

Senator Wayne L. Niederhauser proposes the following substitute bill:

PROCUREMENT AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne L. Niederhauser

House Sponsor: Melvin R. Brown

LONG TITLE

General Description:

This bill recodifies and amends the Utah Procurement Code.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ describes requirements and procedures relating to procurements and procurement processes by public entities;
- ▶ describes the applicability of the Utah Procurement Code;
- ▶ grants rulemaking authority;
- ▶ describes the duties and powers of the Division of Purchasing and General Services;
- ▶ provides for exemptions from certain provisions of the Utah Procurement Code;
- ▶ describes the duties and powers of the Utah State Procurement Policy Board and the procurement advisory councils;
- ▶ describes the duties and powers of the chief procurement officer;
- ▶ provides for exceptions to procurement process requirements;
- ▶ addresses cancellations, rejections, and debarment;
- ▶ addresses reciprocal preferences and purchase from community rehabilitation programs;



- 26 ▶ describes the duties and powers of the Purchasing from Persons with Disabilities
- 27 Advisory Board;
- 28 ▶ describes bid security and bond requirements;
- 29 ▶ describes requirements relating to contracts and change orders;
- 30 ▶ describes requirements relating to construction procurement and contracts;
- 31 ▶ describes requirements relating to architect-engineer services;
- 32 ▶ describes procedures, requirements, and limitations relating to controversies,
- 33 protests, appeals, and judicial action;
- 34 ▶ addresses the retention of records;
- 35 ▶ addresses interaction between public procurement units;
- 36 ▶ establishes ethical practice provisions relating to procurements;
- 37 ▶ amends existing, and enacts new, criminal provisions and penalties relating to
- 38 procurements; and
- 39 ▶ makes technical changes.

40 Money Appropriated in this Bill:

41 None

42 Other Special Clauses:

43 This bill takes effect on January 1, 2013.

44 Utah Code Sections Affected:

45 AMENDS:

- 46 **7-1-323**, as last amended by Laws of Utah 2008, Chapter 382
- 47 **7-2-21**, as last amended by Laws of Utah 2008, Chapter 382
- 48 **9-4-704**, as last amended by Laws of Utah 2011, Chapter 342
- 49 **9-4-906**, as last amended by Laws of Utah 2008, Chapter 382
- 50 **9-4-1602**, as enacted by Laws of Utah 2011, Chapter 217
- 51 **10-3-1304**, as last amended by Laws of Utah 2008, Chapter 382
- 52 **10-3-1305**, as last amended by Laws of Utah 2008, Chapter 382
- 53 **10-7-86**, as last amended by Laws of Utah 2008, Chapter 382
- 54 **11-17-20**, as last amended by Laws of Utah 2008, Chapter 382
- 55 **11-39-101**, as last amended by Laws of Utah 2008, Chapters 360 and 382
- 56 **11-39-107**, as last amended by Laws of Utah 2011, Chapter 387

- 57 **11-44-202**, as enacted by Laws of Utah 2010, Chapter 244
- 58 **11-44-301**, as enacted by Laws of Utah 2010, Chapter 244
- 59 **13-2-9**, as last amended by Laws of Utah 2008, Chapter 382
- 60 **14-1-18**, as last amended by Laws of Utah 2008, Chapter 382
- 61 **17-16a-4**, as last amended by Laws of Utah 2008, Chapter 382
- 62 **17-43-202**, as last amended by Laws of Utah 2008, Chapter 382
- 63 **17-43-302**, as last amended by Laws of Utah 2008, Chapter 382
- 64 **17-53-225**, as last amended by Laws of Utah 2008, Chapter 382
- 65 **17-53-313**, as last amended by Laws of Utah 2008, Chapter 382
- 66 **17B-1-108**, as last amended by Laws of Utah 2008, Chapter 382
- 67 **17B-2a-818**, as last amended by Laws of Utah 2010, Chapter 281
- 68 **17B-2a-818.5**, as last amended by Laws of Utah 2011, Chapters 297 and 400
- 69 **17D-1-106**, as last amended by Laws of Utah 2011, Chapters 40, 106, 205, and 209
- 70 **17D-2-108**, as enacted by Laws of Utah 2008, Chapter 360
- 71 **19-1-206**, as last amended by Laws of Utah 2011, Chapters 297 and 400
- 72 **20A-11-701**, as last amended by Laws of Utah 2011, Chapter 396
- 73 **26-8a-405.3**, as last amended by Laws of Utah 2011, Chapter 297
- 74 **26-8a-405.5**, as last amended by Laws of Utah 2011, Chapter 297
- 75 **26-10-8**, as enacted by Laws of Utah 2010, Chapter 413
- 76 **26-10b-102**, as last amended by Laws of Utah 2011, Chapter 297
- 77 **26-18-2.6**, as enacted by Laws of Utah 2011, Chapter 344
- 78 **26-40-110**, as last amended by Laws of Utah 2011, Chapter 297
- 79 **30-3-11.3**, as last amended by Laws of Utah 2011, Chapter 51
- 80 **30-3-11.4**, as last amended by Laws of Utah 2011, Chapter 51
- 81 **30-3-38**, as last amended by Laws of Utah 2008, Chapters 44 and 382
- 82 **31A-29-110**, as last amended by Laws of Utah 2008, Chapter 382
- 83 **31A-29-111**, as last amended by Laws of Utah 2008, Chapters 382 and 385
- 84 **31A-33-104**, as last amended by Laws of Utah 2008, Chapter 382
- 85 **31A-33-107**, as last amended by Laws of Utah 2008, Chapter 382
- 86 **34A-2-203**, as last amended by Laws of Utah 2008, Chapter 382
- 87 **35A-5-202**, as last amended by Laws of Utah 2008, Chapter 382

- 88 **38-1-30**, as last amended by Laws of Utah 2011, Chapter 299
- 89 **38-1-39**, as last amended by Laws of Utah 2008, Chapter 382
- 90 **41-12a-803**, as last amended by Laws of Utah 2011, Chapter 342
- 91 **53-2-404**, as last amended by Laws of Utah 2011, Chapter 342
- 92 **53A-1-706**, as last amended by Laws of Utah 2008, Chapter 382
- 93 **53A-1a-511**, as last amended by Laws of Utah 2008, Chapter 382
- 94 **53A-20-101**, as last amended by Laws of Utah 2008, Chapter 382
- 95 **53A-25b-105**, as enacted by Laws of Utah 2009, Chapter 294
- 96 **53C-1-201 (Effective 07/01/12)**, as last amended by Laws of Utah 2011, Chapters 247
- 97 and 353
- 98 **54-3-29**, as last amended by Laws of Utah 2011, Chapter 340
- 99 **54-8b-10**, as last amended by Laws of Utah 2011, Chapters 329 and 342
- 100 **62A-1-108.5**, as last amended by Laws of Utah 2011, Chapter 366
- 101 **62A-3-104**, as last amended by Laws of Utah 2008, Chapter 382
- 102 **62A-3-104.1**, as last amended by Laws of Utah 2008, Chapter 382
- 103 **62A-14-109**, as last amended by Laws of Utah 2008, Chapter 382
- 104 **63A-5-205**, as last amended by Laws of Utah 2011, Chapter 400
- 105 **63A-5-208**, as last amended by Laws of Utah 2008, Chapter 382
- 106 **63A-5-302**, as last amended by Laws of Utah 2010, Chapter 324
- 107 **63B-2-102**, as last amended by Laws of Utah 2008, Chapter 382
- 108 **63B-3-102**, as last amended by Laws of Utah 2008, Chapter 382
- 109 **63B-4-102**, as last amended by Laws of Utah 2008, Chapter 382
- 110 **63B-5-102**, as last amended by Laws of Utah 2008, Chapter 382
- 111 **63B-6-102**, as last amended by Laws of Utah 2008, Chapter 382
- 112 **63B-6-402**, as last amended by Laws of Utah 2008, Chapter 382
- 113 **63B-7-102**, as last amended by Laws of Utah 2008, Chapter 382
- 114 **63B-7-402**, as last amended by Laws of Utah 2008, Chapter 382
- 115 **63B-8-102**, as last amended by Laws of Utah 2008, Chapter 382
- 116 **63B-8-402**, as last amended by Laws of Utah 2008, Chapter 382
- 117 **63B-9-103**, as last amended by Laws of Utah 2008, Chapter 382
- 118 **63B-11-202**, as last amended by Laws of Utah 2008, Chapter 382

- 119 **63C-7-210**, as last amended by Laws of Utah 2008, Chapter 382
- 120 **63C-9-301**, as last amended by Laws of Utah 2008, Chapters 10 and 382
- 121 **63C-9-403**, as last amended by Laws of Utah 2011, Chapter 400
- 122 **63E-2-109**, as last amended by Laws of Utah 2008, Chapter 382
- 123 **63F-1-205**, as last amended by Laws of Utah 2011, Chapter 376
- 124 **63G-7-804**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 125 **63G-10-403**, as enacted by Laws of Utah 2011, Chapter 361
- 126 **63H-2-504**, as enacted by Laws of Utah 2009, Chapter 378
- 127 **63H-3-109**, as renumbered and amended by Laws of Utah 2011, Chapter 370
- 128 **63H-4-108**, as renumbered and amended by Laws of Utah 2011, Chapter 370
- 129 **63H-5-108**, as renumbered and amended by Laws of Utah 2011, Chapter 370
- 130 **63H-6-103**, as renumbered and amended by Laws of Utah 2011, Chapter 370
- 131 **63I-1-263**, as last amended by Laws of Utah 2011, Chapters 199, 370, 408, and 411
- 132 **63M-1-2602**, as enacted by Laws of Utah 2008, Chapter 352
- 133 **63M-1-2603**, as enacted by Laws of Utah 2008, Chapter 352
- 134 **63M-1-2605**, as enacted by Laws of Utah 2008, Chapter 352
- 135 **63M-1-2606**, as enacted by Laws of Utah 2008, Chapter 352
- 136 **63M-1-2607**, as enacted by Laws of Utah 2008, Chapter 352
- 137 **63M-1-2608**, as enacted by Laws of Utah 2008, Chapter 352
- 138 **63M-1-2610**, as enacted by Laws of Utah 2008, Chapter 352
- 139 **64-13a-13**, as last amended by Laws of Utah 2008, Chapter 382
- 140 **67-16-4**, as last amended by Laws of Utah 2008, Chapter 382
- 141 **67-16-5**, as last amended by Laws of Utah 2008, Chapter 382
- 142 **67-16-5.3**, as last amended by Laws of Utah 2008, Chapter 382
- 143 **67-16-6**, as last amended by Laws of Utah 2008, Chapter 382
- 144 **72-6-107**, as last amended by Laws of Utah 2010, Chapter 90
- 145 **72-6-107.5**, as last amended by Laws of Utah 2011, Chapter 400
- 146 **72-6-108**, as last amended by Laws of Utah 2009, Chapter 388
- 147 **72-6-205**, as last amended by Laws of Utah 2009, Chapter 183
- 148 **72-7-504**, as last amended by Laws of Utah 2008, Chapter 382
- 149 **73-10-27**, as last amended by Laws of Utah 2008, Chapters 267 and 382

- 150 **73-23-3**, as last amended by Laws of Utah 2008, Chapter 382
- 151 **76-10-1602**, as last amended by Laws of Utah 2011, Chapter 320
- 152 **78A-2-112**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 153 **79-2-404**, as last amended by Laws of Utah 2011, Chapter 400
- 154 **79-4-203**, as renumbered and amended by Laws of Utah 2009, Chapter 344

155 ENACTS:

- 156 **63G-6a-104**, Utah Code Annotated 1953
- 157 **63G-6a-110**, Utah Code Annotated 1953
- 158 **63G-6a-201**, Utah Code Annotated 1953
- 159 **63G-6a-301**, Utah Code Annotated 1953
- 160 **63G-6a-401**, Utah Code Annotated 1953
- 161 **63G-6a-402**, Utah Code Annotated 1953
- 162 **63G-6a-403**, Utah Code Annotated 1953
- 163 **63G-6a-404**, Utah Code Annotated 1953
- 164 **63G-6a-405**, Utah Code Annotated 1953
- 165 **63G-6a-406**, Utah Code Annotated 1953
- 166 **63G-6a-408**, Utah Code Annotated 1953
- 167 **63G-6a-501**, Utah Code Annotated 1953
- 168 **63G-6a-502**, Utah Code Annotated 1953
- 169 **63G-6a-503**, Utah Code Annotated 1953
- 170 **63G-6a-504**, Utah Code Annotated 1953
- 171 **63G-6a-601**, Utah Code Annotated 1953
- 172 **63G-6a-602**, Utah Code Annotated 1953
- 173 **63G-6a-603**, Utah Code Annotated 1953
- 174 **63G-6a-604**, Utah Code Annotated 1953
- 175 **63G-6a-605**, Utah Code Annotated 1953
- 176 **63G-6a-606**, Utah Code Annotated 1953
- 177 **63G-6a-607**, Utah Code Annotated 1953
- 178 **63G-6a-608**, Utah Code Annotated 1953
- 179 **63G-6a-609**, Utah Code Annotated 1953
- 180 **63G-6a-610**, Utah Code Annotated 1953

- 181 **63G-6a-611**, Utah Code Annotated 1953
- 182 **63G-6a-612**, Utah Code Annotated 1953
- 183 **63G-6a-701**, Utah Code Annotated 1953
- 184 **63G-6a-702**, Utah Code Annotated 1953
- 185 **63G-6a-703**, Utah Code Annotated 1953
- 186 **63G-6a-704**, Utah Code Annotated 1953
- 187 **63G-6a-705**, Utah Code Annotated 1953
- 188 **63G-6a-706**, Utah Code Annotated 1953
- 189 **63G-6a-707**, Utah Code Annotated 1953
- 190 **63G-6a-708**, Utah Code Annotated 1953
- 191 **63G-6a-709**, Utah Code Annotated 1953
- 192 **63G-6a-710**, Utah Code Annotated 1953
- 193 **63G-6a-801**, Utah Code Annotated 1953
- 194 **63G-6a-803**, Utah Code Annotated 1953
- 195 **63G-6a-901**, Utah Code Annotated 1953
- 196 **63G-6a-1001**, Utah Code Annotated 1953
- 197 **63G-6a-1004**, Utah Code Annotated 1953
- 198 **63G-6a-1101**, Utah Code Annotated 1953
- 199 **63G-6a-1201**, Utah Code Annotated 1953
- 200 **63G-6a-1204**, Utah Code Annotated 1953
- 201 **63G-6a-1301**, Utah Code Annotated 1953
- 202 **63G-6a-1401**, Utah Code Annotated 1953
- 203 **63G-6a-1501**, Utah Code Annotated 1953
- 204 **63G-6a-1601**, Utah Code Annotated 1953
- 205 **63G-6a-1701**, Utah Code Annotated 1953
- 206 **63G-6a-1801**, Utah Code Annotated 1953
- 207 **63G-6a-1901**, Utah Code Annotated 1953
- 208 **63G-6a-2001**, Utah Code Annotated 1953
- 209 **63G-6a-2101**, Utah Code Annotated 1953
- 210 **63G-6a-2201**, Utah Code Annotated 1953
- 211 **63G-6a-2202**, Utah Code Annotated 1953

- 212 **63G-6a-2301**, Utah Code Annotated 1953
- 213 **63G-6a-2303**, Utah Code Annotated 1953
- 214 **63G-6a-2304**, Utah Code Annotated 1953
- 215 **63G-6a-2305**, Utah Code Annotated 1953
- 216 **63G-6a-2306**, Utah Code Annotated 1953
- 217 **63G-6a-2307**, Utah Code Annotated 1953

218 RENUMBERS AND AMENDS:

- 219 **63G-6a-101**, (Renumbered from 63G-6-101, as enacted by Laws of Utah 2008, Chapter
- 220 382)
- 221 **63G-6a-102**, (Renumbered from 63G-6-102, as renumbered and amended by Laws of
- 222 Utah 2008, Chapter 382)
- 223 **63G-6a-103**, (Renumbered from 63G-6-103, as last amended by Laws of Utah 2011,
- 224 Chapter 376)
- 225 **63G-6a-105**, (Renumbered from 63G-6-104, as renumbered and amended by Laws of
- 226 Utah 2008, Chapter 382)
- 227 **63G-6a-106**, (Renumbered from 63G-6-207, as last amended by Laws of Utah 2008,
- 228 Chapter 3 and renumbered and amended by Laws of Utah 2008, Chapter 382)
- 229 **63G-6a-109**, (Renumbered from 63G-6-105, as renumbered and amended by Laws of
- 230 Utah 2008, Chapter 382)
- 231 **63G-6a-202**, (Renumbered from 63G-6-201, as last amended by Laws of Utah 2011,
- 232 Chapter 376)
- 233 **63G-6a-203**, (Renumbered from 63G-6-202, as last amended by Laws of Utah 2011,
- 234 Chapter 376)
- 235 **63G-6a-204**, (Renumbered from 63G-6-208, as last amended by Laws of Utah 2009,
- 236 Chapter 132)
- 237 **63G-6a-205**, (Renumbered from 63G-6-209, as renumbered and amended by Laws of
- 238 Utah 2008, Chapter 382)
- 239 **63G-6a-302**, (Renumbered from 63G-6-203, as renumbered and amended by Laws of
- 240 Utah 2008, Chapter 382)
- 241 **63G-6a-303**, (Renumbered from 63G-6-204, as last amended by Laws of Utah 2008,
- 242 Chapter 352 and renumbered and amended by Laws of Utah 2008, Chapter 382)

243 **63G-6a-304**, (Renumbered from 63G-6-205, as last amended by Laws of Utah 2008,
244 Chapter 352 and renumbered and amended by Laws of Utah 2008, Chapter 382)

245 **63G-6a-305**, (Renumbered from 63G-6-302, as last amended by Laws of Utah 2011,
246 Chapter 376)

247 **63G-6a-407**, (Renumbered from 63G-6-303, as renumbered and amended by Laws of
248 Utah 2008, Chapter 382)

249 **63G-6a-711**, (Renumbered from 63G-6-408.5, as enacted by Laws of Utah 2008,
250 Chapter 352)

251 **63G-6a-802**, (Renumbered from 63G-6-410, as renumbered and amended by Laws of
252 Utah 2008, Chapter 382)

253 **63G-6a-804**, (Renumbered from 63G-6-423, as renumbered and amended by Laws of
254 Utah 2008, Chapter 382)

255 **63G-6a-805**, (Renumbered from 63G-6-425, as renumbered and amended by Laws of
256 Utah 2008, Chapter 382)

257 **63G-6a-902**, (Renumbered from 63G-6-412, as renumbered and amended by Laws of
258 Utah 2008, Chapter 382)

259 **63G-6a-903**, (Renumbered from 63G-6-413, as renumbered and amended by Laws of
260 Utah 2008, Chapter 382)

261 **63G-6a-904**, (Renumbered from 63G-6-804, as renumbered and amended by Laws of
262 Utah 2008, Chapter 382)

263 **63G-6a-1002**, (Renumbered from 63G-6-404, as renumbered and amended by Laws of
264 Utah 2008, Chapter 382)

265 **63G-6a-1003**, (Renumbered from 63G-6-405, as renumbered and amended by Laws of
266 Utah 2008, Chapter 382)

267 **63G-6a-1102**, (Renumbered from 63G-6-504, as renumbered and amended by Laws of
268 Utah 2008, Chapter 382)

269 **63G-6a-1103**, (Renumbered from 63G-6-505, as renumbered and amended by Laws of
270 Utah 2008, Chapter 382)

271 **63G-6a-1104**, (Renumbered from 63G-6-506, as last amended by Laws of Utah 2011,
272 Chapter 299)

273 **63G-6a-1105**, (Renumbered from 63G-6-507, as renumbered and amended by Laws of

274 Utah 2008, Chapter 382)
275 **63G-6a-1202**, (Renumbered from 63G-6-601, as renumbered and amended by Laws of
276 Utah 2008, Chapter 382)
277 **63G-6a-1203**, (Renumbered from 63G-6-603, as enacted by Laws of Utah 2009,
278 Chapter 217)
279 **63G-6a-1205**, (Renumbered from 63G-6-416, as renumbered and amended by Laws of
280 Utah 2008, Chapter 382)
281 **63G-6a-1206**, (Renumbered from 63G-6-415, as renumbered and amended by Laws of
282 Utah 2008, Chapter 382)
283 **63G-6a-1207**, (Renumbered from 63G-6-602, as renumbered and amended by Laws of
284 Utah 2008, Chapter 382)
285 **63G-6a-1302**, (Renumbered from 63G-6-501, as renumbered and amended by Laws of
286 Utah 2008, Chapter 382)
287 **63G-6a-1303**, (Renumbered from 63G-6-604, as enacted by Laws of Utah 2010,
288 Chapter 18)
289 **63G-6a-1402**, (Renumbered from 63G-6-502, as last amended by Laws of Utah 2010,
290 Chapter 358)
291 **63G-6a-1403**, (Renumbered from 63G-6-503, as renumbered and amended by Laws of
292 Utah 2008, Chapter 382)
293 **63G-6a-1502**, (Renumbered from 63G-6-701, as renumbered and amended by Laws of
294 Utah 2008, Chapter 382)
295 **63G-6a-1503**, (Renumbered from 63G-6-702, as renumbered and amended by Laws of
296 Utah 2008, Chapter 382)
297 **63G-6a-1504**, (Renumbered from 63G-6-703, as renumbered and amended by Laws of
298 Utah 2008, Chapter 382)
299 **63G-6a-1505**, (Renumbered from 63G-6-704, as renumbered and amended by Laws of
300 Utah 2008, Chapter 382)
301 **63G-6a-1506**, (Renumbered from 63G-6-705, as renumbered and amended by Laws of
302 Utah 2008, Chapter 382)
303 **63G-6a-1602**, (Renumbered from 63G-6-805, as renumbered and amended by Laws of
304 Utah 2008, Chapter 382)

- 305 **63G-6a-1603**, (Renumbered from 63G-6-801, as last amended by Laws of Utah 2011,
306 Chapter 361)
- 307 **63G-6a-1604**, (Renumbered from 63G-6-806, as renumbered and amended by Laws of
308 Utah 2008, Chapter 382)
- 309 **63G-6a-1605**, (Renumbered from 63G-6-907, as renumbered and amended by Laws of
310 Utah 2008, Chapter 382)
- 311 **63G-6a-1606**, (Renumbered from 63G-6-802, as renumbered and amended by Laws of
312 Utah 2008, Chapter 382)
- 313 **63G-6a-1607**, (Renumbered from 63G-6-803, as renumbered and amended by Laws of
314 Utah 2008, Chapter 382)
- 315 **63G-6a-1702**, (Renumbered from 63G-6-807, as last amended by Laws of Utah 2010,
316 Chapter 286)
- 317 **63G-6a-1703**, (Renumbered from 63G-6-810, as renumbered and amended by Laws of
318 Utah 2008, Chapter 382)
- 319 **63G-6a-1704**, (Renumbered from 63G-6-808, as renumbered and amended by Laws of
320 Utah 2008, Chapter 382)
- 321 **63G-6a-1705**, (Renumbered from 63G-6-809, as renumbered and amended by Laws of
322 Utah 2008, Chapter 382)
- 323 **63G-6a-1706**, (Renumbered from 63G-6-811, as renumbered and amended by Laws of
324 Utah 2008, Chapter 382)
- 325 **63G-6a-1707**, (Renumbered from 63G-6-812, as renumbered and amended by Laws of
326 Utah 2008, Chapter 382)
- 327 **63G-6a-1708**, (Renumbered from 63G-6-813, as renumbered and amended by Laws of
328 Utah 2008, Chapter 382)
- 329 **63G-6a-1802**, (Renumbered from 63G-6-814, as renumbered and amended by Laws of
330 Utah 2008, Chapter 382)
- 331 **63G-6a-1803**, (Renumbered from 63G-6-815, as renumbered and amended by Laws of
332 Utah 2008, Chapter 382)
- 333 **63G-6a-1804**, (Renumbered from 63G-6-817, as renumbered and amended by Laws of
334 Utah 2008, Chapter 382)
- 335 **63G-6a-1805**, (Renumbered from 63G-6-816, as renumbered and amended by Laws of

336 Utah 2008, Chapter 382)
337 **63G-6a-1902**, (Renumbered from 63G-6-419, as renumbered and amended by Laws of
338 Utah 2008, Chapter 382)
339 **63G-6a-1903**, (Renumbered from 63G-6-818, as renumbered and amended by Laws of
340 Utah 2008, Chapter 382)
341 **63G-6a-1904**, (Renumbered from 63G-6-819, as renumbered and amended by Laws of
342 Utah 2008, Chapter 382)
343 **63G-6a-1905**, (Renumbered from 63G-6-820, as renumbered and amended by Laws of
344 Utah 2008, Chapter 382)
345 **63G-6a-2002**, (Renumbered from 63G-6-106, as renumbered and amended by Laws of
346 Utah 2008, Chapter 382)
347 **63G-6a-2003**, (Renumbered from 63G-6-421, as renumbered and amended by Laws of
348 Utah 2008, Chapter 382)
349 **63G-6a-2004**, (Renumbered from 63G-6-905, as renumbered and amended by Laws of
350 Utah 2008, Chapter 382)
351 **63G-6a-2102**, (Renumbered from 63G-6-901, as renumbered and amended by Laws of
352 Utah 2008, Chapter 382)
353 **63G-6a-2103**, (Renumbered from 63G-6-902, as renumbered and amended by Laws of
354 Utah 2008, Chapter 382)
355 **63G-6a-2104**, (Renumbered from 63G-6-904, as renumbered and amended by Laws of
356 Utah 2008, Chapter 382)
357 **63G-6a-2105**, (Renumbered from 63G-6-424, as renumbered and amended by Laws of
358 Utah 2008, Chapter 382)
359 **63G-6a-2302**, (Renumbered from 63G-6-420, as renumbered and amended by Laws of
360 Utah 2008, Chapter 382)
361 REPEALS:
362 **10-7-87**, as last amended by Laws of Utah 2008, Chapter 382
363 **11-37-101**, as last amended by Laws of Utah 2008, Chapter 382
364 **17-15-24**, as last amended by Laws of Utah 2008, Chapter 382
365 **17B-1-109**, as renumbered and amended by Laws of Utah 2007, Chapter 329
366 **26A-1-108.7**, as last amended by Laws of Utah 2008, Chapter 382

- 367 **63G-6-206**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 368 **63G-6-301**, as last amended by Laws of Utah 2011, Chapter 376
- 369 **63G-6-401**, as last amended by Laws of Utah 2009, Chapter 388
- 370 **63G-6-402**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 371 **63G-6-403**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 372 **63G-6-406**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 373 **63G-6-407**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 374 **63G-6-408**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 375 **63G-6-409**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 376 **63G-6-411**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 377 **63G-6-414**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 378 **63G-6-417**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 379 **63G-6-418**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 380 **63G-6-422**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 381 **63G-6-426**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 382 **63G-6-903**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 383 **63G-6-906**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 384 **63G-6-1001**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 385 **63G-6-1002**, as renumbered and amended by Laws of Utah 2008, Chapter 382

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

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

389 **7-1-323. Regulation of interstate operations -- Coordination of efforts.**

390 (1) The commissioner may:

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

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

397 (c) coordinate these activities with any other state or federal agency that shares

398 jurisdiction over the institution.

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

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

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

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

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

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

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

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

416 (g) cooperating in any other way with other supervisory agencies and professional
417 associations to promote the efficient, safe, and sound operation and regulation of interstate
418 depository institution activities, including the formulation of interstate examination policies
419 and procedures and the drafting of model laws, rules, and agreements.

420 (4) A contract between the department and an agency that shares jurisdiction over a
421 depository institution to provide examiners to aid in interstate examination and regulation is
422 considered a sole source contract under Section [~~63G-6-410~~] 63G-6a-802.

423 Section 2. Section **7-2-21** is amended to read:

424 **7-2-21. Applicability of Utah Procurement Code.**

425 No action of the commissioner taken under this chapter or Chapter 19, Acquisition of
426 Failing Depository Institutions or Holding Companies, is subject to the provisions of Title 63G,
427 Chapter [~~6~~] 6a, Utah Procurement Code.

428 Section 3. Section **9-4-704** is amended to read:

429 **9-4-704. Distribution of fund money.**

430 (1) The executive director shall:

431 (a) make grants and loans from the fund for any of the activities authorized by Section
432 9-4-705, as directed by the board;

433 (b) establish the criteria with the approval of the board by which loans and grants will
434 be made; and

435 (c) determine with the approval of the board the order in which projects will be funded.

436 (2) The executive director shall distribute, as directed by the board, any federal money
437 contained in the fund according to the procedures, conditions, and restrictions placed upon the
438 use of the money by the federal government.

439 (3) (a) The executive director shall distribute, as directed by the board, any funds
440 received pursuant to Section 17C-1-412 to pay the costs of providing income targeted housing
441 within the community that created the community development and renewal agency under Title
442 17C, Limited Purpose Local Government Entities - Community Development and Renewal
443 Agencies Act.

444 (b) As used in Subsection (3)(a):

445 (i) "Community" has the meaning as defined in Section 17C-1-102.

446 (ii) "Income targeted housing" has the meaning as defined in Section 17C-1-102.

447 (4) Except federal money and money received under Section 17C-1-412, the executive
448 director shall distribute, as directed by the board, all other money from the fund according to
449 the following requirements:

450 (a) Not less than 30% of all fund money shall be distributed to rural areas of the state.

451 (b) At least 50% of the money in the fund shall be distributed as loans to be repaid to
452 the fund by the entity receiving them.

453 (i) (A) Of the fund money distributed as loans, at least 50% shall be distributed to
454 benefit persons whose annual income is at or below 50% of the median family income for the
455 state.

456 (B) The remaining loan money shall be distributed to benefit persons whose annual
457 income is at or below 80% of the median family income for the state.

458 (ii) The executive director or the executive director's designee shall lend money in
459 accordance with this Subsection (4) at a rate based upon the borrower's ability to pay.

460 (c) Any fund money not distributed as loans shall be distributed as grants.

461 (i) At least 90% of the fund money distributed as grants shall be distributed to benefit
462 persons whose annual income is at or below 50% of the median family income for the state.

463 (ii) The remaining fund money distributed as grants may be used by the executive
464 director to obtain federal matching funds or for other uses consistent with the intent of this part,
465 including the payment of reasonable loan servicing costs, but no more than 3% of the revenues
466 of the fund may be used to offset other department or board administrative expenses.

467 (5) The executive director may with the approval of the board:

468 (a) enact rules to establish procedures for the grant and loan process by following the
469 procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
470 and

471 (b) service or contract, pursuant to Title 63G, Chapter [6] 6a, Utah Procurement Code,
472 for the servicing of loans made by the fund.

473 Section 4. Section **9-4-906** is amended to read:

474 **9-4-906. Relation to certain acts.**

475 (1) The corporation is exempt from:

476 (a) Title 51, Chapter 5, Funds Consolidation Act;

477 (b) Title 51, Chapter 7, State Money Management Act;

478 (c) Title 63A, Utah Administrative Services Code; [~~and~~]

479 (d) Title 63G, Chapter [6] 6a, Utah Procurement Code;

480 (e) Title 63J, Chapter 1, Budgetary Procedures Act;

481 (f) Title 63J, Chapter 2, Revenue Procedures and Control Act; and

482 (g) Title 67, Chapter 19, Utah State Personnel Management Act.

483 (2) The corporation shall comply with:

484 (a) Title 52, Chapter 4, Open and Public Meetings Act; and

485 (b) Title 63G, Chapter 2, Government Records Access and Management Act.

486 Section 5. Section **9-4-1602** is amended to read:

487 **9-4-1602. Distribution of fund money.**

488 (1) (a) The director shall make loans and loan guarantees from the fund for the Small
489 Business Credit Initiative created under the federal government's Small Business Jobs Act of
490 2010, to use federal money for programs that leverage private lending to help finance small

491 businesses and manufacturers that are creditworthy but not receiving the loans needed to
492 expand and create jobs.

493 (b) In making loans and loan guarantees under this part, the director shall give due
494 consideration to small businesses in underserved communities throughout the state that have
495 been deeply impacted by recession and not seen a comparable resurgence in their economies.

496 (2) The director shall distribute any federal money in the fund according to the
497 procedures, conditions, and restrictions placed upon the use of the money by the federal
498 government.

499 (3) The director may, with the approval of the executive director of the department:

500 (a) enact rules to establish procedures for the loan and loan guarantee process by
501 following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative
502 Rulemaking Act; and

503 (b) service or contract, under Title 63G, Chapter ~~[6]~~ 6a, Utah Procurement Code, for
504 the servicing of loans made by the fund.

505 Section 6. Section **10-3-1304** is amended to read:

506 **10-3-1304. Use of office for personal benefit prohibited.**

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

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

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

512 (2) It is an offense for an elected or appointed officer or municipal employee, under
513 circumstances not amounting to a violation of Section ~~[63G-6-1001]~~ 63G-6a-2304 or 76-8-105,
514 to:

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

519 (b) use or attempt to use the officer's or employee's official position to:

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

521 (ii) secure special privileges for the officer or employee or for others; or

522 (c) knowingly receive, accept, take, seek, or solicit, directly or indirectly, for the officer
523 or employee or for another, a gift of substantial value or a substantial economic benefit
524 tantamount to a gift that:

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

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

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

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

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

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

533 (d) a political campaign contribution.

534 Section 7. Section **10-3-1305** is amended to read:

535 **10-3-1305. Compensation for assistance in transaction involving municipality --**
536 **Public disclosure and filing required.**

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

540 (2) It is an offense for an elected officer, or appointed officer, who is a member of a
541 public body, under circumstances not amounting to a violation of Section [~~63G-6-1001~~]
542 63G-6a-2304 or 76-8-105, to receive or agree to receive compensation for assisting any person
543 or business entity in any transaction involving the municipality in which the member is an
544 officer unless the member:

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

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

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

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

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

556 (i) the officer or employee's immediate supervisor; and

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

559 (4) (a) The officer or employee shall file the statement required to be filed by this
560 section 10 days before the date of any agreement between the elected or appointed officer or
561 municipal employee and the person or business entity being assisted or 10 days before the
562 receipt of compensation by the officer or employee, whichever is earlier.

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

565 (5) The statement and disclosure shall contain:

566 (a) the name and address of the officer or municipal employee;

567 (b) the name and address of the person or business entity being or to be assisted or in
568 which the appointed or elected official or municipal employee has a substantial interest; and

569 (c) a brief description of the transaction as to which service is rendered or is to be
570 rendered and of the nature of the service performed or to be performed.

571 Section 8. Section **10-7-86** is amended to read:

572 **10-7-86. Municipality may adopt Utah Procurement Code -- Hiring of**
573 **professional architect, engineer, or surveyor.**

574 (1) The governing body of any municipality may adopt any or all of the provisions of
575 Title 63G, Chapter [6] 6a, Utah Procurement Code, or the rules promulgated pursuant to that
576 code.

577 (2) Notwithstanding Subsection (1), the governing body of each municipality that
578 engages the services of a professional architect, engineer, or surveyor and considers more than
579 one such professional for the engagement:

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

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

582 (ii) the specific individuals assigned to the project and the time commitments of each
583 to the project; and

584 (iii) the project schedule and the approach to the project that the firm will take; and
585 (b) may engage the services of a professional architect, engineer, or surveyor based on
586 the criteria under Subsection (2)(a) rather than solely on lowest cost.

587 Section 9. Section **11-17-20** is amended to read:

588 **11-17-20. Power of the State Charter School Finance Authority.**

589 (1) The State Charter School Finance Authority may exercise the powers granted to
590 municipalities and counties by this chapter, subject to the same limitations as that imposed on a
591 municipality or county under the chapter, except as provided by Title 53A, Chapter 20b, State
592 Charter School Finance Authority Act.

593 (2) As used in this chapter, "governing body" when applied to the State Charter School
594 Finance Authority means the authority's governing board as described in Section 53A-20b-103.

595 (3) Notwithstanding Section 11-17-15, a charter school that receives financing under
596 this chapter is subject to Title 63G, Chapter [6] 6a, Utah Procurement Code.

597 Section 10. Section **11-39-101** is amended to read:

598 **11-39-101. Definitions.**

599 As used in this chapter:

600 (1) "Bid limit" means:

601 (a) for a building improvement:

602 (i) for the year 2003, \$40,000; and

603 (ii) for each year after 2003, the amount of the bid limit for the previous year, plus an
604 amount calculated by multiplying the amount of the bid limit for the previous year by the lesser
605 of 3% or the actual percent change in the Consumer Price Index during the previous calendar
606 year; and

607 (b) for a public works project:

608 (i) for the year 2003, \$125,000; and

609 (ii) for each year after 2003, the amount of the bid limit for the previous year, plus an
610 amount calculated by multiplying the amount of the bid limit for the previous year by the lesser
611 of 3% or the actual percent change in the Consumer Price Index during the previous calendar
612 year.

613 (2) "Building improvement":

614 (a) means the construction or repair of a public building or structure; and

- 615 (b) does not include construction or repair at an international airport.
- 616 (3) "Consumer Price Index" means the Consumer Price Index for All Urban
617 Consumers as published by the Bureau of Labor Statistics of the United States Department of
618 Labor.
- 619 (4) "Design-build project":
- 620 (a) means a building improvement or public works project costing over \$250,000 with
621 respect to which both the design and construction are provided for in a single contract with a
622 contractor or combination of contractors capable of providing design-build services; and
- 623 (b) does not include a building improvement or public works project:
- 624 (i) that is undertaken by a local entity under contract with a construction manager that
625 guarantees the contract price and is at risk for any amount over the contract price; and
- 626 (ii) each component of which is competitively bid.
- 627 (5) "Design-build services" means the engineering, architectural, and other services
628 necessary to formulate and implement a design-build project, including its actual construction.
- 629 (6) "Emergency repairs" means a building improvement or public works project
630 undertaken on an expedited basis to:
- 631 (a) eliminate an imminent risk of damage to or loss of public or private property;
- 632 (b) remedy a condition that poses an immediate physical danger; or
- 633 (c) reduce a substantial, imminent risk of interruption of an essential public service.
- 634 (7) "Governing body" means:
- 635 (a) for a county, city, or town, the legislative body of the county, city, or town;
- 636 (b) for a local district, the board of trustees of the local district; and
- 637 (c) for a special service district:
- 638 (i) the legislative body of the county, city, or town that established the special service
639 district, if no administrative control board has been appointed under Section 17D-1-301; or
- 640 (ii) the administrative control board of the special service district, if an administrative
641 control board has been appointed under Section 17D-1-301.
- 642 (8) "Local district" has the same meaning as defined in Section 17B-1-102.
- 643 (9) "Local entity" means a county, city, town, local district, or special service district.
- 644 (10) "Lowest responsive responsible bidder" means a prime contractor who:
- 645 (a) has submitted a bid in compliance with the invitation to bid and within the

646 requirements of the plans and specifications for the building improvement or public works
647 project;

648 (b) is the lowest bidder that satisfies the local entity's criteria relating to financial
649 strength, past performance, integrity, reliability, and other factors that the local entity uses to
650 assess the ability of a bidder to perform fully and in good faith the contract requirements;

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

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

654 (11) "Procurement code" means the provisions of Title 63G, Chapter [6] 6a, Utah
655 Procurement Code.

656 (12) "Public works project":

657 (a) means the construction of:

658 (i) a park or recreational facility; or

659 (ii) a pipeline, culvert, dam, canal, or other system for water, sewage, storm water, or
660 flood control; and

661 (b) does not include:

662 (i) the replacement or repair of existing infrastructure on private property;

663 (ii) construction commenced before June 1, 2003; and

664 (iii) construction or repair at an international airport.

665 (13) "Special service district" has the same meaning as defined in Section 17D-1-102.

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

667 **11-39-107. Procurement code.**

668 (1) This chapter may not be construed to:

669 (a) prohibit a county or municipal legislative body from adopting the procedures of the
670 procurement code; or

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

673 (2) A local entity may adopt procedures for the following construction contracting
674 methods:

675 (a) construction manager/general contractor, as defined in Section [~~63G-6-103~~]

676 63G-6a-103; or

677 (b) a method that requires that the local entity draft a plan, specifications, and an
678 estimate for the building improvement or public works project.

679 (3) For a public works project only and that costs \$10,000,000 or more, the following
680 may enter into a contract for design-build, as defined in Section [~~63G-6-103~~] 63G-6a-103, and
681 adopt the procedures and follow the provisions of the procurement code for the procurement of
682 and as the procedures and provisions relate to a design-build:

683 (a) a city of the first class;

684 (b) a local district; or

685 (c) a special service district.

686 (4) (a) In seeking bids and awarding a contract for a building improvement or public
687 works project, a county or a municipal legislative body may elect to follow the provisions of
688 the procurement code, as the county or municipal legislative body considers appropriate under
689 the circumstances, for specification preparation, source selection, or contract formation.

690 (b) A county or municipal legislative body's election to adopt the procedures of the
691 procurement code may not excuse the county or municipality, respectively, from complying
692 with the requirements to award a contract for work in excess of the bid limit and to publish
693 notice of the intent to award.

694 (c) An election under Subsection (4)(a) may be made on a case-by-case basis, unless
695 the county or municipality has previously adopted [~~the procurement code as permitted by~~
696 Subsection 63G-6-104(3)(c)] the provisions of Title 63G, Chapter 6a, Utah Procurement Code.

697 (d) The county or municipal legislative body shall:

698 (i) make each election under Subsection (4)(a) in an open meeting; and

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

700 (5) If the estimated cost of the building improvement or public works project proposed
701 by a local district or special service district exceeds the bid limit, the governing body of the
702 local district or special service district may, if it determines to proceed with the building
703 improvement or public works project, use the competitive procurement procedures of the
704 procurement code in place of the comparable provisions of this chapter.

705 Section 12. Section **11-44-202** is amended to read:

706 **11-44-202. Types of agreements.**

707 Notwithstanding Section [~~63G-6-416~~] 63G-6a-1205, a political subdivision shall

708 structure an energy service agreement as a guaranteed energy savings performance contract,
709 which shall include:

- 710 (1) the design and installation of an energy efficiency measure, if applicable;
 - 711 (2) operation and maintenance of any energy efficiency measure implemented; and
 - 712 (3) guaranteed annual cost savings that meet or exceed the total annual contract
- 713 payments by the political subdivision under the contract, including financing charges incurred
714 by the political subdivision over the life of the contract.

715 Section 13. Section **11-44-301** is amended to read:

716 **11-44-301. Selection.**

717 (1) A political subdivision shall follow the procedures outlined in Title 63G, Chapter
718 ~~6~~ 6a, Utah Procurement Code, when selecting a qualified energy service provider.

719 (2) The Division of Purchasing shall maintain a list of qualified energy service
720 providers.

721 (3) The qualified energy service provider selected from the bid process shall prepare an
722 investment grade energy audit, which shall become part of the final contract between the
723 political subdivision and the qualified energy service provider.

724 (4) The audit shall include:

- 725 (a) a detailed description of the energy efficiency measure;
- 726 (b) an estimated cost; and
- 727 (c) a projected cost savings.

728 Section 14. Section **13-2-9** is amended to read:

729 **13-2-9. Internet -- Consumer education.**

730 (1) The Division of Consumer Protection shall, subject to appropriation, contract with
731 a person to make public service announcements advising consumers about the dangers of using
732 the Internet, especially:

- 733 (a) material harmful to minors;
 - 734 (b) steps a consumer may take to learn more about the dangers of using the Internet;
 - 735 (c) information about how a service provider can help a consumer learn more about the
- 736 dangers of using the Internet, including the service provider's duties created by this bill; and
- 737 (d) how a consumer can monitor the Internet usage of family members.

738 (2) Money appropriated under Subsection (1) shall be paid by the Division of

739 Consumer Protection to a person only if:

740 (a) the person is a nonprofit organization; and

741 (b) the person agrees to spend private money amounting to two times the amount of
742 money provided by the Division of Consumer Protection during each fiscal year in accordance
743 with Subsection (1).

744 (3) In administering any money appropriated for use under this section, the Division of
745 Consumer Protection shall comply with Title 63G, Chapter ~~[6]~~ 6a, Utah Procurement Code.
746 Section 15. Section **14-1-18** is amended to read:

747 **14-1-18. Definitions -- Application of Procurement Code to payment and**
748 **performance bonds.**

749 (1) (a) For purposes of this chapter, "political subdivision" means any county, city,
750 town, school district, local district, special service district, community development and
751 renewal agency, public corporation, institution of higher education of the state, public agency
752 of any political subdivision, and, to the extent provided by law, any other entity which expends
753 public funds for construction.

754 (b) For purposes of applying Section ~~[63G-6-505]~~ 63G-6a-1103 to a political
755 subdivision, "state" includes "political subdivision."

756 (2) ~~[Section 63G-6-505]~~ Notwithstanding any provision of Title 63G, Chapter 6a, Utah
757 Procurement Code, to the contrary, Section 63G-6a-1103 applies to all contracts for the
758 construction, alteration, or repair of any public building or public work of the state or a
759 political subdivision of the state.

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

761 **17-16a-4. Prohibited use of official position -- Exception.**

762 (1) Except as provided in Subsection (3), it is an offense for an elected or appointed
763 officer, under circumstances not amounting to a violation of Section ~~[63G-6-1001]~~
764 63G-6a-2304 or 76-8-105, to:

765 (a) disclose confidential information acquired by reason of the officer's official position
766 or use that information to secure special privileges or exemptions for himself or others;

767 (b) use or attempt to use the officer's official position to secure special privileges for
768 the officer or for others; or

769 (c) knowingly receive, accept, take, seek or solicit, directly or indirectly, any gift or

770 loan for the officer or for another, if the gift or loan tends to influence the officer in the
771 discharge of the officer's official duties.

772 (2) This section is inapplicable to:

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

774 (b) an award publicly presented;

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

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

777 (3) A member of a county legislative body who is also a member of the governing
778 board of a provider of mental health or substance abuse services under contract with the county
779 does not commit an offense under Subsection (1)(a) or (b) by discharging, in good faith, the
780 duties and responsibilities of each position, if the county legislative body member does not
781 participate in the process of selecting the mental health or substance abuse service provider.

782 Section 17. Section **17-43-202** is amended to read:

783 **17-43-202. Local substance abuse authorities -- Requirements prior to**
784 **distributing public funds.**

785 (1) Each local substance abuse authority shall award all public funds in compliance
786 with:

787 (a) the requirements of Title 63G, Chapter [6] 6a, Utah Procurement Code; or

788 (b) a county procurement ordinance that requires similar procurement practices.

789 (2) If all initial bids on the project are rejected, the authority shall publish a new
790 invitation to bid. If no satisfactory bid is received by the authority when the bids received from
791 the second invitation are opened, the authority may execute a contract without requiring
792 competitive bidding.

793 (3) A local substance abuse authority need not comply with the procurement provisions
794 of this section when it disburses public funds to another political subdivision of the state or an
795 institution of higher education of the state.

796 (4) Each contract awarded by a local substance abuse authority shall be for a fixed
797 amount and limited period. A contract may be modified due to changes in available funding
798 for the same contract purpose without competition.

799 Section 18. Section **17-43-302** is amended to read:

800 **17-43-302. Local mental health authorities -- Requirements prior to distributing**

801 **public funds.**

802 (1) Each local mental health authority shall award all public funds by complying with
803 the requirements of Title 63G, Chapter [6] 6a, Utah Procurement Code, or by complying with a
804 county procurement ordinance which requires similar procurement practices.

805 (2) If all initial bids on the project are rejected, the authority shall publish a new
806 invitation to bid in the manner specified in this section. If no satisfactory bid is received by the
807 authority when the bids received from the second invitation are opened, the authority may
808 execute a contract without requiring competitive bidding.

809 (3) The local mental health authority need not comply with the procurement provisions
810 of this section when it disburses public funds to another political subdivision of the state or an
811 institution of higher education of the state.

812 (4) Each contract awarded by a local mental health authority shall be for a fixed
813 amount and limited period. A contract may be modified due to changes in available funding
814 for the same contract purpose without competition.

815 Section 19. Section **17-53-225** is amended to read:

816 **17-53-225. County legislative body may adopt Utah Procurement Code --**

817 **Retention of records.**

818 (1) A county legislative body may adopt any or all of the provisions of Title 63G,
819 Chapter [6] 6a, Utah Procurement Code, or the rules promulgated pursuant to that code.

820 (2) Whenever any county is required by law to receive bids for purchases, construction,
821 repairs, or any other purpose requiring the expenditure of funds, that county shall keep on file
822 all bids received, together with proof of advertisement by publication or otherwise, for:

823 (a) at least three years following the letting of any contract pursuant to those bids; or

824 (b) three years following the first advertisement for the bids, if all bids pursuant to that
825 advertisement are rejected.

826 Section 20. Section **17-53-313** is amended to read:

827 **17-53-313. Hiring of professional architect, engineer, or surveyor.**

828 Notwithstanding the adoption of some or all of the provisions of Title 63G, Chapter [6]
829 6a, Utah Procurement Code, under Section 17-53-225, each county executive that engages the
830 services of a professional architect, engineer, or surveyor and considers more than one such
831 professional for the engagement:

- 832 (1) shall consider, as a minimum, in the selection process:
833 (a) the qualifications, experience, and background of each firm submitting a proposal;
834 (b) the specific individuals assigned to the project and the time commitments of each to
835 the project; and
836 (c) the project schedule and the approach to the project that the firm will take; and
837 (2) may engage the services of a professional architect, engineer, or surveyor based on
838 the criteria under Subsection (1) rather than solely on lowest cost.

839 Section 21. Section **17B-1-108** is amended to read:

840 **17B-1-108. Restrictions on local district procurement of architect-engineer**
841 **services.**

- 842 (1) As used in this section:
843 (a) "Architect-engineer services" means those professional services within the scope of
844 the practice of architecture as defined in Section 58-3a-102.
845 (b) "Engineer services" means those professional services within the scope of the
846 practice of professional engineering as defined in Section 58-22-102.
847 (2) When a local district elects to obtain architect services or engineering services by
848 using a competitive procurement process and has provided public notice of its competitive
849 procurement process:
850 (a) a higher education entity, or any part of one, may not submit a proposal in response
851 to the local district's competitive procurement process; and
852 (b) the local district may not award a contract to perform the architect services or
853 engineering services solicited in the competitive procurement process to a higher education
854 entity or any part of one.
855 (3) Notwithstanding Subsection [~~63G-6-104(3)(d)~~] 63G-6a-105(3), each local district
856 board that engages the services of a professional architect, engineer, or surveyor and considers
857 more than one such professional for the engagement:
858 (a) shall consider, as a minimum, in the selection process:
859 (i) the qualifications, experience, and background of each firm submitting a proposal;
860 (ii) the specific individuals assigned to the project and the time commitments of each
861 to the project; and
862 (iii) the project schedule and the approach to the project that the firm will take; and

863 (b) may engage the services of a professional architect, engineer, or surveyor based on
864 the criteria under Subsection (3)(a) rather than solely on lowest cost.

865 Section 22. Section **17B-2a-818** is amended to read:

866 **17B-2a-818. Requirements applicable to public transit district contracts.**

867 (1) A public transit district shall comply with the applicable provisions of Title 63G,
868 Chapter [6] 6a, Utah Procurement Code.

869 (2) If construction of a district facility or work exceeds \$750,000, the construction shall
870 be let as provided in:

871 (a) Title 63G, Chapter [6] 6a, Utah Procurement Code; and

872 (b) Section 17B-2a-818.5.

873 Section 23. Section **17B-2a-818.5** is amended to read:

874 **17B-2a-818.5. Contracting powers of public transit districts -- Health insurance**
875 **coverage.**

876 (1) For purposes of this section:

877 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
878 34A-2-104 who:

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

880 (ii) meets employer eligibility waiting requirements for health care insurance which
881 may not exceed the first day of the calendar month following 90 days from the date of hire.

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

883 (c) "Qualified health insurance coverage" is as defined in Section 26-40-115.

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

885 (2) (a) Except as provided in Subsection (3), this section applies to a design or
886 construction contract entered into by the public transit district on or after July 1, 2009, and to a
887 prime contractor or to a subcontractor in accordance with Subsection (2)(b).

888 (b) (i) A prime contractor is subject to this section if the prime contract is in the
889 amount of \$1,500,000 or greater.

890 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
891 \$750,000 or greater.

892 (3) This section does not apply if:

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

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

895 (c) the contract is an emergency procurement.

896 (4) (a) This section does not apply to a change order as defined in Section [~~63G-6-103~~]

897 63G-6a-103, or a modification to a contract, when the contract does not meet the initial

898 threshold required by Subsection (2).

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

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

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

909 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
910 the duration of the contract is subject to penalties in accordance with an ordinance adopted by
911 the public transit district under Subsection (6).

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

914 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
915 the duration of the contract is subject to penalties in accordance with an ordinance adopted by
916 the public transit district under Subsection (6).

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

919 (6) The public transit district shall adopt ordinances:

920 (a) in coordination with:

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

922 (ii) the Department of Natural Resources in accordance with Section 79-2-404;

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

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

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

926 (b) which establish:

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

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

931 (B) that the actuarially equivalent determination required for the qualified health
932 insurance coverage in Subsection (1) is met by the contractor if the contractor provides the
933 department or division with a written statement of actuarial equivalency from either:

934 (I) the Utah Insurance Department;

935 (II) an actuary selected by the contractor or the contractor's insurer; or

936 (III) an underwriter who is responsible for developing the employer group's premium
937 rates;

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

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

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

944 (C) an action for debarment of the contractor or subcontractor in accordance with
945 Section [~~63G-6-804~~] 63G-6a-904 upon the third or subsequent violation; and

946 (D) monetary penalties which may not exceed 50% of the amount necessary to
947 purchase qualified health insurance coverage for employees and dependents of employees of
948 the contractor or subcontractor who were not offered qualified health insurance coverage
949 during the duration of the contract; and

950 (iii) a website on which the district shall post the benchmark for the qualified health
951 insurance coverage identified in Subsection (1)(c).

952 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(b)(ii), a contractor
953 or subcontractor who intentionally violates the provisions of this section shall be liable to the
954 employee for health care costs that would have been covered by qualified health insurance
955 coverage.

956 (ii) An employer has an affirmative defense to a cause of action under Subsection
957 (7)(a)(i) if:

958 (A) the employer relied in good faith on a written statement of actuarial equivalency
959 provided by an:

960 (I) actuary; or

961 (II) underwriter who is responsible for developing the employer group's premium rates;
962 or

963 (B) a department or division determines that compliance with this section is not
964 required under the provisions of Subsection (3) or (4).

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

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

969 (9) The failure of a contractor or subcontractor to provide qualified health insurance
970 coverage as required by this section:

971 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
972 or contractor under Section [~~63G-6-801~~] 63G-6a-1603 or any other provision in Title 63G,
973 Chapter [~~6, Part 8, Legal and Contractual Remedies~~] 6a, Utah Procurement Code; and

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

977 Section 24. Section **17D-1-106** is amended to read:

978 **17D-1-106. Special service districts subject to other provisions.**

979 (1) A special service district is, to the same extent as if it were a local district, subject
980 to and governed by:

981 (a) Sections 17B-1-105, 17B-1-107, 17B-1-108, [~~17B-1-109~~], 17B-1-110, 17B-1-111,
982 17B-1-112, 17B-1-113, 17B-1-116, 17B-1-118, 17B-1-119, 17B-1-120, and 17B-1-121;

983 (b) Subsections 17B-1-301(3) and (4), Sections 17B-1-304, 17B-1-305, 17B-1-306,
984 17B-1-307, 17B-1-310, 17B-1-312, 17B-1-313, and 17B-1-314;

985 (c) Section 20A-1-512;

986 (d) Title 17B, Chapter 1, Part 6, Fiscal Procedures for Local Districts;

- 987 (e) Title 17B, Chapter 1, Part 7, Local District Budgets and Audit Reports;
- 988 (f) Title 17B, Chapter 1, Part 8, Local District Personnel Management; and
- 989 (g) Title 17B, Chapter 1, Part 9, Collection of Service Fees and Charges.

990 (2) For purposes of applying the provisions listed in Subsection (1) to a special service
991 district, each reference in those provisions to the local district board of trustees means the
992 governing body.

993 Section 25. Section **17D-2-108** is amended to read:

994 **17D-2-108. Other statutory provisions.**

995 (1) This chapter is supplemental to existing laws relating to a local entity's acquisition,
996 use, maintenance, management, or operation of a project.

997 (2) Except as provided in this chapter, a local entity or local building authority that
998 complies with the provisions of this chapter need not comply with any other statutory provision
999 concerning the acquisition, construction, use, or maintenance of a project, including:

- 1000 (a) a statute relating to public bidding; and
- 1001 (b) Title 63G, Chapter ~~6~~ 6a, Utah Procurement Code.

1002 (3) A local building authority is, to the same extent as if it were a local district, subject
1003 to and governed by:

- 1004 (a) Title 17B, Chapter 1, Part 6, Fiscal Procedures for Local Districts;
- 1005 (b) Title 17B, Chapter 1, Part 8, Local District Personnel Management; and
- 1006 (c) Section 17B-1-108.

1007 Section 26. Section **19-1-206** is amended to read:

1008 **19-1-206. Contracting powers of department -- Health insurance coverage.**

1009 (1) For purposes of this section:

1010 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
1011 34A-2-104 who:

- 1012 (i) works at least 30 hours per calendar week; and
- 1013 (ii) meets employer eligibility waiting requirements for health care insurance which
1014 may not exceed the first day of the calendar month following 90 days from the date of hire.

1015 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

1016 (c) "Qualified health insurance coverage" is as defined in Section 26-40-115.

1017 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

1018 (2) (a) Except as provided in Subsection (3), this section applies to a design or
1019 construction contract entered into by or delegated to the department or a division or board of
1020 the department on or after July 1, 2009, and to a prime contractor or subcontractor in
1021 accordance with Subsection (2)(b).

1022 (b) (i) A prime contractor is subject to this section if the prime contract is in the
1023 amount of \$1,500,000 or greater.

1024 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
1025 \$750,000 or greater.

1026 (3) This section does not apply to contracts entered into by the department or a division
1027 or board of the department if:

1028 (a) the application of this section jeopardizes the receipt of federal funds;

1029 (b) the contract or agreement is between:

1030 (i) the department or a division or board of the department; and

1031 (ii) (A) another agency of the state;

1032 (B) the federal government;

1033 (C) another state;

1034 (D) an interstate agency;

1035 (E) a political subdivision of this state; or

1036 (F) a political subdivision of another state;

1037 (c) the executive director determines that applying the requirements of this section to a
1038 particular contract interferes with the effective response to an immediate health and safety
1039 threat from the environment; or

1040 (d) the contract is:

1041 (i) a sole source contract; or

1042 (ii) an emergency procurement.

1043 (4) (a) This section does not apply to a change order as defined in Section [~~63G-6-103~~]
1044 63G-6a-103, or a modification to a contract, when the contract does not meet the initial
1045 threshold required by Subsection (2).

1046 (b) A person who intentionally uses change orders or contract modifications to
1047 circumvent the requirements of Subsection (2) is guilty of an infraction.

1048 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive

1049 director that the contractor has and will maintain an offer of qualified health insurance
1050 coverage for the contractor's employees and the employees' dependents during the duration of
1051 the contract.

1052 (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall
1053 demonstrate to the executive director that the subcontractor has and will maintain an offer of
1054 qualified health insurance coverage for the subcontractor's employees and the employees'
1055 dependents during the duration of the contract.

1056 (c) (i) (A) A contractor who fails to comply with Subsection (5)(a) during the duration
1057 of the contract is subject to penalties in accordance with administrative rules adopted by the
1058 department under Subsection (6).

1059 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
1060 requirements of Subsection (5)(b).

1061 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
1062 the duration of the contract is subject to penalties in accordance with administrative rules
1063 adopted by the department under Subsection (6).

1064 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
1065 requirements of Subsection (5)(a).

1066 (6) The department shall adopt administrative rules:

1067 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

1068 (b) in coordination with:

1069 (i) a public transit district in accordance with Section 17B-2a-818.5;

1070 (ii) the Department of Natural Resources in accordance with Section 79-2-404;

1071 (iii) the State Building Board in accordance with Section 63A-5-205;

1072 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

1073 (v) the Department of Transportation in accordance with Section 72-6-107.5; and

1074 (vi) the Legislature's Administrative Rules Review Committee; and

1075 (c) which establish:

1076 (i) the requirements and procedures a contractor shall follow to demonstrate to the
1077 public transit district compliance with this section that shall include:

1078 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or

1079 (b) more than twice in any 12-month period; and

1080 (B) that the actuarially equivalent determination required for the qualified health
1081 insurance coverage in Subsection (1) is met by the contractor if the contractor provides the
1082 department or division with a written statement of actuarial equivalency from either:

1083 (I) the Utah Insurance Department;

1084 (II) an actuary selected by the contractor or the contractor's insurer; or

1085 (III) an underwriter who is responsible for developing the employer group's premium
1086 rates;

1087 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
1088 violates the provisions of this section, which may include:

1089 (A) a three-month suspension of the contractor or subcontractor from entering into
1090 future contracts with the state upon the first violation;

1091 (B) a six-month suspension of the contractor or subcontractor from entering into future
1092 contracts with the state upon the second violation;

1093 (C) an action for debarment of the contractor or subcontractor in accordance with
1094 Section [~~63G-6-804~~] 63G-6a-904 upon the third or subsequent violation; and

1095 (D) notwithstanding Section 19-1-303, monetary penalties which may not exceed 50%
1096 of the amount necessary to purchase qualified health insurance coverage for an employee and
1097 the dependents of an employee of the contractor or subcontractor who was not offered qualified
1098 health insurance coverage during the duration of the contract; and

1099 (iii) a website on which the department shall post the benchmark for the qualified
1100 health insurance coverage identified in Subsection (1)(c).

1101 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or
1102 subcontractor who intentionally violates the provisions of this section shall be liable to the
1103 employee for health care costs that would have been covered by qualified health insurance
1104 coverage.

1105 (ii) An employer has an affirmative defense to a cause of action under Subsection
1106 (7)(a)(i) if:

1107 (A) the employer relied in good faith on a written statement of actuarial equivalency
1108 provided by:

1109 (I) an actuary; or

1110 (II) an underwriter who is responsible for developing the employer group's premium

1111 rates; or

1112 (B) the department determines that compliance with this section is not required under
1113 the provisions of Subsection (3) or (4).

1114 (b) An employee has a private right of action only against the employee's employer to
1115 enforce the provisions of this Subsection (7).

1116 (8) Any penalties imposed and collected under this section shall be deposited into the
1117 Medicaid Restricted Account created in Section 26-18-402.

1118 (9) The failure of a contractor or subcontractor to provide qualified health insurance
1119 coverage as required by this section:

1120 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
1121 or contractor under Section [~~63G-6-801~~] 63G-6a-1603 or any other provision in Title 63G,
1122 Chapter [~~6, Part 8, Legal and Contractual Remedies~~] 6a, Utah Procurement Code; and

1123 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
1124 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
1125 or construction.

1126 Section 27. Section **20A-11-701** is amended to read:

1127 **20A-11-701. Campaign financial reporting by corporations -- Filing requirements**
1128 **-- Statement contents.**

1129 (1) (a) Each corporation that has made expenditures for political purposes that total at
1130 least \$750 during a calendar year shall file a verified financial statement with the lieutenant
1131 governor's office:

1132 (i) on January 10, reporting expenditures as of December 31 of the previous year;

1133 (ii) seven days before the regular primary election date;

1134 (iii) on August 31; and

1135 (iv) seven days before the regular general election date.

