

- 30 ▶ establishes enforcement and penalties for a contractor who does not maintain an
- 31 offer of qualified health insurance coverage for employees during the duration of
- 32 the contract;
- 33 ▶ deposits any penalties collected into the Medicaid Restricted Account; and
- 34 ▶ applies to construction or design contracts entered into on or after July 1, 2009.

35 **Monies Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

38 None

39 **Utah Code Sections Affected:**

40 AMENDS:

- 41 **17B-2a-818**, as last amended by Laws of Utah 2008, Chapter 382
- 42 **26-18-402**, as last amended by Laws of Utah 1998, Chapter 360
- 43 **63A-5-205**, as last amended by Laws of Utah 2008, Chapter 382

44 ENACTS:

- 45 **17B-2a-818.5**, Utah Code Annotated 1953
- 46 **19-1-206**, Utah Code Annotated 1953
- 47 **63-34-22**, Utah Code Annotated 1953
- 48 **63C-9-403**, Utah Code Annotated 1953
- 49 **72-6-107.5**, Utah Code Annotated 1953



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

52 Section 1. Section **17B-2a-818** is amended to read:

53 **17B-2a-818. Requirements applicable to public transit district contracts.**

- 54 (1) If the expenditure required to construct district facilities or works exceeds:
- 55 (a) \$25,000, the construction shall be let as provided in Title 63G, Chapter 6, Utah
- 56 Procurement Code[-]; and
- 57 (b) \$750,000, the construction shall be let as provided in:

58 (i) Title 63G, Chapter 6, Utah Procurement Code; and
59 (ii) Section 17B-2a-818.5.
60 (2) (a) The board of trustees of a public transit district shall advertise each bid or
61 proposal through public notice as the board determines.
62 (b) A notice under Subsection (2)(a) may:
63 (i) include publication in:
64 (A) a newspaper of general circulation in the district;
65 (B) a trade journal; or
66 (C) other method determined by the board; and
67 (ii) be made at least once, not less than ten days before the expiration of the period
68 within which bids or proposals are received.
69 (3) (a) The board of trustees may, in its discretion:
70 (i) reject any or all bids or proposals; and
71 (ii) readvertise or give notice again.
72 (b) If, after rejecting bids or proposals, the board of trustees determines and declares
73 by a two-thirds vote of all members present that in the board's opinion the supplies,
74 equipment, and materials may be purchased at a lower price in the open market, the board may
75 purchase the supplies, equipment, and materials in the open market, notwithstanding any
76 provisions requiring contracts, bids, proposals, advertisement, or notice.
77 (4) The board of trustees of a public transit district may let a contract without
78 advertising for or inviting bids if:
79 (a) the board finds, upon a two-thirds vote of all members present, that a repair,
80 alteration, or other work or the purchase of materials, supplies, equipment, or other property is
81 of urgent necessity; or
82 (b) the district's general manager certifies by affidavit that there is only one source for
83 the required supplies, equipment, materials, or construction items.
84 (5) If a public transit district retains or withholds any payment on a contract with a
85 private contractor to construct facilities under this section, the board shall retain or withhold

86 and release the payment as provided in Section 13-8-5.

87 Section 2. Section **17B-2a-818.5** is enacted to read:

88 **17B-2a-818.5. Contracting powers of public transit districts -- Health insurance**
89 **coverage.**

90 (1) For purposes of this section:

91 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
92 34A-2-104 who:

93 (i) works at least 30 hours per calendar week; and

94 (ii) meets employer eligibility waiting requirements for health care insurance which
95 may not exceed 90 days from the date of hire.

96 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

97 (c) "Qualified health insurance coverage" means a health benefit plan that at the time
98 the contract is entered into or renewed:

99 (i) (A) provides coverage that is actuarially equivalent to the current benefit plan
100 determined by the Children's Health Insurance Program under Section 26-40-106; and

101 (B) under which the employer pays at least 50% of the premium for the employee and
102 the dependents of the employee;

103 (ii) (A) is a federally qualified high deductible health plan that has:

104 (I) the lowest deductible permitted for a federally qualified high deductible health
105 plan; and

106 (II) an out of pocket maximum that does not exceed three times the amount of the
107 annual deductible; and

108 (B) under which the employer pays 75% of the premium for the employee and the
109 dependents of the employee; or

110 (iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan
111 determined under Subsection (1)(c)(i); and

112 (B) under which the employer pays at least 75% of the premium of the employee and
113 the dependents of the employee.

114 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
115 (2) Except as provided in Subsection (3), this section applies to all contracts entered
116 into by the public transit district on or after July 1, 2009, if:
117 (a) the contract is for design or construction; and
118 (b) (i) the prime contract is in the amount of \$1,500,000 or greater; or
119 (ii) a subcontract is in the amount of \$750,000 or greater.
120 (3) This section does not apply if:
121 (a) the application of this section jeopardizes the receipt of federal funds;
122 (b) the contract is a sole source contract; or
123 (c) the contract is an emergency procurement.
124 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
125 or a modification to a contract, when the contract does not meet the initial threshold required
126 by Subsection (2).
127 (b) A person who intentionally uses change orders or contract modifications to
128 circumvent the requirements of Subsection (2) is guilty of an infraction.
129 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the public transit
130 district that the contractor has and will maintain an offer of qualified health insurance
131 coverage for the contractor's employees and the employee's dependents during the duration of
132 the contract.
133 (b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor
134 shall demonstrate to the public transit district that the subcontractor has and will maintain an
135 offer of qualified health insurance coverage for the subcontractor's employees and the
136 employee's dependents during the duration of the contract.
137 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
138 the duration of the contract is subject to penalties in accordance with administrative rules
139 adopted by the public transit district under Subsection (6).
140 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet
141 the requirements of Subsection (5)(b).

142 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
143 the duration of the contract is subject to penalties in accordance with administrative rules
144 adopted by the public transit district under Subsection (6).

145 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet
146 the requirements of Subsection (5)(a).

147 (6) The public transit district shall adopt administrative rules:

148 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

149 (b) in coordination with:

150 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

151 (ii) the Department of Natural Resources in accordance with Section 63-34-22;

152 (iii) the State Building Board in accordance with Section 63A-5-205;

153 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

154 (v) the Department of Transportation in accordance with Section 72-6-107.5; and

155 (vi) the Legislature's Administrative Rules Review Committee; and

156 (c) which establish:

157 (i) the requirements and procedures a contractor must follow to demonstrate to the
158 public transit district compliance with this section which shall include:

159 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a)
160 or (b) more than twice in any 12-month period; and

161 (B) that the actuarially equivalent determination required in Subsection (1) is met by
162 the contractor if the contractor provides the department or division with a written statement of
163 actuarial equivalency from either the Utah Insurance Department or an actuary selected by the
164 contractor or the contractor's insurer; and

165 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
166 violates the provisions of this section, which may include:

167 (A) a three-month suspension of the contractor or subcontractor from entering into
168 future contracts with the public transit district upon the first violation;

169 (B) a six-month suspension of the contractor or subcontractor from entering into

170 future contracts with the public transit district upon the second violation;

171 (C) an action for debarment of the contractor or subcontractor in accordance with
172 Section 63G-6-804 upon the third or subsequent violation; and

173 (D) monetary penalties which may not exceed 50% of the amount necessary to
174 purchase qualified health insurance coverage for employees and dependents of employees of
175 the contractor or subcontractor who were not offered qualified health insurance coverage
176 during the duration of the contract.

177 (7) (a) In addition to the penalties imposed under Subsection (6)(c), a contractor or
178 subcontractor who violates the provisions of this section shall be liable to the employee for
179 health care costs not covered by insurance.

180 (b) An employee has a private right of action only against the employee's employer to
181 enforce the provisions of this Subsection (7).

182 (8) Any penalties imposed and collected under this section shall be deposited into the
183 Medicaid Restricted Account created in Section 26-18-402.

184 (9) The failure of a contractor or subcontractor to provide health insurance as required
185 by this section:

186 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
187 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
188 Legal and Contractual Remedies; and

189 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
190 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
191 or construction.

192 Section 3. Section **19-1-206** is enacted to read:

193 **19-1-206. Contracting powers of department -- Health insurance coverage.**

194 (1) For purposes of this section:

195 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
196 34A-2-104 who:

197 (i) works at least 30 hours per calendar week; and

198 (ii) meets employer eligibility waiting requirements for health care insurance which
199 may not exceed 90 days from the date of hire.

200 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

201 (c) "Qualified health insurance coverage" means a health benefit plan that at the time
202 the contract is entered into or renewed:

203 (i) (A) provides coverage that is actuarially equivalent to the current benefit plan
204 determined by the Children's Health Insurance Program under Section 26-40-106; and

205 (B) under which the employer pays at least 50% of the premium for the employee and
206 the dependents of the employee;

207 (ii) (A) is a federally qualified high deductible health plan that has:

208 (I) the lowest deductible permitted for a federally qualified high deductible health
209 plan; and

210 (II) an out of pocket maximum that does not exceed three times the amount of the
211 annual deductible; and

212 (B) under which the employer pays 75% of the premium for the employee and the
213 dependents of the employee; or

214 (iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan
215 determined under Subsection (1)(c)(i); and

216 (B) under which the employer pays at least 75% of the premium of the employee and
217 the dependents of the employee.

218 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

219 (2) Except as provided in Subsection (3), this section applies to all contracts entered
220 into by or delegated to the department or a division or board of the department on or after July
221 1, 2009, if:

222 (a) the contract is for design or construction; and

223 (b) (i) the prime contract is in the amount of \$1,500,000 or greater; or

224 (ii) a subcontract is in the amount of \$750,000 or greater.

225 (3) This section does not apply to contracts entered into by the department or a

226 division or board of the department if:
227 (a) the application of this section jeopardizes the receipt of federal funds;
228 (b) the contract or agreement is between:
229 (i) the department or a division or board of the department; and
230 (ii) (A) another agency of the state;
231 (B) the federal government;
232 (C) another state;
233 (D) an interstate agency;
234 (E) a political subdivision of this state; or
235 (F) a political subdivision of another state;
236 (c) the executive director determines that applying the requirements of this section to a
237 particular contract interferes with the effective response to an immediate health and safety
238 threat from the environment; or
239 (d) the contract is:
240 (i) a sole source contract; or
241 (ii) an emergency procurement.
242 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
243 or a modification to a contract, when the contract does not meet the initial threshold required
244 by Subsection (2).
245 (b) A person who intentionally uses change orders or contract modifications to
246 circumvent the requirements of Subsection (2) is guilty of an infraction.
247 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive
248 director that the contractor has and will maintain an offer of qualified health insurance
249 coverage for the contractor's employees and the employees' dependents during the duration of
250 the contract.
251 (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall
252 demonstrate to the executive director that the subcontractor has and will maintain an offer of
253 qualified health insurance coverage for the subcontractor's employees and the employees'

254 dependents during the duration of the contract.

255 (c) (i) (A) A contractor who fails to comply with Subsection (5)(a) during the duration
256 of the contract is subject to penalties in accordance with administrative rules adopted by the
257 department under Subsection (6).

258 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet
259 the requirements of Subsection (5)(b).

260 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
261 the duration of the contract is subject to penalties in accordance with administrative rules
262 adopted by the department under Subsection (6).

263 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet
264 the requirements of Subsection (5)(a).

265 (6) The department shall adopt administrative rules:

266 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

267 (b) in coordination with:

268 (i) a public transit district in accordance with Section 17B-2a-818.5;

269 (ii) the Department of Natural Resources in accordance with Section 63-34-22;

270 (iii) the State Building Board in accordance with Section 63A-5-205;

271 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

272 (v) the Department of Transportation in accordance with Section 72-6-107.5; and

273 (vi) the Legislature's Administrative Rules Review Committee; and

274 (c) which establish:

275 (i) the requirements and procedures a contractor must follow to demonstrate to the
276 public transit district compliance with this section which shall include:

277 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a)
278 or (b) more than twice in any 12-month period; and

279 (B) that the actuarially equivalent determination required in Subsection (1) is met by
280 the contractor if the contractor provides the department or division with a written statement of
281 actuarial equivalency from either the Utah Insurance Department or an actuary selected by the

282 contractor or the contractor's insurer; and

283 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
284 violates the provisions of this section, which may include:

285 (A) a three-month suspension of the contractor or subcontractor from entering into
286 future contracts with the state upon the first violation;

287 (B) a six-month suspension of the contractor or subcontractor from entering into
288 future contracts with the state upon the second violation;

289 (C) an action for debarment of the contractor or subcontractor in accordance with
290 Section 63G-6-804 upon the third or subsequent violation; and

291 (D) notwithstanding Section 19-1-303, monetary penalties which may not exceed 50%
292 of the amount necessary to purchase qualified health insurance coverage for an employee and
293 the dependents of an employee of the contractor or subcontractor who was not offered
294 qualified health insurance coverage during the duration of the contract.

295 (7) (a) In addition to the penalties imposed under Subsection (6)(c), a contractor or
296 subcontractor who violates the provisions of this section shall be liable to the employee for
297 health care costs not covered by insurance.

298 (b) An employee has a private right of action only against the employee's employer to
299 enforce the provisions of this Subsection (7).

300 (8) Any penalties imposed and collected under this section shall be deposited into the
301 Medicaid Restricted Account created in Section 26-18-402.

302 (9) The failure of a contractor or subcontractor to provide health insurance as required
303 by this section:

304 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
305 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
306 Legal and Contractual Remedies; and

307 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
308 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
309 or construction.

310 Section 4. Section **26-18-402** is amended to read:

311 **26-18-402. Medicaid Restricted Account.**

312 (1) There is created a restricted account in the General Fund known as the Medicaid
313 Restricted Account.

314 (2) (a) ~~Any~~ The following shall be deposited into the Medicaid Restricted Account:

315 (i) any general funds appropriated to the department for the state plan for medical
316 assistance or for the Division of Health Care Financing that are not expended by the
317 department in the fiscal year for which the general funds were appropriated and which are not
318 otherwise designated as nonlapsing shall lapse into the Medicaid Restricted Account[-]; and

319 (ii) any penalties imposed and collected under:

320 (A) Section 17B-2a-818.5;

321 (B) Section 19-1-206;

322 (C) Section 63-34-22;

323 (D) Section 63A-5-205;

324 (E) Section 63C-9-403; or

325 (F) Section 72-6-107.5.

326 (b) The account shall earn interest and all interest earned shall be deposited into the
327 account.

328 (c) The Legislature may appropriate monies in the restricted account to fund programs
329 that expand medical assistance coverage and private health insurance plans to low income
330 persons who have not traditionally been served by Medicaid, including the Utah Children's
331 Health Insurance Program created in Chapter 40.

332 Section 5. Section **63-34-22** is enacted to read:

333 **63-34-22. Contracting powers of department -- Health insurance coverage.**

334 (1) For purposes of this section:

335 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
336 34A-2-104 who:

337 (i) works at least 30 hours per calendar week; and

338 (ii) meets employer eligibility waiting requirements for health care insurance which
339 may not exceed 90 days from the date of hire.

340 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

341 (c) "Qualified health insurance coverage" means a health benefit plan that at the time
342 the contract is entered into or renewed:

343 (i) (A) provides coverage that is actuarially equivalent to the current benefit plan
344 determined by the Children's Health Insurance Program under Section 26-40-106; and

345 (B) under which the employer pays at least 50% of the premium for the employee and
346 the dependents of the employee;

347 (ii) (A) is a federally qualified high deductible health plan that has:

348 (I) the lowest deductible permitted for a federally qualified high deductible health
349 plan; and

350 (II) an out of pocket maximum that does not exceed three times the amount of the
351 annual deductible; and

352 (B) under which the employer pays 75% of the premium for the employee and the
353 dependents of the employee; or

354 (iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan
355 determined under Subsection (1)(c)(i); and

356 (B) under which the employer pays at least 75% of the premium of the employee and
357 the dependents of the employee.

358 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

359 (2) Except as provided in Subsection (3), this section applies to all contracts entered
360 into by, or delegated to, the department or a division, board, or council of the department on or
361 after July 1, 2009, if:

362 (a) the contract is for design or construction; and

363 (b) (i) the prime contract is in the amount of \$1,500,000 or greater; or

364 (ii) a subcontract is in the amount of \$750,000 or greater.

365 (3) This section does not apply to contracts entered into by the department or a

366 division, board, or council of the department if:
367 (a) the application of this section jeopardizes the receipt of federal funds;
368 (b) the contract or agreement is between:
369 (i) the department or a division, board, or council of the department; and
370 (ii) (A) another agency of the state;
371 (B) the federal government;
372 (C) another state;
373 (D) an interstate agency;
374 (E) a political subdivision of this state; or
375 (F) a political subdivision of another state; or
376 (c) the contract or agreement is:
377 (i) for the purpose of disbursing grants or loans authorized by statute;
378 (ii) a sole source contract; or
379 (iii) an emergency procurement.
380 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
381 or a modification to a contract, when the contract does not meet the initial threshold required
382 by Subsection (2).
383 (b) A person who intentionally uses change orders or contract modifications to
384 circumvent the requirements of Subsection (2) is guilty of an infraction.
385 (5) (a) A contractor subject to Subsection (2)(b)(i) shall demonstrate to the department
386 that the contractor has and will maintain an offer of qualified health insurance coverage for the
387 contractor's employees and the employees' dependents during the duration of the contract.
388 (b) If a subcontractor of the contractor is subject to Subsection (2)(b)(ii), the
389 contractor shall demonstrate to the department that the subcontractor has and will maintain an
390 offer of qualified health insurance coverage for the subcontractor's employees and the
391 employees' dependents during the duration of the contract.
392 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
393 the duration of the contract is subject to penalties in accordance with administrative rules

394 adopted by the department under Subsection (6).

395 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet
396 the requirements of Subsection (5)(b).

397 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
398 the duration of the contract is subject to penalties in accordance with administrative rules
399 adopted by the department under Subsection (6).

400 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet
401 the requirements of Subsection (5)(a).

402 (6) The department shall adopt administrative rules:

403 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

404 (b) in coordination with:

405 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

406 (ii) a public transit district in accordance with Section 17B-2a-818.5;

407 (iii) the State Building Board in accordance with Section 63A-5-205;

408 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

409 (v) the Department of Transportation in accordance with Section 72-6-107.5; and

410 (vi) the Legislature's Administrative Rules Review Committee; and

411 (c) which establish:

412 (i) the requirements and procedures a contractor must follow to demonstrate

413 compliance with this section to the department which shall include:

414 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a)

415 or (b) more than twice in any 12-month period; and

416 (B) that the actuarially equivalent determination required in Subsection (1) is met by
417 the contractor if the contractor provides the department or division with a written statement of
418 actuarial equivalency from either the Utah Insurance Department or an actuary selected by the
419 contractor or the contractor's insurer; and

420 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
421 violates the provisions of this section, which may include:

422 (A) a three-month suspension of the contractor or subcontractor from entering into
423 future contracts with the state upon the first violation;

424 (B) a six-month suspension of the contractor or subcontractor from entering into
425 future contracts with the state upon the second violation;

426 (C) an action for debarment of the contractor or subcontractor in accordance with
427 Section 63G-6-804 upon the third or subsequent violation; and

428 (D) monetary penalties which may not exceed 50% of the amount necessary to
429 purchase qualified health insurance coverage for an employee and a dependent of an employee
430 of the contractor or subcontractor who was not offered qualified health insurance coverage
431 during the duration of the contract.

432 (7) (a) In addition to the penalties imposed under Subsection (6), a contractor or
433 subcontractor who violates the provisions of this section shall be liable to the employee for
434 health care costs not covered by insurance.

435 (b) An employee has a private right of action only against the employee's employer to
436 enforce the provisions of this Subsection (7).

437 (8) Any penalties imposed and collected under this section shall be deposited into the
438 Medicaid Restricted Account created in Section 26-18-402.

439 (9) The failure of a contractor or subcontractor to provide health insurance as required
440 by this section:

441 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
442 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
443 Legal and Contractual Remedies; and

444 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
445 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
446 or construction.

447 Section 6. Section **63A-5-205** is amended to read:

448 **63A-5-205. Contracting powers of director -- Retainage -- Health insurance**
449 **coverage.**

450 (1) As used in this section~~["capital developments" and "capital improvements" have];~~
451 (a) "Capital developments" has the same meaning as provided in Section 63A-5-104.
452 (b) "Capital improvements" has the same meaning as provided in Section 63A-5-104.
453 (c) "Employee" means an "employee," "worker," or "operative" as defined in Section
454 34A-2-104 who:
455 (i) works at least 30 hours per calendar week; and
456 (ii) meets employer eligibility waiting requirements for health care insurance which
457 may not exceed 90 days from the date of hire.
458 (d) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
459 (e) "Qualified health insurance coverage" means a health benefit plan that at the time
460 the contract is entered into or renewed:
461 (i) (A) provides coverage that is actuarially equivalent to the current benefit plan
462 determined by the Children's Health Insurance Program under Section 26-40-106; and
463 (B) under which the employer pays at least 50% of the premium for the employee and
464 the dependents of the employee;
465 (ii) (A) is a federally qualified high deductible health plan that has:
466 (I) the lowest deductible permitted for a federally qualified high deductible health
467 plan; and
468 (II) an out of pocket maximum that does not exceed three times the amount of the
469 annual deductible; and
470 (B) under which the employer pays 75% of the premium for the employee and the
471 dependents of the employee; or
472 (iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan
473 determined under Subsection (1)(e)(i); and
474 (B) under which the employer pays at least 75% of the premium of the employee and
475 the dependents of the employee.
476 (f) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
477 (2) In accordance with Title 63G, Chapter 6, Utah Procurement Code, the director

478 may:

479 (a) subject to Subsection (3), enter into contracts for any work or professional services
480 which the division or the State Building Board may do or have done; and

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

483 (3) (a) Except as provided in Subsection (3)(b), this Subsection (3) applies to all
484 contracts entered into by the division or the State Building Board on or after July 1, 2009, if:

485 (i) the contract is for design or construction; and

486 (ii) (A) the prime contract is in the amount of \$1,500,000 or greater; or

487 (B) a subcontract is in the amount of \$750,000 or greater.

488 (b) This Subsection (3) does not apply:

489 (i) if the application of this Subsection (3) jeopardizes the receipt of federal funds;

490 (ii) if the contract is a sole source contract;

491 (iii) if the contract is an emergency procurement; or

492 (iv) to a change order as defined in Section 63G-6-102, or a modification to a contract,

493 when the contract does not meet the threshold required by Subsection (3)(a).

494 (c) A person who intentionally uses change orders or contract modifications to
495 circumvent the requirements of Subsection (3)(a) is guilty of an infraction.

496 (d) (i) A contractor subject to Subsection (3)(a) shall demonstrate to the director that
497 the contractor has and will maintain an offer of qualified health insurance coverage for the
498 contractor's employees and the employees' dependents.

499 (ii) If a subcontractor of the contractor is subject to Subsection (3)(a), the contractor
500 shall demonstrate to the director that the subcontractor has and will maintain an offer of
501 qualified health insurance coverage for the subcontractor's employees and the employees'
502 dependents.

503 (e) (i) (A) A contractor who fails to meet the requirements of Subsection (3)(d)(i)
504 during the duration of the contract is subject to penalties in accordance with administrative
505 rules adopted by the division under Subsection (3)(f).

506 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet
507 the requirements of Subsection (3)(d)(ii).

508 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (3)(d)(ii)
509 during the duration of the contract is subject to penalties in accordance with administrative
510 rules adopted by the division under Subsection (3)(f).

511 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet
512 the requirements of Subsection (3)(d)(i).

513 (f) The division shall adopt administrative rules:

514 (i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

515 (ii) in coordination with:

516 (A) the Department of Environmental Quality in accordance with Section 19-1-206;

517 (B) the Department of Natural Resources in accordance with Section 63-34-22;

518 (C) a public transit district in accordance with Section 17B-2a-818.5;

519 (D) the State Capitol Preservation Board in accordance with Section 63C-9-403;

520 (E) the Department of Transportation in accordance with Section 72-6-107.5; and

521 (F) the Legislature's Administrative Rules Review Committee; and

522 (iii) which establish:

523 (A) the requirements and procedures a contractor must follow to demonstrate to the
524 director compliance with this Subsection (3) which shall include:

525 (I) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or
526 (b) more than twice in any 12-month period; and

527 (II) that the actuarially equivalent determination required in Subsection (1) is met by
528 the contractor if the contractor provides the department or division with a written statement of
529 actuarial equivalency from either the Utah Insurance Department or an actuary selected by the
530 contractor or the contractor's insurer; and

531 (B) the penalties that may be imposed if a contractor or subcontractor intentionally
532 violates the provisions of this Subsection (3), which may include:

533 (I) a three-month suspension of the contractor or subcontractor from entering into

534 future contracts with the state upon the first violation;

535 (II) a six-month suspension of the contractor or subcontractor from entering into future
536 contracts with the state upon the second violation;

537 (III) an action for debarment of the contractor or subcontractor in accordance with
538 Section 63G-6-804 upon the third or subsequent violation; and

539 (IV) monetary penalties which may not exceed 50% of the amount necessary to
540 purchase qualified health insurance coverage for an employee and the dependents of an
541 employee of the contractor or subcontractor who was not offered qualified health insurance
542 coverage during the duration of the contract.

543 (g) (i) In addition to the penalties imposed under Subsection (3)(f)(iii), a contractor or
544 subcontractor who violates the provisions of this section shall be liable to the employee for
545 health care costs not covered by insurance.

546 (ii) An employee has a private right of action only against the employee's employer to
547 enforce the provisions of this Subsection (3)(g).

548 (h) Any penalties imposed and collected under this section shall be deposited into the
549 Medicaid Restricted Account created by Section 26-18-402.

550 (i) The failure of a contractor or subcontractor to provide health insurance as required
551 by this section:

552 (i) may not be the basis for a protest or other action from a prospective bidder, offeror,
553 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
554 Legal and Contractual Remedies; and

555 (ii) may not be used by the procurement entity or a prospective bidder, offeror, or
556 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
557 or construction.

558 ~~[(3)]~~ (4) The judgment of the director as to the responsibility and qualifications of a
559 bidder is conclusive, except in case of fraud or bad faith.

560 ~~[(4)]~~ (5) The division shall make all payments to the contractor for completed work in
561 accordance with the contract and pay the interest specified in the contract on any payments

562 that are late.

563 ~~[(5)] (6)~~ If any payment on a contract with a private contractor to do work for the
564 division or the State Building Board is retained or withheld, it shall be retained or withheld
565 and released as provided in Section 13-8-5.

566 Section 7. Section **63C-9-403** is enacted to read:

567 **63C-9-403. Contracting power of executive director -- Health insurance**
568 **coverage.**

569 (1) For purposes of this section:

570 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
571 34A-2-104 who:

572 (i) works at least 30 hours per calendar week; and

573 (ii) meets employer eligibility waiting requirements for health care insurance which
574 may not exceed 90 days from the date of hire.

575 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

576 (c) "Qualified health insurance coverage" means a health benefit plan that at the time
577 the contract is entered into or renewed:

578 (i) (A) provides coverage that is actuarially equivalent to the current benefit plan
579 determined by the Children's Health Insurance Program under Section 26-40-106; and

580 (B) under which the employer pays at least 50% of the premium for the employee and
581 the dependents of the employee;

582 (ii) (A) is a federally qualified high deductible health plan that has:

583 (I) the lowest deductible permitted for a federally qualified high deductible health
584 plan; and

585 (II) an out of pocket maximum that does not exceed three times the amount of the
586 annual deductible; and

587 (B) under which the employer pays 75% of the premium for the employee and the
588 dependents of the employee; or

589 (iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan

590 determined under Subsection (1)(c)(i); and

591 (B) under which the employer pays at least 75% of the premium of the employee and
592 the dependents of the employee.

593 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

594 (2) Except as provided in Subsection (3), this section applies to all contracts entered
595 into by the board or on behalf of the board on or after July 1, 2009, if:

596 (a) the contract is for design or construction; and

597 (b) (i) the prime contract is in the amount of \$1,500,000 or greater; or

598 (ii) a subcontract is in the amount of \$750,000 or greater.

599 (3) This section does not apply if:

600 (a) the application of this section jeopardizes the receipt of federal funds;

601 (b) the contract is a sole source contract; or

602 (c) the contract is an emergency procurement.

603 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
604 or a modification to a contract, when the contract does not meet the initial threshold required
605 by Subsection (2).

606 (b) A person who intentionally uses change orders or contract modifications to
607 circumvent the requirements of Subsection (2) is guilty of an infraction.

608 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive
609 director that the contractor has and will maintain an offer of qualified health insurance
610 coverage for the contractor's employees and the employees' dependents during the duration of
611 the contract.

612 (b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor
613 shall demonstrate to the executive director that the subcontractor has and will maintain an
614 offer of qualified health insurance coverage for the subcontractor's employees and the
615 employees' dependents during the duration of the contract.

616 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
617 the duration of the contract is subject to penalties in accordance with administrative rules

618 adopted by the division under Subsection (6).

619 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet
620 the requirements of Subsection (5)(b).

621 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
622 the duration of the contract is subject to penalties in accordance with administrative rules
623 adopted by the department under Subsection (6).

624 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet
625 the requirements of Subsection (5)(a).

626 (6) The department shall adopt administrative rules:

627 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

628 (b) in coordination with:

629 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

630 (ii) the Department of Natural Resources in accordance with Section 63-34-22;

631 (iii) the State Building Board in accordance with Section 63A-5-205;

632 (iv) a public transit district in accordance with Section 17B-2a-818.5;

633 (v) the Department of Transportation in accordance with Section 72-6-107.5; and

634 (vi) the Legislature's Administrative Rules Review Committee; and

635 (c) which establish:

636 (i) the requirements and procedures a contractor must follow to demonstrate to the
637 executive director compliance with this section which shall include:

638 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a)

639 or (b) more than twice in any 12-month period; and

640 (B) that the actuarially equivalent determination required in Subsection (1) is met by
641 the contractor if the contractor provides the department or division with a written statement of
642 actuarial equivalency from either the Utah Insurance Department or an actuary selected by the
643 contractor or the contractor's insurer; and

644 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
645 violates the provisions of this section, which may include:

646 (A) a three-month suspension of the contractor or subcontractor from entering into
647 future contracts with the state upon the first violation;

648 (B) a six-month suspension of the contractor or subcontractor from entering into
649 future contracts with the state upon the second violation;

650 (C) an action for debarment of the contractor or subcontractor in accordance with
651 Section 63G-6-804 upon the third or subsequent violation; and

652 (D) monetary penalties which may not exceed 50% of the amount necessary to
653 purchase qualified health insurance coverage for employees and dependents of employees of
654 the contractor or subcontractor who were not offered qualified health insurance coverage
655 during the duration of the contract.

656 (7) (a) In addition to the penalties imposed under Subsection (6)(c), a contractor or
657 subcontractor who violates the provisions of this section shall be liable to the employee for
658 health care costs not covered by insurance.

659 (ii) An employee has a private right of action only against the employee's employer to
660 enforce the provisions of this Subsection (7).

661 (8) Any penalties imposed and collected under this section shall be deposited into the
662 Medicaid Restricted Account created in Section 26-18-402.

663 (9) The failure of a contractor or subcontractor to provide health insurance as required
664 by this section:

665 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
666 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
667 Legal and Contractual Remedies; and

668 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
669 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
670 or construction.

671 Section 8. Section **72-6-107.5** is enacted to read:

672 **72-6-107.5. Construction of improvements of highway -- Contracts -- Health**
673 **insurance coverage.**

674 (1) For purposes of this section:

675 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
676 34A-2-104 who:

677 (i) works at least 30 hours per calendar week; and

678 (ii) meets employer eligibility waiting requirements for health care insurance which
679 may not exceed 90 days from the date of hire.

680 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

681 (c) "Qualified health insurance coverage" means a health benefit plan that at the time
682 the contract is entered into or renewed:

683 (i) (A) provides coverage that is actuarially equivalent to the current benefit plan
684 determined by the Children's Health Insurance Program under Section 26-40-106; and

685 (B) under which the employer pays at least 50% of the premium for the employee and
686 the dependents of the employee;

687 (ii) (A) is a federally qualified high deductible health plan that has:

688 (I) the lowest deductible permitted for a federally qualified high deductible health
689 plan; and

690 (II) an out of pocket maximum that does not exceed three times the amount of the
691 annual deductible; and

692 (B) under which the employer pays 75% of the premium for the employee and the
693 dependents of the employee; or

694 (iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan
695 determined under Subsection (1)(c)(i); and

696 (B) under which the employer pays at least 75% of the premium of the employee and
697 the dependents of the employee.

698 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

699 (2) Except as provided in Subsection (3), this section applies to all contracts entered
700 into by the department on or after July 1, 2009, for construction or design of highways if:

701 (a) the prime contract is in the amount of \$1,500,000 or greater; or

702 (b) a subcontract is in the amount of \$750,000 or greater.

703 (3) This section does not apply if:

704 (a) the application of this section jeopardizes the receipt of federal funds;

705 (b) the contract is a sole source contract; or

706 (c) the contract is an emergency procurement.

707 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
708 or a modification to a contract, when the contract does not meet the initial threshold required
709 by Subsection (2).

710 (b) A person who intentionally uses change orders or contract modifications to
711 circumvent the requirements of Subsection (2) is guilty of an infraction.

712 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the department that
713 the contractor has and will maintain an offer of qualified health insurance coverage for the
714 contractor's employees and the employees' dependents during the duration of the contract.

715 (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall
716 demonstrate to the department that the subcontractor has and will maintain an offer of
717 qualified health insurance coverage for the subcontractor's employees and the employees'
718 dependents during the duration of the contract.

719 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
720 the duration of the contract is subject to penalties in accordance with administrative rules
721 adopted by the department under Subsection (6).

722 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet
723 the requirements of Subsection (5)(b).

724 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
725 the duration of the contract is subject to penalties in accordance with administrative rules
726 adopted by the department under Subsection (6).

727 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet
728 the requirements of Subsection (5)(a).

729 (6) The department shall adopt administrative rules:

730 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

731 (b) in coordination with:

732 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

733 (ii) the Department of Natural Resources in accordance with Section 63-34-22;

734 (iii) the State Building Board in accordance with Section 63A-5-205;

735 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

736 (v) a public transit district in accordance with Section 17B-2a-818.5; and

737 (vi) the Legislature's Administrative Rules Review Committee; and

738 (c) which establish:

739 (i) the requirements and procedures a contractor must follow to demonstrate to the

740 department compliance with this section which shall include:

741 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a)

742 or (b) more than twice in any 12-month period; and

743 (B) that the actuarially equivalent determination required in Subsection (1) is met by

744 the contractor if the contractor provides the department or division with a written statement of

745 actuarial equivalency from either the Utah Insurance Department or an actuary selected by the

746 contractor or the contractor's insurer; and

747 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally

748 violates the provisions of this section, which may include:

749 (A) a three-month suspension of the contractor or subcontractor from entering into

750 future contracts with the state upon the first violation;

751 (B) a six-month suspension of the contractor or subcontractor from entering into

752 future contracts with the state upon the second violation;

753 (C) an action for debarment of the contractor or subcontractor in accordance with

754 Section 63G-6-804 upon the third or subsequent violation; and

755 (D) monetary penalties which may not exceed 50% of the amount necessary to

756 purchase qualified health insurance coverage for an employee and a dependent of the

757 employee of the contractor or subcontractor who was not offered qualified health insurance

758 coverage during the duration of the contract.

759 (7) (a) In addition to the penalties imposed under Subsection (6), a contractor or
760 subcontractor who violates the provisions of this section shall be liable to the employee for
761 health care costs not covered by insurance.

762 (ii) An employee has a private right of action only against the employee's employer to
763 enforce the provisions of this Subsection (7).

764 (8) Any penalties imposed and collected under this section shall be deposited into the
765 Medicaid Restricted Account created in Section 26-18-402.

766 (9) The failure of a contractor or subcontractor to provide health insurance as required
767 by this section:

768 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
769 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
770 Legal and Contractual Remedies; and

771 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
772 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
773 or construction.