

SCHOOL CONSTRUCTION PROJECTS AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Melissa G. Ballard

Senate Sponsor: David G. Buxton

LONG TITLE

General Description:

This bill amends requirements for a local education agency related to school construction.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a local education agency (LEA) to appoint an employee of the LEA or a contracted person to oversee a school construction project;
- ▶ provides requirements for a person who oversees a school construction project;
- ▶ requires an LEA to receive at least three proposals for an architect and three bids for a contractor for a school construction project;
- ▶ prohibits an LEA from issuing a single contract for design services and contractor services for a school construction project with certain exceptions;
- ▶ requires the State Board of Education to make rules; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 **53E-3-702**, as last amended by Laws of Utah 2019, Chapter 186

30 **53E-3-703**, as last amended by Laws of Utah 2019, Chapter 186

31 **53E-3-707**, as last amended by Laws of Utah 2019, Chapter 186

32 **53E-3-708**, as renumbered and amended by Laws of Utah 2018, Chapter 1

33

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

35 Section 1. Section **53E-3-702** is amended to read:

36 **53E-3-702. State board to adopt public school construction guidelines.**

37 (1) As used in this section, "public school construction" means construction work on a
38 new public school.

39 (2) (a) The state board shall:

40 (i) adopt guidelines for public school construction; and

41 (ii) consult with the Division of Facilities Construction and Management

42 Administration on proposed guidelines before adoption.

43 (b) The state board shall ensure that guidelines adopted under Subsection (2)(a)(i)
44 maximize funds used for public school construction and reflect efficient and economic use of
45 those funds, including adopting guidelines that address a school's essential needs rather than
46 encouraging or endorsing excessive costs per square foot of construction or nonessential
47 facilities, design, or furnishings.

48 (3) Before a school district or charter school may begin public school construction, the
49 school district or charter school shall:

50 (a) review the guidelines adopted by the state board under this section; and

51 (b) take into consideration the guidelines when planning the public school

52 construction.

53 (4) In adopting the guidelines for public school construction, the state board shall
54 consider the following and adopt alternative guidelines as needed:

55 (a) location factors, including whether the school is in a rural or urban setting, and
56 climate factors;

57 (b) variations in guidelines for significant or minimal projected student population
58 growth;

59 (c) guidelines specific to schools that serve various populations and grades, including
 60 high schools, junior high schools, middle schools, elementary schools, alternative schools, and
 61 schools for people with disabilities; and

62 (d) year-round use.

63 (5) The guidelines shall address the following:

64 (a) square footage per student;

65 (b) minimum and maximum required real property for a public school;

66 (c) athletic facilities and fields, playgrounds, and hard surface play areas;

67 (d) cost per square foot;

68 (e) minimum and maximum qualities and costs for building materials;

69 (f) design efficiency;

70 (g) parking;

71 (h) furnishing;

72 (i) proof of compliance with applicable building codes; and

73 (j) safety.

74 (6) The state board shall establish in rule, in accordance with Title 63G, Chapter 3,
 75 Utah Administrative Rulemaking Act, an amount of money for a building project cost
 76 threshold that applies to the requirements described in Section [53E-3-703](#).

77 Section 2. Section **53E-3-703** is amended to read:

78 **53E-3-703. Construction and alteration of schools and plants -- Advertising for**
 79 **bids -- Payment and performance bonds -- Contracts -- Bidding limitations on local**
 80 **school boards -- Interest of local school board members.**

81 (1) As used in this section~~[, the word]~~:

82 (a) "cost threshold" means the amount of money established by the state board in rule
 83 under Section [53E-3-702](#); and

84 (b) "sealed" does not preclude acceptance of electronically sealed and submitted bids or
 85 proposals in addition to bids or proposals manually sealed and submitted.

86 (2) (a) ~~[Prior to]~~ Before the construction of any school or the alteration of any existing
 87 school plant, if the total estimated accumulative building project cost exceeds ~~[\$80,000]~~ the
 88 cost threshold, a local school board shall advertise for bids for an architect and a contractor on
 89 the project at least 10 days before the bid due date.

