggrieved person shall file an appeal within seven calendar days of receipt of a decision
2017 rendered or [~~deemed~~] considered to have been rendered pursuant to Section [~~63-56-50~~]
2018 63-56-806.

2019 (3) For an appeal from a decision regarding a debarment, suspension, or contract
2020 controversy, the aggrieved person shall file an appeal within 60 calendar days of receipt of a
2021 decision rendered or [~~deemed~~] considered to have been rendered pursuant to Section
2022 [~~63-56-50~~] 63-56-806.

2023 Section 81. Section **63-56-812**, which is renumbered from Section 63-56-56 is
2024 renumbered and amended to read:

2025 [~~63-56-56~~]. **63-56-812. Discontinued appeal with prejudice, except as**
2026 **authorized.**

2027 After notice of an appeal has been filed with the Procurement Appeals Board, no party
2028 may discontinue the appeal without prejudice, except as authorized by the Procurement
2029 Appeals Board.

2030 Section 82. Section **63-56-813**, which is renumbered from Section 63-56-57 is
2031 renumbered and amended to read:

2032 [~~63-56-57~~]. **63-56-813. Factual determination of appeals board final and**
2033 **conclusive.**

2034 (1) On any protest or appeal under Section [~~63-56-54~~] 63-56-810, the Procurement
2035 Appeals Board shall promptly decide the contract controversy or whether the solicitation or
2036 award was in accordance with this chapter. Any prior determinations by administrative officials
2037 regarding protests of solicitations or awards, suspension or debarments, contract controversies,
2038 or breach of contract controversies shall not be final or conclusive.

2039 (2) A determination of an issue of fact by the Procurement Appeals Board under
2040 Subsection (1) shall be final and conclusive unless arbitrary and capricious or clearly
2041 erroneous. No determination on an issue of law shall be final or conclusive.

2042 Section 83. Section **63-56-814**, which is renumbered from Section 63-56-58 is

2043 renumbered and amended to read:

2044 **[63-56-58]. 63-56-814. Right to appeal to Court of Appeals.**

2045 Any person receiving an adverse decision or the state may appeal a decision of the
2046 Procurement Appeals Board to the Court of Appeals. However, no appeal may be made by the
2047 state unless recommended by the chief procurement officer or the head of the purchasing
2048 agency involved, and approved by the attorney general.

2049 Section 84. Section **63-56-815**, which is renumbered from Section 63-56-59 is
2050 renumbered and amended to read:

2051 **[63-56-59]. 63-56-815. Jurisdiction of district court.**

2052 (1) The district court shall have jurisdiction over an action, whether the action is at law
2053 or in equity, between the state and:

2054 (a) a bidder, offeror, or contractor, prospective or actual, who is aggrieved in
2055 connection with the solicitation or award of a contract;

2056 (b) a person who is subject to a suspension or debarment proceeding; and

2057 (c) a contractor, for any cause of action which arises under, or by virtue of a contract.

2058 (2) The provisions of Title 63, Chapter 30d, Part 4, Notice of Claim Against a
2059 Governmental Entity or a Government Employee, and Section 63-30d-601 do not apply to
2060 actions brought under this chapter by an aggrieved party for equitable relief or reasonable costs
2061 incurred in preparing or appealing an unsuccessful bid or offer.

2062 Section 85. Section **63-56-816**, which is renumbered from Section 63-56-60 is
2063 renumbered and amended to read:

2064 **[63-56-60]. 63-56-816. Effect of prior determination by agents of state.**

2065 In any judicial action under Section [63-56-59] 63-56-815, determinations by
2066 employees, agents, or other persons appointed by the state shall be final and conclusive only as
2067 provided in Sections [63-56-32] 63-56-419 and [63-56-50] 63-56-806, and Subsection
2068 [63-56-57] 63-56-813(2).

2069 Section 86. Section **63-56-817**, which is renumbered from Section 63-56-61 is
2070 renumbered and amended to read:

2071 **[63-56-61]. 63-56-817. Statutes of limitations.**

2072 (1) Any action under Subsection [63-56-59] 63-56-815(1)(a) shall be initiated as
2073 follows:

2074 (a) within 20 calendar days after the aggrieved person knows or should have known of
2075 the facts giving rise to the action; provided, however, that an action with respect to an
2076 invitation for bids or request for proposals shall be initiated prior to the opening of bids or the
2077 closing date for proposals unless the aggrieved person did not know and should not have
2078 known of the facts giving rise to the action prior to bid opening or the closing date for
2079 proposals; or

2080 (b) within 14 calendar days after receipt of a final administrative decision pursuant to
2081 either Section [~~63-56-50~~] 63-56-806 or Section [~~63-56-57~~] 63-56-813, whichever is applicable.

2082 (2) Any action under Subsection [~~63-56-59~~] 63-56-815(1)(b) shall be commenced
2083 within six months after receipt of a final administrative decision pursuant to Section [~~63-56-50~~]
2084 63-56-806 or Section [~~63-56-57~~] 63-56-813, whichever is applicable.

2085 (3) The statutory limitations on an action between private persons on a contract or for
2086 breach of contract shall apply to any action commenced pursuant to Subsection [~~63-56-59~~]
2087 63-56-815(1)(c), except notice of appeals from the Procurement Appeals Board pursuant to
2088 Section [~~63-56-58~~] 63-56-814 concerning actions on a contract or for breach of contract shall
2089 be filed within one year after the date of the Procurement Appeals Board decision.

2090 Section 87. Section **63-56-818**, which is renumbered from Section 63-56-62 is
2091 renumbered and amended to read:

2092 [~~63-56-62~~]. **63-56-818. Effect of violation prior to award of contract.**

2093 If prior to award it is determined administratively or upon administrative or judicial
2094 review that a solicitation or proposed award of a contract is in violation of law, the solicitation
2095 or proposed award shall be cancelled or revised to comply with the law.

2096 Section 88. Section **63-56-819**, which is renumbered from Section 63-56-63 is
2097 renumbered and amended to read:

2098 [~~63-56-63~~]. **63-56-819. Effect of violation after award of contract.**

2099 If after an award it is determined administratively or upon administrative or judicial
2100 review that a solicitation or award of a contract is in violation of law:

2101 (1) If the person awarded the contract has not acted fraudulently or in bad faith:

2102 (a) The contract may be ratified and affirmed if it is determined that doing so is in the
2103 best interests of the state; or

2104 (b) The contract may be terminated and the person awarded the contract shall be

2105 compensated for the actual expenses reasonably incurred under the contract prior to
2106 termination, plus a reasonable profit;

2107 (2) If the person awarded the contract has acted fraudulently or in bad faith:

2108 (a) The contract may be declared null and void; or

2109 (b) The contract may be ratified and affirmed if such action is in the best interests of
2110 the state, without prejudice to the state's rights to any appropriate damages.

2111 Section 89. Section **63-56-820**, which is renumbered from Section 63-56-64 is
2112 renumbered and amended to read:

2113 **~~[63-56-64].~~ 63-56-820. Interest rate.**

2114 (1) Except as provided in Subsection (2), in controversies between the state and
2115 contractors under this part, interest on amounts ultimately determined to be due to a contractor
2116 or to the state are payable at the rate applicable to judgments from the date the claim arose
2117 through the date of decision or judgment, whichever is later.

2118 (2) This section does not apply to public assistance benefits programs.

2119 Section 90. Section **63-56-901**, which is renumbered from Section 63-56-65 is
2120 renumbered and amended to read:

2121 **Part 9. Intergovernmental Relations**

2122 **~~[63-56-65].~~ 63-56-901. Agreements between public procurement units.**

2123 Under the terms agreed upon among the parties, any public procurement unit may enter
2124 into agreements with one or more other public procurement units to:

2125 (1) sponsor, conduct, or administer a cooperative agreement for the procurement or
2126 disposal of any supplies, services, or construction;

2127 (2) cooperatively use supplies or services;

2128 (3) commonly use or share warehousing facilities, capital equipment, and other
2129 facilities;

2130 (4) provide personnel; provided that the requesting public procurement unit shall pay
2131 the public procurement unit providing the personnel the direct and indirect cost of providing
2132 the personnel, in accordance with the agreement; or

2133 (5) make available informational, technical, and other services, provided that the
2134 requirements of the public procurement unit tendering the services shall have precedence over
2135 the requesting public procurement unit and that the requesting public procurement unit shall

2136 pay for the expenses of the services so provided, in accordance with the agreement.

2137 Section 91. Section **63-56-902**, which is renumbered from Section 63-56-66 is
2138 renumbered and amended to read:

2139 **[63-56-66]. 63-56-902. Services between public procurement units.**

2140 (1) Upon request, any public procurement unit may make available to other public
2141 procurement units the following services, among others: standard forms; printed manuals;
2142 qualified products lists; source information; common use commodities listings; supplier
2143 prequalification information; supplier performance ratings; debarred and suspended bidders
2144 lists; forms for invitation for bids, requests for proposals, instructions to bidders, general
2145 contract provisions, and other contract forms; and contracts or published summaries thereof,
2146 including price and time of delivery information.

2147 (2) Any public procurement unit may provide the following technical services, among
2148 others, to other public procurement units; development of specifications; development of
2149 quality assurance test methods, including receiving, inspection, and acceptance procedures; use
2150 of testing and inspection facilities; and use of personnel training programs.

2151 (3) Public procurement units may enter into contractual arrangements and publish a
2152 schedule of fees for the services provided under Subsections (1) and (2).

