

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

HEALTH REFORM - HEALTH INSURANCE

COVERAGE IN STATE CONTRACTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: _____

LONG TITLE

General Description:

This bill requires certain state entities to require a contractor who contracts with the state entity to offer the contractor's employees qualified health insurance coverage during the duration of the contract if the contract is over a certain amount, and if the contract is a construction or design contract.

Highlighted Provisions:

This bill:

▶ defines the following terms:

- "employee";
- "qualified health insurance coverage"; and
- "subcontractor";

▶ requires the following state entities to require a contractor who contracts with the state entity to offer qualified health insurance coverage to the contractor's eligible employees and the employee's dependents if the contract amount is above a certain amount:

- the Department of Environmental Quality;
- the Capitol Preservation Board;
- the Department of Natural Resources;
- the Division of Facilities Construction and Management;



- 28 • the Utah Department of Transportation; and
- 29 • public transit districts;
- 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 the
- 32 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) \$500,000, 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 by
73 a two-thirds vote of all members present that in the board's opinion the supplies, equipment,
74 and materials may be purchased at a lower price in the open market, the board may purchase
75 the supplies, equipment, and materials in the open market, notwithstanding any provisions
76 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 works at least 30 hours per calendar week.

93 (b) "First tier subcontractor" has the same meaning as provided in Section 63A-5-208.

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

95 (d) "Qualified health insurance coverage" means a health benefit plan that at the time
96 the contract is entered into or renewed:

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

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

101 (ii) (A) is a federally qualified high deductible health plan that has;

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

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

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

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

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

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

113 (2) Except as provided in Subsection (3), this section applies to all contracts entered
114 into by the public transit district on or after July 1, 2009, if:

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

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

117 (ii) a subcontract is in the amount of \$500,000 or greater.

118 (3) This section does not apply if:

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

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

121 (c) the contract is an emergency procurement.

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

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

127 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the public transit
128 district that the contractor has and will maintain an offer of qualified health insurance coverage
129 for the contractor's employees and the employee's dependents during the duration of the
130 contract.

131 (b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor
132 shall demonstrate to the public transit district that the subcontractor has and will maintain an
133 offer of qualified health insurance coverage for the subcontractor's employees and the
134 employee's dependents during the duration of the contract.

135 (c) (i) A contractor who fails to meet the requirements of Subsection (5)(a) during the
136 duration of the contract is subject to penalties in accordance with administrative rules adopted
137 by the public transit district under Subsection (6).

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

141 (6) (a) The public transit district shall adopt administrative rules in accordance with
142 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which establish:

143 (i) the requirements and procedures a contractor must follow to demonstrate to the
144 public transit district compliance with this section; and

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

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

149 (B) a six-month suspension of the contractor or subcontractor from entering into future
150 contracts with the public transit district upon the second violation;

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

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

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

157 (b) (i) In addition to the penalties imposed under Subsection (6)(a)(ii), a contractor or
158 subcontractor who violates the provisions of this section shall be liable to the employee for
159 health care costs not covered by insurance.

160 (ii) An employee has a private right of action against an employer to enforce the
161 provisions of this Subsection (6)(b).

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

164 (8) The failure of a contractor or subcontractor to provide health insurance as required
165 by this section:

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

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

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

173 **19-1-206. Contracting powers of department -- Health insurance coverage.**

174 (1) For purposes of this section:

175 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
176 34A-2-104 who works at least 30 hours per calendar week.

177 (b) "First tier subcontractor" has the same meaning as provided in Section 63A-5-208.

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

179 (d) "Qualified health insurance coverage" means a health benefit plan that at the time
180 the contract is entered into or renewed:

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

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

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

186 (I) the lowest deductible permitted for a federally qualified high deductible health plan;

187 and

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

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

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

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

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

197 (2) Except as provided in Subsection (3), this section applies to all contracts entered
198 into by or delegated to the department or a division or board of the department on or after July
199 1, 2009, if:

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

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

202 (ii) a subcontract is in the amount of \$500,000 or greater.

