

1 EXECUTIVE APPROPRIATIONS COMMITTEE REPORT

2 AMENDMENTS

3 2016 GENERAL SESSION

4 STATE OF UTAH

5 Chief Sponsor: Dean Sanpei

6 Senate Sponsor: Lyle W. Hillyard

8 LONG TITLE

9 General Description:

10 This bill modifies reporting requirements to the Executive Appropriations Committee.

11 Highlighted Provisions:

12 This bill:

- 13 ▶ modifies reporting requirements for the Department of Health;
- 14 ▶ removes reporting requirements for the Department of Workforce Services and the
15 Women in the Economy Commission;
- 16 ▶ removes reporting requirements for the Revenue and Taxation Interim Committee;
- 17 ▶ modifies reporting requirements for the inspector general of Medicaid;
- 18 ▶ modifies reporting requirements for the Department of Natural Resources;
- 19 ▶ removes reduction in funds reporting requirements for state agencies;
- 20 ▶ requires certain reports to be electronic;
- 21 ▶ removes reporting requirements for the Division of Finance on highway general
22 obligation bonds;
- 23 ▶ creates reporting requirements for the Department of Transportation regarding
24 payoff of highway general obligation bonds;
- 25 ▶ removes the Division of Finance's report of general obligation bonds;
- 26 ▶ removes the Department of Transportation's report of prioritized projects and
27 modifies other reporting requirements for the department; and
- 28 ▶ requires the attorney general's annual report to be electronic.

29 Money Appropriated in this Bill:

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **26-18-405**, as enacted by Laws of Utah 2011, Chapter 211

36 **26-33a-106.5**, as last amended by Laws of Utah 2014, Chapter 425

37 **35A-3-302**, as last amended by Laws of Utah 2015, Chapter 221

38 **35A-11-203**, as enacted by Laws of Utah 2014, Chapter 127

39 **59-7-701**, as last amended by Laws of Utah 2009, Chapter 312

40 **63A-13-204**, as last amended by Laws of Utah 2015, Chapter 135

41 **63A-13-502**, as last amended by Laws of Utah 2013, Chapter 359 and renumbered and
42 amended by Laws of Utah 2013, Chapter 12

43 **63B-17-401**, as enacted by Laws of Utah 2008, Chapter 128

44 **63J-1-218**, as last amended by Laws of Utah 2013, Second Special Session, Chapters 1
45 and 2

46 **63N-13-206**, as renumbered and amended by Laws of Utah 2015, Chapter 283

47 **63N-13-209**, as renumbered and amended by Laws of Utah 2015, Chapter 283

48 **63N-13-210**, as renumbered and amended by Laws of Utah 2015, Chapter 283

49 **72-2-118**, as last amended by Laws of Utah 2013, Chapter 400

50 **72-2-125**, as last amended by Laws of Utah 2013, Chapter 400

51 **72-6-206**, as enacted by Laws of Utah 2006, Chapter 36

52 **78B-6-1904**, as enacted by Laws of Utah 2014, Chapter 310

53

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

55 Section 1. Section **26-18-405** is amended to read:

56 **26-18-405. Waivers to maximize replacement of fee-for-service delivery model.**

57 (1) The department shall develop a proposal to amend the state plan for the Medicaid

58 program in a way that maximizes replacement of the fee-for-service delivery model with one or
59 more risk-based delivery models.

60 (2) The proposal shall:

61 (a) restructure the program's provider payment provisions to reward health care
62 providers for delivering the most appropriate services at the lowest cost and in ways that,
63 compared to services delivered before implementation of the proposal, maintain or improve
64 recipient health status;

65 (b) restructure the program's cost sharing provisions and other incentives to reward
66 recipients for personal efforts to:

67 (i) maintain or improve their health status; and

68 (ii) use providers that deliver the most appropriate services at the lowest cost;

69 (c) identify the evidence-based practices and measures, risk adjustment methodologies,
70 payment systems, funding sources, and other mechanisms necessary to reward providers for
71 delivering the most appropriate services at the lowest cost, including mechanisms that:

72 (i) pay providers for packages of services delivered over entire episodes of illness
73 rather than for individual services delivered during each patient encounter; and

74 (ii) reward providers for delivering services that make the most positive contribution to
75 a recipient's health status;

76 (d) limit total annual per-patient-per-month expenditures for services delivered through
77 fee-for-service arrangements to total annual per-patient-per-month expenditures for services
78 delivered through risk-based arrangements covering similar recipient populations and services;
79 and

80 (e) limit the rate of growth in per-patient-per-month General Fund expenditures for the
81 program to the rate of growth in General Fund expenditures for all other programs, when the
82 rate of growth in the General Fund expenditures for all other programs is greater than zero.

83 (3) To the extent possible, the department shall develop the proposal with the input of
84 stakeholder groups representing those who will be affected by the proposal.