2153 Section 92. Section **63-56-903**, which is renumbered from Section 63-56-67 is
2154 renumbered and amended to read:

2155 **[63-56-67]. 63-56-903. Payments between public procurement units.**

2156 All payments from any public procurement unit received by a public procurement unit
2157 supplying personnel or services shall be available to the supplying public procurement unit.

2158 Section 93. Section **63-56-904**, which is renumbered from Section 63-56-68 is
2159 renumbered and amended to read:

2160 **[63-56-68]. 63-56-904. Compliance by one public procurement unit pursuant to**
2161 **agreement considered compliance by others to agreement.**

2162 Where the public procurement unit administering a cooperative purchase complies with
2163 the requirements of this chapter, any public procurement unit participating in such a purchase
2164 shall be ~~deemed~~ considered to have complied with this chapter. Public procurement units may
2165 not enter into a cooperative purchasing agreement for the purpose of circumventing this
2166 chapter.

2167 Section 94. Section **63-56-905**, which is renumbered from Section 63-56-69 is
2168 renumbered and amended to read:

2169 **[63-56-69]. 63-56-905. Chief procurement officer to collect information as to**
2170 **supplies, etc.**

2171 To the extent possible, the chief procurement officer may collect information
2172 concerning the type, cost, quality, and quantity of commonly used supplies, services, or
2173 construction being procured or used by state public procurement units and local public
2174 procurement units. The chief procurement officer may make the information available to any
2175 public procurement unit upon request.

2176 Section 95. Section **63-56-906**, which is renumbered from Section 63-56-70 is
2177 renumbered and amended to read:

2178 **[63-56-70]. 63-56-906. Resolving controversy arising under a cooperative**
2179 **purchasing agreement.**

2180 Under a cooperative purchasing agreement, controversies arising between an
2181 administering state public procurement unit and its bidders, offerors, or contractors shall be
2182 resolved in accordance with Part [~~H of this chapter~~] 8, Legal and Contractual Remedies.

2183 Section 96. Section **63-56-907**, which is renumbered from Section 63-56-71 is
2184 renumbered and amended to read:

2185 **[63-56-71]. 63-56-907. Resolution of local public procurement controversies.**

2186 Any local public procurement unit is authorized to enter into an agreement with the
2187 State Procurement Appeals Board to resolve controversies between the local public
2188 procurement unit and its contractors, whether or not such controversy arose from a cooperative
2189 purchasing agreement.

2190 Section 97. Section **63-56-1001**, which is renumbered from Section 63-56-72 is
2191 renumbered and amended to read:

2192 **Part 10. Illegal Activities**

2193 **[63-56-72]. 63-56-1001. Felony to accept emolument.**

2194 Any person acting as a procurement officer for the state of Utah or any subdivision
2195 thereof, or who in any official capacity participates in the procurement of any supplies,
2196 services, construction, real property, or insurance for any such political units, is guilty of a
2197 felony if the person asks, receives, or offers to receive any emolument, gratuity, contribution,

2198 loan, or reward, or any promise thereof, either for the person's own use or the use or benefit of
2199 any other person or organization from any person interested in the sale of such supplies,
2200 services, construction, real property, or insurance.

2201 Section 98. Section **63-56-1002**, which is renumbered from Section 63-56-73 is
2202 renumbered and amended to read:

2203 ~~[63-56-73]~~. **63-56-1002. Felony to offer emolument.**

2204 A person who is interested in any way in the sale of any supplies, services, construction,
2205 real property, or insurance to the state of Utah or any political subdivision thereof, is guilty of a
2206 felony if the person gives or offers to give any emolument, gratuity, contribution, loan or
2207 reward, or any promise thereof to any person acting as a procurement officer, or who in any
2208 official capacity participates in the procurement of such supplies, services, construction, real
2209 property, or insurance, whether it is given for his own use or for the use or benefit of any other
2210 person or organization.

2211 Section 99. Section **63A-5-208** is amended to read:

2212 **63A-5-208. Definitions -- Certain public construction bids to list subcontractors --**
2213 **Changing subcontractors -- Bidders as subcontractors -- Dispute resolution process --**
2214 **Penalties.**

2215 (1) As used in this section:

2216 (a) "First-tier subcontractor" means a subcontractor who contracts directly with the
2217 prime contractor.

2218 (b) "Subcontractor" means any person or entity under contract with a contractor or
2219 another subcontractor to provide services or labor for the construction, installation, or repair of
2220 an improvement to real property.

2221 (c) "Subcontractor" includes a trade contractor or specialty contractor.

2222 (d) "Subcontractor" does not include suppliers who provide only materials, equipment,
2223 or supplies to a contractor or subcontractor.

2224 (2) The director shall apply the provisions of this section to achieve fair and
2225 competitive bidding and to discourage bid-shopping by contractors.

2226 (3) (a) (i) (A) On each public construction project, the director shall require the
2227 apparent lowest three bidders to submit a list of their first-tier subcontractors indicating each
2228 subcontractor's name, bid amount, and other information required by rule.

2229 (B) Other bidders who are not one of the apparent lowest three bidders may also
2230 submit a list of their first-tier subcontractors containing the information required by this
2231 Subsection (3).

2232 (C) The director may not consider any bid submitted by a bidder if the bidder fails to
2233 submit a subcontractor list meeting the requirements of this section.

2234 (ii) On projects where the contractor's total bid is less than \$500,000, subcontractors
2235 whose bid is less than \$20,000 need not be listed.

2236 (iii) On projects where the contractor's total bid is \$500,000 or more, subcontractors
2237 whose bid is less than \$35,000 need not be listed.

2238 (b) (i) The bidders shall submit this list within 24 hours after the bid opening time, not
2239 including Saturdays, Sundays, and state holidays.

2240 (ii) This list does not limit the director's right to authorize a change in the listing of any
2241 subcontractor.

2242 (c) The bidders shall verify that all subcontractors listed as part of their bids are
2243 licensed as required by state law.

2244 (d) Twenty-four hours after the bid opening, the contractor may change his
2245 subcontractors only after:

2246 (i) receiving permission from the director; and

2247 (ii) establishing that:

2248 (A) the change is in the best interest of the state; and

2249 (B) the contractor establishes reasons for the change that meet the standards established
2250 by the State Building Board.

2251 (e) If the director approves any changes in subcontractors that result in a net lower
2252 contract price for subcontracted work, the total of the prime contract may be reduced to reflect
2253 the changes.

2254 (4) (a) A bidder may list himself as a subcontractor when the bidder is currently
2255 licensed to perform the portion of the work for which the bidder lists himself as a subcontractor
2256 and:

2257 (i) the bidder intends to perform the work of a subcontractor himself; or

2258 (ii) the bidder intends to obtain a subcontractor to perform the work at a later date
2259 because the bidder was unable to:

- 2260 (A) obtain a bid from a qualified subcontractor; or
- 2261 (B) obtain a bid from a qualified subcontractor at a cost that the bidder considers to be
- 2262 reasonable.
- 2263 (b) (i) When the bidder intends to perform the work of a subcontractor himself, the
- 2264 director may, by written request, require that the bidder provide the director with information
- 2265 indicating the bidder's:
 - 2266 (A) previous experience in the type of work to be performed; and
 - 2267 (B) qualifications for performing the work.
- 2268 (ii) The bidder must respond in writing within five business days of receiving the
- 2269 director's written request.
- 2270 (iii) If the bidder's submitted information causes the director to reasonably believe that
- 2271 self-performance of the portion of the work by the bidder is likely to yield a substandard
- 2272 finished product, the director shall:
 - 2273 (A) require the bidder to use a subcontractor for the portion of the work in question and
 - 2274 obtain the subcontractor bid under the supervision of the director; or
 - 2275 (B) reject the bidder's bid.
- 2276 (c) (i) When the bidder intends to obtain a subcontractor to perform the work at a later
- 2277 date, the bidder shall provide documentation with the subcontractor list describing:
 - 2278 (A) the bidder's efforts to obtain a bid of a qualified subcontractor at a reasonable cost;
 - 2279 and
 - 2280 (B) why the bidder was unable to obtain a qualified subcontractor bid.
- 2281 (ii) If the bidder who intends to obtain a subcontractor to perform the work at a later
- 2282 date is awarded a contract, the director shall supervise the bidder's efforts to obtain a qualified
- 2283 subcontractor bid.
- 2284 (iii) The director may not adjust the amount of the contract awarded in order to reflect
- 2285 the actual amount of the subcontractor's bid.
- 2286 (5) The division may not disclose any subcontractor bid amounts obtained under this
- 2287 section until the division has awarded the project to a contractor.
- 2288 (6) (a) The director shall, in consultation with the State Building Board, prepare draft
- 2289 rules establishing a process for resolving disputes involved with contracts under the division's
- 2290 procurement authority.

2291 (b) The draft rules shall be presented to the Government Operations Interim Committee
2292 for review, comment, and recommendations before August 31, 2004.