1136 (b) The corporation shall report:

1137 (i) a detailed listing of all expenditures made since the last statement;

1138 (ii) for financial statements filed under Subsections (1)(a)(ii) through (iv), all
1139 expenditures as of five days before the required filing date of the financial statement; and

1140 (iii) whether the corporation, including an officer of the corporation, director of the
1141 corporation, or person with at least 10% ownership in the corporation:

1142 (A) has bid since the last financial statement on a contract, as defined in Section
1143 [~~63G-6-103~~] 63G-6a-103, in excess of \$100,000;

1144 (B) is currently bidding on a contract, as defined in Section [~~63G-6-103~~] 63G-6a-103,
1145 in excess of \$100,000; or

1146 (C) is a party to a contract, as defined in Section [~~63G-6-103~~] 63G-6a-103, in excess of
1147 \$100,000.

1148 (c) The corporation need not file a financial statement under this section if the
1149 corporation made no expenditures during the reporting period.

1150 (2) The financial statement shall include:

1151 (a) the name and address of each reporting entity that received an expenditure from the
1152 corporation, and the amount of each expenditure;

1153 (b) the total amount of expenditures disbursed by the corporation; and

1154 (c) a statement by the corporation's treasurer or chief financial officer certifying the
1155 accuracy of the financial statement.

1156 Section 28. Section **26-8a-405.3** is amended to read:

1157 **26-8a-405.3. Use of competitive sealed proposals -- Procedure -- Appeal rights.**

1158 (1) (a) Competitive sealed proposals for paramedic or 911 ambulance services under
1159 Section 26-8a-405.2, or for non-911 services under Section 26-8a-405.4, shall be solicited
1160 through a request for proposal and the provisions of this section.

1161 (b) The governing body of the political subdivision shall approve the request for
1162 proposal prior to the notice of the request for proposals under Subsection (1)(c).

1163 (c) (i) Notice of the request for proposals shall be published:

1164 (A) at least once a week for three consecutive weeks in a newspaper of general
1165 circulation published in the county; or

1166 (B) if there is no such newspaper, then notice shall be posted for at least 20 days in at
1167 least five public places in the county; and

1168 (ii) in accordance with Section 45-1-101 for at least 20 days.

1169 (2) (a) Proposals shall be opened so as to avoid disclosure of contents to competing
1170 offerors during the process of negotiations.

1171 (b) (i) Subsequent to the published notice, and prior to selecting an applicant, the
1172 political subdivision shall hold a presubmission conference with interested applicants for the

1173 purpose of assuring full understanding of, and responsiveness to, solicitation requirements.

1174 (ii) A political subdivision shall allow at least 90 days from the presubmission
1175 conference for the proposers to submit proposals.

1176 (c) Subsequent to the presubmission conference, the political subdivision may issue
1177 addenda to the request for proposals. An addenda to a request for proposal shall be finalized
1178 and posted by the political subdivision at least 45 days before the day on which the proposal
1179 must be submitted.

1180 (d) Offerors to the request for proposals shall be accorded fair and equal treatment with
1181 respect to any opportunity for discussion and revisions of proposals, and revisions may be
1182 permitted after submission and before a contract is awarded for the purpose of obtaining best
1183 and final offers.

1184 (e) In conducting discussions, there shall be no disclosures of any information derived
1185 from proposals submitted by competing offerors.

1186 (3) (a) (i) A political subdivision may select an applicant approved by the department
1187 under Section 26-8a-404 to provide 911 ambulance or paramedic services by contract to the
1188 most responsible offeror as defined in [~~Subsection 63G-6-103(24)~~] Section 63G-6a-103.

1189 (ii) An award under Subsection (3)(a)(i) shall be made to the responsible offeror whose
1190 proposal is determined in writing to be the most advantageous to the political subdivision,
1191 taking into consideration price and the evaluation factors set forth in the request for proposal.

1192 (b) The applicants who are approved under Section 26-8a-405 and who are selected
1193 under this section may be the political subdivision issuing the request for competitive sealed
1194 proposals, or any other public entity or entities, any private person or entity, or any
1195 combination thereof.

1196 (c) A political subdivision may reject all of the competitive proposals.

1197 (4) In seeking competitive sealed proposals and awarding contracts under this section,
1198 a political subdivision:

1199 (a) shall apply the public convenience and necessity factors listed in Subsections
1200 26-8a-408(2) through (6);

1201 (b) shall require the applicant responding to the proposal to disclose how the applicant
1202 will meet performance standards in the request for proposal;

1203 (c) may not require or restrict an applicant to a certain method of meeting the

1204 performance standards, including:

1205 (i) requiring ambulance medical personnel to also be a firefighter; or

1206 (ii) mandating that offerors use fire stations or dispatch services of the political

1207 subdivision;

1208 (d) shall require an applicant to submit the proposal:

1209 (i) based on full cost accounting in accordance with generally accepted accounting

1210 principals; and

1211 (ii) if the applicant is a governmental entity, in addition to the requirements of

1212 Subsection (4)(e)(i), in accordance with generally accepted government auditing standards and

1213 in compliance with the State of Utah Legal Compliance Audit Guide; and

1214 (e) shall set forth in the request for proposal:

1215 (i) the method for determining full cost accounting in accordance with generally

1216 accepted accounting principles, and require an applicant to submit the proposal based on such

1217 full cost accounting principles;

1218 (ii) guidelines established to further competition and provider accountability; and

1219 (iii) a list of the factors that will be considered by the political subdivision in the award

1220 of the contract, including by percentage, the relative weight of the factors established under this

1221 Subsection (4)(e), which may include such things as:

1222 (A) response times;

1223 (B) staging locations;

1224 (C) experience;

1225 (D) quality of care; and

1226 (E) cost, consistent with the cost accounting method in Subsection (4)(e)(i).

1227 (5) (a) Notwithstanding [~~the provisions of Subsection 63G-6-104(3), the~~] any provision

1228 of Title 63G, Chapter 6a, Utah Procurement Code, to the contrary, the provisions of Title 63G,

1229 Chapter [6, Part 8, Legal and Contractual Remedies] 6a, Utah Procurement Code, apply to the

1230 procurement process required by this section, except as provided in Subsection (5)(c).

1231 (b) [~~The Procurement Appeals Board created in Section 63G-6-807~~] An appeals board,

1232 as defined in Section 63G-6a-103, shall have jurisdiction to review and determine an appeal of

1233 an offeror under this section in the same manner as provided in Section [63G-6-810]

1234 63G-6a-1703.

1235 (c) (i) An offeror may appeal the solicitation or award as provided by the political
1236 subdivision's procedures. After all political subdivision appeal rights are exhausted, the offeror
1237 may appeal under the provisions of Subsections (5)(a) and (b).

1238 (ii) The factual determination required by Subsection [~~63G-6-813~~] 63G-6a-1708(1)
1239 shall be based on whether the solicitation or award was made in accordance with the
1240 procedures set forth in this section and Section 26-8a-405.2.

1241 (d) The determination of an issue of fact by the appeals board shall be final and
1242 conclusive unless arbitrary and capricious or clearly erroneous as provided in Section
1243 [~~63G-6-813~~] 63G-6a-1708.

1244 Section 29. Section **26-8a-405.5** is amended to read:

1245 **26-8a-405.5. Use of competitive sealed proposals -- Procedure -- Appeal rights.**

1246 (1) (a) The department shall issue a request for proposal for non-911 services in a
1247 geographic service area if the department receives a request from a political subdivision under
1248 Subsection 26-8a-405.4(3)(a)(ii)(B) to issue a request for proposal for non-911 services.

1249 (b) Competitive sealed proposals for non-911 services under Subsection (1)(a) shall be
1250 solicited through a request for proposal and the provisions of this section.

1251 (c) (i) Notice of the request for proposals shall be published:

1252 (A) at least once a week for three consecutive weeks in a newspaper of general
1253 circulation published in the county; or

1254 (B) if there is no such newspaper, then notice shall be posted for at least 20 days in at
1255 least five public places in the county; and

1256 (ii) in accordance with Section 45-1-101 for at least 20 days.

1257 (2) (a) Proposals shall be opened so as to avoid disclosure of contents to competing
1258 offerors during the process of negotiations.

1259 (b) (i) Subsequent to the published notice, and prior to selecting an applicant, the
1260 department shall hold a presubmission conference with interested applicants for the purpose of
1261 assuring full understanding of, and responsiveness to, solicitation requirements.

1262 (ii) The department shall allow at least 90 days from the presubmission conference for
1263 the proposers to submit proposals.

1264 (c) Subsequent to the presubmission conference, the department may issue addenda to
1265 the request for proposals. An addenda to a request for proposal shall be finalized and posted by

1266 the department at least 45 days before the day on which the proposal must be submitted.

1267 (d) Offerors to the request for proposals shall be accorded fair and equal treatment with
1268 respect to any opportunity for discussion and revisions of proposals, and revisions may be
1269 permitted after submission and before a contract is awarded for the purpose of obtaining best
1270 and final offers.

1271 (e) In conducting discussions, there shall be no disclosures of any information derived
1272 from proposals submitted by competing offerors.

1273 (3) (a) (i) The department may select an applicant approved by the department under
1274 Section 26-8a-404 to provide non-911 services by contract to the most responsible offeror as
1275 defined in [~~Subsection 63G-6-103(24)~~] Section 63G-6a-103.

1276 (ii) An award under Subsection (3)(a)(i) shall be made to the responsible offeror whose
1277 proposal is determined in writing to be the most advantageous to the public, taking into
1278 consideration price and the evaluation factors set forth in the request for proposal.

1279 (b) The applicants who are approved under Section 26-8a-405 and who are selected
1280 under this section may be the political subdivision responding to the request for competitive
1281 sealed proposals, or any other public entity or entities, any private person or entity, or any
1282 combination thereof.

1283 (c) The department may reject all of the competitive proposals.

1284 (4) In seeking competitive sealed proposals and awarding contracts under this section,
1285 the department:

1286 (a) shall consider the public convenience and necessity factors listed in Subsections
1287 26-8a-408(2) through (6);

1288 (b) shall require the applicant responding to the proposal to disclose how the applicant
1289 will meet performance standards in the request for proposal;

1290 (c) may not require or restrict an applicant to a certain method of meeting the
1291 performance standards, including:

1292 (i) requiring ambulance medical personnel to also be a firefighter; or

1293 (ii) mandating that offerors use fire stations or dispatch services of the political
1294 subdivision;

1295 (d) shall require an applicant to submit the proposal:

1296 (i) based on full cost accounting in accordance with generally accepted accounting

1297 principals; and
1298 (ii) if the applicant is a governmental entity, in addition to the requirements of
1299 Subsection (4)(e)(i), in accordance with generally accepted government auditing standards and
1300 in compliance with the State of Utah Legal Compliance Audit Guide; and

1301 (e) shall set forth in the request for proposal:

1302 (i) the method for determining full cost accounting in accordance with generally
1303 accepted accounting principles, and require an applicant to submit the proposal based on such
1304 full cost accounting principles;

1305 (ii) guidelines established to further competition and provider accountability; and

1306 (iii) a list of the factors that will be considered by the department in the award of the
1307 contract, including by percentage, the relative weight of the factors established under this
1308 Subsection (4)(e), which may include such things as:

1309 (A) response times;

1310 (B) staging locations;

1311 (C) experience;

1312 (D) quality of care; and

1313 (E) cost, consistent with the cost accounting method in Subsection (4)(e)(i).

1314 (5) A license issued under this section:

1315 (a) is for the exclusive geographic service area approved by the department;

1316 (b) is valid for four years;

1317 (c) is not subject to a request for license from another applicant under the provisions of
1318 Sections 26-8a-406 through 26-8a-409 during the four-year term, unless the applicant's license
1319 is revoked under Section 26-8a-504;

1320 (d) is subject to supervision by the department under Sections 26-8a-503 and
1321 26-8a-504; and

1322 (e) except as provided in Subsection (4)(a), is not subject to the provisions of Sections
1323 26-8a-406 through 26-8a-409.

1324 Section 30. Section **26-10-8** is amended to read:

1325 **26-10-8. Request for proposal required for non-state supplied services.**

1326 (1) Funds provided to the department through Sections 51-9-201 and 59-14-204 to be
1327 used to provide services, shall be awarded to non-governmental entities based on a competitive

1328 process consistent with Title 63G, Chapter [6] 6a, Utah Procurement Code.

1329 (2) Beginning July 1, 2010, and not more than every five years thereafter, the
1330 department shall issue requests for proposals for new or renewing contracts to award funding
1331 for programs under Subsection (1).

1332 Section 31. Section **26-10b-102** is amended to read:

1333 **26-10b-102. Department to award grants and contracts -- Applications.**

1334 (1) (a) Within appropriations specified by the Legislature for this purpose, the
1335 department may make grants to public and nonprofit entities for the cost of operation of
1336 providing primary health care services to medically underserved populations.

1337 (b) The department may, as funding permits, contract with community based
1338 organizations for the purpose of developing culturally and linguistically appropriate programs
1339 and services for low income and medically underserved populations through a pilot program to
1340 accomplish one or more of the following:

1341 (i) to educate individuals:

1342 (A) to use private and public health care coverage programs, products, services, and
1343 resources in a timely, effective, and responsible manner;

1344 (B) to make prudent use of private and public health care resources;

1345 (C) to pursue preventive health care, health screenings, and disease management; and

1346 (D) to locate health care programs and services;

1347 (ii) to assist individuals to develop:

1348 (A) personal health management;

1349 (B) self-sufficiency in daily care; and

1350 (C) life and disease management skills;

1351 (iii) to support translation of health materials and information;

1352 (iv) to facilitate an individual's access to primary care services and providers, including
1353 mental health services; and

1354 (v) to measure and report empirical results of the pilot project.

1355 (2) (a) Grants by the department shall be awarded based on:

1356 (i) applications submitted to the department in the manner and form prescribed by the
1357 department; and

1358 (ii) the criteria established in Section 26-10b-103.

- 1359 (b) The application for a grant under Subsection (2)(a) shall contain:
- 1360 (i) a requested award amount;
- 1361 (ii) a budget; and
- 1362 (iii) a narrative plan of the manner in which the applicant intends to provide the
- 1363 primary health care services described in Subsection 26-10b-101(7).
- 1364 (c) A contract bid for a service under Subsection (1)(b):
- 1365 (i) shall be awarded in accordance with Title 63G, Chapter [6] 6a, Utah Procurement
- 1366 Code;
- 1367 (ii) shall include the information described in Section 26-10b-103; and
- 1368 (iii) is subject to Subsection (3) [~~of this section~~].
- 1369 (3) (a) An applicant under this chapter shall demonstrate to the department that the
- 1370 applicant will not deny services to a person because of the person's inability to pay for the
- 1371 services.
- 1372 (b) Subsection (3)(a) does not preclude an applicant from seeking payment from the
- 1373 person receiving services, a third party, or a government agency if:
- 1374 (i) the applicant is authorized to charge for the services; and
- 1375 (ii) the person, third party, or government agency is under legal obligation to pay the
- 1376 charges.
- 1377 (4) The department shall maximize the use of federal matching funds received for
- 1378 services under Subsection (1)(b) to fund additional contracts under Subsection (1)(b).
- 1379 Section 32. Section **26-18-2.6** is amended to read:
- 1380 **26-18-2.6. Dental benefits.**
- 1381 (1) (a) The division shall establish a competitive bid process to bid out Medicaid dental
- 1382 benefits under this chapter.
- 1383 (b) The division may bid out the Medicaid dental benefits separately from other
- 1384 program benefits.
- 1385 (2) The division shall use the following criteria to evaluate dental bids:
- 1386 (a) ability to manage dental expenses;
- 1387 (b) proven ability to handle dental insurance;
- 1388 (c) efficiency of claim paying procedures;
- 1389 (d) provider contracting, discounts, and adequacy of network; and

- 1390 (e) other criteria established by the department.
- 1391 (3) The division shall request bids for the program's benefits:
- 1392 (a) in 2011; and
- 1393 (b) at least once every five years thereafter.
- 1394 (4) The division's contract with dental plans for the program's benefits shall include
- 1395 risk sharing provisions in which the dental plan must accept 100% of the risk for any difference
- 1396 between the division's premium payments per client and actual dental expenditures.
- 1397 (5) The division may not award contracts to:
- 1398 (a) more than three responsive bidders under this section; or
- 1399 (b) an insurer that does not have a current license in the state.
- 1400 (6) (a) The division may cancel the request for proposals if:
- 1401 (i) there are no responsive bidders; or
- 1402 (ii) the division determines that accepting the bids would increase the program's costs.
- 1403 (b) If the division cancels the request for proposals under Subsection (6)(a), the
- 1404 division shall report to the Health and Human Services Committee regarding the reasons for
- 1405 the decision.
- 1406 (7) Title 63G, Chapter [6] 6a, Utah Procurement Code, shall apply to this section.
- 1407 Section 33. Section **26-40-110** is amended to read:
- 1408 **26-40-110. Managed care -- Contracting for services.**
- 1409 (1) Program benefits provided to enrollees under the program, as described in Section
- 1410 26-40-106, shall be delivered in a managed care system if the department determines that
- 1411 adequate services are available where the enrollee lives or resides.
- 1412 (2) (a) The department shall use the following criteria to evaluate bids from health
- 1413 plans:
- 1414 (i) ability to manage medical expenses, including mental health costs;
- 1415 (ii) proven ability to handle accident and health insurance;
- 1416 (iii) efficiency of claim paying procedures;
- 1417 (iv) proven ability for managed care and quality assurance;
- 1418 (v) provider contracting and discounts;
- 1419 (vi) pharmacy benefit management;
- 1420 (vii) an estimate of total charges for administering the pool;

- 1421 (viii) ability to administer the pool in a cost-efficient manner;
- 1422 (ix) the ability to provide adequate providers and services in the state; and
- 1423 (x) other criteria established by the department.
- 1424 (b) The dental benefits required by Section 26-40-106 may be bid out separately from
- 1425 other program benefits.
- 1426 (c) Except for dental benefits, the department shall request bids for the program's
- 1427 benefits in 2008. The department shall request bids for the program's dental benefits in 2009.
- 1428 The department shall request bids for the program's benefits at least once every five years
- 1429 thereafter.
- 1430 (d) The department's contract with health plans for the program's benefits shall include
- 1431 risk sharing provisions in which the health plan shall accept at least 75% of the risk for any
- 1432 difference between the department's premium payments per client and actual medical
- 1433 expenditures.
- 1434 (3) The executive director shall report to and seek recommendations from the Health
- 1435 Advisory Council created in Section 26-1-7.5:
- 1436 (a) if the division receives less than two bids or proposals under this section that are
- 1437 acceptable to the division or responsive to the bid; and
- 1438 (b) before awarding a contract to a managed care system.
- 1439 (4) (a) The department shall award contracts to responsive bidders if the department
- 1440 determines that a bid is acceptable and meets the criteria of Subsections (2)(a) and (d).
- 1441 (b) The department may contract with the Group Insurance Division within the Utah
- 1442 State Retirement Office to provide services under Subsection (1) if:
- 1443 (i) the executive director seeks the recommendation of the Health Advisory Council
- 1444 under Subsection (3); and
- 1445 (ii) the executive director determines that the bids were not acceptable to the
- 1446 department.
- 1447 (c) In accordance with Section 49-20-201, a contract awarded under Subsection (4)(b)
- 1448 is not subject to the risk sharing required by Subsection (2)(d).
- 1449 (5) Title 63G, Chapter ~~6~~ 6a, Utah Procurement Code, shall apply to this section.
- 1450 Section 34. Section **30-3-11.3** is amended to read:
- 1451 **30-3-11.3. Mandatory educational course for divorcing parents -- Purpose --**

1452 **Curriculum -- Exceptions.**

1453 (1) The Judicial Council shall approve and implement a mandatory course for
1454 divorcing parents in all judicial districts. The mandatory course is designed to educate and
1455 sensitize divorcing parties to their children's needs both during and after the divorce process.

1456 (2) The Judicial Council shall adopt rules to implement and administer this program.

1457 (3) As a prerequisite to receiving a divorce decree, both parties are required to attend a
1458 mandatory course on their children's needs after filing a complaint for divorce and receiving a
1459 docket number, unless waived under Section 30-3-4. If that requirement is waived, the court
1460 may permit the divorce action to proceed.

1461 (4) The court may require unmarried parents to attend this educational course when
1462 those parents are involved in a visitation or custody proceeding before the court.

1463 (5) The mandatory course shall instruct both parties:

1464 (a) about divorce and its impacts on:

1465 (i) their child or children;

1466 (ii) their family relationship; and

1467 (iii) their financial responsibilities for their child or children; and

1468 (b) that domestic violence has a harmful effect on children and family relationships.

1469 (6) The Administrative Office of the Courts shall administer the course pursuant to
1470 Title 63G, Chapter [6] 6a, Utah Procurement Code, through private or public contracts and
1471 organize the program in each of Utah's judicial districts. The contracts shall provide for the
1472 recoupment of administrative expenses through the costs charged to individual parties,
1473 pursuant to Subsection (8).

1474 (7) A certificate of completion constitutes evidence to the court of course completion
1475 by the parties.

1476 (8) (a) Each party shall pay the costs of the course to the independent contractor
1477 providing the course at the time and place of the course. A fee of \$8 shall be collected, as part
1478 of the course fee paid by each participant, and deposited in the Children's Legal Defense
1479 Account, described in Section 51-9-408.

1480 (b) Each party who is unable to pay the costs of the course may attend the course
1481 without payment upon a prima facie showing of impecuniosity as evidenced by an affidavit of
1482 impecuniosity filed in the district court. In those situations, the independent contractor shall be

1483 reimbursed for its costs from the appropriation to the Administrative Office of the Courts for
1484 "Mandatory Educational Course for Divorcing Parents Program." Before a decree of divorce
1485 may be entered, the court shall make a final review and determination of impecuniosity and
1486 may order the payment of the costs if so determined.

1487 (9) Appropriations from the General Fund to the Administrative Office of the Courts
1488 for the "Mandatory Educational Course for Divorcing Parents Program" shall be used to pay
1489 the costs of an indigent parent who makes a showing as provided in Subsection (8)(b).

1490 (10) The Administrative Office of the Courts shall adopt a program to evaluate the
1491 effectiveness of the mandatory educational course. Progress reports shall be provided if
1492 requested by the Judiciary Interim Committee.

1493 Section 35. Section **30-3-11.4** is amended to read:

1494 **30-3-11.4. Mandatory orientation course for divorcing parties -- Purpose --**

1495 **Curriculum -- Exceptions.**

1496 (1) There is established a mandatory divorce orientation course for all parties with
1497 minor children who file a petition for temporary separation or for a divorce. A couple with no
1498 minor children are not required, but may choose to attend the course. The purpose of the
1499 course shall be to educate parties about the divorce process and reasonable alternatives.

1500 (2) A petitioner shall attend a divorce orientation course no more than 60 days after
1501 filing a petition for divorce.

1502 (3) The respondent shall attend the divorce orientation course no more than 30 days
1503 after being served with a petition for divorce.

1504 (4) The clerk of the court shall provide notice to a petitioner of the requirement for the
1505 course, and information regarding the course shall be included with the petition or motion,
1506 when served on the respondent.

1507 (5) The divorce orientation course shall be neutral, unbiased, at least one hour in
1508 duration, and include:

1509 (a) options available as alternatives to divorce;

1510 (b) resources available from courts and administrative agencies for resolving custody
1511 and support issues without filing for divorce;

1512 (c) resources available to improve or strengthen the marriage;

1513 (d) a discussion of the positive and negative consequences of divorce;

- 1514 (e) a discussion of the process of divorce;
- 1515 (f) options available for proceeding with a divorce, including:
- 1516 (i) mediation;
- 1517 (ii) collaborative law; and
- 1518 (iii) litigation; and
- 1519 (g) a discussion of post-divorce resources.
- 1520 (6) The course may be provided in conjunction with the mandatory course for
- 1521 divorcing parents required by Section 30-3-11.3.
- 1522 (7) The Administrative Office of the Courts shall administer the course pursuant to
- 1523 Title 63G, Chapter [6] 6a, Utah Procurement Code, through private or public contracts.
- 1524 (8) Each participant shall pay the costs of the course, which may not exceed \$20, to the
- 1525 independent contractor providing the course at the time and place of the course.
- 1526 (a) A fee of \$5 shall be collected, as part of the course fee paid by each participant, and
- 1527 deposited in the Children's Legal Defense Account described in Section 51-9-408.
- 1528 (b) A participant who is unable to pay the costs of the course may attend without
- 1529 payment and request an Affidavit of Impecuniosity from the provider to be filed with the
- 1530 petition or motion. The provider shall be reimbursed for its costs by the Administrative Office
- 1531 of the Courts. A petitioner who is later determined not to meet the qualifications for
- 1532 impecuniosity may be ordered to pay the costs of the course.
- 1533 (9) Appropriations from the General Fund to the Administrative Office of the Courts
- 1534 for the divorce orientation course shall be used to pay the costs of an indigent petitioner who is
- 1535 determined to be impecunious as provided in Subsection (8)(b).
- 1536 (10) The Online Court Assistance Program shall include instructions with the forms for
- 1537 divorce which inform the petitioner of the requirement of this section.
- 1538 (11) Both parties shall attend a divorce orientation course before a divorce decree may
- 1539 be entered, unless waived by the court. A certificate of completion constitutes evidence to the
- 1540 court of course completion by the parties.
- 1541 (12) It shall be an affirmative defense in all divorce actions that the divorce orientation
- 1542 requirement was not complied with, and the action may not continue until a party has
- 1543 complied.
- 1544 (13) The Administrative Office of the Courts shall adopt a program to evaluate the

1545 effectiveness of the mandatory educational course. Progress reports shall be provided if
1546 requested by the Judiciary Interim Committee.

1547 Section 36. Section **30-3-38** is amended to read:

1548 **30-3-38. Expedited Parent-time Enforcement Program.**

1549 (1) There is established an Expedited Parent-time Enforcement Program in the third
1550 judicial district to be administered by the Administrative Office of the Courts.

1551 (2) As used in this section:

1552 (a) "Mediator" means a person who:

1553 (i) is qualified to mediate parent-time disputes under criteria established by the
1554 Administrative Office of the Courts; and

1555 (ii) agrees to follow billing guidelines established by the Administrative Office of the
1556 Courts and this section.

1557 (b) "Services to facilitate parent-time" or "services" means services designed to assist
1558 families in resolving parent-time problems through:

1559 (i) counseling;

1560 (ii) supervised parent-time;

1561 (iii) neutral drop-off and pick-up;

1562 (iv) educational classes; and

1563 (v) other related activities.

1564 (3) (a) If a parent files a motion in the third district court alleging that court-ordered
1565 parent-time rights are being violated, the clerk of the court, after assigning the case to a judge,
1566 shall refer the case to the administrator of this program for assignment to a mediator, unless a
1567 parent is incarcerated or otherwise unavailable. Unless the court rules otherwise, a parent
1568 residing outside of the state is not unavailable. The director of the program for the courts, the
1569 court, or the mediator may excuse either party from the requirement to mediate for good cause.

1570 (b) Upon receipt of a case, the mediator shall:

1571 (i) meet with the parents to address parent-time issues within 15 days of the motion
1572 being filed;

1573 (ii) assess the situation;

1574 (iii) facilitate an agreement on parent-time between the parents; and

1575 (iv) determine whether a referral to a service provider under Subsection (3)(c) is

1576 warranted.

1577 (c) While a case is in mediation, a mediator may refer the parents to a service provider
1578 designated by the Department of Human Services for services to facilitate parent-time if:

1579 (i) the services may be of significant benefit to the parents; or

1580 (ii) (A) a mediated agreement between the parents is unlikely; and

1581 (B) the services may facilitate an agreement.

1582 (d) At any time during mediation, a mediator shall terminate mediation and transfer the
1583 case to the administrator of the program for referral to the judge or court commissioner to

1584 whom the case was assigned under Subsection (3)(a) if:

1585 (i) a written agreement between the parents is reached; or

1586 (ii) the parents are unable to reach an agreement through mediation and:

1587 (A) the parents have received services to facilitate parent-time;

1588 (B) both parents object to receiving services to facilitate parent-time; or

1589 (C) the parents are unlikely to benefit from receiving services to facilitate parent-time.

1590 (e) Upon receiving a case from the administrator of the program, a judge or court
1591 commissioner may:

1592 (i) review the agreement of the parents and, if acceptable, sign it as an order;

1593 (ii) order the parents to receive services to facilitate parent-time;

1594 (iii) proceed with the case; or

1595 (iv) take other appropriate action.

1596 (4) (a) If a parent makes a particularized allegation of physical or sexual abuse of a
1597 child who is the subject of a parent-time order against the other parent or a member of the other
1598 parent's household to a mediator or service provider, the mediator or service provider shall
1599 immediately report that information to:

1600 (i) the judge assigned to the case who may immediately issue orders and take other
1601 appropriate action to resolve the allegation and protect the child; and

1602 (ii) the Division of Child and Family Services within the Department of Human
1603 Services in the manner required by Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect
1604 Reporting Requirements.

1605 (b) If an allegation under Subsection (4)(a) is made against a parent with parent-time
1606 rights or a member of that parent's household, parent-time by that parent shall, pursuant to an

1607 order of the court, be supervised until:

1608 (i) the allegation has been resolved; or

1609 (ii) a court orders otherwise.

1610 (c) Notwithstanding an allegation under Subsection (4)(a), a mediator may continue to
1611 mediate parent-time problems and a service provider may continue to provide services to
1612 facilitate parent-time unless otherwise ordered by a court.

1613 (5) (a) The Department of Human Services may contract with one or more entities in
1614 accordance with Title 63G, Chapter [6] 6a, Utah Procurement Code, to provide:

1615 (i) services to facilitate parent-time;

1616 (ii) case management services; and

1617 (iii) administrative services.

1618 (b) An entity who contracts with the Department of Human Services under Subsection
1619 (5)(a) shall:

1620 (i) be qualified to provide one or more of the services listed in Subsection (5)(a); and

1621 (ii) agree to follow billing guidelines established by the Department of Human Services
1622 and this section.

1623 (6) (a) Except as provided in Subsection (6)(b), the cost of mediation shall be:

1624 (i) reduced to a sum certain;

1625 (ii) divided equally between the parents; and

1626 (iii) charged against each parent taking into account the ability of that parent to pay
1627 under billing guidelines adopted in accordance with this section.

1628 (b) A judge may order a parent to pay an amount in excess of that provided for in
1629 Subsection (6)(a) if the parent:

1630 (i) failed to participate in good faith in mediation or services to facilitate parent-time;

1631 or

1632 (ii) made an unfounded assertion or claim of physical or sexual abuse of a child.

1633 (c) (i) The cost of mediation and services to facilitate parent-time may be charged to
1634 parents at periodic intervals.

1635 (ii) Mediation and services to facilitate parent-time may only be terminated on the
1636 ground of nonpayment if both parents are delinquent.

1637 (7) (a) The Judicial Council may make rules to implement and administer the

1638 provisions of this program related to mediation.

1639 (b) The Department of Human Services may make rules to implement and administer
1640 the provisions of this program related to services to facilitate parent-time.

1641 (8) (a) The Administrative Office of the Courts shall adopt outcome measures to
1642 evaluate the effectiveness of the mediation component of this program. Progress reports shall
1643 be provided to the Judiciary Interim Committee as requested by the committee.

1644 (b) The Department of Human Services shall adopt outcome measures to evaluate the
1645 effectiveness of the services component of this program. Progress reports shall be provided to
1646 the Judiciary Interim Committee as requested by the committee.

1647 (c) The Administrative Office of the Courts and the Department of Human Services
1648 may adopt joint outcome measures and file joint reports to satisfy the requirements of
1649 Subsections (7)(a) and (b).

1650 (9) The Department of Human Services shall, by following the procedures and
1651 requirements of Title 63J, Chapter 5, Federal Funds Procedures, apply for federal funds as
1652 available.

1653 Section 37. Section **31A-29-110** is amended to read:

1654 **31A-29-110. Pool administrator -- Selection -- Powers.**

1655 (1) The board shall select a pool administrator in accordance with Title 63G, Chapter
1656 [6] 6a, Utah Procurement Code. The board shall evaluate bids based on criteria established by
1657 the board, which shall include:

- 1658 (a) ability to manage medical expenses;
 - 1659 (b) proven ability to handle accident and health insurance;
 - 1660 (c) efficiency of claim paying procedures;
 - 1661 (d) marketing and underwriting;
 - 1662 (e) proven ability for managed care and quality assurance;
 - 1663 (f) provider contracting and discounts;
 - 1664 (g) pharmacy benefit management;
 - 1665 (h) an estimate of total charges for administering the pool; and
 - 1666 (i) ability to administer the pool in a cost-efficient manner.
- 1667 (2) A pool administrator may be:
- 1668 (a) a health insurer;

1669 (b) a health maintenance organization;

1670 (c) a third-party administrator; or

1671 (d) any person or entity which has demonstrated ability to meet the criteria in

1672 Subsection (1).

1673 (3) (a) The pool administrator shall serve for a period of three years, with two one-year
1674 extension options, subject to the terms, conditions, and limitations of the contract between the
1675 board and the administrator.

1676 (b) At least one year prior to the expiration of the contract between the board and the
1677 pool administrator, the board shall invite all interested parties, including the current pool
1678 administrator, to submit bids to serve as the pool administrator.

1679 (c) Selection of the pool administrator for a succeeding period shall be made at least
1680 six months prior to the expiration of the period of service under Subsection (3)(a).

1681 (4) The pool administrator is responsible for all operational functions of the pool and
1682 shall:

1683 (a) have access to all nonpatient specific experience data, statistics, treatment criteria,
1684 and guidelines compiled or adopted by the Medicaid program, the Public Employees Health
1685 Plan, the Department of Health, or the Insurance Department, and which are not otherwise
1686 declared by statute to be confidential;

1687 (b) perform all marketing, eligibility, enrollment, member agreements, and
1688 administrative claim payment functions relating to the pool;

1689 (c) establish, administer, and operate a monthly premium billing procedure for
1690 collection of premiums from enrollees;

1691 (d) perform all necessary functions to assure timely payment of benefits to enrollees,
1692 including:

1693 (i) making information available relating to the proper manner of submitting a claim
1694 for benefits to the pool administrator and distributing forms upon which submission shall be
1695 made; and

1696 (ii) evaluating the eligibility of each claim for payment by the pool;

1697 (e) submit regular reports to the board regarding the operation of the pool, the
1698 frequency, content, and form of which reports shall be determined by the board;

1699 (f) following the close of each calendar year, determine net written and earned

1700 premiums, the expense of administration, and the paid and incurred losses for the year and
1701 submit a report of this information to the board, the commissioner, and the Division of Finance
1702 on a form prescribed by the commissioner; and

1703 (g) be paid as provided in the plan of operation for expenses incurred in the
1704 performance of the pool administrator's services.

1705 Section 38. Section **31A-29-111** is amended to read:

1706 **31A-29-111. Eligibility -- Limitations.**

1707 (1) (a) Except as provided in Subsection (1)(b), an individual who is not HIPAA
1708 eligible is eligible for pool coverage if the individual:

1709 (i) pays the established premium;

1710 (ii) is a resident of this state; and

1711 (iii) meets the health underwriting criteria under Subsection (5)(a).

1712 (b) Notwithstanding Subsection (1)(a), an individual who is not HIPAA eligible is not
1713 eligible for pool coverage if one or more of the following conditions apply:

1714 (i) the individual is eligible for health care benefits under Medicaid or Medicare,
1715 except as provided in Section 31A-29-112;

1716 (ii) the individual has terminated coverage in the pool, unless:

1717 (A) 12 months have elapsed since the termination date; or

1718 (B) the individual demonstrates that creditable coverage has been involuntarily
1719 terminated for any reason other than nonpayment of premium;

1720 (iii) the pool has paid the maximum lifetime benefit to or on behalf of the individual;

1721 (iv) the individual is an inmate of a public institution;

1722 (v) the individual is eligible for a public health plan, as defined in federal regulations
1723 adopted pursuant to 42 U.S.C. 300gg;

1724 (vi) the individual's health condition does not meet the criteria established under
1725 Subsection (5);

1726 (vii) the individual is eligible for coverage under an employer group that offers a health
1727 benefit plan or a self-insurance arrangement to its eligible employees, dependents, or members
1728 as:

1729 (A) an eligible employee;

1730 (B) a dependent of an eligible employee; or

1731 (C) a member;

1732 (viii) the individual is covered under any other health benefit plan;

1733 (ix) at the time of application, the individual has not resided in Utah for at least 12

1734 consecutive months preceding the date of application; or

1735 (x) the individual's employer pays any part of the individual's health benefit plan

1736 premium, either as an insured or a dependent, for pool coverage.

1737 (2) (a) Except as provided in Subsection (2)(b), an individual who is HIPAA eligible is

1738 eligible for pool coverage if the individual:

1739 (i) pays the established premium; and

1740 (ii) is a resident of this state.

1741 (b) Notwithstanding Subsection (2)(a), a HIPAA eligible individual is not eligible for

1742 pool coverage if one or more of the following conditions apply:

1743 (i) the individual is eligible for health care benefits under Medicaid or Medicare,

1744 except as provided in Section 31A-29-112;

1745 (ii) the individual is eligible for a public health plan, as defined in federal regulations

1746 adopted pursuant to 42 U.S.C. 300gg;

1747 (iii) the individual is covered under any other health benefit plan;

1748 (iv) the individual is eligible for coverage under an employer group that offers a health

1749 benefit plan or self-insurance arrangements to its eligible employees, dependents, or members

1750 as:

1751 (A) an eligible employee;

1752 (B) a dependent of an eligible employee; or

1753 (C) a member;

1754 (v) the pool has paid the maximum lifetime benefit to or on behalf of the individual;

1755 (vi) the individual is an inmate of a public institution; or

1756 (vii) the individual's employer pays any part of the individual's health benefit plan

1757 premium, either as an insured or a dependent, for pool coverage.

1758 (3) (a) Notwithstanding Subsection (1)(b)(ix), if otherwise eligible under Subsection

1759 (1)(a), an individual whose health care insurance coverage from a state high risk pool with

1760 similar coverage is terminated because of nonresidency in another state is eligible for coverage

1761 under the pool subject to the conditions of Subsections (1)(b)(i) through (viii).

1762 (b) Coverage sought under Subsection (3)(a) shall be applied for within 63 days after
1763 the termination date of the previous high risk pool coverage.

1764 (c) The effective date of this state's pool coverage shall be the date of termination of
1765 the previous high risk pool coverage.

1766 (d) The waiting period of an individual with a preexisting condition applying for
1767 coverage under this chapter shall be waived:

1768 (i) to the extent to which the waiting period was satisfied under a similar plan from
1769 another state; and

1770 (ii) if the other state's benefit limitation was not reached.

1771 (4) (a) If an eligible individual applies for pool coverage within 30 days of being
1772 denied coverage by an individual carrier, the effective date for pool coverage shall be no later
1773 than the first day of the month following the date of submission of the completed insurance
1774 application to the carrier.

1775 (b) Notwithstanding Subsection (4)(a), for individuals eligible for coverage under
1776 Subsection (3), the effective date shall be the date of termination of the previous high risk pool
1777 coverage.

1778 (5) (a) The board shall establish and adjust, as necessary, health underwriting criteria
1779 based on:

1780 (i) health condition; and

1781 (ii) expected claims so that the expected claims are anticipated to remain within
1782 available funding.

1783 (b) The board, with approval of the commissioner, may contract with one or more
1784 providers under Title 63G, Chapter [6] 6a, Utah Procurement Code, to develop underwriting
1785 criteria under Subsection (5)(a).

1786 (c) If an individual is denied coverage by the pool under the criteria established in
1787 Subsection (5)(a), the pool shall issue a certificate of insurability to the individual for coverage
1788 under Subsection 31A-30-108(3).

1789 Section 39. Section **31A-33-104** is amended to read:

1790 **31A-33-104. Workers' Compensation Fund exempted.**

1791 (1) The Workers' Compensation Fund is exempt from the provisions of:

1792 (a) Title 52, Chapter 4, Open and Public Meetings Act;

- 1793 (b) Title 63G, Chapter 2, Government Records Access and Management Act; and
1794 (c) Title 63A, Utah Administrative Services Code.
- 1795 (2) The board may specifically exempt the Workers' Compensation Fund from any
1796 provisions of:
- 1797 (a) Title 67, Chapter 19, Utah State Personnel Management Act; and
1798 (b) Title 63G, Chapter [6] 6a, Utah Procurement Code.
- 1799 (3) The provisions of Title 63G, Chapter 4, Administrative Procedures Act, do not
1800 govern the initial determination of any person's eligibility for benefits under Title 34A, Chapter
1801 2, Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act.
1802 Section 40. Section **31A-33-107** is amended to read:
- 1803 **31A-33-107. Duties of board -- Creation of subsidiaries -- Entering into joint**
1804 **enterprises.**
- 1805 (1) The board shall:
- 1806 (a) appoint a chief executive officer to administer the Workers' Compensation Fund;
1807 (b) receive and act upon financial, management, and actuarial reports covering the
1808 operations of the Workers' Compensation Fund;
- 1809 (c) ensure that the Workers' Compensation Fund is administered according to law;
1810 (d) examine and approve an annual operating budget for the Workers' Compensation
1811 Fund;
- 1812 (e) serve as investment trustees and fiduciaries of the Injury Fund;
1813 (f) receive and act upon recommendations of the chief executive officer;
1814 (g) develop broad policy for the long-term operation of the Workers' Compensation
1815 Fund, consistent with its mission and fiduciary responsibility;
- 1816 (h) subject to Chapter 19a, Part 4, Workers' Compensation Rates, approve any rating
1817 plans that would modify a policyholder's premium;
- 1818 (i) subject to Chapter 19a, Part 4, Workers' Compensation Rates, approve the amount
1819 of deviation, if any, from standard insurance rates;
- 1820 (j) approve the amount of the dividends, if any, to be returned to policyholders;
1821 (k) adopt a procurement policy consistent with the provisions of Title 63G, Chapter [6]
1822 6a, Utah Procurement Code;
- 1823 (l) develop and publish an annual report to policyholders, the governor, the Legislature,

1824 and interested parties that describes the financial condition of the Injury Fund, including a
1825 statement of expenses and income and what measures were taken or will be necessary to keep
1826 the Injury Fund actuarially sound;

1827 (m) establish a fiscal year;

1828 (n) determine and establish an actuarially sound price for insurance offered by the
1829 fund;

1830 (o) establish conflict of interest requirements that govern the board, officers, and
1831 employees;

1832 (p) establish compensation and reasonable expenses to be paid to directors on the board
1833 subject to the requirements of Section 31A-33-106, so that the board may not approve

1834 compensation that exceeds the amount described in Subsection 31A-33-106(18)(a)(i)(B); and

1835 (q) perform all other acts necessary for the policymaking and oversight of the Workers'
1836 Compensation Fund.

1837 (2) Subject to board review and its responsibilities under Subsection (1)(e), the board
1838 may delegate authority to make daily investment decisions.

1839 (3) The fund may form or acquire a subsidiary or enter into a joint enterprise:

1840 (a) only if that action is approved by the board; and

1841 (b) subject to the limitations in Section 31A-33-103.5.

1842 Section 41. Section **34A-2-203** is amended to read:

1843 **34A-2-203. Payment of premiums for workers' compensation.**

1844 (1) Until June 30, 2007, a department, commission, board, or other agency of the state
1845 shall pay the insurance premium on its employees direct to the Workers' Compensation Fund.

1846 (2) Beginning July 1, 2007, the state shall secure the payment of workers'
1847 compensation benefits for its employees:

1848 (a) by:

1849 (i) insuring, and keeping insured, the payment of this compensation with the Workers'
1850 Compensation Fund;

1851 (ii) insuring, and keeping insured, the payment of this compensation with any stock
1852 corporation or mutual association authorized to transact the business of workers' compensation
1853 insurance in this state; or

1854 (iii) paying direct compensation as a self-insured employer in the amount, in the

1855 manner, and when due as provided for in this chapter or Chapter 3, Utah Occupational Disease
1856 Act;

1857 (b) in accordance with Title 63A, Chapter 4, Risk Management; and

1858 (c) subject to Subsection (3).

1859 (3) (a) If the state determines to secure the payment of workers' compensation benefits
1860 for its employees by paying direct compensation as a self-insured employer in the amount, in
1861 the manner, and due as provided for in this chapter or Chapter 3, Utah Occupational Disease
1862 Act, the state is:

1863 (i) exempt from Section 34A-2-202.5 and Subsection 34A-2-704(14); and

1864 (ii) required to pay a premium assessment as provided in Section 34A-2-202.

1865 (b) If the state chooses to pay workers' compensation benefits for its employees
1866 through insuring under Subsection (2)(a)(i) or (ii), the state shall obtain that insurance in
1867 accordance with Title 63G, Chapter [6] 6a, Utah Procurement Code.

1868 Section 42. Section **35A-5-202** is amended to read:

1869 **35A-5-202. Contracts with providers.**

1870 (1) In compliance with Title 63G, Chapter [6] 6a, Utah Procurement Code, the
1871 department shall enter into a contract with one or more qualified providers to implement the
1872 workforce improvement plan created under Section 35A-5-201.

1873 (2) A contract entered into under this section shall be:

1874 (a) performance based; and

1875 (b) structured so that the provider receives reimbursement based on:

1876 (i) job development;

1877 (ii) participant placement in jobs;

1878 (iii) wages and benefits provided; and

1879 (iv) participant retention in jobs over at least a 12-month period.

1880 (3) If the department determines through the procurement process that there are no
1881 qualified providers to implement the workforce improvement plan, the department may
1882 implement the plan.

1883 Section 43. Section **38-1-30** is amended to read:

1884 **38-1-30. Third party contract -- Designated agent.**

1885 (1) The division shall contract in accordance with Title 63G, Chapter [6] 6a, Utah

1886 Procurement Code, with a third party to establish and maintain the database for the purposes
1887 established under this section, Section 38-1-27, and Sections 38-1-31 through 38-1-36.

1888 (2) (a) The third party under contract under this section is the division's designated
1889 agent, and shall develop and maintain a database from the information provided by:

1890 (i) local government entities issuing building permits;

1891 (ii) original contractors;

1892 (iii) subcontractors; and

1893 (iv) other interested persons.

1894 (b) The database shall accommodate filings by third parties on behalf of clients.

1895 (c) The division and the designated agent shall design, develop, and test the database
1896 for full implementation on May 1, 2005.

1897 (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1898 division shall make rules and develop procedures for:

1899 (a) the division to oversee and enforce this section, Section 38-1-27, and Sections
1900 38-1-31 through 38-1-36;

1901 (b) the designated agent to administer this section, Section 38-1-27, and Sections
1902 38-1-31 through 38-1-36; and

1903 (c) the form of submission of an alternate filing, which may include procedures for
1904 rejecting an illegible or incomplete filing.

1905 (4) (a) The designated agent shall archive computer data files at least semiannually for
1906 auditing purposes.

1907 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1908 division shall make rules to allow the designated agent to periodically archive projects from the
1909 database.

1910 (c) A project shall be archived no earlier than:

1911 (i) one year after the day on which a notice of completion is filed for a project;

1912 (ii) if no notice of completion is filed, two years after the last filing activity for a
1913 project; or

1914 (iii) one year after the day on which a filing is cancelled under Subsection
1915 38-1-32(6)(c) or 38-1-33(2)(c).

1916 (d) The division may audit the designated agent's administration of the database as

1917 often as the division considers necessary.

1918 (5) The designated agent shall carry errors and omissions insurance in the amounts
1919 established by rule made by the division in accordance with Title 63G, Chapter 3, Utah
1920 Administrative Rulemaking Act.

1921 (6) (a) The designated agent shall make reasonable efforts to assure the accurate entry
1922 into the database of information provided in alternate filings.

1923 (b) The designated agent shall meet or exceed standards established by the division for
1924 the accuracy of data entry for alternate filings.

1925 (7) The designated agent is not liable for the correctness of the information contained
1926 in an alternate filing it enters into the database.

1927 Section 44. Section **38-1-39** is amended to read:

1928 **38-1-39. Waiver or impairment of a lien right -- Forms -- Scope.**

1929 (1) As used in this section:

1930 (a) "Check" means a payment instrument on a depository institution including:

1931 (i) a check;

1932 (ii) a draft;

1933 (iii) an order; or

1934 (iv) other instrument.

1935 (b) "Depository institution" is as defined in Section 7-1-103.

1936 (c) "Lien claimant" means a person that claims a lien under this chapter.

1937 (d) "Receives payment" means, in the case of a restrictive endorsement, a payee has
1938 endorsed a check and the check is presented to and paid by the depository institution on which
1939 it is drawn.

1940 (2) Notwithstanding Section 38-1-29, a written consent given by a lien claimant that
1941 waives or limits the lien claimant's lien rights is enforceable only if the lien claimant:

1942 (a) (i) executes a waiver and release that is signed by the lien claimant or the lien
1943 claimant's authorized agent; or

1944 (ii) for a restrictive endorsement on a check, includes a restrictive endorsement on a
1945 check that is:

1946 (A) signed by the lien claimant or the lien claimant's authorized agent; and

1947 (B) in substantially the same form set forth in Subsection (4)(d); and

1948 (b) receives payment of the amount identified in the waiver and release or check that
1949 includes the restrictive endorsement:

1950 (i) including payment by a joint payee check; and

1951 (ii) for a progress payment, only to the extent of the payment.

1952 (3) (a) Notwithstanding the language of a waiver and release described in Subsection
1953 (2), Subsection (3)(b) applies if:

1954 (i) the payment given in exchange for any waiver and release of lien is made by check;
1955 and

1956 (ii) the check fails to clear the depository institution on which it is drawn for any
1957 reason.

1958 (b) If the conditions of Subsection (3)(a) are met:

1959 (i) the waiver and release described in Subsection (3)(a) is null, void, and of no legal
1960 effect; and

1961 (ii) the following will not be affected by the lien claimant's execution of the waiver and
1962 release:

1963 (A) any lien;

1964 (B) any lien right;

1965 (C) any bond right;

1966 (D) any contract right; or

1967 (E) any other right to recover payment afforded to the lien claimant in law or equity.

1968 (4) (a) A waiver and release given by a lien claimant meets the requirements of this
1969 section if it is in substantially the form provided in this Subsection (4) for the circumstance
1970 provided in this Subsection (4).

1971 (b) A waiver and release may be in substantially the following form if the lien claimant
1972 is required to execute a waiver and release in exchange for or to induce the payment of a
1973 progress billing:

1974 "UTAH CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

1975 Property Name: _____

1976 Property Location: _____

1977 Undersigned's Customer: _____

1978 Invoice/Payment Application Number: _____

1979 Payment Amount: _____

1980 Payment Period: _____

1981 To the extent provided below, this document becomes effective to release and the
1982 undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38,
1983 Chapter 1, Mechanics' Liens, or any bond right under Utah Code Ann., Title 14, Contractors'
1984 Bonds, or Section [~~63G-6-505~~] 63G-6a-1103 related to payment rights the undersigned has on
1985 the above described Property once:

1986 (1) the undersigned endorses a check in the above referenced Payment Amount payable
1987 to the undersigned; and

1988 (2) the check is paid by the depository institution on which it is drawn.

1989 This waiver and release applies to a progress payment for the work, materials,
1990 equipment, or a combination of work, materials, and equipment furnished by the undersigned
1991 to the Property or to the Undersigned's Customer which are the subject of the Invoice or
1992 Payment Application, but only to the extent of the Payment Amount. This waiver and release
1993 does not apply to any retention withheld; any items, modifications, or changes pending
1994 approval; disputed items and claims; or items furnished or invoiced after the Payment Period.

1995 The undersigned warrants that the undersigned either has already paid or will use the
1996 money the undersigned receives from this progress payment promptly to pay in full all the
1997 undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials,
1998 equipment, or combination of work, materials, and equipment that are the subject of this
1999 waiver and release.

2000 Dated: _____

2001 _____ (Company Name)

2002 _____ By: _____

2003 _____ Its: _____ "

2004 (c) A waiver and release may be in substantially the following form if the lien claimant
2005 is required to execute a waiver and release in exchange for or to induce the payment of a final
2006 billing:

2007 "UTAH WAIVER AND RELEASE UPON FINAL PAYMENT

2008 Property Name: _____

2009 Property Location: _____

2010 Undersigned's Customer: _____

2011 Invoice/Payment Application Number: _____

2012 Payment Amount: _____

2013 To the extent provided below, this document becomes effective to release and the
2014 undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38,
2015 Chapter 1, Mechanics' Liens, or any bond right under Utah Code Ann., Title 14, Contractors'
2016 Bonds, or Section [~~63G-6-505~~] 63G-6a-1103 related to payment rights the undersigned has on
2017 the above described Property once:

2018 (1) the undersigned endorses a check in the above referenced Payment Amount payable
2019 to the undersigned; and

2020 (2) the check is paid by the depository institution on which it is drawn.

2021 This waiver and release applies to the final payment for the work, materials, equipment,
2022 or combination of work, materials, and equipment furnished by the undersigned to the Property
2023 or to the Undersigned's Customer.

2024 The undersigned warrants that the undersigned either has already paid or will use the
2025 money the undersigned receives from the final payment promptly to pay in full all the
2026 undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials,
2027 equipment, or combination of work, materials, and equipment that are the subject of this
2028 waiver and release.

2029 Dated: _____

2030 _____ (Company Name)

2031 _____ By: _____

2032 _____ Its: _____ "

2033 (d) A restrictive endorsement placed on a check to effectuate a waiver and release
2034 described in this Subsection (4) meets the requirements of this section if it is in substantially
2035 the following form:

2036 "This check is a progress/ final payment for property described on this check sufficient
2037 for identification. Endorsement of this check is an acknowledgment by the endorser that the
2038 waiver and release to which the payment applies is effective to the extent provided in Utah
2039 Code Ann. Subsection 38-1-39(4)(b) or (c) respectively."

2040 (e) (i) If using a restrictive endorsement under Subsection (4)(d), the person preparing

2041 the check shall indicate whether the check is for a progress payment or a final payment by
2042 circling the word "progress" if the check is for a progress payment, or the word "final" if the
2043 check is for a final payment.

2044 (ii) If a restrictive endorsement does not indicate whether the check is for a progress
2045 payment or a final payment, it is considered to be for a progress payment.

2046 (5) (a) If the conditions of Subsection (5)(b) are met, this section does not affect the
2047 enforcement of:

2048 (i) an accord and satisfaction regarding a bona fide dispute; or

2049 (ii) an agreement made in settlement of an action pending in any court or arbitration.

2050 (b) Pursuant to Subsection (5)(a), this section does not affect enforcement of an accord
2051 and satisfaction or settlement described in Subsection (5)(a) if the accord and satisfaction or
2052 settlement:

2053 (i) is in a writing signed by the lien claimant; and

2054 (ii) specifically references the lien rights waived or impaired.

2055 Section 45. Section **41-12a-803** is amended to read:

2056 **41-12a-803. Program creation -- Administration -- Selection of designated agent**
2057 **-- Duties -- Rulemaking -- Audits.**

2058 (1) There is created the Uninsured Motorist Identification Database Program to:

2059 (a) establish an Uninsured Motorist Identification Database to verify compliance with
2060 motor vehicle owner's or operator's security requirements under Section 41-12a-301 and other
2061 provisions under this part;

2062 (b) assist in reducing the number of uninsured motor vehicles on the highways of the
2063 state;

2064 (c) assist in increasing compliance with motor vehicle registration and sales and use tax
2065 laws;

2066 (d) assist in protecting a financial institution's bona fide security interest in a motor
2067 vehicle; and

2068 (e) assist in the identification and prevention of identity theft and other crimes.

2069 (2) The program shall be administered by the department with the assistance of the
2070 designated agent and the Motor Vehicle Division.

2071 (3) (a) The department shall contract in accordance with Title 63G, Chapter [6] 6a,

2072 Utah Procurement Code, with a third party to establish and maintain an Uninsured Motorist
2073 Identification Database for the purposes established under this part.

2074 (b) The contract may not obligate the department to pay the third party more money
2075 than is available in the account.

2076 (4) (a) The third party under contract under this section is the department's designated
2077 agent, and shall develop and maintain a computer database from the information provided by:

2078 (i) insurers under Section 31A-22-315;

2079 (ii) the division under Subsection (6); and

2080 (iii) the Motor Vehicle Division under Section 41-1a-120.

2081 (b) (i) The database shall be developed and maintained in accordance with guidelines
2082 established by the department so that state and local law enforcement agencies and financial
2083 institutions as defined in Section 7-1-103 can efficiently access the records of the database,
2084 including reports useful for the implementation of the provisions of this part.

2085 (ii) (A) The reports shall be in a form and contain information approved by the
2086 department.

2087 (B) The reports may be made available through the Internet or through other electronic
2088 medium, if the department determines that sufficient security is provided to ensure compliance
2089 with Section 41-12a-805 regarding limitations on disclosure of information in the database.

2090 (5) With information provided by the department and the Motor Vehicle Division, the
2091 designated agent shall, at least monthly for submissions under Subsection 31A-22-315(2)(b) or
2092 at least twice a month for submissions under Subsection 31A-22-315(2)(a):

2093 (a) update the database with the motor vehicle insurance information provided by the
2094 insurers in accordance with Section 31A-22-315; and

2095 (b) compare all current motor vehicle registrations against the database.

2096 (6) The division shall provide the designated agent with the name, date of birth,
2097 address, and driver license number of all persons on the driver license database.

2098 (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2099 department shall make rules and develop procedures in cooperation with the Motor Vehicle
2100 Division to use the database for the purpose of administering and enforcing this part.

2101 (8) (a) The designated agent shall archive computer data files at least semi-annually for
2102 auditing purposes.

2103 (b) The internal audit unit of the tax commission provided under Section 59-1-206
2104 shall audit the program at least every three years.

2105 (c) The audit under Subsection (8)(b) shall include verification of:

2106 (i) billings made by the designated agent; and

2107 (ii) the accuracy of the designated agent's matching of vehicle registration with
2108 insurance data.

2109 Section 46. Section **53-2-404** is amended to read:

2110 **53-2-404. State costs for emergency disaster services.**

2111 (1) Subject to this section and Section 53-2-403, the division shall expend or commit to
2112 expend money described in Subsection 53-2-403(1)(d)(i) to fund costs to the state of
2113 emergency disaster services.

2114 (2) Money paid by the division under this section to government entities and private
2115 persons providing emergency disaster services are subject to Title 63G, Chapter [6] 6a, Utah
2116 Procurement Code.

2117 Section 47. Section **53A-1-706** is amended to read:

2118 **53A-1-706. Purchases of educational technology.**

2119 (1) (a) A school district or college of education shall comply with Title 63G, Chapter
2120 [6] 6a, Utah Procurement Code, in purchasing technology, except as otherwise provided in
2121 Subsection (1)(b).

2122 (b) A school district may purchase computers from, and contract for the repair or
2123 refurbishing of computers with, the Utah Correctional Industries without going through the
2124 bidding or competition procedures outlined in Title 63G, Chapter [6, ~~Part 4, Source Selections~~
2125 ~~and Contract Formation~~] 6a, Utah Procurement Code.

2126 (2) A school district or college of education may purchase technology through
2127 cooperative purchasing contracts administered by the state Division of Purchasing or through
2128 its own established purchasing program.

2129 Section 48. Section **53A-1a-511** is amended to read:

2130 **53A-1a-511. Waivers from state board rules -- Application of statutes and rules**
2131 **to charter schools.**

2132 (1) A charter school shall operate in accordance with its charter and is subject to Title
2133 53A, State System of Public Education, and other state laws applicable to public schools,

2134 except as otherwise provided in this part.

2135 (2) (a) A charter school or any other public school or school district may apply to the
2136 State Board of Education for a waiver of any state board rule that inhibits or hinders the school
2137 or the school district from accomplishing its mission or educational goals set out in its strategic
2138 plan or charter.

2139 (b) The state board may grant the waiver, unless:

2140 (i) the waiver would cause the school district or the school to be in violation of state or
2141 federal law; or

2142 (ii) the waiver would threaten the health, safety, or welfare of students in the district or
2143 at the school.

2144 (c) If the State Board of Education denies the waiver, the reason for the denial shall be
2145 provided in writing to the waiver applicant.

2146 (3) (a) Except as provided in Subsection (3)(b), State Board of Education rules
2147 governing the following do not apply to a charter school:

2148 (i) school libraries;

2149 (ii) required school administrative and supervisory services; and

2150 (iii) required expenditures for instructional supplies.

2151 (b) A charter school shall comply with rules implementing statutes that prescribe how
2152 state appropriations may be spent.

2153 (4) The following provisions of Title 53A, State System of Public Education, and rules
2154 adopted under those provisions, do not apply to a charter school:

2155 (a) Sections 53A-1a-108 and 53A-1a-108.5, requiring the establishment of a school
2156 community council and school improvement plan;

2157 (b) Sections 53A-3-413 and 53A-3-414, pertaining to the use of school buildings as
2158 civic centers;

2159 (c) Section 53A-3-420, requiring the use of activity disclosure statements;

2160 (d) Section 53A-12-207, requiring notification of intent to dispose of textbooks;

2161 (e) Section 53A-13-107, requiring annual presentations on adoption;

2162 (f) Chapter 19, Part 1, Fiscal Procedures, pertaining to fiscal procedures of school
2163 districts and local school boards; and

2164 (g) Section 53A-14-107, requiring an independent evaluation of instructional materials.

2165 (5) For the purposes of Title 63G, Chapter [6] 6a, Utah Procurement Code, a charter
2166 school shall be considered a local public procurement unit.

2167 (6) Each charter school shall be subject to:

2168 (a) Title 52, Chapter 4, Open and Public Meetings Act; and

2169 (b) Title 63G, Chapter 2, Government Records Access and Management Act.

2170 (7) (a) The State Charter School Board shall, in concert with the charter schools, study
2171 existing state law and administrative rules for the purpose of determining from which laws and
2172 rules charter schools should be exempt.

2173 (b) (i) The State Charter School Board shall present recommendations for exemption to
2174 the State Board of Education for consideration.

2175 (ii) The State Board of Education shall consider the recommendations of the State
2176 Charter School Board and respond within 60 days.

2177 Section 49. Section **53A-20-101** is amended to read:

2178 **53A-20-101. Construction and alteration of schools and plants -- Advertising for**
2179 **bids -- Payment and performance bonds -- Contracts -- Bidding limitations on local**
2180 **school boards -- Interest of local school board members.**

2181 (1) As used in this section, the word "sealed" does not preclude acceptance of
2182 electronically sealed and submitted bids or proposals in addition to bids or proposals manually
2183 sealed and submitted.

2184 (2) (a) Prior to the construction of any school or the alteration of any existing school
2185 plant, if the total estimated accumulative building project cost exceeds \$80,000, a local school
2186 board shall advertise for bids on the project at least 10 days before the bid due date.

2187 (b) The board shall have the advertisement published in a newspaper having general
2188 circulation throughout the state and in appropriate construction trade publications that offer
2189 free listings.

2190 (c) A similar advertisement is required in a newspaper published or having general
2191 circulation in any city or county that would be affected by the proposed project.

2192 (d) The advertisement shall:

2193 (i) require sealed proposals for the building project in accordance with plans and
2194 specifications furnished by the local school board;

2195 (ii) state where and when the proposals will be opened and shall reserve the right of the

2196 board to reject any and all proposals; and
2197 (iii) require a certified check or bid bond of not less than 5% of the bid to accompany
2198 the bid.

2199 (3) (a) The board shall meet at the time and place specified in the advertisement and
2200 publicly open and read all received proposals.

2201 (b) If satisfactory bids are received, the board shall award the contract to the lowest
2202 responsible bidder.

2203 (c) If none of the proposals are satisfactory, all shall be rejected.

2204 (d) The board shall again advertise in the manner provided in this section.

2205 (e) If, after advertising a second time no satisfactory bid is received, the board may
2206 proceed under its own direction with the required project.

2207 (4) (a) The check or bond required under Subsection (2)(d) shall be drawn in favor of
2208 the local school board.

2209 (b) If the successful bidder fails or refuses to enter into the contract and furnish the
2210 additional bonds required under this section, then the bidder's check or bond is forfeited to the
2211 district.

2212 (5) A local school board shall require payment and performance bonds of the
2213 successful bidder as required in Section [~~63G-6-505~~] 63G-6a-1103.

2214 (6) (a) A local school board may require in the proposed contract that at least 10% of
2215 the contract price be withheld until the project is completed and accepted by the board.

2216 (b) If money is withheld, the board shall place it in an interest bearing account, and the
2217 interest accrues for the benefit of the contractor and subcontractors.

2218 (c) This money shall be paid upon completion of the project and acceptance by the
2219 board.

2220 (7) (a) A local school board may not bid on projects within the district if the total
2221 accumulative estimated cost exceeds \$80,000.

2222 (b) The board may use its resources if no satisfactory bids are received under this
2223 section.

2224 (8) If the local school board determines in accordance with Section [~~63G-6-501~~]
2225 63G-6a-1302 to use a construction manager/general contractor as its method of construction
2226 contracting management on projects where the total estimated accumulative cost exceeds

2227 \$80,000, it shall select the construction manager/general contractor [~~using one of the source~~
2228 ~~selection methods provided for in Sections 63G-6-401 through 63G-6-501~~] in accordance with
2229 the requirements of Title 63G, Chapter 6a, Utah Procurement Code.

2230 (9) A local school board member may not have a direct or indirect financial interest in
2231 the construction project contract.

2232 Section 50. Section **53A-25b-105** is amended to read:

2233 **53A-25b-105. Applicability of statutes to the Utah Schools for the Deaf and the**
2234 **Blind.**

2235 (1) The Utah Schools for the Deaf and the Blind is subject to Title 53A, State System
2236 of Public Education, and other state laws applicable to public schools, except as otherwise
2237 provided by this chapter.

2238 (2) The following provisions of Title 53A, State System of Public Education, do not
2239 apply to the Utah Schools for the Deaf and the Blind:

2240 (a) provisions governing the budgets, funding, or finances of school districts or charter
2241 schools; and

2242 (b) provisions governing school construction.

2243 (3) Except as provided in this chapter, the Utah Schools for the Deaf and the Blind is
2244 subject to state laws governing state agencies, including:

2245 (a) Title 51, Chapter 5, Funds Consolidation Act;

2246 (b) Title 51, Chapter 7, State Money Management Act;

2247 (c) Title 52, Chapter 4, Open and Public Meetings Act;

2248 (d) Title 63A, Utah Administrative Services Code;

2249 (e) Title 63G, Chapter 2, Government Records Access and Management Act;

2250 (f) Title 63G, Chapter 4, Administrative Procedures Act;

2251 (g) Title 63G, Chapter [~~6~~] 6a, Utah Procurement Code;

2252 (h) Title 63J, Chapter 1, Budgetary Procedures Act;

2253 (i) Title 63J, Chapter 2, Revenue Procedures and Control Act; and

2254 (j) Title 67, Chapter 19, Utah State Personnel Management Act.

2255 Section 51. Section **53C-1-201 (Effective 07/01/12)** is amended to read:

2256 **53C-1-201 (Effective 07/01/12). Creation of administration -- Purpose -- Director.**

2257 (1) (a) There is established within state government the School and Institutional Trust

2258 Lands Administration.

2259 (b) The administration shall manage all school and institutional trust lands and assets
2260 within the state, except as otherwise provided in Title 53C, Chapter 3, Deposit and Allocation
2261 of Revenue from Trust Lands, and Sections 51-7a-201 and 51-7a-202.

2262 (2) The administration is an independent state agency and not a division of any other
2263 department.

2264 (3) (a) It is subject to the usual legislative and executive department controls except as
2265 provided in this Subsection (3).

2266 (b) (i) The director may make rules as approved by the board that allow the
2267 administration to classify a business proposal submitted to the administration as protected
2268 under Section 63G-2-305, for as long as is necessary to evaluate the proposal.

2269 (ii) The administration shall return the proposal to the party who submitted the
2270 proposal, and incur no further duties under Title 63G, Chapter 2, Government Records Access
2271 and Management Act, if the administration determines not to proceed with the proposal.

2272 (iii) The administration shall classify the proposal pursuant to law if it decides to
2273 proceed with the proposal.

2274 (iv) Section 63G-2-403 does not apply during the review period.

2275 (c) The director shall make rules in compliance with Title 63G, Chapter 3, Utah
2276 Administrative Rulemaking Act, except that the administration is not subject to Subsections
2277 63G-3-301(6) and (7) and Section 63G-3-601, and the director, with the board's approval, may
2278 establish a procedure for the expedited approval of rules, based on written findings by the
2279 director showing:

2280 (i) the changes in business opportunities affecting the assets of the trust;

2281 (ii) the specific business opportunity arising out of those changes which may be lost
2282 without the rule or changes to the rule;

2283 (iii) the reasons the normal procedures under Section 63G-3-301 cannot be met without
2284 causing the loss of the specific opportunity;

2285 (iv) approval by at least five board members; and

2286 (v) that the director has filed a copy of the rule and a rule analysis, stating the specific
2287 reasons and justifications for its findings, with the Division of Administrative Rules and
2288 notified interested parties as provided in Subsection 63G-3-301(10).

2289 (d) (i) The administration shall comply with Title 67, Chapter 19, Utah State Personnel
2290 Management Act, except as provided in this Subsection (3)(d).

2291 (ii) The board may approve, upon recommendation of the director, that exemption for
2292 specific positions under Subsections 67-19-12(2) and 67-19-15(1) is required in order to enable
2293 the administration to efficiently fulfill its responsibilities under the law. The director shall
2294 consult with the executive director of the Department of Human Resource Management prior
2295 to making such a recommendation.

2296 (iii) The positions of director, deputy director, associate director, assistant director,
2297 legal counsel appointed under Section 53C-1-305, administrative assistant, and public affairs
2298 officer are exempt under Subsections 67-19-12(2) and 67-19-15(1).

2299 (iv) Salaries for exempted positions, except for the director, shall be set by the director,
2300 after consultation with the executive director of the Department of Human Resource
2301 Management, within ranges approved by the board. The board and director shall consider
2302 salaries for similar positions in private enterprise and other public employment when setting
2303 salary ranges.

2304 (v) The board may create an annual incentive and bonus plan for the director and other
2305 administration employees designated by the board, based upon the attainment of financial
2306 performance goals and other measurable criteria defined and budgeted in advance by the board.

2307 (e) The administration shall comply with Title 63G, Chapter [6] 6a, Utah Procurement
2308 Code, except where the board approves, upon recommendation of the director, exemption from
2309 the Utah Procurement Code, and simultaneous adoption of rules under Title 63G, Chapter 3,
2310 Utah Administrative Rulemaking Act, for procurement, which enable the administration to
2311 efficiently fulfill its responsibilities under the law.

2312 (f) (i) Except as provided in Subsection (3)(f)(ii), the administration is not subject to
2313 the fee agency requirements of Section 63J-1-504.

2314 (ii) The following fees of the administration are subject to the requirements of Section
2315 63J-1-504: application, assignment, amendment, affidavit for lost documents, name change,
2316 reinstatement, grazing nonuse, extension of time, partial conveyance, patent reissue, collateral
2317 assignment, electronic payment, and processing.

2318 (4) The administration is managed by a director of school and institutional trust lands
2319 appointed by a majority vote of the board of trustees with the consent of the governor.

2320 (5) (a) The board of trustees shall provide policies for the management of the
2321 administration and for the management of trust lands and assets.

2322 (b) The board shall provide policies for the ownership and control of Native American
2323 remains that are discovered or excavated on school and institutional trust lands in consultation
2324 with the Division of Indian Affairs and giving due consideration to Title 9, Chapter 9, Part 4,
2325 Native American Grave Protection and Repatriation Act. The director may make rules in
2326 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement
2327 policies provided by the board regarding Native American remains.

2328 (6) In connection with joint ventures and other transactions involving trust lands and
2329 minerals approved under Sections 53C-1-303 and 53C-2-401, the administration, with board
2330 approval, may become a member of a limited liability company under Title 48, Chapter 3, Utah
2331 Revised Uniform Limited Liability Company Act, and is considered a person under Section
2332 48-3-102.

2333 Section 52. Section **54-3-29** is amended to read:

2334 **54-3-29. Removal, relocation, or alteration of utility facility in public highway**
2335 **construction or reconstruction -- Notice -- Cooperation.**

2336 (1) As used in this section:

2337 (a) "Design-build" means a design-build transportation project for which a design-build
2338 transportation project contract is issued, within the meaning of Section [~~63G-6-502~~]
2339 63G-6a-1402.

2340 (b) "Municipality" is as defined in Section 10-1-104.

2341 (c) "Political subdivision" means a:

2342 (i) county; or

2343 (ii) municipality.

2344 (d) "Public agency" means an entity of state government or a political subdivision.

2345 (e) "Public highway" means a highway, street, road, or alley constructed for public use
2346 in the state.

2347 (f) "Utility company" means a privately, cooperatively, or publicly owned utility,
2348 including a utility owned by a political subdivision, that provides service using a utility facility.

2349 (g) "Utility facility" means:

2350 (i) a telecommunications, gas, electricity, cable television, water, sewer, or data

2351 facility;

2352 (ii) a video transmission line;

2353 (iii) a drainage and irrigation system; or

2354 (iv) a facility similar to those listed in Subsections (1)(g)(i) through (iii) located in, on,
2355 along, across, over, through, or under any public highway.

2356 (2) If a public agency engages in or proposes to engage in a construction or
2357 reconstruction project on a public highway that may require the removal, relocation, or
2358 alteration of a utility facility, the public agency shall:

2359 (a) contact an association, established under Title 54, Chapter 8a, Damage to
2360 Underground Utility Facilities, to identify each utility company that may have a utility facility
2361 in the area of the construction or reconstruction project;

2362 (b) identify a utility company that has an above-ground utility facility in the area of the
2363 proposed construction or reconstruction project; and

2364 (c) electronically notify each utility company identified in accordance with Subsections
2365 (2)(a) and (b).

2366 (3) The notice required by Subsection (2)(c) shall:

2367 (a) be made as early as practicable and at least 30 days:

2368 (i) before the preliminary design or project development meeting;

2369 (ii) before issuance of a request for proposal for a design-build project; or

2370 (iii) after a change in scope of a design-build project;

2371 (b) include:

2372 (i) information concerning the proposed project design;

2373 (ii) the proposed date of a required removal, relocation, or alteration of a utility facility;

2374 (iii) the federal identifying project number, if applicable; and

2375 (c) advise the utility company if the proposed project may qualify for aid for the utility
2376 company's expense in removing, relocating, or altering a utility facility.

2377 (4) A public agency shall permit a utility company notified under Subsection (2) to
2378 participate in the preliminary design or project development meeting, or similar meeting at
2379 which the project design is addressed.

2380 (5) (a) A public agency shall, not less than 30 days after providing notice under
2381 Subsection (2) to each utility company, provide the utility company an opportunity to meet

2382 with the public agency to allow the utility company to:

2383 (i) review project plans;

2384 (ii) understand the objectives and funding sources for the proposed project;

2385 (iii) provide and discuss recommendations to the public agency that may reasonably

2386 eliminate or minimize utility removal, relocation, or alteration costs, limit the disruption of

2387 utility company services, or eliminate or reduce the need for present or future utility facility

2388 removal, relocation, or alteration; and

2389 (iv) provide reasonable schedules to enable coordination of the construction project

2390 and removal, relocation, or alteration of a utility facility.

2391 (b) If a public agency provides a utility company with reasonable opportunities to meet

2392 in accordance with Subsection (5)(a), the utility company's failure to meet does not affect the

2393 public agency's ability to proceed with the project.

2394 (6) While recognizing the essential goals and objectives of the public highway agency

2395 in proceeding with and completing a project, the parties shall use their best efforts to find ways

2396 to:

2397 (a) eliminate the cost to the utility of relocation of the utility facilities; or

2398 (b) if elimination of the costs is not feasible, minimize the relocation costs to the extent

2399 reasonably possible.

2400 (7) A utility company notified under Subsection (2) shall coordinate with the public

2401 agency concerning the utility facility removal, relocation, or alteration, including the

2402 scheduling of the utility facility removal, relocation, or alteration.

2403 (8) A public agency and a utility company may address the removal, relocation, or

2404 alteration of a utility facility in relation to a construction or reconstruction project on a public

2405 highway in a franchise agreement in lieu of this section, if the public agency is otherwise

2406 permitted to enter into the franchise agreement.

2407 (9) This chapter does not affect a public agency's authority over a public right-of-way,

2408 including any rule, ordinance, order to relocate a utility as provided in Section 72-6-116, or

2409 other valid provision governing the use of the public right-of-way.

2410 Section 53. Section **54-8b-10** is amended to read:

2411 **54-8b-10. Imposing a surcharge to provide hearing and speech impaired persons**

2412 **with telecommunication devices -- Definitions -- Procedures for establishing program --**

2413 **Surcharge -- Administration and disposition of surcharge money.**

2414 (1) As used in this section:

2415 (a) "Certified deaf or severely hearing or speech impaired person" means any state
2416 resident who:

2417 (i) is so certified by:

2418 (A) a licensed physician;

2419 (B) an otolaryngologist;

2420 (C) a speech language pathologist;

2421 (D) an audiologist; or

2422 (E) a qualified state agency; and

2423 (ii) qualifies for assistance under any low income public assistance program
2424 administered by a state agency.

2425 (b) "Certified interpreter" means a person who is a certified interpreter under Title
2426 53A, Chapter 26a, Interpreter Services for the Hearing Impaired Act.

2427 (c) (i) "Telecommunication device" means any mechanical adaptation device that
2428 enables a deaf or severely hearing or speech impaired person to use the telephone.

2429 (ii) "Telecommunication device" includes:

2430 (A) telecommunication devices for the deaf (TDD);

2431 (B) telephone amplifiers;

2432 (C) telephone signal devices;

2433 (D) artificial larynxes; and

2434 (E) adaptive equipment for TDD keyboard access.

2435 (2) The commission shall hold hearings to establish a program whereby a certified deaf
2436 or severely hearing or speech impaired customer of a telecommunications corporation that
2437 provides service through a local exchange or of a wireless telecommunications provider may
2438 obtain a telecommunication device capable of serving the customer at no charge to the
2439 customer beyond the rate for basic service.

2440 (3) (a) The program described in Subsection (2) shall provide a dual party relay system
2441 using third party intervention to connect a certified deaf or severely hearing or speech impaired
2442 person with a normal hearing person by way of telecommunication devices designed for that
2443 purpose.

2444 (b) The commission may, by rule, establish the type of telecommunications device to
2445 be provided to ensure functional equivalence.

2446 (4) (a) The commission shall impose a surcharge on each residential and business
2447 access line of each customer of local-exchange telephone service in this state, and each
2448 residential and business telephone number of each customer of mobile telephone service in this
2449 state, not including a telephone number used exclusively to transfer data to and from a mobile
2450 device, which shall be collected by the telecommunications corporation providing public
2451 telecommunications service to the customer, to cover the costs of:

- 2452 (i) the program described in Subsection (2); and
- 2453 (ii) payments made under Subsection (5).

2454 (b) The commission shall establish by rule the amount to be charged under this section,
2455 provided that:

2456 (i) the surcharge does not exceed 20 cents per month for each residential and business
2457 access line for local-exchange telephone service, and for each residential and business
2458 telephone number for mobile telephone service, not including a telephone number used
2459 exclusively to transfer data to and from a mobile device; and

2460 (ii) if the surcharge is related to a mobile telecommunications service, the surcharge
2461 may be imposed, billed, and collected only to the extent permitted by the Mobile
2462 Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

2463 (c) The telecommunications corporation shall collect the surcharge from its customers
2464 and transfer the money collected to the commission under rules adopted by the commission.

2465 (d) The surcharge shall be separately identified on each bill to a customer.

2466 (5) (a) Money collected from the surcharge imposed under Subsection (4) shall be
2467 deposited in the state treasury as dedicated credits to be administered as determined by the
2468 commission.

2469 (b) These dedicated credits may be used only:

2470 (i) for the purchase, maintenance, repair, and distribution of telecommunication
2471 devices;

2472 (ii) for the acquisition, operation, maintenance, and repair of a dual party relay system;

2473 (iii) to reimburse telephone corporations for the expenses incurred in collecting and
2474 transferring to the commission the surcharge imposed by the commission;

2475 (iv) for the general administration of the program;
2476 (v) to train persons in the use of telecommunications devices; and
2477 (vi) by the commission to contract, in compliance with Title 63G, Chapter [6] 6a, Utah
2478 Procurement Code, with:

2479 (A) an institution within the state system of higher education listed in Section
2480 53B-1-102 for a program approved by the Board of Regents that trains persons to qualify as
2481 certified interpreters; or

2482 (B) the Division of Services to the Deaf and Hard of Hearing for a program that trains
2483 persons to qualify as certified interpreters.

2484 (c) (i) The commission shall make rules under Title 63G, Chapter 3, Utah
2485 Administrative Rulemaking Act, for the administration of money under Subsection (5)(b)(vi).

2486 (ii) In the initial rulemaking to determine the administration of money under
2487 Subsection (5)(b)(vi), the commission shall give notice and hold a public hearing.

2488 (d) Money received by the commission under Subsection (4) is nonlapsing.

2489 (6) (a) The telephone surcharge need not be collected by a telecommunications
2490 corporation if the amount collected would be less than the actual administrative costs of the
2491 collection.

2492 (b) If Subsection (6)(a) applies, the telecommunications corporation shall submit to the
2493 commission, in lieu of the revenue from the surcharge collection, a breakdown of the
2494 anticipated costs and the expected revenue from the collection, showing that the costs exceed
2495 the revenue.

2496 (7) The commission shall solicit the advice, counsel, and physical assistance of
2497 severely hearing or speech impaired persons and the organizations serving them in the design
2498 and implementation of the program.

2499 Section 54. Section **62A-1-108.5** is amended to read:

2500 **62A-1-108.5. Mental illness and intellectual disability examinations --**

2501 **Responsibilities of the department.**

2502 (1) In accomplishing its duties to conduct mental illness and intellectual disability
2503 examinations under Title 77, Utah Code of Criminal Procedure, the department shall proceed
2504 as outlined in this section and within appropriations authorized by the Legislature. The
2505 executive director may delegate the executive director's responsibilities under this section to

2506 one or more divisions within the department.

2507 (2) When the department is ordered by the court to conduct a mental illness or
2508 intellectual disability examination, the executive director shall:

2509 (a) direct that the examination be performed at the Utah State Hospital; or

2510 (b) designate at least one examiner, selected under Subsection (3), to examine the
2511 defendant in the defendant's current custody or status.

2512 (3) The department shall establish criteria, in consultation with the Commission on
2513 Criminal and Juvenile Justice, and shall contract with persons or organizations to conduct
2514 mental illness and intellectual disability examinations under Subsection (2)(b). In making this
2515 selection, the department shall follow the provisions of Title 63G, Chapter [6] 6a, Utah
2516 Procurement Code.

2517 (4) Nothing in this section prohibits the executive director, at the request of defense
2518 counsel or a prosecuting attorney in a criminal proceeding under Title 77, Utah Code of
2519 Criminal Procedure, and for good cause shown, from proposing a person who has not been
2520 previously selected under Subsection (3) to contract with the department to conduct the
2521 examination. In selecting that person, the criteria of the department established under
2522 Subsection (3) and the provisions of Title 63G, Chapter [6] 6a, Utah Procurement Code, shall
2523 be met.

2524 Section 55. Section **62A-3-104** is amended to read:

2525 **62A-3-104. Authority of division.**

2526 (1) The division is the sole state agency, as defined by the Older Americans Act of
2527 1965, 42 U.S.C. 3001 et seq., to:

2528 (a) serve as an effective and visible advocate for the aging and adult population of this
2529 state;

2530 (b) develop and administer a state plan under the policy direction of the board; and

2531 (c) take primary responsibility for state activities relating to provisions of the Older
2532 Americans Act of 1965, as amended.

2533 (2) (a) The division has authority to designate:

2534 (i) planning and service areas for the state; and

2535 (ii) an area agency on aging within each planning and service area to design and
2536 implement a comprehensive and coordinated system of services and programs for the aged

2537 within appropriations from the Legislature.

2538 (b) Designation as an area agency on aging may be withdrawn:

2539 (i) upon request of the area agency on aging; or

2540 (ii) upon noncompliance with the provisions of the:

2541 (A) Older Americans Act of 1965, 42 U.S.C. 3001 et seq.;

2542 (B) federal regulations enacted under the Older Americans Act of 1965, 42 U.S.C.

2543 3001 et seq.;

2544 (C) provisions of this chapter; or

2545 (D) rules, policies, or procedures established by the division.

2546 (3) (a) The division has the authority to designate:

2547 (i) planning and service areas for the state; and

2548 (ii) subject to Subsection (3)(b), an area agency on high risk adults within each

2549 planning and service area to design and implement a comprehensive and coordinated system of

2550 case management and programs for high risk adults within appropriations from the Legislature.

2551 (b) For purposes of Subsection (3)(a)(ii), before October 1, 1998, the division shall

2552 designate as the area agency on high risk adults in a planning and service area:

2553 (i) the area agency on aging that operates within the same geographic area if that

2554 agency requests, before July 1, 1998, to expand that agency's current contract with the division

2555 to include the responsibility of:

2556 (A) being the area agency on high risk adults; or

2557 (B) operating the area agency on high risk adults:

2558 (I) through joint cooperation with one or more existing area agencies on aging; and

2559 (II) without reducing geographical coverage in any service area; or

2560 (ii) a public or private nonprofit agency or office if the area agency on aging that

2561 operates within the same geographic area has not made a request in accordance with Subsection

2562 (3)(b)(i).

2563 (c) (i) Area agencies on high risk adults shall be in operation before July 1, 1999.

2564 (ii) The division's efforts to establish area agencies on high risk adults shall start with

2565 counties with a population of more than 150,000 people.

2566 (d) Designation as an area agency on high risk adults may be withdrawn:

2567 (i) upon request by the area agency; or

- 2568 (ii) upon noncompliance with:
- 2569 (A) state law;
- 2570 (B) federal law; or
- 2571 (C) rules, policies, or procedures established by the division.
- 2572 (4) (a) The division may, by following the procedures and requirements of Title 63J,
- 2573 Chapter 5, Federal Funds Procedures:
- 2574 (i) seek federal grants, loans, or participation in federal programs; and
- 2575 (ii) receive and distribute state and federal funds for the division's programs and
- 2576 services to the aging and adult populations of the state.
- 2577 (b) The division may not disburse public funds to a personal care attendant as payment
- 2578 for personal services rendered to an aged person or high risk adult, except as provided in
- 2579 Section 62A-3-104.3.
- 2580 (5) The division has authority to establish, either directly or by contract, programs of
- 2581 advocacy, monitoring, evaluation, technical assistance, and public education to enhance the
- 2582 quality of life for aging and adult citizens of the state.
- 2583 (6) In accordance with the rules of the division and Title 63G, Chapter [6] 6a, Utah
- 2584 Procurement Code, the division may contract with:
- 2585 (a) the governing body of an area agency to provide a comprehensive program of
- 2586 services; or
- 2587 (b) public and private entities for special services.
- 2588 (7) The division has authority to provide for collection, compilation, and dissemination
- 2589 of information, statistics, and reports relating to issues facing aging and adult citizens.
- 2590 (8) The division has authority to prepare and submit reports regarding the operation
- 2591 and administration of the division to the department, the Legislature, and the governor, as
- 2592 requested.
- 2593 (9) The division shall:
- 2594 (a) implement and enforce policies established by the board governing all aspects of
- 2595 the division's programs for aging and adult persons in the state;
- 2596 (b) in order to ensure compliance with all applicable state and federal statutes, policies,
- 2597 and procedures, monitor and evaluate programs provided by or under contract with:
- 2598 (i) the division;

- 2599 (ii) area agencies; and
- 2600 (iii) an entity that receives funds from an area agency;
- 2601 (c) examine expenditures of public funds;
- 2602 (d) withhold funds from programs based on contract noncompliance;
- 2603 (e) review and approve plans of area agencies in order to ensure:
- 2604 (i) compliance with division policies; and
- 2605 (ii) a statewide comprehensive program;
- 2606 (f) in order to further programs for aging and adult persons and prevent duplication of
- 2607 services, promote and establish cooperative relationships with:
- 2608 (i) state and federal agencies;
- 2609 (ii) social and health agencies;
- 2610 (iii) education and research organizations; and
- 2611 (iv) other related groups;
- 2612 (g) advocate for the aging and adult populations;
- 2613 (h) promote and conduct research on the problems and needs of aging and adult
- 2614 persons;
- 2615 (i) submit recommendations for changes in policies, programs, and funding to the:
- 2616 (i) governor; and
- 2617 (ii) Legislature; and
- 2618 (j) (i) accept contributions to and administer the funds contained in the "Out and
- 2619 About" Homebound Transportation Assistance Fund created in Section 62A-3-110; and
- 2620 (ii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
- 2621 Rulemaking Act, to facilitate the administration of the "Out and About" Homebound
- 2622 Transportation Assistance Fund in accordance with Section 62A-3-110.
- 2623 Section 56. Section **62A-3-104.1** is amended to read:
- 2624 **62A-3-104.1. Powers and duties of area agencies.**
- 2625 (1) An area agency that provides services to an aged person, or a high risk adult shall
- 2626 within the area agency's respective jurisdiction:
- 2627 (a) advocate by monitoring, evaluating, and providing input on all policies, programs,
- 2628 hearings, and levies that affect a person described in this Subsection (1);
- 2629 (b) design and implement a comprehensive and coordinated system of services within a

- 2630 designated planning and service area;
- 2631 (c) conduct periodic reviews and evaluations of needs and services;
- 2632 (d) prepare and submit to the division plans for funding and service delivery for
- 2633 services within the designated planning and service area;
- 2634 (e) establish, either directly or by contract, programs licensed under Chapter 2,
- 2635 Licensure of Programs and Facilities;
- 2636 (f) (i) appoint an area director;
- 2637 (ii) prescribe the area director's duties; and
- 2638 (iii) provide adequate and qualified staff to carry out the area plan described in
- 2639 Subsection (1)(d);
- 2640 (g) establish rules not contrary to policies of the board and rules of the division,
- 2641 regulating local services and facilities;
- 2642 (h) operate other services and programs funded by sources other than those
- 2643 administered by the division;
- 2644 (i) establish mechanisms to provide direct citizen input, including an area agency
- 2645 advisory council with a majority of members who are eligible for services from the area
- 2646 agency;
- 2647 (j) establish fee schedules; and
- 2648 (k) comply with the requirements and procedures of:
- 2649 (i) Title 11, Chapter 13, Interlocal Cooperation Act; and
- 2650 (ii) Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal
- 2651 Organizations, and Other Local Entities Act.
- 2652 (2) Before disbursing any public funds, an area agency shall require that all entities
- 2653 receiving any public funds agree in writing that:
- 2654 (a) the division may examine the entity's program and financial records; and
- 2655 (b) the auditor of the local area agency may examine and audit the entity's program and
- 2656 financial records, if requested by the local area agency.
- 2657 (3) An area agency on aging may not disburse public funds to a personal care attendant
- 2658 as payment for personal services rendered to an aged person or high risk adult, except as
- 2659 provided in Section 62A-3-104.3.
- 2660 (4) (a) For the purpose of providing services pursuant to this part, a local area agency

2661 may receive:

2662 (i) property;

2663 (ii) grants;

2664 (iii) gifts;

2665 (iv) supplies;

2666 (v) materials;

2667 (vi) any benefit derived from the items described in Subsections (4)(a)(i) through (v);

2668 and

2669 (vii) contributions.

2670 (b) If a gift is conditioned upon the gift's use for a specified service or program, the gift

2671 shall be used for the specific service or program.

2672 (5) (a) Area agencies shall award all public funds in compliance with:

2673 (i) the requirements of Title 63G, Chapter [6] 6a, Utah Procurement Code; or

2674 (ii) a county procurement ordinance that requires procurement procedures similar to

2675 those described in Subsection (5)(a)(i).

2676 (b) (i) If all initial bids on a project are rejected, the area agency shall publish a new

2677 invitation to bid.

2678 (ii) If no satisfactory bid is received by the area agency described in Subsection

2679 (5)(b)(i), when the bids received from the second invitation are opened the area agency may

2680 execute a contract without requiring competitive bidding.

2681 (c) (i) An area agency need not comply with the procurement provisions of this section

2682 when it disburses public funds to another governmental entity.

2683 (ii) For purposes of this Subsection (5)(c), "governmental entity" means any political

2684 subdivision or institution of higher education of the state.

2685 (d) (i) Contracts awarded by an area agency shall be for a:

2686 (A) fixed amount; and

2687 (B) limited period.

2688 (ii) The contracts described in Subsection (5)(d)(i) may be modified due to changes in

2689 available funding for the same contract purpose without competition.

2690 (6) Local area agencies shall comply with:

2691 (a) applicable state and federal:

- 2692 (i) statutes;
- 2693 (ii) policies; and
- 2694 (iii) audit requirements; and
- 2695 (b) directives resulting from an audit described in Subsection (6)(a)(iii).

2696 Section 57. Section **62A-14-109** is amended to read:

2697 **62A-14-109. Contract for services.**

2698 (1) In accordance with Title 63G, Chapter [6] 6a, Utah Procurement Code, the office
2699 may contract with one or more providers to perform guardian and conservator duties.

2700 (2) The office shall review and monitor the services provided by a contract provider to
2701 a ward for whom the office has been appointed guardian or conservator.

2702 Section 58. Section **63A-5-205** is amended to read:

2703 **63A-5-205. Contracting powers of director -- Retainage -- Health insurance**
2704 **coverage.**

2705 (1) As used in this section:

2706 (a) "Capital developments" has the same meaning as provided in Section 63A-5-104.

2707 (b) "Capital improvements" has the same meaning as provided in Section 63A-5-104.

2708 (c) "Employee" means an "employee," "worker," or "operative" as defined in Section
2709 34A-2-104 who:

2710 (i) works at least 30 hours per calendar week; and

2711 (ii) meets employer eligibility waiting requirements for health care insurance which
2712 may not exceed the first day of the calendar month following 90 days from the date of hire.

2713 (d) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

2714 (e) "Qualified health insurance coverage" is as defined in Section 26-40-115.

2715 (f) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

2716 (2) In accordance with Title 63G, Chapter [6] 6a, Utah Procurement Code, the director
2717 may:

2718 (a) subject to Subsection (3), enter into contracts for any work or professional services
2719 which the division or the State Building Board may do or have done; and

2720 (b) as a condition of any contract for architectural or engineering services, prohibit the
2721 architect or engineer from retaining a sales or agent engineer for the necessary design work.

2722 (3) (a) Except as provided in Subsection (3)(b), this Subsection (3) applies to all design

2723 or construction contracts entered into by the division or the State Building Board on or after
2724 July 1, 2009, and:

2725 (i) applies to a prime contractor if the prime contract is in the amount of \$1,500,000 or
2726 greater; and

2727 (ii) applies to a subcontractor if the subcontract is in the amount of \$750,000 or greater.

2728 (b) This Subsection (3) does not apply:

2729 (i) if the application of this Subsection (3) jeopardizes the receipt of federal funds;

2730 (ii) if the contract is a sole source contract;

2731 (iii) if the contract is an emergency procurement; or

2732 (iv) to a change order as defined in Section [~~63G-6-103~~] 63G-6a-103, or a modification
2733 to a contract, when the contract does not meet the threshold required by Subsection (3)(a).

2734 (c) A person who intentionally uses change orders or contract modifications to
2735 circumvent the requirements of Subsection (3)(a) is guilty of an infraction.

2736 (d) (i) A contractor subject to Subsection (3)(a) shall demonstrate to the director that
2737 the contractor has and will maintain an offer of qualified health insurance coverage for the
2738 contractor's employees and the employees' dependents.

2739 (ii) If a subcontractor of the contractor is subject to Subsection (3)(a), the contractor
2740 shall demonstrate to the director that the subcontractor has and will maintain an offer of
2741 qualified health insurance coverage for the subcontractor's employees and the employees'
2742 dependents.

2743 (e) (i) (A) A contractor who fails to meet the requirements of Subsection (3)(d)(i)
2744 during the duration of the contract is subject to penalties in accordance with administrative
2745 rules adopted by the division under Subsection (3)(f).

2746 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
2747 requirements of Subsection (3)(d)(ii).

2748 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (3)(d)(ii)
2749 during the duration of the contract is subject to penalties in accordance with administrative
2750 rules adopted by the division under Subsection (3)(f).

2751 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
2752 requirements of Subsection (3)(d)(i).

2753 (f) The division shall adopt administrative rules:

- 2754 (i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- 2755 (ii) in coordination with:
- 2756 (A) the Department of Environmental Quality in accordance with Section 19-1-206;
- 2757 (B) the Department of Natural Resources in accordance with Section 79-2-404;
- 2758 (C) a public transit district in accordance with Section 17B-2a-818.5;
- 2759 (D) the State Capitol Preservation Board in accordance with Section 63C-9-403;
- 2760 (E) the Department of Transportation in accordance with Section 72-6-107.5; and
- 2761 (F) the Legislature's Administrative Rules Review Committee; and
- 2762 (iii) which establish:
- 2763 (A) the requirements and procedures a contractor must follow to demonstrate to the
- 2764 director compliance with this Subsection (3) which shall include:
- 2765 (I) that a contractor will not have to demonstrate compliance with Subsection (3)(d)(i)
- 2766 or (ii) more than twice in any 12-month period; and
- 2767 (II) that the actuarially equivalent determination required for the qualified health
- 2768 insurance coverage in Subsection (1) is met by the contractor if the contractor provides the
- 2769 department or division with a written statement of actuarial equivalency from either:
- 2770 (Aa) the Utah Insurance Department;
- 2771 (Bb) an actuary selected by the contractor or the contractor's insurer; or
- 2772 (Cc) an underwriter who is responsible for developing the employer group's premium
- 2773 rates;
- 2774 (B) the penalties that may be imposed if a contractor or subcontractor intentionally
- 2775 violates the provisions of this Subsection (3), which may include:
- 2776 (I) a three-month suspension of the contractor or subcontractor from entering into
- 2777 future contracts with the state upon the first violation;
- 2778 (II) a six-month suspension of the contractor or subcontractor from entering into future
- 2779 contracts with the state upon the second violation;
- 2780 (III) an action for debarment of the contractor or subcontractor in accordance with
- 2781 Section [~~63G-6-804~~] 63G-6a-904 upon the third or subsequent violation; and
- 2782 (IV) monetary penalties which may not exceed 50% of the amount necessary to
- 2783 purchase qualified health insurance coverage for an employee and the dependents of an
- 2784 employee of the contractor or subcontractor who was not offered qualified health insurance

2785 coverage during the duration of the contract; and

2786 (C) a website on which the department shall post the benchmark for the qualified
2787 health insurance coverage identified in Subsection (1)(e).

2788 (g) (i) In addition to the penalties imposed under Subsection (3)(f)(iii), a contractor or
2789 subcontractor who intentionally violates the provisions of this section shall be liable to the
2790 employee for health care costs that would have been covered by qualified health insurance
2791 coverage.

2792 (ii) An employer has an affirmative defense to a cause of action under Subsection
2793 (3)(g)(i) if:

2794 (A) the employer relied in good faith on a written statement of actuarial equivalency
2795 provided by:

2796 (I) an actuary; or

2797 (II) an underwriter who is responsible for developing the employer group's premium
2798 rates; or

2799 (B) the department determines that compliance with this section is not required under
2800 the provisions of Subsection (3)(b).

2801 (iii) An employee has a private right of action only against the employee's employer to
2802 enforce the provisions of this Subsection (3)(g).

2803 (h) Any penalties imposed and collected under this section shall be deposited into the
2804 Medicaid Restricted Account created by Section 26-18-402.

2805 (i) The failure of a contractor or subcontractor to provide qualified health insurance
2806 coverage as required by this section:

2807 (i) may not be the basis for a protest or other action from a prospective bidder, offeror,
2808 or contractor under Section [~~63G-6-801~~] 63G-6a-1603 or any other provision in Title 63G,
2809 Chapter [~~6, Part 8, Legal and Contractual Remedies~~] 6a, Utah Procurement Code; and

2810 (ii) may not be used by the procurement entity or a prospective bidder, offeror, or
2811 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
2812 or construction.

2813 (4) The judgment of the director as to the responsibility and qualifications of a bidder
2814 is conclusive, except in case of fraud or bad faith.

2815 (5) The division shall make all payments to the contractor for completed work in

2816 accordance with the contract and pay the interest specified in the contract on any payments that
2817 are late.

2818 (6) If any payment on a contract with a private contractor to do work for the division or
2819 the State Building Board is retained or withheld, it shall be retained or withheld and released as
2820 provided in Section 13-8-5.

2821 Section 59. Section **63A-5-208** is amended to read:

2822 **63A-5-208. Definitions -- Certain public construction bids to list subcontractors --**

2823 **Changing subcontractors -- Bidders as subcontractors -- Dispute resolution process --**

2824 **Penalties.**

2825 (1) As used in this section:

2826 (a) "First-tier subcontractor" means a subcontractor who contracts directly with the
2827 prime contractor.

2828 (b) "Subcontractor" means any person or entity under contract with a contractor or
2829 another subcontractor to provide services or labor for the construction, installation, or repair of
2830 an improvement to real property.

2831 (c) "Subcontractor" includes a trade contractor or specialty contractor.

2832 (d) "Subcontractor" does not include suppliers who provide only materials, equipment,
2833 or supplies to a contractor or subcontractor.

2834 (2) The director shall apply the provisions of this section to achieve fair and
2835 competitive bidding and to discourage bid-shopping by contractors.

2836 (3) (a) (i) (A) On each public construction project, the director shall require the
2837 apparent lowest three bidders to submit a list of their first-tier subcontractors indicating each
2838 subcontractor's name, bid amount, and other information required by rule.

2839 (B) Other bidders who are not one of the apparent lowest three bidders may also
2840 submit a list of their first-tier subcontractors containing the information required by this
2841 Subsection (3).

2842 (C) The director may not consider any bid submitted by a bidder if the bidder fails to
2843 submit a subcontractor list meeting the requirements of this section.

2844 (ii) On projects where the contractor's total bid is less than \$500,000, subcontractors
2845 whose bid is less than \$20,000 need not be listed.

2846 (iii) On projects where the contractor's total bid is \$500,000 or more, subcontractors

2847 whose bid is less than \$35,000 need not be listed.

2848 (b) (i) The bidders shall submit this list within 24 hours after the bid opening time, not
2849 including Saturdays, Sundays, and state holidays.

2850 (ii) This list does not limit the director's right to authorize a change in the listing of any
2851 subcontractor.

2852 (c) The bidders shall verify that all subcontractors listed as part of their bids are
2853 licensed as required by state law.

2854 (d) Twenty-four hours after the bid opening, the contractor may change the contractor's
2855 subcontractors only after:

2856 (i) receiving permission from the director; and

2857 (ii) establishing that:

2858 (A) the change is in the best interest of the state; and

2859 (B) the contractor establishes reasons for the change that meet the standards established
2860 by the State Building Board.

2861 (e) If the director approves any changes in subcontractors that result in a net lower
2862 contract price for subcontracted work, the total of the prime contract may be reduced to reflect
2863 the changes.

2864 (4) (a) A bidder may list himself as a subcontractor when the bidder is currently
2865 licensed to perform the portion of the work for which the bidder lists himself as a subcontractor
2866 and:

2867 (i) the bidder intends to perform the work of a subcontractor himself; or

2868 (ii) the bidder intends to obtain a subcontractor to perform the work at a later date

2869 because the bidder was unable to:

2870 (A) obtain a bid from a qualified subcontractor; or

2871 (B) obtain a bid from a qualified subcontractor at a cost that the bidder considers to be
2872 reasonable.

2873 (b) (i) When the bidder intends to perform the work of a subcontractor himself, the
2874 director may, by written request, require that the bidder provide the director with information
2875 indicating the bidder's:

2876 (A) previous experience in the type of work to be performed; and

2877 (B) qualifications for performing the work.

2878 (ii) The bidder must respond in writing within five business days of receiving the
2879 director's written request.

2880 (iii) If the bidder's submitted information causes the director to reasonably believe that
2881 self-performance of the portion of the work by the bidder is likely to yield a substandard
2882 finished product, the director shall:

2883 (A) require the bidder to use a subcontractor for the portion of the work in question and
2884 obtain the subcontractor bid under the supervision of the director; or

2885 (B) reject the bidder's bid.

2886 (c) (i) When the bidder intends to obtain a subcontractor to perform the work at a later
2887 date, the bidder shall provide documentation with the subcontractor list describing:

2888 (A) the bidder's efforts to obtain a bid of a qualified subcontractor at a reasonable cost;
2889 and

2890 (B) why the bidder was unable to obtain a qualified subcontractor bid.

2891 (ii) If the bidder who intends to obtain a subcontractor to perform the work at a later
2892 date is awarded a contract, the director shall supervise the bidder's efforts to obtain a qualified
2893 subcontractor bid.

2894 (iii) The director may not adjust the amount of the contract awarded in order to reflect
2895 the actual amount of the subcontractor's bid.

2896 (5) The division may not disclose any subcontractor bid amounts obtained under this
2897 section until the division has awarded the project to a contractor.

2898 (6) (a) The director shall, in consultation with the State Building Board, prepare draft
2899 rules establishing a process for resolving disputes involved with contracts under the division's
2900 procurement authority.

2901 (b) The draft rules shall be presented to the Government Operations Interim Committee
2902 for review, comment, and recommendations before August 31, 2004.

2903 (c) The director shall consider, and the rules may include:

2904 (i) requirements regarding preliminary resolution efforts between the parties directly
2905 involved with the dispute;

2906 (ii) requirements for the filing of claims, including notification, timeframes, and
2907 documentation;

2908 (iii) identification of the types of costs eligible for allocation and a method for

2909 allocating costs among the parties to the dispute;

2910 (iv) required time periods, not to exceed 60 days, for the resolution of the claim;

2911 (v) provision for an independent hearing officer, panel, or arbitrator to extend the time

2912 period for resolution of the claim by not to exceed 60 additional days for good cause;

2913 (vi) provision for the extension of required time periods if the claimant agrees;

2914 (vii) requirements that decisions be issued in writing;

2915 (viii) provisions for administrative appeals of the decision;

2916 (ix) provisions for the timely payment of claims after resolution of the dispute,

2917 including any appeals;

2918 (x) a requirement that the final determination resulting from the dispute resolution

2919 process provided for in the rules is a final agency action subject to judicial review as provided

2920 in Sections 63G-4-401 and 63G-4-402;

2921 (xi) a requirement that a claim or dispute that does not include a monetary claim

2922 against the division or its agents is not limited to the dispute resolution process provided for in

2923 this Subsection (6);

2924 (xii) requirements for claims and disputes to be eligible for this dispute resolution

2925 process;

2926 (xiii) the use of an independent hearing officer, panel, arbitration, or mediation; and

2927 (xiv) the circumstances under which a subcontractor may file a claim directly with the

2928 division.

2929 (d) Persons pursuing claims under the process required by this Subsection (6):

2930 (i) are bound by the decision reached under this process unless the decision is properly

2931 appealed; and

2932 (ii) may not pursue claims or disputes under the dispute resolution process established

2933 in Sections [~~63G-6-805 through 63G-6-814~~] 63G-6a-1602 through 63G-6a-1802.

2934 (7) In addition to all other reasons allowed by law or rule, the director may reject all

2935 bids if none of the bidders whose bid is within the budget of the project submit a subcontractor

2936 list that meets the requirements of this section.

2937 (8) Any violation of this section, or any fraudulent misrepresentation by a contractor,

2938 subcontractor, or supplier, may be grounds for:

2939 (a) the contractor, subcontractor, or supplier to be suspended or debarred by the

2940 director; or

2941 (b) the contractor or subcontractor to be disciplined by the Division of Professional and
2942 Occupational Licensing.

2943 Section 60. Section **63A-5-302** is amended to read:

2944 **63A-5-302. Leasing responsibilities of the director.**

2945 (1) The director shall:

2946 (a) lease, in the name of the division, all real property space to be occupied by an
2947 agency;

2948 (b) in leasing space, comply with:

2949 (i) Title 63G, Chapter [6] 6a, Utah Procurement Code; and

2950 (ii) any legislative mandates contained in the appropriations act or other specific
2951 legislation;

2952 (c) apply the criteria contained in Subsection (1)(e) to prepare a report evaluating each
2953 high-cost lease at least 12 months before it expires;

2954 (d) evaluate each lease under the division's control and apply the criteria contained in
2955 Subsection (1)(e), when appropriate, to evaluate those leases;

2956 (e) in evaluating leases:

2957 (i) determine whether or not the lease is cost-effective when the needs of the agency to
2958 be housed in the leased facilities are considered;

2959 (ii) determine whether or not another option such as construction, use of other
2960 state-owned space, or a lease-purchase agreement is more cost-effective than leasing;

2961 (iii) determine whether or not the significant lease terms are cost-effective and provide
2962 the state with sufficient flexibility and protection from liability;

2963 (iv) compare the proposed lease payments to the current market rates, and evaluate
2964 whether or not the proposed lease payments are reasonable under current market conditions;

2965 (v) compare proposed significant lease terms to the current market, and recommend
2966 whether or not these proposed terms are reasonable under current market conditions; and

2967 (vi) if applicable, recommend that the lease or modification to a lease be approved or
2968 disapproved;

2969 (f) based upon the evaluation, include in the report recommendations that identify
2970 viable alternatives to:

- 2971 (i) make the lease cost-effective; or
- 2972 (ii) meet the agency's needs when the lease expires; and
- 2973 (g) upon request, provide the information included in the report to:
- 2974 (i) the agency benefitted by the lease; and
- 2975 (ii) the Office of Legislative Fiscal Analyst.
- 2976 (2) The director may:
- 2977 (a) subject to legislative appropriation, enter into facility leases with terms of up to 10
- 2978 years when the length of the lease's term is economically advantageous to the state; and
- 2979 (b) with the approval of the State Building Board and subject to legislative
- 2980 appropriation, enter into facility leases with terms of more than 10 years when the length of the
- 2981 lease's term is economically advantageous to the state.

Section 61. Section **63B-2-102** is amended to read:

63B-2-102. Maximum amount -- Projects authorized.

(1) The total amount of bonds issued under this part may not exceed \$80,000,000.

(2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide funds to pay all or part of the cost of acquiring and constructing the projects listed in this Subsection (2).

(b) These costs may include the cost of acquiring land, interests in land, easements and rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or convenient to the facilities, interest estimated to accrue on these bonds during the period to be covered by construction of the projects plus a period of six months after the end of the construction period and all related engineering, architectural, and legal fees.

(c) For the division, proceeds shall be provided for the following:

CAPITAL IMPROVEMENTS

2996	1	Alterations, Repairs, and Improvements	\$8,413,900
2997		TOTAL IMPROVEMENTS	\$8,413,900

CAPITAL FACILITIES CONSTRUCTION

2999				ESTIMATED OPERATIONS AND MAINTENANCE COSTS
	PROJECT PRIORITY	PROJECT DESCRIPTION	AMOUNT FUNDED	
3000	1	Corrections - Northern Utah Community Corrections Center Phase II	\$2,729,700	\$158,000
3001	2	University of Utah Marriot Library Phase II	\$10,200,000	\$881,600
3002	3	Ogden Courts Building Phase II	\$12,096,000	\$340,000
3003	4	Utah National Guard - Southeast Utah Armory Phase II	\$397,800	\$70,500
3004	5	Southern Utah University Library Phase II	\$7,004,400	\$427,000
3005	6	Utah Valley Special Events Center Phase II	\$11,845,300	\$536,900
3006	7	Salt Lake Community College - Land	\$1,300,000	\$0
3007	8	Tax Commission Building	\$14,224,000	\$812,000
3008	9	Dixie College Business Building	\$2,823,300	\$187,800
3009	10	Salt Lake Community College South City 3rd Floor and Boiler	\$4,009,500	\$257,600
3010	11	Public Education - Deaf and Blind Classrooms	\$3,456,100	\$124,800
3011		TOTAL CONSTRUCTION	\$70,086,100	
3012		TOTAL IMPROVEMENTS AND CONSTRUCTION	\$78,500,000	

3013 (d) For purposes of this section, operations and maintenance costs:

3014 (i) are estimates only;

3015 (ii) may include any operations and maintenance costs already funded in existing

3016 agency budgets; and

3017 (iii) are not commitments by this Legislature or future Legislatures to fund those
3018 operations and maintenance costs.

3019 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
3020 constitute a limitation on the amount that may be expended for any project.

3021 (b) The board may revise these estimates and redistribute the amount estimated for a
3022 project among the projects authorized.

3023 (c) The commission, by resolution and in consultation with the board, may delete one
3024 or more projects from this list if the inclusion of that project or those projects in the list could
3025 be construed to violate state law or federal law or regulation.

3026 (4) (a) The division may enter into agreements related to these projects before the
3027 receipt of proceeds of bonds issued under this chapter.

3028 (b) The division shall make those expenditures from unexpended and unencumbered
3029 building funds already appropriated to the Capital Projects Fund.

3030 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
3031 of bonds issued under this chapter.

3032 (d) The commission may, by resolution, make any statement of intent relating to that
3033 reimbursement that is necessary or desirable to comply with federal tax law.

3034 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
3035 it is the intent of the Legislature that the balance necessary to complete the projects be
3036 addressed by future Legislatures, either through appropriations or through the issuance or sale
3037 of bonds.

3038 (b) For those phased projects, the division may enter into contracts for amounts not to
3039 exceed the anticipated full project funding but may not allow work to be performed on those
3040 contracts in excess of the funding already authorized by the Legislature.

3041 (c) Those contracts shall contain a provision for termination of the contract for the
3042 convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

3043 (d) It is also the intent of the Legislature that this authorization to the division does not
3044 bind future Legislatures to fund projects initiated from this authorization.

3045 Section 62. Section **63B-3-102** is amended to read:

3046 **63B-3-102. Maximum amount -- Projects authorized.**

3047 (1) The total amount of bonds issued under this part may not exceed \$64,600,000.

3048 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
 3049 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
 3050 Subsection (2).

3051 (b) These costs may include the cost of acquiring land, interests in land, easements and
 3052 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
 3053 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
 3054 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
 3055 covered by construction of the projects plus a period of six months after the end of the
 3056 construction period and all related engineering, architectural, and legal fees.

3057 (c) For the division, proceeds shall be provided for the following:

3058 CAPITAL IMPROVEMENTS

3059	1	Alterations, Repairs, and Improvements	\$5,000,000
3060		TOTAL IMPROVEMENTS	\$5,000,000

3061 CAPITAL AND ECONOMIC DEVELOPMENT

3062			ESTIMATED OPERATIONS AND MAINTENANCE COSTS
	PRIORITY PROJECT	PROJECT DESCRIPTION	AMOUNT FUNDED
3063	1	University of Utah Marriott Library Phase III (Final)	\$13,811,500 \$881,600
3064	2	Bridgerland Applied Technology Center Utah State University Space	\$2,400,000 \$0
3065	3	Weber State University - Heat Plant	\$2,332,100 \$9,600

3066	4	Department of Human Services - Division of Youth Corrections renamed in 2003 to the Division of Juvenile Justice Services	\$4,180,000	\$400,000
3067	5	Snow College - Administrative Services/Student Center	\$3,885,100	\$224,500
3068	6	Ogden Weber Applied Technology Center - Metal Trades Building Design and Equipment Purchase	\$750,000	\$0
3069	7	Department of Corrections B-Block Remodel	\$1,237,100	\$72,000
3070	8	Utah State University - Old Main Phase III Design	\$550,000	\$0
3071	9	Department of Corrections - 144 bed Uintah Expansion	\$6,700,000	\$168,800
3072	10	Southern Utah University Administrative Services/Student Center	\$5,630,400	\$314,200
3073	11	Anasazi Museum	\$760,200	\$8,500
3074	12	Hill Air Force Base - Easements Purchase	\$9,500,000	\$0
3075	13	Signetics Building Remodel	\$2,000,000	\$0
3076	14	Antelope Island Visitors Center	\$750,000	\$30,000
3077	15	State Fair Park - Master Study	\$150,000	\$0
3078	16	Utah National Guard - Draper Land	\$380,800	\$0
3079	17	Davis Applied Technology Center - Design	\$325,000	\$0
3080	18	Palisade State Park - Land and Park Development	\$800,000	\$0

3081	19	Department of Human Services - Cedar City Land	\$80,000	\$0
3082	20	Department of Human Services - Clearfield Land	\$163,400	\$0
3083	21	Electronic technology, equipment, and hardware	\$2,500,000	\$0
3084		TOTAL CAPITAL AND ECONOMIC DEVELOPMENT	\$58,885,600	
3085		TOTAL IMPROVEMENTS AND CAPITAL AND ECONOMIC DEVELOPMENT	\$63,885,600	

- 3086 (d) For purposes of this section, operations and maintenance costs:
- 3087 (i) are estimates only;
- 3088 (ii) may include any operations and maintenance costs already funded in existing
- 3089 agency budgets; and
- 3090 (iii) are not commitments by this Legislature or future Legislatures to fund those
- 3091 operations and maintenance costs.
- 3092 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
- 3093 constitute a limitation on the amount that may be expended for any project.
- 3094 (b) The board may revise these estimates and redistribute the amount estimated for a
- 3095 project among the projects authorized.
- 3096 (c) The commission, by resolution and in consultation with the board, may delete one
- 3097 or more projects from this list if the inclusion of that project or those projects in the list could
- 3098 be construed to violate state law or federal law or regulation.
- 3099 (4) (a) The division may enter into agreements related to these projects before the
- 3100 receipt of proceeds of bonds issued under this chapter.
- 3101 (b) The division shall make those expenditures from unexpended and unencumbered
- 3102 building funds already appropriated to the Capital Projects Fund.
- 3103 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
- 3104 of bonds issued under this chapter.
- 3105 (d) The commission may, by resolution, make any statement of intent relating to that
- 3106 reimbursement that is necessary or desirable to comply with federal tax law.

3107 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
3108 it is the intent of the Legislature that the balance necessary to complete the projects be
3109 addressed by future Legislatures, either through appropriations or through the issuance or sale
3110 of bonds.

3111 (b) For those phased projects, the division may enter into contracts for amounts not to
3112 exceed the anticipated full project funding but may not allow work to be performed on those
3113 contracts in excess of the funding already authorized by the Legislature.

3114 (c) Those contracts shall contain a provision for termination of the contract for the
3115 convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

3116 (d) It is also the intent of the Legislature that this authorization to the division does not
3117 bind future Legislatures to fund projects initiated from this authorization.

3118 Section 63. Section **63B-4-102** is amended to read:

3119 **63B-4-102. Maximum amount -- Projects authorized.**

3120 (1) The total amount of bonds issued under this part may not exceed \$45,300,000.

3121 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
3122 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
3123 Subsection (2).

3124 (b) These costs may include the cost of acquiring land, interests in land, easements and
3125 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
3126 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
3127 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
3128 covered by construction of the projects plus a period of six months after the end of the
3129 construction period, and all related engineering, architectural, and legal fees.

3130 (c) For the division, proceeds shall be provided for the following:

3131	CAPITAL IMPROVEMENTS	
3132	Alterations, Repairs, and Improvements	\$7,200,000
3133	TOTAL IMPROVEMENTS	\$7,200,000

3134 CAPITAL AND ECONOMIC DEVELOPMENT

3135			ESTIMATED OPERATIONS AND MAINTENANCE COSTS
	PROJECT DESCRIPTION	AMOUNT FUNDED	
3136	Corrections - Uinta IVA	\$11,300,000	\$212,800
3137	Utah County Youth Correctional Facility	\$6,650,000	\$245,000
3138	Ogden Weber Applied Technology Center - Metal Trades	\$5,161,000	\$176,000
3139	Project Reserve Fund	\$3,500,000	None
3140	Weber State University - Browning Center Remodel	\$3,300,000	None
3141	Heber Wells Building Remodel	\$2,000,000	None
3142	Higher Education Davis County - Land Purchase	\$1,600,000	None
3143	National Guard -- Provo Armory	\$1,500,000	\$128,000
3144	Department of Natural Resources - Pioneer Trails Visitor Center	\$900,000	\$65,000
3145	Higher Education Design Projects	\$800,000	Varies depending upon projects selected
3146	Salt Lake Community College - South Valley Planning	\$300,000	None
3147	Division of Youth Corrections renamed in 2003 to the Division of Juvenile Justice Services - Logan Land Purchase	\$120,000	None
3148	TOTAL CAPITAL AND ECONOMIC DEVELOPMENT		\$37,131,000
3149	TOTAL IMPROVEMENTS AND CAPITAL AND ECONOMIC DEVELOPMENT		\$44,331,000

3150 (d) For purposes of this section, operations and maintenance costs:

3151 (i) are estimates only;

3152 (ii) may include any operations and maintenance costs already funded in existing
3153 agency budgets; and

3154 (iii) are not commitments by this Legislature or future Legislatures to fund those
3155 operations and maintenance costs.

3156 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
3157 constitute a limitation on the amount that may be expended for any project.

3158 (b) The board may revise these estimates and redistribute the amount estimated for a
3159 project among the projects authorized.

3160 (c) The commission, by resolution and in consultation with the board, may delete one
3161 or more projects from this list if the inclusion of that project or those projects in the list could
3162 be construed to violate state law or federal law or regulation.

3163 (4) (a) The division may enter into agreements related to these projects before the
3164 receipt of proceeds of bonds issued under this chapter.

3165 (b) The division shall make those expenditures from unexpended and unencumbered
3166 building funds already appropriated to the Capital Projects Fund.

3167 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
3168 of bonds issued under this chapter.

3169 (d) The commission may, by resolution, make any statement of intent relating to that
3170 reimbursement that is necessary or desirable to comply with federal tax law.

3171 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
3172 it is the intent of the Legislature that the balance necessary to complete the projects be
3173 addressed by future Legislatures, either through appropriations or through the issuance or sale
3174 of bonds.

3175 (b) For those phased projects, the division may enter into contracts for amounts not to
3176 exceed the anticipated full project funding but may not allow work to be performed on those
3177 contracts in excess of the funding already authorized by the Legislature.

3178 (c) Those contracts shall contain a provision for termination of the contract for the
3179 convenience of the state as required by Section ~~[63G-6-601]~~ 63G-6a-1202.

3180 (d) It is also the intent of the Legislature that this authorization to the division does not
3181 bind future Legislatures to fund projects initiated from this authorization.

3182 Section 64. Section **63B-5-102** is amended to read:

3183 **63B-5-102. Maximum amount -- Projects authorized.**

3184 (1) The total amount of bonds issued under this part may not exceed \$32,000,000.

3185 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
 3186 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
 3187 Subsection (2).

3188 (b) These costs may include the cost of acquiring land, interests in land, easements and
 3189 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
 3190 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
 3191 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
 3192 covered by construction of the projects plus a period of six months after the end of the
 3193 construction period, and all related engineering, architectural, and legal fees.

3194 (c) For the division, proceeds shall be provided for the following:

3195 **CAPITAL IMPROVEMENTS**

3196	Alterations, Repairs, and Improvements	\$7,600,000
3197	TOTAL IMPROVEMENTS	\$7,600,000

3198 **CAPITAL AND ECONOMIC DEVELOPMENT**

3199		ESTIMATED OPERATIONS AND AMOUNT FUNDED	MAINTENANCE COSTS
	PROJECT DESCRIPTION		
3200	Corrections - Gunnison (192 Beds)	\$13,970,000	\$210,000
3201	University of Utah -- Gardner Hall	\$7,361,000	\$203,900
3202	Weber State University Davis Campus -- Land Purchase	\$771,000	None
3203	Department of Workforce Services Cedar City -- Land Purchase	\$148,000	None
3204	College of Eastern Utah Durrant School -- Land Purchase	\$400,000	None
3205	State Hospital - Forensic Design (200 beds)	\$750,000	\$575,000

3206 TOTAL CAPITAL AND ECONOMIC \$23,400,000
DEVELOPMENT

3207 TOTAL IMPROVEMENTS AND CAPITAL AND \$31,000,000
ECONOMIC DEVELOPMENT

3208 (d) For purposes of this section, operations and maintenance costs:

3209 (i) are estimates only;

3210 (ii) may include any operations and maintenance costs already funded in existing
3211 agency budgets; and

3212 (iii) are not commitments by this Legislature or future Legislatures to fund those
3213 operations and maintenance costs.

3214 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
3215 constitute a limitation on the amount that may be expended for any project.

3216 (b) The board may revise these estimates and redistribute the amount estimated for a
3217 project among the projects authorized.

3218 (c) The commission, by resolution and in consultation with the board, may delete one
3219 or more projects from this list if the inclusion of that project or those projects in the list could
3220 be construed to violate state law or federal law or regulation.

3221 (4) (a) The division may enter into agreements related to these projects before the
3222 receipt of proceeds of bonds issued under this chapter.

3223 (b) The division shall make those expenditures from unexpended and unencumbered
3224 building funds already appropriated to the Capital Projects Fund.

3225 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
3226 of bonds issued under this chapter.

3227 (d) The commission may, by resolution, make any statement of intent relating to that
3228 reimbursement that is necessary or desirable to comply with federal tax law.

3229 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
3230 it is the intent of the Legislature that the balance necessary to complete the projects be
3231 addressed by future Legislatures, either through appropriations or through the issuance or sale
3232 of bonds.

3233 (b) For those phased projects, the division may enter into contracts for amounts not to
3234 exceed the anticipated full project funding but may not allow work to be performed on those

3235 contracts in excess of the funding already authorized by the Legislature.

3236 (c) Those contracts shall contain a provision for termination of the contract for the
 3237 convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

3238 (d) It is also the intent of the Legislature that this authorization to the division does not
 3239 bind future Legislatures to fund projects initiated from this authorization.

3240 Section 65. Section **63B-6-102** is amended to read:

3241 **63B-6-102. Maximum amount -- Projects authorized.**

3242 (1) The total amount of bonds issued under this part may not exceed \$57,000,000.

3243 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
 3244 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
 3245 Subsection (2).

3246 (b) These costs may include the cost of acquiring land, interests in land, easements and
 3247 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
 3248 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
 3249 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
 3250 covered by construction of the projects plus a period of six months after the end of the
 3251 construction period, and all related engineering, architectural, and legal fees.

3252 (c) For the division, proceeds shall be provided for the following:

3253 CAPITAL AND ECONOMIC DEVELOPMENT

PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE
3255 Youth Corrections - Carbon / Emery (18 beds)	\$2,298,100	\$70,000
3256 State Hospital - 100 bed Forensic Facility	\$13,800,700	\$320,600
3257 Utah State University - Widtsoe Hall	\$23,986,700	\$750,200
3258 Davis Applied Technology Center - Medical/Health Tech Addition	\$6,344,900	\$144,000
3259 Southern Utah University -- Physical Education Building (Design)	\$1,100,000	\$456,100

3260	Salt Lake Community College -- High Technology Building, 90th So. Campus (Design)	\$1,165,000	\$718,500
3261	Department of Natural Resources - Antelope Island Road	\$3,600,000	None
3262	Youth Corrections - Region 1 72 Secured Bed Facility	\$1,500,000	None
3263	Department of Natural Resources - Dead Horse Point Visitors Center	\$1,350,000	\$5,700
3264	TOTAL CAPITAL AND ECONOMIC DEVELOPMENT	\$55,145,400	

3265 (d) For purposes of this section, operations and maintenance costs:

3266 (i) are estimates only;

3267 (ii) may include any operations and maintenance costs already funded in existing
3268 agency budgets; and

3269 (iii) are not commitments by this Legislature or future Legislatures to fund those
3270 operations and maintenance costs.

3271 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
3272 constitute a limitation on the amount that may be expended for any project.

3273 (b) The board may revise these estimates and redistribute the amount estimated for a
3274 project among the projects authorized.

3275 (c) The commission, by resolution and in consultation with the board, may delete one
3276 or more projects from this list if the inclusion of that project or those projects in the list could
3277 be construed to violate state law or federal law or regulation.

3278 (4) (a) The division may enter into agreements related to these projects before the
3279 receipt of proceeds of bonds issued under this chapter.

3280 (b) The division shall make those expenditures from unexpended and unencumbered
3281 building funds already appropriated to the Capital Projects Fund.

3282 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
3283 of bonds issued under this chapter.

3284 (d) The commission may, by resolution, make any statement of intent relating to that

3285 reimbursement that is necessary or desirable to comply with federal tax law.

3286 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
3287 it is the intent of the Legislature that the balance necessary to complete the projects be
3288 addressed by future Legislatures, either through appropriations or through the issuance or sale
3289 of bonds.

3290 (b) For those phased projects, the division may enter into contracts for amounts not to
3291 exceed the anticipated full project funding but may not allow work to be performed on those
3292 contracts in excess of the funding already authorized by the Legislature.

3293 (c) Those contracts shall contain a provision for termination of the contract for the
3294 convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

3295 (d) It is also the intent of the Legislature that this authorization to the division does not
3296 bind future Legislatures to fund projects initiated from this authorization.

3297 Section 66. Section **63B-6-402** is amended to read:

3298 **63B-6-402. Maximum amount -- Projects authorized.**

3299 (1) The total amount of bonds issued under this part may not exceed \$9,000,000.

3300 (2) (a) Proceeds from the issuance of bonds shall be provided to the State Tax
3301 Commission to provide funds to pay all or part of the cost of the project described in this
3302 Subsection (2).

3303 (b) These costs may include:

3304 (i) the cost of acquisition, development, and conversion of computer hardware and
3305 software for motor vehicle fee systems and tax collection and accounting systems of the state;

3306 (ii) interest estimated to accrue on these bonds during the period to be covered by that
3307 development and conversion, plus a period of six months following the completion of the
3308 development and conversion; and

3309 (iii) all related engineering, consulting, and legal fees.

3310 (c) For the State Tax Commission, proceeds shall be provided for the following:

3311	PROJECT	AMOUNT
	DESCRIPTION	FUNDED
3312	UTAX SYSTEMS ACQUISITION AND DEVELOPMENT	\$8,500,000

3313 (3) The commission, by resolution may decline to issue bonds if the project could be

3314 construed to violate state law or federal law or regulation.

3315 (4) (a) For this project, for which only partial funding is provided in Subsection (2), it
 3316 is the intent of the Legislature that the balance necessary to complete the project be addressed
 3317 by future Legislatures, either through appropriations or through the issuance or sale of bonds.

3318 (b) The State Tax Commission may enter into contracts for amounts not to exceed the
 3319 anticipated full project funding but may not allow work to be performed on those contracts in
 3320 excess of the funding already authorized by the Legislature.

3321 (c) Those contracts shall contain a provision for termination of the contract for the
 3322 convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

3323 (d) It is also the intent of the Legislature that this authorization to the State Tax
 3324 Commission does not bind future Legislatures to fund projects initiated from this authorization.

3325 Section 67. Section **63B-7-102** is amended to read:

3326 **63B-7-102. Maximum amount -- Projects authorized.**

3327 (1) The total amount of bonds issued under this part may not exceed \$33,600,000.

3328 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
 3329 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
 3330 Subsection (2).

3331 (b) These costs may include the cost of acquiring land, interests in land, easements and
 3332 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
 3333 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
 3334 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
 3335 covered by construction of the projects plus a period of six months after the end of the
 3336 construction period, and all related engineering, architectural, and legal fees.

3337 (c) For the division, proceeds shall be provided for the following:

3338

PROJECT DESCRIPTION	AMOUNT FUNDED	ESTIMATED OPERATIONS AND MAINTENANCE
3339 Southern Utah University Land Purchase	\$4,600,000	\$0
3340 Salt Lake Community College High Tech Center - Jordan Campus	\$3,980,700	\$507,900

3341	Children's Special Health Care Needs Clinic	\$755,400	\$247,600
3342	Youth Corrections - 2 @ 32 beds (Vernal / Logan)	\$419,500	\$276,000
3343	Corrections - Gunnison 288 bed and Lagoon Expansion	\$8,425,600	\$0
3344	University of Utah - Cowles Building	\$445,500	\$101,700
3345	Utah Valley State College - Technical Building	\$1,166,300	\$391,000
3346	Sevier Valley Applied Technology Center - Shop Expansion	\$3,014,300	\$443,300
3347	Division of Parks and Recreation Statewide Restrooms	\$1,000,000	\$22,700
3348	Murray Highway Patrol Office	\$2,300,000	\$81,000
3349	Department of Workforce Services - Davis County Employment Center	\$2,780,000	\$128,100
3350	State Hospital - Rampton II	\$1,600,000	\$462,000
3351	Courts - 4th District Land - Provo	\$1,368,000	\$0
3352	Dixie College - Land	\$1,000,000	\$0
3353	TOTAL CAPITAL AND ECONOMIC DEVELOPMENT	\$32,855,300	

- 3354 (d) For purposes of this section, operations and maintenance costs:
- 3355 (i) are estimates only;
- 3356 (ii) may include any operations and maintenance costs already funded in existing
- 3357 agency budgets; and
- 3358 (iii) are not commitments by this Legislature or future Legislatures to fund those
- 3359 operations and maintenance costs.
- 3360 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
- 3361 constitute a limitation on the amount that may be expended for any project.
- 3362 (b) The board may revise these estimates and redistribute the amount estimated for a
- 3363 project among the projects authorized.
- 3364 (c) The commission, by resolution and in consultation with the board, may delete one

3365 or more projects from this list if the inclusion of that project or those projects in the list could
3366 be construed to violate state law or federal law or regulation.

3367 (4) (a) The division may enter into agreements related to these projects before the
3368 receipt of proceeds of bonds issued under this chapter.

3369 (b) The division shall make those expenditures from unexpended and unencumbered
3370 building funds already appropriated to the Capital Projects Fund.

3371 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
3372 of bonds issued under this chapter.

3373 (d) The commission may, by resolution, make any statement of intent relating to that
3374 reimbursement that is necessary or desirable to comply with federal tax law.

3375 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
3376 it is the intent of the Legislature that the balance necessary to complete the projects be
3377 addressed by future Legislatures, either through appropriations or through the issuance or sale
3378 of bonds.

3379 (b) For those phased projects, the division may enter into contracts for amounts not to
3380 exceed the anticipated full project funding but may not allow work to be performed on those
3381 contracts in excess of the funding already authorized by the Legislature.

3382 (c) Those contracts shall contain a provision for termination of the contract for the
3383 convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

3384 (d) It is also the intent of the Legislature that this authorization to the division does not
3385 bind future Legislatures to fund projects initiated from this authorization.

3386 Section 68. Section **63B-7-402** is amended to read:

3387 **63B-7-402. Maximum amount -- Projects authorized.**

3388 (1) The total amount of bonds issued under this part may not exceed \$16,500,000.

3389 (2) (a) Proceeds from the issuance of bonds shall be provided to the State Tax
3390 Commission to provide funds to pay all or part of the cost of the project described in this
3391 Subsection (2).

3392 (b) These costs may include:

3393 (i) the cost of acquisition, development, and conversion of computer hardware and
3394 software for motor vehicle fee systems and tax collection and accounting systems of the state;

3395 (ii) interest estimated to accrue on these bonds during the period to be covered by that

3396 development and conversion, plus a period of six months following the completion of the
3397 development and conversion; and

3398 (iii) all related engineering, consulting, and legal fees.

3399 (c) For the State Tax Commission, proceeds shall be provided for the following:

3400	PROJECT	AMOUNT
	DESCRIPTION	FUNDED
3401	UTAX SYSTEMS ACQUISITION AND DEVELOPMENT	\$15,650,000

3402 (3) The commission, by resolution may decline to issue bonds if the project could be
3403 construed to violate state law or federal law or regulation.

3404 (4) (a) For this project, for which only partial funding is provided in Subsection (2), it
3405 is the intent of the Legislature that the balance necessary to complete the project be addressed
3406 by future Legislatures, either through appropriations or through the issuance or sale of bonds.

3407 (b) The State Tax Commission may enter into contracts for amounts not to exceed the
3408 anticipated full project funding but may not allow work to be performed on those contracts in
3409 excess of the funding already authorized by the Legislature.

3410 (c) Those contracts shall contain a provision for termination of the contract for the
3411 convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

3412 (d) It is also the intent of the Legislature that this authorization to the State Tax
3413 Commission does not bind future Legislatures to fund projects initiated from this authorization.

3414 Section 69. Section **63B-8-102** is amended to read:
3415 **63B-8-102. Maximum amount -- Projects authorized.**

3416 (1) The total amount of bonds issued under this part may not exceed \$48,500,000.

3417 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
3418 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
3419 Subsection (2).

3420 (b) These costs may include the cost of acquiring land, interests in land, easements and
3421 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
3422 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
3423 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
3424 covered by construction of the projects plus a period of six months after the end of the

3425 construction period, and all related engineering, architectural, and legal fees.

3426 (c) For the division, proceeds shall be provided for the following:

3427		ESTIMATED
		OPERATIONS
PROJECT	AMOUNT	AND
DESCRIPTION	FUNDED	MAINTENANCE
3428	Southern Utah University - Physical Education Building	\$447,744
3429	Utah Valley State College - Information Sciences Building	\$721,875
3430	University of Utah - Cowles Building Renovation	\$140,217
3431	Vernal District Court	\$149,989
3432	Salt Lake Community College - Applied Education Center	\$281,784
3433	TOTAL CAPITAL AND ECONOMIC DEVELOPMENT	\$47,501,200

3434 (d) For purposes of this section, operations and maintenance costs:

3435 (i) are estimates only;

3436 (ii) may include any operations and maintenance costs already funded in existing
3437 agency budgets; and

3438 (iii) are not commitments by this Legislature or future Legislatures to fund those
3439 operations and maintenance costs.

3440 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
3441 constitute a limitation on the amount that may be expended for any project.

3442 (b) The board may revise these estimates and redistribute the amount estimated for a
3443 project among the projects authorized.

3444 (c) The commission, by resolution and in consultation with the board, may delete one
3445 or more projects from this list if the inclusion of that project or those projects in the list could
3446 be construed to violate state law or federal law or regulation.

3447 (4) (a) The division may enter into agreements related to these projects before the

3448 receipt of proceeds of bonds issued under this chapter.

3449 (b) The division shall make those expenditures from unexpended and unencumbered
3450 building funds already appropriated to the Capital Projects Fund.

3451 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
3452 of bonds issued under this chapter.

3453 (d) The commission may, by resolution, make any statement of intent relating to that
3454 reimbursement that is necessary or desirable to comply with federal tax law.

3455 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
3456 it is the intent of the Legislature that the balance necessary to complete the projects be
3457 addressed by future Legislatures, either through appropriations or through the issuance or sale
3458 of bonds.

3459 (b) For those phased projects, the division may enter into contracts for amounts not to
3460 exceed the anticipated full project funding but may not allow work to be performed on those
3461 contracts in excess of the funding already authorized by the Legislature.

3462 (c) Those contracts shall contain a provision for termination of the contract for the
3463 convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

3464 (d) It is also the intent of the Legislature that this authorization to the division does not
3465 bind future Legislatures to fund projects initiated from this authorization.

3466 Section 70. Section **63B-8-402** is amended to read:

3467 **63B-8-402. Maximum amount -- Projects authorized.**

3468 (1) The total amount of bonds issued under this part may not exceed \$7,400,000.

3469 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
3470 funds to pay all or part of the cost of acquiring and constructing the project listed in this
3471 Subsection (2).

3472 (b) These costs may include the cost of acquiring land, interests in land, easements and
3473 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
3474 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
3475 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
3476 covered by construction of the projects plus a period of six months after the end of the
3477 construction period, and all related engineering, architectural, and legal fees.

3478 (c) For the division, proceeds shall be provided for the following:

3479		ESTIMATED OPERATIONS AND MAINTENANCE
	PROJECT DESCRIPTION	AMOUNT FUNDED
3480	State Hospital - Rampton II	\$7,000,000 \$462,000

- 3481 (d) For purposes of this section, operations and maintenance costs:
- 3482 (i) are estimates only;
- 3483 (ii) may include any operations and maintenance costs already funded in existing
- 3484 agency budgets; and
- 3485 (iii) are not commitments by this Legislature or future Legislatures to fund those
- 3486 operations and maintenance costs.
- 3487 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
- 3488 constitute a limitation on the amount that may be expended for any project.
- 3489 (b) The board may revise these estimates and redistribute the amount estimated for a
- 3490 project among the projects authorized.
- 3491 (c) The commission, by resolution and in consultation with the board, may delete one
- 3492 or more projects from this list if the inclusion of that project or those projects in the list could
- 3493 be construed to violate state law or federal law or regulation.
- 3494 (4) (a) The division may enter into agreements related to these projects before the
- 3495 receipt of proceeds of bonds issued under this chapter.
- 3496 (b) The division shall make those expenditures from unexpended and unencumbered
- 3497 building funds already appropriated to the Capital Projects Fund.
- 3498 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
- 3499 of bonds issued under this chapter.
- 3500 (d) The commission may, by resolution, make any statement of intent relating to that
- 3501 reimbursement that is necessary or desirable to comply with federal tax law.
- 3502 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
- 3503 it is the intent of the Legislature that the balance necessary to complete the projects be
- 3504 addressed by future Legislatures, either through appropriations or through the issuance or sale
- 3505 of bonds.
- 3506 (b) For those phased projects, the division may enter into contracts for amounts not to

3507 exceed the anticipated full project funding but may not allow work to be performed on those
3508 contracts in excess of the funding already authorized by the Legislature.

3509 (c) Those contracts shall contain a provision for termination of the contract for the
3510 convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

3511 (d) It is also the intent of the Legislature that this authorization to the division does not
3512 bind future Legislatures to fund projects initiated from this authorization.

3513 Section 71. Section **63B-9-103** is amended to read:

3514 **63B-9-103. Other capital facility authorizations and intent language.**

3515 (1) It is the intent of the Legislature that:

3516 (a) Utah State University use institutional funds to plan, design, and construct a
3517 renovation and expansion of the Edith Bowen School under the direction of the director of the
3518 Division of Facilities Construction and Management unless supervisory authority has been
3519 delegated;

3520 (b) no state funds be used for any portion of this project; and

3521 (c) the university may request state funds for operations and maintenance to the extent
3522 that the university is able to demonstrate to the Board of Regents that the facility meets
3523 approved academic and training purposes under Board of Regents policy R710.

3524 (2) It is the intent of the Legislature that:

3525 (a) the University of Utah use institutional funds to plan, design, and construct a
3526 College of Science Math Center under the direction of the director of the Division of Facilities
3527 Construction and Management unless supervisory authority has been delegated;

3528 (b) no state funds be used for any portion of this project; and

3529 (c) the university may request state funds for operations and maintenance to the extent
3530 that the university is able to demonstrate to the Board of Regents that the facility meets
3531 approved academic and training purposes under Board of Regents policy R710.

3532 (3) It is the intent of the Legislature that:

3533 (a) the University of Utah use institutional funds to plan, design, and construct a
3534 Burbidge Athletics and Academics Building under the direction of the director of the Division
3535 of Facilities Construction and Management unless supervisory authority has been delegated;

3536 (b) no state funds be used for any portion of this project; and

3537 (c) the university may not request state funds for operations and maintenance.

- 3538 (4) It is the intent of the Legislature that:
- 3539 (a) the University of Utah use institutional funds to plan, design, and construct an
- 3540 expansion to the bookstore under the direction of the director of the Division of Facilities
- 3541 Construction and Management unless supervisory authority has been delegated;
- 3542 (b) no state funds be used for any portion of this project; and
- 3543 (c) the university may not request state funds for operations and maintenance.
- 3544 (5) It is the intent of the Legislature that:
- 3545 (a) the University of Utah use institutional funds to plan, design, and construct a Health
- 3546 Sciences/Basic Sciences Building under the direction of the director of the Division of
- 3547 Facilities Construction and Management unless supervisory authority has been delegated;
- 3548 (b) no state funds be used for any portion of this project; and
- 3549 (c) the university may request state funds for operations and maintenance to the extent
- 3550 that the university is able to demonstrate to the Board of Regents that the facility meets
- 3551 approved academic and training purposes under Board of Regents policy R710.
- 3552 (6) It is the intent of the Legislature that:
- 3553 (a) Weber State University use institutional funds to plan, design, and construct an
- 3554 expansion to the stadium under the direction of the director of the Division of Facilities
- 3555 Construction and Management unless supervisory authority has been delegated;
- 3556 (b) no state funds be used for any portion of this project; and
- 3557 (c) the university may not request state funds for operations and maintenance.
- 3558 (7) It is the intent of the Legislature that:
- 3559 (a) Utah Valley State College use institutional funds to plan, design, and construct a
- 3560 baseball stadium under the direction of the director of the Division of Facilities Construction
- 3561 and Management unless supervisory authority has been delegated;
- 3562 (b) no state funds be used for any portion of this project; and
- 3563 (c) the college may not request state funds for operations and maintenance.
- 3564 (8) It is the intent of the Legislature that:
- 3565 (a) Southern Utah University use institutional funds to plan, design, and construct a
- 3566 weight training room under the direction of the director of the Division of Facilities
- 3567 Construction and Management unless supervisory authority has been delegated;
- 3568 (b) no state funds be used for any portion of this project; and

- 3569 (c) the university may not request state funds for operations and maintenance.
- 3570 (9) It is the intent of the Legislature that:
- 3571 (a) Snow College may lease land at the Snow College Richfield campus to a private
- 3572 developer for the construction and operation of student housing;
- 3573 (b) the oversight and inspection of the construction comply with Section 63A-5-206;
- 3574 (c) no state funds be used for any portion of this project; and
- 3575 (d) the college may not request state funds for operations and maintenance.
- 3576 (10) It is the intent of the Legislature that:
- 3577 (a) Salt Lake Community College may lease land at the Jordan campus to Jordan
- 3578 School District for the construction and operation of an Applied Technology Education Center;
- 3579 (b) the oversight and inspection of the construction comply with Section 63A-5-206;
- 3580 (c) no state funds be used for any portion of this project; and
- 3581 (d) the college may not request state funds for operations and maintenance.
- 3582 (11) It is the intent of the Legislature that:
- 3583 (a) the Department of Transportation exchange its maintenance station at Kimball
- 3584 Junction for property located near Highway 40 in Summit County; and
- 3585 (b) the Department of Transportation use federal funds, rent paid by the Salt Lake
- 3586 Organizing Committee for the use of the maintenance station, and any net proceeds resulting
- 3587 from the exchange of property to construct a replacement facility under the direction of the
- 3588 director of the Division of Facilities Construction and Management unless supervisory
- 3589 authority has been delegated.
- 3590 (12) It is the intent of the Legislature that:
- 3591 (a) the Department of Transportation sell surplus property in Utah County;
- 3592 (b) the Department of Transportation use funds from that sale to remodel existing
- 3593 space and add an addition to the Region 3 Complex; and
- 3594 (c) the project cost not exceed the funds received through sale of property.
- 3595 (13) It is the intent of the Legislature that the Department of Workforce Services use
- 3596 proceeds from property sales to purchase additional property adjacent to its state-owned facility
- 3597 in Logan.
- 3598 (14) (a) It is the intent of the Legislature that, because only partial funding is provided
- 3599 for the Heat Plant/Infrastructure Project at Utah State University, the balance necessary to

3600 complete this project be addressed by future Legislatures, either through appropriations or
3601 through the issuance of bonds.

3602 (b) (i) In compliance with Section 63A-5-207, the division may enter into contracts for
3603 amounts not to exceed the anticipated full project funding but may not allow work to be
3604 performed on those contracts in excess of the funding already authorized by the Legislature.

3605 (ii) Those contracts shall contain a provision for termination of the contract for the
3606 convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

3607 (c) It is also the intent of the Legislature that this authorization to the division does not
3608 bind future Legislatures to fund the Heat Plant/Infrastructure Project at Utah State University.

3609 Section 72. Section **63B-11-202** is amended to read:

3610 **63B-11-202. Maximum amount -- Projects authorized.**

3611 (1) (a) The total amount of bonds issued under this part may not exceed \$21,250,000.

3612 (b) When Utah State University certifies to the commission that the university has
3613 obtained reliable commitments, convertible to cash, of \$5,000,000 or more in nonstate funds to
3614 construct an addition to the new engineering building and demolish the existing engineering
3615 classroom building, the commission may issue and sell general obligation bonds in a total
3616 amount not to exceed \$6,100,000.

3617 (c) When the University of Utah certifies to the commission that the university has
3618 obtained reliable commitments, convertible to cash, of \$13,000,000 or more in nonstate funds
3619 to construct a new engineering building, the commission may issue and sell general obligation
3620 bonds in a total amount not to exceed \$15,150,000.

3621 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
3622 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
3623 Subsection (2).

3624 (b) These costs may include the cost of acquiring land, interests in land, easements and
3625 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
3626 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
3627 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
3628 covered by construction of the projects plus a period of six months after the end of the
3629 construction period, and all related engineering, architectural, and legal fees.

3630 (c) For the division, proceeds shall be provided for the following:

3631		ESTIMATED
		OPERATING
		AND
PROJECT	AMOUNT	MAINTENANCE
DESCRIPTION	FUNDED	COSTS
3632	1. Utah State University Engineering Building Renovation	\$5,943,500 \$425,000
3633	2. University of Utah New Engineering Building	\$15,000,000 \$489,000
3634	COSTS OF ISSUANCE	\$306,500
3635	TOTAL CAPITAL AND ECONOMIC DEVELOPMENT	\$21,250,000

- 3636 (d) For purposes of this section, operations and maintenance costs:
- 3637 (i) are estimates only;
- 3638 (ii) may include any operations and maintenance costs already funded in existing
- 3639 agency budgets; and
- 3640 (iii) are not commitments by this Legislature or future Legislatures to fund those
- 3641 operations and maintenance costs.
- 3642 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
- 3643 constitute a limitation on the amount that may be expended for any project.
- 3644 (b) The board may revise these estimates and redistribute the amount estimated for a
- 3645 project among the projects authorized.
- 3646 (c) The commission, by resolution and in consultation with the board, may delete one
- 3647 or more projects from this list if the inclusion of that project or those projects in the list could
- 3648 be construed to violate state law or federal law or regulation.
- 3649 (4) (a) The division may enter into agreements related to these projects before the
- 3650 receipt of proceeds of bonds issued under this chapter.
- 3651 (b) The division shall make those expenditures from unexpended and unencumbered
- 3652 building funds already appropriated to the Capital Projects Fund.
- 3653 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
- 3654 of bonds issued under this chapter.
- 3655 (d) The commission may, by resolution, make any statement of intent relating to that

3656 reimbursement that is necessary or desirable to comply with federal tax law.

3657 (5) (a) For those projects for which only partial funding is provided in Subsection (2),
3658 it is the intent of the Legislature that the balance necessary to complete the projects be
3659 addressed by future Legislatures, either through appropriations or through the issuance or sale
3660 of bonds.

3661 (b) For those phased projects, the division may enter into contracts for amounts not to
3662 exceed the anticipated full project funding but may not allow work to be performed on those
3663 contracts in excess of the funding already authorized by the Legislature.

3664 (c) Those contracts shall contain a provision for termination of the contract for the
3665 convenience of the state as required by Section [~~63G-6-601~~] 63G-6a-1202.

3666 (d) It is also the intent of the Legislature that this authorization to the division does not
3667 bind future Legislatures to fund projects initiated from this authorization.

3668 Section 73. Section **63C-7-210** is amended to read:

3669 **63C-7-210. Exemption from certain acts.**

3670 (1) The Utah Communications Agency Network is exempt from:

3671 (a) Title 63J, Chapter 1, Budgetary Procedures Act;

3672 (b) Title 63A, Utah Administrative Services Code, except as provided in Section
3673 63A-4-205.5;

3674 (c) Title 63G, Chapter [~~6~~] 6a, Utah Procurement Code;

3675 (d) Title 63G, Chapter 4, Administrative Procedures Act; and

3676 (e) Title 67, Chapter 19, Utah State Personnel Management Act.

3677 (2) The board shall adopt budgetary procedures, accounting, procurement, and
3678 personnel policies substantially similar to those from which they have been exempted in
3679 Subsection (1).

3680 Section 74. Section **63C-9-301** is amended to read:

3681 **63C-9-301. Board powers -- Subcommittees.**

3682 (1) The board shall:

3683 (a) except as provided in Subsection (2), exercise complete jurisdiction and
3684 stewardship over capitol hill facilities, capitol hill grounds, and the capitol hill complex;

3685 (b) preserve, maintain, and restore the capitol hill complex, capitol hill facilities,
3686 capitol hill grounds, and their contents;

3687 (c) before October 1 of each year, review and approve the executive director's annual
3688 budget request for submittal to the governor and Legislature;

3689 (d) by October 1 of each year, prepare and submit a recommended budget request for
3690 the upcoming fiscal year for the capitol hill complex to:

3691 (i) the governor, through the Governor's Office of Planning and Budget; and

3692 (ii) the Legislature's appropriations subcommittee responsible for capitol hill facilities,
3693 through the Office of Legislative Fiscal Analyst;

3694 (e) review and approve the executive director's:

3695 (i) annual work plan;

3696 (ii) long-range master plan for the capitol hill complex, capitol hill facilities, and
3697 capitol hill grounds; and

3698 (iii) furnishings plan for placement and care of objects under the care of the board;

3699 (f) approve all changes to the buildings and their grounds, including:

3700 (i) restoration, remodeling, and rehabilitation projects;

3701 (ii) usual maintenance program; and

3702 (iii) any transfers or loans of objects under the board's care;

3703 (g) define and identify all significant aspects of the capitol hill complex, capitol hill
3704 facilities, and capitol hill grounds, after consultation with the:

3705 (i) Division of Facilities Construction and Management;

3706 (ii) State Library Division;

3707 (iii) Division of Archives and Records Service;

3708 (iv) Division of State History;

3709 (v) Office of Museum Services; and

3710 (vi) Arts Council;

3711 (h) inventory, define, and identify all significant contents of the buildings and all
3712 state-owned items of historical significance that were at one time in the buildings, after
3713 consultation with the:

3714 (i) Division of Facilities Construction and Management;

3715 (ii) State Library Division;

3716 (iii) Division of Archives and Records Service;

3717 (iv) Division of State History;

3718 (v) Office of Museum Services; and

3719 (vi) Arts Council;

3720 (i) maintain archives relating to the construction and development of the buildings, the
3721 contents of the buildings and their grounds, including documents such as plans, specifications,
3722 photographs, purchase orders, and other related documents, the original copies of which shall
3723 be maintained by the Division of Archives and Records Service;

3724 (j) comply with federal and state laws related to program and facility accessibility; and

3725 (k) establish procedures for receiving, hearing, and deciding complaints or other issues
3726 raised about the capitol hill complex, capitol hill facilities, and capitol hill grounds, or their
3727 use.

3728 (2) (a) Notwithstanding Subsection (1)(a), the supervision and control of the legislative
3729 area, as defined in Section 36-5-1, is reserved to the Legislature; and

3730 (b) the supervision and control of the governor's area, as defined in Section 67-1-16, is
3731 reserved to the governor.

3732 (3) (a) The board shall make rules to govern, administer, and regulate the capitol hill
3733 complex, capitol hill facilities, and capitol hill grounds by following the procedures and
3734 requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

3735 (b) A person who violates a rule adopted by the board under the authority of this
3736 Subsection (3) is subject to a civil penalty not to exceed \$2,500 for each violation, plus the
3737 amount of any actual damages, expenses, and costs related to the violation of the rule that are
3738 incurred by the state.

3739 (c) The board may take any other legal action allowed by law.

3740 (d) If any violation of a rule adopted by the board is also an offense under Title 76,
3741 Utah Criminal Code, the violation is subject to the civil penalty, damages, expenses, and costs
3742 allowed under this Subsection (3) in addition to any criminal prosecution.

3743 (e) The board may not apply this section or rules adopted under the authority of this
3744 section in a manner that violates a person's rights under the Utah Constitution or the First
3745 Amendment to the United States Constitution, including the right of persons to peaceably
3746 assemble.

3747 (f) The board shall send proposed rules under this section to the legislative general
3748 counsel and the governor's general counsel for review and comment before the board adopts the

3749 rules.

3750 (4) The board is exempt from the requirements of Title 63G, Chapter [6] 6a, Utah
3751 Procurement Code, but shall adopt procurement rules substantially similar to the requirements
3752 of that chapter.

3753 (5) (a) The board may:

3754 (i) establish subcommittees made up of board members and members of the public to
3755 assist and support the executive director in accomplishing the executive director's duties;

3756 (ii) establish fees for the use of capitol hill facilities and capitol hill grounds;

3757 (iii) assign and allocate specific duties and responsibilities to any other state agency, if
3758 the other agency agrees to perform the duty or accept the responsibility;

3759 (iv) contract with another state agency to provide services;

3760 (v) delegate by specific motion of the board any authority granted to it by this section
3761 to the executive director;

3762 (vi) in conjunction with Salt Lake City, expend money to improve or maintain public
3763 property contiguous to East Capitol Boulevard and capitol hill;

3764 (vii) provide wireless Internet service to the public without a fee in any capitol hill
3765 facility; and

3766 (viii) when necessary, consult with the:

3767 (A) Division of Facilities Construction and Management;

3768 (B) State Library Division;

3769 (C) Division of Archives and Records Service;

3770 (D) Division of State History;

3771 (E) Office of Museum Services; and

3772 (F) Arts Council.

3773 (b) The board's provision of wireless Internet service under Subsection (5)(a)(vii) shall
3774 be discontinued in the legislative area if the president of the Senate and the speaker of the
3775 House of Representatives each submit a signed letter to the board indicating that the service is
3776 disruptive to the legislative process and is to be discontinued.

3777 (c) If a budget subcommittee is established by the board, the following shall serve as ex
3778 officio, nonvoting members of the budget subcommittee:

3779 (i) the legislative fiscal analyst, or the analyst's designee, who shall be from the Office

3780 of Legislative Fiscal Analyst; and

3781 (ii) the director of the Governor's Office of Planning and Budget, or the director's
3782 designee, who shall be from the Governor's Office of Planning and Budget.

3783 (d) If a preservation and maintenance subcommittee is established by the board, the
3784 board may, by majority vote, appoint one or each of the following to serve on the
3785 subcommittee as voting members of the subcommittee:

3786 (i) an architect, who shall be selected from a list of three architects submitted by the
3787 American Institute of Architects; or

3788 (ii) an engineer, who shall be selected from a list of three engineers submitted by the
3789 American Civil Engineers Council.

3790 (e) If the board establishes any subcommittees, the board may, by majority vote,
3791 appoint up to two people who are not members of the board to serve, at the will of the board, as
3792 nonvoting members of a subcommittee.

3793 (f) Members of each subcommittee shall, at the first meeting of each calendar year,
3794 select one individual to act as chair of the subcommittee for a one-year term.

3795 (6) (a) The board, and the employees of the board, may not move the office of the
3796 governor, lieutenant governor, president of the Senate, speaker of the House of
3797 Representatives, or a member of the Legislature from the State Capitol unless the removal is
3798 approved by:

3799 (i) the governor, in the case of the governor's office;

3800 (ii) the lieutenant governor, in the case of the lieutenant governor's office;

3801 (iii) the president of the Senate, in the case of the president's office or the office of a
3802 member of the Senate; or

3803 (iv) the speaker of the House of Representatives, in the case of the speaker's office or
3804 the office of a member of the House.

3805 (b) The board and the employees of the board have no control over the furniture,
3806 furnishings, and decorative objects in the offices of the governor, lieutenant governor, or the
3807 members of the Legislature except as necessary to inventory or conserve items of historical
3808 significance owned by the state.

3809 (c) The board and the employees of the board have no control over records and
3810 documents produced by or in the custody of a state agency, official, or employee having an

3811 office in a building on the capitol hill complex.

3812 (d) Except for items identified by the board as having historical significance, and
3813 except as provided in Subsection (6)(b), the board and the employees of the board have no
3814 control over moveable furnishings and equipment in the custody of a state agency, official, or
3815 employee having an office in a building on the capitol hill complex.

3816 Section 75. Section **63C-9-403** is amended to read:

3817 **63C-9-403. Contracting power of executive director -- Health insurance coverage.**

3818 (1) For purposes of this section:

3819 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
3820 34A-2-104 who:

3821 (i) works at least 30 hours per calendar week; and

3822 (ii) meets employer eligibility waiting requirements for health care insurance which
3823 may not exceed the first of the calendar month following 90 days from the date of hire.

3824 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

3825 (c) "Qualified health insurance coverage" is as defined in Section 26-40-115.

3826 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

3827 (2) (a) Except as provided in Subsection (3), this section applies to a design or
3828 construction contract entered into by the board or on behalf of the board on or after July 1,
3829 2009, and to a prime contractor or a subcontractor in accordance with Subsection (2)(b).

3830 (b) (i) A prime contractor is subject to this section if the prime contract is in the
3831 amount of \$1,500,000 or greater.

3832 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
3833 \$750,000 or greater.

3834 (3) This section does not apply if:

3835 (a) the application of this section jeopardizes the receipt of federal funds;

3836 (b) the contract is a sole source contract; or

3837 (c) the contract is an emergency procurement.

3838 (4) (a) This section does not apply to a change order as defined in Section [~~63G-6-103~~]
3839 63G-6a-103, or a modification to a contract, when the contract does not meet the initial
3840 threshold required by Subsection (2).

3841 (b) A person who intentionally uses change orders or contract modifications to

3842 circumvent the requirements of Subsection (2) is guilty of an infraction.

3843 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive
3844 director that the contractor has and will maintain an offer of qualified health insurance
3845 coverage for the contractor's employees and the employees' dependents during the duration of
3846 the contract.

3847 (b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor
3848 shall demonstrate to the executive director that the subcontractor has and will maintain an offer
3849 of qualified health insurance coverage for the subcontractor's employees and the employees'
3850 dependents during the duration of the contract.

3851 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
3852 the duration of the contract is subject to penalties in accordance with administrative rules
3853 adopted by the division under Subsection (6).

3854 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
3855 requirements of Subsection (5)(b).

3856 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
3857 the duration of the contract is subject to penalties in accordance with administrative rules
3858 adopted by the department under Subsection (6).

3859 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
3860 requirements of Subsection (5)(a).

3861 (6) The department shall adopt administrative rules:

3862 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

3863 (b) in coordination with:

3864 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

3865 (ii) the Department of Natural Resources in accordance with Section 79-2-404;

3866 (iii) the State Building Board in accordance with Section 63A-5-205;

3867 (iv) a public transit district in accordance with Section 17B-2a-818.5;

3868 (v) the Department of Transportation in accordance with Section 72-6-107.5; and

3869 (vi) the Legislature's Administrative Rules Review Committee; and

3870 (c) which establish:

3871 (i) the requirements and procedures a contractor must follow to demonstrate to the
3872 executive director compliance with this section which shall include:

3873 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or
3874 (b) more than twice in any 12-month period; and

3875 (B) that the actuarially equivalent determination required for the qualified health
3876 insurance coverage in Subsection (1) is met by the contractor if the contractor provides the
3877 department or division with a written statement of actuarial equivalency from either:

3878 (I) the Utah Insurance Department;

3879 (II) an actuary selected by the contractor or the contractor's insurer; or

3880 (III) an underwriter who is responsible for developing the employer group's premium
3881 rates;

3882 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
3883 violates the provisions of this section, which may include:

3884 (A) a three-month suspension of the contractor or subcontractor from entering into
3885 future contracts with the state upon the first violation;

3886 (B) a six-month suspension of the contractor or subcontractor from entering into future
3887 contracts with the state upon the second violation;

3888 (C) an action for debarment of the contractor or subcontractor in accordance with
3889 Section [~~63G-6-804~~] 63G-6a-904 upon the third or subsequent violation; and

3890 (D) monetary penalties which may not exceed 50% of the amount necessary to
3891 purchase qualified health insurance coverage for employees and dependents of employees of
3892 the contractor or subcontractor who were not offered qualified health insurance coverage
3893 during the duration of the contract; and

3894 (iii) a website on which the department shall post the benchmark for the qualified
3895 health insurance coverage identified in Subsection (1)(c).

3896 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or
3897 subcontractor who intentionally violates the provisions of this section shall be liable to the
3898 employee for health care costs that would have been covered by qualified health insurance
3899 coverage.

3900 (ii) An employer has an affirmative defense to a cause of action under Subsection
3901 (7)(a)(i) if:

3902 (A) the employer relied in good faith on a written statement of actuarial equivalency
3903 provided by:

3904 (I) an actuary; or
3905 (II) an underwriter who is responsible for developing the employer group's premium
3906 rates; or

3907 (B) the department determines that compliance with this section is not required under
3908 the provisions of Subsection (3) or (4).

3909 (b) An employee has a private right of action only against the employee's employer to
3910 enforce the provisions of this Subsection (7).

3911 (8) Any penalties imposed and collected under this section shall be deposited into the
3912 Medicaid Restricted Account created in Section 26-18-402.

3913 (9) The failure of a contractor or subcontractor to provide qualified health insurance
3914 coverage as required by this section:

3915 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
3916 or contractor under Section [~~63G-6-801~~] 63G-6a-1603 or any other provision in Title 63G,
3917 Chapter [~~6, Part 8, Legal and Contractual Remedies~~] 6a, Utah Procurement Code; and

3918 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
3919 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
3920 or construction.

3921 Section 76. Section **63E-2-109** is amended to read:

3922 **63E-2-109. State statutes.**

3923 (1) Except as specifically modified in its authorizing statute, each independent
3924 corporation shall be exempt from the statutes governing state agencies, including:

3925 (a) Title 51, Chapter 5, Funds Consolidation Act;

3926 (b) Title 51, Chapter 7, State Money Management Act;

3927 (c) Title 63A, Utah Administrative Services Code;

3928 (d) Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

3929 (e) Title 63G, Chapter 4, Administrative Procedures Act;

3930 (f) Title 63G, Chapter [~~6~~] 6a, Utah Procurement Code;

3931 (g) Title 63J, Chapter 1, Budgetary Procedures Act;

3932 (h) Title 63J, Chapter 2, Revenue Procedures and Control Act; and

3933 (i) Title 67, Chapter 19, Utah Personnel Management Act.

3934 (2) Except as specifically modified in its authorizing statute, each independent

3935 corporation shall be subject to:

3936 (a) Title 52, Chapter 4, Open and Public Meetings Act; and

3937 (b) Title 63G, Chapter 2, Government Records Access and Management Act.

3938 (3) Each independent corporation board may adopt its own policies and procedures

3939 governing its:

3940 (a) funds management;

3941 (b) audits; and

3942 (c) personnel.

3943 Section 77. Section **63F-1-205** is amended to read:

3944 **63F-1-205. Approval of acquisitions of information technology.**

3945 (1) (a) Except as provided in Title 63M, Chapter 1, Part 26, Government Procurement

3946 Private Proposal Program, in accordance with Subsection (2), the chief information officer

3947 shall approve the acquisition by an executive branch agency of:

3948 (i) information technology equipment;

3949 (ii) telecommunications equipment;

3950 (iii) software;

3951 (iv) services related to the items listed in Subsections (1)(a)(i) through (iii); and

3952 (v) data acquisition.

3953 (b) The chief information officer may negotiate the purchase, lease, or rental of private

3954 or public information technology or telecommunication services or facilities in accordance with

3955 this section.

3956 (c) Where practical, efficient, and economically beneficial, the chief information

3957 officer shall use existing private and public information technology or telecommunication

3958 resources.

3959 (d) Notwithstanding another provision of this section, an acquisition authorized by this

3960 section shall comply with rules made by the [~~State Procurement Policy Board~~] applicable

3961 rulemaking authority under Title 63G, Chapter [6] 6a, Utah Procurement Code.

3962 (2) Before negotiating a purchase, lease, or rental under Subsection (1) for an amount

3963 that exceeds the value established by the chief information officer by rule in accordance with

3964 Section 63F-1-206, the chief information officer shall:

3965 (a) conduct an analysis of the needs of executive branch agencies and subscribers of

3966 services and the ability of the proposed information technology or telecommunications services
3967 or supplies to meet those needs; and

3968 (b) for purchases, leases, or rentals not covered by an existing statewide contract,
3969 provide in writing to the chief procurement officer in the Division of Purchasing and General
3970 Services that:

3971 (i) the analysis required in Subsection (2)(a) was completed; and

3972 (ii) based on the analysis, the proposed purchase, lease, rental, or master contract of
3973 services, products, or supplies is practical, efficient, and economically beneficial to the state
3974 and the executive branch agency or subscriber of services.

3975 (3) In approving an acquisition described in Subsections (1) and (2), the chief
3976 information officer shall:

3977 (a) establish by administrative rule, in accordance with Section 63F-1-206, standards
3978 under which an agency must obtain approval from the chief information officer before
3979 acquiring the items listed in Subsections (1) and (2);

3980 (b) for those acquisitions requiring approval, determine whether the acquisition is in
3981 compliance with:

3982 (i) the executive branch strategic plan;

3983 (ii) the applicable agency information technology plan;

3984 (iii) the budget for the executive branch agency or department as adopted by the
3985 Legislature; and

3986 (iv) Title 63G, Chapter [6] 6a, Utah Procurement Code; and

3987 (c) in accordance with Section 63F-1-207, require coordination of acquisitions between
3988 two or more executive branch agencies if it is in the best interests of the state.

3989 (4) (a) Each executive branch agency shall provide the chief information officer with
3990 complete access to all information technology records, documents, and reports:

3991 (i) at the request of the chief information officer; and

3992 (ii) related to the executive branch agency's acquisition of any item listed in Subsection
3993 (1).

3994 (b) Beginning July 1, 2006 and in accordance with administrative rules established by
3995 the department under Section 63F-1-206, no new technology projects may be initiated by an
3996 executive branch agency or the department unless the technology project is described in a

3997 formal project plan and the business case analysis has been approved by the chief information
3998 officer and agency head. The project plan and business case analysis required by this
3999 Subsection (4) shall be in the form required by the chief information officer, and shall include:

- 4000 (i) a statement of work to be done and existing work to be modified or displaced;
- 4001 (ii) total cost of system development and conversion effort, including system analysis
4002 and programming costs, establishment of master files, testing, documentation, special
4003 equipment cost and all other costs, including overhead;
- 4004 (iii) savings or added operating costs that will result after conversion;
- 4005 (iv) other advantages or reasons that justify the work;
- 4006 (v) source of funding of the work, including ongoing costs;
- 4007 (vi) consistency with budget submissions and planning components of budgets; and
- 4008 (vii) whether the work is within the scope of projects or initiatives envisioned when the
4009 current fiscal year budget was approved.

4010 (5) (a) The chief information officer and the Division of Purchasing and General
4011 Services shall work cooperatively to establish procedures under which the chief information
4012 officer shall monitor and approve acquisitions as provided in this section.

4013 (b) The procedures established under this section shall include at least the written
4014 certification required by Subsection [~~63G-6-204(8)~~] 63G-6a-303(5).

4015 Section 78. Section **63G-6a-101**, which is renumbered from Section 63G-6-101 is
4016 renumbered and amended to read:

4017 **CHAPTER 6a. UTAH PROCUREMENT CODE**

4018 **Part 1. General Procurement Provisions**

4019 [~~63G-6-101~~]. **63G-6a-101. Title.**

4020 (1) This chapter is known as the "Utah Procurement Code."

4021 (2) This part is known as "General Procurement Provisions."

4022 Section 79. Section **63G-6a-102**, which is renumbered from Section 63G-6-102 is
4023 renumbered and amended to read:

4024 [~~63G-6-102~~]. **63G-6a-102. Purpose of chapter.**

4025 The underlying purposes and policies of this chapter are:

- 4026 (1) to simplify, clarify, and modernize the law governing procurement by this state;
- 4027 (2) to ensure the fair and equitable treatment of all persons who deal with the

4028 procurement system of this state;

4029 (3) to provide increased economy in state procurement activities; and

4030 (4) to foster effective broad-based competition within the free enterprise system.

4031 Section 80. Section **63G-6a-103**, which is renumbered from Section 63G-6-103 is

4032 renumbered and amended to read:

4033 ~~[63G-6-103]~~. **63G-6a-103. Definitions.**

4034 As used in this chapter:

4035 (1) "Appeals board" means:

4036 (a) the Procurement Appeals Board created under Subsection 63G-6a-1702(1); or

4037 (b) a board created under Subsection 63G-6a-1702(5).

4038 (2) "Applicable rulemaking authority" means:

4039 (a) as it relates to the state legislative branch, the Legislative Management Committee,

4040 except to the extent that the Legislature passes a rule that supercedes or conflicts with a rule

4041 made by the Legislative Management Committee;

4042 (b) as it relates to the state judicial branch, the Judicial Council;

4043 (c) as it relates to a local public procurement unit, other than a local public

4044 procurement unit described in Subsections (2)(d) through (g), the board; or

4045 (d) as it relates to a municipality or county that adopts this chapter, the legislative body

4046 of the municipality or county, not as a delegation of authority from the Legislature, but under

4047 the municipality's or county's own legislative authority;

4048 (e) as it relates to a school district or a public school, the Procurement Policy Board,

4049 except to the extent that a school district makes its own non-administrative rules, with respect

4050 to a particular subject, that do not conflict with the provisions of this chapter;

4051 (f) as it relates to a state institution of higher education, the State Board of Regents;

4052 (g) as it relates to a public transit district organized under Title 17B, Chapter 2a, Part 8,

4053 Public Transit District Act, the governing board of the public transit district;

4054 (h) as it relates to the following entities, but only to the extent that the rules relate to

4055 procurement authority expressly granted to the entity by statute:

4056 (i) the State Building Board, created in Section 63A-5-101;

4057 (ii) the Division of Facilities Construction and Management created in Section

4058 63A-5-201;

- 4059 (iii) the attorney general's office; or
- 4060 (iv) the Department of Transportation, created in Section 72-1-201;
- 4061 (i) as it relates to the state executive branch and all public procurement units other than
- 4062 those described in Subsections (2)(a) through (g), the board; or
- 4063 (j) as it relates to an entity described in Subsection (2)(h), except to the extent that the
- 4064 rules relate to procurement authority expressly granted to the entity by statute, the board.
- 4065 ~~[(1)]~~ (3) "Architect-engineer services" [are those] means:
- 4066 (a) professional services within the scope of the practice of architecture as defined in
- 4067 Section 58-3a-102[;] or
- 4068 (b) professional engineering as defined in Section 58-22-102.
- 4069 ~~[(2) "Business" means any corporation, partnership, individual, sole proprietorship,~~
- 4070 ~~joint stock company, joint venture, or any other private legal entity.]~~
- 4071 (4) "Bidder" means a person who responds to an invitation for bids.
- 4072 (5) "Board" means the Utah State Procurement Policy Board, created in Section
- 4073 63G-6a-202.
- 4074 (6) "Building Board" means the State Building Board created in Section 63A-5-101.
- 4075 ~~[(3)]~~ (7) "Change order" means:
- 4076 (a) a written order signed by the procurement officer[~~, directing~~] that directs the
- 4077 contractor to suspend work or make changes, [which the appropriate clauses of the contract
- 4078 authorize the procurement officer to order] as authorized by contract, without the consent of the
- 4079 contractor; or [any]
- 4080 (b) a written alteration in specifications, delivery point, rate of delivery, period of
- 4081 performance, price, quantity, or other provisions of [any contract accomplished by mutual
- 4082 action] a contract, upon mutual agreement of the parties to the contract.
- 4083 (8) "Chief procurement officer" means the chief procurement officer appointed under
- 4084 Subsection 63G-6a-302(1).
- 4085 ~~[(4)]~~ (9) (a) "Construction" means the process of building, [renovation, alteration,
- 4086 improvement, or repair of any] renovating, altering, improving, or repairing a public building
- 4087 or public work.
- 4088 (b) "Construction" does not [mean] include the routine operation, routine repair, or
- 4089 routine maintenance of an existing [structures, buildings] structure, building, or real property.

4090 ~~[(5)]~~ (10) (a) "Construction manager/general contractor" means ~~[any]~~ a contractor who
4091 enters into a contract for the management of a construction project when ~~[that]~~ the contract
4092 allows the contractor to subcontract for additional labor and materials that ~~[were]~~ are not
4093 included in the contractor's cost proposal submitted at the time of the procurement of the
4094 ~~[Construction Manager/General]~~ contractor's services.

4095 (b) "Construction manager/general contractor" does not ~~[mean]~~ include a contractor
4096 whose only subcontract work not included in the contractor's cost proposal submitted as part of
4097 the procurement of ~~[construction]~~ the contractor's services is to meet subcontracted portions of
4098 change orders approved within the scope of the project.

4099 ~~[(6)]~~ (11) "Contract" means ~~[any state]~~ an agreement for the procurement or disposal of
4100 ~~[supplies, services, or construction]~~ a procurement item.

4101 (12) "Contractor" means a person who is awarded a contract with a public procurement
4102 unit.

4103 ~~[(7)]~~ (13) "Cooperative purchasing" means procurement conducted by, or on behalf of,
4104 more than one public procurement unit, or by a public procurement unit ~~[with]~~ and an external
4105 procurement unit.

4106 ~~[(8)]~~ (14) "Cost-reimbursement contract" means a contract under which a contractor is
4107 reimbursed for costs which are allowed and allocated in accordance with the contract terms and
4108 the provisions of this chapter, and a fee, if any.

4109 (15) "Days" means calendar days, unless expressly provided otherwise.

4110 ~~[(9)-(a)]~~ (16) "Design-build" means the procurement of architect-engineer services and
4111 construction by the use of a single contract with the design-build provider.

4112 ~~[(b) This method of design and construction can include the design-build provider~~
4113 ~~supplying the site as part of the contract.]~~

4114 (17) "Director" means the director of the division.

4115 (18) "Division" means the Division of Purchasing and General Services.

4116 ~~[(10)]~~ (19) "Established catalogue price" means the price included in a catalogue, price
4117 list, schedule, or other form that:

4118 (a) is regularly maintained by a manufacturer or contractor;

4119 (b) is either published or otherwise available for inspection by customers; and

4120 (c) states prices at which sales are currently or were last made to a significant number

4121 of any category of buyers or buyers constituting the general buying public for the supplies or
4122 services involved.

4123 ~~[(11) "External procurement unit" means any buying organization not located in this
4124 state which, if located in this state, would qualify as a public procurement unit. An agency of
4125 the United States is an external procurement unit.]~~

4126 ~~[(12)]~~ (20) (a) "Grant" means ~~[the]~~ furnishing, by ~~[the state]~~ a public entity or by any
4127 other public or private source ~~[assistance, whether financial or otherwise, to any],~~ financial or
4128 other assistance to a person to support a program authorized by law. ~~[It]~~

4129 (b) "Grant" does not include:

4130 (i) an award whose primary purpose is to procure an end product~~[-, whether in the form
4131 of supplies, services, or construction. A contract resulting from the award is not a grant but a
4132 procurement contract.]~~ or procurement item; or

4133 (ii) a contract that is awarded as a result of a procurement or a procurement process.

4134 ~~[(13) "Invitation for bids" means all documents, whether attached or incorporated by
4135 reference, utilized for soliciting bids.]~~

4136 ~~[(14) "Local public procurement unit" means any political subdivision or institution of
4137 higher education of the state or public agency of any subdivision, public authority, educational,
4138 health, or other institution, and to the extent provided by law, any other entity which expends
4139 public funds for the procurement of supplies, services, and construction, but not counties,
4140 municipalities, political subdivisions created by counties or municipalities under the Interlocal
4141 Cooperation Act, the Utah Housing Corporation, or the Legislature and its staff offices. It
4142 includes two or more local public procurement units acting under legislation which authorizes
4143 intergovernmental cooperation.]~~

4144 ~~[(15) "Person" means any business, individual, union, committee, club, other
4145 organization, or group of individuals, not including a state agency or a local public
4146 procurement unit.]~~

4147 ~~[(16) "Policy board" means the procurement policy board created by Section
4148 63G-6-201.]~~

4149 (21) "Head of a public procurement unit" means:

4150 (a) as it relates to the state legislative branch, any person designated by legislative rule;

4151 (b) as it relates to the state executive branch;

- 4152 (i) the director of a division; or
- 4153 (ii) any other person designated by the board, by rule;
- 4154 (c) as it relates to the state judicial branch:
- 4155 (i) the Judicial Council; or
- 4156 (ii) any other person designated by the Judicial Council, by rule;
- 4157 (d) as it relates to a local public procurement unit, other than a local public
- 4158 procurement unit described in Subsections (21)(e) through (h):
- 4159 (i) the appointed or elected head of the local public procurement unit; or
- 4160 (ii) any other person designated by the board, by rule;
- 4161 (e) as it relates to a local public procurement unit that is a municipality or a county:
- 4162 (i) the legislative body of the municipality or county; or
- 4163 (ii) any other person designated by the municipality or county;
- 4164 (f) as it relates to a school district or any school or entity within a school district, the
- 4165 board of the school district, or the board's designee;
- 4166 (g) as it relates to a charter school, the individual or body with executive authority over
- 4167 the charter school, or the individual's or body's designee; or
- 4168 (h) as it relates to an institution of higher education of the state, the president of the
- 4169 institution of higher education, or the president's designee.
- 4170 (22) "Head of an authorized purchasing entity" means:
- 4171 (a) as it relates to the division, the chief procurement officer;
- 4172 (b) to the extent that the entities have express statutory authority to engage in a
- 4173 procurement without the involvement of the division:
- 4174 (i) as it relates to the State Building Board, created in Section 63A-5-101, the State
- 4175 Building Board;
- 4176 (ii) as it relates to the Division of Facilities Construction and Management created in
- 4177 Section 63A-5-201, the director of the Division of Facilities Construction and Management;
- 4178 (iii) as it relates to the attorney general's office, the attorney general;
- 4179 (iv) as it relates to the Department of Transportation, created in Section 72-1-201, the
- 4180 executive director of the Department of Transportation; or
- 4181 (v) as it relates to a district court, a person designated by the Judicial Council, by rule;
- 4182 (c) as it relates to an institution of higher education of the state, the president of the

4183 institution of higher education of the state;

4184 (d) as it relates to a school district, the board of the school district;

4185 (e) as it relates to a public school, including a local school board, the board of the
4186 school district;

4187 (f) as it relates to a charter school, a person designated by the charter school; or

4188 (g) as it relates to a non-executive state procurement unit, a person designated by the
4189 applicable rulemaking authority.

4190 (23) "Invitation for bids" includes all documents, including documents that are attached
4191 or incorporated by reference, used for soliciting bids to provide a procurement item to a public
4192 procurement unit.

4193 (24) "Multiple award contracts" means the award of a contract for an indefinite
4194 quantity of a procurement item to more than one bidder or offeror.

4195 (25) "Multiyear contract" means a contract that extends beyond a one-year period,
4196 including a contract that permits renewal of the contract, without competition, beyond the first
4197 year of the contract.

4198 (26) "Municipality" means a city or a town.

4199 (27) "Offeror" means a person who responds to a request for proposals.

4200 ~~[(17)]~~ (28) "Preferred bidder" means a bidder that is entitled to receive a reciprocal
4201 preference under the requirements of this chapter.

4202 ~~[(18)]~~ (29) (a) "Procure" or "procurement" means buying, purchasing, renting, leasing,
4203 leasing with an option to purchase, or otherwise acquiring ~~[any supplies, services, or~~
4204 construction. It also] a procurement item.

4205 (b) "Procure" or "procurement" includes all functions that pertain to the obtaining of
4206 [any supply, service, or construction] a procurement item, including:

4207 (i) the description of requirements[-];

4208 (ii) the selection[-and] process;

4209 (iii) solicitation of sources[-];

4210 (iv) the preparation[-and] for soliciting a procurement item;

4211 (v) the award of a contract[-]; and

4212 (vi) all phases of contract administration.

4213 ~~[(19) "Procurement officer" means any person or board duly authorized to enter into~~

4214 and administer contracts and make written determinations with respect thereto. It also includes
4215 an authorized representative acting within the limits of authority.]

4216 [(20) "Public procurement unit" means either a local public procurement unit or a state
4217 public procurement unit.]

4218 [(21) "Purchase description" means the words used in a solicitation to describe the
4219 supplies, services, or construction to be purchased, and includes specifications attached to or
4220 made a part of the solicitation.]

4221 [(22) "Purchasing agency" means any state agency other than the Division of
4222 Purchasing and General Services that is authorized by this chapter or its implementing
4223 regulations, or by delegation from the chief procurement officer, to enter into contracts.]

4224 [(23) "Request for proposals" means all documents, whether attached or incorporated
4225 by reference, used for soliciting proposals.]

4226 [(24) "Responsible bidder or offeror" means a person who has the capability in all
4227 respects to perform fully the contract requirements and who has the integrity and reliability
4228 which will assure good faith performance.]

4229 [(25) "Responsive bidder" means a person who has submitted a bid which conforms in
4230 all material respects to the invitation for bids.]

4231 (30) "Procurement item" means a supply, a service, construction, or technology.

4232 (31) "Procurement officer" means:

4233 (a) as it relates to the state legislative branch, the head of a public procurement unit in
4234 the legislative branch;

4235 (b) as it relates to the state judicial branch, the head of a public procurement unit in the
4236 state judicial branch;

4237 (c) as it relates to the state executive branch, the chief procurement officer;

4238 (d) as it relates to a local public procurement unit other than a local public procurement
4239 unit described in Subsection (31)(e) or (f), the chief procurement officer;

4240 (e) as it relates to a municipality or county that adopts this chapter, the legislative body
4241 of the municipality or county; or

4242 (f) as it relates to a state purchasing unit, the head of the state purchasing unit, or a
4243 designee of the head of the state purchasing unit.

4244 (32) "Professional service" means a service that requires a high degree of specialized

4245 knowledge and discretion in the performance of the service, including:

4246 (a) legal services;

4247 (b) consultation services;

4248 (c) architectural services;

4249 (d) engineering;

4250 (e) design;

4251 (f) underwriting;

4252 (g) bond counsel;

4253 (h) financial advice; or

4254 (i) construction management.

4255 (33) "Request for information" means a nonbinding process where a public

4256 procurement unit requests information relating to a procurement item.

4257 (34) "Request for proposals" includes all documents, including documents that are
4258 attached or incorporated by reference, used for soliciting proposals to provide a procurement

4259 item to a public procurement unit.

4260 (35) "Responsible" means that a bidder or offeror:

4261 (i) is capable, in all respects, to fully perform the contract requirements solicited in an
4262 invitation for bids or a request for proposals; and

4263 (ii) has the integrity and reliability to ensure good faith performance.

4264 (36) "Responsive" means that a bidder or offeror submits a response to an invitation for
4265 bids or a request for proposals that conforms in all material respects to the invitation for bids or
4266 request for proposals.

4267 ~~[(26)]~~ (37) "Sealed" [does not preclude acceptance of] means manually or
4268 electronically sealed and submitted bids or proposals [in addition to bids or proposals manually
4269 sealed and submitted].

4270 ~~[(27)]~~ (38) (a) "Services" means the furnishing of labor, time, or effort by a contractor,
4271 not involving the delivery of a specific end product other than [reports which are merely] a
4272 report that is incidental to the required performance. [It]

4273 (b) "Services" does not include an employment [agreements] agreement or a collective
4274 bargaining [agreements] agreement.

4275 ~~[(28)]~~ (39) "Specification" means any description of the physical or functional

4276 characteristics, or ~~[of the]~~ nature of a ~~[supply, service, technology, or construction item. It may~~
4277 ~~include]~~ procurement item included in an invitation for bids or a request for proposals, or
4278 otherwise specified or agreed to by a public procurement unit, including a description of [any]:

4279 (a) a requirement for inspecting~~[-testing,]~~ or testing a procurement item; or

4280 (b) preparing a ~~[supply, service, technology, or construction] procurement item for~~
4281 delivery.

4282 ~~[(29) "State agency" or "the state" means any department, division, commission,~~
4283 ~~council, board, bureau, committee, institution, government corporation, or other establishment,~~
4284 ~~official, or employee of this state.]~~

4285 ~~[(30) "State public procurement unit" means the Division of Purchasing and General~~
4286 ~~Services and any other purchasing agency of this state.]~~

4287 (40) "Standard procurement process" means one of the following methods of obtaining
4288 a procurement item:

4289 (a) bidding, as described in Part 6, Bidding;

4290 (b) request for proposals, as described in Part 7, Request for Proposals; or

4291 (c) small purchases, in accordance with the requirements established under Section
4292 63G-6a-408.

4293 (41) (a) "Subcontractor" means a person under contract with a contractor or another
4294 subcontractor to provide services or labor for design or construction.

4295 (b) "Subcontractor" includes a trade contractor or specialty contractor.

4296 (c) "Subcontractor" does not include a supplier who provides only materials,
4297 equipment, or supplies to a contractor or subcontractor.

4298 ~~[(31)] (42) "Supplies" means all property, including equipment, materials, and printing.~~

4299 ~~[(32) "Using agency" means any state agency which utilizes any supplies, services, or~~
4300 ~~construction procured under this chapter.]~~

4301 (43) "Tie bid" means that the lowest responsive and responsible bids are identical in
4302 price.

4303 Section 81. Section **63G-6a-104** is enacted to read:

4304 **63G-6a-104. Definitions of government entities.**

4305 As used in this chapter:

4306 (1) "Authorized purchasing entity" means:

- 4307 (a) a non-executive state procurement unit; or
- 4308 (b) a state purchasing unit.
- 4309 (2) "External procurement unit" means:
- 4310 (a) a buying organization not located in this state which, if located in this state, would
- 4311 qualify as a public procurement unit; or
- 4312 (b) an agency of the United States.
- 4313 (3) "Local government unit" means:
- 4314 (a) a county;
- 4315 (b) a municipality;
- 4316 (c) a political subdivision created by counties or municipalities under Title 11, Chapter
- 4317 13, Interlocal Cooperation Act; or
- 4318 (d) the Utah Housing Corporation.
- 4319 (4) "Local public procurement unit" means:
- 4320 (a) a local district, as defined in Section 17B-1-102;
- 4321 (b) a special service district, as defined in Section 17D-1-102;
- 4322 (c) a local building authority, as defined in Section 17D-2-102;
- 4323 (d) a conservation district, as described in Title 17D, Chapter 3, Conservation District
- 4324 Act;
- 4325 (e) a public corporation, other than the Utah Housing Corporation;
- 4326 (f) a community development and renewal agency;
- 4327 (g) a school district;
- 4328 (h) a public school, including a local school board or a charter school;
- 4329 (i) Utah Schools for the Deaf and Blind;
- 4330 (j) the Utah Education Network;
- 4331 (k) an institution of higher education of the state;
- 4332 (l) a county or municipality, and each office or agency of the county or municipality,
- 4333 unless the county or municipality adopts its own procurement code by ordinance;
- 4334 (m) a county or municipality, and each office or agency of the county or municipality,
- 4335 that has adopted this entire chapter by ordinance;
- 4336 (n) a county or municipality, and each office or agency of the county or municipality,
- 4337 that has adopted a portion of this chapter by ordinance, to the extent that the term is used in the

- 4338 adopted portion of this chapter; or
- 4339 (o) two or more of the entities described in this Subsection (4), acting under legislation
- 4340 that authorizes intergovernmental cooperation.
- 4341 (5) "Non-executive state procurement unit" means:
- 4342 (a) the state legislative branch;
- 4343 (b) a public procurement unit in the state legislative branch;
- 4344 (c) the state judicial branch;
- 4345 (d) a public procurement unit in the state judicial branch; or
- 4346 (e) a public transit district, organized under Title 17B, Chapter 2a, Part 8, Public
- 4347 Transit District Act.
- 4348 (6) "Public entity" means any state or local government entity, located in Utah,
- 4349 including:
- 4350 (a) the state legislative branch, including the Legislature and each house, staff office,
- 4351 committee, subcommittee, or other part of the state legislative branch;
- 4352 (b) the state executive branch, including the governor's office and each department,
- 4353 division, agency, office, and bureau in the state executive branch;
- 4354 (c) the state judicial branch, including the Utah Supreme Court, the Utah Court of
- 4355 Appeals, the Judicial Council, and each court, office, and other part of the state judicial branch;
- 4356 (d) a municipality or county, regardless of whether the municipality or county has
- 4357 adopted this chapter or any part of this chapter;
- 4358 (e) a public procurement unit; and
- 4359 (f) any other entity that expends public funds.
- 4360 (7) "Public procurement unit" means:
- 4361 (a) the Senate;
- 4362 (b) the House of Representatives;
- 4363 (c) a staff office of the state legislative branch;
- 4364 (d) a state executive branch department, division, office, bureau, or agency;
- 4365 (e) the Utah State Supreme Court;
- 4366 (f) the Judicial Council;
- 4367 (g) a state judicial district; or
- 4368 (h) a local public procurement unit.

- 4369 (8) "State purchasing unit" means:
4370 (a) the division;
4371 (b) the following entities, to the extent that the entities have express statutory authority
4372 to engage in a procurement without the involvement of the division:
4373 (i) the State Building Board, created in Section 63A-5-101;
4374 (ii) the Division of Facilities Construction and Management, created in Section
4375 63A-5-201;
4376 (iii) the attorney general's office;
4377 (iv) the Department of Transportation, created in Section 72-1-201; or
4378 (v) a district court;
4379 (c) an institution of higher education of the state;
4380 (d) a school district; or
4381 (e) a public school, including a local school board or a charter school.

4382 Section 82. Section **63G-6a-105**, which is renumbered from Section 63G-6-104 is
4383 renumbered and amended to read:

4384 ~~[63G-6-104].~~ **63G-6a-105. Application of chapter.**

4385 ~~[(1) This chapter applies only to contracts solicited or entered into after the effective~~
4386 ~~date of this chapter unless the parties agree to its application to a contract solicited or entered~~
4387 ~~into prior to the effective date.]~~

4388 (1) The provisions of this chapter that are enacted on July 1, 2012, apply only to a
4389 procurement advertised, or begun on or after July 1, 2012, unless the parties agree to have the
4390 provisions apply with respect to a procurement that was advertised or begun before July 1,
4391 2012, but is not completed before July 1, 2012.

4392 (2) Except as provided in Section ~~[63G-6-105]~~ 63G-6a-109, this chapter shall apply to
4393 every expenditure of public funds irrespective of ~~[their source]~~ the source of the funds,
4394 including federal assistance, by any ~~[state agency]~~ public procurement unit, under any contract.

4395 ~~[(3) (a) Only the following sections shall apply to local public procurement units:~~
4396 ~~Sections 63G-6-103, 63G-6-105, 63G-6-301, 63G-6-303 through 63G-6-420, 63G-6-422,~~
4397 ~~63G-6-501 through 63G-6-602, 63G-6-801 through 63G-6-806, and 63G-6-815 through~~
4398 ~~63G-6-819; provided, however, that, except as provided in Sections 63G-6-906 and~~
4399 ~~63G-6-907, the jurisdiction of the procurement appeals board is limited to matters involving~~

4400 state agencies.]

4401 ~~[(b) Subsections 63G-6-208(1)(b), 63G-6-504(4), and 63G-6-505(2) also apply to local~~
4402 ~~public procurement units.]~~

4403 ~~[(c) For the purpose of application of those sections and subsections to a local public~~
4404 ~~procurement unit, "state" shall mean "local public procurement unit," "chief procurement~~
4405 ~~officer" or "head of a purchasing agency" shall mean any person conducting procurement for a~~
4406 ~~local public procurement unit, and "rules and regulations" shall mean ordinances and rules and~~
4407 ~~regulations promulgated by a local public procurement unit to implement or supplement those~~
4408 ~~sections.]~~

4409 ~~[(d) In addition to the sections and subsections listed above and except]~~

4410 ~~(3) Except as provided in Subsection 17B-1-108(3) relating to local districts, each local~~
4411 ~~public procurement unit shall adopt ordinances relating to the procurement of~~
4412 ~~architect-engineer services not inconsistent with the provisions of Part [7] 15,~~
4413 ~~Architect-Engineer Services.~~

4414 ~~[(e)] (4) Any [other] section of this chapter, or its implementing regulations, may be~~
4415 ~~adopted by any local [public procurement] government unit.~~

4416 ~~[(f) Any other implementing regulations adopted by local public procurement units~~
4417 ~~may not be inconsistent with the provisions of this chapter.]~~

4418 ~~(5) Rules adopted under this chapter shall be consistent with the provisions of this~~
4419 ~~chapter.~~

4420 ~~(6) A state purchasing unit or a public procurement unit may not adopt rules, policies,~~
4421 ~~or regulations that are inconsistent with this chapter.~~

4422 ~~[(4)] (7) Unless otherwise provided by statute, this chapter does not apply to~~
4423 ~~procurement of real property.~~

4424 Section 83. Section **63G-6a-106**, which is renumbered from Section 63G-6-207 is
4425 renumbered and amended to read:

4426 ~~[63G-6-207].~~ **63G-6a-106. Specific statutory authority -- Limitations on**
4427 **authority of chief procurement officer and division.**

4428 (1) The [authority to procure certain supplies, services, and construction given the
4429 ~~public procurement units governed by] procurement authority given to a public entity under the
4430 following provisions shall be retained, and shall be applied only to the extent described in those~~

4431 provisions:

4432 (a) Title 53B, State System of Higher Education;

4433 (b) Title 63A, Chapter 5, State Building Board - Division of Facilities Construction
4434 and Management;

4435 (c) Title 67, Chapter 5, Attorney General;

4436 (d) Title 72, Transportation Code; and

4437 (e) Title 78A, Chapter 5, District Courts.

4438 (2) [~~This authority extends only to supplies, services, and construction to the extent~~
4439 ~~provided in the cited chapters.] Except as otherwise provided in Sections [~~63G-6-104 and~~
4440 ~~63G-6-105, the respective purchasing agencies shall procure supplies, services, and~~
4441 ~~construction]~~ 63G-6a-105 and 63G-6a-109, a public procurement unit shall conduct a
4442 procurement in accordance with this chapter.~~

4443 (3) (a) The Department of Transportation may make rules governing the procurement
4444 of highway construction or improvement.

4445 (b) This Subsection (3) supersedes Subsections (1) and (2).

4446 [~~(4) The Legislature may procure supplies and services for its own needs.]~~

4447 (4) Except to the extent otherwise agreed to in a memorandum of understanding
4448 between the division and the following entities, the authority of the chief procurement officer
4449 and of the division does not extend to:

4450 (a) a non-executive state procurement unit;

4451 (b) a local government unit; or

4452 (c) a state purchasing unit, other than the division.

4453 (5) An entity described in Subsection (4) or a state purchasing unit, other than the
4454 division, may, without supervision, interference, or involvement by the chief procurement
4455 officer or the division, but consistent with the requirements of this chapter:

4456 (a) engage in a procurement process;

4457 (b) procure an item under an exception, as provided in this chapter, to the requirement
4458 to use a procurement process; or

4459 (c) otherwise engage in an act authorized or required by this chapter.

4460 (6) The attorney general may, in accordance with the provisions of this chapter, but
4461 without involvement by the division or the chief procurement officer:

4462 (a) retain outside counsel; or

4463 (b) procure litigation support services, including retaining an expert witness.

4464 (7) A public procurement unit, or a state purchasing unit, that is not represented by the

4465 attorney general's office may, in accordance with the provisions of this chapter, but without

4466 involvement by the division or the chief procurement officer:

4467 (a) retain outside counsel; or

4468 (b) procure litigation support services, including retaining an expert witness.

4469 (8) The state auditor's office may, in accordance with the provisions of this chapter, but

4470 without involvement by the division or the chief procurement officer, procure audit services.

4471 Section 84. Section **63G-6a-109**, which is renumbered from Section 63G-6-105 is

4472 renumbered and amended to read:

4473 **[63G-6-105]. 63G-6a-109. Exemptions from chapter -- Compliance with**

4474 **federal law.**

4475 (1) ~~[This chapter is]~~ Except for Part 23, Unlawful Conduct and Penalties, the

4476 provisions of this chapter are not applicable to:

4477 (a) funds administered under the Percent-for-Art Program of the Utah Percent-for-Art

4478 Act[.];

4479 ~~[(2) This chapter is not applicable to]~~

4480 (b) grants awarded by the state or contracts between the state and a local public

4481 procurement [units] unit, except as provided in Part [9] 21, Intergovernmental Relations[.]; or

4482 (c) any action taken by a majority of both houses of the Legislature.

4483 ~~[(3)]~~ (2) This chapter [shall] does not prevent the state or a local public procurement

4484 unit from complying with the terms and conditions of any grant, gift, or bequest that is

4485 otherwise consistent with law.

4486 ~~[(4)]~~ (3) [When] Notwithstanding any conflicting provision of this chapter, when a

4487 procurement involves the expenditure of federal assistance [or], federal contract funds, or

4488 federal financial participation funds, the [chief procurement officer or head of a purchasing

4489 agency] public procurement unit or state purchasing unit shall comply with mandatory

4490 applicable federal law and regulations not reflected in this chapter.

4491 ~~[(5)]~~ (4) This chapter [may] does not supersede the requirements for retention or

4492 withholding of construction proceeds and release of construction proceeds as provided in

4493 Section 13-8-5.

4494 Section 85. Section **63G-6a-110** is enacted to read:

4495 **63G-6a-110. Procurements under direction and control of division -- Exception.**

4496 (1) Except as provided in Subsection (2), a public procurement unit may not engage in

4497 a procurement unless:

4498 (a) the procurement is made under the direction and control of the division; or

4499 (b) the division, pursuant to rules made by the board, permits the public procurement

4500 unit to make the procurement on its own.

4501 (2) Subsection (1) does not apply to a public procurement unit that is:

4502 (a) a non-executive state procurement unit;

4503 (b) a local government unit; or

4504 (c) a state purchasing unit, other than the division.

4505 Section 86. Section **63G-6a-201** is enacted to read:

4506 **Part 2. Procurement Policy Board**

4507 **63G-6a-201. Title.**

4508 This part is known as "Procurement Policy Board."

4509 Section 87. Section **63G-6a-202**, which is renumbered from Section 63G-6-201 is
4510 renumbered and amended to read:

4511 ~~**[63G-6-201].**~~ **63G-6a-202. Creation of procurement policy board.**

4512 (1) ~~[(a)]~~ There is created ~~[a state procurement policy board]~~ the Utah State

4513 Procurement Policy Board.

4514 ~~[(b)]~~ (2) The [policy board shall consist of] board consists of up to 10 members as
4515 follows:

4516 ~~[(i)]~~ (a) an employee of a state institution of higher education, appointed by the board
4517 of regents;

4518 ~~[(ii)]~~ (b) an employee of the Department of Human Services, appointed by the
4519 executive director of that department;

4520 ~~[(iii)]~~ (c) an employee of the Department of Transportation, appointed by the executive
4521 director of that department;

4522 ~~[(iv)]~~ (d) an employee of a school district appointed by a cooperative purchasing entity
4523 for school districts;

4524 [(v)] (e) an employee of the Division of Facilities Construction and Management
4525 appointed by the director of that division;

4526 [(vi)] (f) an employee of a county, appointed by the Utah Association of Counties;

4527 [(vii)] (g) an employee of a city, appointed by the Utah League of Cities and Towns;

4528 [(viii)] (h) an employee of a local district or special service district, appointed by the
4529 Utah Association of Special Districts;

4530 [(ix)] (i) the executive director of the Department of Technology Services or the
4531 executive director's designee; and

4532 [(x)] (j) the chief procurement officer or the chief procurement officer's designee.

4533 [(c)] (3) Members of the [policy] board shall be knowledgeable and experienced in,
4534 and have supervisory responsibility for, procurement in their official positions.

4535 [(2)] (4) A board member [shall] may serve as long as the member meets the
4536 description in Subsection [(1)(b)] (2) unless removed by the person or entity [who appointed]
4537 with the authority to appoint the board member.

4538 [(3)] (5) (a) The [policy] board shall:

4539 (i) adopt rules of procedure for conducting its business; and

4540 (ii) elect a chair to serve for one year.

4541 (b) The chair of the board shall be selected by a majority of the members of the board
4542 and may be elected to succeeding terms.

4543 (c) The chief procurement officer shall designate an employee of the [~~Division of~~
4544 ~~Purchasing and General Services~~] division to serve as the nonvoting secretary to the policy
4545 board.

4546 [(4)] (6) A member of the board may not receive compensation or benefits for the
4547 member's service, but may receive per diem and travel expenses in accordance with:

4548 (a) Section 63A-3-106;

4549 (b) Section 63A-3-107; and

4550 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
4551 63A-3-107.

4552 Section 88. Section **63G-6a-203**, which is renumbered from Section 63G-6-202 is
4553 renumbered and amended to read:

4554 [~~63G-6-202~~]. **63G-6a-203. Powers and duties of board.**

4555 ~~[(1) Except as otherwise provided in Section 63G-6-104 and Subsection~~
4556 ~~63G-6-208(1)(b), the policy board shall:]~~

4557 ~~[(a) make rules, consistent with this chapter, governing the procurement, management,~~
4558 ~~and control of any and all supplies, services, technology, and construction to be procured by the~~
4559 ~~state; and]~~

4560 ~~[(b)]~~ (1) In addition to making rules in accordance with Section 63G-6a-402 and the
4561 other provisions of this chapter, the board shall consider and decide matters of policy within
4562 the provisions of this chapter, including those referred to it by the chief procurement officer.

4563 (2) (a) The [~~policy~~] board may:

4564 (i) audit and monitor the implementation of its rules and the requirements of this
4565 chapter;

4566 (ii) upon the request of a local public procurement unit, review that local public
4567 procurement unit's proposed rules to ensure that they are not inconsistent with the provisions of
4568 this chapter or rules made by the board; and

4569 (iii) approve the use of innovative procurement [~~methods~~] processes proposed by local
4570 public procurement units.

4571 (b) The [~~policy~~] board may not exercise authority over the award or administration of:

4572 (i) any particular [~~contact~~] contract; or

4573 (ii) [~~over~~] any dispute, claim, or litigation pertaining to any particular contract.

4574 (3) The board does not have authority over a matter involving:

4575 (a) a non-executive state procurement unit; or

4576 (b) a local government unit.

4577 Section 89. Section ~~63G-6a-204~~, which is renumbered from Section 63G-6-208 is
4578 renumbered and amended to read:

4579 ~~[63G-6-208].~~ 63G-6a-204. Applicability of rules and regulations of Utah
4580 State Procurement Policy Board and State Building Board -- Report to interim
4581 committee.

4582 ~~[(1)(a) Except as provided in Subsection (2), the policy board shall make rules~~
4583 ~~governing state procurement by complying with the procedures and requirements of Title 63G,~~
4584 ~~Chapter 3, the Utah Administrative Rulemaking Act.]~~

4585 ~~[(b) Except for rules made under Subsection (1)(c), the procurement rules adopted by~~

4586 the policy board under this section apply to all local public procurement units unless the local
4587 public procurement unit's legislative body has adopted separate rules governing procurement.]

4588 ~~[(c) The rules shall include provisions consistent with federal contract prohibition~~
4589 ~~provisions of the Sudan Accountability and Divestment Act of 2007 (Pub. L. No. 110-174) that~~
4590 ~~prohibit a state agency from contracting with a person doing business in Sudan.]~~

4591 (1) Except as provided in Subsection (2), rules made by the board under this chapter
4592 shall govern all public procurement units for which the board is the applicable rulemaking
4593 authority.

4594 (2) The ~~[State Building Board]~~ building board rules governing procurement of
4595 construction, architect-engineer services, and leases apply to the procurement of construction,
4596 architect-engineer services, and leases of real property by the Division of Facilities
4597 Construction and Management.

4598 (3) The Legislature may enact its own rules, consistent with this chapter, governing
4599 procurement by the legislative branch.

4600 (4) The Judicial Council may enact its own rules, consistent with this chapter,
4601 governing procurement by the judicial branch.

4602 ~~[(3)]~~ (5) The board shall make a report [by] on or before July 1 of each year to [an
4603 appropriate] a legislative interim committee, designated by the Legislative Management
4604 Committee created under Section 36-12-6, on the establishment, implementation, and
4605 enforcement of the rules made under [Subsection (1)(c)] Section 63G-6a-203.

4606 Section 90. Section ~~63G-6a-205~~, which is renumbered from Section 63G-6-209 is
4607 renumbered and amended to read:

4608 ~~[63G-6-209].~~ **63G-6a-205. Procurement advisory councils.**

4609 ~~[(1) The policy board may establish a Procurement Advisory Council, which shall meet~~
4610 ~~at least once a year for the discussion of problems and recommendations for improvement of~~
4611 ~~the procurement process. When requested by the policy board, the Procurement Advisory~~
4612 ~~Council may conduct studies, research, analyses, and make reports and recommendations with~~
4613 ~~respect to subjects or matters within the jurisdiction of the policy board. The Procurement~~
4614 ~~Advisory Council shall consist of representatives of state and local government and any other~~
4615 ~~persons the policy board considers desirable.]~~

4616 ~~[(2)]~~ The chief procurement officer may appoint advisory ~~[groups]~~ councils to provide

4617 advice regarding any matters within the authority of the chief procurement officer.

4618 [~~(3) Members of the Procurement Advisory Council and other advisory groups may be~~
4619 ~~reimbursed for expenses incurred in the performance of their duties, as provided by the policy~~
4620 ~~board.]~~

4621 Section 91. Section **63G-6a-301** is enacted to read:

4622 **Part 3. Chief Procurement Officer**

4623 **63G-6a-301. Title.**

4624 This part is known as "Chief Procurement Officer."

4625 Section 92. Section **63G-6a-302**, which is renumbered from Section 63G-6-203 is
4626 renumbered and amended to read:

4627 [~~63G-6-203~~]. **63G-6a-302. Chief procurement officer -- Appointment --**
4628 **Qualifications -- Authority.**

4629 (1) The executive director of the Department of Administrative Services, with the
4630 consent of the governor, shall appoint the chief procurement officer after considering
4631 recommendations from the [~~policy~~] board.

4632 (2) The chief procurement officer shall:

4633 (a) have a minimum of eight years' experience in the large-scale procurement of
4634 supplies and services or services and construction, at least five years of which shall have been
4635 in public or comparable private procurement within 12 years preceding the date of
4636 appointment; and

4637 (b) be a person with demonstrated executive and organizational ability.

4638 (3) The chief procurement officer appointed under Subsection (1) is also the director of
4639 the Division of Purchasing and General Services.

4640 (4) Except as otherwise expressly provided in this chapter, the chief procurement
4641 officer has authority over procurements by a public procurement unit, other than:

4642 (a) a non-executive procurement unit;

4643 (b) a local government unit; or

4644 (c) a state purchasing unit, other than the division.

4645 Section 93. Section **63G-6a-303**, which is renumbered from Section 63G-6-204 is
4646 renumbered and amended to read:

4647 [~~63G-6-204~~]. **63G-6a-303. Duties of chief procurement officer.**

4648 Except as otherwise specifically provided in this chapter, the chief procurement officer
4649 serves as the central procurement officer of the state and shall:

4650 (1) adopt office policies governing the internal functions of the [~~Division of Purchasing~~
4651 ~~and General Services~~] division;

4652 (2) procure or supervise [~~the~~] each procurement [~~of all supplies, services, and~~
4653 ~~construction needed by the state~~] over which the chief procurement officer has authority;

4654 [~~(3) exercise general supervision and control over all inventories or supplies belonging~~
4655 ~~to the state;~~]

4656 [~~(4)~~] (3) establish and maintain programs for the inspection, testing, and acceptance of
4657 [~~supplies, services, and construction~~] each procurement item over which the chief procurement
4658 officer has authority;

4659 [~~(5)~~] (4) prepare statistical data concerning [~~the procurement and usage of all supplies,~~
4660 ~~services, and construction~~] each procurement and procurement usage of a state procurement
4661 unit;

4662 [~~(6) before June 1, 1990, notify all public procurement units of the requirements of~~
4663 ~~Section 63G-6-406 regarding purchases of recycled paper and recycled paper products,~~
4664 ~~recycling requirements, and provide guidelines on the availability of recycled paper and paper~~
4665 ~~products, including the sources of supply and the potential uses of various grades of recycled~~
4666 ~~paper;~~]

4667 [~~(7) before July 1, 1992:~~]

4668 [(a) ~~establish standards and specifications for determining which supplies are~~
4669 ~~considered recycled, based upon the chief procurement officer's review of current definitions~~
4670 ~~and standards employed by national procurement, product recycling, and other relevant~~
4671 ~~organizations and the federal Environmental Protection Agency;~~]

4672 [(b) ~~compile and update as necessary the specifications, a list of recycled supplies~~
4673 ~~available on state contract, and sources where the supplies may be obtained;~~]

4674 [(c) ~~make the compiled information under Subsection (7)(b) available to:~~]

4675 [(i) ~~all local government entities under Section 11-37-101;~~]

4676 [(ii) ~~all local health departments under Section 26A-1-108.7;~~]

4677 [(iii) ~~all procurement officers or other persons responsible for purchasing supplies~~
4678 ~~within the public school system under Title 53A, State System of Public Education;~~]

4679 [~~(iv) all procurement officers or other persons responsible for purchasing supplies~~
4680 ~~within the state system of higher education under Title 53B, State System of Higher Education;~~
4681 ~~and]~~

4682 [~~(v) all procurement officers or other persons responsible for purchasing supplies for~~
4683 ~~all public procurement units as defined in Section 63G-6-103; and]~~

4684 [~~(d) present a written report to the Natural Resources, Agriculture, and Environment~~
4685 ~~Interim Committee annually prior to November 30 regarding the purchases of recycled goods~~
4686 ~~on state contracts during the prior fiscal year; and]~~

4687 [(8)] (5) ensure that:

4688 (a) before approving a [~~purchase, lease, or rental~~] procurement not covered by an
4689 existing statewide contract for information technology or telecommunications supplies or
4690 services, the chief information officer and the agency have [~~provided~~] stated in writing to the
4691 division[;] that the needs analysis required in Section 63F-1-205 was completed, unless the
4692 [~~purchase, lease, or rental~~] procurement is approved in accordance with Title 63M, Chapter 1,
4693 Part 26, Government Procurement Private Proposal Program; and

4694 (b) the oversight authority required by Subsection [(8)](5)(a) is not delegated outside
4695 the [~~Division of Purchasing and General Services.~~] division; and

4696 (6) provide training to public procurement units and to persons who do business with
4697 public procurement units.

4698 Section 94. Section ~~63G-6a-304~~, which is renumbered from Section 63G-6-205 is
4699 renumbered and amended to read:

4700 [~~63G-6-205~~]. 63G-6a-304. Delegation of authority.

4701 [~~Subject to rules and regulations~~]

4702 (1) In accordance with rules made by the board, the chief procurement officer may
4703 delegate authority to designees or to any department, agency, or official.

4704 (2) For a procurement [~~process~~] under Title 63M, Chapter 1, Part 26, Government
4705 Procurement Private Proposal Program, any delegation by the chief procurement officer under
4706 this section shall be made to the Governor's Office of Economic Development.

4707 Section 95. Section ~~63G-6a-305~~, which is renumbered from Section 63G-6-302 is
4708 renumbered and amended to read:

4709 [~~63G-6-302~~]. 63G-6a-305. Duty of chief procurement officer in

4710 **maintaining specifications.**

4711 (1) The chief procurement officer ~~[shall]~~ may prepare, issue, revise, maintain, and
4712 monitor the use of specifications for ~~[supplies, services, construction, and technology required~~
4713 ~~by the state]~~ each procurement over which the chief procurement officer has authority.

4714 (2) The chief procurement officer shall obtain expert advice and assistance from
4715 personnel of ~~[using agencies]~~ public procurement units in the development of specifications
4716 and may delegate in writing to a ~~[using agency]~~ public procurement unit the authority to
4717 prepare and utilize its own specifications.

4718 (3) For a procurement ~~[process]~~ under Title 63M, Chapter 1, Part 26, Government
4719 Procurement Private Proposal Program, any delegation by the chief procurement officer under
4720 this section shall be made to the Governor's Office of Economic Development.

4721 Section 96. Section **63G-6a-401** is enacted to read:

4722 **Part 4. General Procurement Provisions**

4723 **63G-6a-401. Title.**

4724 This part is known as "General Procurement Provisions."

4725 Section 97. Section **63G-6a-402** is enacted to read:

4726 **63G-6a-402. Public procurement unit required to comply with Utah Procurement**
4727 **Code and applicable rules -- Rulemaking authority -- Reporting.**

4728 (1) Except as otherwise provided in Section 63G-6a-109, Section 63G-6a-403, Part 8,
4729 Exceptions to Procurement Requirements, or elsewhere in this chapter, a public procurement
4730 unit may not obtain a procurement item, unless:

4731 (a) if the public procurement unit is an authorized purchasing entity, the public
4732 procurement unit:

4733 (i) uses a procurement process; and

4734 (ii) complies with:

4735 (A) the requirements of this chapter; and

4736 (B) the rules made pursuant to this chapter by the applicable rulemaking authority;

4737 (b) if the public procurement unit is a local government unit, the public procurement
4738 unit complies with:

4739 (i) the requirements of this chapter that are adopted by the local government unit; and

4740 (ii) all other procurement requirements that the local government unit is required to

4741 comply with; or

4742 (c) if the public procurement unit is not a public procurement unit described in

4743 Subsections (1)(a) or (b), the public procurement unit:

4744 (i) obtains the procurement item under the direction and approval of the division,

4745 unless otherwise provided by a rule made by the board;

4746 (ii) uses a procurement process; and

4747 (iii) complies with:

4748 (A) the requirements of this chapter; and

4749 (B) the rules made pursuant to this chapter by the applicable rulemaking authority.

4750 (2) Subject to Subsection (3), the applicable rulemaking authority shall make rules

4751 relating to the management and control of procurements and procurement procedures by a

4752 public procurement unit.

4753 (3) (a) Rules made under Subsection (2) shall ensure compliance with the federal

4754 contract prohibition provisions of the Sudan Accountability and Divestment Act of 2007 (Pub.

4755 L. No. 110-174) that prohibit contracting with a person doing business in Sudan.

4756 (b) The State Building Board rules governing procurement of construction,

4757 architect-engineer services, and leases apply to the procurement of construction,

4758 architect-engineer services, and leases of real property by the Division of Facilities

4759 Construction and Management.

4760 (4) An applicable rulemaking authority that is subject to Title 63G, Chapter 3, Utah

4761 Administrative Rulemaking Act, shall make the rules described in this chapter in accordance

4762 with the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

4763 (5) The State Building Board shall make a report on or before July 1 of each year to a

4764 legislative interim committee, designated by the Legislative Management Committee created

4765 under Section 36-12-6, on the establishment, implementation, and enforcement of the rules

4766 made by the State Building Board under this chapter.

4767 Section 98. Section **63G-6a-403** is enacted to read:

4768 **63G-6a-403. Prequalification of potential bidders or offerers.**

4769 (1) A public procurement unit may, in accordance with this section:

4770 (a) prequalify potential bidders or offerors to provide any type of procurement item

4771 specified by the public procurement unit; and

- 4772 (b) limit participation in an invitation for bids or a request for proposals to the
4773 prequalified potential bidders or offerors for the specified type of procurement item.
- 4774 (2) To prequalify potential bidders or offerors to provide a specified type of
4775 procurement item, a public procurement unit shall issue a request for qualifications.
- 4776 (3) A public procurement unit that issues a request for qualifications shall:
- 4777 (a) publish the request for qualifications in accordance with the requirements of
4778 Section 63G-6a-402;
- 4779 (b) state in the request for qualifications:
- 4780 (i) the type of procurement item to which the request for qualifications relates;
4781 (ii) the scope of work to be performed;
4782 (iii) the instructions and the deadline for providing information in response to the
4783 request for qualifications;
- 4784 (iv) the minimum criteria for prequalification;
- 4785 (v) the period of time during which the list of prequalified potential bidders or offerors
4786 will remain in effect, which may not be longer than 18 months after the list of prequalified
4787 potential bidders or offerors is made available to the public under Subsection (8)(b); and
- 4788 (vi) that a public procurement unit may limit participation in an invitation for bids or a
4789 request for proposals, during the time period described in Subsection (3)(b)(v), to the potential
4790 bidders or offerors that are prequalified to provide the specified type of procurement item.
- 4791 (4) The minimum criteria described in Subsection (3)(b)(iv):
- 4792 (a) shall include the prequalification requirements unique to the procurement;
4793 (b) may include performance rating criteria; and
4794 (c) may not be so restrictive that the criteria unreasonably limit competition.
- 4795 (5) A public procurement unit may, before making a final list of prequalified bidders or
4796 offerors, request additional information to clarify responses made to the request for
4797 prequalifications.
- 4798 (6) A potential bidder or offeror shall be included on the list of prequalified potential
4799 bidders or offerors if the bidder or offeror:
- 4800 (a) submits a timely, responsive response to the request for prequalifications; and
4801 (b) meets the minimum criteria for qualification described in Subsection (3)(b)(iv).
- 4802 (7) If a request for qualifications will result in only one potential bidder or offeror

4803 being placed on the list of prequalified potential bidders or offerors:

4804 (a) the public procurement unit shall cancel the request for qualifications; and

4805 (b) the list may not be used by the public procurement unit.

4806 (8) The public procurement unit shall:

4807 (a) before making the list of prequalified potential bidders or offerors available to the
4808 public, provide each potential bidder or offeror who provided information in response to the
4809 request, but who did not meet the minimum qualifications for placement on the list, a written
4810 justification statement describing why the potential bidder or offeror did not meet the criteria
4811 for inclusion on the list; and

4812 (b) within 30 days after the day of the deadline described in Subsection (3)(b)(iii),
4813 make the list of prequalified potential bidders or offerors available to the public.

4814 Section 99. Section **63G-6a-404** is enacted to read:

4815 **63G-6a-404. Approved contractor list.**

4816 (1) An authorized purchasing entity may compile a list of approved contractors from
4817 which procurement items may be obtained.

4818 (2) An approved contractor list may only be compiled from:

4819 (a) timely, responsive bids or responses received in response to:

4820 (i) an invitation for bids; or

4821 (ii) a request for proposals; or

4822 (b) timely, responsive responses to:

4823 (i) the prequalification process described in Section 63G-6a-403; or

4824 (ii) the process described in Part 15, Architect-Engineer Services.

4825 (3) In order to ensure equal treatment of all contractors on a contractor list, an
4826 authorized purchasing entity shall use one of the following methods in an unbiased manner:

4827 (a) a rotation system, organized alphabetically, numerically, or randomly;

4828 (b) assigning contractors to a specified geographical area; or

4829 (c) classifying each contractor based on each contractor's particular expertise or field.

4830 Section 100. Section **63G-6a-405** is enacted to read:

4831 **63G-6a-405. Multiple award contracts.**

4832 (1) An authorized purchasing entity may enter into multiple award contracts with
4833 bidders or offerors.

4834 (2) Multiple award contracts may be in an authorized purchasing entity's best interest if
4835 award to two or more bidders or offerors for similar procurement items is needed or desired for
4836 adequate delivery, service, availability, or product compatibility.

4837 (3) An authorized purchasing entity shall:

4838 (a) exercise care to protect and promote competition among bidders or offerors when
4839 seeking to enter into multiple award contracts;

4840 (b) name all eligible users of the multiple award contracts in the invitation for bids or
4841 request for proposals; and

4842 (c) if the authorized purchasing entity anticipates entering into multiple award
4843 contracts before issuing the invitation for bids or request for proposals, state in the invitation
4844 for bids or request for proposals that the authorized purchasing entity may enter into multiple
4845 award contracts at the end of the procurement process.

4846 (4) An authorized purchasing entity that enters into multiple award contracts shall:

4847 (a) obtain all of its normal, recurring requirements for the procurement items that are
4848 the subject of the contracts until the contracts terminate; and

4849 (b) reserve the right to obtain the procurement items described in Subsection (4)(a)
4850 separately from the contracts if:

4851 (i) there is a need to obtain a quantity of the procurement items that exceeds the
4852 amount specified in the contracts; or

4853 (ii) the procurement officer makes a written finding that the procurement items
4854 available under the contract will not effectively or efficiently meet a nonrecurring special need
4855 of a public procurement unit.

4856 (5) Notwithstanding Subsection (3)(b), if an authorized purchasing entity enters into a
4857 multiple award contract under this section, another authorized purchasing entity that is not a
4858 signatory to the contract may, but is not required to, obtain a procurement item under the
4859 contract.

4860 (6) An applicable rulemaking authority may make rules to further regulate a
4861 procurement under this section.

4862 Section 101. Section **63G-6a-406** is enacted to read:

4863 **63G-6a-406. Public notice of procurement process.**

4864 (1) An authorized purchasing entity that issues an invitation for bids, a request for

4865 proposals, or another document required by this chapter to be published in accordance with this
4866 section, shall provide public notice that includes:

4867 (a) the name of the authorized purchasing entity and the public procurement unit
4868 acquiring the procurement item;

4869 (b) information on how to contact the authorized purchasing entity in relation to the
4870 invitation for bids, request for proposals, or other document;

4871 (c) for an invitation for bids or a request for proposals, the date of the opening and
4872 closing of the invitation for bids or request for proposals;

4873 (d) information on how to obtain a copy of the invitation for bids, request for
4874 proposals, or other document; and

4875 (e) a general description of the procurement items that will be obtained through the
4876 procurement process.

4877 (2) Except as provided in Subsection (3), the authorized purchasing entity shall publish
4878 the notice described in Subsection (1), using at least one of the following methods:

4879 (a) at least 10 days before the day of the deadline for submission of a bid or other
4880 response, publish the notice:

4881 (i) in a newspaper of general circulation in the state; or

4882 (ii) in a newspaper of local circulation in the area:

4883 (A) directly impacted by the procurement; or

4884 (B) over which the public procurement unit has jurisdiction; or

4885 (b) at least 10 consecutive days before the day of the deadline for submission of a bid
4886 or other response, publish the notice:

4887 (i) on the main website for the authorized purchasing entity or public procurement unit;

4888 or

4889 (ii) on a state website that is owned, managed by, or provided under contract with, the
4890 division for posting a public procurement notice.

4891 (3) An authorized purchasing entity may reduce the 10-day period described in
4892 Subsection (2), if the procurement officer or the procurement officer's designee signs a written
4893 statement that:

4894 (a) states that a shorter time is needed; and

4895 (b) as it relates to an invitation for bids or a request for proposals, determines that

4896 competition from multiple sources may be obtained within the shorter period of time.

4897 (4) An authorized purchasing entity shall make a copy of an invitation for bids, a
4898 request for proposals, or any other document described in Subsection (1), available for public
4899 inspection at the main office of the authorized purchasing entity or on the website described in
4900 Subsection (2)(b).

4901 Section 102. Section **63G-6a-407**, which is renumbered from Section 63G-6-303 is
4902 renumbered and amended to read:

4903 ~~**63G-6-303.**~~ **63G-6a-407. Purpose of specifications.**

4904 (1) All specifications shall seek to promote the overall economy and best use for the
4905 purposes intended and encourage competition in satisfying the [state's] needs of the public
4906 procurement unit, and [shall] may not be unduly restrictive.

4907 (2) The requirements of this part regarding the purposes and nonrestrictiveness of
4908 specifications shall apply to all specifications, including[~~, but not limited to,~~] those prepared by
4909 architects, engineers, designers, and draftsmen for public contracts.

4910 Section 103. Section **63G-6a-408** is enacted to read:

4911 **63G-6a-408. Small purchases.**

4912 (1) The applicable rulemaking authority may make rules governing small purchases,
4913 including:

4914 (a) establishing the maximum expenditure that may qualify as a small purchase, unless
4915 otherwise provided by statute;

4916 (b) establishing expenditure thresholds and procurement requirements related to those
4917 thresholds; and

4918 (c) the use of electronic, telephone, or written quotes.

4919 (2) (a) Except as provided in Subsection (2)(b), a public procurement unit may not
4920 obtain a procurement item through a small purchase procurement process if the procurement
4921 item may be obtained through a state contract.

4922 (b) Subsection (2)(a) does not apply:

4923 (i) to a non-executive state procurement unit;

4924 (ii) if the procurement officer or the head of the state purchasing unit authorizes an
4925 exception to the requirement;

4926 (iii) to an institution of higher education of the state; or

4927 (iv) to a school district or a public school.

4928 (c) An entity that is exempt from the requirements of Subsection (2)(a) is encouraged,
4929 but not required, to comply with Subsection (2)(a).

4930 (3) A public procurement unit:

4931 (a) may not use the small purchase procurement process described in this section for
4932 ongoing, continuous, and regularly scheduled procurements; and

4933 (b) shall make its ongoing, continuous, and regularly scheduled procurements through
4934 a contract awarded through a procurement process described in this chapter or an applicable
4935 exception to a procurement process.

4936 (4) It is unlawful for a person to intentionally or knowingly divide a procurement into
4937 one or more smaller procurements with the intent to make a procurement:

4938 (a) qualify as a small purchase, if, before dividing the procurement, it would not have
4939 qualified as a small purchase; or

4940 (b) meet a threshold established by rule made by the applicable rulemaking authority,
4941 if, before dividing the procurement, it would not have met the threshold.

4942 (5) A division of a procurement that is prohibited under Subsection (4) includes doing
4943 any of the following with the intent or knowledge described in Subsection (4):

4944 (a) making two or more separate purchases;

4945 (b) dividing an invoice or purchase order into two or more invoices or purchase orders;
4946 or

4947 (c) making smaller purchases over a period of time.

4948 (6) A person who violates Subsection (4) is subject to the criminal penalties described
4949 in Section 63G-6a-2305.

4950 (7) The Division of Finance within the Department of Administrative Services may
4951 conduct an audit of a public procurement unit in the state executive branch to verify
4952 compliance with the requirements of this section.

4953 (8) A public procurement unit in the state executive branch may not make a small
4954 purchase after January 1, 2013, unless the chief procurement officer certifies that the person
4955 responsible for procurements in the public procurement unit has satisfactorily completed
4956 training on this section and the rules made under this section.

4957 Section 104. Section **63G-6a-501** is enacted to read:

4958 **Part 5. Request for Information**

4959 **63G-6a-501. Title.**

4960 This part is known as "Request for Information."

4961 Section 105. Section **63G-6a-502** is enacted to read:

4962 **63G-6a-502. Purpose of request for information.**

4963 (1) The purpose of a request for information is to:

4964 (a) obtain information, comments, or suggestions from potential bidders or offerors
4965 before issuing an invitation for bids or request for proposals;

4966 (b) determine whether to issue an invitation for bids or a request for proposals; and

4967 (c) generate interest in a potential invitation for bids or a request for proposals.

4968 (2) A request for information may be useful in order to:

4969 (a) prepare to issue an invitation for bids or request for proposals for an unfamiliar or
4970 complex procurement;

4971 (b) determine the market availability of a procurement item; or

4972 (c) determine best practices, industry standards, performance standards, product
4973 specifications, and innovations relating to a procurement item.

4974 Section 106. Section **63G-6a-503** is enacted to read:

4975 **63G-6a-503. Request for information and response nonbinding.**

4976 (1) A request for information is not a procurement process and may not be used to
4977 make a purchase or enter into a contract. A public procurement unit is required to use a
4978 procurement process, or comply with an exception to the requirement to use a procurement
4979 process, in order to make a purchase or enter into a contract.

4980 (2) A response to a request for information is not an offer and may not be accepted to
4981 form a binding contract.

4982 Section 107. Section **63G-6a-504** is enacted to read:

4983 **63G-6a-504. Contents of request for information -- Public notice.**

4984 A request for information may seek a wide range of information, including:

4985 (1) availability of a procurement item;

4986 (2) delivery schedules;

4987 (3) industry standards and practices;

4988 (4) product specifications;

- 4989 (5) training;
- 4990 (6) new technologies;
- 4991 (7) capabilities of potential providers of a procurement item; and
- 4992 (8) alternate solutions.

4993 Section 108. Section **63G-6a-601** is enacted to read:

4994 **Part 6. Bidding**

4995 **63G-6a-601. Title.**

4996 This part is known as "Bidding."

4997 Section 109. Section **63G-6a-602** is enacted to read:

4998 **63G-6a-602. Contracts awarded by bidding.**

4999 (1) Except as otherwise provided in this chapter, an authorized purchasing entity shall
5000 award a contract for a procurement by bidding, in accordance with the rules of the applicable
5001 rulemaking authority.

5002 (2) The bidding procurement process is appropriate to use when cost is the major factor
5003 in determining the award of a procurement.

5004 Section 110. Section **63G-6a-603** is enacted to read:

5005 **63G-6a-603. Invitation for bids -- Contents -- Notice.**

5006 (1) The bidding procurement process begins when the authorized purchasing entity
5007 issues an invitation for bids.

5008 (2) An invitation for bids shall:

5009 (a) state the period of time during which bids will be accepted;

5010 (b) describe the manner in which a bid shall be submitted;

5011 (c) state the place where a bid shall be submitted; and

5012 (d) include, or incorporate by reference:

5013 (i) a description of the procurement items sought;

5014 (ii) the objective criteria that will be used to evaluate the bids; and

5015 (iii) the required contractual terms and conditions.

5016 (3) An authorized purchasing entity shall publish an invitation for bids in accordance
5017 with the requirements of Section 63G-6a-406.

5018 Section 111. Section **63G-6a-604** is enacted to read:

5019 **63G-6a-604. Bid opening and acceptance.**

- 5020 (1) Bids shall be opened:
- 5021 (a) publicly, except as provided in Section 63G-6a-611;
- 5022 (b) in the presence of one or more witnesses, unless an electronic bid opening process
- 5023 is used where bidders may see the opening of the bid electronically; and
- 5024 (c) at the time and place indicated in the invitation for bids.
- 5025 (2) Bids shall be accepted unconditionally, without alteration or correction, except as
- 5026 otherwise authorized by this chapter.
- 5027 (3) (a) The procurement officer shall reject a bid that is not responsive or responsible.
- 5028 (b) A bid that is not responsive includes a bid that:
- 5029 (i) is conditional;
- 5030 (ii) attempts to modify the bid requirements;
- 5031 (iii) contains additional terms or conditions; or
- 5032 (iv) fails to conform with the requirements or specifications of the invitation for bids.
- 5033 (c) A bid that is not responsible includes a bid where the procurement officer
- 5034 reasonably concludes that the bidder or an employee, agent, or subcontractor of the bidder, at
- 5035 any tier, is unable to satisfactorily fulfill the bid requirements.
- 5036 (4) An authorized purchasing entity may not accept a bid after the time for submission
- 5037 of a bid has expired.
- 5038 (5) The procurement officer shall:
- 5039 (a) record the name of each bidder and the amount of each bid; and
- 5040 (b) after the bid is awarded, make the information described in Subsection (5)(a)
- 5041 available for public disclosure.
- 5042 Section 112. Section **63G-6a-605** is enacted to read:
- 5043 **63G-6a-605. Correction or withdrawal of bids -- Cancellation of award.**
- 5044 (1) Correction or withdrawal of inadvertently erroneous bids, or the cancellation of an
- 5045 award or a contract that is based on an unintentionally erroneous bid, may be made in
- 5046 accordance with the rules of the applicable rulemaking authority.
- 5047 (2) Notwithstanding Subsection (1), the following changes may not be made to a bid
- 5048 after the bid opening:
- 5049 (a) changes in bid pricing;
- 5050 (b) changes in the cost evaluation formula; or

5051 (c) changes in other provisions that are prejudicial to fair competition or to the interest
5052 of the public procurement unit.

5053 (3) A decision to permit the correction or withdrawal of a bid or the cancellation of an
5054 award or a contract under Subsection (1) shall be supported in a written document, signed by
5055 the procurement officer or the head of the authorized purchasing entity.

5056 Section 113. Section **63G-6a-606** is enacted to read:

5057 **63G-6a-606. Evaluation of bids -- Award -- Cancellation -- Disqualification.**

5058 (1) An authorized purchasing entity shall evaluate each bid using the objective criteria
5059 described in the invitation for bids, which may include:

5060 (a) experience;

5061 (b) performance ratings;

5062 (c) inspection;

5063 (d) testing;

5064 (e) quality;

5065 (f) workmanship;

5066 (g) time and manner of delivery;

5067 (h) references;

5068 (i) financial stability;

5069 (j) cost;

5070 (k) suitability for a particular purpose; or

5071 (l) other objective criteria specified in the invitation for bids.

5072 (2) Criteria not described in the invitation for bids may not be used to evaluate a bid.

5073 (3) The authorized purchasing entity shall:

5074 (a) award the contract as soon as practicable to:

5075 (i) the lowest responsive and responsible bidder who meets the objective criteria
5076 described in the invitation for bids; or

5077 (ii) if, in accordance with Subsection (4), the procurement officer or the head of the
5078 authorized purchasing entity disqualifies the bidder described in Subsection (3)(a)(i), the next
5079 lowest responsive and responsible bidder who meets the objective criteria described in the
5080 invitation for bids; or

5081 (b) cancel the invitation for bids without awarding a contract.

5082 (4) In accordance with Subsection (5), the procurement officer or the head of the
5083 authorized purchasing entity may disqualify a bidder for:
5084 (a) a violation of this chapter;
5085 (b) a violation of a requirement of the invitation for bids;
5086 (c) unlawful or unethical conduct; or
5087 (d) a change in circumstance that, had the change been known at the time the bid was
5088 submitted, would have caused the bidder to not be the lowest responsive and responsible bidder
5089 who meets the objective criteria described in the invitation for bids.

5090 (5) A procurement officer or head of an authorized purchasing entity who disqualifies a
5091 bidder under Subsection (4) shall:

5092 (a) make a written finding, stating the reasons for disqualification; and

5093 (b) provide a copy of the written finding to the disqualified bidder.

5094 (6) If an authorized purchasing entity cancels an invitation for bids without awarding a
5095 contract, the authorized purchasing entity shall make available for public inspection a written
5096 justification for the cancellation.

5097 Section 114. Section **63G-6a-607** is enacted to read:

5098 **63G-6a-607. Action when all bids are over budget.**

5099 (1) Except as provided in Subsection (2) or (3), if the fiscal officer for the public
5100 procurement unit certifies that all accepted bids exceed available funds and that the lowest
5101 responsive and responsible bidder does not exceed the available funds by more than 5%, the
5102 procurement officer may negotiate an adjustment of the bid price and bid requirements with the
5103 lowest responsive and responsible bidder in order to bring the bid within the amount of
5104 available funds.

5105 (2) A procurement officer may not adjust the bid requirements under Subsection (1) if
5106 there is a substantial likelihood that, had the adjustment been included in the invitation for
5107 bids, a person that did not submit a bid would have submitted a responsive, responsible, and
5108 competitive bid.

5109 (3) The Division of Facilities Construction and Management is exempt from the
5110 requirements of this section if:

5111 (a) the building board adopts rules governing procedures when all accepted bids exceed
5112 available funds; and

5113 (b) the Division of Facilities Construction and Management complies with the rules
5114 described in Subsection (3)(a).

5115 Section 115. Section **63G-6a-608** is enacted to read:

5116 **63G-6a-608. Tie bids -- Resolution -- Copies provided to attorney general.**

5117 (1) A procurement officer shall resolve a tie bid in accordance with a method
5118 established by rule made by the applicable rulemaking authority. The method may include
5119 awarding the tie bid:

5120 (a) to the tie bidder who:

5121 (i) is provider of state products, if no other tie bidder is a responsive provider of state
5122 products;

5123 (ii) is closest to the point of delivery;

5124 (iii) received the previous award; or

5125 (iv) will provide the earliest delivery date;

5126 (b) by drawing lots; or

5127 (c) by any other reasonable method of resolving a tie bid.

5128 (2) The method chosen by the procurement officer to resolve a tie bid shall be at the
5129 sole discretion of the procurement officer, subject to the rules established under Subsection (1).

5130 (3) A public procurement unit in the state executive branch shall provide a copy of the
5131 procurement to the attorney general if an award of a contract to a tie bidder exceeds \$100,000
5132 in expenditures.

5133 Section 116. Section **63G-6a-609** is enacted to read:

5134 **63G-6a-609. Multiple stage bidding process.**

5135 (1) An authorized purchasing entity may conduct a bid in multiple stages, to:

5136 (a) narrow the number of bidders who will progress to a subsequent stage;

5137 (b) prequalify bidders for subsequent stages, in accordance with Section 63G-6a-403;

5138 (c) enter into a contract for a single procurement; or

5139 (d) award multiple contracts for a series of upcoming procurements.

5140 (2) The invitation for bids for a multiple stage bidding process shall:

5141 (a) describe the requirements for, and purpose of, each stage of the process;

5142 (b) indicate whether the authorized purchasing entity intends to award:

5143 (i) a single contract; or

- 5144 (ii) multiple contracts for a series of upcoming procurements; and
5145 (c) state that:
5146 (i) the first stage is for prequalification only;
5147 (ii) a bidder may not submit any pricing information in the first stage of the process;
5148 and
5149 (iii) bids in the second stage will only be accepted from a person who prequalifies in
5150 the first stage.
5151 (3) During the first stage, the authorized purchasing entity:
5152 (a) shall prequalify bidders to participate in subsequent stages, in accordance with
5153 Section 63G-6a-403;
5154 (b) shall prohibit the submission of pricing information until the final stage; and
5155 (c) may, before beginning the second stage, request additional information to clarify
5156 the qualifications of the bidders who submit timely responses.
5157 (4) Contracts may only be awarded for a procurement item described in stage one of
5158 the invitation for bids.
5159 (5) An authorized purchasing entity may conduct a bid in as many stages as it
5160 determines to be appropriate.
5161 (6) Except as otherwise expressly provided in this section, an authorized purchasing
5162 entity shall conduct a multiple stage process in accordance with this part.
5163 (7) The applicable rulemaking authority may make rules governing the use of a
5164 multiple stage process described in this section.
5165 Section 117. Section **63G-6a-610** is enacted to read:
5166 **63G-6a-610. Contracts awarded by reverse auction.**
5167 (1) Reverse auction bidding may be used if the procurement officer determines, in
5168 writing, that reverse auction bidding will provide the best value to the public procurement unit.
5169 (2) Reverse auction bidding is appropriate to use when there are multiple prequalified
5170 providers of a procurement item.
5171 Section 118. Section **63G-6a-611** is enacted to read:
5172 **63G-6a-611. Invitation for bids for reverse auction -- Notice contents --**
5173 **Agreement to terms and conditions.**
5174 (1) The reverse auction bidding process begins when an authorized purchasing entity

5175 issues an invitation for bids to prequalify bidders to participate in the reverse auction.

5176 (2) The invitation for bids shall:

5177 (a) state the period of time during which bids will be accepted;

5178 (b) state that the bid will be conducted by reverse auction;

5179 (c) describe the procurement items sought;

5180 (d) describe the minimum requirements to become prequalified;

5181 (e) state the required contractual terms and conditions; and

5182 (f) describe the procedure that the authorized purchasing entity will follow in

5183 conducting the reverse auction.

5184 (3) In order to participate in a reverse auction, a bidder shall agree to:

5185 (a) the specifications, and contractual terms and conditions, of the procurement; and

5186 (b) be trained in, and abide by, the procedure that the authorized purchasing entity will

5187 follow in conducting the reverse auction.

5188 (4) An authorized purchasing entity shall publish an invitation for bids for a reverse

5189 auction in accordance with the requirements of Section 63G-6a-406.

5190 Section 119. Section **63G-6a-612** is enacted to read:

5191 **63G-6a-612. Conduct of reverse auction.**

5192 (1) When conducting a reverse auction, an authorized purchasing entity:

5193 (a) may conduct the reverse auction at a physical location or by electronic means;

5194 (b) shall permit all prequalified bidders to participate in the reverse auction;

5195 (c) may not permit a bidder to participate in the reverse auction if the bidder did not

5196 prequalify to participate in the reverse auction;

5197 (d) may not accept a bid after the time for submission of a bid has expired;

5198 (e) shall update the bids on a real time basis; and

5199 (f) shall conduct the reverse auction in a manner that permits each bidder to:

5200 (i) bid against each other; and

5201 (ii) lower the bidder's price below the lowest bid before the reverse auction closes.

5202 (2) At the end of the reverse auction, the authorized purchasing entity shall:

5203 (a) award the contract as soon as practicable to the lowest responsive and responsible

5204 bidder who meets the objective criteria described in the invitation for bids; or

5205 (b) cancel the reverse auction without awarding a contract.

5206 (3) After the reverse auction is finished, the procurement officer shall make publicly
5207 available:

5208 (a) (i) the amount of the final bid submitted by each bidder during the reverse auction;

5209 and

5210 (i) the identity of the bidder that submitted each final bid; and

5211 (b) if practicable:

5212 (i) the amount of each bid submitted during the reverse auction; and

5213 (ii) the identity of the bidder that submitted each bid.

5214 Section 120. Section **63G-6a-701** is enacted to read:

5215 **Part 7. Request for Proposals**

5216 **63G-6a-701. Title.**

5217 This part is known as "Request for Proposals."

5218 Section 121. Section **63G-6a-702** is enacted to read:

5219 **63G-6a-702. Contracts awarded by request for proposals.**

5220 (1) A request for proposals procurement process may be used instead of bidding if the
5221 procurement officer determines, in writing, that the request for proposals procurement process
5222 will provide the best value to the public procurement unit.

5223 (2) The request for proposals procurement process is appropriate to use for:

5224 (a) the procurement of professional services;

5225 (b) a design-build procurement;

5226 (c) when cost is not the most important factor to be considered in making the selection
5227 that is most advantageous to the public procurement unit; or

5228 (d) when factors, in addition to cost, are highly significant in making the selection that
5229 is most advantageous to the public procurement unit.

5230 Section 122. Section **63G-6a-703** is enacted to read:

5231 **63G-6a-703. Request for proposals -- Notice -- Contents.**

5232 (1) The request for proposals procurement process begins when the authorized
5233 purchasing entity issues a request for proposals.

5234 (2) A request for proposals shall:

5235 (a) state the period of time during which a proposal will be accepted;

5236 (b) describe the manner in which a proposal shall be submitted;

- 5237 (c) state the place where a proposal shall be submitted;
5238 (d) include, or incorporate by reference:
5239 (i) a description of the procurement items sought;
5240 (ii) a description of the subjective and objective criteria that will be used to evaluate
5241 the proposal; and
5242 (iii) the standard contractual terms and conditions required by the authorized
5243 purchasing entity;
5244 (e) state the relative weight that will be given to each score awarded for the criteria
5245 described in Subsection (2)(d)(ii), including cost;
5246 (f) state the formula that will be used to determine the score awarded for the cost of
5247 each proposal;
5248 (g) if the request for proposals will be conducted in multiple stages, as described in
5249 Section 63G-6a-710, include a description of the stages and the criteria and scoring that will be
5250 used to screen offerors at each stage; and
5251 (h) state that discussions may be conducted with offerors who submit proposals
5252 determined to be reasonably susceptible of being selected for award, followed by an
5253 opportunity to make best and final offers, but that proposals may be accepted without
5254 discussions.
5255 (3) An authorized purchasing entity shall publish a request for proposals in accordance
5256 with the requirements of Section 63G-6a-406.
5257 Section 123. Section **63G-6a-704** is enacted to read:
5258 **63G-6a-704. Opening of proposals and acceptance.**
5259 (1) An authorized purchasing entity shall ensure that proposals are opened in a manner
5260 that avoids disclosing the contents to competing offerors during the evaluation process.
5261 (2) An authorized purchasing entity may not accept a proposal:
5262 (a) after the time for submission of a proposal has expired; or
5263 (b) that is not responsive to the request for proposals.
5264 Section 124. Section **63G-6a-705** is enacted to read:
5265 **63G-6a-705. Discussions -- Best and final offers.**
5266 (1) After proposals are received and opened, the authorized purchasing entity may
5267 conduct discussions with the offerors and allow the offerors to make best and final offers after

5268 the discussions.

5269 (2) The authorized purchasing entity shall:

5270 (a) ensure that each offeror receives fair and equal treatment with respect to the other
5271 offerors;

5272 (b) establish a schedule and procedures for conducting discussions;

5273 (c) ensure that information in each proposal and information gathered during
5274 discussions is not shared with other offerors until the contract is awarded;

5275 (d) ensure that auction tactics are not used in the discussion process, including
5276 discussing and comparing the costs and features of other proposals; and

5277 (e) set a common date and time for the submission of best and final offers.

5278 (3) If an offeror chooses not to participate in a discussion or does not make a timely
5279 best and final offer, the offer submitted by the offerors before the conduct of discussions shall
5280 be treated as the offeror's best and final offer.

5281 Section 125. Section **63G-6a-706** is enacted to read:

5282 **63G-6a-706. Correction or withdrawal of proposal -- Cancellation of award.**

5283 (1) Correction or withdrawal of an unintentionally erroneous proposal, or the
5284 cancellation of an award or contract that is based on an unintentionally erroneous proposal,
5285 may be made in accordance with the rules of the applicable rulemaking authority.

5286 (2) A decision to permit the correction or withdrawal of a proposal or the cancellation
5287 of an award or a contract under Subsection (1) shall be supported in a written document, signed
5288 by the procurement officer.

5289 Section 126. Section **63G-6a-707** is enacted to read:

5290 **63G-6a-707. Evaluation of proposals -- Evaluation committee.**

5291 (1) Each proposal shall be evaluated using the criteria described in the request for
5292 proposals, which may include:

5293 (a) experience;

5294 (b) performance ratings;

5295 (c) inspection;

5296 (d) testing;

5297 (e) quality;

5298 (f) workmanship;

- 5299 (g) time, manner, or schedule of delivery;
- 5300 (h) references;
- 5301 (i) financial stability;
- 5302 (j) suitability for a particular purpose;
- 5303 (k) management plans;
- 5304 (l) cost; or
- 5305 (m) other subjective or objective criteria specified in the request for proposals.
- 5306 (2) Criteria not described in the request for proposals may not be used to evaluate a
- 5307 proposal.
- 5308 (3) The authorized purchasing entity shall:
- 5309 (a) appoint an evaluation committee consisting of at least three individuals; and
- 5310 (b) ensure that the evaluation committee and each member of the evaluation
- 5311 committee:
- 5312 (i) does not have a conflict of interest with any of the offerors;
- 5313 (ii) can fairly evaluate each proposal;
- 5314 (iii) does not contact or communicate with an offeror for any reason other than
- 5315 conducting the procurement process; and
- 5316 (iv) conducts the evaluation in a manner that ensures a fair and competitive process
- 5317 and avoids the appearance of impropriety.
- 5318 (4) The evaluation committee may conduct interviews with, or participate in
- 5319 presentations by, the offerors.
- 5320 (5) Except as provided in Subsection (6) or (7), each member of the evaluation
- 5321 committee is prohibited from knowing, or having access to, any information relating to the
- 5322 cost, or the scoring of the cost, of a proposal until after the evaluation committee submits its
- 5323 final recommended scores on all other criteria to the authorized purchasing entity.
- 5324 (6) (a) As used in this Subsection (6), "management fee" includes only the following
- 5325 fees of the construction manager/general contractor:
- 5326 (i) preconstruction phase services;
- 5327 (ii) monthly supervision fees for the construction phase; and
- 5328 (iii) overhead and profit for the construction phase.
- 5329 (b) When selecting a construction manager/general contractor for a construction

5330 project, the evaluation committee:

5331 (i) may, at any time after the opening of the responses to the request for proposals, have
5332 access to, and consider, the management fee proposed by the offerors; and

5333 (ii) except as provided in Subsection (7), may not know or have access to any other
5334 information relating to the cost of construction submitted by the offerors, until after the
5335 evaluation committee submits its final recommended scores on all other criteria to the
5336 authorized purchasing entity.

5337 (7) An authorized purchasing entity is not required to comply with Subsection (5) if,
5338 before opening the responses to the request for proposals, the head of the authorized purchasing
5339 entity or a person designated by rule made by the applicable rulemaking authority:

5340 (a) signs a written statement:

5341 (i) indicating that, due to the nature of the proposal or other circumstances, it is in the
5342 best interest of the state to waive compliance with Subsection (5); and

5343 (ii) describing the nature of the proposal and the other circumstances relied upon to
5344 waive compliance with Subsection (5); and

5345 (b) makes the written statement available to the public, upon request.

5346 Section 127. Section **63G-6a-708** is enacted to read:

5347 **63G-6a-708. Publication of award and scores -- Cost-benefit analysis.**

5348 (1) The authorized purchasing entity shall, on the day on which the selection is
5349 announced, make available to each offeror and to the public a written statement that includes:

5350 (a) the name of the offeror found by the authorized purchasing entity to provide the
5351 greatest overall value to the public procurement unit, taking into account the cost and the other
5352 evaluation criteria described in the request for proposals; and

5353 (b) the scores awarded to each offeror by the evaluation committee for each evaluation
5354 criteria category described in the request for proposals.

5355 (2) If the contract is awarded to an offeror other than the lowest cost offeror, and the
5356 difference between the cost of the accepted proposal and the lowest proposal exceeds the
5357 greater of \$10,000 or 5% of the lowest cost offer, an authorized purchasing entity shall include,
5358 with the statement described in Subsection (1), an informal written cost-benefit analysis that:

5359 (a) explains, in general terms, the advantage to the public procurement unit of
5360 awarding the contract to the higher cost offeror;

5361 (b) includes, except as provided in Subsection (2)(c), the estimated added financial
5362 value to the public procurement unit of each criteria that justifies awarding the contract to the
5363 higher cost offeror;

5364 (c) includes, to the extent that assigning a financial value to a particular criteria is not
5365 practicable, a statement describing:

5366 (i) why it is not practicable to assign a financial value to the criteria; and

5367 (ii) in nonfinancial terms, the advantage to the public procurement unit, based on the
5368 particular criteria, of awarding the contract to the higher cost offeror;

5369 (d) demonstrates that the value of the advantage to the public procurement unit of
5370 awarding the contract to the higher cost offeror exceeds the value of the difference between the
5371 cost of the higher cost offeror and the cost of the lower cost offerors; and

5372 (e) includes any other information required by rule made by the applicable rulemaking
5373 authority.

5374 Section 128. Section **63G-6a-709** is enacted to read:

5375 **63G-6a-709. Award of contract -- Cancellation -- Disqualification.**

5376 (1) After the evaluation and scoring of proposals is completed, the authorized
5377 purchasing entity shall:

5378 (a) award the contract as soon as practicable to:

5379 (i) the responsive and responsible offeror with the highest total score; or

5380 (ii) if, in accordance with Subsection (2), the procurement officer or the head of the
5381 authorized purchasing entity disqualifies the offeror described in Subsection (1)(a)(i), the
5382 responsive and responsible offeror with the next highest total score; or

5383 (b) cancel the request for proposals without awarding a contract.

5384 (2) In accordance with Subsection (3), the procurement officer or the head of the
5385 authorized purchasing entity may disqualify an offeror for:

5386 (a) a violation of this chapter;

5387 (b) a violation of a requirement of the request for proposals;

5388 (c) unlawful or unethical conduct; or

5389 (d) a change in circumstance that, had the change been known at the time the proposal
5390 was submitted, would have caused the proposal to not have the highest score.

5391 (3) A procurement officer or head of an authorized purchasing entity who disqualifies

5392 an offeror under Subsection (2) shall:

5393 (a) make a written finding, stating the reasons for disqualification; and

5394 (b) provide a copy of the written finding to the disqualified offeror.

5395 (4) If an authorized purchasing entity cancels a request for proposals without awarding
5396 a contract, the authorized purchasing entity shall make available for public inspection a written
5397 justification for the cancellation.

5398 Section 129. Section **63G-6a-710** is enacted to read:

5399 **63G-6a-710. Multiple stage process.**

5400 (1) An authorized purchasing entity may conduct a request for proposals in stages,
5401 where an earlier stage is used to qualify offerors for subsequent stages or to narrow the number
5402 of offerors that will move on to subsequent stages.

5403 (2) Except as otherwise expressly provided in this section, an authorized purchasing
5404 entity shall conduct a multiple stage process in accordance with this part.

5405 Section 130. Section **63G-6a-711**, which is renumbered from Section 63G-6-408.5 is
5406 renumbered and amended to read:

5407 ~~[63G-6-408.5].~~ **63G-6a-711. Procurement for submitted proposal.**

5408 (1) As used in this section:

5409 (a) "Committee" is as defined in Section 63M-1-2602.

5410 (b) "Initial proposal" is a proposal submitted by a private entity under Section
5411 63M-1-2605.

5412 (2) After receipt by the chief procurement officer of a copy of an initial proposal from
5413 the committee in accordance with Subsection 63M-1-2606(5), including any comment,
5414 suggestion, or modification to the initial proposal, the chief procurement officer shall initiate a
5415 procurement process in compliance with [~~Title 63G, Chapter 6, Utah Procurement Code~~] this
5416 chapter.

5417 (3) The chief procurement officer or designee shall:

5418 (a) review each detailed proposal received in accordance with Title 63M, Chapter 1,
5419 Part 26, Government Procurement Private Proposal Program; and

5420 (b) submit all detailed proposals that meet the guidelines established under Subsection
5421 63M-1-2608(1) to the committee for review under Section 63M-1-2609.

5422 (4) For purposes of this chapter, the Governor's Office of Economic Development is

5423 considered the state purchasing [agency] unit for a procurement process under Title 63M,
5424 Chapter 1, Part 26, Government Procurement Private Proposal Program.

5425 Section 131. Section **63G-6a-801** is enacted to read:

5426 **Part 8. Exceptions to Procurement Requirements**

5427 **63G-6a-801. Title.**

5428 This part is known as "Exceptions to Procurement Requirements."

5429 Section 132. Section **63G-6a-802**, which is renumbered from Section 63G-6-410 is
5430 renumbered and amended to read:

5431 ~~[63G-6-410].~~ **63G-6a-802. Sole source -- Award of contract without**
5432 **competition -- Notice.**

5433 (1) As used in this section:

5434 (a) "Transitional costs" mean the costs of changing from an existing provider of, or
5435 type of, a procurement item to another provider of, or type of, procurement item.

5436 (b) "Transitional costs" include:

5437 (i) training costs;

5438 (ii) conversion costs;

5439 (iii) compatibility costs;

5440 (iv) system downtime;

5441 (v) disruption of service;

5442 (vi) staff time necessary to put the transition into effect;

5443 (vii) installation costs; and

5444 (viii) ancillary software, hardware, equipment, or construction costs.

5445 (c) "Transitional costs" do not include:

5446 (i) the costs of preparing for or engaging in a procurement process; or

5447 (ii) contract negotiation or contract drafting costs.

5448 (2) A contract may be awarded for a [supply, service, or construction] procurement
5449 item without competition [when, under rules and regulations, the chief] if the procurement
5450 officer, the head of [a purchasing agency, or a designee of either officer above the level of
5451 procurement officer] an authorized purchasing entity, or a designee of either who is senior to
5452 the procurement officer or the head of the authorized purchasing entity, determines in writing
5453 that:

5454 ~~[(1)]~~ (a) there is only one source for the ~~[required supply, service, or construction]~~
5455 procurement item; or

5456 ~~[(2)]~~ (b) the award to a specific supplier, service provider, or contractor is a condition
5457 of a donation that will fund the full cost of the supply, service, or construction item.

5458 (3) Circumstances under which there is only one source for a procurement item may
5459 include:

5460 (a) where the most important consideration in obtaining a procurement item is the
5461 compatibility of equipment, technology, software, accessories, replacement parts, or service;

5462 (b) where a procurement item is needed for trial use or testing;

5463 (c) where transitional costs are unreasonable or cost prohibitive; or

5464 (d) procurement of public utility services.

5465 (4) The applicable rulemaking authority shall make rules regarding the publication of
5466 notice for a sole source procurement that, at a minimum, require publication of notice of a sole
5467 source procurement, in accordance with Section 63G-6a-406, if the cost of the procurement
5468 exceeds \$50,000.

5469 (5) An authorized purchasing entity who awards a sole source contract on behalf of a
5470 public procurement unit shall negotiate with the contractor to ensure that the terms of the
5471 contract, including price and delivery, are in the best interest of the state.

5472 (6) A public procurement unit may extend a contract for a reasonable period of time
5473 without engaging in a procurement process, if:

5474 (a) the award of a new contract for the procurement item is delayed due to a protest or
5475 appeal;

5476 (b) the procurement process is delayed due to unintentional error;

5477 (c) changes in industry standards require significant changes to specifications for the
5478 procurement item;

5479 (d) the extension is necessary to prevent the loss of federal funds;

5480 (e) the extension is necessary to address a circumstance where the appropriation of
5481 state or federal funds has been delayed; or

5482 (f) the extension covers the period of time during which contract negotiations with a
5483 new provider are being conducted.

5484 Section 133. Section **63G-6a-803** is enacted to read:

5485 **63G-6a-803. Emergency procurement.**

5486 (1) Notwithstanding any other provision of this chapter, a procurement officer or the
5487 procurement officer's designee may authorize an emergency procurement without using a
5488 standard procurement process when an emergency condition exists.

5489 (2) A procurement officer who authorizes an emergency procurement under Subsection
5490 (1) shall:

5491 (a) make the authorization in writing, stating the emergency condition upon which the
5492 emergency procurement is made; and

5493 (b) ensure that the procurement is made with as much competition as reasonably
5494 practicable while avoiding harm, or a risk of harm, to the public health, safety, welfare, or
5495 property.

5496 Section 134. Section **63G-6a-804**, which is renumbered from Section 63G-6-423 is
5497 renumbered and amended to read:

5498 ~~**63G-6-423.**~~ **63G-6a-804. Purchase of prison industry goods.**

5499 (1) ~~[A] (a) A public procurement [units] unit that is not a political subdivision shall~~
5500 ~~purchase goods and services produced by the Utah Correctional Industries Division as provided~~
5501 ~~[by] in this section[, which is an exemption from this chapter. All political subdivisions].~~

5502 (b) A political subdivision of the state may, and is encouraged to, purchase [these]
5503 goods and services [and are encouraged to do so when feasible] under this section.

5504 (c) A public procurement unit is not required to use a procurement process to purchase
5505 goods or services under this section.

5506 (2) ~~[By]~~ On or before July 1 of each year, the director of the Utah Correctional
5507 Industries shall:

5508 (a) publish and distribute to all [state agencies and interested political subdivisions]
5509 public procurement units and other interested public entities a catalog of goods and services
5510 provided by the Correctional Industries Division[. The catalog shall include], including a
5511 description and price of each item offered for sale[. The catalog shall be updated and revised];
5512 and

5513 (b) update and revise the catalog described in Subsection (2)(a) during the year as the
5514 director considers necessary.

5515 (3) (a) ~~[State departments, agencies, and institutions]~~ A procurement unit that is not a

5516 political subdivision of the state may not purchase any goods or services provided by the
 5517 Correctional Industries Division from any other source unless it has been determined in writing
 5518 by the director of Correctional Industries and by the [state] procurement officer or in the case
 5519 of institutions of higher education, the institutional procurement officer, that purchase from the
 5520 Correctional Industries Division is not feasible due to one of the following circumstances:

5521 (i) the good or service offered by the division does not meet the reasonable
 5522 requirements of the [~~purchasing agency~~] public procurement unit;
 5523 (ii) the good or service cannot be supplied within a reasonable time by the division; or
 5524 (iii) the cost of the good or service, including basic price, transportation costs, and
 5525 other expenses of acquisition, is not competitive with the cost of procuring the item from
 5526 another source.

5527 (b) In cases of disagreement[;] under Subsection (3)(a):
 5528 (i) the decision may be appealed to a board consisting of:
 5529 (A) the director of the Department of Corrections[;];
 5530 (B) the director of Administrative Services[;]; and
 5531 (C) a neutral third party agreed upon by the other two members [~~or~~] of the board;
 5532 (ii) in the case of [~~institutions~~] an institution of higher education of the state, the
 5533 president of the [~~involved~~] institution, or the president's designee, shall make the final
 5534 decision[-]; or

5535 (iii) in the case of a non-executive state procurement unit, a person designated by the
 5536 applicable rulemaking authority shall make the final decision.

5537 Section 135. Section **63G-6a-805**, which is renumbered from Section 63G-6-425 is
 5538 renumbered and amended to read:

5539 [~~63G-6-425~~]. **63G-6a-805. Purchase from community rehabilitation**
 5540 **programs.**

5541 (1) As used in this section:

5542 (a) [~~"Board"~~] "Advisory board" means the Purchasing from Persons with Disabilities
 5543 Advisory Board created under this section.

5544 (b) "Central not-for-profit association" means a group of experts designated by the
 5545 advisory board to do the following, under guidelines established by the advisory board:

5546 (i) assist the advisory board with its functions; and

5547 (ii) facilitate the implementation of advisory board policies.

5548 (c) (i) "Community rehabilitation program" means a program that is operated primarily
5549 for the purpose of the employment and training of persons with a disability by a government
5550 agency or qualified nonprofit organization which is an income tax exempt organization under
5551 26 U.S.C. Sec. 501(c)(3) of the Internal Revenue Code.

5552 (ii) A community rehabilitation program:

5553 (A) maintains an employment ratio of at least 75% of the program employees under the
5554 procurement contract in question have severe disabilities;

5555 (B) (I) complies with any applicable occupational health and safety standards
5556 prescribed by the United States Department of Labor; or

5557 (II) is a supported employment program approved by the Utah State Office of
5558 Rehabilitation;

5559 (C) has its principal place of business in Utah;

5560 (D) produces any good provided under this section in Utah; and

5561 (E) provides any service that is provided by individuals with a majority of whom
5562 domiciled in Utah.

5563 (d) "Person with a disability" means a person with any disability as defined by and
5564 covered under the Americans with Disabilities Act of 1990, 42 U.S.C. 12102.

5565 (2) ~~[(a)]~~ There is created within the division the Purchasing from Persons with
5566 Disabilities Advisory Board ~~[within the Division of Purchasing and General Services of the~~
5567 ~~Department of Administrative Services. The board shall be composed of the following three~~
5568 ~~members:]~~.

5569 (3) The advisory board shall consist of three members, as follows:

5570 ~~[(i)]~~ (a) the director of the ~~[Division of Purchasing and General Services created under~~
5571 ~~Section 63A-2-101 or a]~~ division or the director's designee;

5572 ~~[(ii)]~~ (b) the executive director of the Utah State Office of Rehabilitation, ~~created under~~
5573 ~~Section 53A-24-103,~~ or ~~[a]~~ the executive director's designee; and

5574 ~~[(iii)]~~ (c) a representative of the private business community who shall be appointed to
5575 a three-year term by the governor with the advice and consent of the Senate.

5576 ~~[(b)]~~ (4) The advisory board shall meet, as needed, to facilitate the procurement of
5577 goods and services from community rehabilitation programs by a public procurement unit

5578 under this chapter by:

5579 [(i)] (a) identifying goods and services that are available from community rehabilitation
5580 programs ~~[according to the requirements under Subsection (4)]~~ in accordance with the
5581 requirements of Subsection (7);

5582 [(ii)] (b) approving prices in accordance with Subsection ~~[(4)]~~ (7)(c) for goods and
5583 services that are identified under Subsection ~~[(2)(b)(i)]~~ (4)(a);

5584 [(iii)] (c) developing, maintaining, and approving a preferred procurement contract list
5585 of goods and services identified and priced under Subsections ~~[(2)(b)(i) and (ii)]~~ (4)(a) and (b);

5586 [(iv)] (d) reviewing bids received by a community rehabilitation program; and

5587 [(v)] (e) awarding and renewing specified contracts for set contract times, without
5588 competitive bidding, for the purchase of goods and services under Subsection ~~[(4)]~~ (7).

5589 [(e)] (5) The provisions of Subsections ~~[(2)(b)]~~ (4) and ~~[(4)]~~ (7)(a) are an exception to
5590 the procurement provisions under this chapter.

5591 [(3)] (6) (a) The advisory board may designate a central not-for-profit association,
5592 appoint its members, and establish guidelines for its duties.

5593 (b) The designated central not-for-profit association serves at the pleasure of the
5594 advisory board ~~[and the]~~. The central not-for-profit association or its individual members may
5595 be removed by the advisory board at any time by a majority vote of the advisory board.

5596 (c) Subject to the board guidelines and discretion, a designated central not-for-profit
5597 association may be assigned to perform the following duties:

5598 (i) identify qualified community rehabilitation programs and the goods and services
5599 that they provide or have the potential to provide;

5600 (ii) help ensure that goods and services are provided at reasonable quality and delivery
5601 levels;

5602 (iii) recommend pricing for goods and services;

5603 (iv) ~~[reviewing]~~ review bids and ~~[recommending]~~ recommend the award of contracts
5604 under the board's direction;

5605 (v) ~~[collecting and reporting]~~ collect and report program data to the advisory board and
5606 to the division; and

5607 (vi) other duties specified by the advisory board.

5608 ~~[(4)]~~ (7) Except as provided under Subsection ~~[(6)]~~ (9), notwithstanding any provision

5609 [in] of this chapter to the contrary, each public procurement unit shall purchase goods and
 5610 services produced by a community rehabilitation program using the preferred procurement
 5611 contract list approved under Subsection [~~(2)(b)(iii)] (4)(c) if:~~

5612 (a) the good or service offered for sale by a community rehabilitation program
 5613 reasonably conforms to the needs and specifications of the public procurement unit;

5614 (b) the community rehabilitation program can supply the good or service within a
 5615 reasonable time; and

5616 (c) the price of the good or service is reasonably competitive with the cost of procuring
 5617 the good or service from another source.

5618 [~~(5)] (8) Each community rehabilitation program:~~

5619 (a) may submit a bid to the advisory board at any time and not necessarily in response
 5620 to [~~a request~~] an invitation for bids; and

5621 (b) shall certify on any bid it submits to the advisory board or to a public procurement
 5622 unit under this section that it is claiming a preference under this section.

5623 [~~(6)] (9) During a fiscal year, the requirement for a public procurement unit to purchase
 5624 goods and services produced by a community rehabilitation program under the preferred
 5625 procurement list under Subsection [~~(4)] (7) does not apply if the [~~Division of Purchasing and~~
 5626 ~~General Services~~] division determines that the total amount of procurement contracts with
 5627 community rehabilitation programs has reached \$5 million for that fiscal year.~~~~

5628 [~~(7)] (10) In the case of conflict between a purchase under this section and a purchase
 5629 under Section [~~63G-6-423~~] 63G-6a-804, this section prevails.~~

5630 Section 136. Section **63G-6a-901** is enacted to read:

5631 **Part 9. Cancellations, Rejections, and Debarment**

5632 **63G-6a-901. Title.**

5633 This part is known as "Cancellations, Rejections, and Debarment."

5634 Section 137. Section **63G-6a-902**, which is renumbered from Section 63G-6-412 is
 5635 renumbered and amended to read:

5636 [~~63G-6-412~~]. **63G-6a-902. Cancellation and rejection of bids and**
 5637 **proposals.**

5638 [~~An~~] (1) An authorized purchasing entity may cancel an invitation for bids, a request
 5639 for proposals, or other solicitation [~~may be cancelled, or any or all bids or proposals may be~~

5640 ~~rejected]~~ or reject any or all bids or proposal responses, in whole or in part, as may be specified
5641 in the solicitation, when it is in the best interests of the ~~[state]~~ public procurement unit in
5642 accordance with ~~[rules and regulations]~~ the rules of the applicable rulemaking authority.

5643 (2) The reasons for a cancellation or rejection described in Subsection (1) shall be
5644 made part of the contract file.

5645 Section 138. Section **63G-6a-903**, which is renumbered from Section 63G-6-413 is
5646 renumbered and amended to read:

5647 ~~[63G-6-413].~~ **63G-6a-903. Determination of nonresponsibility of bidder or**
5648 **offeror.**

5649 (1) A ~~[written]~~ determination of nonresponsibility of a bidder or offeror made by an
5650 authorized purchasing entity shall be made in writing, in accordance with ~~[rules and~~
5651 ~~regulations]~~ the rules of the applicable rulemaking authority.

5652 (2) The unreasonable failure of a bidder or offeror to promptly supply information in
5653 connection with an inquiry with respect to responsibility may be grounds for a determination of
5654 nonresponsibility with respect to the bidder or offeror. ~~[Information]~~

5655 (3) Subject to Title 63G, Chapter 2, Government Records Access and Management
5656 Act, information furnished by a bidder or offeror pursuant to this section ~~[shall]~~ may not be
5657 disclosed outside of the ~~[purchasing division or the purchasing agency]~~ public procurement
5658 unit or authorized purchasing entity without prior written consent by the bidder or offeror.

5659 Section 139. Section **63G-6a-904**, which is renumbered from Section 63G-6-804 is
5660 renumbered and amended to read:

5661 ~~[63G-6-804].~~ **63G-6a-904. Debarment from consideration for award of**
5662 **contracts -- Causes for debarment.**

5663 (1) After reasonable notice to the person involved and reasonable opportunity for that
5664 person to be heard, ~~[the chief procurement officer or the head of a purchasing agency,]~~ a
5665 procurement officer or the head of an authorized purchasing entity may, after consultation with
5666 the ~~[using agency and]~~ public procurement unit and, if the public procurement unit is in the
5667 state executive branch, the attorney general~~[-, shall have authority to]:~~

5668 (a) debar a person for cause from consideration for award of contracts~~[- The debarment~~
5669 ~~shall not be for a period exceeding three years. The same officer, after consultation with the~~
5670 ~~using agency and the attorney general, shall have authority to] for a period not to exceed three~~

5671 years; or

5672 (b) suspend a person from consideration for award of contracts if there is probable
5673 cause to believe that the person has engaged in any activity [~~which~~] that might lead to
5674 debarment. [~~The suspension shall~~]

5675 (2) A suspension described in Subsection (1)(b) may not be for a period exceeding
5676 three months, unless an indictment has been issued for an offense which would be a cause for
5677 debarment under Subsection [~~(2)~~] (3), in which case the suspension shall, at the request of the
5678 attorney general, remain in effect until after the trial of the suspended person.

5679 [~~(2)~~] (3) The causes for debarment include the following:

5680 (a) conviction of a criminal offense as an incident to obtaining or attempting to obtain a
5681 public or private contract or subcontract or in the performance of [~~such~~] a public or private
5682 contract or subcontract;

5683 (b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery,
5684 falsification or destruction of records, receiving stolen property, or any other offense indicating
5685 a lack of business integrity or business honesty which currently, seriously, and directly affects
5686 responsibility as a state contractor;

5687 (c) conviction under state or federal antitrust statutes;

5688 (d) failure without good cause to perform in accordance with the terms of the contract;

5689 [or]

5690 (e) a violation of this chapter, including Part 22, Ethical Requirements; or

5691 [~~(e)~~] (f) any other cause the [~~chief~~] procurement officer, or the head of [~~a purchasing~~
5692 ~~agency~~] an authorized purchasing entity determines to be so serious and compelling as to affect
5693 responsibility as a state contractor, including debarment by another governmental entity [~~for~~
5694 ~~any cause listed in rules and regulations~~].

5695 Section 140. Section **63G-6a-1001** is enacted to read:

5696 **Part 10. Preferences**

5697 **63G-6a-1001. Title.**

5698 This part is known as "Preferences."

5699 Section 141. Section **63G-6a-1002**, which is renumbered from Section 63G-6-404 is
5700 renumbered and amended to read:

5701 [~~63G-6-404~~]. **63G-6a-1002. Reciprocal preference for providers of state**

5702 **products.**

5703 (1) (a) [~~All public procurement units shall, in all purchases of goods, supplies,~~
5704 ~~equipment, materials, and printing]~~ An authorized purchasing entity shall, for all procurements,
5705 give a reciprocal preference to those bidders offering [~~goods, supplies, equipment, materials, or~~
5706 ~~printing]~~ procurement items that are produced, manufactured, mined, grown, or performed in
5707 Utah [~~as against]~~ over those bidders offering [~~goods, supplies, equipment, materials, or~~
5708 ~~printing]~~ procurement items that are produced, manufactured, mined, grown, or performed in
5709 any state that gives or requires a preference to [~~goods, supplies, equipment, materials, or~~
5710 ~~printing]~~ procurement items that are produced, manufactured, mined, grown, or performed in
5711 that state.

5712 (b) The amount of reciprocal preference shall be equal to the amount of the preference
5713 applied by the other state for that particular [~~good, supply, equipment, material, or printing]~~
5714 procurement item.

5715 (c) [~~(i) The~~] In order to receive a reciprocal preference under this section, the bidder
5716 shall certify on the bid that the [~~goods, supplies, equipment, materials, or printing]~~ procurement
5717 items offered are produced, manufactured, mined, grown, or performed in Utah.

5718 [~~(ii)~~] (d) The reciprocal preference is waived if [~~that~~] the certification described in
5719 Subsection (1)(c) does not appear on the bid.

5720 (2) (a) If the bidder submitting the lowest responsive and responsible bid offers [~~goods,~~
5721 ~~supplies, equipment, materials, or printing]~~ procurement items that are produced,
5722 manufactured, mined, grown, or performed in a state that gives or requires a preference, and if
5723 another bidder has submitted a responsive and responsible bid offering [~~goods, supplies,~~
5724 ~~equipment, materials, or printing]~~ procurement items that are produced, manufactured, mined,
5725 grown, or performed in Utah, and with the benefit of the reciprocal preference, [~~his~~ the bid of
5726 the other bidder is equal to or less than the original lowest bid, the [~~procurement officer]~~
5727 authorized purchasing entity shall:

5728 (i) give notice to the bidder offering [~~goods, supplies, equipment, materials, or~~
5729 ~~printing]~~ procurement items that are produced, manufactured, mined, grown, or performed in
5730 Utah that the bidder qualifies as a preferred bidder; and

5731 (ii) make the purchase from the preferred bidder if[;] the bidder agrees, in writing, to
5732 meet the low bid within 72 hours after notification that the bidder is a preferred bidder.

5733 (b) The ~~[procurement officer]~~ authorized purchasing entity shall include the exact price
5734 submitted by the lowest bidder in the notice the ~~[procurement officer]~~ authorized purchasing
5735 entity submits to the preferred bidder.

5736 (c) The ~~[procurement officer]~~ authorized purchasing entity may not enter into a
5737 contract with any other bidder for the purchase until 72 hours have elapsed after notification to
5738 the preferred bidder.

5739 (3) (a) If there is more than one preferred bidder, the ~~[procurement officer]~~ authorized
5740 purchasing entity shall award the contract to the willing preferred bidder who was the lowest
5741 preferred bidder originally.

5742 (b) If there were two or more equally low preferred bidders, the ~~[procurement officer]~~
5743 authorized purchasing entity shall comply with the rules ~~[adopted by the Procurement Policy~~
5744 ~~Board]~~ of the applicable rulemaking authority to determine which bidder should be awarded
5745 the contract.

5746 (4) The provisions of this section do not apply if application of this section might
5747 jeopardize the receipt of federal funds.

5748 Section 142. Section **63G-6a-1003**, which is renumbered from Section 63G-6-405 is
5749 renumbered and amended to read:

5750 ~~[63G-6-405].~~ **63G-6a-1003. Preference for resident contractors.**

5751 (1) As used in this section, "resident contractor" means a person, partnership,
5752 corporation, or other business entity that:

5753 (a) either has its principal place of business in Utah or that employs workers who are
5754 residents of this state when available; and

5755 (b) was transacting business on the date when bids for the public contract were first
5756 solicited.

5757 (2) (a) When awarding contracts for construction, ~~[a public procurement unit]~~ an
5758 authorized purchasing entity shall grant a resident contractor a reciprocal preference ~~[as~~
5759 ~~against]~~ over a nonresident contractor from any state that gives or requires a preference to
5760 contractors from that state.

5761 (b) The amount of the reciprocal preference shall be equal to the amount of the
5762 preference applied by the state of the nonresident contractor.

5763 (3) (a) ~~[The]~~ In order to receive the reciprocal preference under this section, the bidder

5764 shall certify on the bid that the bidder qualifies as a resident contractor.

5765 (b) The reciprocal preference is waived if ~~[that]~~ the certification described in
5766 Subsection (2)(a) does not appear on the bid.

5767 (4) (a) If the contractor submitting the lowest responsive and responsible bid is not a
5768 resident contractor ~~[and has his]~~ whose principal place of business ~~[in any]~~ is in a state that
5769 gives or requires a preference to contractors from that state, and if a resident contractor has also
5770 submitted a responsive and responsible bid, and, with the benefit of the reciprocal preference,
5771 the resident contractor's bid is equal to or less than the original lowest bid, the ~~[procurement~~
5772 ~~officer]~~ authorized purchasing entity shall:

5773 (i) give notice to the resident contractor that the resident contractor qualifies as a
5774 preferred resident contractor; and

5775 (ii) issue the contract to the resident contractor if the resident contractor agrees, in
5776 writing, to meet the low bid within 72 hours after notification that the resident contractor is a
5777 preferred resident contractor.

5778 (b) The ~~[procurement officer]~~ authorized purchasing entity shall include the exact price
5779 submitted by the lowest bidder in the notice ~~[the procurement officer]~~ that the authorized
5780 purchasing entity submits to the preferred resident contractor.

5781 (c) The ~~[procurement officer]~~ authorized purchasing entity may not enter into a
5782 contract with any other bidder for the construction until 72 hours have elapsed after notification
5783 to the preferred resident contractor.

5784 (5) (a) If there is more than one preferred resident contractor, the ~~[procurement officer]~~
5785 authorized purchasing entity shall award the contract to the willing preferred resident
5786 contractor who was the lowest preferred resident contractor originally.

5787 (b) If there were two or more equally low preferred resident contractors, the
5788 ~~[procurement officer]~~ authorized purchasing entity shall comply with the rules ~~[adopted by the~~
5789 ~~Procurement Policy Board]~~ of the applicable rulemaking authority to determine which bidder
5790 should be awarded the contract.

5791 (6) The provisions of this section do not apply if application of this section might
5792 jeopardize the receipt of federal funds.

5793 Section 143. Section **63G-6a-1004** is enacted to read:

5794 **63G-6a-1004. Exception for federally funded contracts.**

5795 This part does not apply to the extent it conflicts with federal requirements relating to a
5796 procurement that involves the expenditure of federal assistance, federal contract funds, or
5797 federal financial participation funds.

5798 Section 144. Section **63G-6a-1101** is enacted to read:

5799 **Part 11. Bonds**

5800 **63G-6a-1101. Title.**

5801 This part is known as "Bonds."

5802 Section 145. Section **63G-6a-1102**, which is renumbered from Section 63G-6-504 is
5803 renumbered and amended to read:

5804 ~~[63G-6-504].~~ **63G-6a-1102. Bid security requirements -- Directed**
5805 **suretyship prohibited -- Penalty.**

5806 (1) Bid security in an amount equal to at least 5% of the amount of the bid shall be
5807 required for all competitive [~~sealed~~] bidding for construction contracts. Bid security shall be a
5808 bond provided by a surety company authorized to do business in this state, the equivalent in
5809 cash, or any other form satisfactory to the state.

5810 (2) When a bidder fails to comply with the requirement for bid security [~~set forth~~]
5811 described in the invitation for bids, the bid shall be rejected unless, pursuant to rules[~~, it is~~
5812 ~~determined~~] of the applicable rulemaking authority, the authorized purchasing entity
5813 determines that the failure to comply with the security requirements is nonsubstantial.

5814 (3) After the bids are opened, they shall be irrevocable for the period specified in the
5815 invitation for bids, except as provided in [~~Subsection 63G-6-401(6)~~] Section 63G-6a-605. If a
5816 bidder is permitted to withdraw a bid before award, no action shall be taken against the bidder
5817 or the bid security.

5818 (4) (a) When issuing an invitation for a bid under this chapter, the [~~chief~~] procurement
5819 officer or the head of [~~the purchasing agency~~] an authorized purchasing entity responsible for
5820 carrying out a construction project may not require a person or entity who is bidding for a
5821 contract to obtain a bond of the type [~~referred to~~] described in Subsection (1) from a specific
5822 insurance or surety company, producer, agent, or broker.

5823 (b) A person who violates Subsection (4)(a) is guilty of an infraction.

5824 Section 146. Section **63G-6a-1103**, which is renumbered from Section 63G-6-505 is
5825 renumbered and amended to read:

5826 ~~[63G-6-505].~~ 63G-6a-1103. **Bonds necessary when contract is awarded --**
5827 **Waiver -- Action -- Attorney fees.**

5828 (1) When a construction contract is awarded under this chapter, the contractor to whom
5829 the contract is awarded shall deliver the following bonds or security to the state, which shall
5830 become binding on the parties upon the execution of the contract:

5831 (a) a performance bond satisfactory to the state that is in an amount equal to 100% of
5832 the price specified in the contract and is executed by a surety company authorized to do
5833 business in this state or any other form satisfactory to the state; and

5834 (b) a payment bond satisfactory to the state that is in an amount equal to 100% of the
5835 price specified in the contract and is executed by a surety company authorized to do business in
5836 this state or any other form satisfactory to the state, which is for the protection of each person
5837 supplying labor, service, equipment, or material for the performance of the work provided for
5838 in the contract.

5839 (2) (a) When a construction contract is awarded under this chapter, the [~~chief~~
5840 procurement officer or the head of the [~~purchasing agency~~] authorized purchasing entity
5841 responsible for carrying out [a] the construction project may not require a contractor to whom a
5842 contract is awarded to obtain a bond of the types referred to in Subsection (1) from a specific
5843 insurance or surety company, producer, agent, or broker.

5844 (b) A person who violates Subsection (2)(a) is guilty of an infraction.

5845 (3) Rules of the applicable rulemaking authority may provide for waiver of the
5846 requirement of a bid, performance, or payment bond for circumstances in which the [~~state~~]
5847 procurement officer considers any or all of the bonds to be unnecessary to protect the [~~state~~]
5848 public procurement unit.

5849 (4) A person shall have a right of action on a payment bond under this section for any
5850 unpaid amount due [~~him~~] to the person if:

5851 (a) the person has furnished labor, service, equipment, or material for the work
5852 provided for in the contract for which the payment bond is furnished under this section; and

5853 (b) the person has not been paid in full within 90 days after the last [~~date~~] day on which
5854 the person performed the labor or service or supplied the equipment or material for which the
5855 claim is made.

5856 (5) An action upon a payment bond [~~shall~~] may only be brought in a court of

5857 competent jurisdiction in ~~[any]~~ a county where the construction contract was to be performed
5858 ~~[and not elsewhere]~~. The action is barred if not commenced within one year after the last day
5859 on which the claimant performed the labor or service or supplied the equipment or material on
5860 which the claim is based. The obligee named in the bond need not be joined as a party to the
5861 action.

5862 (6) In any suit upon a payment bond, the court shall award reasonable attorney fees to
5863 the prevailing party, which fees shall be taxed as costs in the action.

5864 Section 147. Section **63G-6a-1104**, which is renumbered from Section 63G-6-506 is
5865 renumbered and amended to read:

5866 ~~[63G-6-506]~~. **63G-6a-1104. Preliminary notice requirement.**

5867 (1) Any person furnishing labor, service, equipment, or material for which a payment
5868 bond claim may be made under this chapter shall provide preliminary notice to the designated
5869 agent as prescribed by Section 38-1-32.5, except that this section does not apply:

5870 (a) to a person performing labor for wages; or

5871 (b) if a notice of commencement is not filed as prescribed in Section 38-1-31.5 for the
5872 project or improvement for which labor, service, equipment, or material is furnished.

5873 (2) Any person who fails to provide the preliminary notice required by Subsection (1)
5874 may not make a payment bond claim under this chapter.

5875 (3) The preliminary notice required by Subsection (1) must be provided before
5876 commencement of any action on the payment bond.

5877 Section 148. Section **63G-6a-1105**, which is renumbered from Section 63G-6-507 is
5878 renumbered and amended to read:

5879 ~~[63G-6-507]~~. **63G-6a-1105. Form of bonds -- Effect of certified copy.**

5880 The form of the bonds required by this part shall be established by ~~[rules and~~
5881 ~~regulations]~~ rule made by the applicable rulemaking authority. Any person may obtain from
5882 the state a certified copy of a bond upon payment of the cost of reproduction of the bond and
5883 postage, if any. A certified copy of a bond shall be prima facie evidence of the contents,
5884 execution, and delivery of the original.

5885 Section 149. Section **63G-6a-1201** is enacted to read:

5886 **Part 12. Contracts and Change Orders**

5887 **63G-6a-1201. Title.**

5888 This part is known as "Contracts and Change Orders."

5889 Section 150. Section **63G-6a-1202**, which is renumbered from Section 63G-6-601 is
5890 renumbered and amended to read:

5891 ~~[63G-6-601]~~. **63G-6a-1202**. **Required contract clauses -- Computation of**
5892 **price adjustments -- Use of rules and regulations.**

5893 (1) ~~[Rules and regulations]~~ The rules of the applicable rulemaking authority shall
5894 require for state construction contracts, and may permit or require for ~~[state]~~ contracts for
5895 supplies and services, the inclusion of clauses providing for adjustments in prices, time of
5896 performance, or other appropriate contract provisions, and covering the following subjects:

5897 (a) the unilateral right of the ~~[state]~~ procurement officer to order in writing changes in
5898 the work within the scope of the contract and changes in the time of performance of the
5899 contract that do not alter the scope of the contract work;

5900 (b) variations occurring between estimated quantities of work in a contract and actual
5901 quantities;

5902 (c) suspension of work ordered by the ~~[state]~~ procurement officer; and

5903 (d) site conditions differing from those indicated in the construction contract, or
5904 ordinarily encountered, except that differing site conditions clauses required by the rules ~~[and~~
5905 ~~regulations]~~ need not be included in a construction contract when:

5906 (i) the contract is negotiated~~[, when]~~;

5907 (ii) the contractor provides the site or design~~[, or when]~~; or

5908 (iii) the parties have otherwise agreed with respect to the risk of differing site
5909 conditions.

5910 (2) Adjustments in price pursuant to clauses ~~[promulgated under]~~ described in
5911 Subsection (1) shall be computed in one or more of the following ways:

5912 (a) by agreement on a fixed price adjustment before commencement of the pertinent
5913 performance or as soon thereafter as practicable;

5914 (b) by unit prices specified in the contract or subsequently agreed upon;

5915 (c) by the costs attributable to the events or situations under the clauses with
5916 adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

5917 (d) in any other manner as the contracting parties may mutually agree; or

5918 (e) in the absence of agreement by the parties, by a unilateral determination by the

5919 [state] procurement officer of the costs attributable to the events or situations under the clauses
 5920 with adjustment of profit or fee, all as computed by the [state] procurement officer in
 5921 accordance with applicable [~~sections of the~~] rules and [~~regulations issued under Subsection~~
 5922 ~~63G-6-415(1) and~~] subject to the provisions of Part [~~8, Legal and Contractual Remedies~~] 17,
 5923 Procurement Appeals Board, and Part 18, Appeals to Court and Court Proceedings.

5924 (3) A contractor shall be required to submit cost or pricing data if any adjustment in
 5925 contract price is subject to the provisions of Section [~~63G-6-415~~] 63G-6a-1206.

5926 (4) [~~Rules and regulations~~] The rules of the applicable rulemaking authority shall
 5927 require for [state] construction contracts, and may permit or require for [state] contracts for
 5928 supplies and services, the inclusion of clauses providing for appropriate remedies and covering
 5929 at least the following subjects:

5930 (a) liquidated damages as appropriate;

5931 (b) specified excuses for delay or nonperformance;

5932 (c) termination of the contract for default; and

5933 (d) termination of the contract in whole or in part for the convenience of the [state]
 5934 public procurement unit.

5935 (5) The contract clauses [~~promulgated under~~] described in this section shall be [~~set~~
 5936 ~~forth in rules and regulations~~] established by rule. However, the [chief] procurement officer or
 5937 the head of [~~a purchasing agency~~] an authorized purchasing entity may modify the clauses for
 5938 inclusion in any particular contract. [~~Any~~] The applicable rulemaking authority may, by rule,
 5939 require that:

5940 (a) variations [~~shall~~] be supported by a written determination that describes the
 5941 circumstances justifying the variations[;]; and

5942 (b) notice of any material variation shall be included in the invitation for bids or
 5943 request for proposals.

5944 Section 151. Section **63G-6a-1203**, which is renumbered from Section 63G-6-603 is
 5945 renumbered and amended to read:

5946 [~~63G-6-603~~]. **63G-6a-1203. Contracts -- Certain indemnification**
 5947 **provisions forbidden.**

5948 (1) As used in this section, "design professional" means:

5949 (a) an architect, licensed under Title 58, Chapter 3a, Architects Licensing Act;

5950 (b) a landscape architect, licensed under Title 58, Chapter 53, Landscape Architects
5951 Licensing Act; and

5952 (c) a professional engineer or professional land surveyor, licensed under Title 58,
5953 Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

5954 (2) (a) [~~Beginning May 12, 2009, a~~] A contract, including an amendment to an existing
5955 contract, entered into under [~~authority of~~] this chapter may not require that a design
5956 professional indemnify another from liability claims that arise out of the design professional's
5957 services, unless the liability claim arises from the design professional's negligent act, wrongful
5958 act, error or omission, or other liability imposed by law.

5959 (b) Subsection (2)(a) may not be waived by contract.

5960 (c) Notwithstanding Subsections (2)(a) and (b), a design professional may be required
5961 to indemnify a person for whom the design professional has direct or indirect control or
5962 responsibility.

5963 Section 152. Section **63G-6a-1204** is enacted to read:

5964 **63G-6a-1204. Multiyear contracts.**

5965 (1) Except as provided in Subsection (7), a public procurement unit may enter into a
5966 multiyear contract resulting from an invitation for bids or a request for proposals, if:

5967 (a) the procurement officer determines, in the discretion of the procurement officer,
5968 that entering into a multiyear contract is in the best interest of the public procurement unit; and

5969 (b) the invitation for bids or request for proposals:

5970 (i) states the term of the contract, including all possible renewals of the contract;

5971 (ii) states the conditions for renewal of the contract; and

5972 (iii) includes the provisions of Subsections (3) through (5) that are applicable to the
5973 contract.

5974 (2) In making the determination described in Subsection (1)(a), the procurement officer
5975 shall consider whether entering into a multiyear contract will:

5976 (a) result in significant savings to the public procurement unit, including:

5977 (i) reduction of the administrative burden in procuring, negotiating, or administering
5978 contracts;

5979 (ii) continuity in operations of the public procurement unit; or

5980 (iii) the ability to obtain a volume or term discount;

5981 (b) encourage participation by a person who might not otherwise be willing or able to
5982 compete for a shorter term contract; or

5983 (c) provide an incentive for a bidder or offeror to improve productivity through capital
5984 investment or better technology.

5985 (3) (a) The determination described in Subsection (1)(a) is discretionary and is not
5986 required to be in writing or otherwise recorded.

5987 (b) Except as provided in Subsections (4) and (5), notwithstanding any provision of an
5988 invitation for bids, a request for proposals, or a contract to the contrary, a multiyear contract,
5989 including a contract that was awarded outside of an invitation for bids or request for proposals
5990 process, may not continue or be renewed for any year after the first year of the multiyear
5991 contract if adequate funds are not appropriated to continue or renew the contract.

5992 (4) A multiyear contract that is funded solely by federal funds may be continued or
5993 renewed for any year after the first year of the multiyear contract if:

5994 (a) adequate funds to continue or renew the contract have not been, but are expected to
5995 be appropriated by, and received from, the federal government;

5996 (b) continuation or renewal of the contract before the money is appropriated or
5997 received is permitted by the federal government; and

5998 (c) the contract states that it may be cancelled, without penalty, if the anticipated
5999 federal funds are not appropriated or received.

6000 (5) A multiyear contract that is funded in part by federal funds may be continued or
6001 renewed for any year after the first year of the multiyear contract if:

6002 (a) the portion of the contract that is to be funded by funds of a public entity are
6003 appropriated;

6004 (b) adequate federal funds to continue or renew the contract have not been, but are
6005 expected to be, appropriated by, and received from, the federal government;

6006 (c) continuation or renewal of the contract before the federal money is appropriated or
6007 received is permitted by the federal government; and

6008 (d) the contract states that it may be cancelled, without penalty, if the anticipated
6009 federal funds are not appropriated or received.

6010 (6) A public procurement unit may not continue or renew a multiyear contract after the
6011 end of the multiyear contract term or the renewal periods described in the contract, unless the

6012 public procurement unit engages in a new procurement process or complies with an exception,
 6013 described in this chapter, to using a standard procurement process.

6014 (7) A multiyear contract, including any renewal periods, may not exceed a period of
 6015 five years, unless:

6016 (a) the procurement officer determines, in writing, that:

6017 (i) a longer period is necessary in order to obtain the procurement item;

6018 (ii) a longer period is customary for industry standards; or

6019 (iii) a longer period is in the best interest of the public procurement unit; and

6020 (b) the written determination described in subsection (7)(a) is included in the file
 6021 relating to the procurement.

6022 (8) This section does not apply to a contract for the design or construction of a facility,
 6023 a road, or a public transit project.

6024 Section 153. Section **63G-6a-1205**, which is renumbered from Section 63G-6-416 is
 6025 renumbered and amended to read:

6026 ~~[63G-6-416].~~ **63G-6a-1205. Cost-plus-a-percentage-of-cost contract**
 6027 **prohibited.**

6028 (1) ~~[Subject to the limitations of]~~ Except as otherwise provided in this section, a public
 6029 procurement unit may use any type of contract [which] that will promote the best interests of
 6030 the state [may be used; provided that the use of].

6031 (2) A public procurement unit may not use a cost-plus-a-percentage-of-cost contract [is
 6032 prohibited. A].

6033 (3) A public procurement unit may not use a cost-reimbursement contract [may be used
 6034 only when a determination is made in writing that such] unless the procurement officer makes a
 6035 written determination that:

6036 (a) the contract is likely to be less costly to the [state] public procurement unit than any
 6037 other type of contract; or [that]

6038 (b) it is impracticable to obtain the [supplies, services, or construction required except
 6039 under such a] procurement item under another type of contract.

6040 ~~[(2) Except with respect to firm fixed-price contracts, no contract type shall be used~~
 6041 ~~unless it has been determined in writing by the chief procurement officer, the head of a~~
 6042 ~~purchasing agency, or a designee of either officer that:]~~

6043 (4) A procurement officer, the head of an authorized procurement entity, or a designee
6044 of either, may not use a type of contract, other than a firm fixed-price contract, unless the
6045 procurement officer makes a written determination that:

6046 (a) the proposed contractor's accounting system will permit timely development of all
6047 necessary cost data in the form required by the specific contract type contemplated; and

6048 (b) the proposed contractor's accounting system is adequate to allocate costs in
6049 accordance with generally accepted accounting principles.

6050 Section 154. Section **63G-6a-1206**, which is renumbered from Section 63G-6-415 is
6051 renumbered and amended to read:

6052 ~~[63G-6-415].~~ **63G-6a-1206. Rules and regulations to determine allowable**
6053 **incurred costs -- Required information -- Auditing of books.**

6054 ~~[(1) Rules and regulations may be promulgated to set forth cost principles to be used to~~
6055 ~~determine the allowability of incurred costs for the purpose of reimbursing costs under contract~~
6056 ~~provisions which provide for the reimbursement of costs; provided that if a written~~
6057 ~~determination is approved at a level above the procurement officer, the cost principles may be~~
6058 ~~modified by contract.]~~

6059 ~~[(2) A person shall, except as provided in Subsection (4), submit cost or pricing data~~
6060 ~~and shall certify that, to the best of the person's knowledge and belief, the cost or pricing data~~
6061 ~~submitted were accurate, complete, and current as of a mutually determined specified date prior~~
6062 ~~to the date of:]~~

6063 (1) (a) The applicable rulemaking authority may, by rule, establish the cost principles
6064 to be included in a cost-reimbursement contract to determine incurred costs for the purpose of
6065 calculating a reimbursement.

6066 (b) The cost principles established by rule under Subsection (1)(a) may be modified, by
6067 contract, if the procurement officer or head of the authorized procurement entity approves the
6068 modification.

6069 (2) Except as provided in Subsection (5), a person who seeks to be, or is, a party in a
6070 cost-based contract with a public procurement unit shall:

6071 (a) submit cost or pricing data relating to determining the cost or pricing amount; and

6072 (b) certify that, to the best of the contractor's knowledge and belief, the cost or pricing
6073 data submitted is accurate and complete as of the date specified by the public procurement unit.

6074 (3) The procurement officer shall ensure that the date specified under Subsection (2)(b)
6075 is before:

6076 (a) the pricing of any contract awarded by ~~[competitive sealed proposals]~~ a
6077 procurement process or pursuant to ~~[the]~~ a sole source procurement ~~[authority, where]~~, if the
6078 total contract price is expected to exceed an amount established by ~~[rules and regulations]~~ rule
6079 made by the applicable rulemaking authority; or

6080 (b) the pricing of any change order ~~[which]~~ that is expected to exceed an amount
6081 established by ~~[rules and regulations]~~ rule made by the applicable rulemaking authority.

6082 ~~[(3) Any]~~ (4) A contract or change order [under which a certificate is required shall
6083 contain] that requires a certification described in Subsection (2) shall include a provision that
6084 the price to the ~~[state]~~ public procurement unit, including profit or fee, shall be adjusted to
6085 exclude any significant sums by which the ~~[state]~~ public procurement unit finds that the price
6086 was increased because the ~~[contractor-furnished]~~ contractor provided cost or pricing data
6087 ~~[were]~~ that was inaccurate, incomplete, or not current as of the date ~~[agreed upon between the~~
6088 parties] specified by the procurement officer.

6089 ~~[(4) The requirements of Subsections (2) and (3) need not be applied to contracts:]~~

6090 (5) A public procurement unit is not required to comply with Subsection (2) if:

6091 (a) ~~[where]~~ the contract price is based on adequate price competition;

6092 (b) ~~[where]~~ the contract price is based on established catalogue prices or market prices;

6093 (c) ~~[where contract prices are]~~ the contract price is set by law or ~~[regulation]~~ rule; or

6094 (d) ~~[where it is determined]~~ the procurement states, in writing:

6095 (i) that, in accordance with rules ~~[and regulations that]~~ made by the applicable
6096 rulemaking authority, the requirements of ~~[this section]~~ Subsection (2) may be waived~~[-]~~; and

6097 (ii) the reasons for ~~[such]~~ the waiver ~~[are stated in writing]~~.

6098 ~~[(5)]~~ (6) The ~~[state]~~ procurement officer may, at reasonable times and places, only to
6099 the extent that the books and records relate to the applicable cost or pricing data, audit the
6100 books and records of ~~[any]~~:

6101 (a) a person who has submitted cost or pricing data pursuant to this section; or ~~[any]~~

6102 (b) a contractor or subcontractor under [any negotiated] a contract or subcontract other
6103 than a firm fixed-price contract [to the extent that the books and records relate to the cost or
6104 pricing data, contract, or subcontract. The].

6105 (7) Unless a shorter time is provided by contract:

6106 (a) a person described in Subsection (6)(a) shall maintain the books and records [shall
6107 be maintained by the contractor] described in Subsection (6) for three years [following the end
6108 of] after the day on which the fiscal year in which final payment is made under the [prime
6109 contract and by the subcontractor for three years following the end of the] contract ends;

6110 (b) a contractor shall maintain the books and records described in Subsection (6) for
6111 three years after the day on which the fiscal year in which final payment under the prime
6112 contract ends; and

6113 (c) a subcontractor shall maintain the books and records described in Subsection (6) for
6114 three years after the day on which the fiscal year in which final payment is made under the
6115 subcontract[, unless a shorter period is otherwise authorized in writing] ends.

6116 Section 155. Section **63G-6a-1207**, which is renumbered from Section 63G-6-602 is
6117 renumbered and amended to read:

6118 ~~[63G-6-602].~~ **63G-6a-1207. Certification of change order.**

6119 (1) Under a construction contract, [any] a change order [which] that increases the
6120 contract amount [shall be subject to] may not be made without prior written certification that
6121 the change order is within the determined project or contract budget[. The certification shall be
6122 made] by:

6123 (a) the fiscal officer of the entity responsible for funding the project or [the] contract;
6124 or [other]

6125 (b) the official responsible for monitoring and reporting upon the status of the costs of
6126 the total project or contract budget. [If the certification discloses a resulting]

6127 (2) If a change order will result in an increase in the total project or contract budget,
6128 [the procurement officer shall not execute or make] the change order may not be made, unless:

6129 (a) sufficient funds are [available] added to the project contract or budget; or

6130 (b) the scope of the project or contract is adjusted to permit the degree of completion
6131 feasible within the total project or contract budget as it existed [prior to] before the change
6132 order under consideration. [However, with respect to the validity, as to the contractor, of any
6133 executed change order upon which the contractor has reasonably relied, it shall be presumed
6134 that there has been compliance with the provisions of this section.]

6135 (3) Notwithstanding any other provision of this section, it shall be presumed that this

6136 section has been complied with if the contractor reasonably relies on an executed change order.

6137 Section 156. Section **63G-6a-1301** is enacted to read:

6138 **Part 13. General Construction Provisions**

6139 **63G-6a-1301. Title.**

6140 This part is known as "General Construction Provisions."

6141 Section 157. Section **63G-6a-1302**, which is renumbered from Section 63G-6-501 is
6142 renumbered and amended to read:

6143 ~~[63G-6-501].~~ **63G-6a-1302. Alternative methods of construction**
6144 **contracting management.**

6145 (1) ~~[(a) Rules shall]~~ The applicable rulemaking authority shall, by rule provide as many
6146 alternative methods of construction contracting management as determined to be feasible.

6147 ~~[(b) These rules shall:]~~

6148 (2) The rules described in Subsection (1) shall:

6149 ~~[(i)]~~ (a) grant to the ~~[chief]~~ procurement officer or the head of the state purchasing
6150 ~~[agency]~~ unit responsible for carrying out the construction project the discretion to select the
6151 appropriate method of construction contracting management for a particular project; and

6152 ~~[(ii)]~~ (b) require the procurement officer to execute and include in the contract file a
6153 written statement ~~[setting forth]~~ describing the facts ~~[which]~~ that led to the selection of a
6154 particular method of construction contracting management for each project.

6155 ~~[(e)]~~ (3) Before choosing a construction contracting management method, the ~~[chief]~~
6156 procurement officer or the head of the state purchasing ~~[agency]~~ unit responsible for carrying
6157 out the construction project shall consider the following factors:

6158 ~~[(i)]~~ (a) when the project must be ready to be occupied;

6159 ~~[(ii)]~~ (b) the type of project;

6160 ~~[(iii)]~~ (c) the extent to which the requirements of the ~~[procuring agencies]~~ public
6161 procurement unit, and the ~~[ways in which]~~ way they are to be met are known;

6162 ~~[(iv)]~~ (d) the location of the project;

6163 ~~[(v)]~~ (e) the size, scope, complexity, and economics of the project;

6164 ~~[(vi)]~~ (f) the source of funding and any resulting constraints necessitated by the funding
6165 source;

6166 ~~[(vii)]~~ (g) the availability, qualification, and experience of ~~[state]~~ public personnel to

6167 be assigned to the project and ~~[how much time the state]~~ the amount of time that the public
6168 personnel can devote to the project; and

6169 ~~[(viii)]~~ (h) the availability, qualifications, and experience of outside consultants and
6170 contractors to complete the project under the various methods being considered.

6171 ~~[(2)(a) Rules adopted by state public procurement units and local public procurement~~
6172 ~~units to implement this section may authorize the use of a Construction Manager/General~~
6173 ~~Contractor as one method of construction contracting management.]~~

6174 ~~[(b) Those rules shall require that:]~~

6175 ~~[(i) the Construction Manager/General Contractor shall be selected using one of the~~
6176 ~~source selection methods provided for in Part 4, Source Selections and Contract Formation,~~
6177 ~~and Section 63G-6-502; and]~~

6178 ~~[(ii) when entering into any subcontract that was not specifically included in the~~
6179 ~~Construction Manager/General Contractor's cost proposal submitted under the requirements of~~
6180 ~~Subsection (2)(b)(i), the Construction Manager/General Contractor shall procure that~~
6181 ~~subcontractor by using one of the source selection methods provided for in Part 4, Source~~
6182 ~~Selections and Contract Formation, in the same manner as if the subcontract work was~~
6183 ~~procured directly by the state.]~~

6184 (4) An applicable rulemaking authority may make rules that authorize the use of a
6185 construction manager/general contractor as one method of construction contracting
6186 management.

6187 (5) The rules described in Subsection (2) shall require that:

6188 (a) the construction manager/general contractor be selected using:

6189 (i) a procurement process; or

6190 (ii) an exception to the requirement to use a procurement process; and

6191 (b) when entering into a subcontract that was not specifically included in the
6192 construction manager/general contractor's cost proposal, the construction manager/general
6193 contractor shall procure the subcontractor by using a procurement process, or an exception to
6194 the requirement to use a procurement process, in the same manner as if the subcontract work
6195 was procured directly by the public procurement unit.

6196 ~~[(3)]~~ (6) Procurement rules adopted by the State Building Board under ~~[Subsection (1)]~~
6197 Subsections (1) through (3) for state building construction projects may authorize the use of a

6198 design-build provider as one method of construction contracting management.

6199 (7) A design-build contract may include a provision for obtaining the site for the
6200 construction project.

6201 (8) A design-build contract or a construction manager/general contractor contract may
6202 include provision by the contractor of operations, maintenance, or financing.

6203 Section 158. Section **63G-6a-1303**, which is renumbered from Section 63G-6-604 is
6204 renumbered and amended to read:

6205 ~~[63G-6-604].~~ **63G-6a-1303. Drug and alcohol testing required for state**
6206 **construction contracts.**

6207 (1) As used in this section:

6208 (a) "Contractor" means a person who is or may be awarded a state construction
6209 contract.

6210 (b) "Covered individual" means an individual who:

6211 (i) on behalf of a contractor or subcontractor provides services directly related to
6212 design or construction under a state construction contract; and

6213 (ii) is in a safety sensitive position, including a design position that has responsibilities
6214 that directly affect the safety of an improvement to real property that is the subject of a state
6215 construction contract.

6216 (c) "Drug and alcohol testing policy" means a policy under which a contractor or
6217 subcontractor tests a covered individual to establish, maintain, or enforce the prohibition of:

6218 (i) the manufacture, distribution, dispensing, possession, or use of drugs or alcohol,
6219 except the medically prescribed possession and use of a drug; or

6220 (ii) the impairment of judgment or physical abilities due to the use of drugs or alcohol.

6221 (d) "Random testing" means that a covered individual is subject to periodic testing for
6222 drugs and alcohol:

6223 (i) in accordance with a drug and alcohol testing policy; and

6224 (ii) on the basis of a random selection process.

6225 ~~[(e) For purposes of Subsection (6), "state" includes any of the following of the state:]~~

6226 (e) "State executive entity" means:

6227 (i) a state executive branch;

6228 ~~[(i)-a]~~ (A) department;

6229 ~~[(ii)-a]~~ (B) division;

6230 ~~[(iii)-an]~~ (C) agency;

6231 ~~[(iv)-a]~~ (D) board;

6232 ~~[(v)-a]~~ (E) commission;

6233 ~~[(vi)-a]~~ (F) council;

6234 ~~[(vii)-a]~~ (G) committee; ~~[and]~~ or

6235 ~~[(viii)-an]~~ (H) institution~~[-, including a state institution of higher education, as defined~~

6236 ~~under Section 53B-3-102.]; or~~

6237 (ii) a state institution of higher education, as defined in Section 53B-3-102.

6238 (f) "State construction contract" means a contract for design or construction entered

6239 into by a state ~~[public procurement unit]~~ executive entity.

6240 ~~[(g) (i) "Subcontractor" means a person under contract with a contractor or another~~

6241 ~~subcontractor to provide services or labor for design or construction.]~~

6242 ~~[(ii) "Subcontractor" includes a trade contractor or specialty contractor.]~~

6243 ~~[(iii) "Subcontractor" does not include a supplier who provides only materials,~~

6244 ~~equipment, or supplies to a contractor or subcontractor.]~~

6245 (2) Except as provided in Subsection (7), ~~[on and after July 1, 2010;]~~ a state ~~[public~~

6246 ~~procurement unit]~~ executive entity may not enter into a state construction contract unless the

6247 ~~[state]~~ public construction contract requires ~~[the following]~~ that the contractor demonstrate to

6248 the state executive entity that the contractor:

6249 ~~[(a) A contractor shall demonstrate to the state public procurement unit that the~~

6250 ~~contractor:]~~

6251 ~~[(i)]~~ (a) has and will maintain a drug and alcohol testing policy during the period of the

6252 state construction contract that applies to the covered individuals hired by the contractor;

6253 ~~[(ii)]~~ (b) posts in one or more conspicuous places notice to covered individuals hired

6254 by the contractor that the contractor has the drug and alcohol testing policy described in

6255 Subsection (2)(a)~~[(i); and]~~;

6256 ~~[(iii)]~~ (c) subjects the covered individuals to random testing under the drug and alcohol

6257 testing policy described in Subsection (2)(a)~~[(i)]~~ if at any time during the period of the state

6258 construction contract there are 10 or more individuals who are covered individuals hired by the

6259 contractor~~[-]; and~~

6260 ~~[(b) A contractor shall demonstrate to the state public procurement unit that the~~
6261 ~~contractor]~~

6262 (d) requires that as a condition of contracting with the contractor, a subcontractor:

6263 (i) has and will maintain a drug and alcohol testing policy during the period of the state
6264 construction contract that applies to the covered individuals hired by the subcontractor;

6265 (ii) posts in one or more conspicuous places notice to covered individuals hired by the
6266 subcontractor that the subcontractor has the drug and alcohol testing policy described in
6267 Subsection (2)~~[(b)]~~(d)(i); and

6268 (iii) subjects the covered individuals hired by the subcontractor to random testing under
6269 the drug and alcohol testing policy described in Subsection (2)~~[(b)]~~(d)(i) if at any time during
6270 the period of the state construction contract there are 10 or more individuals who are covered
6271 individuals hired by the subcontractor.

6272 (3) (a) Except as otherwise provided in this Subsection (3), if a contractor or
6273 subcontractor fails to comply with Subsection (2), the contractor or subcontractor may be
6274 suspended or debarred in accordance with this chapter.

6275 (b) ~~[On and after July 1, 2010, a]~~ A state [public procurement unit] executive entity
6276 shall include in a state construction contract:

6277 (i) a reference to the rules described in Subsection (4)(b); or

6278 (ii) if the ~~[state public procurement unit]~~ applicable rulemaking authority has not made
6279 the rules described in Subsection (4)(b), a process that provides a contractor or subcontractor
6280 reasonable notice and opportunity to cure a violation of this section before suspension or
6281 debarment of the contractor or subcontractor in light of the circumstances of the state
6282 construction contract or the violation.

6283 (c) (i) A contractor is not subject to penalties for the failure of a subcontractor to
6284 comply with Subsection (2).

6285 (ii) A subcontractor is not subject to penalties for the failure of a contractor to comply
6286 with Subsection (2).

6287 ~~[(4) If otherwise authorized to make rules, in accordance with Title 63G, Chapter 3,~~
6288 ~~Utah Administrative Rulemaking Act, a state public procurement unit:]~~

6289 (4) An authorized rulemaking authority:

6290 (a) may make rules that establish the requirements and procedures a contractor ~~[shall]~~

6291 is required to follow to comply with Subsection (2); and

6292 (b) shall make rules that establish:

6293 (i) the penalties that may be imposed in accordance with Subsection (3); and

6294 (ii) a process that provides a contractor or subcontractor reasonable notice and

6295 opportunity to cure a violation of this section before suspension or debarment of the contractor

6296 or subcontractor in light of the circumstances of the state construction contract or the violation.

6297 (5) The failure of a contractor or subcontractor to meet the requirements of Subsection

6298 (2):

6299 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,

6300 or contractor under Part [~~8, Legal and Contractual Remedies~~] 17, Procurement Appeals Board,

6301 or Part 18, Appeals to Court and Court Proceedings; and

6302 (b) may not be used by a state public procurement unit, a prospective bidder, an

6303 offeror, a contractor, or a subcontractor as a basis for an action that would suspend, disrupt, or

6304 terminate the design or construction under a state construction contract.

6305 (6) (a) After a state [~~public procurement unit~~] executive entity enters into a state

6306 construction contract in compliance with this section, the state is not required to audit, monitor,

6307 or take any other action to ensure compliance with this section.

6308 (b) The state is not liable in any action related to this section, including not being liable

6309 in relation to:

6310 (i) a contractor or subcontractor having or not having a drug and alcohol testing policy;

6311 (ii) failure to test for a drug or alcohol under a contractor's or subcontractor's drug and
6312 alcohol testing policy;

6313 (iii) the requirements of a contractor's or subcontractor's drug and alcohol testing
6314 policy;

6315 (iv) a contractor's or subcontractor's implementation of a drug and alcohol testing
6316 policy, including procedures for:

6317 (A) collection of a sample;

6318 (B) testing of a sample;

6319 (C) evaluation of a test; or

6320 (D) disciplinary or rehabilitative action on the basis of a test result;

6321 (v) an individual being under the influence of drugs or alcohol; or

6322 (vi) an individual under the influence of drugs or alcohol harming another person or
6323 causing property damage.

6324 (7) This section does not apply if the state [~~public procurement unit~~] executive entity
6325 determines that the application of this section would severely disrupt the operation of a [~~state~~
6326 ~~agency~~] public entity to the detriment of the [~~state agency~~] public entity or the general public,
6327 including:

- 6328 (a) jeopardizing the receipt of federal funds;
- 6329 (b) causing the state construction contract [~~being~~] to be a sole source contract; or
- 6330 (c) causing the state construction contract [~~being~~] to be an emergency procurement.

6331 (8) If a contractor or subcontractor meets the requirements of this section, this section
6332 may not be construed to restrict the contractor's or subcontractor's ability to impose or
6333 implement an otherwise lawful provision as part of a drug and alcohol testing policy.

6334 Section 159. Section **63G-6a-1401** is enacted to read:

6335 **Part 14. Transportation Contracts**

6336 **63G-6a-1401. Title.**

6337 This part is known as "Transportation Contracts."

6338 Section 160. Section **63G-6a-1402**, which is renumbered from Section 63G-6-502 is
6339 renumbered and amended to read:

6340 [~~63G-6-502~~]. **63G-6a-1402. Procurement of design-build transportation**
6341 **project contracts.**

6342 (1) As used in this section:

6343 (a) "Design-build transportation project contract" means the procurement of both the
6344 design and construction of a transportation project in a single contract with a company or
6345 combination of companies capable of providing the necessary engineering services and
6346 construction.

6347 (b) "Transportation agency" means:

6348 (i) the Department of Transportation;

6349 (ii) a county of the first or second class, as defined in Section 17-50-501;

6350 (iii) a municipality of the first class, as defined in Section 10-2-301;

6351 (iv) a public transit district that has more than 200,000 people residing within its
6352 boundaries; and

6353 (v) a public airport authority.

6354 (2) Except as provided in Subsection (3), a transportation agency may award a
6355 design-build transportation project contract for any transportation project that has an estimated
6356 cost of at least \$50,000,000 by following the requirements of this section.

6357 (3) (a) The Department of Transportation:

6358 (i) may award a design-build transportation project contract for any transportation
6359 project by following the requirements of this section; and

6360 (ii) shall make rules, ~~[by following the procedures and requirements of]~~ in accordance
6361 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing requirements for
6362 the procurement of its design-build transportation project contracts in addition to those required
6363 by this section.

6364 (b) A public transit district that has more than 200,000 people residing within its
6365 boundaries:

6366 (i) may award a design-build transportation project contract for any transportation
6367 project by following the requirements of this section; and

6368 (ii) shall pass ordinances or a resolution establishing requirements for the procurement
6369 of its design-build transportation project contracts in addition to those required by this section.

6370 (c) A design-build transportation project contract authorized under this Subsection (3)
6371 is not subject to the estimated cost threshold ~~[under]~~ described in Subsection (2).

6372 (d) A design-build transportation project contract may include provision by the
6373 contractor of operations, maintenance, or financing.

6374 (4) (a) Before entering into a design-build transportation project contract, a
6375 transportation agency may issue a request for qualifications to prequalify potential contractors.

6376 (b) Public notice of the request for qualifications shall be given in accordance with
6377 ~~[policy]~~ board rules.

6378 (c) A transportation agency shall require, as part of the qualifications specified in the
6379 request for qualifications, that potential contractors at least demonstrate their:

6380 (i) construction experience;

6381 (ii) design experience;

6382 (iii) financial, manpower, and equipment resources available for the project; and

6383 (iv) experience in other design-build transportation projects with attributes similar to

6384 the project being procured.

6385 (d) The request for qualifications shall identify the number of eligible competing
6386 proposers that the transportation agency will select to submit a proposal, which [~~must be at~~
6387 ~~least~~] may not be less than two.

6388 (5) [~~(a)~~] The transportation agency shall:

6389 [(i)] (a) evaluate the responses received from the request for qualifications;

6390 [(ii)] (b) select from their number those qualified to submit proposals; and

6391 [(iii)] (c) invite those respondents to submit proposals based upon the transportation
6392 agency's request for proposals.

6393 [~~(b)(i)~~] (6) Except as provided in Subsection [~~(5)(b)(ii)~~] (7), if the transportation
6394 agency fails to receive at least two qualified eligible competing [~~proposers~~] proposals, the
6395 transportation agency shall readvertise the project.

6396 [(ii)] (7) A transportation agency may award a contract for a transportation project that
6397 has an estimated cost of \$5,000,000 or less to a qualified eligible proposer if:

6398 [~~(A)~~] (a) only a single proposal is received; and

6399 [~~(B)~~] (b) the transportation agency determines that:

6400 [(i)] (i) the proposal is advantageous to the state; and

6401 [(ii)] (ii) the proposal price is reasonable.

6402 [~~(6)~~] (8) The transportation agency shall issue a request for proposals to those qualified
6403 respondents that:

6404 (a) includes a scope of work statement constituting an information for proposal that
6405 may include:

6406 (i) preliminary design concepts;

6407 (ii) design criteria, needs, and objectives;

6408 (iii) warranty and quality control requirements;

6409 (iv) applicable standards;

6410 (v) environmental documents;

6411 (vi) constraints;

6412 (vii) time expectations or limitations;

6413 (viii) incentives or disincentives; and

6414 (ix) other special considerations;

6415 (b) requires submitters to provide:
6416 (i) a sealed cost proposal;
6417 (ii) a critical path matrix schedule, including cash flow requirements;
6418 (iii) proposal security; and
6419 (iv) other items required by the department for the project; and
6420 (c) may include award of a stipulated fee to be paid to ~~submitters~~ offerors who submit
6421 unsuccessful proposals.

6422 ~~[(7)]~~ (9) The transportation agency shall:

6423 (a) evaluate the submissions received in response to the request for proposals from the
6424 prequalified ~~proposers~~ offerors;

6425 (b) comply with rules relating to discussion of proposals, best and final offers, and
6426 evaluations of the proposals submitted; and

6427 (c) after considering price and other identified factors, award the contract to the
6428 responsive and responsible ~~proposer~~ offeror whose proposal is most advantageous to the
6429 state.

6430 Section 161. Section **63G-6a-1403**, which is renumbered from Section 63G-6-503 is
6431 renumbered and amended to read:

6432 ~~**63G-6-503**~~. **63G-6a-1403**. **Procurement of tollway development**
6433 **agreements.**

6434 (1) As used in this section~~[(a) "Department" means the Department of~~
6435 ~~Transportation. (b) "Tollway", "tollway development agreement" [has the same meaning] is~~ as
6436 defined in Section 72-6-202.

6437 (2) The ~~department~~ Department of Transportation and the Transportation
6438 Commission:

6439 (a) may solicit a tollway development agreement proposal by following the
6440 requirements of this section;

6441 (b) may award a solicited tollway development agreement contract for any tollway
6442 project by following the requirements of this section; and

6443 (c) shall make rules, ~~[by following the procedures and requirements of]~~ in accordance
6444 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing requirements for
6445 the procurement of tollway development agreement proposals in addition to those required by

6446 this section.

6447 (3) (a) Before entering into a tollway development agreement, the [department]
6448 Department of Transportation may issue a request for qualifications to prequalify potential
6449 contractors.

6450 (b) Public notice of the request for qualifications shall be given in accordance with
6451 [policy] board rules.

6452 (c) The [department] Department of Transportation shall require, as part of the
6453 qualifications specified in the request for qualifications, that potential contractors at least
6454 provide:

6455 (i) a demonstration of their experience with other transportation concession projects
6456 with attributes similar to the project being procured;

6457 (ii) a financial statement of the firm or consortium of firms making the proposal;

6458 (iii) a conceptual project development plan and financing plan;

6459 (iv) the legal structure of the firm or consortium of firms making the proposal;

6460 (v) the organizational structure for the project; and

6461 (vi) a statement describing why the firm or consortium of firms is best qualified for the
6462 project.

6463 (d) The request for qualifications shall identify the number of eligible competing
6464 [proposers] offerors that the [department] Department of Transportation will select to submit a
6465 proposal.

6466 (4) The [department] Department of Transportation shall:

6467 (a) evaluate the responses received from the request for qualifications;

6468 (b) select from their number those qualified to submit proposals; and

6469 (c) invite those respondents to submit proposals based upon the [department's]
6470 Department of Transportation's request for proposals.

6471 (5) The [department] Department of Transportation shall issue a request for proposals
6472 to those qualified respondents that may require, as appropriate for the procurement:

6473 (a) a description of the proposed project or projects;

6474 (b) a financial plan for the project, including:

6475 (i) the anticipated financial commitment of all parties;

6476 (ii) equity, debt, and other financing mechanisms;

- 6477 (iii) an analysis of the projected return, rate of return, or both; and
- 6478 (iv) the monetary benefit and other value to a government entity;
- 6479 (c) assumptions about user fees or toll rates;
- 6480 (d) a project development and management plan, including:
- 6481 (i) the contracting structure;
- 6482 (ii) the plan for quality management;
- 6483 (iii) the proposed toll enforcement plan; and
- 6484 (iv) the plan for safety management; and
- 6485 (e) that the proposal to comply with the minimum guidelines for tollway development
- 6486 agreement proposals under Section 72-6-204.

6487 (6) The ~~[department]~~ Department of Transportation and the Transportation
6488 Commission:

- 6489 (a) shall evaluate the submissions received in response to the request for proposals
- 6490 from the prequalified ~~[proposers]~~ offerors;
- 6491 (b) shall comply with rules relating to discussion of proposals, best and final offers,
- 6492 and evaluations of the proposals submitted; and
- 6493 (c) may, after considering price and other identified factors and complying with the
- 6494 requirements of Section 72-6-206, award the contract to the responsive and responsible
- 6495 ~~[proposer]~~ offeror whose proposal is most advantageous to the state.

6496 Section 162. Section **63G-6a-1501** is enacted to read:

6497 **Part 15. Architect-Engineer Services**

6498 **63G-6a-1501. Title.**

6499 This part is known as "Architect-Engineer Services."

6500 Section 163. Section **63G-6a-1502**, which is renumbered from Section 63G-6-701 is
6501 renumbered and amended to read:

6502 ~~[63G-6-701].~~ **63G-6a-1502. Policy regarding architect-engineer services.**

6503 (1) It is the policy of this state to publicly announce all requirements for
6504 architect-engineer services and to negotiate contracts for architect-engineer services on the
6505 basis of demonstrated competence and qualification for the type of services required, and at fair
6506 and reasonable prices.

6507 (2) Architect-engineer services shall be procured as provided in this part except as

6508 authorized by Sections [~~63G-6-409 through 63G-6-411~~] 63G-6a-408, 63G-6a-802, and
6509 63G-6a-803.

6510 (3) This part does not affect the authority of, and does not apply to procedures
6511 undertaken by, a public procurement unit to obtain the services of architects or engineers in the
6512 capacity of employees of [~~such~~] the public procurement unit.

6513 Section 164. Section **63G-6a-1503**, which is renumbered from Section 63G-6-702 is
6514 renumbered and amended to read:

6515 [~~63G-6-702~~]. **63G-6a-1503. Selection committee for architect-engineer**
6516 **services.**

6517 (1) In the procurement of architect-engineer services, the [~~chief~~] procurement officer or
6518 the head of a state purchasing [agency] unit shall encourage firms engaged in the lawful
6519 practice of their profession to submit annually a statement of qualifications and performance
6520 data.

6521 (2) The Building Board shall be the [~~selection~~] evaluation committee for
6522 architect-engineer services contracts under its authority. [~~Selection committees~~]

6523 (3) An evaluation committee for architect-engineer services contracts not under the
6524 authority of the Building Board shall be established in accordance with rules [~~and regulations~~
6525 ~~promulgated by the policy board. Selection committees shall~~] made by the applicable
6526 rulemaking authority.

6527 (4) An evaluation committee shall:

6528 (a) evaluate current statements of qualifications and performance data on file with the
6529 state, together with those that may be submitted by other firms in response to the
6530 announcement of the proposed contract[~~. Selection committees shall~~];

6531 (b) consider no less than three firms [~~and then shall select therefrom;~~]; and

6532 (c) based upon criteria established and published by the [~~selection committees;~~]
6533 authorized purchasing entity, select no less than three of the firms considered to be the most
6534 highly qualified to provide the services required.

6535 Section 165. Section **63G-6a-1504**, which is renumbered from Section 63G-6-703 is
6536 renumbered and amended to read:

6537 [~~63G-6-703~~]. **63G-6a-1504. Selection as part of design-build or lease.**

6538 Notwithstanding any other provision of this chapter, architect-engineer services may be

6539 procured under Title 63A, Chapter 5, State Building Board - Division of Facilities Construction
6540 and Management, as part of the services obtained in a design-build contract or as part of the
6541 services obtained in a lease contract for real property, ~~[provided that]~~ if the qualifications of
6542 those providing the architect-engineer services are part of the consideration in the selection
6543 process.

6544 Section 166. Section **63G-6a-1505**, which is renumbered from Section 63G-6-704 is
6545 renumbered and amended to read:

6546 ~~[63G-6-704].~~ **63G-6a-1505. Determination of compensation for**
6547 **architect-engineer services.**

6548 (1) The procurement officer shall award a contract to a qualified firm at compensation
6549 ~~[which]~~ that the procurement officer determines, in writing, to be fair and reasonable to the
6550 state.

6551 (2) In making ~~[this decision,]~~ the determination described in Subsection (1), the
6552 procurement officer shall take into account the services':

6553 (a) estimated value~~[-the]~~;

6554 (b) scope~~[-and]~~;

6555 (c) complexity~~[-]~~; and ~~[the]~~

6556 (d) professional nature ~~[of the services to be rendered. Should]~~.

6557 (3) If the procurement officer [be] is unable to agree to a satisfactory contract with the
6558 firm first selected, at a price the procurement officer determines to be fair and reasonable to the
6559 state, [discussions with that firm shall be formally terminated. The] the procurement officer
6560 shall [then]:

6561 (a) formally terminate discussions with that firm; and

6562 (b) undertake discussions with a second qualified firm. [Failing accord with the
6563 second firm, the procurement officer shall formally terminate discussions. The procurement
6564 officer shall then]

6565 (4) If the procurement officer is unable to agree to a satisfactory contract with the
6566 second firm selected, at a price the procurement officer determines to be fair and reasonable to
6567 the state, the procurement officer shall:

6568 (a) formally terminate discussions with that firm; and

6569 (b) undertake discussions with a third qualified firm. [Should the procurement officer

6570 be]

6571 (5) If the procurement officer is unable to award a contract at a fair and reasonable
 6572 price [with] to any of the selected firms, the procurement officer shall:

6573 (a) select additional firms[;]; and [the procurement officer shall]

6574 (b) continue discussions in accordance with this part until an agreement is reached.

6575 Section 167. Section **63G-6a-1506**, which is renumbered from Section 63G-6-705 is
 6576 renumbered and amended to read:

6577 ~~[63G-6-705].~~ **63G-6a-1506. Restrictions on procurement of**

6578 **architect-engineer services.**

6579 (1) Except as provided in Subsection (2), when [a public procurement unit] an
 6580 authorized purchasing entity, in accordance with Section [63G-6-704] 63G-6a-1502, elects to
 6581 obtain architect or engineering services by using a competitive procurement process and has
 6582 provided public notice of its competitive procurement process:

6583 (a) a higher education entity, or any part of one, may not submit a proposal in response
 6584 to the [public procurement unit's] authorized purchasing entity's competitive procurement
 6585 process; and

6586 (b) the [public procurement unit] authorized purchasing entity may not award a
 6587 contract to perform the architect or engineering services solicited in the competitive
 6588 procurement process to a higher education entity or any part of one.

6589 (2) [A public procurement unit need not comply with the requirements of] Subsection
 6590 (1) does not apply when the [public procurement unit] authorized purchasing entity is
 6591 procuring architect or engineer services for contracts related to research activities and
 6592 technology transfer.

6593 Section 168. Section **63G-6a-1601** is enacted to read:

6594 **Part 16. Controversies and Protests**

6595 **63G-6a-1601. Title.**

6596 This part is known as "Controversies and Protests."

6597 Section 169. Section **63G-6a-1602**, which is renumbered from Section 63G-6-805 is
 6598 renumbered and amended to read:

6599 ~~[63G-6-805].~~ **63G-6a-1602. Authority to resolve controversy between**

6600 **public procurement unit and contractor.**

6601 The [chief] procurement officer, the head of [a purchasing agency] an authorized
6602 purchasing entity, or a designee of either [officer is authorized, prior to] may, before
6603 commencement of an action in court concerning the controversy, [to] settle and resolve a
6604 controversy [which] that arises between [the state] a public procurement unit or an authorized
6605 purchasing entity and a contractor [under or by virtue of a contract between them. This
6606 includes, without limitation, controversies] in relation to a contract or a procurement, including
6607 a controversy based upon breach of contract, [mistakes] a mistake, misrepresentation, or other
6608 cause for contract modification or rescission.

6609 Section 170. Section **63G-6a-1603**, which is renumbered from Section 63G-6-801 is
6610 renumbered and amended to read:

6611 ~~[63G-6-801].~~ **63G-6a-1603. Protest to procurement officer -- Time --**
6612 **Authority to resolve protest.**

6613 (1) Any actual or prospective bidder, offeror, or contractor who is aggrieved in
6614 connection with the solicitation or award of a contract may protest to the [chief] procurement
6615 officer or the head of [a purchasing agency] an authorized purchasing entity. A protest with
6616 respect to an invitation for bids or a request for proposals shall be submitted in writing [prior
6617 to] before the opening of bids or the closing date for proposals, unless the aggrieved person did
6618 not know and should not have known of the facts giving rise to the protest [prior to] before the
6619 bid opening or the closing date for proposals. [The protest shall be submitted] An aggrieved
6620 person shall submit a protest in writing within [five working] seven days after the aggrieved
6621 person knows or should have known of the facts giving rise [thereto] to the protest.

6622 (2) Subject to the applicable requirements in Section 63G-10-403, the [chief]
6623 procurement officer, the head of [a purchasing agency] an authorized purchasing entity, or a
6624 designee of either [officer shall have the authority, prior to], may, before the commencement of
6625 an action in court concerning the controversy, [to] settle and resolve the protest.

6626 Section 171. Section **63G-6a-1604**, which is renumbered from Section 63G-6-806 is
6627 renumbered and amended to read:

6628 ~~[63G-6-806].~~ **63G-6a-1604. Decisions to be in writing -- Effect of no**
6629 **writing.**

6630 (1) The [chief procurement officer, the head of a purchasing agency, or the designee of
6631 either officer] person who conducts a hearing under Section 63G-6a-1603 shall promptly issue

6632 a written decision regarding any protest, debarment ~~[or]~~, suspension, or contract controversy if
6633 it is not settled by a mutual agreement.

6634 (2) The decision shall state the reasons for the action taken and inform the protestor,
6635 contractor, or prospective contractor of the right to judicial or administrative review as
6636 provided in this chapter.

6637 ~~[(2)]~~ (3) A decision ~~[shall be]~~ described in this section is effective until stayed or
6638 reversed on appeal, except to the extent provided in Section ~~[63G-6-802]~~ 63G-6a-1607. ~~[A~~
6639 ~~copy of the decision under Subsection (1) shall be mailed]~~

6640 (4) A person who issues a decision under this section shall mail or otherwise
6641 ~~[furnished]~~ immediately furnish a copy of the decision to the protestor, prospective contractor,
6642 or contractor.

6643 (5) The decision shall be final and conclusive unless the protestor, prospective
6644 contractor, or contractor:

6645 (a) appeals administratively to the ~~[procurement]~~ applicable appeals board, if any, in
6646 accordance with Subsection ~~[63G-6-810]~~ 63G-6a-1703(2); or ~~[the protestor, prospective~~
6647 ~~contractor, or contractor]~~

6648 (b) if there is not an applicable appeals board, commences an action in district court in
6649 accordance with Section ~~[63G-6-815]~~ 63G-6a-1803.

6650 ~~[(3)]~~ (6) If the ~~[chief]~~ procurement officer, the head of ~~[a purchasing agency]~~ an
6651 authorized purchasing entity, or the designee of either ~~[officer]~~ does not issue the written
6652 decision ~~[regarding a contract controversy]~~ as required by this section within 60 ~~[calendar]~~ days
6653 after the day on which a written request for a final decision is made, or within ~~[such]~~ a longer
6654 period as may be agreed upon by the parties, then the protestor, contractor, or prospective
6655 contractor may proceed as if an adverse decision had been received.

6656 Section 172. Section **63G-6a-1605**, which is renumbered from Section 63G-6-907 is
6657 renumbered and amended to read:

6658 ~~[63G-6-907]~~. **63G-6a-1605. Resolution of local public procurement**
6659 **controversies.**

6660 ~~[Any]~~ A local public procurement unit ~~[is authorized to]~~ may enter into an agreement
6661 with the State Procurement Appeals Board to resolve controversies between the local public
6662 procurement unit and its bidders, offerors, contractors, regardless of whether ~~[or not such]~~ the

6663 controversy arose from a cooperative purchasing agreement.

6664 Section 173. Section **63G-6a-1606**, which is renumbered from Section 63G-6-802 is
6665 renumbered and amended to read:

6666 ~~[63G-6-802].~~ **63G-6a-1606. Effect of timely protest.**

6667 In the event of a timely protest under Subsection [~~63G-6-801(1), 63G-6-810(1), or~~
6668 ~~63G-6-815(1), the state shall]~~ 63G-6a-1603(1), 63G-6a-1703(1), or 63G-6a-1803(1), an
6669 authorized purchasing entity may not proceed further with the solicitation or with the award of
6670 the contract until all administrative and judicial remedies [~~have been~~] are exhausted or until the
6671 [~~chief~~] procurement officer, after consultation with the head of the [~~using agency~~] public
6672 procurement unit or the head of [~~a purchasing agency~~] an authorized purchasing entity, makes a
6673 written determination that the award of the contract without delay is necessary to protect
6674 substantial interests of the state.

6675 Section 174. Section **63G-6a-1607**, which is renumbered from Section 63G-6-803 is
6676 renumbered and amended to read:

6677 ~~[63G-6-803].~~ **63G-6a-1607. Costs to or against protestor.**

6678 (1) When a protest is sustained administratively or upon administrative or judicial
6679 review and the protesting bidder or offeror should have been awarded the contract under the
6680 solicitation but is not, the protestor shall be entitled to the following relief as a claim against
6681 the state:

6682 (a) the reasonable costs incurred in connection with the solicitation, including bid
6683 preparation and appeal costs; and

6684 (b) any equitable relief determined to be appropriate by the reviewing administrative or
6685 judicial body.

6686 (2) When a protest is not sustained by the [~~Procurement Appeals Board~~] appeals board,
6687 the protestor shall reimburse the [~~Division of Purchasing and General Services~~] public entity
6688 for the per diem and expenses paid by the [~~division~~] public entity to witnesses or appeals board
6689 members and any additional expenses incurred by the [~~state agency~~] staff of the public entity
6690 who have provided materials and administrative services to the appeals board for that case.

6691 Section 175. Section **63G-6a-1701** is enacted to read:

6692 **Part 17. Procurement Appeals Board**

6693 **63G-6a-1701. Title.**

6694 This part is known as "Procurement Appeals Board."

6695 Section 176. Section **63G-6a-1702**, which is renumbered from Section 63G-6-807 is
6696 renumbered and amended to read:

6697 ~~[63G-6-807]~~. **63G-6a-1702. Creation of Procurement Appeals Board --**
6698 **Creation of other appeals boards.**

6699 (1) (a) A Procurement Appeals Board is created in the executive branch. The
6700 Procurement Appeals Board shall be composed of a chair and one other member, to be
6701 appointed by the governor, and a third member to be designated by the two appointed members
6702 on a case-by-case basis.

6703 (b) None of the members of the Procurement Appeals Board shall otherwise be
6704 full-time employees of the state.

6705 (c) The appointed members of the Procurement Appeals Board shall have been
6706 members in good standing of the state bar for at least five years and shall be experienced in
6707 contract or commercial matters.

6708 (d) The designated member shall possess the technical expertise and experience needed
6709 for the proper disposition of the factual issues presented by the case.

6710 (2) (a) Except as required by Subsection (2)(b), as terms of current ~~[board]~~ members
6711 expire, the governor shall appoint each new member or reappointed member to a four-year
6712 term.

6713 (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the
6714 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
6715 ~~[board]~~ members are staggered so that approximately half of the ~~[board is]~~ members of the
6716 Procurement Appeals Board are appointed every two years.

6717 (c) The designated member shall serve for the case on which designated until the final
6718 disposition of the case.

6719 (d) Appointed members may be reappointed for succeeding terms and may continue to
6720 serve after the expiration of their terms until a successor takes office.

6721 (e) Qualified persons may be redesignated as members.

6722 (3) When a vacancy occurs in the membership for any reason, the replacement shall be
6723 appointed for the unexpired term.

6724 (4) A member may not receive compensation or benefits for the member's service, but

6725 may receive per diem and travel expenses in accordance with:

6726 (a) Section 63A-3-106;

6727 (b) Section 63A-3-107; and

6728 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and

6729 63A-3-107.

6730 (5) A local public procurement unit, a non-executive state procurement unit, or a state
6731 institution of higher education may form its own appeals board to hear procurement protests.

6732 Section 177. Section **63G-6a-1703**, which is renumbered from Section 63G-6-810 is
6733 renumbered and amended to read:

6734 ~~[63G-6-810].~~ **63G-6a-1703. Jurisdiction of appeals board.**

6735 Unless an action has been initiated previously in district courts for essentially the same
6736 cause of action, ~~[the]~~ an appeals board shall have jurisdiction to review and determine de novo:

6737 (1) any protest of a solicitation or award of a contract addressed to the appeals board by
6738 an aggrieved actual or prospective bidder or offeror, or a contractor; and

6739 (2) any appeal by an aggrieved party from a decision rendered or considered to have
6740 been rendered pursuant to Section ~~[63G-6-806]~~ 63G-6a-1604.

6741 Section 178. Section **63G-6a-1704**, which is renumbered from Section 63G-6-808 is
6742 renumbered and amended to read:

6743 ~~[63G-6-808].~~ **63G-6a-1704. Rules of procedure to be adopted.**

6744 The Procurement Appeals Board:

6745 (1) shall adopt rules of procedure ~~[which]~~ that, to the fullest extent possible, ~~[will]~~
6746 provide for the expeditious resolution of controversies, including procedures to encourage
6747 agreements between the parties to a controversy prior to a hearing~~[- The board]; and~~

6748 (2) may adopt small claims procedures for the resolution of controversies involving
6749 claims of less than \$15,000.

6750 Section 179. Section **63G-6a-1705**, which is renumbered from Section 63G-6-809 is
6751 renumbered and amended to read:

6752 ~~[63G-6-809].~~ **63G-6a-1705. Decisions of appeals board to be in writing.**

6753 ~~[The Procurement Appeals Board shall]~~

6754 An appeals board shall:

6755 (1) issue a decision in writing or take other appropriate action of each appeal

6756 submitted~~[A]~~; and

6757 (2) provide a copy of any decision [shall be provided] to all parties and the [chief]
6758 procurement officer or the head of [a purchasing agency] an authorized purchasing entity.

6759 Section 180. Section **63G-6a-1706**, which is renumbered from Section 63G-6-811 is
6760 renumbered and amended to read:

6761 ~~[63G-6-811].~~ **63G-6a-1706. Time limits to file protest or appeal -- Effect of**
6762 **filing.**

6763 (1) For a protest under Subsection ~~[63G-6-810]~~ 63G-6a-1703(1), the aggrieved person
6764 shall file a protest with the appeals board within ~~[five working]~~ seven days after the aggrieved
6765 person knows or should have known of the facts and circumstances upon which the protest is
6766 based~~[; provided, however,]~~ except that a protest with respect to an invitation for bids or
6767 request for proposals shall be filed ~~[prior to]~~ before the opening of bids or the closing date for
6768 proposals unless the aggrieved person did not know and should not have known of the facts
6769 giving rise to the protest ~~[prior to]~~ before the bid opening or the closing date for proposals.

6770 (2) For an appeal from a decision regarding a protested solicitation or award, the
6771 aggrieved person shall file an appeal within seven ~~[calendar days of receipt of a]~~ days after the
6772 day on which the decision is rendered or considered to have been rendered ~~[pursuant to Section~~
6773 ~~63G-6-806]~~ under Section 63G-6a-1604.

6774 (3) For an appeal from a decision regarding a debarment, suspension, or contract
6775 controversy, the aggrieved person shall file an appeal within 60 ~~[calendar days of receipt of]~~
6776 days after the day on which the person receives a decision rendered or considered to have been
6777 rendered ~~[pursuant to Section 63G-6-806]~~ under Section 63G-6a-1604.

6778 Section 181. Section **63G-6a-1707**, which is renumbered from Section 63G-6-812 is
6779 renumbered and amended to read:

6780 ~~[63G-6-812].~~ **63G-6a-1707. Discontinued appeal with prejudice, except as**
6781 **authorized.**

6782 After notice of an appeal ~~[has been]~~ is filed with the ~~[Procurement Appeals Board]~~
6783 applicable appeals board, no party may discontinue the appeal without prejudice, except as
6784 authorized by the ~~[Procurement Appeals Board]~~ applicable appeals board.

6785 Section 182. Section **63G-6a-1708**, which is renumbered from Section 63G-6-813 is
6786 renumbered and amended to read:

6787 ~~[63G-6-813].~~ 63G-6a-1708. Factual determination of appeals board final
 6788 and conclusive.

6789 (1) On any protest or appeal under Section ~~[63G-6-810]~~ 63G-6a-1703, the
 6790 ~~[Procurement Appeals Board]~~ applicable appeals board shall promptly decide the contract
 6791 controversy or whether the ~~[solicitation]~~ procurement or award was in accordance with this
 6792 chapter. Any prior determinations by administrative officials regarding protests of
 6793 ~~[solicitations]~~ procurements or awards, suspension or debarments, contract controversies, or
 6794 breach of contract controversies ~~[shall not be]~~ are not final or conclusive.

6795 (2) A determination of an issue of fact by the ~~[Procurement Appeals Board]~~ applicable
 6796 appeals board under Subsection (1) ~~[shall be]~~ is final and conclusive unless arbitrary and
 6797 capricious or clearly erroneous. No determination on an issue of law ~~[shall be]~~ by the
 6798 applicable appeals board is final or conclusive.

6799 (3) The applicable appeals board may, without a hearing, determine, in writing, that a
 6800 protest is without merit.

6801 Section 183. Section **63G-6a-1801** is enacted to read:

6802 **Part 18. Appeals to Court and Court Proceedings**

6803 **63G-6a-1801. Title.**

6804 This part is known as "Appeals to Court and Court Proceedings."

6805 Section 184. Section **63G-6a-1802**, which is renumbered from Section 63G-6-814 is
 6806 renumbered and amended to read:

6807 ~~[63G-6-814].~~ **63G-6a-1802. Right to appeal to Court of Appeals.**

6808 Any person receiving an adverse decision, or the state, may appeal a decision of ~~[the~~
 6809 ~~Procurement Appeals Board]~~ an appeals board to the Court of Appeals. ~~[However, no appeal~~
 6810 ~~may be made by the state]~~ The state may not appeal a decision of an appeals board unless:

6811 (1) recommended by the chief procurement officer or the head of the state purchasing
 6812 [agency] unit involved, and approved by the attorney general[-]; or

6813 (2) for a non-executive state procurement unit, approved by a person authorized by rule
 6814 made by the applicable rulemaking authority.

6815 Section 185. Section **63G-6a-1803**, which is renumbered from Section 63G-6-815 is
 6816 renumbered and amended to read:

6817 ~~[63G-6-815].~~ **63G-6a-1803. Jurisdiction of district court.**

6818 (1) The district court shall have jurisdiction over an action, whether the action is at law
6819 or in equity, between the state and:

6820 (a) a bidder, offeror, or contractor, prospective or actual, who is aggrieved in
6821 connection with the ~~[solicitation]~~ procurement or award of a contract;

6822 (b) a person who is subject to a suspension or debarment proceeding; and

6823 (c) a contractor, for any cause of action ~~[which]~~ that arises under, or ~~[by virtue of]~~ or in
6824 relation to a contract.

6825 (2) The provisions of Title 63G, Chapter 7, Part 4, Notice of Claim Against a
6826 Governmental Entity or a Government Employee, and Section 63G-7-601 do not apply to
6827 actions brought under this chapter by an aggrieved party for equitable relief or reasonable costs
6828 incurred in preparing or appealing an unsuccessful bid or offer.

6829 Section 186. Section **63G-6a-1804**, which is renumbered from Section 63G-6-817 is
6830 renumbered and amended to read:

6831 ~~[63G-6-817]~~. **63G-6a-1804. Statutes of limitations.**

6832 (1) ~~[Any]~~ An action under Subsection ~~[63G-6-815]~~ 63G-6a-1803(1)(a) shall be
6833 initiated ~~[as follows]~~:

6834 (a) within 20 ~~[calendar]~~ days after the day on which the aggrieved person knows or
6835 should have known of the facts giving rise to the action; ~~[provided, however, that an action]~~

6836 (b) with respect to an invitation for bids or request for proposals ~~[shall be initiated~~
6837 prior to], before the opening of bids or the closing date for proposals unless the aggrieved
6838 person did not know and should not have known of the facts giving rise to the action ~~[prior to~~
6839 bid opening or the closing date for proposals]; or

6840 ~~[(b)]~~ (c) within 14 ~~[calendar]~~ days after receipt of a final administrative decision
6841 pursuant to either Section ~~[63G-6-806 or Section 63G-6-813]~~ 63G-6a-1604 or 63G-6a-1708,
6842 whichever is applicable.

6843 (2) ~~[Any]~~ An action under Subsection ~~[63G-6-815]~~ 63G-6a-1803(1)(b) shall be
6844 commenced within six months after receipt of a final administrative decision, pursuant to
6845 Section ~~[63G-6-806 or Section 63G-6-813, whichever is applicable]~~ 63G-6a-1604 or
6846 63G-6a-1708.

6847 (3) The statutory limitations on an action between private persons on a contract or for
6848 breach of contract shall apply to any action commenced pursuant to Subsection ~~[63G-6-815]~~

6849 63G-6a-1803(1)(c), except notice of appeals from [~~the Procurement Appeals Board~~] an appeals
 6850 board pursuant to Section [~~63G-6-814~~] 63G-6a-1802 concerning actions on a contract or for
 6851 breach of contract, shall be filed within one year after the [~~date of the Procurement Appeals~~
 6852 ~~Board decision~~] day on which the decision of the appeals board is made.

6853 Section 187. Section **63G-6a-1805**, which is renumbered from Section 63G-6-816 is
 6854 renumbered and amended to read:

6855 [~~63G-6-816~~]. **63G-6a-1805. Effect of prior determination by agents of**
 6856 **state.**

6857 In any judicial action under Section [~~63G-6-815~~] 63G-6a-1803, determinations by
 6858 employees, agents, or other persons appointed by the state shall be final and conclusive only as
 6859 provided in Sections [~~63G-6-419 and 63G-6-806~~] 63G-6a-1604 and 63G-6a-1902, and
 6860 Subsection [~~63G-6-813~~] 63G-6a-1708(2).

6861 Section 188. Section **63G-6a-1901** is enacted to read:

6862 **Part 19. General Provisions Related to Protest or Appeal**

6863 **63G-6a-1901. Title.**

6864 This part is known as "General Provisions Related to Protest or Appeal."

6865 Section 189. Section **63G-6a-1902**, which is renumbered from Section 63G-6-419 is
 6866 renumbered and amended to read:

6867 [~~63G-6-419~~]. **63G-6a-1902. Determinations final except when arbitrary**
 6868 **and capricious.**

6869 The determinations required [~~by Subsections 63G-6-401(6), 63G-6-408(1) and (6),~~
 6870 ~~Sections 63G-6-410, 63G-6-411, 63G-6-413, Subsection 63G-6-415(4), Section 63G-6-416,~~
 6871 ~~and Subsection 63G-6-417(2)] under the following provisions are final and conclusive unless
 6872 they are arbitrary and capricious or clearly erroneous[-]:~~

6873 (1) Section 63G-6a-605;

6874 (2) Section 63G-6a-702;

6875 (3) Subsection 63G-6a-708(1)(a);

6876 (4) Subsection 63G-6a-709(1);

6877 (5) Section 63G-6a-803;

6878 (6) Section 63G-6a-804;

6879 (7) Section 63G-6a-903;

6880 (8) Subsection 63G-6a-1204(1) or (2);

6881 (9) Subsection 63G-6a-1204(5);

6882 (10) Section 63G-6a-1205; or

6883 (11) Subsection 63G-6a-1206(5).

6884 Section 190. Section **63G-6a-1903**, which is renumbered from Section 63G-6-818 is
6885 renumbered and amended to read:

6886 ~~[63G-6-818].~~ **63G-6a-1903. Effect of violation prior to award of contract.**

6887 If ~~[prior to]~~, before award of a contract, it is determined administratively or upon
6888 administrative or judicial review that a ~~[solicitation]~~ procurement or proposed award of a
6889 contract is in violation of law, the ~~[solicitation]~~ procurement or proposed award shall be
6890 cancelled or revised to comply with the law.

6891 Section 191. Section **63G-6a-1904**, which is renumbered from Section 63G-6-819 is
6892 renumbered and amended to read:

6893 ~~[63G-6-819].~~ **63G-6a-1904. Effect of violation after award of contract.**

6894 If, after ~~[an]~~ award of a contract, it is determined administratively or upon
6895 administrative or judicial review that a ~~[solicitation]~~ procurement or award of a contract is in
6896 violation of law:

6897 (1) if the person awarded the contract ~~[has not acted]~~ did not act fraudulently or in bad
6898 faith:

6899 (a) the contract may be ratified and affirmed if it is ~~[determined that doing so is]~~ in the
6900 best interests of the state; or

6901 (b) (i) the contract may be terminated; and

6902 (ii) the person awarded the contract shall be compensated for the actual expenses
6903 reasonably incurred under the contract ~~[prior to]~~ before the termination, plus a reasonable
6904 profit;

6905 (2) if the person awarded the contract has acted fraudulently or in bad faith:

6906 (a) the contract may be declared null and void; or

6907 (b) the contract may be ratified and affirmed if ~~[such action]~~ it is in the best interests of
6908 the state, without prejudice to the state's rights to any appropriate damages.

6909 Section 192. Section **63G-6a-1905**, which is renumbered from Section 63G-6-820 is
6910 renumbered and amended to read:

6911 ~~[63G-6-820].~~ 63G-6a-1905. Interest rate.

6912 (1) Except as provided in Subsection (2), in controversies between the state and
6913 contractors under this part, Part 16, Controversies and Protests, Part 17, Procurement Appeals
6914 Board, or Part 18, Appeals to Court and Court Proceedings, interest on amounts ultimately
6915 determined to be due to a contractor or [to] the state are payable at the rate applicable to
6916 judgments from the date the claim arose through the date of decision or judgment, whichever is
6917 later.

6918 (2) This section does not apply to public assistance benefits programs.

6919 Section 193. Section **63G-6a-2001** is enacted to read:

6920 **Part 20. Records**

6921 63G-6a-2001. Title.

6922 This part is known as "Records."

6923 Section 194. Section **63G-6a-2002**, which is renumbered from Section 63G-6-106 is
6924 renumbered and amended to read:

6925 ~~[63G-6-106].~~ 63G-6a-2002. Records -- Retention.

6926 (1) All procurement records shall be retained and disposed of in accordance with Title
6927 63G, Chapter 2, Government Records Access and Management Act.

6928 (2) Written determinations required by this chapter shall [also] be retained in the
6929 appropriate official contract file of [~~the Division of Purchasing and General Services or the~~
6930 ~~purchasing agency~~];

6931 (a) the division;

6932 (b) the state purchasing unit; or

6933 (c) for a non-executive state procurement unit, the person designated by rule made by
6934 the applicable rulemaking authority.

6935 (3) A public procurement unit shall keep, and make available to the public, upon
6936 request, a written record of all procurements made under this section for which an expenditure
6937 of \$50 or more is made, for the longer of:

6938 (a) four years;

6939 (b) the time otherwise required by law; or

6940 (c) the time period provided by rule made by the applicable rulemaking authority.

6941 (4) The written record described in Subsection (3) shall include:

6942 (a) the name of the provider from whom the procurement was made;

6943 (b) a description of the procurement item;

6944 (c) the date of the procurement; and

6945 (d) the expenditure made for the procurement.

6946 Section 195. Section **63G-6a-2003**, which is renumbered from Section 63G-6-421 is
6947 renumbered and amended to read:

6948 ~~[63G-6-421].~~ **63G-6a-2003. Records of contracts made -- Audits --**
6949 **Contract requirements.**

6950 The [chief] procurement officer or the head of [a purchasing agency] an authorized
6951 purchasing entity shall maintain a record listing all contracts made under Section [63G-6-410
6952 ~~or 63G-6-411 and shall maintain the record]~~ 63G-6a-408, 63G-6a-802, or 63G-6a-803, in
6953 accordance with Title 63G, Chapter 2, Government Records Access and Management Act.
6954 The record shall contain each contractor's name, the amount and type of each contract, and a
6955 listing of the [~~supplies, services, or construction procured under each contract~~] procurement
6956 items to which the contract relates.

6957 Section 196. Section **63G-6a-2004**, which is renumbered from Section 63G-6-905 is
6958 renumbered and amended to read:

6959 ~~[63G-6-905].~~ **63G-6a-2004. Chief procurement officer's collection of**
6960 **information on procurement items.**

6961 (1) To the extent possible, the chief procurement officer may collect information
6962 concerning the type, cost, quality, and quantity of commonly used [~~supplies, services, or~~
6963 ~~construction being~~] procurement items procured or used by [state] public procurement units
6964 [~~and local public procurement units~~].

6965 (2) The chief procurement officer may make the information described in Subsection
6966 (1) available to any public procurement unit upon request.

6967 Section 197. Section **63G-6a-2101** is enacted to read:

6968 **Part 21. Interaction Between Public Procurement Units**

6969 **63G-6a-2101. Title.**

6970 This part is known as "Interaction Between Public Procurement Units."

6971 Section 198. Section **63G-6a-2102**, which is renumbered from Section 63G-6-901 is
6972 renumbered and amended to read:

6973 ~~[63G-6-901].~~ 63G-6a-2102. **Agreements between public procurement**
 6974 **units.**

6975 ~~[Under the terms agreed upon among the parties, any]~~

6976 (1) For purposes of this section only, "public procurement unit" includes an external
 6977 procurement unit.

6978 (2) A public procurement unit may enter into ~~[agreements]~~ an agreement with one or
 6979 more other public procurement units to:

6980 ~~[(1)]~~ (a) sponsor, conduct, or administer a cooperative agreement for the procurement
 6981 or disposal of ~~[any supplies, services, or construction]~~ a procurement item;

6982 ~~[(2)]~~ (b) cooperatively use ~~[supplies or services]~~ a procurement item;

6983 ~~[(3)]~~ (c) commonly use or share warehousing facilities, capital equipment, and other
 6984 facilities;

6985 ~~[(4)]~~ (d) provide personnel~~;~~ ~~provided that the requesting], if the receiving~~ public
 6986 procurement unit ~~[shall pay]~~ pays the public procurement unit providing the personnel the
 6987 direct and indirect cost of providing the personnel, in accordance with the agreement; or

6988 ~~[(5)]~~ (e) make available informational, technical, and other services, ~~[provided that], if:~~

6989 (i) the requirements of the public procurement unit tendering the services ~~[shall]~~ have
 6990 precedence over the ~~[requesting]~~ public procurement unit that receives the services; and ~~[that]~~

6991 (ii) the ~~[requesting]~~ receiving public procurement unit ~~[shall pay for]~~ pays the expenses
 6992 of the services ~~[so]~~ provided, in accordance with the agreement.

6993 (3) If a public procurement unit does not have the expertise necessary to administer a
 6994 particular procurement, the public procurement unit may enter into an agreement for
 6995 administration of the procurement with:

6996 (a) another public procurement unit; or

6997 (b) a person that is under contract to administer procurements.

6998 Section 199. Section **63G-6a-2103**, which is renumbered from Section 63G-6-902 is
 6999 renumbered and amended to read:

7000 ~~[63G-6-902].~~ 63G-6a-2103. **Services between public procurement units.**

7001 (1) Upon request, ~~[any]~~ a public procurement unit may make services available to

7002 ~~[other]~~ another public procurement ~~[units the following services, among others]~~ unit, including:

7003 (a) standard forms;

7004 (b) printed manuals;
 7005 (c) qualified products lists;
 7006 (d) source information;
 7007 (e) common use commodities listings;
 7008 (f) supplier prequalification information;
 7009 (g) supplier performance ratings;
 7010 (h) debarred and suspended bidders lists;
 7011 (i) forms for invitation for bids, requests for proposals, instructions to bidders, general
 7012 contract provisions, and ~~[other]~~ contract forms; ~~[and]~~ or
 7013 (j) contracts or published summaries ~~[thereof]~~ of contracts, including price and time of
 7014 delivery information.

7015 (2) ~~[Any]~~ A public procurement unit may provide ~~[the following]~~ technical services[;]
 7016 ~~[among others, to other]~~ to another public procurement ~~[units;]~~ unit, including:

7017 (a) development of specifications;
 7018 (b) development of quality assurance test methods, including receiving, inspection, and
 7019 acceptance procedures;
 7020 (c) use of testing and inspection facilities; ~~[and]~~ or
 7021 (d) use of personnel training programs.

7022 (3) Public procurement units may enter into contractual arrangements and publish a
 7023 schedule of fees for the services provided under Subsections (1) and (2).

7024 Section 200. Section **63G-6a-2104**, which is renumbered from Section 63G-6-904 is
 7025 renumbered and amended to read:

7026 ~~[63G-6-904]~~. **63G-6a-2104**. **Compliance by one public procurement unit**
 7027 **pursuant to agreement considered compliance by others to agreement.**

7028 ~~[Where the]~~ (1) When a public procurement unit ~~[administering]~~ that administers a
 7029 cooperative purchase complies with the requirements of this chapter, any public procurement
 7030 unit participating in ~~[such a]~~ the purchase ~~[shall be]~~ is considered to have complied with this
 7031 chapter. ~~[Public procurement units]~~

7032 (2) A public procurement unit may not enter into a cooperative purchasing agreement
 7033 for the purpose of circumventing this chapter.

7034 Section 201. Section **63G-6a-2105**, which is renumbered from Section 63G-6-424 is

7035 renumbered and amended to read:

7036 ~~[63G-6-424].~~ **63G-6a-2105. Participation of counties, municipalities, and**
7037 **public procurement units in agreements or contracts of public procurement units.**

7038 [~~Utah counties, municipalities, and local public procurement units~~]

7039 (1) A Utah county or municipality may purchase [from] under or otherwise participate
7040 in [state public procurement unit agreements and contracts.] an agreement or contract of a Utah
7041 public procurement unit.

7042 (2) A state purchasing unit or a Utah public procurement unit may:

7043 (a) contract with the federal government without going through a procurement process
7044 or an exception to a procurement process;

7045 (b) purchase under, or otherwise participate in, an agreement or contract of another
7046 Utah public procurement unit; or

7047 (c) purchase under, or otherwise participate in, an agreement or contract of an external
7048 public procurement unit, if:

7049 (i) the procurement was conducted in accordance with the requirements of this chapter;
7050 and

7051 (ii) the Utah participating addendum to the contract contains the terms and conditions
7052 required by the applicable rulemaking authority that enters into the Utah participating
7053 addendum.

7054 (3) A public transit district, organized under Title 17B, Chapter 2a, Part 8, Public
7055 Transit District Act, may, without going through a procurement process or an exception to a
7056 procurement process, contract with a county or municipality to receive money from the county
7057 or municipality to fund a transportation project.

7058 Section 202. Section **63G-6a-2201** is enacted to read:

7059 **Part 22. Ethical Requirements**

7060 **63G-6a-2201. Title.**

7061 This part is known as "Ethical Requirements."

7062 Section 203. Section **63G-6a-2202** is enacted to read:

7063 **63G-6a-2202. Ethical requirements for public procurement.**

7064 (1) As used in this section, "ethics provisions of the model procurement code" means
7065 the following provisions of Article 12 of the 2000 American Bar Association Model

7066 Procurement Code for State and Local Governments:

7067 (a) Section 12-202, General Standards of Ethical Conduct;

7068 (b) Section 12-204, Employee Conflict of Interest;

7069 (c) Section 12-205, Employee Disclosure Requirements;

7070 (d) Section 12-206, Gratuities and Kickbacks;

7071 (e) Section 12-207, Prohibition Against Contingent Fees;

7072 (f) Section 12-208, Restrictions on Employment of Present and Former Employees;

7073 and

7074 (g) Section 12-209, Use of Confidential Information.

7075 (2) The applicable rulemaking authority shall make rules that prescribe ethical

7076 standards for its agents and employees in relation to a procurement.

7077 (3) The ethical standards described in Subsection (2) shall be based upon the general

7078 principles of the ethics provisions of the model procurement code.

7079 (4) The applicable rulemaking authority:

7080 (a) is not required to adopt or implement any of the specific provisions of the ethics

7081 provisions of the model procurement code; and

7082 (b) may not adopt any provision of the ethics provisions of the model procurement

7083 code that conflict with this chapter.

7084 (5) A public entity shall advise its employees and agents who are involved in a

7085 procurement process for the public entity regarding the following provisions and the penalties

7086 associated with those provisions:

7087 (a) the provisions of this part and rules made under this part;

7088 (b) Subsections 63G-6a-408 (4) and (5), relating to artificially dividing a procurement;

7089 (c) Section 63G-6a-2303, Offering a gratuity;

7090 (d) Section 63G-6a-2304, Accepting or requesting a gratuity;

7091 (e) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;

7092 (f) Section 76-8-103, Bribery or offering a bribe;

7093 (g) Section 76-8-105, Receiving or soliciting bribe or bribery by public servant ; and

7094 (h) Section 76-8-402. Misusing public money.

7095 Section 204. Section **63G-6a-2301** is enacted to read:

7096 **Part 23. Unlawful Conduct and Penalties**

7097 **63G-6a-2301. Title.**

7098 This part is known as "Unlawful Conduct and Penalties."

7099 Section 205. Section **63G-6a-2302**, which is renumbered from Section 63G-6-420 is
7100 renumbered and amended to read:

7101 ~~[63G-6-420].~~ **63G-6a-2302. Factual information to attorney general if**
7102 **collusion suspected.**

7103 ~~[When for any reason]~~ If a public procurement unit suspects collusion or other
7104 anticompetitive practices ~~[are suspected]~~ among bidders or offerors, the public procurement
7105 unit shall transmit a notice of the relevant facts ~~[shall be transmitted]~~ to the attorney general.

7106 Section 206. Section **63G-6a-2303** is enacted to read:

7107 **63G-6a-2303. Offering a gratuity.**

7108 (1) As used in this section, "interested person" means a person who is interested in any
7109 way in the sale of a procurement item, real property, or insurance to a public entity.

7110 (2) Except as provided in Subsection (5), it is unlawful for an interested person to give,
7111 offer, or promise to give an emolument, gratuity, contribution, loan, or reward to:

7112 (a) a procurement officer of the public entity that is seeking to obtain the procurement
7113 item;

7114 (b) any employee, official, or agent of the public entity that is seeking to obtain the
7115 procurement item; or

7116 (c) another person or entity on behalf of a person described in Subsection (2)(a) or (b).

7117 (3) The conduct described in Subsection (2) is unlawful, regardless of whether the
7118 emolument, gratuity, contribution, loan, or reward is given for:

7119 (a) the person's own use; or

7120 (b) the use or benefit of any other person.

7121 (4) A person who violates this section is guilty of:

7122 (a) a felony of the second degree if the total value of the emolument, gratuity,
7123 contribution, loan, or reward is \$1,000 or more;

7124 (b) a felony of the third degree if the total value of the emolument, gratuity,
7125 contribution, loan, or reward is \$250 or more, but less than \$1,000;

7126 (c) a class A misdemeanor if the value of the emolument, gratuity, contribution, loan,
7127 or reward is \$100 or more, but less than \$250; or

7128 (d) a class B misdemeanor if the value of the emolument, gratuity, contribution, loan,
7129 or reward is less than \$100.

7130 (5) A person is not guilty of a violation of this section if:

7131 (a) (i) the gift is an item of less than \$10 in value;

7132 (ii) the total value of all gifts given by the person to a person described in Subsection
7133 (2), or another person in that person's behalf, during that calendar year does not exceed \$50;

7134 and

7135 (iii) the gift is not given with the intent to induce a person to make a procurement
7136 decision in reciprocation for the gift; or

7137 (b) the gift:

7138 (i) is a philanthropic donation to a government entity; and

7139 (ii) is not given with the intent to induce a person to make a procurement decision in
7140 reciprocation for the gift.

7141 Section 207. Section **63G-6a-2304** is enacted to read:

7142 **63G-6a-2304. Accepting or requesting a gratuity.**

7143 (1) As used in this section, "associate" means any of the following:

7144 (a) the chief procurement officer;

7145 (b) a procurement officer;

7146 (c) a public employee;

7147 (d) a public official; or

7148 (e) an agent of a public entity.

7149 (2) Except as provided in Subsection (4), it is unlawful for an associate of a public
7150 entity that is engaged in obtaining a procurement item, real property, or insurance to ask,
7151 receive, offer to receive, accept, or ask for a promise to receive, an emolument, gratuity,
7152 contribution, loan, or reward for the associate's own use or benefit, or the use or benefit of any
7153 other person interested in the procurement item, real property, or insurance.

7154 (3) A person who violates this section is guilty of:

7155 (a) a felony of the second degree if the total value of the emolument, gratuity,
7156 contribution, loan, or reward is \$1,000 or more;

7157 (b) a felony of the third degree if the total value of the emolument, gratuity,
7158 contribution, loan, or reward is \$250 or more, but less than \$1,000;

7159 (c) a class A misdemeanor if the value of the emolument, gratuity, contribution, loan,
7160 or reward is \$100 or more, but less than \$250; or

7161 (d) a class B misdemeanor if the value of the emolument, gratuity, contribution, loan,
7162 or reward is less than \$100.

7163 (4) A person is not guilty of a violation of this section if:

7164 (a) (i) the associate receives a gift of less than \$10 in value;

7165 (ii) the total value of all gifts received by the associate from the same person during
7166 that calendar year does not exceed \$50; and

7167 (iii) the associate does not make a procurement decision, or intend to make a
7168 procurement decision, in reciprocation for the gift; or

7169 (b) the associate:

7170 (i) receives a philanthropic donation on behalf of a government entity; and

7171 (ii) does not make a procurement decision, or intend to make a procurement decision,
7172 in reciprocation for the donation.

7173 Section 208. Section **63G-6a-2305** is enacted to read:

7174 **63G-6a-2305. Penalties for artificially dividing a purchase.**

7175 A person who violates Subsection 63G-6a-408(4) or (5) is guilty of:

7176 (1) a felony of the second degree if the total value of the divided procurements is
7177 \$1,000,000 or more;

7178 (2) a felony of the third degree if the total value of the divided procurements is
7179 \$250,000 or more, but less than \$1,000,000;

7180 (3) a class A misdemeanor if the total value of the divided procurements is \$100,000 or
7181 more, but less than \$250,000; or

7182 (4) a class B misdemeanor if the total value of the divided procurements is less than
7183 \$100,000.

7184 Section 209. Section **63G-6a-2306** is enacted to read:

7185 **63G-6a-2306. Penalties.**

7186 (1) Except as provided in Subsection (2), in addition to any penalty contained in any
7187 other provision of law, a public officer or public employee who intentionally violates a
7188 provision of Section 63G-6a-2303, Section 63G-6a-2304, or Section 63G-6a-2305 shall be
7189 dismissed from employment or removed from office.

7190 (2) An elected official who intentionally violates a provision of Section 63G-6a-2303,
7191 Section 63G-6a-2304, or Section 63G-6a-2305 may only be removed from office in accordance
7192 with the requirements of law relating to removal of the elected official from office.

7193 (3) Except as provided in Subsection (4), a public officer or public employee who
7194 intentionally violates a provision of this chapter, including Part 22, Ethical Requirements, is
7195 subject to disciplinary action, up to and including dismissal from employment or dismissal
7196 from office.

7197 (4) An elected official who intentionally violates a provision of this chapter, including
7198 Part 22, Ethical Requirements, may only be disciplined or removed from office in accordance
7199 with the requirements of law relating to discipline of the elected official or removal of the
7200 elected official from office.

7201 Section 210. Section **63G-6a-2307** is enacted to read:

7202 **63G-6a-2307. Contract awarded in relation to criminal conduct void.**

7203 If a person who is awarded a contract intentionally violates a provision of Section
7204 63G-6a-2303 or Section 63G-6a-2304 in relation to the contract, the contract is void and
7205 unenforceable.

7206 Section 211. Section **63G-7-804** is amended to read:

7207 **63G-7-804. Liability insurance -- Methods for purchase or renewal.**

7208 (1) Except as provided in Subsection (2), a contract or policy of insurance may be
7209 purchased or renewed under this chapter only upon public bid to be let to the lowest and best
7210 bidder.

7211 (2) The purchase or renewal of insurance by the state shall be conducted in accordance
7212 with the provisions of Title 63G, Chapter [6] 6a, Utah Procurement Code.

7213 Section 212. Section **63G-10-403** is amended to read:

7214 **63G-10-403. Department of Transportation bid or request for proposals protest**
7215 **settlement agreement approval and review.**

7216 (1) As used in this section:

7217 (a) "Department" means the Department of Transportation created in Section 72-1-201.

7218 (b) "Settlement agreement" includes stipulations, consent decrees, settlement
7219 agreements, or other legally binding documents or representations resolving a dispute between
7220 the department and another party when the department is required to pay money or required to

7221 take legally binding action.

7222 (2) The department shall obtain the approval of the Transportation Commission or the
7223 governor or review by the Legislative Management Committee of a settlement agreement that
7224 involves a bid or request for proposal protest in accordance with this section.

7225 (3) A settlement agreement that is being settled by the department as part of a bid or
7226 request for proposal protest, in accordance with Section [~~63G-6-801~~] 63G-6a-1603, that might
7227 cost government entities more than \$100,000 to implement shall be presented to the
7228 Transportation Commission for approval or rejection.

7229 (4) A settlement agreement that is being settled by the department as part of a bid or
7230 request for proposal protest, in accordance with Section [~~63G-6-801~~] 63G-6a-1603, that might
7231 cost government entities more than \$500,000 to implement shall be presented:

7232 (a) to the Transportation Commission for approval or rejection; and

7233 (b) to the governor for approval or rejection.

7234 (5) (a) A settlement agreement that is being settled by the department as part of a bid or
7235 request for proposal protest, in accordance with Section [~~63G-6-801~~] 63G-6a-1603, that might
7236 cost government entities more than \$1,000,000 to implement shall be presented:

7237 (i) to the Transportation Commission for approval or rejection;

7238 (ii) to the governor for approval or rejection; and

7239 (iii) if the settlement agreement is approved by the Transportation Commission and the
7240 governor, to the Legislative Management Committee.

7241 (b) The Legislative Management Committee may recommend approval or rejection of
7242 the settlement agreement.

7243 (6) (a) The department may not enter into a settlement agreement that resolves a bid or
7244 request for proposal protest, in accordance with Section [~~63G-6-801~~] 63G-6a-1603, that might
7245 cost government entities more than \$100,000 to implement until the Transportation
7246 Commission has approved the agreement.

7247 (b) The department may not enter into a settlement agreement that resolves a bid or
7248 request for proposal protest, in accordance with Section [~~63G-6-801~~] 63G-6a-1603, that might
7249 cost government entities more than \$500,000 to implement until the Transportation
7250 Commission and the governor have approved the agreement.

7251 (c) The department may not enter into a settlement agreement that resolves a bid or

7252 request for proposal protest, in accordance with Section [~~63G-6-801~~] 63G-6a-1603, that might
7253 cost government entities more than \$1,000,000 to implement until:

- 7254 (i) the Transportation Commission has approved the agreement;
- 7255 (ii) the governor has approved the agreement; and
- 7256 (iii) the Legislative Management Committee has reviewed the agreement.

7257 Section 213. Section **63H-2-504** is amended to read:

7258 **63H-2-504. Relation to other state statutes.**

7259 (1) The authority is subject to review by the Retirement and Independent Entities
7260 Committee in accordance with Title 63E, Chapter 1, Independent Entities Act.

7261 (2) The authority is subject to:

- 7262 (a) Title 51, Chapter 5, Funds Consolidation Act;
- 7263 (b) Title 51, Chapter 7, State Money Management Act;
- 7264 (c) Title 52, Chapter 4, Open and Public Meetings Act;
- 7265 (d) Title 63A, Utah Administrative Services Code;
- 7266 (e) Title 63G, Chapter 2, Government Records Access and Management Act;
- 7267 (f) Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- 7268 (g) Title 63G, Chapter 4, Administrative Procedures Act;
- 7269 (h) Title 63G, Chapter [~~6~~] 6a, Utah Procurement Code;
- 7270 (i) Title 63J, Chapter 1, Budgetary Procedures Act;
- 7271 (j) Title 63J, Chapter 2, Revenue Procedures and Control Act; and
- 7272 (k) Title 67, Chapter 19, Utah State Personnel Management Act.

7273 Section 214. Section **63H-3-109** is amended to read:

7274 **63H-3-109. Relation to certain acts.**

7275 (1) The authority is exempt from:

- 7276 (a) Title 51, Chapter 5, Funds Consolidation Act;
- 7277 (b) Title 63A, Chapter 1, Department of Administrative Services;
- 7278 (c) Title 63G, Chapter [~~6~~] 6a, Utah Procurement Code;
- 7279 (d) Title 63J, Chapter 1, Budgetary Procedures Act; and
- 7280 (e) Title 67, Chapter 19, Utah State Personnel Management Act.

7281 (2) The authority is subject to audit by:

- 7282 (a) the state auditor pursuant to Title 67, Chapter 3, Auditor; and

7283 (b) the legislative auditor general pursuant to Section 36-12-15.

7284 (3) The authority shall annually report to the Retirement and Independent Entities

7285 Committee created under Section 63E-1-201 concerning the authority's implementation of this

7286 part.

7287 Section 215. Section **63H-4-108** is amended to read:

7288 **63H-4-108. Relation to certain acts.**

7289 (1) The authority is exempt from:

7290 (a) Title 51, Chapter 5, Funds Consolidation Act;

7291 (b) Title 63A, Utah Administrative Services Code;

7292 (c) Title 63G, Chapter [6] 6a, Utah Procurement Code;

7293 (d) Title 63J, Chapter 1, Budgetary Procedures Act; and

7294 (e) Title 67, Chapter 19, Utah State Personnel Management Act.

7295 (2) The authority is subject to audit by the state auditor pursuant to Title 67, Chapter 3,

7296 Auditor, and by the legislative auditor general pursuant to Section 36-12-15.

7297 Section 216. Section **63H-5-108** is amended to read:

7298 **63H-5-108. Relation to certain acts.**

7299 (1) The authority is exempt from:

7300 (a) Title 51, Chapter 5, Funds Consolidation Act;

7301 (b) Title 63A, Chapter 1, Department of Administrative Services;

7302 (c) Title 63G, Chapter [6] 6a, Utah Procurement Code;

7303 (d) Title 63J, Chapter 1, Budgetary Procedures Act; and

7304 (e) Title 67, Chapter 19, Utah State Personnel Management Act.

7305 (2) The authority is subject to audit by the state auditor pursuant to Title 67, Chapter 3,

7306 Auditor, and by the legislative auditor general pursuant to Section 36-12-15.

7307 Section 217. Section **63H-6-103** is amended to read:

7308 **63H-6-103. Utah State Fair Corporation -- Legal status -- Powers.**

7309 (1) There is created an independent public nonprofit corporation known as the "Utah
7310 State Fair Corporation."

7311 (2) The board shall file articles of incorporation for the corporation with the Division
7312 of Corporations and Commercial Code.

7313 (3) The corporation, subject to this chapter, has all powers and authority permitted

7314 nonprofit corporations by law.

7315 (4) The corporation shall, subject to approval of the board:

7316 (a) have general management, supervision, and control over all activities relating to the
7317 state fair and have charge of all state expositions except as otherwise provided by statute;

7318 (b) for public entertainment, displays, and exhibits or similar events:

7319 (i) provide, sponsor, or arrange the events;

7320 (ii) publicize and promote the events; and

7321 (iii) secure funds to cover the cost of the exhibits from:

7322 (A) private contributions;

7323 (B) public appropriations;

7324 (C) admission charges; and

7325 (D) other lawful means;

7326 (c) establish the time, place, and purpose of state expositions; and

7327 (d) acquire and designate exposition sites.

7328 (5) (a) The corporation shall:

7329 (i) use generally accepted accounting principals in accounting for its assets, liabilities,
7330 and operations;

7331 (ii) seek corporate sponsorships for the state fair park and for individual buildings or
7332 facilities within the fair park;

7333 (iii) work with county and municipal governments, the Salt Lake Convention and
7334 Visitor's Bureau, the Utah Travel Council, and other entities to develop and promote
7335 expositions and the use of the state fair park;

7336 (iv) develop and maintain a marketing program to promote expositions and the use of
7337 the state fair park;

7338 (v) in cooperation with the Division of Facilities Construction and Management,
7339 maintain the physical appearance and structural integrity of the state fair park and the buildings
7340 located at the state fair park;

7341 (vi) hold an annual exhibition that:

7342 (A) is called the state fair or a similar name;

7343 (B) includes expositions of livestock, poultry, agricultural, domestic science,
7344 horticultural, floricultural, mineral, and industrial products, manufactured articles, and

7345 domestic animals that, in the corporation's opinion will best stimulate agricultural, industrial,
7346 artistic, and educational pursuits and the sharing of talents among the people of Utah;

7347 (C) includes the award of premiums for the best specimens of the exhibited articles and
7348 animals;

7349 (D) permits competition by livestock exhibited by citizens of other states and territories
7350 of the United States; and

7351 (E) is arranged according to plans approved by the board;

7352 (vii) fix the conditions of entry to the exposition described in Subsection (5)(a)(vi); and

7353 (viii) publish a list of premiums that will be awarded at the exhibition described in
7354 Subsection (5)(a)(vi) for the best specimens of exhibited articles and animals.

7355 (b) In addition to the state fair to be held in accordance with Subsection (5)(a)(vi), the
7356 corporation may hold other exhibitions of livestock, poultry, agricultural, domestic science,
7357 horticultural, floricultural, mineral, and industrial products, manufactured articles, and
7358 domestic animals that, in its opinion, will best stimulate agricultural, industrial, artistic, and
7359 educational pursuits and the sharing of talents among the people of Utah.

7360 (6) The corporation may:

7361 (a) employ advisers, consultants, and agents, including financial experts and
7362 independent legal counsel, and fix their compensation;

7363 (b) procure insurance against any loss in connection with its property and other assets,
7364 including mortgage loans;

7365 (c) receive and accept aid or contributions of money, property, labor, or other things of
7366 value from any source, including any grants or appropriations from any department, agency, or
7367 instrumentality of the United States or Utah;

7368 (d) hold, use, loan, grant, and apply that aid and those contributions to carry out the
7369 purposes of the corporation, subject to the conditions, if any, upon which the aid and
7370 contributions were made;

7371 (e) enter into management agreements with any person or entity for the performance of
7372 its functions or powers;

7373 (f) establish whatever accounts and procedures as necessary to budget, receive, and
7374 disburse, account for, and audit all funds received, appropriated, or generated;

7375 (g) enter into agreements for the leasing of any of the facilities at the state fair park, if

7376 approved by the board; and

7377 (h) sponsor events as approved by the board.

7378 (7) (a) Except as provided in Subsection (7)(c), as an independent agency of Utah, the
7379 corporation is exempt from:

7380 (i) Title 51, Chapter 5, Funds Consolidation Act;

7381 (ii) Title 51, Chapter 7, State Money Management Act;

7382 (iii) Title 63A, Utah Administrative Services Code;

7383 (iv) Title 63G, Chapter [6] 6a, Utah Procurement Code;

7384 (v) Title 63J, Chapter 1, Budgetary Procedures Act; and

7385 (vi) Title 67, Chapter 19, Utah State Personnel Management Act.

7386 (b) The board shall adopt policies parallel to and consistent with:

7387 (i) Title 51, Chapter 5, Funds Consolidation Act;

7388 (ii) Title 51, Chapter 7, State Money Management Act;

7389 (iii) Title 63A, Utah Administrative Services Code;

7390 (iv) Title 63G, Chapter [6] 6a, Utah Procurement Code; and

7391 (v) Title 63J, Chapter 1, Budgetary Procedures Act.

7392 (c) The corporation shall comply with the legislative approval requirements for new
7393 facilities established in Subsection 63A-5-104(3).

7394 Section 218. Section **63I-1-263** is amended to read:

7395 **63I-1-263. Repeal dates, Titles 63A to 63M.**

7396 (1) Section 63A-4-204, authorizing the Risk Management Fund to provide coverage to
7397 any public school district which chooses to participate, is repealed July 1, 2016.

7398 (2) Section 63A-5-603, State Facility Energy Efficiency Fund, is repealed July 1, 2016.

7399 (3) Section 63C-8-106, rural residency training program, is repealed July 1, 2015.

7400 (4) Title 63C, Chapter 13, Prison Relocation and Development Authority Act, is
7401 repealed July 1, 2014.

7402 (5) Subsection [~~63G-6-502(5)(b)(ii)~~] 63G-6a-1402(7) authorizing certain transportation
7403 agencies to award a contract for a design-build transportation project in certain circumstances,
7404 is repealed July 1, 2015.

7405 (6) Title 63H, Chapter 4, Heber Valley Historic Railroad Authority, is repealed July 1,
7406 2020.

- 7407 (7) The Resource Development Coordinating Committee, created in Section
7408 63J-4-501, is repealed July 1, 2015.
- 7409 (8) Title 63M, Chapter 1, Part 4, Enterprise Zone Act, is repealed July 1, 2018.
- 7410 (9) (a) Title 63M, Chapter 1, Part 11, Recycling Market Development Zone Act, is
7411 repealed January 1, 2021.
- 7412 (b) Subject to Subsection (9)(c), Sections 59-7-610 and 59-10-1007 regarding tax
7413 credits for certain persons in recycling market development zones, are repealed for taxable
7414 years beginning on or after January 1, 2012.
- 7415 (c) A person may not claim a tax credit under Section 59-7-610 or 59-10-1007:
- 7416 (i) for the purchase price of machinery or equipment described in Section 59-7-610 or
7417 59-10-1007, if the machinery or equipment is purchased on or after January 1, 2012; or
7418 (ii) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), if
7419 the expenditure is made on or after January 1, 2012.
- 7420 (d) Notwithstanding Subsections (9)(b) and (c), a person may carry forward a tax credit
7421 in accordance with Section 59-7-610 or 59-10-1007 if:
- 7422 (i) the person is entitled to a tax credit under Section 59-7-610 or 59-10-1007; and
7423 (ii) (A) for the purchase price of machinery or equipment described in Section
7424 59-7-610 or 59-10-1007, the machinery or equipment is purchased on or before December 31,
7425 2011; or
7426 (B) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), the
7427 expenditure is made on or before December 31, 2011.
- 7428 (10) The Crime Victim Reparations and Assistance Board, created in Section
7429 63M-7-504, is repealed July 1, 2017.
- 7430 (11) Title 63M, Chapter 8, Utah Commission for Women and Families Act, is repealed
7431 July 1, 2011.
- 7432 (12) Title 63M, Chapter 9, Families, Agencies, and Communities Together for
7433 Children and Youth At Risk Act, is repealed July 1, 2016.
- 7434 (13) Title 63M, Chapter 11, Utah Commission on Aging, is repealed July 1, 2012.
7435 Section 219. Section **63M-1-2602** is amended to read:
7436 **63M-1-2602. Definitions.**
7437 As used in this part:

- 7438 (1) "Affected department" means, as applicable, the Board of Education or the
7439 Department of Technology Services.
- 7440 (2) "Board" means the Board of Business and Economic Development created under
7441 Section 63M-1-301.
- 7442 (3) "Board of Education" means the Utah State Board of Education.
- 7443 (4) "Chief procurement officer" means the chief procurement officer appointed under
7444 Section [~~63G-6-203~~] 63G-6a-302.
- 7445 (5) "Committee" means the proposal review committee created under Section
7446 63M-1-2604.
- 7447 (6) "Day" means a calendar day.
- 7448 (7) "Director" is as defined in Section 63M-1-102.
- 7449 (8) "Executive Appropriations Committee" means the Legislature's Executive
7450 Appropriations Committee.
- 7451 (9) "Information technology" is as defined in Section 63F-1-102.
- 7452 (10) "Office" means the Governor's Office of Economic Development created under
7453 Section 63M-1-201.
- 7454 (11) "Private entity" means a person submitting a proposal under this part for the
7455 purpose of entering into a project.
- 7456 (12) "Project" means the subject of a proposal or an agreement for the procurement or
7457 disposal of:
- 7458 (a) information technology or telecommunications products or services; or
7459 (b) supplies or services for or on behalf of the Department of Technology Services or
7460 the Board of Education.
- 7461 (13) "Proposal" means an unsolicited offer by a private entity to undertake a project,
7462 including an initial proposal under Section 63M-1-2605 and a detailed proposal under Section
7463 63M-1-2608.
- 7464 (14) "Services" is as defined in Section [~~63G-6-103~~] 63G-6a-103.
- 7465 (15) "Supplies" is as defined in Section [~~63G-6-103~~] 63G-6a-103.
- 7466 (16) "Telecommunications" is as defined in Section 63F-1-102.
- 7467 Section 220. Section **63M-1-2603** is amended to read:
- 7468 **63M-1-2603. Government Procurement Private Proposal Program -- Proposals --**

7469 **Rulemaking.**

7470 (1) There is created within the office the Government Procurement Private Proposal
7471 Program.

7472 (2) In accordance with this part, the board may:

7473 (a) accept a proposal for a project;

7474 (b) solicit comments, suggestions, and modifications to a project in accordance with
7475 Section [~~63G-6-408.5~~] 63G-6a-711; and

7476 (c) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
7477 Rulemaking Act, establishing requirements, including time limits for any action required by the
7478 affected department, a directly affected state entity or school district, or the Governor's Office
7479 of Planning and Budget, for the procurement of a project to the extent not governed by Title
7480 63G, Chapter [6] 6a, Utah Procurement Code.

7481 Section 221. Section **63M-1-2605** is amended to read:

7482 **63M-1-2605. Initial proposal -- Requirements.**

7483 (1) In accordance with this part, a private entity may at any time submit to the
7484 committee an initial proposal for a project.

7485 (2) An initial proposal shall include:

7486 (a) a conceptual description of the project;

7487 (b) a description of the economic benefit of the project to the state and the affected
7488 department;

7489 (c) information concerning the products, services, and supplies currently being
7490 provided by the state, that are similar to the project;

7491 (d) an estimate of the following costs associated with the project:

7492 (i) design;

7493 (ii) implementation;

7494 (iii) operation and maintenance; and

7495 (iv) any other related project cost; and

7496 (e) the name and address of a person who may be contacted for further information
7497 concerning the initial proposal.

7498 (3) A private entity submitting an initial proposal under this section shall pay the fee
7499 required by Section 63M-1-2612 when the initial proposal is submitted.

7500 (4) An initial proposal submitted under this section is a protected record under Title
7501 63G, Chapter 2, Government Records Access and Management Act, until the chief
7502 procurement officer initiates a procurement process in accordance with Section [~~63G-6-408.5~~]
7503 63G-6a-711.

7504 (5) The board shall make rules in accordance with Title 63G, Chapter 3, Utah
7505 Administrative Rulemaking Act, detailing the portions of an initial proposal that remain
7506 protected after the chief procurement officer initiates a procurement process.

7507 Section 222. Section **63M-1-2606** is amended to read:

7508 **63M-1-2606. Review of initial proposal -- Affected department review.**

7509 (1) The committee shall review and evaluate an initial proposal submitted in
7510 accordance with:

7511 (a) this part; and

7512 (b) any rule established by the board under Section 63M-1-2603.

7513 (2) If the committee, in its sole discretion, determines to proceed with the project, the
7514 committee shall submit a copy of the initial proposal to:

7515 (a) the affected department; and

7516 (b) the Governor's Office of Planning and Budget.

7517 (3) (a) An affected department, directly affected state entity, and school district
7518 receiving a copy of the initial proposal under Subsection (2) or (4) shall review the initial
7519 proposal and provide the committee with any comment, suggestion, or modification to the
7520 project.

7521 (b) After receiving an initial proposal, the Governor's Office of Planning and Budget
7522 shall prepare an economic feasibility report containing:

7523 (i) information concerning the economic feasibility and effectiveness of the project
7524 based upon competent evidence;

7525 (ii) a dollar amount representing the total estimated fiscal impact of the project to the
7526 affected department and the state; and

7527 (iii) any other matter the committee requests or is required by the board by rule.

7528 (4) In reviewing an initial proposal, the affected department shall share the initial
7529 proposal with any other state entity or school district that will be directly affected if the
7530 proposal is ultimately adopted, if the confidentiality of the initial proposal is maintained.

7531 (5) If the committee determines to proceed with the project, the committee shall submit
7532 a copy of the initial proposal, including any comment, suggestion, or modification to the initial
7533 proposal, to:

7534 (a) the chief procurement officer in accordance with Section [~~63G-6-408.5~~]

7535 63G-6a-711; and

7536 (b) the Executive Appropriations Committee, for informational purposes.

7537 (6) Before taking any action under Subsection (5), the committee shall consider:

7538 (a) any comment, suggestion, or modification to the initial proposal submitted in
7539 accordance with Subsection (3);

7540 (b) the extent to which the project is practical, efficient, and economically beneficial to
7541 the state and the affected department;

7542 (c) the economic feasibility report prepared by the Governor's Office of Planning and
7543 Budget; and

7544 (d) any other reasonable factor identified by the committee or required by the board by
7545 rule.

7546 Section 223. Section **63M-1-2607** is amended to read:

7547 **63M-1-2607. Acceptance of initial proposal -- Obtaining detailed proposals.**

7548 (1) If an initial proposal is accepted under Section 63M-1-2606, the chief procurement
7549 officer shall:

7550 (a) take action under Section [~~63G-6-408.5~~] 63G-6a-711 to initiate a procurement
7551 process to obtain one or more detailed proposals using information from portions of the initial
7552 proposal that are not protected records under Title 63G, Chapter 2, Government Records [~~and~~]
7553 Access and Management Act;

7554 (b) consult with the committee during the procurement process; and

7555 (c) submit all detailed proposals that meet the guidelines established under Subsection
7556 63M-1-2608(1), including the detailed proposal submitted by the private entity that submitted
7557 the initial proposal for the project, to:

7558 (i) the committee; and

7559 (ii) the Governor's Office of Planning and Budget.

7560 (2) The office is considered the purchasing agency for a procurement process initiated
7561 under this part.

7562 Section 224. Section **63M-1-2608** is amended to read:

7563 **63M-1-2608. Detailed proposal -- Requirements -- Cooperation of affected**
7564 **department.**

7565 (1) A detailed proposal submitted in response to a procurement process initiated under
7566 Section 63M-1-2607 shall include:

7567 (a) a conceptual description of the project, including the scope of the work;

7568 (b) a description of the economic benefit of the project to the state and the affected
7569 department;

7570 (c) an estimate of the design, implementation, operation, maintenance, or other costs
7571 associated with the project;

7572 (d) information concerning the information technology or telecommunication product
7573 and service or other supply or service currently provided by the state that is similar to the
7574 project being proposed, if applicable;

7575 (e) a statement setting forth the private entity's general plan for financing the project,
7576 including any appropriation by the Legislature or other public money and, if applicable, the
7577 sources of the private entity's funds and identification of any dedicated revenue source or
7578 proposed debt or equity investment on behalf of the private entity;

7579 (f) the name and address of the person who may be contacted for further information
7580 concerning the detailed proposal;

7581 (g) a statement describing the private entity's experience with other similar projects and
7582 a description of why the private entity is best qualified for the project; and

7583 (h) any other information:

7584 (i) reasonably requested by the affected department or the committee, or required by
7585 the board by rule; or

7586 (ii) that the private entity considers necessary or appropriate to complete or describe
7587 the detailed proposal.

7588 (2) To assist each private entity in preparing a detailed proposal:

7589 (a) the affected department shall provide each private entity with access to all
7590 information, records, documents, and reports related to the proposal and the project that are
7591 designated public records under Title 63G, Chapter 2, Government Records Access and
7592 Management Act; and

7593 (b) the affected department and the committee shall cooperate with each private entity
7594 to assist the private entity in the development of a detailed proposal that is:

7595 (i) practical;

7596 (ii) efficient; and

7597 (iii) economically beneficial to the state and the affected department.

7598 (3) The committee or any private entity may choose to terminate the development of
7599 the detailed proposal at any time before the submission of the detailed proposal to the chief
7600 procurement officer under Section ~~[63G-6-408.5]~~ 63G-6a-711.

7601 Section 225. Section **63M-1-2610** is amended to read:

7602 **63M-1-2610. Project agreement.**

7603 (1) If the board accepts the detailed proposal, the director shall:

7604 (a) prepare a project agreement in consultation with the affected department and any
7605 other state entity directly impacted by the detailed proposal; and

7606 (b) enter into the project agreement with the private entity.

7607 (2) A project agreement shall be signed by the director, the affected department, a
7608 directly affected state entity or school district, and the private entity.

7609 (3) A project agreement shall include provisions concerning:

7610 (a) the scope of the project;

7611 (b) the pricing method of the project;

7612 (c) the director's or the state's ability to terminate for convenience or for default, and
7613 any termination compensation to be paid to the private entity, if applicable;

7614 (d) the ability to monitor performance under the project agreement;

7615 (e) the appropriate limits of liability;

7616 (f) the appropriate transition of services, if applicable;

7617 (g) the exceptions from applicable rules and procedures for the implementation and
7618 administration of the project by the affected department, if any;

7619 (h) the clauses and remedies applicable to state contracts under Title 63G, Chapter ~~[6,~~
7620 ~~Part 6, Contract Clauses]~~ 6a, Part 12, Contracts and Change Orders; and

7621 (i) any other matter reasonably requested by the committee or required by the board by
7622 rule.

7623 (4) A copy of the signed project agreement shall be submitted to:

7624 (a) the affected department; and

7625 (b) the Executive Appropriations Committee.

7626 (5) A project agreement is considered a contract under Title 63G, Chapter [6] 6a, Utah
7627 Procurement Code.

7628 (6) The affected department shall implement and administer the project agreement in
7629 accordance with rules made under Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
7630 except as modified by the project agreement under Subsection (3)(g).

7631 Section 226. Section **64-13a-13** is amended to read:

7632 **64-13a-13. Purchases of material -- Exemption.**

7633 (1) The Division of Correctional Industries is exempt from the provisions of Title 63G,
7634 Chapter [6] 6a, Utah Procurement Code, in respect to goods or services purchased by or sold to
7635 the department.

7636 (2) The purchase of raw materials for use by the division in manufacturing or
7637 processing products for resale is exempt from the powers and duties of the state purchasing
7638 agent.

7639 Section 227. Section **67-16-4** is amended to read:

7640 **67-16-4. Improperly disclosing or using private, controlled, or protected**
7641 **information -- Using position to secure privileges or exemptions -- Accepting employment**
7642 **which would impair independence of judgment or ethical performance -- Exceptions.**

7643 (1) Except as provided in Subsection (3), it is an offense for a public officer, public
7644 employee, or legislator, under circumstances not amounting to a violation of Section
7645 [~~63G-6-1001~~] 63G-6a-2304 or 76-8-105, to:

7646 (a) accept employment or engage in any business or professional activity that he might
7647 reasonably expect would require or induce him to improperly disclose controlled information
7648 that he has gained by reason of his official position;

7649 (b) disclose or improperly use controlled, private, or protected information acquired by
7650 reason of his official position or in the course of official duties in order to further substantially
7651 the officer's or employee's personal economic interest or to secure special privileges or
7652 exemptions for himself or others;

7653 (c) use or attempt to use his official position to:

7654 (i) further substantially the officer's or employee's personal economic interest; or

7655 (ii) secure special privileges or exemptions for himself or others;
7656 (d) accept other employment that he might expect would impair his independence of
7657 judgment in the performance of his public duties; or

7658 (e) accept other employment that he might expect would interfere with the ethical
7659 performance of his public duties.

7660 (2) (a) Subsection (1) does not apply to the provision of education-related services to
7661 public school students by public education employees acting outside their regular employment.

7662 (b) The conduct referred to in Subsection (2)(a) is subject to Section 53A-1-402.5.

7663 (3) A county legislative body member who does not participate in the process of
7664 selecting a mental health or substance abuse service provider does not commit an offense under
7665 Subsection (1)(a) or (b) by:

7666 (a) serving also as a member of the governing board of the provider of mental health or
7667 substance abuse services under contract with the county; or

7668 (b) discharging, in good faith, the duties and responsibilities of each position.

7669 Section 228. Section **67-16-5** is amended to read:

7670 **67-16-5. Accepting gift, compensation, or loan -- When prohibited.**

7671 (1) As used in this section, "economic benefit tantamount to a gift" includes:

7672 (a) a loan at an interest rate that is substantially lower than the commercial rate then
7673 currently prevalent for similar loans; and

7674 (b) compensation received for private services rendered at a rate substantially
7675 exceeding the fair market value of the services.

7676 (2) It is an offense for a public officer or public employee, under circumstances not
7677 amounting to a violation of Section [~~63G-6-1001~~] 63G-6a-2304 or 76-8-105, to knowingly
7678 receive, accept, take, seek, or solicit, directly or indirectly for himself or another a gift of
7679 substantial value or a substantial economic benefit tantamount to a gift:

7680 (a) that would tend improperly to influence a reasonable person in the person's position
7681 to depart from the faithful and impartial discharge of the person's public duties;

7682 (b) that the public officer or public employee knows or that a reasonable person in that
7683 position should know under the circumstances is primarily for the purpose of rewarding the
7684 public officer or public employee for official action taken; or

7685 (c) if the public officer or public employee recently has been, is now, or in the near

7686 future may be involved in any governmental action directly affecting the donor or lender,
7687 unless a disclosure of the gift, compensation, or loan and other relevant information has been
7688 made in the manner provided in Section 67-16-6.

7689 (3) Subsection (2) does not apply to:

- 7690 (a) an occasional nonpecuniary gift, having a value of not in excess of \$50;
- 7691 (b) an award publicly presented in recognition of public services;
- 7692 (c) any bona fide loan made in the ordinary course of business; or
- 7693 (d) a political campaign contribution.

7694 Section 229. Section **67-16-5.3** is amended to read:

7695 **67-16-5.3. Requiring donation, payment, or service to government agency in**
7696 **exchange for approval -- When prohibited.**

7697 (1) It is an offense for a public officer, public employee, or legislator, under
7698 circumstances not amounting to a violation of Section [~~63G-6-1001~~] 63G-6a-2304 or 76-8-105,
7699 to demand from any person as a condition of granting any application or request for a permit,
7700 approval, or other authorization, that the person donate personal property, money, or services to
7701 any agency.

7702 (2) (a) Subsection (1) does not apply to any donation of property, funds, or services to
7703 an agency that is:

- 7704 (i) expressly required by statute, ordinance, or agency rule;
- 7705 (ii) mutually agreed to between the applicant and the entity issuing the permit,
7706 approval, or other authorization;
- 7707 (iii) made voluntarily by the applicant; or
- 7708 (iv) a condition of a consent decree, settlement agreement, or other binding instrument
7709 entered into to resolve, in whole or in part, an actual or threatened agency enforcement action.

7710 (b) If a person donates property, funds, or services to an agency, the agency shall, as
7711 part of the permit or other written authorization:

- 7712 (i) identify that a donation has been made;
- 7713 (ii) describe the donation;
- 7714 (iii) certify, in writing, that the donation was voluntary; and
- 7715 (iv) place that information in its files.

7716 Section 230. Section **67-16-6** is amended to read:

7717 **67-16-6. Receiving compensation for assistance in transaction involving an**
7718 **agency -- Filing sworn statement.**

7719 (1) It is an offense for a public officer or public employee, under circumstances not
7720 amounting to a violation of Section [~~63G-6-1001~~] 63G-6a-2304 or 76-8-105, to receive or
7721 agree to receive compensation for assisting any person or business entity in any transaction
7722 involving an agency unless the public officer or public employee files a sworn, written
7723 statement containing the information required by Subsection (2) with:

- 7724 (a) the head of the officer or employee's own agency;
7725 (b) the agency head of the agency with which the transaction is being conducted; and
7726 (c) the state attorney general.

7727 (2) The statement shall contain:

- 7728 (a) the name and address of the public officer or public employee involved;
7729 (b) the name of the public officer's or public employee's agency;
7730 (c) the name and address of the person or business entity being or to be assisted; and
7731 (d) a brief description of:
7732 (i) the transaction as to which service is rendered or is to be rendered; and
7733 (ii) the nature of the service performed or to be performed.

7734 (3) The statement required to be filed under Subsection (1) shall be filed within 10
7735 days after the date of any agreement between the public officer or public employee and the
7736 person or business entity being assisted or the receipt of compensation, whichever is earlier.

7737 (4) The statement is public information and shall be available for examination by the
7738 public.

7739 Section 231. Section **72-6-107** is amended to read:

7740 **72-6-107. Construction or improvement of highway -- Contracts -- Retainage --**
7741 **Certain indemnification provisions forbidden.**

7742 (1) As used in this section, "design professional" means:

- 7743 (a) an architect, licensed under Title 58, Chapter 3a, Architects Licensing Act;
7744 (b) a landscape architect, licensed under Title 58, Chapter 53, Landscape Architects
7745 Licensing Act; and

7746 (c) a professional engineer or professional land surveyor, licensed under Title 58,
7747 Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

7748 (2) (a) The department shall make plans, specifications, and estimates prior to the
7749 construction or improvement of any state highway.

7750 (b) Except as provided in Section [~~63G-6-502~~] 63G-6a-1402 and except for
7751 construction or improvements performed with state prison labor, a construction or
7752 improvement project with an estimated cost exceeding the bid limit as defined in Section
7753 72-6-109 for labor and materials shall be performed under contract awarded to the lowest
7754 responsible bidder.

7755 (c) (i) The department:

7756 (A) shall publish an advertisement for bids in accordance with Section 45-1-101, for a
7757 period of two weeks ending no more than 10 days before bids are opened; and

7758 (B) may publish an advertisement for bids in a newspaper of general circulation in the
7759 county in which the work is to be performed.

7760 (ii) If the department publishes an advertisement for bids in a newspaper under
7761 Subsection (2)(c)(i)(B), the department shall publish the advertisement at least once a week for
7762 two consecutive weeks, with the last publication at least 10 days before bids are opened.

7763 (d) The department shall receive sealed bids and open the bids at the time and place
7764 designated in the advertisement. The department may then award the contract but may reject
7765 any and all bids.

7766 (e) If the department's estimates are substantially lower than any responsible bid
7767 received, the department may perform any work by force account.

7768 (3) If any payment on a contract with a private contractor for construction or
7769 improvement of a state highway is retained or withheld, the payment shall be retained or
7770 withheld and released as provided in Section 13-8-5.

7771 (4) If the department performs a construction or improvement project by force account,
7772 the department shall:

7773 (a) provide an accounting of the costs and expenditures of the improvement including
7774 material and labor;

7775 (b) disclose the costs and expenditures to any person upon request and allow the person
7776 to make a copy and pay for the actual cost of the copy; and

7777 (c) perform the work using the same specifications and standards that would apply to a
7778 private contractor.

7779 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
7780 department shall establish procedures for:

7781 (a) hearing evidence that a region within the department violated this section; and

7782 (b) administering sanctions against the region if the region is found in violation.

7783 (6) (a) Beginning May 12, 2009, a contract, including an amendment to an existing
7784 contract, entered into under authority of this chapter may not require that a design professional
7785 indemnify another from liability claims that arise out of the design professional's services,
7786 unless the liability claim arises from the design professional's negligent act, wrongful act, error
7787 or omission, or other liability imposed by law.

7788 (b) Subsection (6)(a) may not be waived by contract.

7789 (c) Notwithstanding Subsections (6)(a) and (b), a design professional may be required
7790 to indemnify a person for whom the design professional has direct or indirect control or
7791 responsibility.

7792 Section 232. Section **72-6-107.5** is amended to read:

7793 **72-6-107.5. Construction of improvements of highway -- Contracts -- Health**
7794 **insurance coverage.**

7795 (1) For purposes of this section:

7796 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
7797 34A-2-104 who:

7798 (i) works at least 30 hours per calendar week; and

7799 (ii) meets employer eligibility waiting requirements for health care insurance which
7800 may not exceed the first day of the calendar month following 90 days from the date of hire.

7801 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

7802 (c) "Qualified health insurance coverage" is as defined in Section 26-40-115.

7803 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

7804 (2) (a) Except as provided in Subsection (3), this section applies to contracts entered
7805 into by the department on or after July 1, 2009, for construction or design of highways and to a
7806 prime contractor or to a subcontractor in accordance with Subsection (2)(b).

7807 (b) (i) A prime contractor is subject to this section if the prime contract is in the
7808 amount of \$1,500,000 or greater.

7809 (ii) A subcontractor is subject to this section if a subcontract is in the amount of

7810 \$750,000 or greater.

7811 (3) This section does not apply if:

7812 (a) the application of this section jeopardizes the receipt of federal funds;

7813 (b) the contract is a sole source contract; or

7814 (c) the contract is an emergency procurement.

7815 (4) (a) This section does not apply to a change order as defined in Section [~~63G-6-103~~]

7816 63G-6a-103, or a modification to a contract, when the contract does not meet the initial
7817 threshold required by Subsection (2).

7818 (b) A person who intentionally uses change orders or contract modifications to
7819 circumvent the requirements of Subsection (2) is guilty of an infraction.

7820 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the department that
7821 the contractor has and will maintain an offer of qualified health insurance coverage for the
7822 contractor's employees and the employees' dependents during the duration of the contract.

7823 (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall
7824 demonstrate to the department that the subcontractor has and will maintain an offer of qualified
7825 health insurance coverage for the subcontractor's employees and the employees' dependents
7826 during the duration of the contract.

7827 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
7828 the duration of the contract is subject to penalties in accordance with administrative rules
7829 adopted by the department under Subsection (6).

7830 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
7831 requirements of Subsection (5)(b).

7832 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
7833 the duration of the contract is subject to penalties in accordance with administrative rules
7834 adopted by the department under Subsection (6).

7835 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
7836 requirements of Subsection (5)(a).

7837 (6) The department shall adopt administrative rules:

7838 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

7839 (b) in coordination with:

7840 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

- 7841 (ii) the Department of Natural Resources in accordance with Section 79-2-404;
- 7842 (iii) the State Building Board in accordance with Section 63A-5-205;
- 7843 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;
- 7844 (v) a public transit district in accordance with Section 17B-2a-818.5; and
- 7845 (vi) the Legislature's Administrative Rules Review Committee; and
- 7846 (c) which establish:
 - 7847 (i) the requirements and procedures a contractor must follow to demonstrate to the
 - 7848 department compliance with this section which shall include:
 - 7849 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or
 - 7850 (b) more than twice in any 12-month period; and
 - 7851 (B) that the actuarially equivalent determination required for qualified health insurance
 - 7852 coverage in Subsection (1) is met by the contractor if the contractor provides the department or
 - 7853 division with a written statement of actuarial equivalency from either:
 - 7854 (I) the Utah Insurance Department;
 - 7855 (II) an actuary selected by the contractor or the contractor's insurer; or
 - 7856 (III) an underwriter who is responsible for developing the employer group's premium
 - 7857 rates;
 - 7858 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
 - 7859 violates the provisions of this section, which may include:
 - 7860 (A) a three-month suspension of the contractor or subcontractor from entering into
 - 7861 future contracts with the state upon the first violation;
 - 7862 (B) a six-month suspension of the contractor or subcontractor from entering into future
 - 7863 contracts with the state upon the second violation;
 - 7864 (C) an action for debarment of the contractor or subcontractor in accordance with
 - 7865 Section [~~63G-6-804~~] 63G-6a-904 upon the third or subsequent violation; and
 - 7866 (D) monetary penalties which may not exceed 50% of the amount necessary to
 - 7867 purchase qualified health insurance coverage for an employee and a dependent of the employee
 - 7868 of the contractor or subcontractor who was not offered qualified health insurance coverage
 - 7869 during the duration of the contract; and
 - 7870 (iii) a website on which the department shall post the benchmark for the qualified
 - 7871 health insurance coverage identified in Subsection (1)(c).

7872 (7) (a) (i) In addition to the penalties imposed under Subsection (6), a contractor or
7873 subcontractor who intentionally violates the provisions of this section shall be liable to the
7874 employee for health care costs that would have been covered by qualified health insurance
7875 coverage.

7876 (ii) An employer has an affirmative defense to a cause of action under Subsection
7877 (7)(a)(i) if:

7878 (A) the employer relied in good faith on a written statement of actuarial equivalency
7879 provided by:

7880 (I) an actuary; or

7881 (II) an underwriter who is responsible for developing the employer group's premium
7882 rates; or

7883 (B) the department determines that compliance with this section is not required under
7884 the provisions of Subsection (3) or (4).

7885 (b) An employee has a private right of action only against the employee's employer to
7886 enforce the provisions of this Subsection (7).

7887 (8) Any penalties imposed and collected under this section shall be deposited into the
7888 Medicaid Restricted Account created in Section 26-18-402.

7889 (9) The failure of a contractor or subcontractor to provide qualified health insurance
7890 coverage as required by this section:

7891 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
7892 or contractor under Section [~~63G-6-804~~] 63G-6a-1603 or any other provision in Title 63G,
7893 Chapter [~~6, Part 8, Legal and Contractual Remedies~~] 6a, Utah Procurement Code; and

7894 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
7895 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
7896 or construction.

7897 Section 233. Section **72-6-108** is amended to read:

7898 **72-6-108. Class B and C roads -- Improvement projects -- Contracts -- Retainage.**

7899 (1) A county executive for class B roads and the municipal executive for class C roads
7900 shall cause plans, specifications, and estimates to be made prior to the construction of any
7901 improvement project, as defined in Section 72-6-109, on a class B or C road if the estimated
7902 cost for any one project exceeds the bid limit as defined in Section 72-6-109 for labor,

7903 equipment, and materials.

7904 (2) (a) All projects in excess of the bid limit shall be performed under contract to be let
7905 to the lowest responsible bidder.

7906 (b) If the estimated cost of the improvement project exceeds the bid limit for labor,
7907 equipment, and materials, the project may not be divided to permit the construction in parts,
7908 unless each part is done by contract.

7909 (3) (a) The advertisement on bids shall be published:

7910 (i) in a newspaper of general circulation in the county in which the work is to be
7911 performed at least once a week for three consecutive weeks; and

7912 (ii) in accordance with Section 45-1-101 for three weeks.

7913 (b) If there is no newspaper of general circulation as described in Subsection (3)(a)(i),
7914 the notice shall be posted for at least 20 days in at least five public places in the county.

7915 (4) The county or municipal executive or their designee shall receive sealed bids and
7916 open the bids at the time and place designated in the advertisement. The county or municipal
7917 executive or their designee may then award the contract but may reject any and all bids.

7918 (5) The person, firm, or corporation that is awarded a contract under this section is
7919 subject to the provisions of Title 63G, Chapter [6] 6a, Utah Procurement Code.

7920 (6) If any payment on a contract with a private contractor for construction or
7921 improvement of a class B or C road is retained or withheld, the payment shall be retained or
7922 withheld and released as provided in Section 13-8-5.

7923 Section 234. Section **72-6-205** is amended to read:

7924 **72-6-205. Solicited and unsolicited tollway development agreement proposals.**

7925 (1) In accordance with this section, the department may:

7926 (a) accept unsolicited tollway development agreement proposals; or

7927 (b) solicit tollway development agreement proposals for a proposed project.

7928 (2) The department shall solicit tollway development agreement proposals in
7929 accordance with Section [~~63G-6-503~~] 63G-6a-1403.

7930 (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
7931 department and the commission shall establish rules and procedures for accepting unsolicited
7932 proposals that require the:

7933 (a) private entity that submits the unsolicited proposal to comply with the minimum

7934 requirements for tollway development agreement proposals under Section 72-6-204;
7935 (b) department to issue a request for competing proposals and qualifications that
7936 includes:

7937 (i) a description of the proposed tollway development facility and the terms and
7938 conditions of a tollway development agreement;

7939 (ii) submittal requirements;

7940 (iii) the criteria to be used to evaluate the proposals;

7941 (iv) the relative weight given to the criteria; and

7942 (v) the deadline by which competing proposals must be received; and

7943 (c) department to publish a notice advertising the request for competing proposals and
7944 providing information regarding how to obtain a copy of the request.

7945 (4) (a) The department may establish a fee in accordance with Section 63J-1-504 for
7946 reviewing unsolicited proposals and competing proposals submitted under this section.

7947 (b) The department may waive the fee under Subsection (4)(a) if it determines that it is
7948 reasonable and in the best interest of the state.

7949 Section 235. Section **72-7-504** is amended to read:

7950 **72-7-504. Advertising prohibited near interstate or primary system -- Exceptions**
7951 **-- Logo advertising -- Department rules.**

7952 (1) Outdoor advertising that is capable of being read or comprehended from any place
7953 on the main-traveled way of an interstate or primary system may not be erected or maintained,
7954 except:

7955 (a) directional and other official signs and notices authorized or required by law,
7956 including signs and notices pertaining to natural wonders and scenic and historic attractions,
7957 informational or directional signs regarding utility service, emergency telephone signs, buried
7958 or underground utility markers, and above ground utility closure signs;

7959 (b) signs advertising the sale or lease of property upon which they are located;

7960 (c) signs advertising activities conducted on the property where they are located,
7961 including signs on the premises of a public assembly facility as provided in Section 72-7-504.5;

7962 (d) signs located in a commercial or industrial zone;

7963 (e) signs located in unzoned industrial or commercial areas as determined from actual
7964 land uses; and

7965 (f) logo advertising under Subsection (2).

7966 (2) (a) The department may itself or by contract erect, administer, and maintain
7967 informational signs on the main-traveled way of an interstate or primary system for the display
7968 of logo advertising and information of interest to the traveling public if:

7969 (i) the department complies with Title 63G, Chapter [6] 6a, Utah Procurement Code, in
7970 the lease or other contract agreement with a private party for the sign or sign space; and

7971 (ii) the private party for the lease of the sign or sign space pays an amount set by the
7972 department to be paid to the department or the party under contract with the department under
7973 this Subsection (2).

7974 (b) The amount shall be sufficient to cover the costs of erecting, administering, and
7975 maintaining the signs or sign spaces.

7976 (c) The department may consult the Governor's Office of Economic Development in
7977 carrying out this Subsection (2).

7978 (3) (a) Revenue generated under Subsection (2) shall be:

7979 (i) applied first to cover department costs under Subsection (2); and

7980 (ii) deposited in the Transportation Fund.

7981 (b) Revenue in excess of costs under Subsection (2)(a) shall be deposited in the
7982 General Fund as a dedicated credit for use by the Governor's Office of Economic Development
7983 no later than the following fiscal year.

7984 (4) Outdoor advertising under Subsections (1)(a), (d), (e), and (f) shall conform to the
7985 rules made by the department under Sections 72-7-506 and 72-7-507.

7986 Section 236. Section **73-10-27** is amended to read:

7987 **73-10-27. Definitions -- Project priorities -- Considerations -- Determinations of**
7988 **feasibility -- Bids and contracts -- Definitions -- Retainage.**

7989 (1) As used in this section:

7990 (a) "Board" means the Board of Water Resources created in Section 73-10-1.5.

7991 (b) "Estimated cost" means the cost of the labor, material, and equipment necessary for
7992 construction of the contemplated project.

7993 (c) "Lowest responsible bidder" means a licensed contractor:

7994 (i) who:

7995 (A) submits the lowest bid; and

- 7996 (B) furnishes a payment bond and a performance bond under Sections 14-1-18 and
7997 [~~63G-6-505~~] 63G-6a-1103; and
- 7998 (ii) whose bid:
- 7999 (A) is in compliance with the invitation for a bid; and
- 8000 (B) meets the plans and specifications.
- 8001 (2) In considering the priority for a project to be built or financed with funds made
8002 available under Section 73-10-24, the board shall give preference to a project that:
- 8003 (a) is sponsored by, or for the benefit of, the state or a political subdivision of the state;
- 8004 (b) meets a critical local need;
- 8005 (c) has greater economic feasibility;
- 8006 (d) will yield revenue to the state within a reasonable time or will return a reasonable
8007 rate of interest, based on financial feasibility; and
- 8008 (e) meets other considerations deemed necessary by the board, including wildlife
8009 management and recreational needs.
- 8010 (3) (a) In determining the economic feasibility, the board shall establish a
8011 benefit-to-cost ratio for each project, using a uniform standard of procedure for all projects.
- 8012 (b) In considering whether a project should be built, the benefit-to-cost ratio for each
8013 project shall be weighted based on the relative cost of the project.
- 8014 (c) A project, when considered in total with all other projects constructed under this
8015 chapter and still the subject of a repayment contract, may not cause the accumulative
8016 benefit-to-cost ratio of the projects to be less than one to one.
- 8017 (4) A project may not be built if the project is not:
- 8018 (a) in the public interest, as determined by the board; or
- 8019 (b) adequately designed based on sound engineering and geologic considerations.
- 8020 (5) In preparing a project constructed by the board, the board shall:
- 8021 (a) based on a competitive bid, award a contract for:
- 8022 (i) a flood control project:
- 8023 (A) involving a city or county; and
- 8024 (B) costing in excess of \$35,000;
- 8025 (ii) the construction of a storage reservoir in excess of 100 acre-feet; or
- 8026 (iii) the construction of a hydroelectric generating facility;

8027 (b) publish an advertisement for a competitive bid:
8028 (i) at least once a week for three consecutive weeks in a newspaper with general
8029 circulation in the state, with the last date of publication appearing at least five days before the
8030 schedule bid opening; and
8031 (ii) indicating that the board:
8032 (A) will award the contract to the lowest responsible bidder; and
8033 (B) reserves the right to reject any and all bids;
8034 (c) readvertise the project in the manner specified in Subsection (5)(b) if the board
8035 rejects all of the initial bids on the project; and
8036 (d) keep an accurate record of all facts and representations relied upon in preparing the
8037 board's estimated cost for a project that is subject to the competitive bidding requirements of
8038 this section.

8039 (6) If no satisfactory bid is received by the board upon the readvertisement of the
8040 project in accordance with Subsection (5), the board may proceed to construct the project in
8041 accordance with the plan and specifications used to calculate the estimated cost of the project.

8042 (7) If a payment on a contract with a private contractor for construction of a project
8043 under this section is retained or withheld, it shall be retained or withheld and released as
8044 provided in Section 13-8-5.

8045 Section 237. Section **73-23-3** is amended to read:

8046 **73-23-3. Duties and powers of Division of Water Resources.**

8047 For purposes of this chapter, the Division of Water Resources:

8048 (1) shall provide for the construction, operation, and maintenance of the West Desert
8049 Pumping Project;

8050 (2) may enter into agreements as necessary to provide for all or any portion of the West
8051 Desert Pumping Project, including any indemnification agreements required by the federal
8052 government;

8053 (3) may acquire land or any other property right by any lawful means, including
8054 eminent domain;

8055 (4) is exempt from Title 63G, Chapter [~~6, the~~] 6a, Utah Procurement Code; and

8056 (5) may proceed without obtaining water right approval from the state engineer.

8057 Section 238. Section **76-10-1602** is amended to read:

8058 **76-10-1602. Definitions.**

8059 As used in this part:

8060 (1) "Enterprise" means any individual, sole proprietorship, partnership, corporation,
8061 business trust, association, or other legal entity, and any union or group of individuals
8062 associated in fact although not a legal entity, and includes illicit as well as licit entities.

8063 (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the
8064 commission of at least three episodes of unlawful activity, which episodes are not isolated, but
8065 have the same or similar purposes, results, participants, victims, or methods of commission, or
8066 otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall
8067 demonstrate continuing unlawful conduct and be related either to each other or to the
8068 enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have
8069 occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful
8070 activity as defined by this part shall have occurred within five years of the commission of the
8071 next preceding act alleged as part of the pattern.

8072 (3) "Person" includes any individual or entity capable of holding a legal or beneficial
8073 interest in property, including state, county, and local governmental entities.

8074 (4) "Unlawful activity" means to directly engage in conduct or to solicit, request,
8075 command, encourage, or intentionally aid another person to engage in conduct which would
8076 constitute any offense described by the following crimes or categories of crimes, or to attempt
8077 or conspire to engage in an act which would constitute any of those offenses, regardless of
8078 whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor
8079 or a felony:

8080 (a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized
8081 Recording Practices Act;

8082 (b) any act prohibited by the criminal provisions of Title 19, Environmental Quality
8083 Code, Sections 19-1-101 through 19-7-109;

8084 (c) taking, destroying, or possessing wildlife or parts of wildlife for the primary
8085 purpose of sale, trade, or other pecuniary gain, in violation of Title 23, Wildlife Resources
8086 Code of Utah, or Section 23-20-4;

8087 (d) false claims for medical benefits, kickbacks, and any other act prohibited by Title
8088 26, Chapter 20, Utah False Claims Act, Sections 26-20-1 through 26-20-12;

- 8089 (e) any act prohibited by the criminal provisions of Title 32B, Chapter 4, Criminal
8090 Offenses and Procedure Act;
- 8091 (f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform
8092 Land Sales Practices Act;
- 8093 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah
8094 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,
8095 Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,
8096 Clandestine Drug Lab Act;
- 8097 (h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform
8098 Securities Act;
- 8099 (i) any act prohibited by the criminal provisions of Title 63G, Chapter [6] 6a, Utah
8100 Procurement Code;
- 8101 (j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;
- 8102 (k) a threat of terrorism, Section 76-5-107.3;
- 8103 (l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;
- 8104 (m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;
- 8105 (n) sexual exploitation of a minor, Section 76-5b-201;
- 8106 (o) arson or aggravated arson, Sections 76-6-102 and 76-6-103;
- 8107 (p) causing a catastrophe, Section 76-6-105;
- 8108 (q) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;
- 8109 (r) burglary of a vehicle, Section 76-6-204;
- 8110 (s) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;
- 8111 (t) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;
- 8112 (u) theft, Section 76-6-404;
- 8113 (v) theft by deception, Section 76-6-405;
- 8114 (w) theft by extortion, Section 76-6-406;
- 8115 (x) receiving stolen property, Section 76-6-408;
- 8116 (y) theft of services, Section 76-6-409;
- 8117 (z) forgery, Section 76-6-501;
- 8118 (aa) fraudulent use of a credit card, Sections 76-6-506.2, 76-6-506.3, 76-6-506.5, and
8119 76-6-506.6;

- 8120 (bb) deceptive business practices, Section 76-6-507;
- 8121 (cc) bribery or receiving bribe by person in the business of selection, appraisal, or
8122 criticism of goods, Section 76-6-508;
- 8123 (dd) bribery of a labor official, Section 76-6-509;
- 8124 (ee) defrauding creditors, Section 76-6-511;
- 8125 (ff) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- 8126 (gg) unlawful dealing with property by fiduciary, Section 76-6-513;
- 8127 (hh) bribery or threat to influence contest, Section 76-6-514;
- 8128 (ii) making a false credit report, Section 76-6-517;
- 8129 (jj) criminal simulation, Section 76-6-518;
- 8130 (kk) criminal usury, Section 76-6-520;
- 8131 (ll) fraudulent insurance act, Section 76-6-521;
- 8132 (mm) retail theft, Section 76-6-602;
- 8133 (nn) computer crimes, Section 76-6-703;
- 8134 (oo) identity fraud, Section 76-6-1102;
- 8135 (pp) mortgage fraud, Section 76-6-1203;
- 8136 (qq) sale of a child, Section 76-7-203;
- 8137 (rr) bribery to influence official or political actions, Section 76-8-103;
- 8138 (ss) threats to influence official or political action, Section 76-8-104;
- 8139 (tt) receiving bribe or bribery by public servant, Section 76-8-105;
- 8140 (uu) receiving bribe or bribery for endorsement of person as public servant, Section
8141 76-8-106;
- 8142 (vv) official misconduct, Sections 76-8-201 and 76-8-202;
- 8143 (ww) obstruction of justice, Section 76-8-306;
- 8144 (xx) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;
- 8145 (yy) false or inconsistent material statements, Section 76-8-502;
- 8146 (zz) false or inconsistent statements, Section 76-8-503;
- 8147 (aaa) written false statements, Section 76-8-504;
- 8148 (bbb) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- 8149 (ccc) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- 8150 (ddd) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;

- 8151 (eee) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or
- 8152 76-8-1205;
- 8153 (fff) unemployment insurance fraud, Section 76-8-1301;
- 8154 (ggg) intentionally or knowingly causing one animal to fight with another, Subsection
- 8155 76-9-301(2)(d) or (e), or Section 76-9-301.1;
- 8156 (hhh) possession, use, or removal of explosives, chemical, or incendiary devices or
- 8157 parts, Section 76-10-306;
- 8158 (iii) delivery to common carrier, mailing, or placement on premises of an incendiary
- 8159 device, Section 76-10-307;
- 8160 (jjj) possession of a deadly weapon with intent to assault, Section 76-10-507;
- 8161 (kkk) unlawful marking of pistol or revolver, Section 76-10-521;
- 8162 (lll) alteration of number or mark on pistol or revolver, Section 76-10-522;
- 8163 (mmm) forging or counterfeiting trademarks, trade name, or trade device, Section
- 8164 76-10-1002;
- 8165 (nnn) selling goods under counterfeited trademark, trade name, or trade devices,
- 8166 Section 76-10-1003;
- 8167 (ooo) sales in containers bearing registered trademark of substituted articles, Section
- 8168 76-10-1004;
- 8169 (ppp) selling or dealing with article bearing registered trademark or service mark with
- 8170 intent to defraud, Section 76-10-1006;
- 8171 (qqq) gambling, Section 76-10-1102;
- 8172 (rrr) gambling fraud, Section 76-10-1103;
- 8173 (sss) gambling promotion, Section 76-10-1104;
- 8174 (ttt) possessing a gambling device or record, Section 76-10-1105;
- 8175 (uuu) confidence game, Section 76-10-1109;
- 8176 (vvv) distributing pornographic material, Section 76-10-1204;
- 8177 (www) inducing acceptance of pornographic material, Section 76-10-1205;
- 8178 (xxx) dealing in harmful material to a minor, Section 76-10-1206;
- 8179 (yyy) distribution of pornographic films, Section 76-10-1222;
- 8180 (zzz) indecent public displays, Section 76-10-1228;
- 8181 (aaaa) prostitution, Section 76-10-1302;

- 8182 (bbbb) aiding prostitution, Section 76-10-1304;
- 8183 (cccc) exploiting prostitution, Section 76-10-1305;
- 8184 (dddd) aggravated exploitation of prostitution, Section 76-10-1306;
- 8185 (eeee) communications fraud, Section 76-10-1801;
- 8186 (ffff) any act prohibited by the criminal provisions of [~~Chapter 10,~~] Part 19, Money
- 8187 Laundering and Currency Transaction Reporting Act;
- 8188 (gggg) vehicle compartment for contraband, Section 76-10-2801;
- 8189 (hhhh) any act prohibited by the criminal provisions of the laws governing taxation in
- 8190 this state; and
- 8191 (iiii) any act illegal under the laws of the United States and enumerated in 18 U.S.C.
- 8192 Sec. 1961 (1)(B), (C), and (D).

8193 Section 239. Section **78A-2-112** is amended to read:

8194 **78A-2-112. Grants to nonprofit legal assistance organization.**

8195 Subject to legislative appropriation, the state court administrator shall, in accordance
8196 with Title 63G, Chapter [6] 6a, Utah Procurement Code, solicit requests for proposals and
8197 award grants to nonprofit legal assistance providers to provide legal assistance throughout the
8198 state to:

- 8199 (1) low to moderate income victims of domestic violence; and
- 8200 (2) low to moderate income individuals in family law matters.

8201 Section 240. Section **79-2-404** is amended to read:

8202 **79-2-404. Contracting powers of department -- Health insurance coverage.**

8203 (1) For purposes of this section:

8204 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
8205 34A-2-104 who:

- 8206 (i) works at least 30 hours per calendar week; and
- 8207 (ii) meets employer eligibility waiting requirements for health care insurance which
8208 may not exceed the first day of the calendar month following 90 days from the date of hire.

8209 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

8210 (c) "Qualified health insurance coverage" is as defined in Section 26-40-115.

8211 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

8212 (2) (a) Except as provided in Subsection (3), this section applies a design or

8213 construction contract entered into by, or delegated to, the department or a division, board, or
8214 council of the department on or after July 1, 2009, and to a prime contractor or to a
8215 subcontractor in accordance with Subsection (2)(b).

8216 (b) (i) A prime contractor is subject to this section if the prime contract is in the
8217 amount of \$1,500,000 or greater.

8218 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
8219 \$750,000 or greater.

8220 (3) This section does not apply to contracts entered into by the department or a
8221 division, board, or council of the department if:

8222 (a) the application of this section jeopardizes the receipt of federal funds;

8223 (b) the contract or agreement is between:

8224 (i) the department or a division, board, or council of the department; and

8225 (ii) (A) another agency of the state;

8226 (B) the federal government;

8227 (C) another state;

8228 (D) an interstate agency;

8229 (E) a political subdivision of this state; or

8230 (F) a political subdivision of another state; or

8231 (c) the contract or agreement is:

8232 (i) for the purpose of disbursing grants or loans authorized by statute;

8233 (ii) a sole source contract; or

8234 (iii) an emergency procurement.

8235 (4) (a) This section does not apply to a change order as defined in Section [~~63G-6-103~~]
8236 63G-6a-103, or a modification to a contract, when the contract does not meet the initial
8237 threshold required by Subsection (2).

8238 (b) A person who intentionally uses change orders or contract modifications to
8239 circumvent the requirements of Subsection (2) is guilty of an infraction.

8240 (5) (a) A contractor subject to Subsection (2)(b)(i) shall demonstrate to the department
8241 that the contractor has and will maintain an offer of qualified health insurance coverage for the
8242 contractor's employees and the employees' dependents during the duration of the contract.

8243 (b) If a subcontractor of the contractor is subject to Subsection (2)(b)(ii), the contractor

8244 shall demonstrate to the department that the subcontractor has and will maintain an offer of
8245 qualified health insurance coverage for the subcontractor's employees and the employees'
8246 dependents during the duration of the contract.

8247 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
8248 the duration of the contract is subject to penalties in accordance with administrative rules
8249 adopted by the department under Subsection (6).

8250 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
8251 requirements of Subsection (5)(b).

8252 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
8253 the duration of the contract is subject to penalties in accordance with administrative rules
8254 adopted by the department under Subsection (6).

8255 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
8256 requirements of Subsection (5)(a).

8257 (6) The department shall adopt administrative rules:

8258 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

8259 (b) in coordination with:

8260 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

8261 (ii) a public transit district in accordance with Section 17B-2a-818.5;

8262 (iii) the State Building Board in accordance with Section 63A-5-205;

8263 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

8264 (v) the Department of Transportation in accordance with Section 72-6-107.5; and

8265 (vi) the Legislature's Administrative Rules Review Committee; and

8266 (c) which establish:

8267 (i) the requirements and procedures a contractor must follow to demonstrate

8268 compliance with this section to the department which shall include:

8269 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or

8270 (b) more than twice in any 12-month period; and

8271 (B) that the actuarially equivalent determination required for qualified health insurance

8272 coverage in Subsection (1) is met by the contractor if the contractor provides the department or

8273 division with a written statement of actuarial equivalency from either:

8274 (I) the Utah Insurance Department;

- 8275 (II) an actuary selected by the contractor or the contractor's insurer; or
8276 (III) an underwriter who is responsible for developing the employer group's premium
8277 rates;
- 8278 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
8279 violates the provisions of this section, which may include:
- 8280 (A) a three-month suspension of the contractor or subcontractor from entering into
8281 future contracts with the state upon the first violation;
- 8282 (B) a six-month suspension of the contractor or subcontractor from entering into future
8283 contracts with the state upon the second violation;
- 8284 (C) an action for debarment of the contractor or subcontractor in accordance with
8285 Section [~~63G-6-804~~] 63G-6a-904 upon the third or subsequent violation; and
- 8286 (D) monetary penalties which may not exceed 50% of the amount necessary to
8287 purchase qualified health insurance coverage for an employee and a dependent of an employee
8288 of the contractor or subcontractor who was not offered qualified health insurance coverage
8289 during the duration of the contract; and
- 8290 (iii) a website on which the department shall post the benchmark for the qualified
8291 health insurance coverage identified in Subsection (1)(c).
- 8292 (7) (a) (i) In addition to the penalties imposed under Subsection (6), a contractor or
8293 subcontractor who intentionally violates the provisions of this section shall be liable to the
8294 employee for health care costs that would have been covered by qualified health insurance
8295 coverage.
- 8296 (ii) An employer has an affirmative defense to a cause of action under Subsection
8297 (7)(a)(i) if:
- 8298 (A) the employer relied in good faith on a written statement of actuarial equivalency
8299 provided by:
- 8300 (I) an actuary; or
- 8301 (II) an underwriter who is responsible for developing the employer group's premium
8302 rates; or
- 8303 (B) the department determines that compliance with this section is not required under
8304 the provisions of Subsection (3) or (4).
- 8305 (b) An employee has a private right of action only against the employee's employer to

8306 enforce the provisions of this Subsection (7).

8307 (8) Any penalties imposed and collected under this section shall be deposited into the
8308 Medicaid Restricted Account created in Section 26-18-402.

8309 (9) The failure of a contractor or subcontractor to provide qualified health insurance
8310 coverage as required by this section:

8311 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
8312 or contractor under Section [~~63G-6-804~~] 63G-6a-1603 or any other provision in Title 63G,
8313 Chapter [~~6, Part 8, Legal and Contractual Remedies~~] 6a, Utah Procurement Code; and

8314 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
8315 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
8316 or construction.

8317 Section 241. Section **79-4-203** is amended to read:

8318 **79-4-203. Powers and duties of division.**

8319 (1) As used in this section, "real property" includes land under water, upland, and all
8320 other property commonly or legally defined as real property.

8321 (2) The Division of Wildlife Resources shall retain the power and jurisdiction
8322 conferred upon it by law within state parks and on property controlled by the Division of Parks
8323 and Recreation with reference to fish and game.

8324 (3) The division shall permit multiple use of state parks and property controlled by it
8325 for purposes such as grazing, fishing, hunting, mining, and the development and utilization of
8326 water and other natural resources.

8327 (4) (a) The division may acquire real and personal property in the name of the state by
8328 all legal and proper means, including purchase, gift, devise, eminent domain, lease, exchange,
8329 or otherwise, subject to the approval of the executive director and the governor.

8330 (b) In acquiring any real or personal property, the credit of the state may not be pledged
8331 without the consent of the Legislature.

8332 (5) (a) Before acquiring any real property, the division shall notify the county
8333 legislative body of the county where the property is situated of its intention to acquire the
8334 property.

8335 (b) If the county legislative body requests a hearing within 10 days of receipt of the
8336 notice, the division shall hold a public hearing in the county concerning the matter.

8337 (6) Acceptance of gifts or devises of land or other property is at the discretion of the
8338 division, subject to the approval of the executive director and the governor.

8339 (7) The division shall acquire property by eminent domain in the manner authorized by
8340 Title 78B, Chapter 6, Part 5, Eminent Domain.

8341 (8) (a) The division may make charges for special services and use of facilities, the
8342 income from which is available for park and recreation purposes.

8343 (b) The division may conduct and operate those services necessary for the comfort and
8344 convenience of the public.

8345 (9) (a) The division may lease or rent concessions of all lawful kinds and nature in state
8346 parks and property to persons, partnerships, and corporations for a valuable consideration upon
8347 the recommendation of the board.

8348 (b) The division shall comply with Title 63G, Chapter [6] 6a, Utah Procurement Code,
8349 in selecting concessionaires.

8350 (10) The division shall proceed without delay to negotiate with the federal government
8351 concerning the Weber Basin and other recreation and reclamation projects.

8352 (11) The division shall receive and distribute voluntary contributions collected under
8353 Section 41-1a-422 in accordance with Section 79-4-404.

8354 Section 242. **Repealer.**

8355 This bill repeals:

8356 Section **10-7-87, Procurement -- Use of recycled goods.**

8357 Section **11-37-101, Definition -- Procurement -- Use of recycled goods.**

8358 Section **17-15-24, Procurement -- Use of recycled goods.**

8359 Section **17B-1-109, Procurement -- Use of recycled goods.**

8360 Section **26A-1-108.7, Procurement -- Use of recycled goods.**

8361 Section **63G-6-206, Transfer of power to policy board.**

8362 Section **63G-6-301, Rules for specifications.**

8363 Section **63G-6-401, Contracts awarded by sealed bidding -- Procedure.**

8364 Section **63G-6-402, Contracts awarded by reverse auction.**

8365 Section **63G-6-403, Procurement -- Use of recycled goods.**

8366 Section **63G-6-406, Preference for recycled paper and paper products.**

8367 Section **63G-6-407, Use of alkaline paper.**

- 8368 Section **63G-6-408, Use of competitive sealed proposals in lieu of bids -- Procedure.**
- 8369 Section **63G-6-409, Small purchases.**
- 8370 Section **63G-6-411, Emergency procurements.**
- 8371 Section **63G-6-414, Prequalification of suppliers.**
- 8372 Section **63G-6-417, Period of time for contract of supplies.**
- 8373 Section **63G-6-418, Right of state to inspect place of business of contractor or**
- 8374 **subcontractor.**
- 8375 Section **63G-6-422, Exemptions from source selection and contract requirements --**
- 8376 **Violation penalty.**
- 8377 Section **63G-6-426, Tie bids -- Preference for providers of state products --**
- 8378 **Resolution of tie bids -- Record of tie bids.**
- 8379 Section **63G-6-903, Payments between public procurement units.**
- 8380 Section **63G-6-906, Resolving controversy arising under a cooperative purchasing**
- 8381 **agreement.**
- 8382 Section **63G-6-1001, Felony to accept emolument.**
- 8383 Section **63G-6-1002, Felony to offer emolument.**
- 8384 Section 243. **Effective date.**
- 8385 This bill takes effect on January 1, 2013.