85 ~~[(4) No later than June 1, 2011, the department shall submit a written report on the~~

86 development of the proposal to the Legislature's Executive Appropriations Committee, Social
87 Services Appropriations Subcommittee, and Health and Human Services Interim Committee.];

88 [(5) No later than July 1, 2011, the department shall submit to the Centers for Medicare
89 and Medicaid Services within the United States Department of Health and Human Services a
90 request for waivers from federal statutory and regulatory law necessary to implement the
91 proposal.];

92 [(6) After the request for waivers has been made, and prior to its implementation, the
93 department shall report to the Legislature in accordance with Section 26-18-3 on any
94 modifications to the request proposed by the department or made by the Centers for Medicare
95 and Medicaid Services.];

96 [(7)] (4) The department shall implement the proposal in the fiscal year that follows the
97 fiscal year in which the United States Secretary of Health and Human Services approves the
98 request for waivers.

99 Section 2. Section 26-33a-106.5 is amended to read:

100 **26-33a-106.5. Comparative analyses.**

101 (1) The committee may publish compilations or reports that compare and identify
102 health care providers or data suppliers from the data it collects under this chapter or from any
103 other source.

104 (2) (a) Except as provided in Subsection (7)(c), the committee shall publish
105 compilations or reports from the data it collects under this chapter or from any other source
106 which:

- 107 (i) contain the information described in Subsection (2)(b); and
- 108 (ii) compare and identify by name at least a majority of the health care facilities, health
109 care plans, and institutions in the state.

110 (b) Except as provided in Subsection (7)(c), the report required by this Subsection (2)
111 shall:

- 112 (i) be published at least annually; and
- 113 (ii) contain comparisons based on at least the following factors:

114 (A) nationally or other generally recognized quality standards;

115 (B) charges; and

116 (C) nationally recognized patient safety standards.

117 (3) The committee may contract with a private, independent analyst to evaluate the
118 standard comparative reports of the committee that identify, compare, or rank the performance
119 of data suppliers by name. The evaluation shall include a validation of statistical
120 methodologies, limitations, appropriateness of use, and comparisons using standard health
121 services research practice. The analyst shall be experienced in analyzing large databases from
122 multiple data suppliers and in evaluating health care issues of cost, quality, and access. The
123 results of the analyst's evaluation shall be released to the public before the standard
124 comparative analysis upon which it is based may be published by the committee.

125 (4) The committee shall adopt by rule a timetable for the collection and analysis of data
126 from multiple types of data suppliers.

127 (5) The comparative analysis required under Subsection (2) shall be available:

128 (a) free of charge and easily accessible to the public; and

129 (b) on the Health Insurance Exchange either directly or through a link.

130 (6) (a) The department shall include in the report required by Subsection (2)(b), or
131 include in a separate report, comparative information on commonly recognized or generally
132 agreed upon measures of cost and quality identified in accordance with Subsection (7), for:

133 (i) routine and preventive care; and

134 (ii) the treatment of diabetes, heart disease, and other illnesses or conditions as
135 determined by the committee.

136 (b) The comparative information required by Subsection (6)(a) shall be based on data
137 collected under Subsection (2) and clinical data that may be available to the committee, and
138 shall compare:

139 (i) beginning December 31, 2014, results for health care facilities or institutions;

140 (ii) beginning December 31, 2014, results for health care providers by geographic
141 regions of the state;

142 (iii) beginning July 1, 2016, a clinic's aggregate results for a physician who practices at
143 a clinic with five or more physicians; and

144 (iv) beginning July 1, 2016, a geographic region's aggregate results for a physician who
145 practices at a clinic with less than five physicians, unless the physician requests physician-level
146 data to be published on a clinic level.

147 (c) The department:

148 (i) may publish information required by this Subsection (6) directly or through one or
149 more nonprofit, community-based health data organizations;

150 (ii) may use a private, independent analyst under Subsection (3) in preparing the report
151 required by this section; and

152 (iii) shall identify and report to the Legislature's Health and Human Services Interim
153 Committee by July 1, 2014, and every July 1 thereafter until July 1, 2019, at least three new
154 measures of quality to be added to the report each year.

155 (d) A report published by the department under this Subsection (6):

156 (i) is subject to the requirements of Section [26-33a-107](#); and

157 (ii) shall, prior to being published by the department, be submitted to a neutral,
158 non-biased entity with a broad base of support from health care payers and health care
159 providers in accordance with Subsection (7) for the purpose of validating the report.

160 (7) (a) The Health Data Committee shall, through the department, for purposes of
161 Subsection (6)(a), use the quality measures that are developed and agreed upon by a neutral,
162 non-biased entity with a broad base of support from health care payers and health care
163 providers.

164 (b) If the entity described in Subsection (7)(a) does not submit the quality measures,
165 the department may select the appropriate number of quality measures for purposes of the
166 report required by Subsection (6).

167 (c) (i) For purposes of the reports published on or after July 1, 2014, the department
168 may not compare individual facilities or clinics as described in Subsections (6)(b)(i) through
169 (iv) if the department determines that the data available to the department can not be

170 appropriately validated, does not represent nationally recognized measures, does not reflect the
171 mix of cases seen at a clinic or facility, or is not sufficient for the purposes of comparing
172 providers.

173 (ii) The department shall report to the Legislature's [~~Executive Appropriations~~] Health
174 and Human Services Interim Committee prior to making a determination not to publish a report
175 under Subsection (7)(c)(i).

176 Section 3. Section **35A-3-302** is amended to read:

177 **35A-3-302. Eligibility requirements.**

178 (1) There is created the "Family Employment Program" to provide cash assistance
179 under this part.

180 (2) (a) The department shall submit a state plan to the Secretary of the United States
181 Department of Health and Human Services to obtain funding under the federal Temporary
182 Assistance for Needy Families Block Grant.

183 (b) The department shall make the state plan consistent with this part and federal law.

184 (c) If a discrepancy exists between a provision of the state plan and this part, this part
185 supersedes the provision in the state plan.

186 (3) The services provided under this part are for both one-parent and two-parent
187 families.

188 (4) To be eligible for cash assistance under this part, a family shall:

189 (a) have at least one minor dependent child; or

190 (b) have a parent who is in the third trimester of a pregnancy.

191 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
192 department shall make rules for eligibility and the amount of cash assistance a family is eligible
193 to receive under this part based on:

194 (a) family size;

195 (b) family income;

196 (c) income disregards;

197 (d) other relevant factors; and

198 (e) if the applicant has met the eligibility requirements under Subsections (5)(a)
199 through (d), the assessment and other requirements described in Sections 35A-3-304 and
200 35A-3-304.5.

201 (6) To determine eligibility, the department may not consider money on deposit in an
202 Individual Development Account established under Section 35A-3-312.

203 (7) The department shall provide for an appeal of a determination of eligibility in
204 accordance with Title 63G, Chapter 4, Administrative Procedures Act.

205 (8) (a) The department shall make a report to [~~either the Legislature's Executive~~
206 ~~Appropriations Committee or~~] the Social Services Appropriations Subcommittee on any
207 proposed rule change made under Subsection (5) that would modify the:

- 208 (i) eligibility requirements for cash assistance; or
- 209 (ii) amount of cash assistance a family is eligible to receive.

210 (b) The department shall submit the report under Subsection (8)(a) prior to
211 implementing the proposed rule change.

212 (c) The report under Subsection (8)(a) shall include:

- 213 (i) a description of the department's current practice or policy that it is proposing to
214 change;
- 215 (ii) an explanation of why the department is proposing the change;
- 216 (iii) the effect of an increase or decrease in cash benefits on families; and
- 217 (iv) the fiscal impact of the proposed change.

218 (d) The department may use the Notice of Proposed Rule Amendment form filed with
219 the Division of Administrative Rules as its report if the notice contains the information
220 required under Subsection (8)(c).

221 (9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
222 department shall make rules to ensure that:

- 223 (a) a recipient of assistance from the Family Employment Program:
 - 224 (i) has adequate access to the assistance;
 - 225 (ii) has the ability to use and withdraw assistance with minimal fees or surcharges,

226 including the opportunity to obtain assistance with no fees or surcharges;

227 (iii) is provided information regarding fees and surcharges that may apply to assistance
228 accessed through an electronic fund transaction; and

229 (iv) is provided information explaining the restrictions on accessing assistance
230 described in Subsection (10); and

231 (b) information regarding fees and surcharges that may apply when accessing
232 assistance from the Family Employment Program through an electronic fund transaction is
233 available to the public.

234 (10) An individual receiving assistance under this section may not access the assistance
235 through an electronic benefit transfer, including through an automated teller machine or
236 point-of-sale device, in an establishment in the state that:

237 (a) exclusively or primarily sells intoxicating liquor;

238 (b) allows gambling or gaming; or

239 (c) provides adult-oriented entertainment where performers disrobe or perform
240 unclothed.

241 (11) An establishment described under Subsection (10)(a), (b), or (c) may not allow an
242 individual to access the assistance under this section on the establishment's premises through
243 an electronic benefit transfer, including through an automated teller machine or point-of-sale
244 device.

245 (12) In accordance with federal requirements and in accordance with Title 63G,
246 Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules to prevent
247 individuals from accessing assistance in a manner prohibited by Subsections (10) and (11),
248 which rules may include enforcement provisions that impose sanctions that temporarily or
249 permanently disqualify an individual from receiving assistance.

250 Section 4. Section **35A-11-203** is amended to read:

251 **35A-11-203. Annual report.**

252 (1) The commission shall annually prepare and publish a report directed to the:

253 (a) governor;

- 254 (b) Education Interim Committee;
- 255 (c) Economic Development and Workforce Services Interim Committee;
- 256 [~~(d) Executive Appropriations Committee;~~]
- 257 [~~(e)~~] (d) Legislative Management Committee;
- 258 [~~(f)~~] (e) Business, Economic Development, and Labor Appropriations Subcommittee;
- 259 and
- 260 [~~(g)~~] (f) State Council on Workforce Services.

261 (2) The report described in Subsection (1) shall:

- 262 (a) describe how the commission fulfilled its statutory purposes and duties during the
- 263 year; and
- 264 (b) contain recommendations on how the state should act to address issues relating to
- 265 women in the economy.

266 Section 5. Section **59-7-701** is amended to read:

267 **59-7-701. Taxation of S corporations -- Revenue and Taxation Interim**
268 **Committee study.**

269 (1) Except as provided in Section [59-7-102](#) and subject to the other provisions of this
270 part, beginning on July 1, 1994, and ending on the last day of the taxable year that begins on or
271 after January 1, 2012, but begins on or before December 31, 2012, an S corporation is subject
272 to taxation in the same manner as that S corporation is taxed under Subchapter S - Tax
273 Treatment of S Corporations and Their Shareholders, Sec. 1361 et seq., Internal Revenue Code.

274 (2) An S corporation is taxed at the tax rate provided in Section [59-7-104](#).

275 (3) The business income and nonbusiness income of an S corporation is subject to Part
276 3, Allocation and Apportionment of Income - Utah UDITPA Provisions.

277 (4) An S corporation having income derived from or connected with Utah sources shall
278 make a return in accordance with Section [59-10-507](#).

279 (5) An S corporation shall make payments of estimated tax as required by Section
280 [59-7-504](#).

281 (6) An S corporation is subject to Chapter 10, Part 14, Pass-Through Entities and

282 Pass-Through Entity Taxpayers Act.

283 (7) A pass-through entity taxpayer as defined in Section 59-10-1402 of an S
284 corporation is subject to Chapter 10, Part 14, Pass-Through Entities and Pass-Through Entity
285 Taxpayers Act.

286 (8) Provisions under this chapter governing the following apply to an S corporation:

287 (a) an assessment;

288 (b) a penalty;

289 (c) a refund; or

290 (d) a record required for an S corporation.

291 ~~[(9) (a) During the 2011 interim, the Revenue and Taxation Interim Committee shall~~
292 ~~study the fiscal impacts of:]~~

293 ~~[(i) the enactment of Laws of Utah 2009, Chapter 312; and]~~

294 ~~[(ii) the taxation of S corporations under this part.]~~

295 ~~[(b) On or before November 30, 2011, the Revenue and Taxation Interim Committee~~
296 ~~shall report its findings and recommendations on the study to the Executive Appropriations~~
297 ~~Committee.]~~

298 Section 6. Section 63A-13-204 is amended to read:

299 **63A-13-204. Selection and review of claims.**

300 (1) (a) The office shall periodically select and review a representative sample of claims
301 submitted for reimbursement under the state Medicaid program to determine whether fraud,
302 waste, or abuse occurred.

303 (b) The office shall limit its review for waste and abuse under Subsection (1)(a) to 36
304 months prior to the date of the inception of the investigation or 72 months if there is a credible
305 allegation of fraud. In the event the office or the fraud unit determines that there is fraud as
306 defined in Section 63A-13-102, then the statute of limitations defined in Subsection
307 26-20-15(1) shall apply.

308 (2) The office may directly contact the recipient of record for a Medicaid reimbursed
309 service to determine whether the service for which reimbursement was claimed was actually

310 provided to the recipient of record.

311 (3) The office shall:

312 (a) generate statistics from the sample described in Subsection (1) to determine the
313 type of fraud, waste, or abuse that is most advantageous to focus on in future audits or
314 investigations;

315 (b) ensure that the office, or any entity that contracts with the office to conduct audits:

316 (i) has on staff or contracts with a medical or dental professional who is experienced in
317 the treatment, billing, and coding procedures used by the type of provider being audited; and

318 (ii) uses the services of the appropriate professional described in Subsection (3)(b)(i) if
319 the provider who is the subject of the audit disputes the findings of the audit;

320 (c) ensure that a finding of overpayment or underpayment to a provider is not based on
321 extrapolation, unless:

322 (i) there is a determination that the level of payment error involving the provider
323 exceeds a 10% error rate:

324 (A) for a sample of claims for a particular service code; and

325 (B) over a three year period of time;

326 (ii) documented education intervention has failed to correct the level of payment error;

327 and

328 (iii) the value of the claims for the provider, in aggregate, exceeds \$200,000 in
329 reimbursement for a particular service code on an annual basis; and

330 (d) require that any entity with which the office contracts, for the purpose of
331 conducting an audit of a service provider, shall be paid on a flat fee basis for identifying both
332 overpayments and underpayments.

333 (4) (a) If the office, or a contractor on behalf of the department:

334 (i) intends to implement the use of extrapolation as a method of auditing claims, the
335 department shall, prior to adopting the extrapolation method of auditing, report its intent to use
336 extrapolation [to]:

337 (A) to the Social Services Appropriations Subcommittee; and

338 (B) [~~the Executive Appropriations Committee pursuant to~~] as required under Section
339 63A-13-502; and

340 (ii) determines Subsections (2)(c)(i) through (iii) are applicable to a provider, the office
341 or the contractor may use extrapolation only for the service code associated with the findings
342 under Subsections (2)(c)(i) through (iii).

343 (b) (i) If extrapolation is used under this section, a provider may, at the provider's
344 option, appeal the results of the audit based on:

345 (A) each individual claim; or

346 (B) the extrapolation sample.

347 (ii) Nothing in this section limits a provider's right to appeal the audit under Title 63G,
348 Administrative Code, Title 63G, Chapter 4, Administrative Procedures Act, the Medicaid
349 program and its manual or rules, or other laws or rules that may provide remedies to providers.

350 Section 7. Section **63A-13-502** is amended to read:

351 **63A-13-502. Report and recommendations to governor and Executive**
352 **Appropriations Committee.**

353 (1) The inspector general of Medicaid services shall, on an annual basis, prepare [~~a~~
354 ~~written~~] an electronic report on the activities of the office for the preceding fiscal year.

355 (2) The report shall include:

356 (a) non-identifying information, including statistical information, on:

357 (i) the items described in Subsection 63A-13-202(1)(b) and Section 63A-13-204;

358 (ii) action taken by the office and the result of that action;

359 (iii) fraud, waste, and abuse in the state Medicaid program;

360 (iv) the recovery of fraudulent or improper use of state and federal Medicaid funds;

361 (v) measures taken by the state to discover and reduce fraud, waste, and abuse in the
362 state Medicaid program;

363 (vi) audits conducted by the office;

364 (vii) investigations conducted by the office and the results of those investigations; and

365 (viii) administrative and educational efforts made by the office and the division to

366 improve compliance with Medicaid program policies and requirements;

367 (b) recommendations on action that should be taken by the Legislature or the governor
368 to:

369 (i) improve the discovery and reduction of fraud, waste, and abuse in the state
370 Medicaid program;

371 (ii) improve the recovery of fraudulently or improperly used Medicaid funds; and

372 (iii) reduce costs and avoid or minimize increased costs in the state Medicaid program;

373 (c) recommendations relating to rules, policies, or procedures of a state or local
374 government entity; and

375 (d) services provided by the state Medicaid program that exceed industry standards.

376 (3) The report described in Subsection (1) may not include any information that would
377 interfere with or jeopardize an ongoing criminal investigation or other investigation.

378 (4) On or before [~~October~~] November 1 of each year, the inspector general of Medicaid
379 services shall provide the electronic report described in Subsection (1) to the Executive
380 Appropriations Committee of the Legislature and to the governor [~~on or before October 1 of~~
381 ~~each year~~].

382 [~~(5) The inspector general of Medicaid services shall present the report described in~~
383 ~~Subsection (1) to the Executive Appropriations Committee of the Legislature before November~~
384 ~~30 of each year.~~]

385 Section 8. Section **63B-17-401** is amended to read:

386 **63B-17-401. Authorizations to acquire or exchange property.**

387 The Legislature intends that:

388 (1) the Division of Facilities Construction and Management, acting on behalf of the
389 Department of Natural Resources, may enter into a lease purchase agreement with Uintah
390 County to provide needed space for agency programs in the area;

391 (2) the agreement shall involve a trade at fair market value between the Division of
392 Facilities Construction and Management and Uintah County of the following two properties:

393 (a) that portion of the current Uintah County complex that is owned by the state,

394 located at 147 East Main Street, Vernal, Utah, which currently houses the Department of
395 Natural Resources and other state agencies; and

396 (b) a parcel of land owned by Uintah County, located at approximately 318 North
397 Vernal Avenue, Vernal, Utah, which would become the location of the needed space under the
398 lease purchase agreement;

399 (3) before entering into an agreement with Uintah County, the Division of Facilities
400 Construction and Management shall ensure that all other state agencies in the Uintah County
401 complex stay in their current location or receive adequate replacement space, with the terms of
402 any replacement space acceptable to each state agency;

403 (4) before entering into an agreement with Uintah County, the Department of Natural
404 Resources shall obtain the approval of the State Building Board; and

405 (5) the State Building Board may approve the agreement only if the Department of
406 Natural Resources demonstrates that the lease purchase will be a benefit to the state[~~;~~and].

407 [~~(6) before entering into an agreement with Uintah County, and after obtaining the~~
408 ~~approval of the State Building Board, the Department of Natural Resources shall report the~~
409 ~~terms of the agreement to the legislative Executive Appropriations Committee.]~~

410 Section 9. Section **63J-1-218** is amended to read:

411 **63J-1-218. Reduction in federal funds -- Agencies to reduce budgets.**

412 [(1)] In any fiscal year in which federal grants to be received by state agencies,
413 departments, divisions, or institutions are reduced below the level estimated in the
414 appropriations acts for that year, the programs supported by those grants must be reduced
415 commensurate with the amount of the federal reduction unless the Legislature appropriates
416 state funds to offset the loss in federal funding.

417 [~~(2) This program modification shall be reported to the Legislature through the~~
418 ~~Executive Appropriations Committee and the Office of the Legislative Fiscal Analyst.]~~

419 Section 10. Section **63N-13-206** is amended to read:

420 **63N-13-206. Review of initial proposal -- Affected department review.**

421 (1) The committee shall review and evaluate an initial proposal submitted in

422 accordance with:

423 (a) this part; and

424 (b) any rule established by the board under Section 63N-13-203.

425 (2) If the committee, in its sole discretion, determines to proceed with the project, the
426 committee shall submit a copy of the initial proposal to:

427 (a) the affected department; and

428 (b) the Governor's Office of Management and Budget.

429 (3) (a) An affected department, directly affected state entity, and school district
430 receiving a copy of the initial proposal under Subsection (2) or (4) shall review the initial
431 proposal and provide the committee with any comment, suggestion, or modification to the
432 project.

433 (b) After receiving an initial proposal, the Governor's Office of Management and
434 Budget shall prepare an economic feasibility report containing:

435 (i) information concerning the economic feasibility and effectiveness of the project
436 based upon competent evidence;

437 (ii) a dollar amount representing the total estimated fiscal impact of the project to the
438 affected department and the state; and

439 (iii) any other matter the committee requests or is required by the board by rule.

440 (4) In reviewing an initial proposal, the affected department shall share the initial
441 proposal with any other state entity or school district that will be directly affected if the
442 proposal is ultimately adopted, if the confidentiality of the initial proposal is maintained.

443 (5) If the committee determines to proceed with the project, the committee shall submit
444 [a] an electronic copy of the initial proposal, including any comment, suggestion, or
445 modification to the initial proposal, to:

446 (a) the chief procurement officer in accordance with Section 63G-6a-711; and

447 (b) the Executive Appropriations Committee, for informational purposes.

448 (6) Before taking any action under Subsection (5), the committee shall consider:

449 (a) any comment, suggestion, or modification to the initial proposal submitted in

450 accordance with Subsection (3);

451 (b) the extent to which the project is practical, efficient, and economically beneficial to
452 the state and the affected department;

453 (c) the economic feasibility report prepared by the Governor's Office of Management
454 and Budget; and

455 (d) any other reasonable factor identified by the committee or required by the board by
456 rule.

457 Section 11. Section **63N-13-209** is amended to read:

458 **63N-13-209. Receipt of detailed proposals -- Economic feasibility report --**
459 **Acceptance of a detailed proposal.**

460 (1) If the committee, in its sole discretion, determines that a detailed proposal does not
461 substantially meet the guidelines established under Subsection **63N-13-208(1)**, the committee
462 may elect not to review the detailed proposal.

463 (2) (a) After receiving a detailed proposal, the Governor's Office of Management and
464 Budget shall update the economic feasibility report prepared under Section **63N-13-206**.

465 (b) A detailed proposal that is to be reviewed by the committee shall be submitted to
466 the affected department, a directly affected state entity, and a directly affected school district
467 for comment or suggestion.

468 (3) In determining which, if any, of the detailed proposals to accept, in addition to the
469 proposal evaluation criteria, the committee shall consider the following factors:

470 (a) any comment, suggestion, or modification offered in accordance with Subsection
471 **63N-13-206(3)** or Subsection (2)(b);

472 (b) the economic feasibility report updated in accordance with Subsection (2)(a);

473 (c) the source of funding and any resulting constraint necessitated by the funding
474 source;

475 (d) any alternative funding proposal;

476 (e) the extent to which the project is practical, efficient, and economically beneficial to
477 the state and the affected department; and

478 (f) any other reasonable factor identified by the committee or required by the board by
479 rule.

480 (4) (a) If the committee accepts a detailed proposal, the accepted detailed proposal
481 shall be submitted to the board for approval.

482 (b) If the affected department or a directly affected state entity or school district
483 disputes the detailed proposal approved by the board, the Governor's Office of Management
484 and Budget shall consider the detailed proposal and any comment, suggestion, or modification
485 and determine whether to proceed with a project agreement.

486 (c) If there is no funding for a project that is the subject of a detailed proposal and the
487 committee determines to proceed with the project, the office shall submit a report to the
488 Governor's Office of Management and Budget and an electronic copy of the report to the
489 Executive Appropriations Committee detailing the position of the board, the affected
490 department, a directly affected state entity or school district.

491 (5) A detailed proposal received from a private entity other than the private entity that
492 submitted the initial proposal may not be accepted in place of the detailed proposal offered by
493 the private entity that submitted the initial proposal solely because of a lower cost if the lower
494 cost is within the amount of the fee paid by the private entity that submitted the initial proposal
495 for review of the initial proposal.

496 Section 12. Section **63N-13-210** is amended to read:

497 **63N-13-210. Project agreement.**

498 (1) If the board accepts the detailed proposal, the executive director shall:

499 (a) prepare a project agreement in consultation with the affected department and any
500 other state entity directly impacted by the detailed proposal; and

501 (b) enter into the project agreement with the private entity.

502 (2) A project agreement shall be signed by the executive director, the affected
503 department, a directly affected state entity or school district, and the private entity.

504 (3) A project agreement shall include provisions concerning:

505 (a) the scope of the project;

- 506 (b) the pricing method of the project;
- 507 (c) the executive director's or the state's ability to terminate for convenience or for
508 default, and any termination compensation to be paid to the private entity, if applicable;
- 509 (d) the ability to monitor performance under the project agreement;
- 510 (e) the appropriate limits of liability;
- 511 (f) the appropriate transition of services, if applicable;
- 512 (g) the exceptions from applicable rules and procedures for the implementation and
513 administration of the project by the affected department, if any;
- 514 (h) the clauses and remedies applicable to state contracts under Title 63G, Chapter 6a,
515 Part 12, Contracts and Change Orders; and
- 516 (i) any other matter reasonably requested by the committee or required by the board by
517 rule.
- 518 (4) [A] An electronic copy of the signed project agreement shall be submitted to:
519 (a) the affected department; and
520 (b) the Executive Appropriations Committee.
- 521 (5) A project agreement is considered a contract under Title 63G, Chapter 6a, Utah
522 Procurement Code.
- 523 (6) The affected department shall implement and administer the project agreement in
524 accordance with rules made under Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
525 except as modified by the project agreement under Subsection (3)(g).
- 526 Section 13. Section **72-2-118** is amended to read:
527 **72-2-118. Centennial Highway Fund.**
528 (1) There is created a capital projects fund entitled the Centennial Highway Fund
529 within the Transportation Investment Fund of 2005 created by Section [72-2-124](#).
530 (2) The account consists of money generated from the following revenue sources:
531 (a) any voluntary contributions received for the construction, reconstruction, or
532 renovation of state or federal highways; and
533 (b) appropriations made to the fund by the Legislature.

534 (3) (a) The fund shall earn interest.

535 (b) All interest earned on fund money shall be deposited into the fund.

536 (4) The executive director may use fund money, as prioritized by the Transportation
537 Commission, only to pay the costs of construction, reconstruction, or renovation to state and
538 federal highways.

539 (5) When the highway general obligation bonds have been paid off and the highway
540 projects completed that are intended to be paid from revenues deposited in the account as
541 determined by the Executive Appropriations Committee under Subsection (6)(d), the Division
542 of Finance shall transfer any existing balance in the account into the Transportation Investment
543 Fund of 2005 created by Section 72-2-124.

544 (6) (a) The Division of Finance shall monitor the highway general obligation bonds
545 that are being paid from revenues deposited in the fund.

546 (b) The department shall monitor the highway construction, reconstruction, or
547 renovation projects that are being paid from revenues deposited in the fund.

548 [~~(c) Upon request by the Executive Appropriations Committee of the Legislature:]~~

549 [~~(i) the Division of Finance shall report to the committee the status of all highway
550 general obligation bonds that are being paid from revenues deposited in the fund; and]~~

551 [~~(ii) the department shall report to the committee the status of all highway construction,
552 reconstruction, or renovation projects that are being paid from revenues deposited in the fund.]~~

553 [~~(d)~~] (c) The [~~Executive Appropriations Committee of the Legislature~~] department
554 shall notify the State Tax Commission[, ~~the department,~~] and the Division of Finance when:

555 (i) all highway general obligation bonds that are intended to be paid from revenues
556 deposited in the fund have been paid off; and

557 (ii) all highway projects that are intended to be paid from revenues deposited in the
558 account have been completed.

559 Section 14. Section 72-2-125 is amended to read:

560 **72-2-125. Critical Highway Needs Fund.**

561 (1) There is created a capital projects fund within the Transportation Investment Fund

562 of 2005 known as the "Critical Highway Needs Fund."

563 (2) The fund consists of money generated from the following sources:

564 (a) any voluntary contributions received for the maintenance, construction,
565 reconstruction, or renovation of state and federal highways; and

566 (b) appropriations made to the fund by the Legislature.

567 (3) (a) The fund shall earn interest.

568 (b) Interest on fund money shall be deposited into the fund.

569 (4) (a) The executive director shall use money deposited into the fund to pay the costs
570 of right-of-way acquisition, maintenance, construction, reconstruction, or renovation to state
571 and federal highways identified by the department and prioritized by the commission in
572 accordance with this Subsection (4).

573 (b) (i) The department shall:

574 (A) establish a complete list of projects to be maintained, constructed, reconstructed, or
575 renovated using the funding described in Subsection (4)(a) based on the following criteria:

576 (I) the highway construction project is a high priority project due to high growth in the
577 surrounding area;

578 (II) the highway construction project addresses critical access needs that have a high
579 impact due to commercial and energy development;

580 (III) the highway construction project mitigates congestion;

581 (IV) whether local matching funds are available for the highway construction project;

582 and

583 (V) the highway construction project is a critical alternative route for priority Interstate
584 15 reconstruction projects; and

585 (B) submit the list of projects to the commission for prioritization in accordance with
586 Subsection (4)(c).

587 (ii) A project that is included in the list under this Subsection (4):

588 (A) is not required to be currently listed in the statewide long-range plan; and

589 (B) is not required to be prioritized through the prioritization process for new

590 transportation capacity projects adopted under Section 72-1-304.

591 (c) (i) The commission shall prioritize the project list submitted by the department in
592 accordance with Subsection (4)(b).

593 (ii) For projects prioritized under this Subsection (4)(c), the commission shall give
594 priority consideration to fully funding a project that meets the criteria under Subsection
595 (4)(b)(i)(A)(V).

596 (d) (i) Expenditures of bond proceeds issued in accordance with Section 63B-16-101
597 by the department for the construction of highway projects prioritized under this Subsection (4)
598 may not exceed \$1,200,000,000.

599 (ii) Money expended from the fund for principal, interest, and issuance costs of bonds
600 issued under Section 63B-16-101 is not considered an expenditure for purposes of the
601 \$1,200,000,000 cap under Subsection (4)(d)(i).

602 (e) (i) Before bonds authorized by Section 63B-16-101 may be issued in any fiscal
603 year, the department and the commission shall appear before the Executive Appropriations
604 Committee of the Legislature and present:

605 (A) the commission's current list of projects established and prioritized in accordance
606 with this Subsection (4); and

607 (B) the amount of bond proceeds that the department needs to provide funding for
608 projects on the project list prioritized in accordance with this Subsection (4) for the next fiscal
609 year.

610 (ii) The Executive Appropriations Committee of the Legislature shall review and
611 comment on the prioritized project list and the amount of bond proceeds needed to fund the
612 projects on the prioritized list.

613 (f) The Division of Finance shall, from money deposited into the fund, transfer the
614 amount of funds necessary to pay principal, interest, and issuance costs of bonds authorized by
615 Section 63B-16-101 in the current fiscal year to the appropriate debt service or sinking fund.

616 (5) When the general obligation bonds authorized by Section 63B-16-101 have been
617 paid off and the highway projects completed that are included in the prioritized project list

618 under Subsection (4), the Division of Finance shall transfer any existing balance in the fund
619 into the Transportation Investment Fund of 2005 created by Section [72-2-124](#).

620 (6) (a) The Division of Finance shall monitor the general obligation bonds authorized
621 by Section [63B-16-101](#).

622 (b) The department shall monitor the highway construction or reconstruction projects
623 that are included in the prioritized project list under Subsection (4).

624 [~~(c) Upon request by the Executive Appropriations Committee of the Legislature:]~~

625 [~~(i) the Division of Finance shall report to the committee the status of all general
626 obligation bonds issued under Section [63B-16-101](#); and]~~

627 [~~(ii) the department shall report to the committee the status of all highway construction
628 or reconstruction projects that are included in the prioritized project list under Subsection (4).]~~

629 [~~(d)~~] (c) When the Division of Finance has reported that the general obligation bonds
630 issued by Section [63B-16-101](#) have been paid off and the department has reported that projects
631 included in the prioritized project list are complete to the Executive Appropriations Committee
632 of the Legislature, the Division of Finance shall transfer any existing fund balance in
633 accordance with Subsection (5).

634 (7) (a) Unless prioritized and approved by the Transportation Commission, the
635 department may not delay a project prioritized under this section to a different fiscal year than
636 programmed by the commission due to an unavoidable shortfall in revenues if:

637 (i) the prioritized project was funded by the Legislature in an appropriations act; or

638 (ii) general obligation bond proceeds have been issued for the project in the current
639 fiscal year.

640 (b) For projects identified under Subsection (7)(a), the commission shall prioritize and
641 approve any project delays for projects prioritized under this section due to an unavoidable
642 shortfall in revenues if:

643 (i) the prioritized project was funded by the Legislature in an appropriations act; or

644 (ii) general obligation bond proceeds have been issued for the project in the current
645 fiscal year.

646 Section 15. Section **72-6-206** is amended to read:

647 **72-6-206. Commission approval and legislative review of tollway development**
648 **agreement provisions.**

649 (1) Prior to the department entering into a tollway development agreement under
650 Section **72-6-203**, the department shall submit to the commission for approval the tollway
651 development agreement, including:

652 (a) a description of the tollway facility, including the conceptual design of the facility
653 and all proposed interconnections with other transportation facilities;

654 (b) the proposed date for development, operation, or both of the tollway facility;

655 (c) the proposed term of the tollway development agreement;

656 (d) the proposed method to determine toll rates or user fees, including:

657 (i) identification of vehicle or user classifications, or both, for toll rates;

658 (ii) the original proposed toll rate or user fee for the tollway facility;

659 (iii) proposed toll rate or user fee increases; and

660 (iv) a maximum toll rate or user fee for the tollway facility; and

661 (e) any proposed revenue, public or private, or proposed debt or equity investment that
662 will be used for the design, construction, financing, acquisition, maintenance, or operation of
663 the tollway facility.

664 (2) Prior to amending or modifying a tollway development agreement, the department
665 shall submit the proposed amendment or modification to the commission for approval.

666 (3) The department shall report to the [~~Executive Appropriations Committee;~~]
667 Transportation Interim Committee[;] or another committee designated by the Legislative
668 Management Committee on the status and progress of a tollway subject to a tollway
669 development agreement under Section **72-6-203**.

670 Section 16. Section **78B-6-1904** is amended to read:

671 **78B-6-1904. Action -- Enforcement -- Remedies -- Damages.**

672 (1) A target who has received a demand letter asserting patent infringement in bad
673 faith, or a person aggrieved by a violation of this part, may bring an action in district court.

674 The court may award the following remedies to a target who prevails in an action brought
675 pursuant to this part:

- 676 (a) equitable relief;
- 677 (b) actual damages;
- 678 (c) costs and fees, including reasonable attorney fees; and
- 679 (d) punitive damages in an amount to be established by the court, of not more than the
680 greater of \$50,000 or three times the total of damages, costs, and fees.

681 (2) The attorney general may conduct civil investigations and bring civil actions
682 pursuant to this part. In an action brought by the attorney general under this part, the court may
683 award or impose any relief it considers prudent, including the following:

- 684 (a) equitable relief;
- 685 (b) statutory damages of not less than \$750 per demand letter distributed in bad faith;
- 686 and
- 687 (c) costs and fees, including reasonable attorney fees, to the attorney general.

688 (3) This part may not be construed to limit other rights and remedies available to the
689 state or to any person under any other law.

690 (4) A demand letter or assertion of a patent infringement that includes a claim for relief
691 arising under 35 U.S.C. Sec. 271(e)(2) is not subject to the provisions of this part.

692 (5) The attorney general shall [~~report~~] annually provide an electronic report to the
693 Executive Appropriations Committee regarding the number of investigations and actions
694 brought under this part. The report shall include:

- 695 (a) the number of investigations commenced;
- 696 (b) the number of actions brought under the provisions of this part;
- 697 (c) the current status of actions brought under Subsection (5)(b); and
- 698 (d) final resolution of actions brought under this part, including any recovery under
699 Subsection (2).