2293 (c) The director shall consider, and the rules may include:

2294 (i) requirements regarding preliminary resolution efforts between the parties directly
2295 involved with the dispute;

2296 (ii) requirements for the filing of claims, including notification, timeframes, and
2297 documentation;

2298 (iii) identification of the types of costs eligible for allocation and a method for
2299 allocating costs among the parties to the dispute;

2300 (iv) required time periods, not to exceed 60 days, for the resolution of the claim;

2301 (v) provision for an independent hearing officer, panel, or arbitrator to extend the time
2302 period for resolution of the claim by not to exceed 60 additional days for good cause;

2303 (vi) provision for the extension of required time periods if the claimant agrees;

2304 (vii) requirements that decisions be issued in writing;

2305 (viii) provisions for administrative appeals of the decision;

2306 (ix) provisions for the timely payment of claims after resolution of the dispute,
2307 including any appeals;

2308 (x) a requirement that the final determination resulting from the dispute resolution
2309 process provided for in the rules is a final agency action subject to judicial review as provided
2310 in Sections 63-46b-14 and 63-46b-15;

2311 (xi) a requirement that a claim or dispute that does not include a monetary claim
2312 against the division or its agents is not limited to the dispute resolution process provided for in
2313 this Subsection (6);

2314 (xii) requirements for claims and disputes to be eligible for this dispute resolution
2315 process;

2316 (xiii) the use of an independent hearing officer, panel, arbitration, or mediation; and

2317 (xiv) the circumstances under which a subcontractor may file a claim directly with the
2318 division.

2319 (d) Persons pursuing claims under the process required by this Subsection (6):

2320 (i) are bound by the decision reached under this process unless the decision is properly
2321 appealed; and

2322 (ii) may not pursue claims or disputes under the dispute resolution process established
2323 in Sections [~~63-56-49~~] 63-56-805 through [~~63-56-58~~] 63-56-814.

2324 (7) In addition to all other reasons allowed by law or rule, the director may reject all
2325 bids if none of the bidders whose bid is within the budget of the project submit a subcontractor
2326 list that meets the requirements of this section.

2327 (8) Any violation of this section, or any fraudulent misrepresentation by a contractor,
2328 subcontractor, or supplier, may be grounds for:

2329 (a) the contractor, subcontractor, or supplier to be suspended or debarred by the
2330 director; or

2331 (b) the contractor or subcontractor to be disciplined by the Division of Professional and
2332 Occupational Licensing.

2333 Section 100. Section **63B-2-102** is amended to read:

2334 **63B-2-102. Maximum amount -- Projects authorized.**

2335 (1) The total amount of bonds issued under this part may not exceed \$80,000,000.

2336 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
2337 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
2338 Subsection (2).

2339 (b) These costs may include the cost of acquiring land, interests in land, easements and
2340 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
2341 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
2342 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
2343 covered by construction of the projects plus a period of six months after the end of the
2344 construction period and all related engineering, architectural, and legal fees.

2345 (c) For the division, proceeds shall be provided for the following:

2346 CAPITAL IMPROVEMENTS

2347 1 Alterations, Repairs, and Improvements \$8,413,900

2348 TOTAL IMPROVEMENTS \$8,413,900

2349 CAPITAL FACILITIES CONSTRUCTION

2350 ESTIMATED
2351 OPERATIONS
2352 AND

2353	PROJECT	PROJECT	AMOUNT	MAINTENANCE
2354	PRIORITY	DESCRIPTION	FUNDED	COSTS
2355	1	Corrections - Northern Utah	\$2,729,700	\$158,000
2356		Community Corrections Center Phase II		
2357	2	University of Utah	\$10,200,000	\$881,600
2358		Marriot Library Phase II		
2359	3	Ogden Courts Building Phase II	\$12,096,000	\$340,000
2360	4	Utah National Guard -	\$397,800	\$70,500
2361		Southeast Utah Armory Phase II		
2362	5	Southern Utah University	\$7,004,400	\$427,000
2363		Library Phase II		
2364	6	Utah Valley Special Events	\$11,845,300	\$536,900
2365		Center Phase II		
2366	7	Salt Lake Community College	\$1,300,000	\$0
2367		- Land		
2368	8	Tax Commission Building	\$14,224,000	\$812,000
2369	9	Dixie College Business Building	\$2,823,300	\$187,800
2370	10	Salt Lake Community College	\$4,009,500	\$257,600
2371		South City 3rd Floor and Boiler		
2372	11	Public Education -	\$3,456,100	\$124,800
2373		Deaf and Blind Classrooms		
2374		TOTAL CONSTRUCTION	\$70,086,100	
2375		TOTAL IMPROVEMENTS AND	\$78,500,000	
2376		CONSTRUCTION		
2377		(d) For purposes of this section, operations and maintenance costs:		
2378		(i) are estimates only;		
2379		(ii) may include any operations and maintenance costs already funded in existing		
2380		agency budgets; and		
2381		(iii) are not commitments by this Legislature or future Legislatures to fund those		
2382		operations and maintenance costs.		
2383		(3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not		

2384 constitute a limitation on the amount that may be expended for any project.

2385 (b) The board may revise these estimates and redistribute the amount estimated for a
2386 project among the projects authorized.

2387 (c) The commission, by resolution and in consultation with the board, may delete one
2388 or more projects from this list if the inclusion of that project or those projects in the list could
2389 be construed to violate state law or federal law or regulation.

2390 (4) (a) The division may enter into agreements related to these projects before the
2391 receipt of proceeds of bonds issued under this chapter.

2392 (b) The division shall make those expenditures from unexpended and unencumbered
2393 building funds already appropriated to the Capital Projects Fund.

2394 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
2395 of bonds issued under this chapter.

2396 (d) The commission may, by resolution, make any statement of intent relating to that
2397 reimbursement that is necessary or desirable to comply with federal tax law.

2398 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
2399 it is the intent of the Legislature that the balance necessary to complete the projects be
2400 addressed by future Legislatures, either through appropriations or through the issuance or sale
2401 of bonds.

2402 (b) For those phased projects, the division may enter into contracts for amounts not to
2403 exceed the anticipated full project funding but may not allow work to be performed on those
2404 contracts in excess of the funding already authorized by the Legislature.

2405 (c) Those contracts shall contain a provision for termination of the contract for the
2406 convenience of the state as required by Section [~~63-56-40~~] 63-56-601.

2407 (d) It is also the intent of the Legislature that this authorization to the division does not
2408 bind future Legislatures to fund projects initiated from this authorization.

2409 Section 101. Section **63B-3-102** is amended to read:

2410 **63B-3-102. Maximum amount -- Projects authorized.**

2411 (1) The total amount of bonds issued under this part may not exceed \$64,600,000.

2412 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
2413 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
2414 Subsection (2).

2415 (b) These costs may include the cost of acquiring land, interests in land, easements and
 2416 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
 2417 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
 2418 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
 2419 covered by construction of the projects plus a period of six months after the end of the
 2420 construction period and all related engineering, architectural, and legal fees.

2421 (c) For the division, proceeds shall be provided for the following:

2422 CAPITAL IMPROVEMENTS

2423	1	Alterations, Repairs, and Improvements	\$5,000,000
2424		TOTAL IMPROVEMENTS	\$5,000,000

2425 CAPITAL AND ECONOMIC DEVELOPMENT

2426 ESTIMATED
 2427 OPERATIONS
 2428 AND

2429	PROJECT	PROJECT	AMOUNT	MAINTENANCE
2430	PRIORITY	DESCRIPTION	FUNDED	COSTS
2431	1	University of Utah	\$13,811,500	\$881,600
2432		Marriott Library Phase III (Final)		
2433	2	Bridgerland Applied Technology Center	\$2,400,000	\$0
2434		Utah State University Space		
2435	3	Weber State University -	\$2,332,100	\$9,600
2436		Heat Plant		
2437	4	Department of Human Services	\$4,180,000	\$400,000
2438		- Division of Youth Corrections renamed		
2439		in 2003 to the Division of Juvenile		
2440		Justice Services		
2441	5	Snow College -	\$3,885,100	\$224,500
2442		Administrative Services/Student Center		
2443	6	Ogden Weber Applied	\$750,000	\$0
2444		Technology Center -		
2445		Metal Trades Building Design and		

2446		Equipment Purchase		
2447	7	Department of Corrections	\$1,237,100	\$72,000
2448		B-Block Remodel		
2449	8	Utah State University -	\$550,000	\$0
2450		Old Main Phase III Design		
2451	9	Department of Corrections - 144 bed	\$6,700,000	\$168,800
2452		Uintah Expansion		
2453	10	Southern Utah University	\$5,630,400	\$314,200
2454		Administrative Services/Student Center		
2455	11	Anasazi Museum	\$760,200	\$8,500
2456	12	Hill Air Force Base -	\$9,500,000	\$0
2457		Easements Purchase		
2458	13	Signetics Building Remodel	\$2,000,000	\$0
2459	14	Antelope Island Visitors Center	\$750,000	\$30,000
2460	15	State Fair Park -	\$150,000	\$0
2461		Master Study		
2462	16	Utah National Guard - Draper Land	\$380,800	\$0
2463	17	Davis Applied Technology Center -	\$325,000	\$0
2464		Design		
2465	18	Palisade State Park - Land	\$800,000	\$0
2466		and Park Development		
2467	19	Department of Human Services	\$80,000	\$0
2468		- Cedar City Land		
2469	20	Department of Human Services	\$163,400	\$0
2470		- Clearfield Land		
2471	21	Electronic technology,	\$2,500,000	\$0
2472		equipment, and hardware		
2473		TOTAL CAPITAL AND ECONOMIC DEVELOPMENT	\$58,885,600	
2474		TOTAL IMPROVEMENTS AND		
2475		CAPITAL AND ECONOMIC DEVELOPMENT	\$63,885,600	

2476 (d) For purposes of this section, operations and maintenance costs:

- 2477 (i) are estimates only;
- 2478 (ii) may include any operations and maintenance costs already funded in existing
2479 agency budgets; and
- 2480 (iii) are not commitments by this Legislature or future Legislatures to fund those
2481 operations and maintenance costs.
- 2482 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
2483 constitute a limitation on the amount that may be expended for any project.
- 2484 (b) The board may revise these estimates and redistribute the amount estimated for a
2485 project among the projects authorized.
- 2486 (c) The commission, by resolution and in consultation with the board, may delete one
2487 or more projects from this list if the inclusion of that project or those projects in the list could
2488 be construed to violate state law or federal law or regulation.
- 2489 (4) (a) The division may enter into agreements related to these projects before the
2490 receipt of proceeds of bonds issued under this chapter.
- 2491 (b) The division shall make those expenditures from unexpended and unencumbered
2492 building funds already appropriated to the Capital Projects Fund.
- 2493 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
2494 of bonds issued under this chapter.
- 2495 (d) The commission may, by resolution, make any statement of intent relating to that
2496 reimbursement that is necessary or desirable to comply with federal tax law.
- 2497 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
2498 it is the intent of the Legislature that the balance necessary to complete the projects be
2499 addressed by future Legislatures, either through appropriations or through the issuance or sale
2500 of bonds.
- 2501 (b) For those phased projects, the division may enter into contracts for amounts not to
2502 exceed the anticipated full project funding but may not allow work to be performed on those
2503 contracts in excess of the funding already authorized by the Legislature.
- 2504 (c) Those contracts shall contain a provision for termination of the contract for the
2505 convenience of the state as required by Section [~~63-56-40~~] 63-56-601.
- 2506 (d) It is also the intent of the Legislature that this authorization to the division does not
2507 bind future Legislatures to fund projects initiated from this authorization.

2508 Section 102. Section **63B-4-102** is amended to read:

2509 **63B-4-102. Maximum amount -- Projects authorized.**

2510 (1) The total amount of bonds issued under this part may not exceed \$45,300,000.

2511 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
 2512 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
 2513 Subsection (2).

2514 (b) These costs may include the cost of acquiring land, interests in land, easements and
 2515 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
 2516 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
 2517 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
 2518 covered by construction of the projects plus a period of six months after the end of the
 2519 construction period, and all related engineering, architectural, and legal fees.

2520 (c) For the division, proceeds shall be provided for the following:

2521 CAPITAL IMPROVEMENTS

2522	Alterations, Repairs, and Improvements	\$7,200,000
2523	TOTAL IMPROVEMENTS	\$7,200,000

2524 CAPITAL AND ECONOMIC DEVELOPMENT

2525	PROJECT	AMOUNT	ESTIMATED
2526	DESCRIPTION	FUNDED	OPERATIONS AND
2527			MAINTENANCE
2528			COSTS
2529	Corrections - Uinta IVA	\$11,300,000	\$212,800
2530	Utah County Youth Correctional Facility	\$6,650,000	\$245,000
2531	Ogden Weber Applied Technology Center -	\$5,161,000	\$176,000
2532	Metal Trades		
2533	Project Reserve Fund	\$3,500,000	None
2534	Weber State University - Browning Center	\$3,300,000	None
2535	Remodel		
2536	Heber Wells Building Remodel	\$2,000,000	None
2537	Higher Education Davis County - Land Purchase	\$1,600,000	None
2538	National Guard -- Provo Armory	\$1,500,000	\$128,000

2539	Department of Natural Resources - Pioneer	\$900,000	\$65,000
2540	Trails Visitor Center		
2541	Higher Education Design Projects	\$800,000	Varies
2542			depending
2543			upon
2544			projects
2545			selected
2546	Salt Lake Community College -		
2547	South Valley Planning	\$300,000	None
2548	Division of Youth Corrections renamed in 2003		
2549	to the Division of Juvenile Justice		
2550	Services - Logan Land	\$120,000	None
2551	Purchase		
2552	TOTAL CAPITAL AND ECONOMIC DEVELOPMENT		\$37,131,000
2553	TOTAL IMPROVEMENTS AND		
2554	CAPITAL AND ECONOMIC DEVELOPMENT		\$44,331,000

- 2555 (d) For purposes of this section, operations and maintenance costs:
- 2556 (i) are estimates only;
- 2557 (ii) may include any operations and maintenance costs already funded in existing
- 2558 agency budgets; and
- 2559 (iii) are not commitments by this Legislature or future Legislatures to fund those
- 2560 operations and maintenance costs.
- 2561 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
- 2562 constitute a limitation on the amount that may be expended for any project.
- 2563 (b) The board may revise these estimates and redistribute the amount estimated for a
- 2564 project among the projects authorized.
- 2565 (c) The commission, by resolution and in consultation with the board, may delete one
- 2566 or more projects from this list if the inclusion of that project or those projects in the list could
- 2567 be construed to violate state law or federal law or regulation.
- 2568 (4) (a) The division may enter into agreements related to these projects before the
- 2569 receipt of proceeds of bonds issued under this chapter.

2570 (b) The division shall make those expenditures from unexpended and unencumbered
2571 building funds already appropriated to the Capital Projects Fund.

2572 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
2573 of bonds issued under this chapter.

2574 (d) The commission may, by resolution, make any statement of intent relating to that
2575 reimbursement that is necessary or desirable to comply with federal tax law.

2576 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
2577 it is the intent of the Legislature that the balance necessary to complete the projects be
2578 addressed by future Legislatures, either through appropriations or through the issuance or sale
2579 of bonds.

2580 (b) For those phased projects, the division may enter into contracts for amounts not to
2581 exceed the anticipated full project funding but may not allow work to be performed on those
2582 contracts in excess of the funding already authorized by the Legislature.

2583 (c) Those contracts shall contain a provision for termination of the contract for the
2584 convenience of the state as required by Section [~~63-56-40~~] 63-56-601.

2585 (d) It is also the intent of the Legislature that this authorization to the division does not
2586 bind future Legislatures to fund projects initiated from this authorization.

2587 Section 103. Section **63B-5-102** is amended to read:

2588 **63B-5-102. Maximum amount -- Projects authorized.**

2589 (1) The total amount of bonds issued under this part may not exceed \$32,000,000.

2590 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
2591 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
2592 Subsection (2).

2593 (b) These costs may include the cost of acquiring land, interests in land, easements and
2594 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
2595 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
2596 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
2597 covered by construction of the projects plus a period of six months after the end of the
2598 construction period, and all related engineering, architectural, and legal fees.

2599 (c) For the division, proceeds shall be provided for the following:

2600 CAPITAL IMPROVEMENTS

2601	Alterations, Repairs, and Improvements	\$7,600,000	
2602	TOTAL IMPROVEMENTS	\$7,600,000	
2603	CAPITAL AND ECONOMIC DEVELOPMENT		
2604			ESTIMATED
2605			OPERATIONS AND
2606	PROJECT	AMOUNT	MAINTENANCE
2607	DESCRIPTION	FUNDED	COSTS
2608	Corrections - Gunnison (192 Beds)	\$13,970,000	\$210,000
2609	University of Utah -- Gardner Hall	\$7,361,000	\$203,900
2610	Weber State University Davis Campus	\$771,000	None
2611	-- Land Purchase		
2612	Department of Workforce Services Cedar City	\$148,000	None
2613	-- Land Purchase		
2614	College of Eastern Utah Durrant School	\$400,000	None
2615	-- Land Purchase		
2616	State Hospital - Forensic Design (200 beds)	\$750,000	\$575,000
2617	TOTAL CAPITAL AND ECONOMIC DEVELOPMENT	\$23,400,000	
2618	TOTAL IMPROVEMENTS AND		
2619	CAPITAL AND ECONOMIC DEVELOPMENT	\$31,000,000	

- 2620 (d) For purposes of this section, operations and maintenance costs:
- 2621 (i) are estimates only;
- 2622 (ii) may include any operations and maintenance costs already funded in existing
- 2623 agency budgets; and
- 2624 (iii) are not commitments by this Legislature or future Legislatures to fund those
- 2625 operations and maintenance costs.
- 2626 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
- 2627 constitute a limitation on the amount that may be expended for any project.
- 2628 (b) The board may revise these estimates and redistribute the amount estimated for a
- 2629 project among the projects authorized.
- 2630 (c) The commission, by resolution and in consultation with the board, may delete one
- 2631 or more projects from this list if the inclusion of that project or those projects in the list could

2632 be construed to violate state law or federal law or regulation.

2633 (4) (a) The division may enter into agreements related to these projects before the
2634 receipt of proceeds of bonds issued under this chapter.

2635 (b) The division shall make those expenditures from unexpended and unencumbered
2636 building funds already appropriated to the Capital Projects Fund.

2637 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
2638 of bonds issued under this chapter.

2639 (d) The commission may, by resolution, make any statement of intent relating to that
2640 reimbursement that is necessary or desirable to comply with federal tax law.

2641 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
2642 it is the intent of the Legislature that the balance necessary to complete the projects be
2643 addressed by future Legislatures, either through appropriations or through the issuance or sale
2644 of bonds.

2645 (b) For those phased projects, the division may enter into contracts for amounts not to
2646 exceed the anticipated full project funding but may not allow work to be performed on those
2647 contracts in excess of the funding already authorized by the Legislature.

2648 (c) Those contracts shall contain a provision for termination of the contract for the
2649 convenience of the state as required by Section [~~63-56-40~~] 63-56-601.

2650 (d) It is also the intent of the Legislature that this authorization to the division does not
2651 bind future Legislatures to fund projects initiated from this authorization.

2652 Section 104. Section **63B-6-102** is amended to read:

2653 **63B-6-102. Maximum amount -- Projects authorized.**

2654 (1) The total amount of bonds issued under this part may not exceed \$57,000,000.