203 (3) This section does not apply to contracts entered into by the department or a division
204 or board of the department if:

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

206 (b) the contract or agreement is between:

207 (i) the department or a division or board of the department; and

208 (ii) (A) another agency of the state;

209 (B) the federal government;

210 (C) another state;

211 (D) an interstate agency;

212 (E) a political subdivision of this state; or

213 (F) a political subdivision of another state;

214 (c) the executive director determines that applying the requirements of this section to a
215 particular contract interferes with the effective response to an immediate health and safety
216 threat from the environment; or

217 (d) the contract is:

218 (i) a sole source contract; or

219 (ii) an emergency procurement.

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

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

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

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

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

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

239 (6) (a) The department shall adopt administrative rules in accordance with Title 63G,
240 Chapter 3, Utah Administrative Rulemaking Act, which establish:

241 (i) the requirements and procedures a contractor must follow to demonstrate to the
242 executive director compliance with this section; and

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

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

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

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

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

255 (b) (i) In addition to the penalties imposed under Subsection (6)(a), a contractor or
256 subcontractor who violates the provisions of this section shall be liable to the employee for
257 health care costs not covered by insurance.

258 (ii) An employee has a private right of action against an employer to enforce the
259 provisions of this Subsection (6)(b).

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

262 (8) The failure of a contractor or subcontractor to provide health insurance as required
263 by this section:

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

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

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

271 **26-18-402. Medicaid Restricted Account.**

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

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

275 (i) any general funds appropriated to the department for the state plan for medical

276 assistance or for the Division of Health Care Financing that are not expended by the
277 department in the fiscal year for which the general funds were appropriated and which are not
278 otherwise designated as nonlapsing shall lapse into the Medicaid Restricted Account[-]; and

279 (ii) any penalties imposed and collected under:

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

281 (B) Section 19-1-206;

282 (C) Section 63-34-22;

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

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

285 (F) Section 72-6-107.5.

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

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

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

293 **63-34-22. Contracting powers of department -- Health insurance coverage.**

294 (1) For purposes of this section:

295 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
296 34A-2-104 who works at least 30 hours per calendar week.

297 (b) "First tier subcontractor" has the same meaning as provided in Section 63A-5-208.

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

299 (d) "Qualified health insurance coverage" means a health benefit plan that at the time
300 the contract is entered into or renewed:

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

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

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

306 (I) the lowest deductible permitted for a federally qualified high deductible health plan;

307 and
308 (II) an out of pocket maximum that does not exceed three times the amount of the
309 annual deductible; and
310 (B) under which the employer pays 75% of the premium for the employee and the
311 dependents of the employee; or
312 (iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan
313 determined under Subsection (1)(d)(i); and
314 (B) under which the employer pays at least 75% of the premium of the employee and
315 the dependents of the employee.
316 (e) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
317 (2) Except as provided in Subsection (3), this section applies to all contracts entered
318 into by, or delegated to the department or a division, board, or council of the department on or
319 after July 1, 2009, if:
320 (a) the contract is for design or construction; and
321 (b) (i) the prime contract is in the amount of \$500,000 or greater; or
322 (ii) a subcontract is in the amount of \$500,000 or greater.
323 (3) This section does not apply to contracts entered into by the department or a
324 division, board, or council of the department if:
325 (a) the application of this section jeopardizes the receipt of federal funds;
326 (b) the contract or agreement is between:
327 (i) the department or a division, board, or council of the department; and
328 (ii) (A) another agency of the state;
329 (B) the federal government;
330 (C) another state;
331 (D) an interstate agency;
332 (E) a political subdivision of this state; or
333 (F) a political subdivision of another state; or
334 (c) the contract or agreement is:
335 (i) for the purpose of disbursing grants or loans authorized by statute;
336 (ii) a sole source contract; or
337 (iii) an emergency procurement.

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

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

343 (5) (a) A contractor subject to Subsection (2)(b)(i) shall demonstrate to the department
344 that the contractor has and will maintain an offer of qualified health insurance coverage for the
345 contractor's employees and the employee's dependents during the duration of the contract.

346 (b) If a subcontractor of the contractor is subject to Subsection (2)(b)(ii), the contractor
347 shall demonstrate to the department that the subcontractor has and will maintain an offer of
348 qualified health insurance coverage for the subcontractor's employees and the employee's
349 dependents during the duration of the contract.

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

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

356 (6) The department shall adopt administrative rules in accordance with Title 63G,
357 Chapter 3, Utah Administrative Rulemaking Act, which establish:

358 (a) the requirements and procedures a contractor must follow to demonstrate
359 compliance with this section to the department; and

360 (b) the penalties that may be imposed if a contractor or subcontractor intentionally
361 violates the provisions of this section, which may include:

362 (i) a three-month suspension of the contractor or subcontractor from entering into
363 future contracts with the state upon the first violation;

364 (ii) a six-month suspension of the contractor or subcontractor from entering into future
365 contracts with the state upon the second violation;

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

368 (iv) monetary penalties which may not exceed 50% of the amount necessary to

369 purchase qualified health insurance coverage for an employee and a dependent of an employee
370 of the contractor or subcontractor who was not offered qualified health insurance coverage
371 during the duration of the contract.

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

375 (b) An employee has a private right of action against an employer to enforce the
376 provisions of this Subsection (7).

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

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

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

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

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

388 **63A-5-205. Contracting powers of director -- Retainage -- Health insurance**
389 **coverage.**

390 (1) As used in this section[~~,"capital developments" and "capital improvements" have~~]:

391 (a) "Capital developments" has the same meaning as provided in Section 63A-5-104.

392 (b) "Capital improvements" has the same meaning as provided in Section 63A-5-104.

393 (c) "Employee" means an "employee," "worker," or "operative" as defined in Section
394 34A-2-104 who works at least 30 hours per calendar week.

395 (d) "First tier subcontractor" has the same meaning as provided in Section 63A-5-208.

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

397 (f) "Qualified health insurance coverage" means a health benefit plan that at the time
398 the contract is entered into or renewed:

399 (i) (A) provides coverage that is actuarially equivalent to the current benefit plan

400 determined by the Children's Health Insurance Program under Section 26-40-106; and
401 (B) under which the employer pays at least 50% of the premium for the employee and
402 the dependents of the employee;
403 (ii) (A) is a federally qualified high deductible health plan that has:
404 (I) the lowest deductible permitted for a federally qualified high deductible health plan;
405 and
406 (II) an out of pocket maximum that does not exceed three times the amount of the
407 annual deductible; and
408 (B) under which the employer pays 75% of the premium for the employee and the
409 dependents of the employee; or
410 (iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan
411 determined under Subsection (1)(f)(i); and
412 (B) under which the employer pays at least 75% of the premium of the employee and
413 the dependents of the employee.
414 (g) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
415 (2) In accordance with Title 63G, Chapter 6, Utah Procurement Code, the director may:
416 (a) subject to Subsection (3), enter into contracts for any work or professional services
417 which the division or the State Building Board may do or have done; and
418 (b) as a condition of any contract for architectural or engineering services, prohibit the
419 architect or engineer from retaining a sales or agent engineer for the necessary design work.
420 (3) (a) Except as provided in Subsection (3)(b), this Subsection (3) applies to all
421 contracts entered into by the division or the State Building Board on or after July 1, 2009, if:
422 (i) the contract is for design or construction; and
423 (ii) (A) the prime contract is in the amount of \$500,000 or greater; or
424 (B) a subcontract is in the amount of \$500,000 or greater.
425 (b) This Subsection (3) does not apply:
426 (i) if the application of this Subsection (3) jeopardizes the receipt of federal funds;
427 (ii) if the contract is a sole source contract;
428 (iii) if the contract is an emergency procurement; or
429 (iv) to a change order as defined in Section 63G-6-102, or a modification to a contract,
430 when the contract does not meet the threshold required by Subsection (3)(a).

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

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

436 (ii) If a subcontractor of the contractor is subject to Subsection (3)(a), the contractor
437 shall demonstrate to the director that the subcontractor has and will maintain an offer of
438 qualified health insurance coverage for the subcontractor's employees and the employee's
439 dependents.

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

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

446 (f) The division shall adopt administrative rules in accordance with Title 63G, Chapter
447 3, Utah Administrative Rulemaking Act, which establish:

448 (i) the requirements and procedures a contractor must follow to demonstrate to the
449 director compliance with this Subsection (3); and

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

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

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

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

458 (D) monetary penalties which may not exceed 50% of the amount necessary to
459 purchase qualified health insurance coverage for an employee and the dependents of an
460 employee of the contractor or subcontractor who was not offered qualified health insurance
461 coverage during the duration of the contract.

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

465 (ii) An employee has a private right of action against an employer to enforce the
466 provisions of this Subsection (3)(g).

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

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

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

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

477 [~~3~~] (4) The judgment of the director as to the responsibility and qualifications of a
478 bidder is conclusive, except in case of fraud or bad faith.

479 [~~4~~] (5) The division shall make all payments to the contractor for completed work in
480 accordance with the contract and pay the interest specified in the contract on any payments that
481 are late.

482 [~~5~~] (6) If any payment on a contract with a private contractor to do work for the
483 division or the State Building Board is retained or withheld, it shall be retained or withheld and
484 released as provided in Section 13-8-5.

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

486 **63C-9-403. Contracting power of executive director -- Health insurance coverage.**

487 (1) For purposes of this section:

488 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
489 34A-2-104 who works at least 30 hours per calendar week.

490 (b) "First tier subcontractor" has the same meaning as provided in Section 63A-5-208.

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

492 (d) "Qualified health insurance coverage" means a health benefit plan that at the time

493 the contract is entered into or renewed:

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

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

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

499 (I) the lowest deductible permitted for a federally qualified high deductible health plan;

500 and

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

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

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

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

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

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

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

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

514 (ii) a subcontract is in the amount of \$500,000 or greater.

515 (3) This section does not apply if:

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

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

518 (c) the contract is an emergency procurement.

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

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

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

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

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

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

538 (6) (a) The division shall adopt administrative rules in accordance with Title 63G,
539 Chapter 3, Utah Administrative Rulemaking Act, which establish:

540 (i) the requirements and procedures a contractor must follow to demonstrate to the
541 executive director compliance with this section; and

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

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

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

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

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

554 (b) (i) In addition to the penalties imposed under Subsection (6)(a), a contractor or

555 subcontractor who violates the provisions of this section shall be liable to the employee for
556 health care costs not covered by insurance.

557 (ii) An employee has a private right of action against an employer to enforce the
558 provisions of this Subsection (6)(b).

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

561 (8) The failure of a contractor or subcontractor to provide health insurance as required
562 by this section:

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

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

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

570 **72-6-107.5. Construction of improvements of highway -- Contracts -- Health**
571 **insurance coverage.**

572 (1) For purposes of this section:

573 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
574 34A-2-104 who works at least 30 hours per calendar week.

575 (b) "First tier subcontractor" has the same meaning as provided in Section 63A-5-208.

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

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

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

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

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

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

585 and

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

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

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

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

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

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

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

598 (b) a subcontract is in the amount of \$500,000 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 department that
609 the contractor has and will maintain an offer of qualified health insurance coverage for the
610 contractor's employees and the employee's dependents during the duration of the contract.

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

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

617 by the department under Subsection (6).

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

621 (6) (a) The department shall adopt administrative rules in accordance with Title 63G,
622 Chapter 3, Utah Administrative Rulemaking Act, which establish:

623 (i) the requirements and procedures a contractor must follow to demonstrate to the
624 department compliance with this section; and

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

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

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

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

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

637 (b) (i) In addition to the penalties imposed under Subsection (6)(a), a contractor or
638 subcontractor who violates the provisions of this section shall be liable to the employee for
639 health care costs not covered by insurance.

640 (ii) An employee has a private right of action against an employer to enforce the
641 provisions of this Subsection (6)(b).

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

644 (8) The failure of a contractor or subcontractor to provide health insurance as required
645 by this section:

646 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
647 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,

648 Legal and Contractual Remedies; and

649 (b) may not be used by the procurement entity or a prospective bidder, offeror, or

650 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design

651 or construction.

Legislative Review Note

as of 1-27-09 5:23 PM

Office of Legislative Research and General Counsel

H.B. 331 - Health Reform - Health Insurance Coverage in State Contracts

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill may indirectly increase the cost of state construction projects depending upon the contractor. The extend of such increases is currently unknown.

Individual, Business and/or Local Impact

Enactment of this bill may result in certain cost increases to private contractors, but may benefit individuals working for such contractors. Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.