90 (b) The advertisement for the construction project described in Subsection (2)(a) shall
91 state:

92 (i) that proposals for the building project are required to be sealed in accordance with
93 plans and specifications provided by the local school board;

94 (ii) where and when the local school board will open the proposals [~~will be opened~~];

95 (iii) that the local school board reserves the right to reject any and all proposals; and

96 (iv) that a person that submits a proposal is required to submit a certified check or bid
97 bond, of not less than 5% of the bid in the proposal, to accompany the proposal.

98 (c) The local school board shall publish the advertisement described in Subsection
99 (2)(b), at a minimum:

100 (i) on the local school board's website; or

101 (ii) on a state website that is:

102 (A) owned or managed by, or provided under contract with, the Division of Purchasing
103 and General Services; and

104 (B) available for the posting of public procurement notices.

105 (3) (a) The local school board shall:

106 (i) meet at the time and place specified in the advertisement described in Subsection
107 (2)(b); and

108 (ii) publicly open and read all received proposals for the construction project described
109 in Subsection (2)(a).

110 (b) [~~H~~] Subject to Subsection (9), if satisfactory bids are received, the local school
111 board shall award the contract to the lowest responsive and responsible bidder.

112 (c) If none of the proposals are satisfactory, [~~all shall be rejected~~] the local school
113 board shall reject all the proposals.

114 (d) The local school board [~~shall~~] may again advertise for the construction project
115 described in Subsection (2)(a) in the manner provided in this section.

116 (e) If, after advertising a second time in accordance with Subsection (3)(d), no
117 satisfactory bid is received or fewer than three bids are received, the local school board may:

118 (i) if no satisfactory bid is received, proceed under [~~its~~] the local school board's own
119 direction with the required project[~~;~~]; or

120 (ii) if fewer than three bids are received, select one of the received bids.

121 (4) (a) The check or bond required under Subsection (2)(b) shall be drawn in favor of
122 the local school board.

123 (b) If the successful bidder fails or refuses to enter into the contract and furnish the
124 additional bonds required under this section, then the bidder's check or bond is forfeited to the
125 district.

126 (5) A local school board shall require payment and performance bonds of the
127 successful bidder as required in Section [63G-6a-1103](#).

128 (6) (a) A local school board may require in the proposed contract that up to 5% of the
129 contract price be withheld until the project is completed and accepted by the local school
130 board.

131 (b) If money is withheld[;]:

132 (i) the local school board shall place [it] the withheld money in an interest bearing
133 account[;]; and

134 (ii) the interest accrues for the benefit of the contractor and subcontractors.

135 (c) [~~This~~] The money described in Subsection (6)(b) shall be paid upon completion of
136 the project and acceptance by the local school board.

137 (7) (a) [~~A~~] Except as provided in Subsection (7)(b), a local school board may not [~~bid~~]
138 use the local school board's resources on projects within the district if the total accumulative
139 estimated cost exceeds [~~\$80,000~~] the cost threshold.

140 (b) The local school board may use [~~its~~] the local school board's resources if no
141 satisfactory bids are received under this section.

142 (8) [~~If the~~] Subject to Subsection (9), if a local school board determines in accordance
143 with Section [63G-6a-1302](#) to use a construction manager/general contractor as [~~its~~] the local
144 school board's method of construction contracting management on projects where the total
145 estimated accumulative cost exceeds [~~\$80,000, it~~] the cost threshold, the local school board
146 shall select the construction manager/general contractor in accordance with the requirements of
147 Title 63G, Chapter 6a, Utah Procurement Code.

148 (9) (a) If a local school board receives fewer than three proposals for an architect or
149 fewer than three bids for a general contractor for a school building project, the local school
150 board may reissue the advertisement in accordance with Subsections (2)(b) and (c).

151 (b) If, after advertising a second time in accordance with Subsection (9)(a), no

152 satisfactory bid is received or fewer than three bids are received, the local school board may:

153 (i) if no satisfactory bid is received, proceed under the local school board's own

154 direction with the project; or

155 (ii) if fewer than three bids are received, select one of the received bids.

156 ~~[(9)]~~ (10) A local school board member may not have a direct or indirect financial
157 interest in the construction project contract.

158 Section 3. Section **53E-3-707** is amended to read:

159 **53E-3-707. School building construction and inspection manual -- Annual**
160 **construction and inspection conference -- Verification of school construction inspections.**

161 (1) As used in this section, "local education agency" or "LEA" means:

162 (a) a school district; or

163 (b) a charter school.

164 ~~[(1)]~~ (2) (a) The state board, through the state superintendent, shall develop and
165 distribute to each school district a school building construction and inspection resource manual.

166 (b) The manual shall be provided to a charter school upon request of the charter school.

167 ~~[(2)]~~ (3) (a) The manual shall include:

168 (i) current legal requirements; and

169 (ii) information on school building construction and inspections, including the
170 guidelines adopted by the state board in accordance with Section **53E-3-702**.

171 (b) The state superintendent shall review and update the manual at least once every
172 three years.

173 ~~[(3)]~~ (4) The state board shall provide for an annual school construction conference to
174 allow a representative from each ~~[school district and charter school]~~ LEA to:

175 (a) receive current information on the design, construction, and inspection of school
176 buildings;

177 (b) receive training on such matters as:

178 (i) using properly certified building inspectors;

179 (ii) filing construction inspection summary reports and the final inspection certification
180 with the local governmental authority's building official;

181 (iii) the roles and relationships between ~~[a school district or charter school]~~ an LEA
182 and the local governmental authority, either a county or municipality, as related to the

183 construction and inspection of school buildings; and

184 (iv) adequate documentation of school building inspections; and

185 (c) provide input on any changes that may be needed to improve the existing school
186 building inspection program.

187 ~~[(4)]~~ (5) The state board shall develop a process to verify that inspections by qualified
188 inspectors occur in each ~~[school district or charter school]~~ LEA.

189 (6) An LEA shall:

190 (a) appoint a person to have direct administrative and operational control of all
191 construction, renovation, and inspection of public school facilities within the LEA; and

192 (b) ensure that the person appointed under Subsection (6)(a) has:

193 (i) knowledge of building construction and repair, safety precautions, building trades,
194 contracting procedures, and laws pertaining to construction; and

195 (ii) the ability to oversee building construction projects, read and interpret blueprints,
196 maintain standards of quality, and evaluate construction or design problems and suggest
197 solutions.

198 (7) To fulfill the requirements described in Subsection (6), an LEA may:

199 (a) appoint an employee of the LEA; or

200 (b) in accordance with Title 63G, Chapter 6a, Utah Procurement Code, contract with a
201 person who is not an employee of the LEA.

202 Section 4. Section **53E-3-708** is amended to read:

203 **53E-3-708. Licensed architect to prepare plans.**

204 (1) As used in this section:

205 (a) "Cost threshold" means the same as that term is defined in Section [53E-3-703](#).

206 (b) "Design build" means the same as that term is defined in Section [63G-6-103](#).

207 (2) A licensed architect shall prepare the plans and specifications for the construction
208 or alteration of school buildings.

209 (3) (a) Except as provided in Subsection (3)(b), a local school board:

210 (i) shall procure architecture services for a school construction project separately from
211 procuring general contracting or other construction services; and

212 (ii) may not issue a design build contract for a school construction project.

213 (b) Notwithstanding Subsection (3)(a), a local school board may issue a design build

214 contract for a construction project if the total estimated accumulative building project cost
215 exceeds the cost threshold if the local school board:

216 (i) solicits separate advertisements for architecture services and construction; and

217 (ii) compares the fiscal impact difference between the design build contract and

218 procuring separate contracts for architecture and construction services.

219 (4) (a) Notwithstanding Section 53E-3-703, a local school board may procure
220 architecture services without advertising for bids or receiving a certain number of bids if the
221 local school board procures the architecture services:

222 (i) to adjust a pre-existing design that any local school board has used for a previous
223 construction project; and

224 (ii) from the architect who provided the architecture services for the previous
225 construction project described in Subsection (4)(a)(i).

226 (b) Local school boards shall make efforts to collaborate and share in facility
227 construction and designs, emphasizing:

228 (i) the safety and instruction of students; and

229 (ii) fiscal responsibility regarding tax revenues.