2655 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
2656 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
2657 Subsection (2).

2658 (b) These costs may include the cost of acquiring land, interests in land, easements and
2659 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
2660 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
2661 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
2662 covered by construction of the projects plus a period of six months after the end of the

2663 construction period, and all related engineering, architectural, and legal fees.

2664 (c) For the division, proceeds shall be provided for the following:

2665 CAPITAL AND ECONOMIC DEVELOPMENT

2666		ESTIMATED
2667		OPERATIONS
2668	AMOUNT	AND
2669	FUNDED	MAINTENANCE
2670	PROJECT DESCRIPTION	
2670	Youth Corrections - Carbon / Emery (18 beds)	\$2,298,100 \$70,000
2671	State Hospital - 100 bed Forensic Facility	\$13,800,700 \$320,600
2672	Utah State University - Widtsoe Hall	\$23,986,700 \$750,200
2673	Davis Applied Technology Center	\$6,344,900 \$144,000
2674	- Medical/Health Tech Addition	
2675	Southern Utah University -- Physical	\$1,100,000 \$456,100
2676	Education Building (Design)	
2677	Salt Lake Community College -- High	\$1,165,000 \$718,500
2678	Technology Building, 90th So. Campus (Design)	
2679	Department of Natural Resources - Antelope	\$3,600,000 None
2680	Island Road	
2681	Youth Corrections	\$1,500,000 None
2682	- Region 1 72 Secured Bed Facility	
2683	Department of Natural Resources - Dead Horse	\$1,350,000 \$5,700
2684	Point Visitors Center	
2685	TOTAL CAPITAL AND ECONOMIC	\$55,145,400
2686	DEVELOPMENT	

2687 (d) For purposes of this section, operations and maintenance costs:

2688 (i) are estimates only;

2689 (ii) may include any operations and maintenance costs already funded in existing
2690 agency budgets; and

2691 (iii) are not commitments by this Legislature or future Legislatures to fund those
2692 operations and maintenance costs.

2693 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not

2694 constitute a limitation on the amount that may be expended for any project.

2695 (b) The board may revise these estimates and redistribute the amount estimated for a
2696 project among the projects authorized.

2697 (c) The commission, by resolution and in consultation with the board, may delete one
2698 or more projects from this list if the inclusion of that project or those projects in the list could
2699 be construed to violate state law or federal law or regulation.

2700 (4) (a) The division may enter into agreements related to these projects before the
2701 receipt of proceeds of bonds issued under this chapter.

2702 (b) The division shall make those expenditures from unexpended and unencumbered
2703 building funds already appropriated to the Capital Projects Fund.

2704 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
2705 of bonds issued under this chapter.

2706 (d) The commission may, by resolution, make any statement of intent relating to that
2707 reimbursement that is necessary or desirable to comply with federal tax law.

2708 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
2709 it is the intent of the Legislature that the balance necessary to complete the projects be
2710 addressed by future Legislatures, either through appropriations or through the issuance or sale
2711 of bonds.

2712 (b) For those phased projects, the division may enter into contracts for amounts not to
2713 exceed the anticipated full project funding but may not allow work to be performed on those
2714 contracts in excess of the funding already authorized by the Legislature.

2715 (c) Those contracts shall contain a provision for termination of the contract for the
2716 convenience of the state as required by Section [~~63-56-40~~] 63-56-601.

2717 (d) It is also the intent of the Legislature that this authorization to the division does not
2718 bind future Legislatures to fund projects initiated from this authorization.

2719 Section 105. Section **63B-6-402** is amended to read:

2720 **63B-6-402. Maximum amount -- Projects authorized.**

2721 (1) The total amount of bonds issued under this part may not exceed \$9,000,000.

2722 (2) (a) Proceeds from the issuance of bonds shall be provided to the State Tax
2723 Commission to provide funds to pay all or part of the cost of the project described in this
2724 Subsection (2).

2725 (b) These costs may include:

2726 (i) the cost of acquisition, development, and conversion of computer hardware and
2727 software for motor vehicle fee systems and tax collection and accounting systems of the state;

2728 (ii) interest estimated to accrue on these bonds during the period to be covered by that
2729 development and conversion, plus a period of six months following the completion of the
2730 development and conversion; and

2731 (iii) all related engineering, consulting, and legal fees.

2732 (c) For the State Tax Commission, proceeds shall be provided for the following:

2733	PROJECT	AMOUNT
2734	DESCRIPTION	FUNDED
2735	UTAX SYSTEMS	\$8,500,000
2736	ACQUISITION AND DEVELOPMENT	

2737 (3) The commission, by resolution may decline to issue bonds if the project could be
2738 construed to violate state law or federal law or regulation.

2739 (4) (a) For this project, for which only partial funding is provided in Subsection (2), it
2740 is the intent of the Legislature that the balance necessary to complete the project be addressed
2741 by future Legislatures, either through appropriations or through the issuance or sale of bonds.

2742 (b) The State Tax Commission may enter into contracts for amounts not to exceed the
2743 anticipated full project funding but may not allow work to be performed on those contracts in
2744 excess of the funding already authorized by the Legislature.

2745 (c) Those contracts shall contain a provision for termination of the contract for the
2746 convenience of the state as required by Section [~~63-56-40~~] 63-56-601.

2747 (d) It is also the intent of the Legislature that this authorization to the State Tax
2748 Commission does not bind future Legislatures to fund projects initiated from this authorization.

2749 Section 106. Section **63B-7-102** is amended to read:

2750 **63B-7-102. Maximum amount -- Projects authorized.**

2751 (1) The total amount of bonds issued under this part may not exceed \$33,600,000.

2752 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
2753 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
2754 Subsection (2).

2755 (b) These costs may include the cost of acquiring land, interests in land, easements and

2756 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
2757 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
2758 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
2759 covered by construction of the projects plus a period of six months after the end of the
2760 construction period, and all related engineering, architectural, and legal fees.

2761 (c) For the division, proceeds shall be provided for the following:

2762 PROJECT	AMOUNT	ESTIMATED
2763 DESCRIPTION	FUNDED	OPERATIONS AND
2764		MAINTENANCE
2765 Southern Utah University	\$4,600,000	\$0
2766 Land Purchase		
2767 Salt Lake Community College	\$3,980,700	\$507,900
2768 High Tech Center -		
2769 Jordan Campus		
2770 Children's Special Health Care	\$755,400	\$247,600
2771 Needs Clinic		
2772 Youth Corrections - 2 @ 32 beds	\$419,500	\$276,000
2773 (Vernal / Logan)		
2774 Corrections - Gunnison 288 bed	\$8,425,600	\$0
2775 and Lagoon Expansion		
2776 University of Utah -	\$445,500	\$101,700
2777 Cowles Building		
2778 Utah Valley State College -	\$1,166,300	\$391,000
2779 Technical Building		
2780 Sevier Valley Applied Technology	\$3,014,300	\$443,300
2781 Center - Shop Expansion		
2782 Division of Parks and Recreation	\$1,000,000	\$22,700
2783 Statewide Restrooms		
2784 Murray Highway Patrol Office	\$2,300,000	\$81,000
2785 Department of Workforce	\$2,780,000	\$128,100
2786 Services - Davis County		

2787	Employment Center		
2788	State Hospital - Rampton II	\$1,600,000	\$462,000
2789	Courts - 4th District	\$1,368,000	\$0
2790	Land - Provo		
2791	Dixie College - Land	\$1,000,000	\$0
2792	TOTAL CAPITAL AND	\$32,855,300	
2793	ECONOMIC DEVELOPMENT		
2794	(d) For purposes of this section, operations and maintenance costs:		
2795	(i) are estimates only;		
2796	(ii) may include any operations and maintenance costs already funded in existing		
2797	agency budgets; and		
2798	(iii) are not commitments by this Legislature or future Legislatures to fund those		
2799	operations and maintenance costs.		
2800	(3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not		
2801	constitute a limitation on the amount that may be expended for any project.		
2802	(b) The board may revise these estimates and redistribute the amount estimated for a		
2803	project among the projects authorized.		
2804	(c) The commission, by resolution and in consultation with the board, may delete one		
2805	or more projects from this list if the inclusion of that project or those projects in the list could		
2806	be construed to violate state law or federal law or regulation.		
2807	(4) (a) The division may enter into agreements related to these projects before the		
2808	receipt of proceeds of bonds issued under this chapter.		
2809	(b) The division shall make those expenditures from unexpended and unencumbered		
2810	building funds already appropriated to the Capital Projects Fund.		
2811	(c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds		
2812	of bonds issued under this chapter.		
2813	(d) The commission may, by resolution, make any statement of intent relating to that		
2814	reimbursement that is necessary or desirable to comply with federal tax law.		
2815	(5) (a) For those projects for which only partial funding is provided in Subsection (2),		
2816	it is the intent of the Legislature that the balance necessary to complete the projects be		
2817	addressed by future Legislatures, either through appropriations or through the issuance or sale		

2818 of bonds.

2819 (b) For those phased projects, the division may enter into contracts for amounts not to
2820 exceed the anticipated full project funding but may not allow work to be performed on those
2821 contracts in excess of the funding already authorized by the Legislature.

2822 (c) Those contracts shall contain a provision for termination of the contract for the
2823 convenience of the state as required by Section [~~63-56-40~~] 63-56-601.

2824 (d) It is also the intent of the Legislature that this authorization to the division does not
2825 bind future Legislatures to fund projects initiated from this authorization.

2826 Section 107. Section **63B-7-402** is amended to read:

2827 **63B-7-402. Maximum amount -- Projects authorized.**

2828 (1) The total amount of bonds issued under this part may not exceed \$16,500,000.

2829 (2) (a) Proceeds from the issuance of bonds shall be provided to the State Tax
2830 Commission to provide funds to pay all or part of the cost of the project described in this
2831 Subsection (2).

2832 (b) These costs may include:

2833 (i) the cost of acquisition, development, and conversion of computer hardware and
2834 software for motor vehicle fee systems and tax collection and accounting systems of the state;

2835 (ii) interest estimated to accrue on these bonds during the period to be covered by that
2836 development and conversion, plus a period of six months following the completion of the
2837 development and conversion; and

2838 (iii) all related engineering, consulting, and legal fees.

2839 (c) For the State Tax Commission, proceeds shall be provided for the following:

2840	PROJECT	AMOUNT
2841	DESCRIPTION	FUNDED
2842	UTAX SYSTEMS	\$15,650,000
2843	ACQUISITION AND DEVELOPMENT	

2844 (3) The commission, by resolution may decline to issue bonds if the project could be
2845 construed to violate state law or federal law or regulation.

2846 (4) (a) For this project, for which only partial funding is provided in Subsection (2), it
2847 is the intent of the Legislature that the balance necessary to complete the project be addressed
2848 by future Legislatures, either through appropriations or through the issuance or sale of bonds.

2849 (b) The State Tax Commission may enter into contracts for amounts not to exceed the
 2850 anticipated full project funding but may not allow work to be performed on those contracts in
 2851 excess of the funding already authorized by the Legislature.

2852 (c) Those contracts shall contain a provision for termination of the contract for the
 2853 convenience of the state as required by Section [~~63-56-40~~] 63-56-601.

2854 (d) It is also the intent of the Legislature that this authorization to the State Tax
 2855 Commission does not bind future Legislatures to fund projects initiated from this authorization.
 2856 Section 108. Section **63B-8-102** is amended to read:

2857 **63B-8-102. Maximum amount -- Projects authorized.**

2858 (1) The total amount of bonds issued under this part may not exceed \$48,500,000.

2859 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
 2860 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
 2861 Subsection (2).

2862 (b) These costs may include the cost of acquiring land, interests in land, easements and
 2863 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
 2864 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
 2865 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
 2866 covered by construction of the projects plus a period of six months after the end of the
 2867 construction period, and all related engineering, architectural, and legal fees.

2868 (c) For the division, proceeds shall be provided for the following:

2869 PROJECT	2870 AMOUNT	2871 ESTIMATED
2872 DESCRIPTION	2873 FUNDED	2874 OPERATIONS AND
		2875 MAINTENANCE
2876 Southern Utah University -	2877 \$2,493,200	2878 \$447,744
2879 Physical Education Building		
2880 Utah Valley State College -	2881 \$29,000,000	2882 \$721,875
2883 Information Sciences Building		
2884 University of Utah -	2885 \$7,268,500	2886 \$140,217
2887 Cowles Building Renovation		
2888 Vernal District Court	2889 \$4,539,500	2890 \$149,989
2891 Salt Lake Community College -	2892 \$4,200,000	2893 \$281,784

2880 Applied Education Center

2881 TOTAL CAPITAL AND \$47,501,200

2882 ECONOMIC DEVELOPMENT

2883 (d) For purposes of this section, operations and maintenance costs:

2884 (i) are estimates only;

2885 (ii) may include any operations and maintenance costs already funded in existing
2886 agency budgets; and

2887 (iii) are not commitments by this Legislature or future Legislatures to fund those
2888 operations and maintenance costs.

2889 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
2890 constitute a limitation on the amount that may be expended for any project.

2891 (b) The board may revise these estimates and redistribute the amount estimated for a
2892 project among the projects authorized.

2893 (c) The commission, by resolution and in consultation with the board, may delete one
2894 or more projects from this list if the inclusion of that project or those projects in the list could
2895 be construed to violate state law or federal law or regulation.

2896 (4) (a) The division may enter into agreements related to these projects before the
2897 receipt of proceeds of bonds issued under this chapter.

2898 (b) The division shall make those expenditures from unexpended and unencumbered
2899 building funds already appropriated to the Capital Projects Fund.

2900 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
2901 of bonds issued under this chapter.

2902 (d) The commission may, by resolution, make any statement of intent relating to that
2903 reimbursement that is necessary or desirable to comply with federal tax law.

2904 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
2905 it is the intent of the Legislature that the balance necessary to complete the projects be
2906 addressed by future Legislatures, either through appropriations or through the issuance or sale
2907 of bonds.

2908 (b) For those phased projects, the division may enter into contracts for amounts not to
2909 exceed the anticipated full project funding but may not allow work to be performed on those
2910 contracts in excess of the funding already authorized by the Legislature.

2911 (c) Those contracts shall contain a provision for termination of the contract for the
 2912 convenience of the state as required by Section [~~63-56-40~~] 63-56-601.

2913 (d) It is also the intent of the Legislature that this authorization to the division does not
 2914 bind future Legislatures to fund projects initiated from this authorization.

2915 Section 109. Section **63B-8-402** is amended to read:

2916 **63B-8-402. Maximum amount -- Projects authorized.**

2917 (1) The total amount of bonds issued under this part may not exceed \$7,400,000.

2918 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
 2919 funds to pay all or part of the cost of acquiring and constructing the project listed in this
 2920 Subsection (2).

2921 (b) These costs may include the cost of acquiring land, interests in land, easements and
 2922 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
 2923 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
 2924 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
 2925 covered by construction of the projects plus a period of six months after the end of the
 2926 construction period, and all related engineering, architectural, and legal fees.

2927 (c) For the division, proceeds shall be provided for the following:

2928 PROJECT	2928 AMOUNT	2928 ESTIMATED
2929 DESCRIPTION	2929 FUNDED	2929 OPERATIONS AND
		2930 MAINTENANCE
2931 State Hospital - Rampton II	2931 \$7,000,000	2931 \$462,000

2932 (d) For purposes of this section, operations and maintenance costs:

2933 (i) are estimates only;

2934 (ii) may include any operations and maintenance costs already funded in existing
 2935 agency budgets; and

2936 (iii) are not commitments by this Legislature or future Legislatures to fund those
 2937 operations and maintenance costs.

2938 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
 2939 constitute a limitation on the amount that may be expended for any project.

2940 (b) The board may revise these estimates and redistribute the amount estimated for a
 2941 project among the projects authorized.

2942 (c) The commission, by resolution and in consultation with the board, may delete one
2943 or more projects from this list if the inclusion of that project or those projects in the list could
2944 be construed to violate state law or federal law or regulation.

2945 (4) (a) The division may enter into agreements related to these projects before the
2946 receipt of proceeds of bonds issued under this chapter.

2947 (b) The division shall make those expenditures from unexpended and unencumbered
2948 building funds already appropriated to the Capital Projects Fund.

2949 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
2950 of bonds issued under this chapter.

2951 (d) The commission may, by resolution, make any statement of intent relating to that
2952 reimbursement that is necessary or desirable to comply with federal tax law.

2953 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
2954 it is the intent of the Legislature that the balance necessary to complete the projects be
2955 addressed by future Legislatures, either through appropriations or through the issuance or sale
2956 of bonds.

2957 (b) For those phased projects, the division may enter into contracts for amounts not to
2958 exceed the anticipated full project funding but may not allow work to be performed on those
2959 contracts in excess of the funding already authorized by the Legislature.

2960 (c) Those contracts shall contain a provision for termination of the contract for the
2961 convenience of the state as required by Section [~~63-56-40~~] 63-56-601.

2962 (d) It is also the intent of the Legislature that this authorization to the division does not
2963 bind future Legislatures to fund projects initiated from this authorization.

2964 Section 110. Section **63B-9-103** is amended to read:

2965 **63B-9-103. Other capital facility authorizations and intent language.**

2966 (1) It is the intent of the Legislature that:

2967 (a) Utah State University use institutional funds to plan, design, and construct a
2968 renovation and expansion of the Edith Bowen School under the direction of the director of the
2969 Division of Facilities Construction and Management unless supervisory authority has been
2970 delegated;

2971 (b) no state funds be used for any portion of this project; and

2972 (c) the university may request state funds for operations and maintenance to the extent

2973 that the university is able to demonstrate to the Board of Regents that the facility meets
2974 approved academic and training purposes under Board of Regents policy R710.

2975 (2) It is the intent of the Legislature that:

2976 (a) the University of Utah use institutional funds to plan, design, and construct a
2977 College of Science Math Center under the direction of the director of the Division of Facilities
2978 Construction and Management unless supervisory authority has been delegated;

2979 (b) no state funds be used for any portion of this project; and

2980 (c) the university may request state funds for operations and maintenance to the extent
2981 that the university is able to demonstrate to the Board of Regents that the facility meets
2982 approved academic and training purposes under Board of Regents policy R710.

2983 (3) It is the intent of the Legislature that:

2984 (a) the University of Utah use institutional funds to plan, design, and construct a
2985 Burbidge Athletics and Academics Building under the direction of the director of the Division
2986 of Facilities Construction and Management unless supervisory authority has been delegated;

2987 (b) no state funds be used for any portion of this project; and

2988 (c) the university may not request state funds for operations and maintenance.

2989 (4) It is the intent of the Legislature that:

2990 (a) the University of Utah use institutional funds to plan, design, and construct an
2991 expansion to the bookstore under the direction of the director of the Division of Facilities
2992 Construction and Management unless supervisory authority has been delegated;

2993 (b) no state funds be used for any portion of this project; and

2994 (c) the university may not request state funds for operations and maintenance.

2995 (5) It is the intent of the Legislature that:

2996 (a) the University of Utah use institutional funds to plan, design, and construct a Health
2997 Sciences/Basic Sciences Building under the direction of the director of the Division of
2998 Facilities Construction and Management unless supervisory authority has been delegated;

2999 (b) no state funds be used for any portion of this project; and

3000 (c) the university may request state funds for operations and maintenance to the extent
3001 that the university is able to demonstrate to the Board of Regents that the facility meets
3002 approved academic and training purposes under Board of Regents policy R710.

3003 (6) It is the intent of the Legislature that:

- 3004 (a) Weber State University use institutional funds to plan, design, and construct an
- 3005 expansion to the stadium under the direction of the director of the Division of Facilities
- 3006 Construction and Management unless supervisory authority has been delegated;
- 3007 (b) no state funds be used for any portion of this project; and
- 3008 (c) the university may not request state funds for operations and maintenance.
- 3009 (7) It is the intent of the Legislature that:
- 3010 (a) Utah Valley State College use institutional funds to plan, design, and construct a
- 3011 baseball stadium under the direction of the director of the Division of Facilities Construction
- 3012 and Management unless supervisory authority has been delegated;
- 3013 (b) no state funds be used for any portion of this project; and
- 3014 (c) the college may not request state funds for operations and maintenance.
- 3015 (8) It is the intent of the Legislature that:
- 3016 (a) Southern Utah University use institutional funds to plan, design, and construct a
- 3017 weight training room under the direction of the director of the Division of Facilities
- 3018 Construction and Management unless supervisory authority has been delegated;
- 3019 (b) no state funds be used for any portion of this project; and
- 3020 (c) the university may not request state funds for operations and maintenance.
- 3021 (9) It is the intent of the Legislature that:
- 3022 (a) Snow College may lease land at the Snow College Richfield campus to a private
- 3023 developer for the construction and operation of student housing;
- 3024 (b) the oversight and inspection of the construction comply with Section 63A-5-206;
- 3025 (c) no state funds be used for any portion of this project; and
- 3026 (d) the college may not request state funds for operations and maintenance.
- 3027 (10) It is the intent of the Legislature that:
- 3028 (a) Salt Lake Community College may lease land at the Jordan campus to Jordan
- 3029 School District for the construction and operation of an Applied Technology Education Center;
- 3030 (b) the oversight and inspection of the construction comply with Section 63A-5-206;
- 3031 (c) no state funds be used for any portion of this project; and
- 3032 (d) the college may not request state funds for operations and maintenance.
- 3033 (11) It is the intent of the Legislature that:
- 3034 (a) the Department of Transportation exchange its maintenance station at Kimball

3035 Junction for property located near Highway 40 in Summit County; and

3036 (b) the Department of Transportation use federal funds, rent paid by the Salt Lake
3037 Organizing Committee for the use of the maintenance station, and any net proceeds resulting
3038 from the exchange of property to construct a replacement facility under the direction of the
3039 director of the Division of Facilities Construction and Management unless supervisory
3040 authority has been delegated.

3041 (12) It is the intent of the Legislature that:

3042 (a) the Department of Transportation sell surplus property in Utah County;

3043 (b) the Department of Transportation use funds from that sale to remodel existing
3044 space and add an addition to the Region 3 Complex; and

3045 (c) the project cost not exceed the funds received through sale of property.

3046 (13) It is the intent of the Legislature that the Department of Workforce Services use
3047 proceeds from property sales to purchase additional property adjacent to its state-owned facility
3048 in Logan.

3049 (14) (a) It is the intent of the Legislature that, because only partial funding is provided
3050 for the Heat Plant/Infrastructure Project at Utah State University, the balance necessary to
3051 complete this project be addressed by future Legislatures, either through appropriations or
3052 through the issuance of bonds.

3053 (b) (i) In compliance with Section 63A-5-207, the division may enter into contracts for
3054 amounts not to exceed the anticipated full project funding but may not allow work to be
3055 performed on those contracts in excess of the funding already authorized by the Legislature.

3056 (ii) Those contracts shall contain a provision for termination of the contract for the
3057 convenience of the state as required by Section ~~[63-56-40]~~ 63-56-601.

3058 (c) It is also the intent of the Legislature that this authorization to the division does not
3059 bind future Legislatures to fund the Heat Plant/Infrastructure Project at Utah State University.

3060 Section 111. Section **63B-11-202** is amended to read:

3061 **63B-11-202. Maximum amount -- Projects authorized.**

3062 (1) (a) The total amount of bonds issued under this part may not exceed \$21,250,000.

3063 (b) When Utah State University certifies to the commission that the university has
3064 obtained reliable commitments, convertible to cash, of \$10,000,000 or more in nonstate funds
3065 to renovate the existing engineering building, the commission may issue and sell general

3066 obligation bonds in a total amount not to exceed \$6,100,000.

3067 (c) When the University of Utah certifies to the commission that the university has
3068 obtained reliable commitments, convertible to cash, of \$13,000,000 or more in nonstate funds
3069 to construct a new engineering building, the commission may issue and sell general obligation
3070 bonds in a total amount not to exceed \$15,150,000.

3071 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
3072 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
3073 Subsection (2).

3074 (b) These costs may include the cost of acquiring land, interests in land, easements and
3075 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
3076 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
3077 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
3078 covered by construction of the projects plus a period of six months after the end of the
3079 construction period, and all related engineering, architectural, and legal fees.

3080 (c) For the division, proceeds shall be provided for the following:

3081 PROJECT	AMOUNT	ESTIMATED OPERATING
3082 DESCRIPTION	FUNDED	AND MAINTENANCE COSTS
3083 1. Utah State	\$5,943,500	\$425,000
3084 University		
3085 Engineering Building		
3086 Renovation		
3087 2. University of	\$15,000,000	\$489,000
3088 Utah New		
3089 Engineering Building		
3090 COSTS OF ISSUANCE	\$306,500	
3091 TOTAL CAPITAL AND ECONOMIC DEVELOPMENT		\$21,250,000

3092 (d) For purposes of this section, operations and maintenance costs:

3093 (i) are estimates only;

3094 (ii) may include any operations and maintenance costs already funded in existing
3095 agency budgets; and

3096 (iii) are not commitments by this Legislature or future Legislatures to fund those

3097 operations and maintenance costs.

3098 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
3099 constitute a limitation on the amount that may be expended for any project.

3100 (b) The board may revise these estimates and redistribute the amount estimated for a
3101 project among the projects authorized.

3102 (c) The commission, by resolution and in consultation with the board, may delete one
3103 or more projects from this list if the inclusion of that project or those projects in the list could
3104 be construed to violate state law or federal law or regulation.

3105 (4) (a) The division may enter into agreements related to these projects before the
3106 receipt of proceeds of bonds issued under this chapter.

3107 (b) The division shall make those expenditures from unexpended and unencumbered
3108 building funds already appropriated to the Capital Projects Fund.

3109 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
3110 of bonds issued under this chapter.

3111 (d) The commission may, by resolution, make any statement of intent relating to that
3112 reimbursement that is necessary or desirable to comply with federal tax law.

3113 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
3114 it is the intent of the Legislature that the balance necessary to complete the projects be
3115 addressed by future Legislatures, either through appropriations or through the issuance or sale
3116 of bonds.

3117 (b) For those phased projects, the division may enter into contracts for amounts not to
3118 exceed the anticipated full project funding but may not allow work to be performed on those
3119 contracts in excess of the funding already authorized by the Legislature.

3120 (c) Those contracts shall contain a provision for termination of the contract for the
3121 convenience of the state as required by Section [~~63-56-40~~] 63-56-601.

3122 (d) It is also the intent of the Legislature that this authorization to the division does not
3123 bind future Legislatures to fund projects initiated from this authorization.

3124 Section 112. Section **67-16-4** is amended to read:

3125 **67-16-4. Improperly disclosing or using private, controlled, or protected**
3126 **information -- Using position to secure privileges or exemptions -- Accepting employment**
3127 **which would impair independence of judgment or ethical performance.**

3128 (1) It is an offense for a public officer, public employee, or legislator, under
3129 circumstances not amounting to a violation of Section [~~63-56-72~~] 63-56-1001 or 76-8-105, to:

3130 (a) accept employment or engage in any business or professional activity that he might
3131 reasonably expect would require or induce him to improperly disclose controlled information
3132 that he has gained by reason of his official position;

3133 (b) disclose or improperly use controlled, private, or protected information acquired by
3134 reason of his official position or in the course of official duties in order to further substantially
3135 the officer's or employee's personal economic interest or to secure special privileges or
3136 exemptions for himself or others;

3137 (c) use or attempt to use his official position to:

3138 (i) further substantially the officer's or employee's personal economic interest; or

3139 (ii) secure special privileges or exemptions for himself or others;

3140 (d) accept other employment that he might expect would impair his independence of
3141 judgment in the performance of his public duties; or

3142 (e) accept other employment that he might expect would interfere with the ethical
3143 performance of his public duties.

3144 (2) (a) Subsection (1) does not apply to the provision of education-related services to
3145 public school students by public education employees acting outside their regular employment.

3146 (b) The conduct referred to in Subsection (2)(a) is subject to Section 53A-1-402.5.
3147 Section 113. Section **67-16-5** is amended to read:

3148 **67-16-5. Accepting gift, compensation, or loan -- When prohibited.**

3149 (1) As used in this section, "economic benefit tantamount to a gift" includes:

3150 (a) a loan at an interest rate that is substantially lower than the commercial rate then
3151 currently prevalent for similar loans; and

3152 (b) compensation received for private services rendered at a rate substantially
3153 exceeding the fair market value of the services.

3154 (2) It is an offense for a public officer, public employee, or legislator, under
3155 circumstances not amounting to a violation of Section [~~63-56-72~~] 63-56-1001 or 76-8-105, to
3156 knowingly receive, accept, take, seek, or solicit, directly or indirectly for himself or another a
3157 gift of substantial value or a substantial economic benefit tantamount to a gift:

3158 (a) that would tend improperly to influence a reasonable person in the person's position

3159 to depart from the faithful and impartial discharge of the person's public duties;

3160 (b) that the person knows or that a reasonable person in that position should know
3161 under the circumstances is primarily for the purpose of rewarding the person for official action
3162 taken; or

3163 (c) if he recently has been, is now, or in the near future may be involved in any
3164 governmental action directly affecting the donor or lender, unless a disclosure of the gift,
3165 compensation, or loan and other relevant information has been made in the manner provided in
3166 Section 67-16-6.

3167 (3) Subsection (2) does not apply to:

3168 (a) an occasional nonpecuniary gift, having a value of not in excess of \$50;

3169 (b) an award publicly presented in recognition of public services;

3170 (c) any bona fide loan made in the ordinary course of business; or

3171 (d) a political campaign contribution.

3172 Section 114. Section **67-16-5.3** is amended to read:

3173 **67-16-5.3. Requiring donation, payment, or service to government agency in**
3174 **exchange for approval -- When prohibited.**

3175 (1) It is an offense for a public officer, public employee, or legislator, under
3176 circumstances not amounting to a violation of Section [~~63-56-72~~] 63-56-1001 or 76-8-105, to
3177 demand from any person as a condition of granting any application or request for a permit,
3178 approval, or other authorization, that the person donate personal property, money, or services to
3179 any agency.

3180 (2) (a) Subsection (1) does not apply to any donation of property, funds, or services to
3181 an agency that is:

3182 (i) expressly required by statute, ordinance, or agency rule;

3183 (ii) mutually agreed to between the applicant and the entity issuing the permit,
3184 approval, or other authorization;

3185 (iii) made voluntarily by the applicant; or

3186 (iv) a condition of a consent decree, settlement agreement, or other binding instrument
3187 entered into to resolve, in whole or in part, an actual or threatened agency enforcement action.

3188 (b) If a person donates property, funds, or services to an agency, the agency shall, as
3189 part of the permit or other written authorization:

- 3190 (i) identify that a donation has been made;
- 3191 (ii) describe the donation;
- 3192 (iii) certify, in writing, that the donation was voluntary; and
- 3193 (iv) place that information in its files.

3194 Section 115. Section **67-16-6** is amended to read:

3195 **67-16-6. Receiving compensation for assistance in transaction involving an**
3196 **agency -- Filing sworn statement.**

3197 (1) It is an offense for a public officer or public employee, under circumstances not
3198 amounting to a violation of Section [~~63-56-72~~] 63-56-1001 or 76-8-105, to receive or agree to
3199 receive compensation for assisting any person or business entity in any transaction involving an
3200 agency unless the public officer or public employee files a sworn, written statement containing
3201 the information required by Subsection (2) with:

- 3202 (a) the head of his own agency;
- 3203 (b) the agency head of the agency with which the transaction is being conducted; and
- 3204 (c) the state attorney general.

3205 (2) The statement shall contain:

- 3206 (a) the name and address of the public officer or public employee involved;
- 3207 (b) the name of the public officer's or public employee's agency;
- 3208 (c) the name and address of the person or business entity being or to be assisted; and
- 3209 (d) a brief description of:
 - 3210 (i) the transaction as to which service is rendered or is to be rendered; and
 - 3211 (ii) the nature of the service performed or to be performed.

3212 (3) The statement required to be filed under Subsection (1) shall be filed within ten
3213 days after the date of any agreement between the public officer or public employee and the
3214 person or business entity being assisted or the receipt of compensation, whichever is earlier.

3215 (4) The statement is public information and shall be available for examination by the
3216 public.

3217 Section 116. Section **72-6-107** is amended to read:

3218 **72-6-107. Construction or improvement of highway -- Contracts -- Retainage.**

3219 (1) (a) The department shall make plans, specifications, and estimates prior to the
3220 construction or improvement of any state highway.

3221 (b) Except as provided in Section [~~63-56-36.1~~] 63-56-502 and except for construction
3222 or improvements performed with state prison labor, a construction or improvement project with
3223 an estimated cost exceeding the bid limit as defined in Section 72-6-109 for labor and materials
3224 shall be performed under contract awarded to the lowest responsible bidder.

3225 (c) The advertisement for bids shall be published in a newspaper of general circulation
3226 in the county in which the work is to be performed, at least once a week for two consecutive
3227 weeks, with the last publication at least ten days before bids are opened.

3228 (d) The department shall receive sealed bids and open the bids at the time and place
3229 designated in the advertisement. The department may then award the contract but may reject
3230 any and all bids.

3231 (e) If the department's estimates are substantially lower than any responsible bid
3232 received, the department may perform any work by force account.

3233 (2) If any payment on a contract with a private contractor for construction or
3234 improvement of a state highway is retained or withheld, the payment shall be retained or
3235 withheld and released as provided in Section 13-8-5.

3236 (3) If the department performs a construction or improvement project by force account,
3237 the department shall:

3238 (a) provide an accounting of the costs and expenditures of the improvement including
3239 material and labor;

3240 (b) disclose the costs and expenditures to any person upon request and allow the person
3241 to make a copy and pay for the actual cost of the copy; and

3242 (c) perform the work using the same specifications and standards that would apply to a
3243 private contractor.

3244 (4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
3245 department shall establish procedures for:

3246 (a) hearing evidence that a region within the department violated this section; and

3247 (b) administering sanctions against the region if the region is found in violation.

3248 Section 117. Section **73-10-27** is amended to read:

3249 **73-10-27. Project priorities -- Considerations -- Determinations of feasibility --**
3250 **Bids and contracts -- Definitions -- Retainage.**

3251 (1) In considering the priorities for projects to be built with funds made available under

3252 Section 73-10-24, the board shall give preference to those projects which:

3253 (a) are sponsored by the state or a political subdivision of the state;

3254 (b) meet a critical local need;

3255 (c) have greater economic feasibility;

3256 (d) will yield revenue to the state within a reasonable time or will return a reasonable
3257 rate of interest, based on financial feasibility; and

3258 (e) meet other considerations deemed necessary by the board, including, but not limited
3259 to, wildlife management and recreational needs.

3260 (2) In determining the economic feasibility the board shall establish a benefit-to-cost
3261 ratio for each project, using a uniform standard of procedure for all projects. In considering
3262 whether a project should be built, the benefit-to-cost ratio for each project shall be weighted
3263 based on the relative cost of the project. A project, when considered in total with all other
3264 projects constructed under this chapter and still the subject of a repayment contract, may not
3265 cause the accumulative benefit-to-cost ratio of the projects to be less than one to one.

3266 (3) Under no circumstances may a project be built that is not in the public interest as
3267 determined by the Board of Water Resources, and no project may be built which is not
3268 adequately designed based on sound engineering and geologic considerations.

3269 (4) The board in the preparation of a project for construction shall comply with the
3270 following:

3271 (a) All flood control projects involving cities and counties costing in excess of
3272 \$35,000, and all contracts for the construction of a storage reservoir in excess of 100 acre-feet
3273 or for the construction of a hydroelectric generating facility, shall be awarded on the basis of
3274 competitive bid. Advertisement for competitive bids shall be published by the board at least
3275 once a week for three consecutive weeks in a newspaper with general circulation in the state.
3276 The advertisement shall indicate that the board will award the contract to the lowest
3277 responsible bidder but that it reserves to itself the right to reject any and all bids. The date of
3278 last publication shall appear at least five days before the scheduled bid opening.

3279 (b) If all initial bids on the project are rejected, the board shall readvertise the project in
3280 the manner specified in Subsection (4)(a). If no satisfactory bid is received by the board upon
3281 the readvertisement of the project, it may proceed to construct the project but only in
3282 accordance with the plans and specifications used to calculate the estimated cost of the project.

3283 (c) The board shall keep an accurate record of all facts and representations relied upon
3284 in preparing its estimated cost for any project which is subject to the competitive bidding
3285 requirements of this section.

3286 (d) For the purposes of this Subsection (4):

3287 (i) "Estimated cost" means the cost of all labor, material, and equipment necessary for
3288 construction of the contemplated project.

3289 (ii) "Lowest responsible bidder" means any licensed contractor who submits the lowest
3290 bid, whose bid is in compliance with the invitation for bids, whose bid meets the plans and
3291 specifications, and who furnishes bonds under Sections 14-1-18 and ~~[63-56-38]~~ 63-56-504.

3292 (5) If any payment on a contract with a private contractor for construction of projects
3293 under this section is retained or withheld, it shall be retained or withheld and released as
3294 provided in Section 13-8-5.

Legislative Review Note
as of 12-7-04 8:43 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Interim Committee Note
as of 12-08-04 1:01 PM

The Government Operations Interim Committee recommended this bill.

Fiscal Note
Bill Number HB0019

Procurement Code Renumbering

12-Jan-05

4:32 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst