

## HB0451S01 compared with HB0451

~~text~~ shows text that was in HB0451 but was deleted in HB0451S01.

text shows text that was not in HB0451 but was inserted into HB0451S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Walt Brooks proposes the following substitute bill:

### AMENDMENTS RELATING TO ADMINISTRATION OF STATE FACILITIES

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Walt Brooks**

Senate Sponsor: David G. Buxton

---

---

#### LONG TITLE

##### General Description:

This bill modifies provisions relating to the administration of state facilities.

##### Highlighted Provisions:

This bill:

- ▶ reorganizes and modifies provisions relating to the state building board, the Division of Facilities Construction and Management, and the administration of state facilities;
- ▶ modifies duties and responsibilities of the state building board and the director of the Division of Facilities Construction and Management;
- ▶ increases from \$100,000 to \$250,000 the value of property that is exempt from rules

## **HB0451S01 compared with HB0451**

adopted to ensure that the value of property being bought or exchanged is congruent with the terms of the purchase or exchange;

- ▶ increases from \$100,000 to \$250,000 the value of property the disposal or lease of which is not governed by provisions relating to the disposition of property owned by the Division of Facilities and Construction Management;
- ▶ repeals obsolete or redundant language; and
- ▶ makes technical and conforming changes.

### **Money Appropriated in this Bill:**

None

### **Other Special Clauses:**

This bill provides a special effective date.

[This bill provides a coordination clause.](#)

### **Utah Code Sections Affected:**

AMENDS:

- 11-44-201**, as last amended by Laws of Utah 2018, Chapter 415
- 11-59-302**, as enacted by Laws of Utah 2018, Chapter 388
- 11-59-304**, as enacted by Laws of Utah 2018, Chapter 388
- 11-59-501**, as enacted by Laws of Utah 2018, Chapter 388
- 17B-2a-818.5**, as last amended by Laws of Utah 2018, Chapter 319
- 19-1-206**, as last amended by Laws of Utah 2018, Chapter 319
- 26-18-402**, as last amended by Laws of Utah 2018, Chapter 319
- 26-40-115**, as last amended by Laws of Utah 2019, Chapter 393
- 51-11-102**, as enacted by Laws of Utah 2018, Chapter 253
- 53B-2-109**, as enacted by Laws of Utah 2005, Chapter 231
- 53B-2a-101**, as last amended by Laws of Utah 2019, Chapter 482
- 53B-2a-117**, as enacted by Laws of Utah 2019, Chapter 482
- 53B-22-201**, as enacted by Laws of Utah 2019, Chapter 482
- 53B-22-204**, as enacted by Laws of Utah 2019, Chapter 482
- 63A-1-112**, as last amended by Laws of Utah 2015, Chapter 181
- 63B-1-304**, as last amended by Laws of Utah 2010, Chapter 286
- 63B-2-301**, as last amended by Laws of Utah 2013, Chapters 310 and 465

## **HB0451S01 compared with HB0451**

- 63B-4-201**, as last amended by Laws of Utah 2016, Chapter 144
- 63B-9-103**, as last amended by Laws of Utah 2014, Chapter 196
- 63B-16-201**, as enacted by Laws of Utah 2007, Chapter 174
- 63B-16-202**, as last amended by Laws of Utah 2012, Chapter 393
- 63B-16-301**, as enacted by Laws of Utah 2007, Chapter 174
- 63B-17-201**, as last amended by Laws of Utah 2009, Chapter 150
- 63B-17-202**, as enacted by Laws of Utah 2008, Chapter 128
- 63B-17-301**, as enacted by Laws of Utah 2008, Chapter 128
- 63B-23-101**, as last amended by Laws of Utah 2019, Chapter 468
- 63B-25-101**, as last amended by Laws of Utah 2019, Chapter 246
- 63C-9-403**, as last amended by Laws of Utah 2018, Chapter 319
- 63G-6a-103**, as last amended by Laws of Utah 2019, Chapters 136, 170, 314, and 456
- 63H-6-102**, as last amended by Laws of Utah 2016, Chapter 301
- 63H-6-103**, as last amended by Laws of Utah 2019, Chapters 370 and 456
- 63I-1-263**, as last amended by Laws of Utah 2019, Chapters 89, 246, 311, 414, 468, 469, 482 and last amended by Coordination Clause, Laws of Utah 2019, Chapter 246
- 63J-1-201 (Superseded 07/01/20)**, as last amended by Laws of Utah 2019, Chapter 136
- 63J-1-201 (Effective 07/01/20)**, as last amended by Laws of Utah 2019, Chapters 136 and 464
- 63J-1-206**, as last amended by Laws of Utah 2019, Chapters 182 and 468
- 63J-1-602.2**, as last amended by Laws of Utah 2019, Chapters 136, 326, 468, and 469
- 63J-3-103**, as last amended by Laws of Utah 2017, Chapter 382
- 65A-4-1**, as last amended by Laws of Utah 2019, Chapter 195
- 72-6-107.5**, as last amended by Laws of Utah 2018, Chapter 319
- 79-2-404**, as last amended by Laws of Utah 2018, Chapter 319

### ENACTS:

- 63A-5b-101**, Utah Code Annotated 1953
- 63A-5b-102**, Utah Code Annotated 1953
- 63A-5b-201**, Utah Code Annotated 1953
- 63A-5b-202**, Utah Code Annotated 1953

## HB0451S01 compared with HB0451

63A-5b-203, Utah Code Annotated 1953

63A-5b-303, Utah Code Annotated 1953

63A-5b-304, Utah Code Annotated 1953

63A-5b-305, Utah Code Annotated 1953

63A-5b-401, Utah Code Annotated 1953

63A-5b-402, Utah Code Annotated 1953

63A-5b-403, Utah Code Annotated 1953

63A-5b-404, Utah Code Annotated 1953

63A-5b-406, Utah Code Annotated 1953

63A-5b-501, Utah Code Annotated 1953

63A-5b-502, Utah Code Annotated 1953

63A-5b-601, Utah Code Annotated 1953

63A-5b-602, Utah Code Annotated 1953

63A-5b-603, Utah Code Annotated 1953

63A-5b-604, Utah Code Annotated 1953

63A-5b-606, Utah Code Annotated 1953

63A-5b-701, Utah Code Annotated 1953

63A-5b-702, Utah Code Annotated 1953

63A-5b-703, Utah Code Annotated 1953

63A-5b-801, Utah Code Annotated 1953

63A-5b-1001, Utah Code Annotated 1953

63A-5b-1101, Utah Code Annotated 1953

63A-5b-1103, Utah Code Annotated 1953

63A-5b-1104, Utah Code Annotated 1953

63A-5b-1105, Utah Code Annotated 1953

### RENUMBERS AND AMENDS:

63A-5b-301, (Renumbered from 63A-5-201, as renumbered and amended by Laws of Utah 1993, Chapter 212)

63A-5b-302, (Renumbered from 63A-5-203, as renumbered and amended by Laws of Utah 1993, Chapter 212)

63A-5b-405, (Renumbered from 63A-5-228, as enacted by Laws of Utah 2019, Chapter

## **HB0451S01 compared with HB0451**

468)

**63A-5b-503**, (Renumbered from 63A-5-211, as last amended by Laws of Utah 2011, Chapter 303)

**63A-5b-605**, (Renumbered from 63A-5-208, as last amended by Laws of Utah 2016, Chapter 348)

**63A-5b-607**, (Renumbered from 63A-5-205.5, as enacted by Laws of Utah 2018, Chapter 319)

**63A-5b-608**, (Renumbered from 63A-5-207, as last amended by Laws of Utah 2000, Chapter 231)

**63A-5b-609**, (Renumbered from 63A-5-209, as last amended by Laws of Utah 2019, Chapter 468)

**63A-5b-610**, (Renumbered from 63A-5-219, as last amended by Laws of Utah 2002, Fifth Special Session, Chapter 20)

**63A-5b-802**, (Renumbered from 63A-5-302, as last amended by Laws of Utah 2012, Chapter 347)

**63A-5b-803**, (Renumbered from 63A-5-303, as enacted by Laws of Utah 1995, Chapter 113)

**63A-5b-804**, (Renumbered from 63A-5-304, as enacted by Laws of Utah 1995, Chapter 113)

**63A-5b-805**, (Renumbered from 63A-5-305, as last amended by Laws of Utah 2016, Chapter 240)

**63A-5b-806**, (Renumbered from 63A-5-401, as last amended by Laws of Utah 2019, Chapter 195)

**63A-5b-901**, (Renumbered from 63A-5a-102, as enacted by Laws of Utah 2019, Chapter 195)

**63A-5b-902**, (Renumbered from 63A-5a-103, as enacted by Laws of Utah 2019, Chapter 195)

**63A-5b-903**, (Renumbered from 63A-5a-104, as enacted by Laws of Utah 2019, Chapter 195)

**63A-5b-904**, (Renumbered from 63A-5a-201, as enacted by Laws of Utah 2019, Chapter 195)

## **HB0451S01 compared with HB0451**

- 63A-5b-905**, (Renumbered from 63A-5a-202, as enacted by Laws of Utah 2019, Chapter 195)
- 63A-5b-906**, (Renumbered from 63A-5a-203, as enacted by Laws of Utah 2019, Chapter 195)
- 63A-5b-907**, (Renumbered from 63A-5a-204, as enacted by Laws of Utah 2019, Chapter 195)
- 63A-5b-908**, (Renumbered from 63A-5a-205, as enacted by Laws of Utah 2019, Chapter 195)
- 63A-5b-909**, (Renumbered from 63A-5a-206, as enacted by Laws of Utah 2019, Chapter 195)
- 63A-5b-910**, (Renumbered from 63A-5-215, as last amended by Laws of Utah 2018, Chapter 404)
- 63A-5b-911**, (Renumbered from 63A-5-224, as enacted by Laws of Utah 2009, Chapter 53)
- 63A-5b-912**, (Renumbered from 63A-5-226, as enacted by Laws of Utah 2016, Chapter 298)
- 63A-5b-1002**, (Renumbered from 63A-5-701, as last amended by Laws of Utah 2015, Chapter 181)
- 63A-5b-1003**, (Renumbered from 63A-5-603, as last amended by Laws of Utah 2016, Chapter 322)
- 63A-5b-1102**, (Renumbered from 63A-5-801, as last amended by Laws of Utah 2008, Chapter 360 and renumbered and amended by Laws of Utah 2008, Chapter 382)
- 63A-5b-1106**, (Renumbered from 63A-5-222, as last amended by Laws of Utah 2009, Chapters 53 and 344)
- 63A-5b-1107**, (Renumbered from 63A-5-225, as last amended by Laws of Utah 2019, Chapter 246)

### **REPEALS:**

- 63A-5-100**, as enacted by Laws of Utah 2017, Chapter 355
- 63A-5-101**, as last amended by Laws of Utah 2017, Chapter 355
- 63A-5-101.5**, as enacted by Laws of Utah 2017, Chapter 355
- 63A-5-102**, as last amended by Laws of Utah 2012, Chapter 199

## HB0451S01 compared with HB0451

- 63A-5-103, as last amended by Laws of Utah 2019, Chapter 195
- 63A-5-104, as last amended by Laws of Utah 2019, Chapters 468 and 482
- 63A-5-202, as enacted by Laws of Utah 1993, Chapter 212
- 63A-5-204, as last amended by Laws of Utah 2019, Chapters 195 and 255
- 63A-5-205, as last amended by Laws of Utah 2018, Chapter 319
- 63A-5-206, as last amended by Laws of Utah 2019, Chapter 195
- 63A-5-216, as renumbered and amended by Laws of Utah 1993, Chapter 212
- 63A-5-223, as enacted by Laws of Utah 2009, Chapter 217
- 63A-5-301, as last amended by Laws of Utah 2007, Chapter 12
- 63A-5-501, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 63A-5-502, as last amended by Laws of Utah 2018, Chapter 148
- 63A-5-601, as renumbered and amended by Laws of Utah 2008, Chapters 334 and 382
- 63A-5-602, as last amended by Laws of Utah 2017, Chapter 181
- 63A-5a-101, as enacted by Laws of Utah 2019, Chapter 195

### Utah Code Sections Affected by Coordination Clause:

63A-5-205.5, as enacted by Laws of Utah 2018, Chapter 319

63A-5b-607, Utah Code Annotated 1953

---

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

Section 1. Section **11-44-201** is amended to read:

**11-44-201. Political subdivision responsibilities -- State responsibilities.**

(1) A political subdivision may:

- (a) enter into a performance efficiency agreement;
- (b) develop and administer a performance efficiency program;
- (c) analyze energy consumption by the political subdivision;
- (d) designate a staff member who is responsible for a performance efficiency program;

and

(e) provide the governing body of the political subdivision with information regarding the performance efficiency program.

(2) The following entities may provide information, technical resources, and other assistance to a political subdivision acting under this chapter:

## HB0451S01 compared with HB0451

- (a) the Utah Geological Survey, created in Section 79-3-201;
- (b) the State Board of Education;
- (c) the Division of Purchasing and General Services, created in Section 63A-2-101;

and

(d) the Division of Facilities Construction and Management, created in Section ~~[63A-5-201]~~ 63A-5b-301.

Section 2. Section **11-59-302** is amended to read:

### **11-59-302. Number of board members -- Appointment -- Vacancies -- Chairs.**

(1) The board shall consist of 11 members as provided in Subsection (2).  
(2) (a) The president of the Senate shall appoint two members of the Senate to serve as members of the board.

(b) The speaker of the House of Representatives shall appoint two members of the House of Representatives to serve as members of the board.

(c) The governor shall appoint four individuals to serve as members of the board:

(i) one of whom shall be a member of the board of or employed by the Governor's Office of Economic Development, created in Section 63N-1-201; and

(ii) one of whom shall be an employee of the Division of Facilities Construction and Management, created in Section ~~[63A-5-201]~~ 63A-5b-301.

(d) The Salt Lake County mayor shall appoint one board member, who shall be an elected Salt Lake County government official.

(e) The mayor of Draper, or a member of the Draper city council that the mayor designates, shall serve as a board member.

(f) The commissioner of higher education, appointed under Section 53B-1-105, or the commissioner's designee, shall serve as a board member.

(3) (a) (i) Subject to Subsection (3)(a)(ii), a vacancy on the board shall be filled in the same manner under this section as the appointment of the member whose vacancy is being filled.

(ii) If the mayor of Draper or commissioner of higher education is removed as a board member under Subsection (5), the mayor of Draper or commissioner of higher education, as the case may be, shall designate an individual to serve as a member of the board, as provided in Subsection (2)(e) or (f), respectively.



## HB0451S01 compared with HB0451

(b) Each person appointed or designated to fill a vacancy shall serve the remaining unexpired term of the member whose vacancy the person is filling.

(4) A member of the board appointed by the governor, president of the Senate, or speaker of the House of Representatives serves at the pleasure of and may be removed and replaced at any time, with or without cause, by the governor, president of the Senate, or speaker of the House of Representatives, respectively.

(5) A member of the board may be removed by a vote of two-thirds of all members of the board.

(6) (a) The governor shall appoint one board member to serve as cochair of the board.

(b) The president of the Senate and speaker of the House of Representatives shall jointly appoint one legislative member of the board to serve as cochair of the board.

Section 3. Section **11-59-304** is amended to read:

**11-59-304. Staff and other support services -- Cooperation from state and local government entities.**

(1) As used in this section:

(a) "Division" means the Division of Facilities Construction and Management, created in Section [~~63A-5-201~~] 63A-5b-301.

(b) "Office" means the Governor's Office of Economic Development, created in Section 63N-1-201.

(2) If and as requested by the board:

(a) the division shall:

(i) provide staff support to the board; and

(ii) make available to the board existing division resources and expertise to assist the board in the development, marketing, and disposition of the point of the mountain state land; and

(b) the office shall cooperate with and provide assistance to the board in the board's:

(i) formulation of a development plan for the point of the mountain state land; and

(ii) management and implementation of a development plan, including the marketing of property and recruitment of businesses and others to locate on the point of the mountain state land.

(3) A department, division, or other agency of the state and a political subdivision of

## **HB0451S01 compared with HB0451**

the state shall cooperate with the authority and the board to the fullest extent possible to provide whatever support, information, or other assistance the board requests that is reasonably necessary to help the authority fulfill its duties and responsibilities under this chapter.

Section 4. Section **11-59-501** is amended to read:

**11-59-501. Dissolution of authority -- Restrictions -- Publishing notice of dissolution -- Authority records -- Dissolution expenses.**

(1) The authority may not be dissolved unless:

(a) the authority board first receives approval from the Legislative Management Committee of the Legislature to dissolve the authority; and

(b) the authority has no outstanding bonded indebtedness, other unpaid loans, indebtedness, or advances, and no legally binding contractual obligations with persons or entities other than the state.

(2) To dissolve the authority, the board shall:

(a) obtain the approval of the Legislative Management Committee of the Legislature; and

(b) adopt a resolution dissolving the authority, to become effective as provided in the resolution.

(3) Upon the dissolution of the authority:

(a) the Governor's Office of Economic Development shall publish a notice of dissolution:

(i) in a newspaper of general circulation in the county in which the dissolved authority is located; and

(ii) as required in Section 45-1-101; and

(b) all title to property owned by the authority vests in the Division of Facilities Construction and Management, created in Section [~~63A-5-201~~] 63A-5b-301, for the benefit of the state.

(4) The board shall deposit all books, documents, records, papers, and seal of the dissolved authority with the state auditor for safekeeping and reference.

(5) The authority shall pay all expenses of the deactivation and dissolution.

Section 5. Section **17B-2a-818.5** is amended to read:

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

## HB0451S01 compared with HB0451

### coverage.

(1) As used in this section:

(a) "Aggregate" means the sum of all contracts, change orders, and modifications related to a single project.

(b) "Change order" means the same as that term is defined in Section 63G-6a-103.

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

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

(ii) meets employer eligibility waiting requirements for health care insurance, which may not exceed the first day of the calendar month following 60 days after the day on which the individual is hired.

(d) "Health benefit plan" means the same as that term is defined in Section 31A-1-301.

(e) "Qualified health insurance coverage" means the same as that term is defined in Section 26-40-115.

(f) "Subcontractor" means the same as that term is defined in Section [~~63A-5-208~~ 63A-5b-605].

(2) Except as provided in Subsection (3), the requirements of this section apply to:

(a) a contractor of a design or construction contract entered into by the public transit district on or after July 1, 2009, if the prime contract is in an aggregate amount equal to or greater than \$2,000,000; and

(b) a subcontractor of a contractor of a design or construction contract entered into by the public transit district on or after July 1, 2009, if the subcontract is in an aggregate amount equal to or greater than \$1,000,000.

(3) The requirements of this section do not apply to a contractor or subcontractor described in Subsection (2) if:

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

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

(c) the contract is an emergency procurement.

(4) A person that intentionally uses change orders, contract modifications, or multiple contracts to circumvent the requirements of this section is guilty of an infraction.

(5) (a) A contractor subject to the requirements of this section shall demonstrate to the

## HB0451S01 compared with HB0451

public transit district that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employee's dependents during the duration of the contract by submitting to the public transit district a written statement that:

(i) the contractor offers qualified health insurance coverage that complies with Section 26-40-115;

(ii) is from:

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

(B) an underwriter who is responsible for developing the employer group's premium rates; and

(iii) was created within one year before the day on which the statement is submitted.

(b) A contractor that is subject to the requirements of this section shall:

(i) place a requirement in each of the contractor's subcontracts that a subcontractor that is subject to the requirements of this section shall obtain and maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the subcontract; and

(ii) obtain from a subcontractor that is subject to the requirements of this section a written statement that:

(A) the subcontractor offers qualified health insurance coverage that complies with Section 26-40-115;

(B) is from an actuary selected by the subcontractor or the subcontractor's insurer, or an underwriter who is responsible for developing the employer group's premium rates; and

(C) was created within one year before the day on which the contractor obtains the statement.

(c) (i) (A) A contractor that fails to maintain an offer of qualified health insurance coverage as described in Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with an ordinance adopted by the public transit district under Subsection (6).

(B) A contractor is not subject to penalties for the failure of a subcontractor to obtain and maintain an offer of qualified health insurance coverage described in Subsection (5)(b)(i).

(ii) (A) A subcontractor that fails to obtain and maintain an offer of qualified health insurance coverage described in Subsection (5)(b)(i) during the duration of the subcontract is

## HB0451S01 compared with HB0451

subject to penalties in accordance with an ordinance adopted by the public transit district under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to maintain an offer of qualified health insurance coverage described in Subsection (5)(a).

(6) The public transit district shall adopt ordinances:

(a) in coordination with:

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

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

(iii) the State Building Board in accordance with Section [~~63A-5-205.5~~] 63A-5b-607;

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

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

(b) that establish:

(i) the requirements and procedures a contractor and a subcontractor shall follow to demonstrate compliance with this section, including:

(A) that a contractor or subcontractor's compliance with this section is subject to an audit by the public transit district or the Office of the Legislative Auditor General;

(B) that a contractor that is subject to the requirements of this section shall obtain a written statement described in Subsection (5)(a); and

(C) that a subcontractor that is subject to the requirements of this section shall obtain a written statement described in Subsection (5)(b)(ii);

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

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

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

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

(D) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for employees and dependents of employees of the contractor or subcontractor who were not offered qualified health insurance coverage

## HB0451S01 compared with HB0451

during the duration of the contract; and

(iii) a website on which the district shall post the commercially equivalent benchmark, for the qualified health insurance coverage identified in Subsection (1)(e), that is provided by the Department of Health, in accordance with Subsection 26-40-115(2).

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

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

(A) the employer relied in good faith on a written statement described in Subsection (5)(a) or (5)(b)(ii); or

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

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

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

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

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under:

(i) Section 63G-6a-1602; or

(ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

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

Section 6. Section **19-1-206** is amended to read:

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

(1) As used in this section:

(a) "Aggregate" means the sum of all contracts, change orders, and modifications

## HB0451S01 compared with HB0451

related to a single project.

(b) "Change order" means the same as that term is defined in Section 63G-6a-103.

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

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

(ii) meets employer eligibility waiting requirements for health care insurance, which may not exceed the first day of the calendar month following 60 days after the day on which the individual is hired.

(d) "Health benefit plan" means the same as that term is defined in Section 31A-1-301.

(e) "Qualified health insurance coverage" means the same as that term is defined in Section 26-40-115.

(f) "Subcontractor" means the same as that term is defined in Section [~~63A-5-208~~ 63A-5b-605].

(2) Except as provided in Subsection (3), the requirements of this section apply to:

(a) a contractor of a design or construction contract entered into by, or delegated to, the department, or a division or board of the department, on or after July 1, 2009, if the prime contract is in an aggregate amount equal to or greater than \$2,000,000; and

(b) a subcontractor of a contractor of a design or construction contract entered into by, or delegated to, the department, or a division or board of the department, on or after July 1, 2009, if the subcontract is in an aggregate amount equal to or greater than \$1,000,000.

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

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

(b) the contract or agreement is between:

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

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

(B) the federal government;

(C) another state;

(D) an interstate agency;

(E) a political subdivision of this state; or

(F) a political subdivision of another state;

## HB0451S01 compared with HB0451

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

(d) the contract is:

(i) a sole source contract; or

(ii) an emergency procurement.

(4) A person that intentionally uses change orders, contract modifications, or multiple contracts to circumvent the requirements of this section is guilty of an infraction.

(5) (a) A contractor subject to the requirements of this section shall demonstrate to the executive director that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents during the duration of the contract by submitting to the executive director a written statement that:

(i) the contractor offers qualified health insurance coverage that complies with Section 26-40-115;

(ii) is from:

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

(B) an underwriter who is responsible for developing the employer group's premium rates; and

(iii) was created within one year before the day on which the statement is submitted.

(b) A contractor that is subject to the requirements of this section shall:

(i) place a requirement in each of the contractor's subcontracts that a subcontractor that is subject to the requirements of this section shall obtain and maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the subcontract; and

(ii) obtain from a subcontractor that is subject to the requirements of this section a written statement that:

(A) the subcontractor offers qualified health insurance coverage that complies with Section 26-40-115;

(B) is from an actuary selected by the subcontractor or the subcontractor's insurer, or an underwriter who is responsible for developing the employer group's premium rates; and

(C) was created within one year before the day on which the contractor obtains the



## HB0451S01 compared with HB0451

statement.

(c) (i) (A) A contractor that fails to maintain an offer of qualified health insurance coverage described in Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A contractor is not subject to penalties for the failure of a subcontractor to obtain and maintain an offer of qualified health insurance coverage described in Subsection (5)(b)(i).

(ii) (A) A subcontractor that fails to obtain and maintain an offer of qualified health insurance coverage described in Subsection (5)(b) during the duration of the subcontract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to maintain an offer of qualified health insurance coverage described in Subsection (5)(a).

(6) The department shall adopt administrative rules:

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

(b) in coordination with:

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

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

(iii) the State Building Board in accordance with Section [~~63A-5-205.5~~] 63A-5b-607;

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

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

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

(c) that establish:

(i) the requirements and procedures a contractor and a subcontractor shall follow to demonstrate compliance with this section, including:

(A) that a contractor or subcontractor's compliance with this section is subject to an audit by the department or the Office of the Legislative Auditor General;

(B) that a contractor that is subject to the requirements of this section shall obtain a written statement described in Subsection (5)(a); and

(C) that a subcontractor that is subject to the requirements of this section shall obtain a written statement described in Subsection (5)(b)(ii);

## HB0451S01 compared with HB0451

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

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

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

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

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

(iii) a website on which the department shall post the commercially equivalent benchmark, for the qualified health insurance coverage identified in Subsection (1)(e), that is provided by the Department of Health, in accordance with Subsection 26-40-115(2).

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

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

(A) the employer relied in good faith on a written statement described in Subsection (5)(a) or (5)(b)(ii); or

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

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

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

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

## HB0451S01 compared with HB0451

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under:

(i) Section 63G-6a-1602; or

(ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

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

Section 7. Section **26-18-402** is amended to read:

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

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

(2) (a) Except as provided in Subsection (3), the following shall be deposited into the Medicaid Restricted Account:

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

(ii) any unused state funds that are associated with the Medicaid program, as defined in Section 26-18-2, from the Department of Workforce Services and the Department of Human Services; and

(iii) any penalties imposed and collected under:

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

(B) Section 19-1-206;

(C) Section [~~63A-5-205.5~~] 63A-5b-607;

(D) Section 63C-9-403;

(E) Section 72-6-107.5; or

(F) Section 79-2-404.

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

(c) The Legislature may appropriate money in the restricted account to fund programs that expand medical assistance coverage and private health insurance plans to low income

## HB0451S01 compared with HB0451

persons who have not traditionally been served by Medicaid, including the Utah Children's Health Insurance Program created in Chapter 40, Utah Children's Health Insurance Act.

(3) For fiscal years 2008-09, 2009-10, 2010-11, 2011-12, and 2012-13 the following funds are nonlapsing:

(a) any general funds appropriated to the department for the state plan for medical assistance, or for the Division of Health Care Financing that are not expended by the department in the fiscal year in which the general funds were appropriated; and

(b) funds described in Subsection (2)(a)(ii).

Section 8. Section **26-40-115** is amended to read:

**26-40-115. State contractor -- Employee and dependent health benefit plan coverage.**

(1) For purposes of Sections 17B-2a-818.5, 19-1-206, [~~63A-5-205.5~~] 63A-5b-607, 63C-9-403, 72-6-107.5, and 79-2-404, "qualified health insurance coverage" means, at the time the contract is entered into or renewed:

(a) a health benefit plan and employer contribution level with a combined actuarial value at least actuarially equivalent to the combined actuarial value of the benchmark plan determined by the program under Subsection 26-40-106(1)(a), and a contribution level at which the employer pays at least 50% of the premium for the employee and the dependents of the employee who reside or work in the state; or

(b) a federally qualified high deductible health plan that, at a minimum:

(i) has a deductible that is:

(A) the lowest deductible permitted for a federally qualified high deductible health plan; or

(B) a deductible that is higher than the lowest deductible permitted for a federally qualified high deductible health plan, but includes an employer contribution to a health savings account in a dollar amount at least equal to the dollar amount difference between the lowest deductible permitted for a federally qualified high deductible plan and the deductible for the employer offered federally qualified high deductible plan;

(ii) has an out-of-pocket maximum that does not exceed three times the amount of the annual deductible; and

(iii) provides that the employer pays 60% of the premium for the employee and the

## HB0451S01 compared with HB0451

dependents of the employee who work or reside in the state.

(2) The department shall:

(a) on or before July 1, 2016:

(i) determine the commercial equivalent of the benchmark plan described in Subsection (1)(a); and

(ii) post the commercially equivalent benchmark plan described in Subsection (2)(a)(i) on the department's website, noting the date posted; and

(b) update the posted commercially equivalent benchmark plan annually and at the time of any change in the benchmark.

Section 9. Section **51-11-102** is amended to read:

### **51-11-102. Definitions.**

As used in this chapter:

(1) "Division" means the Division of Facilities Construction and Management created in Section [~~63A-5-201~~] 63A-5b-301.

(2) "Fund" means the Winter Sports Venue Grant Fund.

(3) "Improve" or "improvements" means the replacement or addition to infrastructure, buildings, building components, or facility equipment.

(4) "Venue" means a facility:

(a) designed and currently approved under standards developed by a generally recognized sports federation to host world-class level, international winter sports competitions; and

(b) used for recreational, developmental, and competitive athletic training.

(5) "Venue operator" means a person who:

(a) (i) operates a venue; and

(ii) the venue is exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code; or

(b) owns a venue or operates a venue under contract with the public owner of the

venue.

Section 10. Section **53B-2-109** is amended to read:

### **53B-2-109. Notice to local government when constructing student housing.**

(1) Each institution that intends to construct student housing on property owned by the

## HB0451S01 compared with HB0451

institution shall provide written notice of the intended construction, as provided in Subsection (2), before any funds are committed to the construction, if any of the proposed student housing buildings is within 300 feet of privately owned residential property.

(2) Each notice under Subsection (1) shall be provided to the legislative body and, if applicable, the mayor of:

(a) the county in whose unincorporated area the privately owned residential property is located; or

(b) the municipality in whose boundaries the privately owned residential property is located.

(3) (a) (i) Within 21 days after receiving the notice required by Subsection (1), a county or municipality entitled to the notice may submit a written request to the institution for a public hearing on the proposed student housing construction.

(ii) Each county or municipality that submits a written request for a hearing under Subsection (3)(a) shall deliver a copy of the request to the Division of Facilities Construction and Management.

(b) If a county or municipality requests a hearing under Subsection (3)(a), the legislative body of the affected county or municipality and the institution shall jointly hold a public hearing to provide information to the public and to allow the institution and the county or municipality to receive input from the public about the proposed student housing construction.

(c) A public hearing held under Subsection (3)(a) satisfies the public hearing requirement of Subsection [~~63A-5-206(13)(b)~~] 63A-5b-1104(2) for the same proposed student housing construction.

Section 11. Section **53B-2a-101** is amended to read:

### **53B-2a-101. Definitions.**

As used in this chapter:

(1) "Board of trustees" means the UTech Board of Trustees.

(2) "Capital [~~developments~~] development" means the same as [~~that term is~~] capital development project, as defined in Section [~~63A-5-104~~] 63A-5b-401.

(3) "Commissioner of technical education" means the UTech commissioner of technical education.

## HB0451S01 compared with HB0451

(4) "Competency-based" means mastery of subject matter or skill level, as demonstrated through business and industry approved standards and assessments, achieved through participation in a hands-on learning environment, and which is tied to observable, measurable performance objectives.

(5) "Dedicated project" means a capital development project for which state funds from the Technical Colleges Capital Projects Fund created in Section 53B-2a-118 are requested or used.

(6) "Nondedicated project" means a capital development project for which state funds from a source other than the Technical Colleges Capital Projects Fund created in Section 53B-2a-118 are requested or used.

(7) "Open-entry, open-exit" means:

(a) a method of instructional delivery that allows for flexible scheduling in response to individual student needs or requirements and demonstrated competency when knowledge and skills have been mastered;

(b) students have the flexibility to begin or end study at any time, progress through course material at their own pace, and demonstrate competency when knowledge and skills have been mastered; and

(c) if competency is demonstrated in a program of study, a credential, certificate, or diploma may be awarded.

(8) "State funds" means the same as that term is defined in Section [~~63A-5-104~~] 63A-5b-401.

(9) "UTech" means the Utah System of Technical Colleges described in Section 53B-1-102.

Section 12. Section **53B-2a-117** is amended to read:

**53B-2a-117. Legislative approval -- Capital development projects --**

### **Prioritization.**

(1) As used in this section:

(a) "Consumer Price Index" means the Consumer Price Index for All Urban Consumers as published by the Bureau of Labor Statistics of the United States Department of Labor.

(b) "Fund" means the Technical Colleges Capital Projects Fund created in Section 53B-2a-118.

## HB0451S01 compared with HB0451

(2) In accordance with this section, a technical college is required to receive legislative approval in an appropriations act for a dedicated project or a nondedicated project.

(3) In accordance with Section 53B-2a-112, a technical college shall submit to the board of trustees a proposal for a funding request for each dedicated project or nondedicated project for which the technical college seeks legislative approval.

(4) The board of trustees shall:

(a) review each proposal submitted under Subsection (3) to ensure that the proposal complies with Section 53B-2a-112;

(b) based on the results of the board of trustees' review under Subsection (4)(a), create:

(i) a list of approved dedicated projects, prioritized in accordance with Subsection (6);

and

(ii) a list of approved nondedicated projects, prioritized in accordance with Subsection (6); and

(c) submit the lists described in Subsection (4)(b) to:

(i) the governor;

(ii) the Infrastructure and General Government Appropriations Subcommittee;

(iii) the Higher Education Appropriations Subcommittee; and

(iv) the State Building Board for the State Building Board's:

(A) recommendation, for the list described in Subsection (4)(b)(i); or

(B) recommendation and prioritization, for the list described in Subsection (4)(b)(ii).

(5) A dedicated project:

(a) is subject to the State Building Board's recommendation as described in Section ~~[63A-5-104]~~ 63A-5b-403; and

(b) is not subject to the State Building Board's prioritization as described in Section ~~[63A-5-104]~~ 63A-5b-403.

(6) (a) Subject to Subsection (7), the board of trustees shall prioritize funding requests for capital development projects described in this section based on:

(i) growth and capacity;

(ii) effectiveness and support of critical programs;

(iii) cost effectiveness;

(iv) building deficiencies and life safety concerns; and



## HB0451S01 compared with HB0451

(v) alternative funding sources.

(b) On or before August 1, 2019, the board of trustees shall establish:

(i) how the board of trustees will measure each factor described in Subsection (6)(a);

and

(ii) procedures for prioritizing funding requests for capital development projects described in this section.

(7) (a) Subject to Subsection (7)(b), and in accordance with Subsection (6), the board of trustees may annually prioritize:

(i) up to three nondedicated projects if the ongoing appropriation to the fund is less than \$7,000,000;

(ii) up to two nondedicated projects if the ongoing appropriation to the fund is at least \$7,000,000 but less than \$14,000,000; or

(iii) one nondedicated project if the ongoing appropriation to the fund is at least \$14,000,000.

(b) For each calendar year beginning on or after January 1, 2020, the dollar amounts described in Subsection (7)(a) shall be adjusted by an amount equal to the percentage difference between:

(i) the Consumer Price Index for the 2019 calendar year; and

(ii) the Consumer Price Index for the previous calendar year.

(8) (a) A technical college may request operations and maintenance funds for a capital development project approved under this section.

(b) The Legislature shall consider a technical college's request described in Subsection (8)(a).

Section 13. Section **53B-22-201** is amended to read:

### **53B-22-201. Definitions.**

As used in this part:

(1) "Capital [~~developments~~] development" means the same as [~~that term is~~] capital development project, as defined in Section [~~63A-5-104~~] 63A-5b-401.

(2) "Consumer Price Index" means the Consumer Price Index for All Urban Consumers as published by the Bureau of Labor Statistics of the United States Department of Labor.

## HB0451S01 compared with HB0451

(3) "Dedicated project" means a capital development project for which state funds from an institution's allocation are requested or used.

(4) "Fund" means the Higher Education Capital Projects Fund created in Section 53B-22-202.

(5) "Institution" means a college or university that is part of the Utah System of Higher Education described in Section 53B-1-102.

(6) "Institution's allocation" means the total amount of money in the fund that an institution has been allocated in accordance with Section 53B-22-203.

(7) "Nondedicated project" means a capital development project for which state funds from a source other than an institution's allocation are requested or used.

(8) "State funds" means the same as that term is defined in Section [~~63A-5-104~~] 63A-5b-401.

Section 14. Section **53B-22-204** is amended to read:

**53B-22-204. Funding request for capital development project -- Legislative approval -- Board prioritization, approval, and review.**

(1) In accordance with this section, an institution is required to receive legislative approval in an appropriations act for a dedicated project or a nondedicated project.

(2) An institution shall submit to the board a proposal for a funding request for each dedicated project or nondedicated project for which the institution seeks legislative approval.

(3) The board shall:

(a) review each proposal submitted under Subsection (2) to ensure the proposal:

(i) is cost effective and an efficient use of resources;

(ii) is consistent with the institution's mission and master plan; and

(iii) fulfills a critical institutional facility need;

(b) based on the results of the board's review under Subsection (3)(a), create:

(i) a list of approved dedicated projects; and

(ii) a list of approved nondedicated projects, prioritized in accordance with Subsection

(5); and

(c) submit the lists described in Subsection (3)(b) to:

(i) the governor;

(ii) the Infrastructure and General Government Appropriations Subcommittee;

## HB0451S01 compared with HB0451

- (iii) the Higher Education Appropriations Subcommittee; and
- (iv) the State Building Board for the State Building Board's:
  - (A) recommendation, for the list described in Subsection (3)(b)(i); or
  - (B) recommendation and prioritization, for the list described in Subsection (3)(b)(ii).

(4) A dedicated project:

(a) is subject to the State Building Board's recommendation as described in Section ~~[63A-5-104]~~ 63A-5b-403; and

(b) is not subject to the State Building Board's prioritization as described in Section ~~[63A-5-104]~~ 63A-5b-403.

(5) (a) Subject to Subsection (6), the board shall prioritize institution requests for funding for nondedicated projects based on:

- (i) capital facility need;
- (ii) utilization of facilities;
- (iii) maintenance and condition of facilities; and
- (iv) any other factor determined by the board.

(b) On or before August 1, 2019, the board shall establish how the board will prioritize institution requests for funding for nondedicated projects, including:

- (i) how the board will measure each factor described in Subsection (5)(a); and
- (ii) procedures for prioritizing requests.

(6) (a) Subject to Subsection (6)(b), and in accordance with Subsection (5), the board may annually prioritize:

(i) up to three nondedicated projects if the ongoing appropriation to the fund is less than \$50,000,000;

(ii) up to two nondedicated projects if the ongoing appropriation to the fund is at least \$50,000,000 but less than \$100,000,000; or

(iii) one nondedicated project if the ongoing appropriation to the fund is at least \$100,000,000.

(b) For each calendar year beginning on or after January 1, 2020, the dollar amounts described in Subsection (6)(a) shall be adjusted by an amount equal to the percentage difference between:

- (i) the Consumer Price Index for the 2019 calendar year; and

## HB0451S01 compared with HB0451

(ii) the Consumer Price Index for the previous calendar year.

(7) (a) An institution may request operations and maintenance funds for a capital development project approved under this section.

(b) The Legislature shall consider an institution's request described in Subsection (7)(a).

(8) After an institution completes a capital development project described in this section, the board shall review the capital development project, including the costs and design of the capital development project.

Section 15. Section **63A-1-112** is amended to read:

### **63A-1-112. Certificates of participation -- Legislative approval required --**

#### **Definition -- Exception.**

(1) (a) Certificates of participation for either capital facilities or capital improvements may not be issued by the department, its subdivisions, or any other state agency after July 1, 1985, without prior legislative approval.

(b) Nothing in this section affects the rights and obligations surrounding certificates of participation that were issued prior to July 1, 1985.

(2) (a) As used in this section, "certificate of participation" means an instrument that acts as evidence of the certificate holder's undivided interest in property being lease-purchased, the payment on which is subject to appropriation by the Legislature.

(b) (i) As used in this Subsection (2)(b), "performance efficiency agreement" means the same as that term is defined in Section [~~63A-5-701~~] 63A-5b-1001.

(ii) "Certificate of participation" does not include a performance efficiency agreement.

Section 16. Section **63A-5b-101** is enacted to read:

## **CHAPTER 5b. ADMINISTRATION OF STATE FACILITIES**

### **Part 1. General Provisions**

#### **63A-5b-101. Title.**

This chapter is known as "Administration of State Facilities."

Section 17. Section **63A-5b-102** is enacted to read:

#### **63A-5b-102. Definitions.**

As used in this chapter:

(1) "Board" means the state building board created in Section 63A-5b-201.

## HB0451S01 compared with HB0451

(2) "Board of Regents" means the State Board of Regents established in Section 53B-1-103.

(3) "Capitol hill facilities" means the same as that term is defined in Section 63C-9-102.

(4) "Capitol hill grounds" means the same as that term is defined in Section 63C-9-102.

(5) "Compliance agency" means the same as that term is defined in Section 15A-1-202.

(6) "Director" means the division director, appointed under Section 63A-5b-302.

(7) "Division" means the Division of Facilities Construction and Management created in Section 63A-5b-301.

(8) "Institution of higher education" means an institution listed in Subsection 53B-2-101(1).

(9) "Trust lands administration" means the School and Institutional Trust Lands Administration established in Section 53C-1-201.

(10) "UTech board" means the UTech Board of Trustees created in Section 53B-2a-103.

Section 18. Section **63A-5b-201** is enacted to read:

### **Part 2. State Building Board**

**63A-5b-201. Creation of state building board -- Composition -- Appointment -- Per diem and expenses -- Board officers.**

(1) There is created within the department the state building board.

(2) (a) The board is composed of eight members, seven of whom are voting members appointed by the governor.

(b) The executive director of the Governor's Office of Management and Budget, or the executive director's designee, is a nonvoting member of the board.

(3) The term of a voting board member is four years, except that the governor shall, at the time of a member's appointment or reappointment, adjust the length of the member's term, as necessary, to ensure that approximately half of the board is appointed every two years.

(4) When a vacancy occurs in the membership of the voting members of the board for any reason, the governor shall appoint a replacement for the unexpired term of the member who created the vacancy.

(5) (a) A voting board member shall hold office until a successor is appointed and

## HB0451S01 compared with HB0451

qualified.

(b) A voting board member may not serve more than two consecutive terms.

(6) The governor shall designate one board member as the board chair.

(7) A member of the board may not receive compensation or benefits for the member's service on the board, but may receive per diem and travel expenses in accordance with:

(a) Sections 63A-3-106 and 63A-3-107; and

(b) rules made by the Division of Finance in accordance with Sections 63A-3-106 and 63A-3-107.

(8) A member of the board is not required to post a bond for the performance of the member's official duties.

(9) The executive director or the executive director's designee shall serve as secretary to the board and shall:

(a) manage scheduling for the board and the board's calendar;

(b) establish and manage the agenda for meetings of the board;

(c) keep the minutes of board meetings;

(d) assist the board in the board's obligation to comply with Title 52, Chapter 4, Utah Open and Public Meetings Act;

(e) (i) assist the board in the board's obligation to comply with Title 63G, Chapter 2, Government Records Access and Management Act; and

(ii) act as the board's records officer, as defined in Section 63G-2-103; and

(f) assist the board in the board's obligation to comply with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 19. Section **63A-5b-202** is enacted to read:

**63A-5b-202. Board powers and duties.**

(1) The board may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules that are necessary to discharge the board's duties.

(2) The board shall:

(a) review and approve agency master plans of structures built or contemplated;

(b) submit capital development recommendations and priorities to the Legislature as set forth in Section 63A-5b-402;

(c) submit recommendations for dedicated projects and prioritize nondedicated projects

## HB0451S01 compared with HB0451

as provided in Section 63A-5b-403;

(d) make a finding that the requirements of Section 53B-2a-112 are met before the board may consider a funding request from the UTech board pertaining to new capital facilities and land purchases; and

(e) fulfill the board's responsibilities under:

(i) Section 63A-5b-802, relating to the approval of leases with terms of more than 10 years;

(ii) Section 64A-5b-907, relating to vacant division-owned property; and

(iii) Section 63A-5b-1003, relating to the approval of loans from the state facility energy efficiency fund.

(3) The board may:

(a) authorize capital development projects without Legislative approval only as authorized in Section 63A-5b-404; and

(b) make rules relating to the categorical delegation of projects as provided in Subsection 63A-5b-604(4).

Section 20. Section **63A-5b-203** is enacted to read:

### **63A-5b-203. Meetings of board -- Rules of procedure -- Quorum.**

(1) The board shall meet quarterly and at other times at the call of the executive director or at the request of the board chair.

(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall adopt rules of procedure for the conduct of the board's meetings.

(3) Four members of the board constitute a quorum for the transaction of business.

(4) The board shall conduct all meetings of the board in accordance with Title 52, Chapter 4, Open and Public Meetings Act.

Section 21. Section **63A-5b-301**, which is renumbered from Section 63A-5-201 is renumbered and amended to read:

### **Part 3. Division of Facilities Construction and Management**

#### **[~~63A-5-201~~]. 63A-5b-301. Creation -- Administration.**

There is created within the department the Division of Facilities Construction and Management, to be administered by a director.

Section 22. Section **63A-5b-302**, which is renumbered from Section 63A-5-203 is

## HB0451S01 compared with HB0451

renumbered and amended to read:

### ~~[63A-5-203].~~ **63A-5b-302. Director of division -- Appointment.**

The executive director shall appoint the director of the division with the approval of the governor.

Section 23. Section **63A-5b-303** is enacted to read:

### **63A-5b-303. ~~{ Powers} Duties~~ and ~~{duties}authority~~ of ~~{director}division~~.**

(1) (a) The ~~{director}division~~ shall:

~~(i) {make forms, make policies, and, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules necessary for the division to perform the division's duties};~~

~~—— (ii) {subject to Subsection (1)(b), supervise and control the allocation of space, in accordance with legislative directive through annual appropriations acts {or}, other {specific} legislation, or statute, to {the various} agencies in all buildings or space owned, leased, or rented by or to the state, except {capitol hill facilities and capitol hill grounds and except} as provided in Subsection (3) or as otherwise provided by {law} statute};~~

~~(iii) {ii} assure the efficient use of all building space};~~

~~—— (iv) { under the division's supervision and control};~~

~~(iii) acquire title to all real property, buildings, fixtures, and appurtenances for use by the state or an agency, as authorized by the Legislature through an appropriation act {or}, other legislation, or statute, subject to Subsection (1)({b}), acquire title to all real property, buildings, fixtures, or appurtenances for use by the state or an agency;~~

~~—— (v) {c};~~

~~(iv) except as otherwise provided by statute, hold title {, in the name of the division,} to all real property, buildings, fixtures, {or} and appurtenances owned by the state or an agency;~~

~~(vi) {v} collect and maintain all deeds, abstracts of title, and all other documents evidencing title to or an interest in property belonging to the state or {any} of the state's departments, except institutions of higher education and the trust lands administration;~~

~~{ —— (vii) report all properties acquired by the state, except those acquired by institutions of higher education and the trust lands administration, to the director of the Division of Finance for inclusion in the state's financial records;~~

~~—— (viii) before charging a rate, fee, or other amount for a service provided by the~~



## HB0451S01 compared with HB0451

~~division's internal service fund to an executive branch agency, or to a service subscriber other than an executive branch agency:~~

~~—— (A) submit an analysis of the proposed rate, fee, or other amount to the rate committee created in Section 63A-1-114; and~~

~~—— (B) obtain the approval of the Legislature as required by Section 63J-1-410;~~

~~‡ (fix)vi~~ (A) periodically conduct a market analysis of proposed rates and fees; and

(B) include in ~~the~~a market analysis a comparison of the division's rates and fees with the rates and fees of other public or private sector providers of comparable services, if rates and fees for comparable services are reasonably available;

~~(fx)vii~~ implement the state building energy efficiency program under Section 63A-5b-1002;

~~(fxi)viii~~ convey, lease, or dispose of the real property, water rights, or water shares associated with the Utah State Developmental Center if directed to do so by the Utah State ~~Developmental~~Development Center board, as provided in Subsection 62A-5-206.6(2); and

~~(xii) after receiving the notice required;~~ix) take all other action that the division is required to do under this chapter or other applicable statute.

(b) In making an allocation of space under Subsection 10-2-419(3)(d), file a written protest at or before the public hearing under Subsection 10-2-419(2)(b), if:

~~—— (A) it is in the best interest of the state to protest the boundary adjustment; or~~

~~—— (B) ‡(1)(a)(i), the division shall conduct one or more studies to determine the actual needs of each agency.~~

(c) The division may, without legislative approval, acquire title to real property for use by the state or an agency if the acquisition cost does not exceed \$250,000.

(2) The division may:

(a) sue and be sued;

(b) as authorized by the Legislature; ‡ instructs the director to protest the boundary adjustment; and

~~—— (xiii); buy, lease, or otherwise acquire, by exchange or otherwise, and hold real or personal property necessary for the discharge of the division's duties; and~~

(c) take all other action necessary for carrying out the purposes of this chapter.

~~(b) Legislative approval is not required for an acquisition by the division that costs~~

## HB0451S01 compared with HB0451

~~§250,000 or less.~~

~~\_\_\_\_\_ (2) (a) In making an~~ 3) (a) The division may not supervise or control the allocation of space ~~under Subsection (1)(a)(ii), the director shall:~~

~~\_\_\_\_\_ (i) conduct studies to determine the actual needs of each agency; and~~

~~\_\_\_\_\_ (ii) comply with the restrictions contained in this Subsection (2)}~~ for an institution of higher education or an entity in the public education system.

~~(b) The supervision and control of the legislative area is reserved to the Legislature.~~

~~(c) The supervision and control of the trial courts area is reserved to the judiciary.~~

~~{ \_\_\_\_\_ (d) The director may not supervise or control the allocation of space for institutions of higher education or entities in the public education system.~~

~~‡ (c) d~~ The supervision and control of capitol hill facilities and capitol hill grounds is reserved to the State Capitol Preservation Board.

~~{3} The director may:~~

~~\_\_\_\_\_ (a) hire or otherwise procure assistance and services, professional, skilled, or otherwise, that are necessary to carry out the director's responsibilities, and may expend funds provided for that purpose either through annual operating budget appropriations or from nonlapsing project funds;~~

~~\_\_\_\_\_ (b) sue and be sued in the name of the division; and~~

~~\_\_\_\_\_ (c) hold, buy, lease, and acquire, by exchange or otherwise, as authorized by~~ 4) Before the division charges a rate, fee, or other amount for a service provided by the division's internal service fund to an executive branch agency, or to a service subscriber other than an executive branch agency, the division shall:

(a) submit an analysis of the proposed rate, fee, or other amount to the rate committee created in Section 63A-1-114; and

(b) obtain the approval of the Legislature ~~{, whatever real or personal property is necessary for the discharge of the director's duties.~~

~~\_\_\_\_\_ (4) } as required by Section 63J-1-410.~~

Section 24. Section 63A-5b-304 is enacted to read:

63A-5b-304. Entities authorized to hold title.

Notwithstanding ~~{Subsection (1)(a)(iv)}~~ Section 63A-5b-303, ~~{the following entities}~~ an agency may hold title to ~~{any}~~ real property ~~{, buildings, fixtures, and~~

## HB0451S01 compared with HB0451

appurtenances occupied by them for purposes other than administration:

(a) that the agency occupies for a purpose other than the agency's administrative offices, if the agency is:

(1) the Department of Transportation;

(~~b~~)2) the Department of Natural Resources;

(3) the Department of Workforce Services;

(4) the Division of Forestry, Fire, and State Lands;

(~~c~~) the Department of Natural Resources;

(~~d~~)5) the Utah National Guard;

(~~e~~)6) ~~any~~an area vocational center or other institution administered by the State Board of Education;

(~~f~~)7) the trust lands administration; and

(~~g~~)8) ~~any~~an institution of higher education.

Section 25. Section 63A-5b-305 is enacted to read:

**63A-5b-305. Duties and authority of director.**

(1) The director shall:

(a) administer the division's duties and responsibilities;

(b) report all property acquired by the state, except property acquired by an institution of higher education or the trust lands administration, to the director of the Division of Finance for inclusion in the state's financial records;

(c) after receiving the notice required under Subsection 10-2-419(3)(d), file a written protest at or before the public hearing under Subsection 10-2-419(2)(b), if:

(i) it is in the best interest of the state to protest the boundary adjustment; or

(ii) the Legislature instructs the director to protest the boundary adjustment; and

(d) take all other action that the director is required to take under this chapter or other applicable statute.

(2) The director may:

(a) create forms and make policies necessary for the division or director to perform the division or director's duties;

(b) (i) hire or otherwise procure assistance and service, professional, skilled, or otherwise, necessary to carry out the director's duties under this chapter; and

## HB0451S01 compared with HB0451

(ii) expend funds provided for the purpose described in Subsection (2)(b)(i) through annual operation budget appropriations or from other nonlapsing project funds;

(c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules necessary for the division or director to perform the division or director's duties;  
and

(d) take all other action necessary for carrying out the purposes of this chapter.

Section ~~{24}~~26. Section **63A-5b-401** is enacted to read:

### Part 4. Development of Capital Facilities

#### **63A-5b-401. Definitions.**

As used in this part:

(1) (a) "Capital development project" means:

(i) a remodeling or site or utility improvement project with a total cost of \$3,500,000 or more;

(ii) a new facility with a construction cost of \$500,000 or more; or

(iii) a purchase of real property if an appropriation is requested and made for the purchase.

(b) "Capital development project" does not include a capital improvement project ~~f~~ described in Subsection (2)(b).

(2) "Capital improvement project" means:

(a) a remodeling, alteration, replacement, repair, or site or utility improvement project:

(i) with a total cost of less than \$3,500,000; or

(ii) (A) with a total cost of \$3,500,000 or more; and

(B) that will be paid for with funds that are not state funds;

(b) a utility infrastructure improvement project that:

(i) has a total cost of less than \$7,000,000;

(ii) consists of two or more projects that, if done separately, would each cost less than \$3,500,000; and

(iii) the division determines is more cost effective or feasible to be completed as a single project; or

(c) a new facility with a total construction cost of less than \$500,000.

(3) (a) "New facility" means ~~the construction of~~ a new building constructed on state

## HB0451S01 compared with HB0451

property regardless of the source of the funding ~~{source}~~ that pays for construction of the new building.

(b) "New facility" includes:

(i) an addition to an existing building; and

(ii) the enclosure of space that was not previously fully enclosed.

(c) "New facility" does not include:

(i) the replacement of state-owned space that is demolished or that is otherwise removed from state use, if the total construction cost of the replacement space is less than \$3,500,000; or

(ii) the construction of facilities that do not fully enclose a space.

(4) "Replacement cost" means, as determined by the Division of Risk Management:

(a) for state facilities, excluding auxiliary facilities as defined by the director, the cost to replace those facilities; and

(b) for infrastructure, as defined by the director, the cost to replace the infrastructure.

(5) "State funds" means public money appropriated by the Legislature.

Section ~~{25}~~27. Section **63A-5b-402** is enacted to read:

### **63A-5b-402. Capital development process -- Approval requirements.**

(1) Except as provided in Section 63A-5b-404, the board shall, on behalf of all agencies, submit capital development project recommendations and priorities to the Legislature for approval and prioritization.

(2) An agency that requests an appropriation for a capital development project shall submit to the division for transmission to the board a capital development project request and a feasibility study relating to the capital development project.

(3) (a) The division shall, in consultation with the board and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules that establish standards and requirements for a capital development project request and feasibility study.

(b) The rules shall include:

(i) a deadline by which an agency is required to submit a capital development project request;

(ii) conditions under which an agency may modify the agency's capital development project request after the agency submits the request, and requirements applicable to a

## HB0451S01 compared with HB0451

modification; and

(iii) requirements for the contents of a feasibility study, including:

(A) the need for the capital development project;

(B) the appropriateness of the scope of the capital development project;

(C) any private funding for the capital development project; and

(D) the economic and community impacts of the capital development project.

(4) The division shall verify the completion and accuracy of a feasibility study that an agency submits under Subsection (2) prior to transmitting the feasibility study to the board.

~~{ — (5) Except as provided in Section 63A-5b-404, a capital development project may not be constructed on state property without legislative approval.~~

‡ Section ~~{26}~~28. Section **63A-5b-403** is enacted to read:

**63A-5b-403. Institutions of higher education -- Capital development projects -- dedicated and nondedicated projects -- recommendations and prioritization.**

(1) As used in this section:

(a) "Dedicated project" has the same meaning as that term is defined in:

(i) Section 53B-2a-101, for a capital development project under Title 53B, Chapter 2a, Utah System of Technical Colleges; or

(ii) Section 53B-22-201, for a capital development project under Title 53B, Chapter 22, Higher Education Capital Projects.

(b) "Nondedicated project" has the same meaning as that term is defined in:

(i) Section 53B-2a-101, for a capital development project under Title 53B, Chapter 2a, Utah System of Technical Colleges; or

(ii) Section 53B-22-201, for a capital development project under Title 53B, Chapter 22, Higher Education Capital Projects.

(2) (a) The board shall submit recommendations to the Legislature in accordance with:

(i) Section 53B-2a-117, for a dedicated project under Title 53B, Chapter 2a, Utah System of Technical Colleges; or

(ii) Section 53B-22-204, for a dedicated project under Title 53B, Chapter 22, Higher Education Capital Projects.

(b) A dedicated project is not subject to prioritization by the board.

(3) (a) The board shall prioritize nondedicated projects in accordance with:

## HB0451S01 compared with HB0451

(i) Section 63A-5b-402; and

(ii) (A) Section 53B-2a-117, for a nondedicated project under Title 53B, Chapter 2a, Utah System of Technical Colleges; or

(B) Section 53B-22-204, for a nondedicated project under Title 53B, Chapter 22, Higher Education Capital Projects.

(b) In the board's scoring process for prioritizing nondedicated projects, the board shall give more weight to a request that is designated as a higher priority by the UTech board or Board of Regents than a request that is designated as a lower priority by the UTech board or Board of Regents only for determining the order of prioritization among requests submitted by the UTech board or Board of Regents, respectively.

(4) The board shall require that an institution of higher education that submits a request for a capital development project address whether and how, as a result of the project, the institution of higher education will:

(a) offer courses or other resources that will help meet demand for jobs, training, and employment in the current market and the projected market for the next five years;

(b) respond to individual skilled and technical job demand over the next three, five, and 10 years;

(c) respond to industry demands for trained workers;

(d) help meet commitments made by the Governor's Office of Economic Development, including relating to training and incentives;

(e) respond to changing needs in the economy; and

(f) respond to demands for ~~for-on-line~~ online or in-class instruction, based on demographics.

(5) The division shall:

(a) (i) assist institutions of higher education in providing the information required by Subsection (3); and

(ii) verify the completion and accuracy of the information submitted by an institution of higher education under Subsection (3);

(b) assist the UTech board to fulfill the requirements of Section 53B-2a-112 in connection with the finding that the board is required to make under Subsection 53B-2a-112(5)(b); and

## HB0451S01 compared with HB0451

(c) assist the Board of Regents in submitting a list of dedicated projects to the board for approval and nondedicated projects to the board for recommendation and prioritization pursuant to Section 53B-22-204.

Section ~~{27}~~29. Section **63A-5b-404** is enacted to read:

**63A-5b-404. Exceptions to requirement of legislative approval for capital development projects.**

(1) (a) Except as provided in this section, a capital development project may not be constructed on state property without legislative approval.

(b) The board may authorize a capital development project on state property without legislative approval only as provided in this section.

(2) (a) Legislative approval is not required for a capital development project that consists of the design or construction of a new facility if:

(i) the board determines that the requesting agency has provided adequate assurance that state funds will not be used for the design or construction of the facility;

(ii) the agency provides to the board a written document, signed by the head of the agency:

(A) stating that funding or a revenue stream is in place, or will be in place before the project is completed, to ensure that increased state funding will not be required to cover the cost of operations and maintenance ~~fto~~for the resulting facility or for immediate or future capital improvements; and

(B) detailing the source of the funding that will be used for the cost of operations and maintenance and for immediate and future capital improvements to the resulting facility; and

(iii) the board determines that the use of the state property:

(A) is appropriate and consistent with the master plan for the property; and

(B) will not create an adverse impact on the state.

(b) For a facility constructed without legislative approval under Subsection (2)(a), an agency may not request:

(i) increased state funds for operations and maintenance; or

(ii) increased state capital improvement funding.

(3) Legislative approval is not required for:

~~{~~ (a) the renovation, remodeling, or retrofitting of an existing facility if:



## HB0451S01 compared with HB0451

~~(i) the cost of the renovation, remodeling, or retrofitting is paid by funds other than state funds; and~~

~~(ii) the renovation, remodeling, or retrofitting is approved by the board;~~

‡ ~~(f)(a)~~ a facility:

(i) to be built with funds other than state funds and owned by an entity other than a state entity; and

(ii) that is within a research park area at the University of Utah or Utah State University;

(f)(b) a facility to be built at This is the Place State Park by the This is the Place Foundation with funds of the This is the Place Foundation or with donated services or materials and that may include grant money from the state;

~~(f)(c)~~ a project that:

(i) is funded by the Uintah Basin Revitalization Fund or the Navajo Revitalization Fund; and

(ii) does not provide a new facility for an agency or institution of higher education; or

~~(f)(d)~~ a project on school and institutional trust lands that:

(i) is funded by the trust lands administration from the Land Grant Management Fund;  
and

(ii) does not fund construction of a new facility for an agency or institution of higher education.

(4) (a) Legislative approval is not required for a capital development project to be built for the Department of Transportation resulting from:

(i) an exchange of real property under Section 72-5-111; or

(ii) a sale or exchange of real property from a maintenance facility if the proceeds from the sale of the real property are used for, or the real property is exchanged for:

(A) real property for another maintenance facility; or

(B) another maintenance facility, including improvements for a maintenance facility.

(b) If the Department of Transportation approves a sale or exchange under Subsection (4)(a) for a capital development project subject to the board's approval, the Department of Transportation shall notify the president of the Senate, the speaker of the House of Representatives, and the cochairs of the Infrastructure and General Government Appropriations

## HB0451S01 compared with HB0451

Subcommittee of the Legislature's Joint Appropriations Committee about any new facilities to be built or improved.

Section ~~{28}~~30. Section **63A-5b-405**, which is renumbered from Section 63A-5-228 is renumbered and amended to read:

~~[63A-5-228].~~            **63A-5b-405. Capital improvement projects.**

~~[(1) As used in this section:]~~

~~[(a) "Building board" means the State Building Board created under Section 63A-5-101.]~~

~~[(b) "Capital improvement" means:]~~

~~[(i) a remodeling, alteration, replacement, or repair project with a total cost of less than \$3,500,000;]~~

~~[(ii) a site or utility improvement with a total cost of less than \$3,500,000;]~~

~~[(iii) a utility infrastructure improvement project that:]~~

~~[(A) has a total cost of less than \$7,000,000;]~~

~~[(B) consists of two or more projects that, if done separately, would each cost less than \$3,500,000; and]~~

~~[(C) the division determines is more cost effective or feasible to be completed as a single project; or]~~

~~[(iv) a new facility with a total construction cost of less than \$500,000.]~~

~~[(c) "Capital improvements list" means the list that the division is required to submit to the Legislature under Subsection (2)(a).]~~

~~[(2)(a)(i)]~~ (1)(a) On or before January 15 of each year, the division shall, on behalf of all [state] agencies, submit a list of anticipated capital improvement project requirements to the Legislature.

~~[(ii)]~~ (b) The division shall ensure that the capital improvements project list identifies:

~~[(A)]~~ (i) each single capital improvement project that costs more than \$1,000,000;

~~[(B)]~~ (ii) each multiple capital improvement project within a single building or facility that collectively costs more than \$1,000,000;

~~[(C)]~~ (iii) each single capital improvement project that will be constructed over multiple years with a yearly cost of \$1,000,000 or more and an aggregate cost of more than \$3,500,000;

## HB0451S01 compared with HB0451

~~[(D)]~~ (iv) each multiple capital improvement project within a single building or facility with a yearly cost of \$1,000,000 or more and an aggregate cost of more than \$3,500,000;

~~[(E)]~~ (v) each single capital improvement project previously reported to the Legislature as a capital improvement project under \$1,000,000 that, because of an increase in costs or scope of work, will now cost more than \$1,000,000;

~~[(F)]~~ (vi) each multiple capital improvement project within a single building or facility previously reported to the Legislature as a capital improvement project under \$1,000,000 that, because of an increase in costs or scope of work, will now cost more than \$1,000,000; and

~~[(G)]~~ (vii) each capital improvement project described in Subsection ~~[(+)(b)(iii)]~~ 63A-5b-401(3)(c).

~~[(b)]~~ (2)(a) Unless otherwise directed by the Legislature, the division shall prioritize capital ~~[improvements]~~ improvement projects on the capital ~~[improvements]~~ improvement project list up to the level of appropriation made by the Legislature.

~~[(c)]~~ (b) In prioritizing capital ~~[improvements]~~ improvement projects, the division shall consider the results of facility evaluations completed by an architect or engineer as stipulated by the ~~[building board's]~~ division's facilities maintenance standards.

~~[(d)]~~ (c) In prioritizing capital ~~[improvements]~~ improvement projects, the division shall allocate at least 90% of the funds that the Legislature appropriates for capital ~~[improvements]~~ improvement projects to:

(i) capital improvement projects that address:

(A) a structural issue;

(B) fire safety;

(C) a code violation; or

(D) any issue that impacts health and safety;

(ii) capital improvement projects that upgrade:

(A) an HVAC system;

(B) an electrical system;

(C) essential equipment;

(D) an essential building component; or

(E) infrastructure, including a utility tunnel, water line, gas line, sewer line, roof, parking lot, or road; or

## HB0451S01 compared with HB0451

(iii) capital improvement projects that demolish and replace an existing building that is in extensive disrepair and cannot be fixed by repair or maintenance.

~~[(e)]~~ (d) In prioritizing capital ~~[improvements]~~ improvement projects, the division may not allocate more than 10% of the funds that the Legislature appropriates for capital ~~[improvements]~~ improvement projects to:

- (i) remodeling and aesthetic upgrades to meet state programmatic needs; or
- (ii) construct an addition to an existing building or facility.

~~[(f)]~~ (3) The division may require an entity that benefits from a capital improvement project to repay the capital improvement funds from savings that result from the capital improvement project.

~~[(g)]~~ (4) The division may provide capital improvement project funding to a single project or to multiple projects within a single building or facility, even if the total cost of the project or multiple projects is \$3,500,000 or more, if:

~~[(h)]~~ (a) the capital improvement project is a project described in Subsection ~~[(1)(b)(iii)]~~ 63A-5b-401(3)(c); and

~~[(i)]~~ (b) the Legislature has not refused to fund the project with capital improvement project funds.

~~[(j)]~~ (5) In prioritizing and allocating capital improvement project funding, the division shall comply with the requirement in Subsection 63B-23-101(2)(f).

~~[(k)]~~ (6) (a) In developing the capital improvement project list and priorities, the division shall require each ~~[state]~~ agency that requests an appropriation for a capital improvement project to:

- (i) submit a capital improvement project request; and
- (ii) complete and submit a project scoping document.

~~[(l)]~~ (b) A project scoping document under Subsection ~~[(2)(i)(ii)]~~ (6)(a)(ii) shall address:

- (i) the need for the capital improvement project; and
- (ii) the appropriateness of the scope of the capital improvement project.

~~[(m)]~~ (c) The division shall verify the completion and accuracy of a project scoping document that ~~[a state]~~ an agency submits under Subsection ~~[(2)(i)(ii)]~~ (6)(a)(ii).

~~[(3)(a)]~~ ~~Beginning July 1, 2020, the division shall implement a program to charge state~~

## HB0451S01 compared with HB0451

~~agencies, except institutions included within the state system of higher education under Section 53B-1-102, lease payments for the agency's use and occupancy of space within a building.]~~

~~[(b) Before July 1, 2020, the division shall:]~~

~~[(i) conduct a market analysis of market lease rates for comparable space in buildings comparable to division-owned buildings; and]~~

~~[(ii) establish lease rates for an agency's use and occupancy of a division-owned building.]~~

~~[(c) The lease rates shall be:]~~

~~[(i) consistent with market rates for comparable space in comparable buildings;]~~

~~[(ii) calculated to cover:]~~

~~[(A) an amortized amount for capital replacement;]~~

~~[(B) an amount for capital improvements; and]~~

~~[(C) operation and maintenance costs; and]~~

~~[(iii) in proportion to legislative appropriations.]~~

~~[(d) In making appropriations to cover lease payments under this Subsection (3), the Legislature shall create a line item, as defined in Section 63J-1-102, for each agency to fund the lease payments.]~~

(7) Except for this Subsection (7), this section does not apply to a capital improvement project described in Subsection 63A-5b-401(2)(~~fb~~a)(ii).

Section ~~{29}~~31. Section **63A-5b-406** is enacted to read:

### **63A-5b-406. Limitations on new projects.**

(1) The Legislature may authorize:

(a) the total square footage to be occupied by each agency; and

(b) the total square footage and total cost of lease space for each agency.

(2) If construction of a new building or facility will require an immediate or future increase in state funding for operations and maintenance or for capital improvements, the Legislature may not authorize the new building or facility until the Legislature appropriates funds for:

(a) the portion of operations and maintenance, if any, that will require an immediate or future increase in state funding; and

(b) the portion of capital improvements, if any, that will require an immediate or future

## HB0451S01 compared with HB0451

increase in state funding.

(3) (a) Except as provided in Subsections (3)(b) and (c), the Legislature may not fund the design or construction of any new capital development project, except to complete the funding of a project for which partial funding has been previously provided, until the Legislature has appropriated 1.1% of the replacement cost of existing state facilities and infrastructure to capital improvements.

(b) If the Legislature determines that there exists an Education Fund budget deficit, as defined in Section 63J-1-312, or a General Fund budget deficit, as defined in Section 63J-1-312, the Legislature may, in eliminating the deficit, reduce the amount appropriated to capital improvements to 0.9% of the replacement cost of state buildings and infrastructure.

(c) Subsection (3)(a) does not apply to a dedicated project as defined in Section 63A-5a-403.

(4) (a) (i) Except as provided in Subsection (4)(a)(ii), the Legislature may not fund the design and construction of a new facility in phases over more than one year unless the Legislature approves the funding for both the design and construction by a vote of two-thirds of all the members elected to each house.

(ii) Subsection (4)(a)(i) does not apply to a dedicated project as defined in Section 63A-5a-403.

(b) An agency shall receive approval from the director before the agency begins programming for a new facility:

(i) that requires legislative approval; or

(ii) to be built under Subsection 65A-5b-404(2).

(c) The division or an agency may fund the programming of a new facility before the Legislature makes an appropriation for the new facility under Subsection (4)(a).

(5) (a) The director, with the approval of the Office of the Legislative Fiscal Analyst, shall develop standard forms to present capital development project and capital improvement project cost summary data.

(b) The director shall:

(i) within 30 days after the completion of each capital development project, submit cost summary data for the project on the standard form to the Office of the Legislative Fiscal Analyst; and

## HB0451S01 compared with HB0451

(ii) upon request, submit cost summary data for a capital improvement project to the Office of the Legislative Fiscal Analyst on the standard form.

(6) (a) After the Legislature approves capital development project priorities under Section 65A-5b-402 and capital improvement project priorities under Section 63A-5b-405, the director may reallocate capital development project or capital improvement project funds to address a critical need for a capital improvement project:

(i) if an emergency arises that creates an unforeseen and critical need for the capital improvement project; and

(ii) notwithstanding the requirements of Title 63J, Chapter 1, Budgetary Procedures Act.

(b) The director shall report any changes the director makes in capital development project or capital improvement project allocations approved by the Legislature to:

(i) the Office of the Legislative Fiscal Analyst within 30 days after the reallocation; and

(ii) the Legislature at the Legislature's next annual general session.

Section ~~30~~32. Section **63A-5b-501** is enacted to read:

### **Part 5. Planning and Programming**

#### **63A-5b-501. Five-year building plan.**

(1) The director shall:

(a) in cooperation with agencies, prepare a master plan of structures built or contemplated;

(b) submit to the governor and the Legislature a comprehensive five-year building plan for the state containing the information required by Subsection (2);

(c) amend and keep current the five-year building plan that complies with the requirements described in Subsection (2), for submission to the governor and subsequent legislatures; and

(d) as part of the long-range plan, recommend to the governor and Legislature any changes in the law that are necessary to ensure an effective, well-coordinated building program for all agencies.

(2) (a) The director shall ensure that the five-year building plan required by Subsection (1)(b) includes:

(i) a list that prioritizes construction of new buildings for all structures built or

## HB0451S01 compared with HB0451

contemplated based upon each agency's present and future needs;

(ii) information and space use data for all state-owned and leased facilities;

(iii) substantiating data to support the adequacy of any projected plans;

(iv) a summary of all statewide contingency reserve and project reserve balances as of the end of the most recent fiscal year;

(v) a list of buildings that have completed a comprehensive facility evaluation by an architect or engineer or are scheduled to have an evaluation;

(vi) for those buildings that have completed the evaluation, the estimated costs of needed improvements; and

(vii) for projects recommended in the first two years of the five-year building plan:

(A) detailed estimates of the cost of each project;

(B) the estimated cost to operate and maintain the building or facility on an annual basis;

(C) the cost of capital improvements to the building or facility, estimated at 1.1% of the replacement cost of the building or facility, on an annual basis;

(D) the estimated number of new agency full-time employees expected to be housed in the building or facility;

(E) the estimated cost of new or expanded programs and personnel expected to be housed in the building or facility;

(F) the estimated lifespan of the building with associated costs for major component replacement over the life of the building; and

(G) the estimated cost of any required support facilities.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the director may make rules prescribing the format for submitting the information required by this Subsection (2).

(3) To provide adequate information to enable the director to make a recommendation described in Subsection (1), an agency requesting new full-time employees for the next fiscal year shall report those anticipated requests to the director at least 90 days before the annual general session in which the request is made.

Section ~~31~~33. Section **63A-5b-502** is enacted to read:

**63A-5b-502. Programming.**



## HB0451S01 compared with HB0451

(1) As used in this section:

(a) "Program document" means a final document that contains programming information.

(b) "Programming" means services to define the scope and purpose of an anticipated project, and may include:

(i) researching criteria applicable to the scope and purpose of an anticipated project;

(ii) identifying the scale of the project and the type of facilities and the level of specialized functions that will be required;

(iii) identifying and prioritizing values and goals that will impact the project, including institutional purposes, growth objectives, and cultural, technological, temporal, aesthetic, symbolic, economic, environmental, safety, sustainability, and other relevant criteria;

(iv) evaluating functional efficiency, user comfort, building economics, environmental sustainability, and visual quality;

(v) identifying objectives for the project, including such elements as image, efficiencies, functionality, cost, and schedule;

(vi) identifying and evaluating the constraints that will have an impact on the project such as legal requirements, financial constraints, location, access, visibility and building services;

(vii) developing standards such as area allowances, space allocation, travel distances, and furniture and equipment requirements;

(viii) establishing general space quality standards related to such elements as lighting levels, equipment performance, acoustical requirements, security, and aesthetics;

(ix) identifying required spaces;

(x) establishing sizes and relationships;

(xi) establishing space efficiency factors or the ratio of net square footage to gross square footage; and

(xii) documenting particular space requirements such as special HVAC, plumbing, power, lighting, acoustical, furnishings, equipment, or security needs.

(2) A program document may:

(a) incorporate written and graphic materials; and

(b) include:

## HB0451S01 compared with HB0451

- (i) an executive summary;
- (ii) documentation of the methodology used to develop the programming;
- (iii) value and goal statements;
- (iv) relevant facts upon which the programming was based;
- (v) conclusions derived from data analysis;
- (vi) relationship diagrams;
- (vii) flow diagrams;
- (viii) matrices identifying space allocations and relationships;
- (ix) space listings by function and size; and
- (x) space program sheets, including standard requirements and special HVAC,

plumbing, power, lighting, acoustical, furnishings, equipment, or security needs.

(3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the director may make rules:

(a) establishing the types of projects for which programming and a program document are required;

(b) establishing the scope of programming required for defined categories of projects;

(c) establishing the circumstances under which an agency must obtain authorization from the director to engage in programming;

(d) governing the funding of programming;

(e) relating to the administration of programming; and

(f) regarding any restrictions that may be imposed on a person involved in programming from participating in the preparation of construction documents for a project that is the subject of the programming.

Section ~~{32}~~34. Section **63A-5b-503**, which is renumbered from Section 63A-5-211 is renumbered and amended to read:

~~[63A-5-211].~~      **63A-5b-503. Planning Fund expenditures authorized -- Ceiling on expenditures -- Recovery.**

(1) The Planning Fund shall be used to make payments for engineering, architectural, and other planning expenses necessary to make a meaningful cost estimate of any facility or improvement with a demonstrable or immediate need.

(2) The director may make expenditures from the Planning Fund in order to provide

## HB0451S01 compared with HB0451

planning information to the ~~[State Building Board]~~ board, the governor, and the Legislature, up to a maximum of \$350,000 in outstanding Planning Fund commitments.

(3) (a) The director shall authorize all payments made from the Planning Fund.

(b) ~~[These payments]~~ Payments from the Planning Fund shall be a charge on the project for which they were drawn.

(c) ~~[The amount paid shall be credited to the Planning Fund when]~~ If the Legislature appropriates money for ~~[any]~~ a building project for which planning costs have previously been paid from the Planning Fund, the director shall credit that amount to the Planning Fund.

(4) (a) ~~[Money may also be expended]~~ The director may expend money from the Planning Fund for architectural and engineering services incident to the planning and preparation of applications for funds on construction financed by other than state sources, including federal grants.

(b) ~~[However, upon]~~ Upon approval of ~~[such]~~ financing referred to in Subsection (4)(a), the director shall reimburse to the Planning Fund the money spent for architectural and engineering services ~~[shall be returned as a reimbursement to the Planning Fund]~~.

Section ~~{33}~~35. Section **63A-5b-601** is enacted to read:

### **Part 6. Design and Construction**

#### **63A-5b-601. Definitions.**

As used in this part:

(1) (a) "Facility" means any building, structure, or other improvement that is constructed:

(i) on property owned by the state, the state's departments, commissions, institutions, or agencies; or

(ii) by the state, the state's departments, commissions, institutions, or agencies on property not owned by the state.

(b) "Facility" does not mean an unoccupied structure that is a component of the state highway system.

(2) "Local government" means the county, municipality, or local school district that would have jurisdiction to act as the compliance agency if the division did not have jurisdiction to act as the compliance agency.

Section ~~{34}~~36. Section **63A-5b-602** is enacted to read:

## HB0451S01 compared with HB0451

### **63A-5b-602. Design criteria, standards, and procedures.**

(1) The director shall establish design criteria, standards, and procedures for the planning, design, and construction of a new facility and for improvements to an existing facility, including life-cycle costing, cost-effectiveness studies, and other methods and procedures that address:

- (a) the need for the facility;
- (b) the effectiveness of the facility's design;
- (c) the efficiency of energy use; and
- (d) the usefulness of the facility over the facility's lifetime.

(2) Before proceeding with construction, the director and the officials charged with the administration of the affairs of the particular agency shall approve the location, design, plans, and specifications.

(3) The director shall prepare or have prepared by one or more private persons the designs, plans, and specifications for the projects administered by the division.

(4) Before construction may begin, the director shall review the design of projects exempted from the division's administration under Section 63A-5b-604 to determine if the design:

- (a) complies with any restrictions placed on the project by the director; and
- (b) is appropriate for the purpose and setting of the project.

(5) Notwithstanding the requirements of Title 63J, Chapter 1, Budgetary Procedures Act, the director may:

- (a) accelerate the design of a project funded by an appropriation act passed by the Legislature in the Legislature's annual general session;
- (b) use an unencumbered existing account balance to fund that design work; and
- (c) reimburse the account balance from the amount funded for the project when the appropriation act funding the project becomes effective.

Section ~~35~~37. Section **63A-5b-603** is enacted to read:

### **63A-5b-603. Contracting powers of director -- Bids -- Retainage.**

(1) In accordance with Title 63G, Chapter 6a, Utah Procurement Code, the director may enter into a contract for any work or professional service that the division or board may do or have done.

## HB0451S01 compared with HB0451

(2) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the director may make rules establishing circumstances under which bids may be modified when all bids for a construction project exceed available funds as determined by the director.

(b) In making the rules described in Subsection (2)(a), the director shall provide for the fair and equitable treatment of bidders.

(c) The judgment of the director as to the responsibility and qualifications of a bidder is conclusive, except in case of fraud or bad faith.

(3) The division shall make all payments to the contractor for completed work in accordance with Section 15-6-2 and pay the interest specified in Section 15-6-3 on any payments that are late.

(4) If the division retains or withholds a payment on a contract with a private contractor to do work for the division, the division shall retain or withhold and release the payment as provided in Section 13-8-5.

Section ~~36~~38. Section **63A-5b-604** is enacted to read:

**63A-5b-604. Construction, alteration, and repair of state facilities -- Powers of director -- Exceptions -- Expenditure of appropriations.**

(1) (a) Except as provided in this section and Section 65A-5b-1101, the director shall exercise direct supervision over the design and construction of all new facilities, and all alterations, repairs, and improvements to existing facilities, if the total project construction cost, regardless of the funding source, is greater than \$100,000.

(b) A state entity may exercise direct supervision over the design and construction of all new facilities, and over all alterations, repairs, and improvements to existing facilities, if:

(i) the total project construction cost, regardless of the funding sources, is \$100,000 or less; and

(ii) the state entity assures compliance with the division's forms and contracts and the division's design, construction, alteration, repair, improvement, and code inspection standards.

(2) The director may enter into a capital improvement partnering agreement with an institution of higher education that permits the institution of higher education to exercise direct supervision for a capital improvement project with oversight from the division.

(3) (a) Subject to Subsection (3)(b), the director may delegate control over design, construction, and other aspects of any project to entities of state government on a

## HB0451S01 compared with HB0451

project-by-project basis.

(b) With respect to a delegation of control under Subsection (3)(a), the director may:

(i) impose terms and conditions on the delegation that the director considers necessary or advisable to protect the interests of the state; and

(ii) revoke the delegation and assume control of the design, construction, or other aspect of a delegated project if the director considers the revocation and assumption of control to be necessary to protect the interests of the state.

(4) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board may delegate control over design, construction, and all other aspects of any project to entities of state government on a categorical basis for projects within a particular dollar range and a particular project type.

(b) Rules adopted by the board under Subsection (4)(a) may:

(i) impose the terms and conditions on categorical delegation that the board considers necessary or advisable to protect the interests of the state;

(ii) provide for the revocation of the delegation on a categorical or project specific basis and for the division to assume control of the design, construction, or other aspect of a category of delegated projects or a specific delegated project if the board considers revocation of the delegation and assumption of control to be necessary to protect the interests of the state;

(iii) require that a categorical delegation be renewed by the board on an annual basis;  
and

(iv) require the division's oversight of delegated projects.

(5) (a) A state entity to which project control is delegated under this section shall:

(i) assume fiduciary control over project finances;

(ii) assume all responsibility for project budgets and expenditures; and

(iii) receive all funds appropriated for the project, including any contingency funds contained in the appropriated project budget.

(b) Notwithstanding a delegation of project control under this section, a state entity to which control is delegated is required to comply with the division's codes and guidelines for design and construction.

(c) A state entity to which project control is delegated under this section may not access, for the delegated project, the division's statewide contingency reserve and project

## HB0451S01 compared with HB0451

reserve authorized in Section 63A-5b-609.

(d) For a facility that will be owned, operated, maintained, and repaired by an entity that is not an agency and that is located on state property, the director may authorize the facility's owner to administer the design and construction of the project relating to that facility.

(6) (a) A project for the construction of a new facility and a project for alterations, repairs, and improvements to an existing facility are not subject to Subsection (1) if the project:

(i) occurs on property under the jurisdiction of the State Capitol Preservation Board;

(ii) is within a designated research park at the University of Utah or Utah State University;

(iii) occurs within the boundaries of This is the Place State Park and is administered by This is the Place Foundation; or

(iv) is for the creation and installation of art under Title 9, Chapter 6, Part 4, Utah Percent-for-Art Act.

(b) Notwithstanding Subsection (6)(a)(iii), the This is the Place Foundation may request the director to administer the design and construction of a project within the boundaries of This is the Place State Park.

(7) (a) The role of compliance agency under Title 15A, State Construction and Fire Codes Act, shall be filled by:

(i) the director, for a project administered by the division;

(ii) the entity designated by the State Capitol Preservation Board, for a project under Subsection (6)(a)(i);

(iii) the local government, for a project ~~exempt from~~ that is:

(A) not subject to the division's administration under Subsection (6)(a)(~~iii~~ii);

(B) administered by This is the Place Foundation under Subsection (6)(a)(iii);

(iv) the ~~individual or group~~ compliance agency designated by the director, for a project under Subsection (2), (3), (4), or ~~Subsection~~ (5)(d); and

(v) for the installation of art under Subsection (6)(a)(iv), the entity that is acting ~~in this capacity~~ as the compliance officer for the balance of the project ~~as provided in Subsection (6)(b)~~ for which the art is being installed.

(b) A local government acting as the compliance agency under Subsection (~~5~~7)(a)(iii) may:

## HB0451S01 compared with HB0451

(i) only review plans and inspect construction to enforce the state construction code or an approved code under Title 15A, State Construction and Fire Codes Act; and

(ii) charge a building permit fee of no more than the amount the local government could have charged if the land upon which the improvements are located were not owned by the state.

(8) (a) The zoning authority of a local government under Section 10-9a-305 or 17-27a-305 does not apply to the use of state property or any improvements constructed on state property, including improvements constructed by an entity other than a state entity.

(b) A state entity controlling the use of state property shall consider any input received from a local government in determining how the property is to be used.

Section ~~{37}~~39. Section **63A-5b-605**, which is renumbered from Section 63A-5-208 is renumbered and amended to read:

~~[63A-5-208].~~        **63A-5b-605**. **Certain public construction bids to list subcontractors -- Changing subcontractors -- Bidders as subcontractors -- Dispute resolution process -- Penalties.**

(1) As used in this section:

(a) "First-tier subcontractor" means a subcontractor who contracts directly with the prime contractor.

(b) (i) "Subcontractor" means ~~[any]~~ a person ~~[or entity]~~ under contract with a contractor or another subcontractor to provide services or labor for the construction, installation, or repair of an improvement to real property.

(ii) "Subcontractor" includes a trade contractor or specialty contractor.

(iii) "Subcontractor" does not include ~~[suppliers who provide]~~ a supplier that provides only materials, equipment, or supplies to a contractor or subcontractor.

(2) The director shall apply the provisions of this section to achieve fair and competitive bidding and to discourage bid-shopping by contractors.

(3) (a) (i) (A) On ~~[each]~~ a public construction project, the director shall, except as provided in Subsection (3)(a)(ii), require the apparent lowest three bidders to submit a list of their first-tier subcontractors indicating each first-tier each subcontractor's name, bid amount, and other information required by rule.

(B) ~~[Other bidders who are]~~ A bidder that is not one of the apparent lowest three



## HB0451S01 compared with HB0451

bidders may also submit a list of ~~[their]~~ the bidder's first-tier subcontractors containing the information required by this Subsection (3).

(ii) A bidder is not required to list a first-tier subcontractor if:

(A) the bidder's total bid is less than \$500,000 and the first-tier subcontractor's bid is less than \$20,000; or

(B) the bidder's total bid is \$500,000 or more and the first-tier subcontractor's bid is less than \$35,000.

~~[(C) The director may not consider any bid submitted by a bidder if the bidder fails to submit a subcontractor list meeting the requirements of this section.]~~

~~[(ii) On projects where the contractor's total bid is less than \$500,000, subcontractors whose bid is less than \$20,000 need not be listed.]~~

~~[(iii) On projects where the contractor's total bid is \$500,000 or more, subcontractors whose bid is less than \$35,000 need not be listed.]~~

(b) ~~[(i) The bidders]~~ A bidder shall submit ~~[this]~~ the list required under this section within 24 hours after the bid opening time, not including ~~[Saturdays, Sundays, and state holidays]~~ Saturday, Sunday, and any state holiday.

~~[(ii) (c) [This]~~ A list submitted under this section does not limit the director's right to authorize a change in the listing of any subcontractor.

(4) The director may not consider a bid submitted by a bidder that fails to submit a list meeting the requirements of this section.

~~[(c) (5) [The bidders]~~ A bidder shall verify that all subcontractors listed as part of ~~[their bids]~~ the bidder's bid are licensed as required by state law.

~~[(d) (6) (a) [Twenty-four]~~ After 24 hours after the bid opening, ~~[the contractor]~~ a bidder may change the ~~[contractor's]~~ bidder's subcontractors only after:

(i) receiving permission from the director; and

(ii) establishing ~~[that]~~:

(A) that the change is in the best interest of the state; and

(B) the ~~[contractor establishes]~~ reasons for the change that meet the standards established by the ~~[State Building Board]~~ director.

~~[(e) (b) If the director approves [any changes]~~ a change in subcontractors that ~~[result]~~ results in a net lower contract price for subcontracted work, the director may require the bidder

## HB0451S01 compared with HB0451

to reduce the total of the prime contract [~~may be reduced~~] to reflect the [~~changes~~] change.

~~[(4)]~~ (7) (a) A bidder may list [~~himself~~] the bidder as a subcontractor [~~when~~] if:

(i) the bidder is currently licensed to perform the portion of the work for which the bidder lists [~~himself~~] the bidder as a subcontractor [~~and~~]; and

~~[(+)]~~ (ii) (A) the bidder intends to perform the work of a subcontractor [~~himself~~]; or

~~[(+)]~~ (B) the bidder intends to obtain a subcontractor at a later ~~day~~ date to perform the work [~~at a later date~~] because the bidder was unable to [~~(A)~~] obtain a bid from a qualified subcontractor [~~or (B) obtain a bid~~] or from a qualified subcontractor at a cost that the bidder considers to be reasonable.

(b) (i) [~~When~~] If the bidder intends to perform the work of a subcontractor [~~himself~~], the director may, by written request, require that the bidder provide the director with information indicating the bidder's:

(A) previous experience in the type of work to be performed; and

(B) qualifications for performing the work.

(ii) [~~The bidder must~~] A bidder shall respond in writing within five business days [~~of~~] after receiving the director's written request under Subsection (7)(b)(i).

(iii) If the [~~bidder's submitted~~] information a bidder submits under Subsection (7)(b)(ii) causes the director to reasonably believe that [~~self-performance~~] the bidder's performance of the portion of the work [~~by the bidder~~] is likely to [~~yield~~] result in a substandard finished product, the director shall:

(A) require the bidder to use a subcontractor for the portion of the work in question and obtain the subcontractor bid under the supervision of the director; or

(B) reject the bidder's bid.

~~[(c)-(i)]~~ (8) (a) [~~When the~~] If a bidder intends to obtain a subcontractor [~~to perform the work at a later date~~] at a later date to perform work described in the bidder's bid, the bidder shall provide documentation with the subcontractor list required under this section:

(i) describing [~~(A)~~] the bidder's efforts to obtain a bid of a qualified subcontractor at a reasonable cost; and

~~[(B)]~~ (ii) explaining why the bidder was unable to obtain a qualified subcontractor bid.

~~[(+)]~~ (b) If [~~the~~] a bidder who intends to obtain a subcontractor at a later date to perform the work [~~at a later date~~] described in a bid is awarded a contract, the director:

## HB0451S01 compared with HB0451

~~(i)~~ shall supervise the bidder's efforts to obtain a qualified subcontractor bid~~[-]; and~~  
~~[(iii)]~~ (ii) [The director] may not adjust the amount of the contract awarded in order to reflect the actual amount of the subcontractor's bid.

~~[(5)]~~ (9) The division may not disclose any subcontractor bid amounts obtained under this section until the division has awarded the project to a contractor.

~~[(6)(a) The director shall, in consultation with the State Building Board, prepare draft rules establishing a process for resolving disputes involved with contracts under the division's procurement authority.]~~

~~[(b) The director shall consider, and the rules may include:]~~

~~[(i) requirements regarding preliminary resolution efforts between the parties directly involved with the dispute;]~~

~~[(ii) requirements for the filing of claims, including notification, timeframes, and documentation;]~~

~~[(iii) identification of the types of costs eligible for allocation and a method for allocating costs among the parties to the dispute;]~~

~~[(iv) required time periods, not to exceed 60 days, for the resolution of the claim;]~~

~~[(v) provision for an independent hearing officer, panel, or arbitrator to extend the time period for resolution of the claim by not to exceed 60 additional days for good cause;]~~

~~[(vi) provision for the extension of required time periods if the claimant agrees;]~~

~~[(vii) requirements that decisions be issued in writing;]~~

~~[(viii) provisions for administrative appeals of the decision;]~~

~~[(ix) provisions for the timely payment of claims after resolution of the dispute, including any appeals;]~~

~~[(x) a requirement that the final determination resulting from the dispute resolution process provided for in the rules is a final agency action subject to judicial review as provided in Sections 63G-4-401 and 63G-4-402;]~~

~~[(xi) a requirement that a claim or dispute that does not include a monetary claim against the division or its agents is not limited to the dispute resolution process provided for in this Subsection (6);]~~

~~[(xii) requirements for claims and disputes to be eligible for this dispute resolution process;]~~

## HB0451S01 compared with HB0451

~~[(xiii) the use of an independent hearing officer, panel, arbitration, or mediation; and]~~

~~[(xiv) the circumstances under which a subcontractor may file a claim directly with the division.]~~

~~[(c) Persons pursuing claims under the process required by this Subsection (6):]~~

~~[(i) are bound by the decision reached under this process unless the decision is properly appealed; and]~~

~~[(ii) may not pursue claims or disputes under the dispute resolution process established in Title 63G, Chapter 6a, Utah Procurement Code.]~~

~~[(7) (10) In addition to all other reasons allowed by [law] statute or rule, the director may reject all bids if [none] all of the bidders whose [bid is] bids are within the budget of the project fail to submit a subcontractor list [that meets the requirements of] as required under this section.~~

~~[(8) Any violation of this section, or any fraudulent misrepresentation by a contractor, subcontractor, or supplier, may be grounds for:]~~

~~[(a) the contractor, subcontractor, or supplier to be suspended or debarred by the director; or]~~

~~[(b) the contractor or subcontractor to be disciplined by the Division of Professional and Occupational Licensing.]~~

Section ~~{38}~~40. Section **63A-5b-606** is enacted to read:

### **63A-5b-606. Dispute resolution process -- Penalties.**

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the director shall adopt rules for the division establishing a process for resolving disputes involved with contracts under the division's procurement authority.

(2) The director shall consider, and the rules may include:

(a) requirements regarding preliminary resolution efforts between the parties directly involved with the dispute;

(b) requirements for the filing of a claim, including notification, time frames, and documentation;

(c) identification of the types of costs eligible for allocation and a method for allocating costs among the parties to the dispute;

(d) a required time period, not to exceed 60 days, for the resolution of the claim;

## HB0451S01 compared with HB0451

- (e) a provision for an independent hearing officer, panel, or arbitrator to extend the time period for resolution of the claim by not to exceed 60 additional days for good cause;
- (f) a provision for the extension of required time periods if the claimant agrees;
- (g) requirements that decisions be issued in writing;
- (h) provisions for an administrative appeal of a decision;
- (i) provisions for the timely payment of claims after resolution of the dispute, including any appeals;
- (j) a requirement that the final determination resulting from the dispute resolution process provided for in the rules is a final agency action subject to judicial review as provided in Sections 63G-4-401 and 63G-4-402;
- (k) a requirement that a claim or dispute that does not include a monetary claim against the division or an agent of the ~~{division's agents}~~ division is not limited to the dispute resolution process provided for in this section;
- (l) requirements for claims and disputes to be eligible for the dispute resolution process under this section;
- (m) the use of an independent hearing officer or panel or the use of arbitration or mediation; and
- (n) the circumstances under which a subcontractor may file a claim directly with the division.
- (3) A person pursuing a claim under the process established as provided in this section:
  - (a) is bound by the decision reached under this process, subject to any modification of the decision on appeal; and
  - (b) may not pursue a claim, protest, or dispute under the dispute resolution process established in Title 63G, Chapter 6a, Utah Procurement Code.
- (4) A fraudulent misrepresentation made by or bad faith claim pursued by a contractor, subcontractor, or supplier, may be grounds for:
  - (a) the director to suspend or debar the contractor, subcontractor, or supplier; or
  - (b) the contractor, subcontractor, or supplier to be disciplined by the Division of Professional and Occupational Licensing.

Section ~~{39}~~41. Section **63A-5b-607**, which is renumbered from Section 63A-5-205.5 is renumbered and amended to read:

## HB0451S01 compared with HB0451

~~[63A-5-205.5].~~ **63A-5b-607. Health insurance requirements -- Penalties.**

(1) As used in this section:

(a) "Aggregate amount" means the dollar sum of all contracts, change orders, and modifications ~~[related to]~~ for a single project.

(b) "Change order" means the same as that term is defined in Section 63G-6a-103.

(c) ~~["Employee"]~~ "Eligible employee" means an employee, as defined in Section 34A-2-104, ~~[an "employee," "worker," or "operative"]~~ who:

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

(ii) meets the employer eligibility waiting ~~[requirements]~~ period for qualified health ~~[care insurance, which may not exceed the first day of the calendar month following 60 days after the day on which the individual is hired]~~ insurance coverage provided by the employer.

~~[(d) "Health benefit plan" means the same as that term is defined in Section 31A-1-301.]~~

~~[(e)]~~ (d) "Qualified health insurance coverage" means the same as that term is defined in Section 26-40-115.

~~[(f)]~~ (e) "Subcontractor" means the same as that term is defined in Section ~~[63A-5-208]~~ 63A-5b-605.

~~{~~ (2) An employer's waiting period for an employee to become eligible for qualified health insurance coverage may not extend beyond the first day of the calendar month following 60 days after the day on which the employee is hired.

~~†~~ ~~††(2)††(3)††~~ Except as provided in Subsection ~~††(3)††(4)††~~, the requirements of this section apply to:

(a) a contractor of a design or construction contract ~~[entered into by]~~ with the division ~~[or the State Building Board on or after July 1, 2009,]~~ if the prime contract is in an aggregate amount ~~[equal to or greater than]~~ of \$2,000,000 or more; and

(b) a subcontractor of a contractor of a design or construction contract ~~[entered into by]~~ with the division ~~[or State Building Board on or after July 1, 2009,]~~ if the subcontract is in an aggregate amount ~~[equal to or greater than]~~ of \$1,000,000 or more.

~~††(3)††(4)††~~ The requirements of this section do not apply to a contractor or subcontractor ~~[described in Subsection (2)]~~ if:

(a) the application of this section jeopardizes the division's receipt of federal funds;

## HB0451S01 compared with HB0451

- (b) the contract is a sole source contract, as defined in Section 63G-6a-103; or
- (c) the contract is the result of an emergency procurement.

~~§(4)§(5)~~ A person ~~[that]~~ who intentionally uses a change ~~[orders,]~~ order, contract ~~[modifications,]~~ modification, or multiple contracts to circumvent the requirements of this section is guilty of an infraction.

~~§(5)§(6)~~ (a) A contractor that is subject to the requirements of this section shall ~~[demonstrate to the director that the contractor has and will]:~~

(i) make and maintain an offer of qualified health insurance coverage for the contractor's eligible employees and the eligible employees' dependents ~~[by submitting]; and~~

(ii) submit to the director a written statement ~~[that:]~~ demonstrating that the contractor is in compliance with Subsection (~~§(5)~~)(a)(i).

~~[(i) the contractor offers qualified health insurance coverage that complies with Section 26-40-115;]~~

~~[(ii) is from:]~~

(b) A statement under Subsection (~~§(5)~~)(a)(ii):

(i) shall be from:

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

(B) an underwriter who is responsible for developing the employer group's premium rates; and

~~[(iii) was]~~ (ii) may not be created [within] more than one year before the day on which the [statement is submitted] contractor submits the statement to the director.

~~[(b)] (~~~~§(6)~~(a) A contractor that is subject to the requirements of this section shall:

(i) ~~[place a requirement in each of the contractor's subcontracts that a subcontractor that is subject to the requirements of this section shall]~~ ensure that each contract the contractor enters with a subcontractor that is subject to the requirements of this section requires the subcontractor to obtain and maintain an offer of qualified health insurance coverage for the subcontractor's eligible employees and the eligible employees' dependents during the duration of the subcontract; and

(ii) obtain from a subcontractor ~~[that is subject to the requirements of this section]~~ referred to in Subsection (~~§(6)~~(a))(i) a written statement demonstrating that[:] the subcontractor offers qualified health insurance coverage to eligible employees and eligible

## HB0451S01 compared with HB0451

employees' dependents.

~~[(A) the subcontractor offers qualified health insurance coverage that complies with Section 26-40-115;]~~

~~[(B)]~~ (b) ~~[is]~~ A statement under Subsection ~~(7)(a)~~(~~7~~6)(a)(~~7~~ii):

(i) shall be from:

(A) an actuary selected by the subcontractor or the subcontractor's insurer~~[-];~~ or

(B) an underwriter who is responsible for developing the employer group's premium rates; and

~~[(C)]~~ (ii) ~~[was]~~ may not be created [within] more than one year before the day on which the contractor obtains the statement from the subcontractor.

~~[(C)]~~ (i) ~~(A)]~~ (~~8~~7) (a) (i) A contractor that fails to maintain an offer of qualified health insurance coverage [~~described in Subsection (5)(a)~~] during the duration of the contract as required in this section is subject to penalties in accordance with administrative rules adopted by the division under [~~Subsection (6)]~~ this section.

~~[(B)]~~ (ii) A contractor is not subject to penalties for the failure of a subcontractor to obtain and maintain an offer of qualified health insurance coverage [~~described in Subsection (5)(b)(i)]~~ as required in this section.

~~[(ii)]~~ (A)] (b) (i) A subcontractor that fails to obtain and maintain an offer of qualified health insurance coverage [~~described in Subsection (5)(b)(i)]~~ during the duration of the subcontract as required in this section is subject to penalties in accordance with administrative rules adopted by the division under [~~Subsection (6)]~~ this section.

~~[(B)]~~ (ii) A subcontractor is not subject to penalties for the failure of a contractor to maintain an offer of qualified health insurance coverage [~~described in Subsection (5)(a)]~~ as required in this section.

~~[(6)]~~ (~~9~~8) The division shall adopt administrative rules:

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

(b) in coordination with:

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

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

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

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



## HB0451S01 compared with HB0451

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

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

(c) that establish:

(i) the requirements and procedures for a contractor and a subcontractor [~~shall follow~~] to demonstrate compliance with this section, including:

(A) a provision that a contractor or subcontractor's compliance with this section is subject to an audit by the division or the Office of the Legislative Auditor General;

(B) a provision that a contractor that is subject to the requirements of this section [~~shall~~] obtain a written statement [~~described in Subsection (5)(a)~~] as provided in Subsection (6)5; and

(C) a provision that a subcontractor that is subject to the requirements of this section [~~shall~~] obtain a written statement [~~described in Subsection (5)(b)(ii)~~] as provided in Subsection (7)6;

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

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

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

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

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

(iii) a website [~~on which~~] for the department [~~shall~~] to post the commercially equivalent benchmark for the qualified health insurance coverage that is provided by the Department of Health in accordance with Subsection 26-40-115(2).

[~~(7)(a)~~] ((10)9) During the duration of a contract, the division may perform an audit to verify a contractor or subcontractor's compliance with this section.

[~~(b)~~] ((11)10) (a) Upon the division's request, a contractor or subcontractor shall

## HB0451S01 compared with HB0451

provide the division:

(i) a signed actuarial certification that the coverage the contractor or subcontractor offers is qualified health insurance coverage; or

(ii) all relevant documents and information necessary for the division to determine compliance with this section.

~~[(c)]~~ (b) If a contractor or subcontractor provides the documents and information described in Subsection ~~[(7)(b)(ii)]~~ ~~(11)~~10(a)(i), the Insurance Department shall assist the division in determining if the coverage the contractor or subcontractor offers is qualified health insurance coverage.

~~[(8)]~~ ~~(12)~~11 (a) (i) In addition to the penalties imposed under Subsection ~~[(6)(c)(ii)]~~ ~~(8)~~7, a contractor or subcontractor that intentionally violates the provisions of this section is liable to ~~[the]~~ an eligible employee for health care costs that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection ~~[(8)]~~ ~~(12)~~11(a)(i) if:

(A) the employer relied in good faith on a written statement described in Subsection ~~[(5)(a) or (5)(b)(ii)]~~ ~~(6)~~5 or ~~(7)~~6; or

(B) the department determines that compliance with this section is not required under the provisions of Subsection ~~[(3)]~~ ~~(4)~~.

(b) An eligible employee has a private right of action ~~[only]~~ against the employee's employer ~~[to enforce the provisions of this Subsection (8)]~~ only as provided in this Subsection ~~(12)~~11.

~~[(9)]~~ ~~(13)~~12 ~~[Any penalties imposed and collected]~~ The director shall cause money collected from the imposition and collection of a penalty under this section ~~[shall]~~ to be deposited into the Medicaid Restricted Account created by Section 26-18-402.

~~[(10)]~~ ~~(14)~~13 The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this section:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under:

(i) Section 63G-6a-1602; or

(ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

## HB0451S01 compared with HB0451

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

(14) An employer's waiting period for an employee to become eligible for qualified health insurance coverage may not extend beyond the first day of the calendar month following 60 days after the day on which the employee is hired.

Section ~~{40}~~42. Section **63A-5b-608**, which is renumbered from Section 63A-5-207 is renumbered and amended to read:

~~[63A-5-207]~~. **63A-5b-608. Availability of appropriated funds -- Excessive obligations prohibited -- Exceptions.**

(1) ~~[The]~~ Unless otherwise specifically instructed by the terms of the appropriation for a particular project, the director shall assure ~~[, unless otherwise specifically instructed by the terms of the appropriation of a particular project,]~~ that no obligations beyond the authorized funding are incurred in the construction of any project authorized by the Legislature.

(2) The director may expend appropriations for statewide projects from funds provided by the Legislature for the purposes and within the guidelines established by the Legislature.

~~{2}~~ (3) The director may consent to the drafting of a plan or the awarding of a contract that will exceed in cost the funding currently available for the project ~~[in question]~~ only if the Legislature has specifically provided for extending construction of a building or the completion of a project into future fiscal periods.

Section ~~{41}~~43. Section **63A-5b-609**, which is renumbered from Section 63A-5-209 is renumbered and amended to read:

~~[63A-5-209]~~. **63A-5b-609. Building appropriations supervised by director -- Contingencies -- Disposition of project reserve funds -- Set aside for Utah Percent-for-Art Program.**

(1) The director shall:

(a) (i) supervise the expenditure of funds in providing plans, engineering specifications, sites, and construction of the buildings for which legislative appropriations are made; and

(ii) specifically allocate money appropriated ~~[when]~~ if more than one project is included in any single appropriation without legislative directive;

## HB0451S01 compared with HB0451

(b) (i) expend the amount necessary from appropriations for planning, engineering, and architectural work; and

(ii) (A) allocate amounts from appropriations necessary to cover expenditures previously made from the planning fund under Section [~~63A-5-211~~] 63A-5b-503 in the preparation of plans, engineering, and specifications; and

(B) return the amounts described in Subsection (1)(b)(ii)(A) to the planning fund; and

(c) hold in a statewide contingency reserve the amount budgeted for contingencies:

(i) in appropriations for the construction or remodeling of facilities; and

(ii) [~~which may be~~] that are over and above all amounts obligated by contract for planning, engineering, architectural work, sites, and construction contracts.

(2) (a) The director shall base the amount budgeted for contingencies on a sliding scale percentage of the construction cost ranging from:

(i) 4-1/2% to 6-1/2% for new construction; and

(ii) 6% to 9-1/2% for remodeling projects.

(b) The director shall hold the statewide contingency funds to cover:

(i) costs of change orders; and

(ii) unforeseen, necessary costs beyond those specifically budgeted for the project.

(c) (i) The Legislature shall annually review the percentage and the amount held in the statewide contingency reserve.

(ii) The Legislature may reappropriate to other building needs, including the cost of administering building projects, any amount from the statewide contingency reserve that is in excess of the reserve required to meet future contingency needs.

(3) (a) The director shall hold in a separate project reserve [~~those~~] state appropriated funds accrued through bid savings and project residual [~~as a project reserve~~].

(b) The director shall account for the funds accrued under Subsection (3)(a) in separate accounts as follows:

(i) bid savings and project residual from a capital improvement project, as defined in Section [~~63A-5-104~~] 63A-5b-401; and

(ii) bid savings and project residual from a capital development project, as defined in Section [~~63A-5-104~~] 63A-5b-401.

(c) The [~~State Building Board may authorize the use of~~] director may use project

## HB0451S01 compared with HB0451

reserve funds in the account described in Subsection (3)(b)(i) for a capital improvement project:

(i) approved under Section [~~63A-5-104~~] 63A-5b-405; and

(ii) for which funds are not allocated.

(d) The director may:

(i) authorize the use of project reserve funds in the accounts described in Subsection (3)(b) for the award of contracts in excess of a project's construction budget if the use is required to meet the intent of the project;

(ii) transfer money from the account described in Subsection (3)(b)(i) to the account described in Subsection (3)(b)(ii) if a capital development project has exceeded its construction budget; and

(iii) use project reserve funds for any emergency capital improvement project, whether or not the emergency capital improvement project is related to a project that has exceeded its construction budget.

(e) The director shall report to the Office of the Legislative Fiscal Analyst within 30 days:

(i) an [~~authorization~~] expenditure under Subsection (3)(c); or

(ii) a transfer under Subsection (3)(d).

(f) The Legislature shall annually review the amount held in the project reserve for possible reallocation by the Legislature to other building needs, including the cost of administering building projects.

(4) If any part of the appropriation for a building project, other than the part set aside for the Utah Percent-for-Art Program under Title 9, Chapter 6, Part 4, Utah Percent-for-Art Act, remains unencumbered after the award of construction and professional service contracts and establishing a reserve for fixed and moveable equipment, the balance of the appropriation is dedicated to the project reserve and does not revert to the General Fund.

(5) (a) One percent of the amount appropriated for the construction of any new state building or facility may be appropriated and set aside for the Utah Percent-for-Art Program administered by the Division of Fine Arts under Title 9, Chapter 6, Part 4, Utah Percent-for-Art Act.

(b) The director shall release to the Division of Fine Arts any funds included in an

## HB0451S01 compared with HB0451

appropriation to the division that are designated by the Legislature for the Utah Percent-for-Art Program.

(c) Funds from appropriations for ~~[any]~~ a state building or facility ~~[of which]~~ may not be set aside:

(i) if any part of the funds is derived from the issuance of bonds~~[-]; and~~

(ii) to the extent [it] the set aside of funds would jeopardize the federal income tax exemption otherwise allowed for interest paid on bonds~~[-; may not be set aside].~~

Section ~~{42}~~44. Section **63A-5b-610**, which is renumbered from Section 63A-5-219 is renumbered and amended to read:

~~[63A-5-219].~~            **63A-5b-610. Transfer from project reserve money.**

(1) With the approval of and through an appropriation by the Legislature, the division shall transfer at least \$100,000 annually from the project reserve money to the General Fund to pay for personal service expenses associated with the management of construction projects.

(2) With the approval of and as directed by the Legislature, the division shall transfer additional money from the project reserve money to pay administrative costs associated with the management of construction projects and other division responsibilities.

Section ~~{43}~~45. Section **63A-5b-701** is enacted to read:

### **Part 7. Operations and Maintenance**

**63A-5b-701. Operations and maintenance.**

(1) As used in this section, "maintenance functions" means all programs and activities related to the operation and maintenance of a state facility, including preventive maintenance and inspection.

(2) (a) The director shall direct or delegate maintenance functions for an agency, except for:

(i) the State Capitol Preservation Board; and

(ii) an institution of higher education.

(b) The director may delegate responsibility for maintenance functions to an agency only if:

(i) the agency requests the responsibility; and

(ii) the director determines that:

(A) the agency has the necessary resources and skills to comply with maintenance

## HB0451S01 compared with HB0451

functions standards approved by the director; and

(B) the delegation would result in net cost savings to the state as a whole.

(c) The State Capitol Preservation Board and an institution of higher education are exempt from division oversight of maintenance functions.

(d) An institution of higher education shall comply with the division's facility maintenance functions standards.

(3) (a) An institution of higher education shall annually report to the division, in a format required by the division, on the institution of higher education's compliance with the division's maintenance functions standards.

(b) The division shall:

(i) prescribe a standard format for reporting compliance with the division's maintenance functions standards;

(ii) report to the Legislature on the compliance or noncompliance with the standards; and

(iii) conduct periodic audits to ensure that institutions of higher education are complying with the standards and report the results of the audits to the Legislature.

Section ~~{44}~~46. Section **63A-5b-702** is enacted to read:

**63A-5b-702. Standards -- Operations and Maintenance -- Monitoring -- Reporting -- Auditing.**

(1) As used in this section:

(a) "Life cycle cost-effective" means the most prudent cost of owning, operating, and maintaining a facility, including the initial cost, energy costs, operation and maintenance costs, repair costs, and the costs of energy conservation and renewable energy systems.

(b) "Renewable energy system" means a system designed to use solar, wind, geothermal power, wood, or other replenishable energy source to heat, cool, or provide electricity to a building.

(2) The director shall, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules:

(a) that establish standards and requirements for determining whether a state facility project is life cycle cost-effective;

(b) for the monitoring of an agency's operation and maintenance expenditures for a

## HB0451S01 compared with HB0451

state-owned facility;

(c) to establish standards and requirements for utility metering;

(d) that create an operation and maintenance program for an agency's facilities;

(e) that establish a methodology for determining reasonably anticipated inflationary costs for each operation and maintenance program described in Subsection (2)(d);

(f) that require an agency to report the amount the agency receives and expends on operation and maintenance; and

(g) that provide for determining the actual cost for operation and maintenance requests for a new facility.

(3) The director shall:

(a) ensure that state-owned facilities, except for facilities under the control of the State Capitol Preservation Board, are life cycle cost effective;

(b) conduct ongoing facilities audits of state-owned facilities; and

(c) monitor an agency's operation and maintenance expenditures for state-owned facilities as provided in rules made under Subsection (2)(b).

(4) (a) An agency shall comply with the rules made under Subsection (2) for new facility requests submitted to the Legislature for a session of the Legislature after the 2017 General Session.

(b) ~~{Beginning on December 1, 2016, the}~~ The Office of the Legislative Fiscal Analyst and the Governor's Office of Management and Budget shall, for each agency with ~~{operating}~~ operation and maintenance expenses, ensure that each required budget for the agency is adjusted in accordance with the rules described in Subsection (2)(e).

Section ~~{45}~~ 47. Section **63A-5b-703** is enacted to read:

**63A-5b-703. Agency lease payments.**

(1) (a) Beginning July 1, 2020, the division shall implement a program to charge agencies, except institutions of higher education, lease payments for the agency's use and occupancy of space within a building.

(b) Before July 1, 2020, the division shall:

(i) conduct a market analysis of market lease rates for comparable space in buildings comparable to division-owned buildings; and

(ii) establish lease rates for an agency's use and occupancy of a division-owned



## HB0451S01 compared with HB0451

building.

(c) The lease rates shall be:

(i) consistent with market rates for comparable space in comparable buildings;

(ii) calculated to cover:

(A) an amortized amount for capital replacement;

(B) an amount for capital improvements; and

(C) operation and maintenance costs; and

(iii) in proportion to legislative appropriations.

(2) In making appropriations to cover lease payments under this section, the

Legislature shall create a line item, as defined in Section 63J-1-102, for each agency to fund the lease payments.

Section ~~{46}~~48. Section **63A-5b-801** is enacted to read:

### **Part 8. Acquisitions of Real Property Interests**

#### **63A-5b-801. Definitions.**

As used in this part:

(1) "Agency optional term" means an option that is exclusively exercisable by a leasing agency to extend the lease term.

(2) "High-cost lease" means a real property lease that:

(a) has an initial term including any agency optional term of 10 years or more; or

(b) will require lease payments of more than \$5,000,000 over the term of the lease,

including any agency optional term.

(3) (a) "Leasing agency" means a department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state.

(b) "Leasing agency" does not include:

(i) the legislative branch;

(ii) the judicial branch; and

(iii) an institution of higher education.

(4) "Significant lease terms" includes the duration of the lease, the frequency of the periodic payments, a renewal ~~{clauses}~~clause, a purchase ~~{options}~~option, a cancellation ~~{clauses}~~clause, a repair and maintenance ~~{clauses}~~clause, and ~~{restrictions}~~ a restriction on

## HB0451S01 compared with HB0451

use of the property.

Section ~~{47}~~49. Section **63A-5b-802**, which is renumbered from Section 63A-5-302 is renumbered and amended to read:

~~[63A-5-302].~~            **63A-5b-802. Leasing responsibilities of the director.**

(1) The director shall:

(a) prepare and submit a yearly request to the governor and Legislature for a designated amount of square footage by type of space to be leased by the division for that fiscal year;

~~[(a)]~~ (b) lease, in the name of the division, all real property space to be occupied by [an] a leasing agency;

~~[(b)]~~ (c) in leasing space[, comply with]:

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

(i) use a process consistent with the best interest of the state, the requirements of the leasing agency, and the anticipated use of the property; and

(ii) comply with any legislative mandates contained in the appropriations act or other [specific] legislation;

~~[(c)]~~ (d) apply the criteria contained in Subsection (1)[(c)](f) to prepare a report evaluating each high-cost lease at least 12 months before [it] the lease expires;

~~[(d)]~~ (e) evaluate each lease under the division's control and apply the criteria contained in Subsection [(1)(c), when appropriate, to evaluate those leases] (1)(f), as applicable, to evaluate the lease;

~~[(c)]~~ (f) in evaluating leases:

(i) determine whether [or not] the lease is cost-effective when the needs of the leasing agency to be housed in the leased facilities are considered;

(ii) determine whether [or not] another option such as construction, use of other state-owned space, or a lease-purchase agreement is more cost-effective than leasing;

(iii) determine whether [or not] the significant lease terms are cost-effective and provide the state with sufficient flexibility and protection from liability;

(iv) compare the proposed lease payments to the current market rates, and evaluate whether [or not] the proposed lease payments are reasonable under current market conditions;

(v) compare proposed significant lease terms to the current market, and recommend whether [or not] these proposed terms are reasonable under current market conditions; and

## HB0451S01 compared with HB0451

(vi) if applicable, recommend that the lease or modification to a lease be approved or disapproved;

~~[(f)]~~ (g) based upon the evaluation, include in the report recommendations that identify viable alternatives to:

- (i) make the lease cost-effective; or
  - (ii) meet the leasing agency's needs when the lease expires; and
- ~~[(g)]~~ (h) upon request, provide the information included in the report to:
- (i) the leasing agency benefitted by the lease; and
  - (ii) the Office of the Legislative Fiscal Analyst.

(2) The director may:

(a) subject to legislative appropriation, enter into a facility ~~[leases with terms]~~ lease with a term of up to 10 years ~~[when]~~ if the length of the lease's term is economically advantageous to the state; and

(b) with the approval of the ~~[State Building Board]~~ board and subject to legislative appropriation, enter into a facility ~~[leases with terms]~~ lease with a term of more than 10 years ~~[when]~~ if the length of the lease's term is economically advantageous to the state.

Section ~~{48}~~50. Section **63A-5b-803**, which is renumbered from Section 63A-5-303 is renumbered and amended to read:

~~[63A-5-303]~~. **63A-5b-803. Lease reporting and coordination.**

(1) The director shall:

(a) prepare a standard form upon which ~~[agencies and other state institutions and entities can report their]~~ a leasing agency and another state institution or entity can report the current and proposed lease activity of the leasing agency, institution, or entity, including any lease [renewals] renewal; and

(b) develop procedures and mechanisms within the division to:

- (i) obtain and share information about each leasing agency's real property needs; and
- (ii) provide oversight and review of lessors and lessees during the term of each lease.

(2) Each leasing agency, the Judicial Council, and the Board of Regents, for each institution of higher education, shall report all current and proposed lease activity on the standard form prepared by the division to:

(a) the ~~[State Building Board]~~ division; and

## HB0451S01 compared with HB0451

(b) the Office of the Legislative Fiscal Analyst.

Section ~~{49}~~51. Section **63A-5b-804**, which is renumbered from Section 63A-5-304 is renumbered and amended to read:

~~[63A-5-304]~~. **63A-5b-804. Leasing by the Judicial Council and the Administrative Office of the Courts -- Director's responsibilities.**

(1) Before executing [~~any~~] a high-cost lease or a modification to a lease that results in a high-cost lease, the Administrative Office of the Courts shall submit a draft of the new lease or modification to:

(a) the Judicial Council; and

(b) the director [~~of the Division of Facilities Construction and Management~~].

(2) The director shall:

(a) review the [~~drafts~~] draft submitted by the Administrative Office of the Courts; and

(b) within 30 days after receiving the [~~drafts from the office~~] draft, submit a report on

[~~those drafts~~] the draft to:

(i) the Judicial Council; and

(ii) the Office of the Legislative Fiscal Analyst.

(3) [~~The~~] A report under Subsection (2)(b) shall contain:

(a) the director's opinion about:

(i) whether [~~or not~~] the lease or modification is cost-effective when the needs of the entity to be housed in the leased facility are considered;

(ii) whether [~~or not~~] another option such as construction, use of other state-owned space, or a lease-purchase agreement is more cost-effective than leasing; and

(iii) whether [~~or not~~] the significant lease terms are cost-effective and provide the state with sufficient flexibility and protection from liability;

(b) a comparison of the proposed lease payments to the current market rates, and a recommendation as to whether [~~or not~~] the proposed lease payments are reasonable under current market conditions;

(c) a comparison of proposed significant lease terms to the current market, and a recommendation as to whether [~~these~~] the proposed terms are reasonable under current market conditions; and

(d) a recommendation from the director that the lease or modification to a lease be

## HB0451S01 compared with HB0451

approved or disapproved.

(4) (a) The Administrative Office of the Courts may not execute ~~[any]~~ a new high-cost ~~[leases or modifications to any]~~ lease or modification to an existing lease that will result in a high-cost lease unless ~~[that lease or those modifications are]~~ the lease or modification is approved by a majority vote of the Judicial Council.

(b) The Judicial Council shall consider the recommendations of the director ~~[of the division]~~ in determining whether ~~[or not]~~ to approve a high-cost ~~[leases and modifications]~~ lease or modification resulting in a high-cost ~~[leases]~~ lease.

Section ~~{50}~~52. Section **63A-5b-805**, which is renumbered from Section 63A-5-305 is renumbered and amended to read:

~~[63A-5-305]~~. **63A-5b-805. Leasing by higher education institutions.**

(1) The Board of Regents shall establish written policies and procedures governing leasing by an institution of higher education ~~[institutions]~~.

(2) Except as provided in Sections 53B-2a-113 and 63M-2-602, ~~[a]~~ an institution of higher education ~~[institution]~~ shall comply with the procedures and requirements of the Board of Regents' policies before signing or renewing a lease.

Section ~~{51}~~53. Section **63A-5b-806**, which is renumbered from Section 63A-5-401 is renumbered and amended to read:

~~[63A-5-401]~~. **63A-5b-806. Division rules on the value of property bought, sold, or exchanged -- Exception.**

(1) ~~[If the division buys, sells, or exchanges real property, the]~~ The division shall, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules to ensure that ~~{}~~if the division buys or exchanges real property, the value of the real property is congruent with the proposed price and other terms of the purchase~~[, sale,]~~ or exchange.

(2) The rules:

(a) shall establish procedures for determining the value of the real property;

(b) may provide that an appraisal, as defined ~~[under]~~ in Section 61-2g-102, demonstrates the real property's value; and

(c) may require that the appraisal be completed by a state-certified general appraiser, as defined ~~[under]~~ in Section 61-2g-102.

(3) The rules adopted under Subsection (1) ~~[does]~~ do not apply to~~[-(a)]~~ the purchase~~;~~

## HB0451S01 compared with HB0451

sale,] or exchange of real property, or [~~to~~] an interest in real property, with a value of less than [~~\$100,000~~] \$250,000, as estimated by the division[~~;~~or].

~~[(b) a transfer of ownership or lease of vacant division-owned property, as defined in Section 63A-5a-102, at below fair market value under Chapter 5a, Division-Owned Real Property Act.]~~

Section ~~{52}~~54. Section **63A-5b-901**, which is renumbered from Section 63A-5a-102 is renumbered and amended to read:

### **Part 9. Disposal of Division-Owned Property**

#### **~~[63A-5a-102].~~        63A-5b-901. Definitions.**

As used in this [~~chapter~~] part:

(1) "Applicant" means a person who submits a timely, qualified proposal to the division.

~~[(2) "Board" means the State Building Board, created in Section 63A-5-101.]~~

~~[(3)]~~ (2) "Condemnee" means the same as that term is defined in Section 78B-6-520.3.

~~[(4)]~~ (3) "Convey" means:

(a) to provide for a primary state agency's occupancy or use of vacant division-owned property; or

(b) to effect a transfer of ownership or lease of vacant division-owned property to a secondary state agency, local government entity, public purpose nonprofit entity, or private party.

~~[(5) "Director" means the division director, appointed under Section 63A-5-203.]~~

~~[(6) "Division" means the Division of Facilities Construction and Management, created in Section 63A-5-201.]~~

~~[(7)]~~ (4) "Division-owned property" means real property, including an interest in real property, to which the division holds title, regardless of who occupies or uses the real property.

~~[(8)]~~ (5) "Local government entity" means a county, city, town, metro township, local district, special service district, community development and renewal agency, conservation district, school district, or other political subdivision of the state.

~~[(9)]~~ (6) "Primary state agency" means a state agency for which the division holds title to real property that the state agency occupies or uses, as provided in Subsection [~~63A-5-204(2)(a)(iv)] 63A-5b-303(1)(a)(iv).~~

## HB0451S01 compared with HB0451

~~[(10)]~~ (7) "Private party" means a person who is not a state agency, local government entity, or public purpose nonprofit entity.

~~[(11)]~~ (8) "Public purpose nonprofit entity" means a corporation, association, organization, or entity that:

- (a) is located within the state;
- (b) is not a state agency or local government entity;
- (c) is exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code; and
- (d) operates to fulfill a public purpose.

~~[(12)]~~ (9) "Qualified proposal" means a written proposal that:

- (a) meets the criteria established by the division by rule under Section 63A-5b-903;
- (b) if submitted by a local government entity or public purpose nonprofit entity, explains the public purpose for which the local government entity or public purpose nonprofit entity seeks a transfer of ownership or lease of the vacant division-owned property; and
- (c) the director determines will, if accepted and implemented, provide a material benefit to the state.

~~[(13)]~~ (10) "Secondary state agency" means a state agency:

- (a) that is authorized to hold title to real property that the state agency occupies or uses, as provided in Subsection ~~[63A-5-204(6)]~~ 63A-5b-303(4); and
- (b) for which the division does not hold title to real property that the state agency occupies or uses.

~~[(14)]~~ (11) "State agency" means a department, division, office, entity, agency, or other unit of state government.

~~[(15)]~~ (12) "Transfer of ownership" includes a transfer of the ownership of vacant division-owned property that occurs as part of an exchange of the vacant division-owned property for another property.

~~[(16)]~~ (13) "Vacant division-owned property" means division-owned property that:

- (a) a primary state agency has discontinued to occupy or use; and
- (b) the director has determined should be made available for:
  - (i) use or occupancy by a primary state agency; or
  - (ii) a transfer of ownership or lease to a secondary state agency, local government

## HB0451S01 compared with HB0451

entity, public purpose nonprofit entity, or private party.

~~[(17)]~~ (14) "Written proposal" means a brief statement in writing that explains:

(a) the proposed use or occupancy, transfer of ownership, or lease of vacant division-owned property; and

(b) how the state will benefit from the proposed use or occupancy, transfer of ownership, or lease.

Section ~~{53}~~55. Section **63A-5b-902**, which is renumbered from Section 63A-5a-103 is renumbered and amended to read:

~~[63A-5a-103]~~. **63A-5b-902. Application of part.**

(1) The provisions of this ~~[chapter]~~ part, other than this section, do not apply to:

(a) a conveyance, lease, or disposal under Subsection ~~[63A-5-204(2)(a)(x)]~~ 63A-5b-303(1)(a)(x); or

(b) the division's disposal or lease of division-owned property with a value under ~~[\$100,000]~~ \$250,000, as estimated by the division.

(2) Nothing in Subsection (1)(b) may be construed to diminish or eliminate the division's responsibility to manage division-owned property in the best interests of the state.

Section ~~{54}~~56. Section **63A-5b-903**, which is renumbered from Section 63A-5a-104 is renumbered and amended to read:

~~[63A-5a-104]~~. **63A-5b-903. Rules adopted by the division.**

The division may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules to:

(1) establish criteria that a written proposal is required to satisfy in order to be a qualified proposal, including, if applicable, a minimum acceptable purchase price; and

(2) define criteria that the director will consider in making a determination whether a proposed use or occupancy, transfer of ownership, or lease of vacant division-owned property provides a material benefit to the state.

Section ~~{55}~~57. Section **63A-5b-904**, which is renumbered from Section 63A-5a-201 is renumbered and amended to read:

~~[63A-5a-201]~~. **63A-5b-904. Division authority with respect to vacant division-owned property -- Limitations.**

(1) Subject to Section ~~[63A-5a-206]~~ 63A-5b-909, the division may, as provided in this



## HB0451S01 compared with HB0451

[chapter] part:

(a) provide for a primary state agency's occupancy or use of vacant division-owned property;

(b) effect a transfer of ownership or lease of vacant division-owned property to a secondary state agency, local government entity, public purpose nonprofit entity, or private party; or

(c) refer vacant division-owned property to the Department of Transportation for sale by auction, as provided in Section [~~63A-5a-205~~] 63A-5b-908.

(2) The division may not effect a transfer of ownership or lease of vacant division-owned property without receiving fair market value in return unless:

(a) the director determines that the transfer of ownership or lease is in the best interests of the state;

(b) for a proposed transfer of ownership or lease to a local government entity, public purpose nonprofit entity, or private party, the director determines that the local government entity, public purpose nonprofit entity, or private party intends to use the property to fulfill a public purpose;

(c) the director requests and receives a recommendation on the proposed transfer of ownership or lease from the Legislative Executive Appropriations Committee;

(d) the director communicates the Executive Appropriations Committee's recommendation to the executive director; and

(e) the executive director approves the transfer of ownership or lease.

(3) (a) If the division effects a transfer of ownership of vacant division-owned property without receiving fair market value in return, as provided in this [chapter] part, the division shall require the documents memorializing the transfer of ownership to preserve to the division:

(i) in the case of a transfer of ownership of vacant division-owned property to a secondary state agency, local government entity, or public purpose nonprofit entity for no or nominal consideration, a right of reversion, providing for the ownership of the property to revert to the division if the property ceases to be used for the public benefit; or

(ii) in the case of any other transfer of ownership of vacant division-owned property, a right of first refusal allowing the division to purchase the property from the transferee for the

## HB0451S01 compared with HB0451

same price that the transferee paid to the division if the transferee wishes to transfer ownership of the former vacant division-owned property.

(b) Subsection (3)(a) does not apply to the sale of vacant division-owned property at an auction under Section [~~63A-5a-205~~] 63A-5b-908.

Section ~~{56}~~58. Section **63A-5b-905**, which is renumbered from Section 63A-5a-202 is renumbered and amended to read:

~~[63A-5a-202]~~. **63A-5b-905**. **Notice required before division may convey division-owned property.**

(1) Before the division may convey vacant division-owned property, the division shall give notice as provided in Subsection (2).

(2) A notice required under Subsection (1) shall:

(a) identify and describe the vacant division-owned property;

(b) indicate the availability of the vacant division-owned property;

(c) invite persons interested in the vacant division-owned property to submit a written proposal to the division;

(d) indicate the deadline for submitting a written proposal;

(e) be posted on the division's website for at least 60 consecutive days before the deadline for submitting a written proposal, in a location specifically designated for notices dealing with vacant division-owned property;

(f) be posted on the Utah Public Notice Website created in Section 63F-1-701 for at least 60 consecutive days before the deadline for submitting a written proposal; and

(g) be sent by email to each person who has previously submitted to the division a written request to receive notices under this section.

Section ~~{57}~~59. Section **63A-5b-906**, which is renumbered from Section 63A-5a-203 is renumbered and amended to read:

~~[63A-5a-203]~~. **63A-5b-906**. **Submitting a written proposal for vacant division-owned property.**

(1) A person may submit to the division a written proposal:

(a) in response to the division's notice under Section [~~63A-5a-202~~] 63A-5b-905; or

(b) with respect to vacant division-owned property as to which the division has not given notice under Section [~~63A-5a-202~~] 63A-5b-905.

## HB0451S01 compared with HB0451

(2) The division is not required to consider a written proposal or provide notice under Section [~~63A-5a-202~~] 63A-5b-905 if the director determines that the written proposal is not a qualified proposal.

(3) If a person submits a qualified proposal to the division under Subsection (1)(b):

(a) the division shall:

(i) give notice as provided in Section [~~63A-5a-202~~] 63A-5b-905; and

(ii) treat the qualified proposal as though it were submitted in response to the notice;

and

(b) the person may, within the time provided for the submission of written proposals, modify the qualified proposal to the extent necessary to address matters raised in the notice that were not addressed in the initial qualified proposal.

(4) A person who fails to submit a qualified proposal to the division within 60 days after the date of the notice under Section [~~63A-5a-202~~] 63A-5b-905 may not be considered for the vacant division-owned property.

Section ~~{58}~~60. Section **63A-5b-907**, which is renumbered from Section 63A-5a-204 is renumbered and amended to read:

~~[63A-5a-204].~~      **63A-5b-907. Priorities for vacant division-owned property -- Division to convey vacant division-owned property.**

(1) (a) A state agency has priority for vacant division-owned property over a local government entity, a public purpose nonprofit entity, and a private party.

(b) A local government entity and a public purpose nonprofit entity have:

(i) priority for vacant division-owned property over a private party; and

(ii) between them the same priority for vacant division-owned property.

(2) If the division receives multiple timely qualified proposals from applicants with the highest and same priority, the division shall:

(a) notify the board of:

(i) the availability of the vacant division-owned property; and

(ii) the applicants with the highest and same priority that have submitted qualified proposals; and

(b) provide the board with a copy of the timely qualified proposals submitted by the applicants with the highest and same priority.

## HB0451S01 compared with HB0451

(3) Within 30 days after being notified under Subsection (2), the board shall:

(a) determine which applicant's qualified proposal is most likely to result in the highest and best public benefit; and

(b) notify the division of the board's decision under Subsection (3)(a).

(4) The division shall convey the vacant division-owned property to:

(a) the applicant with the highest priority under Subsection (1), if the division receives a timely qualified proposal from a single applicant with the highest priority; or

(b) the applicant whose qualified proposal was determined by the board under Subsection (3) to be most likely to result in the highest and best public benefit, if the division receives multiple timely qualified proposals from applicants with the highest and same priority.

(5) (a) If the division leases vacant division-owned property to a private party, the division shall, within 30 days after a lease agreement is executed, provide written notice of the lease to:

(i) the municipality in which the vacant division-owned property is located, if the vacant division-owned property is within a municipality; or

(ii) the county in whose unincorporated area the vacant division-owned property is located, if the vacant division-owned property is not located within a municipality.

(b) Nothing in this chapter may be used by a private party leasing division-owned property as a basis for not complying with applicable local land use ordinances and regulations.

Section ~~{59}~~61. Section **63A-5b-908**, which is renumbered from Section 63A-5a-205 is renumbered and amended to read:

~~[63A-5a-205]~~. **63A-5b-908**. **Referring vacant division-owned property to the Department of Transportation for auction.**

(1) The division may refer vacant division-owned property to the Department of Transportation for a public auction if:

(a) (i) the division has provided notice under Section [~~63A-5a-202~~] 63A-5b-905 with respect to the vacant division-owned property; and

(ii) the division receives no qualified proposals in response to the notice under Section [~~63A-5a-202~~] 63A-5b-905;

(b) the director determines that:

(i) there is no reasonable likelihood that within the foreseeable future:

## HB0451S01 compared with HB0451

- (A) a primary state agency will use or occupy the vacant division-owned property; or
  - (B) a secondary state agency, local government entity, or public purpose nonprofit entity will seek a transfer of ownership or lease of the vacant division-owned property; and
    - (ii) disposing of the vacant division-owned property through a public auction is in the best interests of the state;
  - (c) the director requests and receives a recommendation on the proposed public auction from the Legislative Executive Appropriations Committee;
  - (d) the director communicates the Executive Appropriations Committee's recommendation to the executive director; and
  - (e) the executive director approves the public auction.
- (2) If the division refers a vacant division-owned property to the Department of Transportation for public auction, the Department of Transportation shall publicly auction the vacant division-owned property under the same law and in the same manner that apply to a public auction of Department of Transportation property.
- (3) At a public auction conducted under Subsection (2), the Department of Transportation may, on behalf of the division, accept an offer to purchase the vacant division-owned property.
- (4) The division and the Department of Transportation shall coordinate together to:
- (a) manage the details of finalizing any sale of the vacant division-owned property at public auction; and
  - (b) ensure that the buyer acquires proper title and that the division receives the net proceeds of the sale.
- (5) If a public auction under this section does not result in a sale of the vacant division-owned property, the Department of Transportation shall notify the division and refer the vacant division-owned property back to the division.

Section ~~60~~62. Section **63A-5b-909**, which is renumbered from Section 63A-5a-206 is renumbered and amended to read:

~~[63A-5a-206]~~. **63A-5b-909. State real property subject to right of first refusal.**

(1) (a) If Section 78B-6-520.3 applies to vacant division-owned property, the division shall comply with Subsection 78B-6-520.3(3).

## HB0451S01 compared with HB0451

(b) If a condemnee accepts the division's offer to sell the vacant division-owned property as provided in Section 78B-6-520.3, the division shall:

(i) comply with the requirements of Section 78B-6-520.3; and

(ii) terminate any process under this chapter to convey the vacant division-owned property.

(c) A condemnee may waive rights and benefits afforded under Section 78B-6-520.3 and instead seek a transfer of ownership or lease of vacant division-owned property under the provisions of this chapter in the same manner as any other person not entitled to the rights and benefits of Section 78B-6-520.3.

(2) (a) If Section 78B-6-521 applies to the anticipated disposal of the vacant division-owned property, the division shall comply with the limitations and requirements of Subsection 78B-6-521(2).

(b) If the original grantor or the original grantor's assignee accepts an offer for sale as provided in Subsection 78B-6-521(2)(a)(i), the division shall:

(i) sell the vacant division-owned property to the original grantor or the original grantor's assignee, as provided in Section 78B-6-521; and

(ii) terminate any process under this chapter to convey the vacant division-owned property.

(c) An original grantor or the original grantor's assignee may waive rights afforded under Section 78B-6-521 and instead seek a transfer of ownership or lease of vacant division-owned property under the provisions of this chapter in the same manner as any other person seeking a transfer of ownership or lease of vacant division-owned property to which Section 78B-6-521 does not apply.

Section ~~{61}~~63. Section **63A-5b-910**, which is renumbered from Section 63A-5-215 is renumbered and amended to read:

~~[63A-5-215]~~. **63A-5b-910**. **Disposition of proceeds received by division from sale of property.**

(1) (a) Except as provided in Section 62A-5-206.7, the division shall pay into the state treasury the money received [by the division from the sale or other disposition of property shall be paid into the state treasury and] from the transfer of ownership or lease of division-owned property.

## HB0451S01 compared with HB0451

(b) Money paid into the state treasury under Subsection (1)(a):

(i) becomes a part of the funds provided by law for carrying out the building program of the state~~[, and are]~~; and

(ii) is appropriated for [that] the purpose described in Subsection (1)(b)(i).

(2) The proceeds from ~~[sales of]~~ the transfer of ownership or lease of division-owned property belonging to or used by a particular state agency shall, to the extent practicable, be expended for the construction of buildings or in the performance of other work for the benefit of that state agency.

Section ~~{62}~~64. Section **63A-5b-911**, which is renumbered from Section 63A-5-224 is renumbered and amended to read:

~~[63A-5-224].~~        **63A-5b-911. Authority to transfer land for commuter rail station and related development.**

The division may transfer title to a parcel of land it owns in a county of the first class to a public transit district for the purpose of facilitating the development of a commuter rail transit station and associated transit oriented development if:

- (1) the parcel is within one mile of the proposed commuter rail transit station and associated transit oriented development; and
- (2) the division receives in return fair and adequate consideration.

Section ~~{63}~~65. Section **63A-5b-912**, which is renumbered from Section 63A-5-226 is renumbered and amended to read:

~~[63A-5-226].~~        **63A-5b-912. Report to Infrastructure and General Government Appropriations Subcommittee.**

The division shall, ~~[beginning in 2016, and in every even-numbered year after 2016,]~~ on or before the third Wednesday in November of every even-numbered year, present a written report to the Infrastructure and General Government Appropriations Subcommittee that identifies state land and buildings that are no longer needed and can be sold by the state.

Section ~~{64}~~66. Section **63A-5b-1001** is enacted to read:

### **Part 10. Energy Conservation and Efficiency**

#### **63A-5b-1001. Definitions.**

As used in this part:

- (1) "Energy efficiency measure" means an action taken or initiated by an agency that:

## HB0451S01 compared with HB0451

(a) reduces the agency's energy or fuel use or resource energy consumption, water or other resource consumption, operation and maintenance costs, or cost of energy, fuel, water, or other resource; or

(b) increases the agency's energy or fuel efficiency or resource consumption efficiency.

(2) "Energy efficiency program" means a program established under Section 63A-5b-1002 for the purpose of improving energy efficiency measures and reducing the energy costs for state facilities.

(3) "Fund" means the State Facility Energy Efficiency Fund created in Section 63A-5b-1003.

(4) "Performance efficiency agreement" means an agreement entered into by an agency whereby the agency implements one or more energy efficiency measures and finances the costs associated with implementation of performance efficiency measures using the stream of expected savings in costs resulting from implementation of the performance efficiency measures as a funding source for repayment.

(5) (a) "State facility" means any building, structure, or other improvement that is constructed on property owned by the state, the state's departments, commissions, institutions, or agencies, or a state institution of higher education.

(b) "State facility" does not include:

(i) an unoccupied structure that is a component of the state highway system;

(ii) a privately owned structure that is located on property owned by the state, the state's departments, commissions, institutions, or agencies, or a state institution of higher education; or

(iii) a structure that is located on land administered by the trust lands administration under a lease, permit, or contract with the trust lands administration.

Section ~~65~~67. Section **63A-5b-1002**, which is renumbered from Section 63A-5-701 is renumbered and amended to read:

~~[63A-5-701].~~        **63A-5b-1002**. **State Building Energy Efficiency Program.**

~~[(1) For purposes of this section:]~~

~~[(a) "Division" means the Division of Facilities Construction and Management established in Section 63A-5-201.]~~

~~[(b) "Energy efficiency measure" means an action taken or initiated by a state agency~~



## HB0451S01 compared with HB0451

that:]

~~[(i) reduces the state agency's energy or fuel use or resource energy consumption, water or other resource consumption, operation and maintenance costs, or cost of energy, fuel, water, or other resource; or]~~

~~[(ii) increases the state agency's energy or fuel efficiency or resource consumption efficiency.]~~

~~[(c) "Performance efficiency agreement" means an agreement entered into by a state agency whereby the state agency implements one or more energy efficiency measures and finances the costs associated with implementation of performance efficiency measures using the stream of expected savings in costs resulting from implementation of the performance efficiency measures as a funding source for repayment.]~~

~~[(d) "State agency" means each executive, legislative, and judicial branch department, agency, board, commission, or division, and includes a state institution of higher education as defined in Section 53B-3-102.]~~

~~[(e) "State Building Energy Efficiency Program" means a program established under this section for the purpose of improving energy efficiency measures and reducing the energy costs for state facilities.]~~

~~[(f) (i) "State facility" means any building, structure, or other improvement that is constructed on property owned by the state, its departments, commissions, institutions, or agencies, or a state institution of higher education.]~~

~~[(ii) "State facility" does not mean:]~~

~~[(A) an unoccupied structure that is a component of the state highway system;]~~

~~[(B) a privately owned structure that is located on property owned by the state, its departments, commissions, institutions, or agencies, or a state institution of higher education; or]~~

~~[(C) a structure that is located on land administered by the School and Institutional Trust Lands Administration under a lease, permit, or contract with the School and Institutional Trust Lands Administration.]~~

~~[(2)] (1) The division shall:~~

(a) develop and administer the [state building] energy efficiency program, which shall include guidelines and procedures to improve energy efficiency in the maintenance and

## HB0451S01 compared with HB0451

management of state facilities;

(b) provide information and assistance to [state] agencies in their efforts to improve energy efficiency;

(c) analyze energy consumption by [state] agencies to identify opportunities for improved energy efficiency;

(d) establish an advisory group composed of representatives of [state] agencies to provide information and assistance in the development and implementation of the [state building] energy efficiency program; and

(e) submit to the governor and to the Infrastructure and General Government Appropriations Subcommittee of the Legislature an annual report that:

(i) identifies strategies for long-term improvement in energy efficiency;

(ii) identifies goals for energy conservation for the upcoming year; and

(iii) details energy management programs and strategies that were undertaken in the previous year to improve the energy efficiency of [state] agencies and the energy savings achieved.

~~[(3)]~~ (2) Each [state] agency shall:

(a) designate a staff member that is responsible for coordinating energy efficiency efforts within the agency;

(b) provide energy consumption and costs information to the division;

(c) develop strategies for improving energy efficiency and reducing energy costs; and

(d) provide the division with information regarding the agency's energy efficiency and reduction strategies.

~~[(4)(a)]~~ (3) [A state] An agency may enter into a performance efficiency agreement for a term of up to 20 years.

(b) Before entering into a performance efficiency agreement, the [state] agency shall:

(i) utilize the division to oversee the project unless the project is exempt from the division's oversight or the oversight is delegated to the agency under the provisions of Section ~~[63A-5-206]~~ 63A-5b-701;

(ii) obtain the prior approval of the governor or the governor's designee; and

(iii) provide the Office of the Legislative Fiscal Analyst with a copy of the proposed agreement before the agency enters into the agreement.

## HB0451S01 compared with HB0451

(4) An agency may consult with the energy efficiency program manager within the division regarding:

(a) the cost effectiveness of energy efficiency measures; and

(b) ways to measure energy savings that take into account fluctuations in energy costs and temperature.

(5) (a) Except as provided under Subsection (5)(b) and subject to future budget constraints, the Legislature may not remove energy savings from an agency's appropriation.

(b) An agency shall use energy savings to:

(i) fund the cost of the energy efficiency measures; and

(ii) if funds are available after meeting the requirements of Subsection (5)(b)(i), fund and implement new energy efficiency measures.

(c) The Legislature may remove energy savings if:

(i) an agency has complied with Subsection (5)(b)(i); and

(ii) no new cost-effective energy efficiency measure is available for implementation.

Section ~~{66}~~68. Section **63A-5b-1003**, which is renumbered from Section 63A-5-603 is renumbered and amended to read:

**~~[63A-5-603].~~      63A-5b-1003. State Facility Energy Efficiency Fund --**

**Contents -- Use of fund money.**

~~[(1) As used in this section:]~~

~~[(a) "Board" means the State Building Board.]~~

~~[(b) "Division" means the Division of Facilities Construction and Management.]~~

~~[(c) "Fund" means the State Facility Energy Efficiency Fund created by this section.]~~

~~[(2)]~~ (1) There is created a revolving loan fund known as the "State Facility Energy Efficiency Fund."

~~[(3) To capitalize the fund, the Division of Finance shall, at the end of fiscal year 2007-08, transfer \$3,650,000 from the Stripper Well-Petroleum Violation Escrow Fund to the fund.]~~

~~[(4)]~~ (2) The fund shall consist of:

(a) money transferred [under Subsection (3)] from the Stripper Well-Petroleum Violation Escrow Fund;

(b) money appropriated by the Legislature;

## HB0451S01 compared with HB0451

- (c) money received for the repayment of loans made from the fund; and
- (d) interest earned on the fund.

~~[(5)]~~ (3) The board shall make a loan from the fund to ~~[a state]~~ an agency to ~~[, wholly or in part,]~~ finance all or part of energy efficiency measures.

~~[(6)]~~ (4) (a) (i) ~~[A state]~~ An agency requesting a loan shall submit an application to the board in the form and containing the information that the board requires, including plans and specifications for the proposed energy efficiency measures.

(ii) ~~[A state]~~ An agency may request a loan to fund all or part of the cost of energy efficiency measures.

(b) If the board rejects the application, the board shall notify the applicant stating the reasons for the rejection.

~~[(7)]~~ (5) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules establishing:

(i) criteria to determine:

(A) loan eligibility;

(B) energy efficiency measures priority; and

(C) ways to measure energy savings that take into account fluctuations in energy costs and temperature; and

(ii) a method of monitoring actual savings resulting from energy efficiency measures implemented using loan money from the fund, using objective and verifiable post-construction measures, if available.

(b) In making rules that establish prioritization criteria for energy efficiency measures, the board may consider:

(i) possible additional sources of revenue;

(ii) the feasibility and practicality of the energy efficiency measures;

(iii) the energy savings attributable to eligible energy efficiency measures;

(iv) the annual energy savings;

(v) the projected energy cost payback of eligible energy efficiency measures;

(vi) other benefits to the state attributable to eligible energy efficiency measures;

(vii) the availability of federal funds for the energy efficiency measures; and

(viii) whether to require ~~[a state]~~ an agency to provide matching funds for the energy

## HB0451S01 compared with HB0451

efficiency measures.

~~[(8)]~~ (6) (a) In reviewing energy efficiency measures for possible funding, the board shall:

- (i) review the loan application and the plans and specifications for the energy efficiency measures;
- (ii) determine whether to grant the loan by applying the loan eligibility criteria; and
- (iii) if the loan is granted, prioritize funding of the energy efficiency measures by applying the prioritization criteria.

(b) The board may condition approval of a loan application and the availability of funds on assurances from the ~~[state]~~ agency that the board considers necessary to ensure that the ~~[state]~~ agency:

- (i) uses the proceeds to pay the cost of the energy efficiency measures; and
- (ii) implements the energy efficiency measures.

~~[(9)]~~ (7) The division shall annually report to the Government Operations Interim Committee of the Legislature the actual savings resulting from energy efficiency measures implemented using loan money from the fund, as monitored pursuant to rules adopted under Subsection ~~[(7)]~~ (5)(a)(ii).

~~[(10)]~~ (8) The ~~[State Building Energy Efficiency Program]~~ manager of the energy efficiency program shall provide staff support when the board performs the duties established in this section.

Section ~~{67}~~69. Section **63A-5b-1101** is enacted to read:

### **Part 11. Miscellaneous Provisions**

#### **63A-5b-1101. Gifts, grants, and donations.**

(1) (a) The state or the division may receive a gift, grant, or donation to further the purposes of this part.

(b) A gift, grant, or donation described in Subsection (1)(a) may not revert to the General Fund.

(2) (a) This Subsection (2) applies if:

(i) a donor donates land to an institution of higher education and commits to construct a building or buildings on the land; and

(ii) the institution of higher education:

## HB0451S01 compared with HB0451

(A) agrees to provide funds for the ~~operations~~operation and maintenance costs of the building or buildings from sources other than state funds; and

(B) agrees that the building or buildings will not be eligible for state capital improvement funding.

(b) Notwithstanding any other provision of this chapter, an institution of higher education that receives a donation described in Subsection (2)(a) may:

(i) oversee and manage a construction project on the donated land without involvement, oversight, or management from the division; or

(ii) arrange for oversight and management of the construction project by the division.

(c) The role of compliance agency on a construction project on the donated land shall be provided by:

(i) the institution of higher education, for a construction project that the institution of higher education oversees and manages under Subsection (2)(b)~~(ii)~~; or

(ii) the director, for a construction project that the division oversees and manages under Subsection (2)(b)(ii).

Section ~~68~~70. Section **63A-5b-1102**, which is renumbered from Section 63A-5-801 is renumbered and amended to read:

~~[63A-5-801].~~        **63A-5b-1102. Memorials by the state or state agencies.**

(1) As used in this section:

(a) ["State"] "Authorizing agency" means ~~[any of the following of the state]~~ an agency that holds title to state land~~[-];~~

~~[(i) a department;]~~

~~[(ii) a division;]~~

~~[(iii) a board;]~~

~~[(iv) an institution of higher education; or]~~

~~[(v) for the judicial branch, the state court administrator.]~~

(b) ["State"] "Authorizing agency" does not mean a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, or a special service district under Title 17D, Chapter 1, Special Service District Act.

(2) The Legislature, the governor, or ~~[a state]~~ an authorizing agency may authorize the use or donation of state land for the purpose of maintaining, erecting, or contributing to the

## HB0451S01 compared with HB0451

erection or maintenance of a memorial to commemorate ~~[those]~~ individuals who have:

(a) participated in or have given their lives in any of the one or more wars or military conflicts in which the United States of America has been a participant; or

(b) given their lives in association with public service on behalf of the state, including firefighters, peace officers, highway patrol officers, or other public servants.

(3) The use or donation of state land in relation to a memorial described in Subsection (2) may include:

(a) using or appropriating public funds for the purchase, development, improvement, or maintenance of state land on which a memorial is located or established;

(b) using or appropriating public funds for the erection, improvement, or maintenance of a memorial;

(c) donating or selling state land for use in relation to a memorial; or

(d) authorizing the use of state land for a memorial that is funded or maintained in part or in full by another public or private entity.

(4) The Legislature, the governor, or ~~[a state]~~ an authorizing agency may specify the form, placement, and design of a memorial that is subject to this section if the Legislature, the governor, or the ~~[state]~~ authorizing agency holds title to, has authority over, or donates the land on which a memorial is established.

(5) ~~[Memorials]~~ A memorial within the definition of a capital development project, as defined in Section ~~[63A-5-104 must]~~ 63A-5b-401, is required to be approved as provided for in Section ~~[63A-5-104]~~ 63A-5b-402.

(6) Nothing in this section ~~[shall]~~ may be construed as a prohibition of ~~[memorials]~~ a memorial, including ~~[those for purposes]~~ a memorial for a purpose not covered by this section, ~~[which have been]~~ that:

(a) is erected within the approval requirements in effect at the time of ~~[their]~~ the memorial's erection; or

(b) ~~[which]~~ may be duly authorized through other legal means.

Section ~~{69}~~ 71. Section **63A-5b-1103** is enacted to read:

**63A-5b-1103. Making keys to buildings of state, political subdivisions, or colleges and universities without permission prohibited.**

(1) As used in this section:

## HB0451S01 compared with HB0451

(a) "Applicable government entity" means a state agency, a political subdivision of the state, the Board of Regents, or any college or university supported in whole or in part by the state.

(b) "Government facility" means a building, laboratory, facility, room, dormitory, hall, or other structure owned, licensed as a licensee, leased as a tenant, or lawfully occupied by an applicable government entity.

(2) An individual may not knowingly make or cause to be made any key or duplicate key for a government facility without the prior written consent of the applicable government entity.

(3) A person who violates this section is guilty of a class B misdemeanor.

Section ~~{70}~~72. Section **63A-5b-1104** is enacted to read:

**63A-5b-1104. Notification to local governments for construction or modification of certain facilities.**

(1) (a) The director ~~{,}~~ or the director's designee ~~{, or the state entity to which control has been delegated under Section 63A-5b-604,}~~ shall notify in writing the elected representatives of a local government entity directly and substantively affected by any diagnostic, treatment, parole, probation, or other secured facility project exceeding \$250,000, if:

(i) the nature of the project has been significantly altered since an earlier notification;

(ii) the project would significantly change the nature of the functions presently conducted at the location; or

(iii) the project is new construction.

(b) At the request of the state entity or the local government entity, representatives from the state entity and the affected local entity shall conduct or participate in a local public hearing or hearings to discuss the issues described in Subsection (1)(a).

(2) (a) (i) Before beginning the construction of student housing on property owned by the state or an institution of higher education, the director shall provide written notice of the proposed construction, as provided in Subsection (2)(a)(ii), if any of the proposed student housing buildings ~~{are}~~ is within 300 feet of privately owned residential property.

(ii) Each notice under Subsection (2)(a)(i) shall be provided to the legislative body and, if applicable, the mayor of:



## HB0451S01 compared with HB0451

(A) the county in whose unincorporated area the privately owned residential property is located; or

(B) the municipality in whose boundary the privately owned residential property is located.

(b) (i) Within 21 days after receiving the notice required by Subsection (2)(a)(i), a county or municipality entitled to the notice may submit a written request to the director for a public hearing on the proposed student housing construction.

(ii) If a county or municipality requests a hearing under Subsection (2)(b)(i), the director and the county or municipality shall jointly hold a public hearing to provide information to the public and to allow the director and the county or municipality to receive input from the public about the proposed student housing construction.

Section ~~{71}~~73. Section **63A-5b-1105** is enacted to read:

### **63A-5b-1105. Testing and inspection firm requirements.**

The director shall ensure that any person performing testing and inspection work governed by the American Society for Testing Materials Standard E-329 on a public building under the director's supervision:

(1) fully complies with the American Society for Testing Materials standard specifications for an agency engaged in the testing and inspection of materials known as ASTM E-329; and

(2) carries a minimum of \$1,000,000 of errors and omissions insurance.

Section ~~{72}~~74. Section **63A-5b-1106**, which is renumbered from Section 63A-5-222 is renumbered and amended to read:

**[~~63A-5-222~~].            63A-5b-1106. Critical land near state prison -- Definitions -- Preservation as open land -- Management and use of land -- Restrictions on transfer -- Wetlands development -- Conservation easement.**

(1) For purposes of this section:

(a) "Corrections" means the Department of Corrections created under Section 64-13-2.

(b) "Critical land" means:

(i) a parcel of approximately 250 acres of land owned by the division and located on the east edge of the Jordan River between about 12300 South and 14600 South in Salt Lake County, approximately the southern half of whose eastern boundary abuts the Denver and Rio

## HB0451S01 compared with HB0451

Grande Western Railroad right-of-way; and

(ii) any parcel acquired in a transaction authorized under Subsection (3)(c) as a replacement for a portion of the parcel described in Subsection (1)(b)(i) that is conveyed as part of the transaction.

(c) (i) "Open land" means land that is:

(A) preserved in or restored to a predominantly natural, open, and undeveloped condition; and

(B) used for:

(I) wildlife habitat;

(II) cultural or recreational use;

(III) watershed protection; or

(IV) another use consistent with the preservation of the land in or restoration of the land to a predominantly natural, open, and undeveloped condition.

(ii) (A) "Open land" does not include land whose predominant use is as a developed facility for active recreational activities, including baseball, tennis, soccer, golf, or other sporting or similar activity.

(B) The condition of land does not change from a natural, open, and undeveloped condition because of the development or presence on the land of facilities, including trails, waterways, and grassy areas, that:

(I) enhance the natural, scenic, or aesthetic qualities of the land; or

(II) facilitate the public's access to or use of the land for the enjoyment of its natural, scenic, or aesthetic qualities and for compatible recreational activities.

(2) (a) (i) The critical land shall be preserved in perpetuity as open land.

(ii) The long-term ownership and management of the critical land should eventually be turned over to the Department of Natural Resources created under Section 79-2-201 or another agency or entity that is able to accomplish the purposes and intent of this section.

(b) Notwithstanding Subsection (2)(a)(i) and as funding is available, certain actions should be taken on or with respect to the critical land, including:

(i) the development and implementation of a program to eliminate noxious vegetation and restore and facilitate the return of natural vegetation on the critical land;

(ii) the development of a system of trails through the critical land that is compatible

## HB0451S01 compared with HB0451

with the preservation of the critical land as open land;

(iii) the development and implementation of a program to restore the natural features of and improve the flows of the Jordan River as it crosses the critical land;

(iv) the preservation of the archeological site discovered on the critical land and the development of an interpretive site in connection with the archeological discovery;

(v) in restoring features on the critical land, the adoption of methods and plans that will enhance the critical land's function as a wildlife habitat;

(vi) taking measures to reduce safety risks on the critical land; and

(vii) the elimination or rehabilitation of a prison dump site on the critical land.

(3) (a) Except as provided in Subsections (3)(b) and (c), no interest in the critical land may be sold, assigned, leased, or otherwise transferred unless measures are taken to ensure that the critical land that is transferred will be preserved as open land in perpetuity.

(b) Notwithstanding Subsection (3)(a), exchanges of property may be undertaken to resolve boundary disputes with adjacent property owners and easements may be granted for trails and other purposes consistent with Subsection (2)(b) and with the preservation of the critical land as open land.

(c) The Department of Natural Resources may transfer title to a portion of the critical land described in Subsection (1)(b)(i) in exchange for a parcel of land if:

(i) the parcel being acquired is:

(A) open land; and

(B) located within one mile of the portion of critical land being transferred; and

(ii) the purpose of the exchange is to facilitate the development of a commuter rail transit station and associated transit oriented development.

(4) The division shall use the funds remaining from the appropriation under Laws of Utah 1998, Chapter 399, for the purposes of:

(a) determining the boundaries and legal description of the critical land;

(b) determining the boundaries and legal description of the adjacent property owned by the division;

(c) fencing the critical land and adjacent land owned by the division where appropriate and needed; and

(d) assisting to carry out the intent of this section.

## HB0451S01 compared with HB0451

(5) (a) Notwithstanding Subsection (2)(a)(i), the division or its successor in title to the critical land may develop or allow a public agency or private entity to develop more wetlands on the critical land than exist naturally or existed previously.

(b) (i) Subject to Subsections (3)(a) and (5)(b)(ii), the division or its successor in title may transfer jurisdiction of all or a portion of the critical land to a public agency or private entity to provide for the development and management of wetlands and designated wetland buffer areas.

(ii) Before transferring jurisdiction of any part of the critical land under Subsection (5)(b)(i), the division or its successor in title shall assure that reasonable efforts are made to obtain approval from the appropriate federal agency to allow mitigation credits in connection with the critical land to be used for impacts occurring anywhere along the Wasatch Front.

(6) Notwithstanding any other provision of this section, corrections shall have access to the cooling pond located on the critical land as long as that access to and use of the cooling pond are not inconsistent with the preservation of the critical land as open land.

(7) [~~The Department of~~] Corrections, the division, and all other state departments, divisions, or agencies shall cooperate together to carry out the intent of this section.

(8) In order to ensure that the land referred to in this section is preserved as open land, the division shall, as soon as practicable, place the land under a perpetual conservation easement in favor of an independent party such as a reputable land conservation organization or a state or local government agency with experience in conservation easements.

Section ~~{73}~~75. Section **63A-5b-1107**, which is renumbered from Section 63A-5-225 is renumbered and amended to read:

~~[63A-5-225].~~        **63A-5b-1107. Development of new correctional facilities.**

(1) As used in this section:

(a) "Committee" means the Legislative Management Committee created in Section 36-12-6.

(b) "New correctional facilities" means a new prison and related facilities to be constructed to replace the state prison located in Draper.

(c) "Prison project" means all aspects of a project for the design and construction of new correctional facilities on the selected site, including:

(i) the acquisition of land, interests in land, easements, or rights-of-way;

## HB0451S01 compared with HB0451

(ii) site improvement; and

(iii) the acquisition, construction, equipping, or furnishing of facilities, structures, infrastructure, roads, parking facilities, utilities, and improvements, whether on or off the selected site, that are necessary, incidental, or convenient to the development of new correctional facilities on the selected site.

(d) "Selected site" means the site selected [~~under Subsection 63C-15-203(2)~~] as the site for new correctional facilities.

(2) In consultation with the committee, the division shall oversee the prison project, as provided in this section.

(3) (a) In accordance with Title 63G, Chapter 6a, Utah Procurement Code, and this section, the division shall:

(i) enter into contracts with persons providing professional and construction services for the prison project;

(ii) provide reports to the committee regarding the prison project, as requested by the [~~commission~~] committee; and

(iii) consider input from the committee on the prison project, subject to Subsection (3)(b).

(b) The division may not consult with or receive input from the committee regarding:

(i) the evaluation of proposals from persons seeking to provide professional and construction services for the prison project; or

(ii) the selection of persons to provide professional and construction services for the prison project.

(c) A contract with a project manager or person with a comparable position on the prison project shall include a provision that requires the project manager or other person to provide reports to the committee regarding the prison project, as requested by the committee.

(4) All contracts associated with the design or construction of new correctional facilities shall be awarded and managed by the division in accordance with Title 63G, Chapter 6a, Utah Procurement Code, and this section.

(5) The division shall coordinate with the Department of Corrections, created in Section 64-13-2, and the State Commission on Criminal and Juvenile Justice, created in Section 63M-7-201, during the prison project to help ensure that the design and construction of

## HB0451S01 compared with HB0451

new correctional facilities are conducive to and consistent with, and help to implement any reforms of or changes to, the state's corrections system and corrections programs.

(6) (a) There is created within the General Fund a restricted account known as the "Prison Development Restricted Account."

(b) The account created in Subsection (6)(a) is funded by legislative appropriations.

(c) (i) The account shall earn interest or other earnings.

(ii) The Division of Finance shall deposit interest or other earnings derived from the investment of account funds into the account.

(d) Upon appropriation from the Legislature, money from the account shall be used to fund the Prison Project Fund created in Subsection (7).

(7) (a) There is created a capital projects fund known as the "Prison Project Fund."

(b) The fund consists of:

(i) money appropriated to the fund by the Legislature; and

(ii) proceeds from the issuance of bonds authorized in Section 63B-25-101 to provide funding for the prison project.

(c) (i) The fund shall earn interest or other earnings.

(ii) The Division of Finance shall deposit interest or other earnings derived from the investment of fund money into the fund.

(d) Money in the fund shall be used by the division to fund the prison project.

Section ~~{74}~~76. Section **63B-1-304** is amended to read:

**63B-1-304. State Building Ownership Authority created -- Members --**

**Compensation -- Location in Department of Administrative Services.**

(1) There is created a body politic and corporate to be known as the State Building Ownership Authority composed of:

(a) the governor;

(b) the state treasurer; and

(c) the chair of the [~~State Building Board~~] state building board created under Section [~~63A-5-101~~] 63A-5b-201.

(2) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

## HB0451S01 compared with HB0451

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(3) (a) Upon request, the division shall provide staff support to the State Building Ownership Authority.

(b) The State Building Ownership Authority may seek and obtain independent financial advice, support, and information from the state financial advisor created under Section 67-4-16.

Section ~~{75}~~77. Section **63B-2-301** is amended to read:

### **63B-2-301. Legislative intent -- Additional projects.**

It is the intent of the Legislature that:

(1) The Department of Employment Security use money in the special administrative fund to plan, design, and construct a Davis County facility under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by him as authorized by Section ~~[63A-5-206]~~ 63A-5b-604.

(2) The University of Utah may use donated funds to plan, design, and construct the Nora Eccles Harrison addition under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by him as authorized by Section ~~[63A-5-206]~~ 63A-5b-604.

(3) The University of Utah may use hospital funds to plan, design, and construct the West Patient Services Building under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by him as authorized by Section ~~[63A-5-206]~~ 63A-5b-604.

(4) The University of Utah may use federal funds to plan, design, and construct the Computational Science Building under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by him as authorized by Section ~~[63A-5-206]~~ 63A-5b-604.

(5) The Board of Regents may issue revenue bonds to provide:

(a) \$6,700,000 to plan, design, and construct single student housing at Utah State University under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by him as authorized by Section

## HB0451S01 compared with HB0451

[63A-5-206] 63A-5b-604; and

(b) additional money necessary to:

(i) pay costs incident to the issuance and sale of the bonds;

(ii) pay interest on the bonds that accrues during construction and acquisition of the project and for up to one year after construction is completed; and

(iii) fund any reserve requirements for the bonds.

(6) Utah State University may use federal funds to plan, design, and construct the Natural Resources Lab addition under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by him as authorized by Section [63A-5-206] 63A-5b-604.

(7) Utah State University may use funds derived from property sales to plan, design, and construct emergency relocation facilities for the Farmington Botanical Gardens under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by him as authorized by Section [63A-5-206] 63A-5b-604.

(8) Utah State University may use institutional funds to plan, design, and construct an institutional residence for the president under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by him as authorized by Section [63A-5-206] 63A-5b-604.

(9) Weber State University may use discretionary funds to construct a remodel and expansion of the stores building and mail service facilities under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by him as authorized by Section [63A-5-206] 63A-5b-604.

(10) Weber State University may use fees and auxiliary revenue to plan, design, and construct a remodel and expansion of the Shepherd Student Union Building under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by him as authorized by Section [63A-5-206] 63A-5b-604.

(11) Southern Utah University may use donated funds to plan, design, and construct an alumni house under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by him as authorized by Section [63A-5-206] 63A-5b-604.

(12) Utah State University Eastern may use auxiliary revenues and other fees to:



## HB0451S01 compared with HB0451

- (a) make lease or other payments;
- (b) redeem revenue bonds or repay loans issued on behalf of the college; and
- (c) plan, design, and construct a 200 person residence hall under the supervision of the

director of the Division of Facilities Construction and Management unless supervisory authority is delegated by him as authorized by Section [~~63A-5-206~~] 63A-5b-604.

(13) The Sevier Valley Applied Technology Center may use private and Community Impact Board funds, if approved, to plan, design, and construct a performing arts/multi-use facility under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by him as authorized by Section [~~63A-5-206~~] 63A-5b-604.

(14) Ogden City and Weber County may have offices and related space for their attorneys included in the Ogden Courts building if the city and county are able to provide upfront funding to cover all costs associated with the design and construction of that space. In addition, the city and county shall cover their proportionate share of all operations and maintenance costs of their facility, including future major repairs to the building.

(15) If the Legislature authorizes the Division of Facilities Construction and Management to enter into a lease purchase agreement for the Department of Human Services facility at 1385 South State Street in Salt Lake City or for the State Board of Education facility and adjacent space in Salt Lake City, or for both of those facilities, the State Building Ownership Authority, at the reasonable rates and amounts it may determine, and with technical assistance from the state treasurer, the director of the Division of Finance, and the executive director of the Governor's Office of Management and Budget, may seek out the most cost effective lease purchase plans available to the state and may, pursuant to Title 63B, Chapter 1, Part 3, State Building Ownership Authority Act, certificate out interests in, or obligations of the authority pertaining to:

- (a) the lease purchase obligation; or
- (b) lease rental payments under the lease purchase obligation.

(16) Salt Lake Community College may use donated funds to plan, design, and construct an amphitheater under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by him as authorized by Section [~~63A-5-206~~] 63A-5b-604.

## HB0451S01 compared with HB0451

(17) For the Tax Commission building, that:

(a) All costs associated with the construction and furnishing of the Tax Commission building that are incurred before the issuance of the 1993 general obligation bonds be reimbursed by bond proceeds.

(b) The maximum amount of cost that may be reimbursed from the 1993 general obligation bond proceeds for the Tax Commission building and furnishings may not exceed \$14,230,000.

(c) This intent statement for Subsection (17) constitutes a declaration of official intent under Section 1.103-18 of the U.S. Treasury Regulations.

Section ~~76~~78. Section **63B-4-201** is amended to read:

### **63B-4-201. Legislative intent statements -- Capital facilities.**

(1) (a) It is the intent of the Legislature that the University of Utah use institutional and other funds to plan, design, and construct two campus child care centers under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director.

(b) The university shall work with Salt Lake City and the surrounding neighborhood to ensure site compatibility for future recreational development by the city.

(2) It is the intent of the Legislature that the University of Utah use institutional funds to plan, design, and construct:

(a) the Union Parking structure under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director;

(b) the stadium renovation under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director;

(c) the Huntsman Cancer Institute under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director;

(d) the Business Case Method Building under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director; and

## HB0451S01 compared with HB0451

(e) the Fine Arts Museum expansion under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director.

(3) It is the intent of the Legislature that Utah State University use institutional funds to plan, design, and construct:

(a) a student health services facility under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director;

(b) a women's softball field under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director;

(c) an addition to the Nutrition and Food Services Building under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director; and

(d) a Human Resource Research Center under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director.

(4) It is the intent of the Legislature that Weber State University use institutional funds to plan, design, and construct:

(a) a track renovation under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director; and

(b) the Dee Events Center offices under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director.

(5) It is the intent of the Legislature that Southern Utah University use:

(a) institutional funds to plan, design, and construct an institutional residence under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director; and

(b) project revenues and other funds to plan, design, and construct the Shakespearean Festival support facilities under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director.

## HB0451S01 compared with HB0451

(6) It is the intent of the Legislature that Dixie College use institutional funds to plan, design, and construct an institutional residence under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director.

(7) It is the intent of the Legislature that the Division of Forestry, Fire, and State Lands use federal and other funds to plan, design, and construct a wetlands enhancement facility under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director.

(8) (a) As provided in Subsection [~~63A-5-209(2)~~] 63A-5b-609(2), the funds appropriated to the Project Reserve Fund may only be used for the award of contracts in excess of the construction budget if these funds are required to meet the intent of the project.

(b) It is the intent of the Legislature that:

(i) up to \$2,000,000 of the amount may be used to award the construction contract for the Ogden Court Building; and

(ii) the need for any funds remaining as of December 31, 1995 be reviewed by the 1996 Legislature.

(9) (a) It is the intent of the Legislature that the State Building Ownership Authority, under authority of Title 63B, Chapter 1, Part 3, State Building Ownership Authority Act, issue or execute obligations or enter into or arrange for a lease purchase agreement in which participation interests may be created to provide up to \$539,700 for the purchase and demolition of the Keyston property and construction of parking facilities adjacent to the State Board of Education building in Salt Lake City, with additional amounts necessary to:

(i) pay costs of issuance;

(ii) pay capitalized interest; and

(iii) fund any debt service reserve requirements.

(b) It is the intent of the Legislature that the authority seek out the most cost effective and prudent lease purchase plan available with technical assistance from the state treasurer, the director of the Division of Finance, and the executive director of the Governor's Office of Management and Budget.

(10) (a) It is the intent of the Legislature that the money appropriated for Phase One of the Remodeling/Life Safety Upgrades of the Browning Fine Arts Center at Weber State

## HB0451S01 compared with HB0451

University is to include design of full code compliance, life safety, space necessary to maintain required programs, and seismic upgrades.

(b) The design shall identify the full scope and cost of Phase Two of the remodeling for funding consideration in the fiscal year 1997 budget cycle.

(11) It is the intent of the Legislature that:

(a) the fiscal year 1996 appropriation for the Davis County Higher Education land purchase includes up to \$250,000 for planning purposes;

(b) the Division of Facilities Construction and Management, the Board of Regents, and the assigned institution of higher education work jointly to ensure the following elements are part of the planning process:

(i) projections of student enrollment and programmatic needs for the next 10 years;

(ii) review and make recommendations for better use of existing space, current technologies, public/private partnerships, and other alternatives as a means to reduce the need for new facilities and still accommodate the projected student needs; and

(iii) use of a master plan that includes issues of utilities, access, traffic circulation, drainage, rights of way, future developments, and other infrastructure items considered appropriate; and

(c) every effort is used to minimize expenditures for this part until a definitive decision has been made by BRACC relative to Hill Air Force Base.

(12) (a) It is the intent of the Legislature that the State Building Ownership Authority, under authority of Title 63B, Chapter 1, Part 3, State Building Ownership Authority Act, issue or execute obligations or enter into or arrange for a lease purchase agreement in which participation interests may be created, to provide up to \$7,400,000 for the acquisition and improvement of the Human Services Building located at 120 North 200 West, Salt Lake City, Utah, with associated parking for the Department of Human Services together with additional amounts necessary to:

(i) pay costs of issuance;

(ii) pay capitalized interest; and

(iii) fund any debt service reserve requirements.

(b) It is the intent of the Legislature that the authority seek out the most cost effective and prudent lease purchase plan available with technical assistance from the state treasurer, the

## HB0451S01 compared with HB0451

director of the Division of Finance, and the executive director of the Governor's Office of Management and Budget.

(13) (a) It is the intent of the Legislature that the State Building Ownership Authority, under authority of Title 63B, Chapter 1, Part 3, State Building Ownership Authority Act, issue or execute obligations or enter into or arrange for a lease purchase agreement in which participation interests may be created to provide up to \$63,218,600 for the construction of a Salt Lake Courts Complex together with additional amounts necessary to:

- (i) pay costs of issuance;
- (ii) pay capitalized interest; and
- (iii) fund any debt service reserve requirements.

(b) It is the intent of the Legislature that the authority seek out the most cost effective and prudent lease purchase plan available with technical assistance from the state treasurer, the director of the Division of Finance, and the executive director of the Governor's Office of Management and Budget.

(c) It is the intent of the Legislature that the Division of Facilities Construction and Management lease land to the State Building Ownership Authority for the construction of a Salt Lake Courts Complex.

(14) It is the intent of the Legislature that:

(a) the Board of Regents use the higher education design project money to design no more than two higher education projects from among the following projects:

- (i) Utah State University Eastern - Student Center;
- (ii) Snow College - Noyes Building;
- (iii) University of Utah - Gardner Hall;
- (iv) Utah State University - Widtsoe Hall; or
- (v) Southern Utah University - Physical Education Building; and

(b) the higher education institutions that receive approval from the Board of Regents to design projects under this chapter design those projects under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director.

(15) It is the intent of the Legislature that:

- (a) the Board of Regents may authorize the University of Utah to use institutional

## HB0451S01 compared with HB0451

funds and donated funds to design Gardner Hall; and

(b) if authorized by the Board of Regents, the University of Utah may use institutional funds and donated funds to design Gardner Hall under the supervision of the director of the Division of Facilities Construction and Management unless supervisory authority is delegated by the director.

(16) It is the intent of the Legislature that the Division of Facilities Construction and Management use up to \$250,000 of the capital improvement money to fund the site improvements required at the San Juan campus of the Utah State University Eastern.

Section ~~{77}~~79. Section **63B-9-103** is amended to read:

### **63B-9-103. Other capital facility authorizations and intent language.**

(1) It is the intent of the Legislature that:

(a) Utah State University use institutional funds to plan, design, and construct a renovation and expansion of the Edith Bowen School under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

(b) no state funds be used for any portion of this project; and

(c) the university may request state funds for operations and maintenance to the extent that the university is able to demonstrate to the Board of Regents that the facility meets approved academic and training purposes under Board of Regents policy R710.

(2) It is the intent of the Legislature that:

(a) the University of Utah use institutional funds to plan, design, and construct a College of Science Math Center under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

(b) no state funds be used for any portion of this project; and

(c) the university may request state funds for operations and maintenance to the extent that the university is able to demonstrate to the Board of Regents that the facility meets approved academic and training purposes under Board of Regents policy R710.

(3) It is the intent of the Legislature that:

(a) the University of Utah use institutional funds to plan, design, and construct a Burbidge Athletics and Academics Building under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

## HB0451S01 compared with HB0451

(b) no state funds be used for any portion of this project; and

(c) the university may not request state funds for operations and maintenance.

(4) It is the intent of the Legislature that:

(a) the University of Utah use institutional funds to plan, design, and construct an expansion to the bookstore under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

(b) no state funds be used for any portion of this project; and

(c) the university may not request state funds for operations and maintenance.

(5) It is the intent of the Legislature that:

(a) the University of Utah use institutional funds to plan, design, and construct a Health Sciences/Basic Sciences Building under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

(b) no state funds be used for any portion of this project; and

(c) the university may request state funds for operations and maintenance to the extent that the university is able to demonstrate to the Board of Regents that the facility meets approved academic and training purposes under Board of Regents policy R710.

(6) It is the intent of the Legislature that:

(a) Weber State University use institutional funds to plan, design, and construct an expansion to the stadium under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

(b) no state funds be used for any portion of this project; and

(c) the university may not request state funds for operations and maintenance.

(7) It is the intent of the Legislature that:

(a) Utah Valley State College use institutional funds to plan, design, and construct a baseball stadium under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated;

(b) no state funds be used for any portion of this project; and

(c) the college may not request state funds for operations and maintenance.

(8) It is the intent of the Legislature that:

(a) Southern Utah University use institutional funds to plan, design, and construct a weight training room under the direction of the director of the Division of Facilities



## HB0451S01 compared with HB0451

Construction and Management unless supervisory authority has been delegated;

- (b) no state funds be used for any portion of this project; and
- (c) the university may not request state funds for operations and maintenance.

(9) It is the intent of the Legislature that:

(a) Snow College may lease land at the Snow College Richfield campus to a private developer for the construction and operation of student housing;

(b) the oversight and inspection of the construction comply with Section [~~63A-5-206~~]  
63A-5b-604;

- (c) no state funds be used for any portion of this project; and
- (d) the college may not request state funds for operations and maintenance.

(10) It is the intent of the Legislature that:

(a) Salt Lake Community College may lease land at the Jordan campus to Jordan School District for the construction and operation of an Applied Technology Education Center;

(b) the oversight and inspection of the construction comply with Section [~~63A-5-206~~]  
63A-5b-604;

- (c) no state funds be used for any portion of this project; and
- (d) the college may not request state funds for operations and maintenance.

(11) It is the intent of the Legislature that:

(a) the Department of Transportation exchange its maintenance station at Kimball Junction for property located near Highway 40 in Summit County; and

(b) the Department of Transportation use federal funds, rent paid by the Salt Lake Organizing Committee for the use of the maintenance station, and any net proceeds resulting from the exchange of property to construct a replacement facility under the direction of the director of the Division of Facilities Construction and Management unless supervisory authority has been delegated.

(12) It is the intent of the Legislature that:

(a) the Department of Transportation sell surplus property in Utah County;

(b) the Department of Transportation use funds from that sale to remodel existing space and add an addition to the Region 3 Complex; and

(c) the project cost not exceed the funds received through sale of property.

(13) It is the intent of the Legislature that the Department of Workforce Services use

## HB0451S01 compared with HB0451

proceeds from property sales to purchase additional property adjacent to its state-owned facility in Logan.

(14) (a) It is the intent of the Legislature that, because only partial funding is provided for the Heat Plant/Infrastructure Project at Utah State University, the balance necessary to complete this project be addressed by future Legislatures, either through appropriations or through the issuance of bonds.

(b) (i) In compliance with Section [~~63A-5-207~~] 63A-5b-608, the division may enter into contracts for amounts not to exceed the anticipated full project funding but may not allow work to be performed on those contracts in excess of the funding already authorized by the Legislature.

(ii) Those contracts shall contain a provision for termination of the contract for the convenience of the state.

(c) It is also the intent of the Legislature that this authorization to the division does not bind future Legislatures to fund the Heat Plant/Infrastructure Project at Utah State University.

Section ~~{78}~~80. Section **63B-16-201** is amended to read:

### **63B-16-201. Revenue bond authorizations -- State Building Ownership**

#### **Authority.**

(1) It is the intent of the Legislature that:

(a) the State Building Ownership Authority, under the authority of Title 63B, Chapter 1, Part 3, State Building Ownership Authority Act, may issue or execute obligations, or enter into or arrange for a lease-purchase agreement in which participation interests may be created, to provide up to \$5,662,000 for the acquisition and construction of three stores for the Department of Alcoholic Beverage Control, together with additional amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements;

(b) the stores to be addressed through this authorization are:

(i) expansion of the North Temple store in Salt Lake County;

(ii) expansion of the Taylorsville store in Salt Lake County; and

(iii) reconstruction of the Bountiful store in Davis County;

(c) increased sales revenues be used as the primary revenue source for repayment of any obligation created under authority of this section; and

(d) the Department of Alcoholic Beverage Control may request operation and

## HB0451S01 compared with HB0451

maintenance funding from sales revenues.

(2) It is the intent of the Legislature that:

(a) the State Building Ownership Authority, under the authority of Title 63B, Chapter 1, Part 3, State Building Ownership Authority Act, may issue or execute obligations, or enter into or arrange for a lease-purchase agreement in which participation interests may be created, to provide up to \$1,476,000 for the acquisition and construction of a production warehouse for Utah Correctional Industries, together with additional amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements;

(b) Utah Correctional Industries' revenues be used as the primary revenue source for repayment of any obligation created under authority of this section;

(c) Utah Correctional Industries may plan, design, and construct the production warehouse subject to requirements in Section [~~63A-5-206~~] 63A-5b-604; and

(d) Utah Correctional Industries may not request state funds for operation and maintenance costs or capital improvements.

Section ~~{79}~~81. Section **63B-16-202** is amended to read:

### **63B-16-202. Revenue bond authorizations -- Board of Regents.**

(1) It is the intent of the Legislature that:

(a) when the University of Utah certifies to the Board of Regents that the university has obtained reliable commitments, convertible to cash, of \$10,000,000 or more in nonstate funds to construct an on-campus student life center, the Board of Regents, on behalf of the University of Utah, may issue, sell, and deliver revenue bonds or other evidences of indebtedness of the University of Utah to borrow money on the credit, revenues, and reserves of the University of Utah, other than appropriations from the Legislature, to finance the cost of constructing an on-campus student life center;

(b) student recreation fees and non-student fees be used as the primary revenue source for repayment of any obligation created under authority of this section;

(c) the University of Utah may increase student recreation fees to not more than \$60 per semester for not more than 20 years, and use those revenues, together with the \$15,000,000 collected under Subsection (1)(a), to service the student life center revenue bond debt;

(d) the bonds or other evidences of indebtedness authorized by this section may provide up to \$42,500,000, together with other amounts necessary to pay costs of issuance, pay

## HB0451S01 compared with HB0451

capitalized interest, and fund any debt service reserve requirements;

(e) the University of Utah may plan, design, and construct the on-campus student life center subject to requirements in Section [~~63A-5-206~~] 63A-5b-604; and

(f) the university may not request state funds for operation and maintenance costs or capital improvements.

(2) It is the intent of the Legislature that:

(a) the Board of Regents, on behalf of Southern Utah University, may issue, sell, and deliver revenue bonds or other evidences of indebtedness of Southern Utah University to borrow money on the credit, revenues, and reserves of Southern Utah University, other than appropriations of the Legislature, to finance the cost of constructing on-campus student dormitories;

(b) student housing rental fees be used as the primary revenue source for repayment of any obligation created under authority of this section;

(c) the bonds or other evidences of indebtedness authorized by this section may provide up to \$17,500,000, together with other amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements;

(d) Southern Utah University may plan, design, and construct the on-campus student dormitories subject to requirements in Section [~~63A-5-206~~] 63A-5b-604; and

(e) the university may not request state funds for operation and maintenance costs or capital improvements.

Section ~~80~~82. Section **63B-16-301** is amended to read:

**63B-16-301. Authorizations to construct capital facilities using institutional or agency funds.**

(1) It is the intent of the Legislature that:

(a) Utah State University may, subject to requirements in Section [~~63A-5-206~~] 63A-5b-604, plan, design, and construct a classroom building funded and owned by Tooele County on the university's Tooele campus;

(b) no state funds be used for any portion of this project, including for future purchase or otherwise acquiring the building from Tooele County;

(c) the university may not request state funds for operation and maintenance costs or capital improvements while the building is not owned by the university; and

## HB0451S01 compared with HB0451

(d) the university may request state funds for operations and maintenance costs and capital improvements if the building is donated to the university and if the university is able to demonstrate to the Board of Regents that the facility meets approved academic and training purposes under Board of Regents policy R710.

(2) It is the intent of the Legislature that:

(a) Weber State University may, subject to requirements in Section [~~63A-5-206~~] 63A-5b-604, use donations and other institutional funds to plan, design, and construct a Lifelong Learning Center;

(b) no state funds be used for any portion of this project; and

(c) the university may request state funds for operations and maintenance costs and capital improvements to the extent that the university is able to demonstrate to the Board of Regents that the facility meets approved academic and training purposes under Board of Regents policy R710.

(3) It is the intent of the Legislature that:

(a) Salt Lake Community College may, subject to requirements in Section [~~63A-5-206~~] 63A-5b-604, use institutional funds to plan, design, and construct a Facilities/Security/Parking Services Building;

(b) no state funds be used for any portion of this project; and

(c) the college may request state funds for operations and maintenance costs and capital improvements to the extent that the college is able to demonstrate to the Board of Regents that the facility meets approved academic and training purposes under Board of Regents policy R710.

Section ~~{81}~~83. Section **63B-17-201** is amended to read:

### **63B-17-201. Revenue bond authorizations -- State Building Ownership**

#### **Authority.**

(1) The Legislature intends that:

(a) the State Building Ownership Authority, under the authority of Title 63B, Chapter 1, Part 3, State Building Ownership Authority Act, may issue or execute obligations, or enter into or arrange for a lease purchase agreement in which participation interests may be created, to provide up to \$90,000,000 for the acquisition and construction of phase II-B of a cancer clinical research hospital facility adjacent to the University of Utah Medical Center, together

## HB0451S01 compared with HB0451

with additional amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements;

(b) the University of Utah use institutional funds as the primary revenue source for repayment of any obligation created under authority of this section;

(c) the university may plan, design, and construct phase II-B of a cancer clinical research hospital facility subject to the requirements of Section [~~63A-5-206~~] 63A-5b-604; and

(d) the university may not request state funds for operation and maintenance costs or capital improvements.

(2) The Legislature intends that:

(a) the State Building Ownership Authority, under the authority of Title 63B, Chapter 1, Part 3, State Building Ownership Authority Act, may issue or execute obligations, or enter into or arrange for a lease-purchase agreement in which participation interests may be created, to provide up to \$23,700,000 for the acquisition and construction of five stores for the Department of Alcoholic Beverage Control, together with additional amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements;

(b) the stores to be addressed through this authorization are:

(i) the replacement of a liquor store in Cedar City;

(ii) a new Utah County North liquor store;

(iii) a new Utah County South liquor store;

(iv) a new Washington County South liquor store; and

(v) a new Wasatch County Heber/Midway liquor store;

(c) the Department of Alcoholic Beverage Control use increased sales revenues as the primary revenue source for repayment of any obligation created under authority of this section; and

(d) the Department of Alcoholic Beverage Control may request operation and maintenance funding from sales revenues.

Section ~~{82}~~84. Section **63B-17-202** is amended to read:

### **63B-17-202. Revenue bond authorizations -- Board of Regents.**

(1) The Legislature intends that:

(a) the Board of Regents, on behalf of the University of Utah, may issue, sell, and deliver revenue bonds or other evidences of indebtedness of the University of Utah to borrow

## HB0451S01 compared with HB0451

money on the credit, revenues, and reserves of the university, other than appropriations of the Legislature, to finance the cost of constructing a northwest campus parking structure;

(b) the University of Utah use parking fees and donations as the primary revenue source for repayment of any obligation created under authority of this section;

(c) the maximum amount of revenue bonds or other evidences of indebtedness authorized by this section is \$21,280,000, together with other amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements;

(d) the university may plan, design, and construct the northwest campus parking structure subject to the requirements of Section [~~63A-5-206~~] 63A-5b-604; and

(e) the university may not request state funds for operation and maintenance costs or capital improvements.

(2) The Legislature intends that:

(a) the Board of Regents, on behalf of Utah State University, may issue, sell, and deliver revenue bonds or other evidences of indebtedness of Utah State University to borrow money on the credit, revenues, and reserves of the university, other than appropriations of the Legislature, to finance the cost of constructing an early childhood education research center;

(b) Utah State University use institutional funds as the primary revenue source for repayment of any obligation created under authority of this section;

(c) the maximum amount of revenue bonds or other evidences of indebtedness authorized by this section is \$15,828,000, together with other amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements;

(d) the university may plan, design, and construct the early childhood education research center subject to the requirements of Section [~~63A-5-206~~] 63A-5b-604; and

(e) the university may request state funds for operation and maintenance costs and capital improvements to the extent that the university is able to demonstrate to the Board of Regents that the facility meets approved academic and training purposes under Board of Regents policy R710.

(3) It is the intent of the Legislature that:

(a) the Board of Regents, on behalf of Southern Utah University, may issue, sell, and deliver revenue bonds or other evidences of indebtedness of Southern Utah University to borrow money on the credit, revenues, and reserves of the university, other than appropriations

## HB0451S01 compared with HB0451

of the Legislature, to finance the cost of constructing a Shakespearean theater;

(b) Southern Utah University institutional funds be used as the primary revenue source for repayment of any obligation created under authority of this section;

(c) the bonds or other evidences of indebtedness authorized by this section may provide up to \$5,000,000, together with other amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements;

(d) the university may plan, design, and construct the theater subject to the requirements of Section [~~63A-5-206~~] 63A-5b-604; and

(e) the university may request state funds for operation and maintenance costs and capital improvements to the extent that the university is able to demonstrate to the Board of Regents that the facility meets approved academic and training purposes under Board of Regents policy R710.

Section ~~83~~85. Section **63B-17-301** is amended to read:

**63B-17-301. Authorizations to construct capital facilities using institutional or agency funds.**

(1) The Legislature intends that:

(a) the University of Utah may, subject to requirements in Section [~~63A-5-206~~] 63A-5b-604, use clinical fees and donations to plan, design, and construct a neuropsychiatric institute expansion;

(b) no state funds be used for any portion of this project; and

(c) the university may not request state funds for operation and maintenance costs or capital improvements.

(2) The Legislature intends that:

(a) the University of Utah may, subject to the requirements of Section [~~63A-5-206~~] 63A-5b-604, use donations to plan, design, and construct an arboretum visitor center addition;

(b) no state funds be used for any portion of this project; and

(c) the university may request state funds for operation and maintenance costs and capital improvements to the extent that the university is able to demonstrate to the Board of Regents that the facility meets approved academic and training purposes under Board of Regents policy R710.

(3) The Legislature intends that:



## HB0451S01 compared with HB0451

(a) Utah State University may, subject to the requirements of Section [~~63A-5-206~~ 63A-5b-604], use donations to plan, design, and construct a business building addition;

(b) no state funds be used for any portion of this project; and

(c) the university may request state funds for operation and maintenance costs and capital improvements to the extent that the university is able to demonstrate to the Board of Regents that the facility meets approved academic and training purposes under Board of Regents policy R710.

(4) The Legislature intends that:

(a) Utah State University may, subject to the requirements of Section [~~63A-5-206~~ 63A-5b-604], use donations to plan, design, and construct a Vernal entrepreneurship and energy research center;

(b) no state funds be used for any portion of this project; and

(c) the university may request state funds for operation and maintenance costs and capital improvements to the extent that the university is able to demonstrate to the Board of Regents that the facility meets approved academic and training purposes under Board of Regents policy R710.

(5) The Legislature intends that:

(a) Utah State University may, subject to the requirements of Section [~~63A-5-206~~ 63A-5b-604], use research grants and other institutional funds to plan, design, and construct a hydraulics laboratory addition to the water laboratory;

(b) no state funds be used for any portion of this project; and

(c) the university may not request state funds for operation and maintenance costs or capital improvements.

(6) The Legislature intends that:

(a) Utah State University may, subject to the requirements of Section [~~63A-5-206~~ 63A-5b-604], use insurance claim funds and other institutional funds to plan, design, and construct a structures laboratory enclosure;

(b) no state funds be used for any portion of this project; and

(c) the university may not request state funds for operation and maintenance costs or capital improvements.

(7) The Legislature intends that:

## HB0451S01 compared with HB0451

(a) Utah Valley University may, subject to the requirements of Section [~~63A-5-206~~ 63A-5b-604], use donations to plan, design, and construct a children's theater;

(b) no state funds be used for any portion of this project; and

(c) the university may request state funds for operation and maintenance costs and capital improvements to the extent that the university is able to demonstrate to the Board of Regents that the facility meets approved academic and training purposes under Board of Regents policy R710.

(8) The Legislature intends that:

(a) Southern Utah University may, subject to the requirements of Section [~~63A-5-206~~ 63A-5b-604], use donations to plan and design a science center addition;

(b) this authorization and the existence of plans and designs do not guarantee nor improve the chances for legislative approval of the remainder of the building in any subsequent year; and

(c) no state funds be used for any portion of this planning and design.

Section ~~{84}~~86. Section **63B-23-101** is amended to read:

### **63B-23-101. Revenue bond authorizations -- Board of Regents.**

(1) The Legislature intends that:

(a) the Board of Regents, on behalf of the University of Utah, may issue, sell, and deliver revenue bonds or other evidences of indebtedness of the University of Utah to borrow money on the credit, revenues, and reserves of the university, other than appropriations of the Legislature, to finance the cost of constructing the Lassonde Living Center;

(b) the University of Utah use student fees and rents as the primary revenue sources for repayment of any obligation created under authority of this Subsection (1);

(c) the maximum amount of revenue bonds or evidences of indebtedness authorized by this Subsection (1) is \$45,238,000, together with other amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements;

(d) the university shall plan, design, and construct the Lassonde Living Center subject to the requirements of Title 63A, Chapter 5, State Building Board - Division of Facilities Construction and Management; and

(e) the university may not request state funds for operation and maintenance costs or capital improvements.

## HB0451S01 compared with HB0451

(2) The Legislature intends that:

(a) the Board of Regents, on behalf of the University of Utah, may issue, sell, and deliver revenue bonds or other evidences of indebtedness of the University of Utah to borrow money on the credit, revenues, and reserves of the university, except as provided in Subsection (2)(f), other than appropriations of the Legislature, to finance the cost of replacing the University of Utah's utility distribution infrastructure;

(b) the University of Utah impose a power bill surcharge as the primary revenue source for the repayment of any obligation created under authority of this Subsection (2);

(c) the maximum amount of revenue bonds or evidences of indebtedness authorized by this Subsection (2) is \$32,000,000 together with other amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements;

(d) the revenue bonds or evidences of indebtedness authorized by this Subsection (2) may not mature later than 10 years after the date of issuance;

(e) the university shall plan, design, and construct the University of Utah's replacement utility distribution infrastructure subject to the requirements of Title 63A, Chapter 5, State Building Board - Division of Facilities Construction and Management; and

(f) until July 1, 2024, the Division of Facilities Construction and Management annually allocate up to \$1,500,000 of the capital improvement funding allocation given to the University of Utah under Section [~~63A-5-228~~] 63A-5b-405 to be used to pay the debt service on the bonds authorized under this Subsection (2).

Section ~~{85}~~87. Section **63B-25-101** is amended to read:

**63B-25-101. General obligation bonds for prison project -- Maximum amount -- Use of proceeds.**

(1) As used in this section:

(a) "Prison project" means the same as that term is defined in Section [~~63A-5-225~~] 63A-5b-1107.

(b) "Prison project fund" means the capital projects fund created in Subsection [~~63A-5-225(7)~~] 63A-5b-1107(7).

(2) The commission may issue general obligation bonds as provided in this section.

(3) (a) The total amount of bonds to be issued under this section may not exceed \$570,000,000 for acquisition and construction proceeds, plus additional amounts necessary to

## HB0451S01 compared with HB0451

pay costs of issuance, to pay capitalized interest, and to fund any existing debt service reserve requirements, with the total amount of the bonds not to exceed \$575,700,000.

(b) The maturity of bonds issued under this section may not exceed 10 years.

(4) The commission shall ensure that proceeds from the issuance of bonds under this section are deposited into the Prison Project Fund for use by the division to pay all or part of the cost of the prison project, including:

(a) interest estimated to accrue on the bonds authorized in this section until the completion of construction of the prison project, plus a period of 12 months after the end of construction; and

(b) all related engineering, architectural, and legal fees.

(5) (a) The division may enter into agreements related to the prison project before the receipt of proceeds of bonds issued under this section.

(b) The division shall make those expenditures from unexpended and unencumbered building funds already appropriated to the Prison Project Fund.

(c) The division shall reimburse the Prison Project Fund upon receipt of the proceeds of bonds issued under this chapter.

(d) The state intends to use proceeds of tax-exempt bonds to reimburse itself for expenditures for costs of the prison project.

(6) Before issuing bonds authorized under this section, the commission shall request and consider a recommendation from the Legislative Management Committee, created in Section 36-12-6, regarding the timing and amount of the issuance.

Section ~~86~~88. Section **63C-9-403** is amended to read:

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

(1) As used in this section:

(a) "Aggregate" means the sum of all contracts, change orders, and modifications related to a single project.

(b) "Change order" means the same as that term is defined in Section 63G-6a-103.

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

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

(ii) meets employer eligibility waiting requirements for health care insurance, which

## HB0451S01 compared with HB0451

may not exceed the first of the calendar month following 60 days after the day on which the individual is hired.

(d) "Health benefit plan" means the same as that term is defined in Section 31A-1-301.

(e) "Qualified health insurance coverage" means the same as that term is defined in Section 26-40-115.

(f) "Subcontractor" means the same as that term is defined in Section [~~63A-5-208~~ 63A-5b-605].

(2) Except as provided in Subsection (3), the requirements of this section apply to:

(a) a contractor of a design or construction contract entered into by the board, or on behalf of the board, on or after July 1, 2009, if the prime contract is in an aggregate amount equal to or greater than \$2,000,000; and

(b) a subcontractor of a contractor of a design or construction contract entered into by the board, or on behalf of the board, on or after July 1, 2009, if the subcontract is in an aggregate amount equal to or greater than \$1,000,000.

(3) The requirements of this section do not apply to a contractor or subcontractor described in Subsection (2) if:

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

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

(c) the contract is an emergency procurement.

(4) A person that intentionally uses change orders, contract modifications, or multiple contracts to circumvent the requirements of this section is guilty of an infraction.

(5) (a) A contractor subject to the requirements of this section shall demonstrate to the executive director that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents during the duration of the contract by submitting to the executive director a written statement that:

(i) the contractor offers qualified health insurance coverage that complies with Section 26-40-115;

(ii) is from:

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

(B) an underwriter who is responsible for developing the employer group's premium rates; and

## HB0451S01 compared with HB0451

(iii) was created within one year before the day on which the statement is submitted.

(b) A contractor that is subject to the requirements of this section shall:

(i) place a requirement in each of the contractor's subcontracts that a subcontractor that is subject to the requirements of this section shall obtain and maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the subcontract; and

(ii) obtain from a subcontractor that is subject to the requirements of this section a written statement that:

(A) the subcontractor offers qualified health insurance coverage that complies with Section 26-40-115;

(B) is from an actuary selected by the subcontractor or the subcontractor's insurer, or an underwriter who is responsible for developing the employer group's premium rates; and

(C) was created within one year before the day on which the contractor obtains the statement.

(c) (i) (A) A contractor that fails to maintain an offer of qualified health insurance coverage as described in Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the division under Subsection (6).

(B) A contractor is not subject to penalties for the failure of a subcontractor to obtain and maintain an offer of qualified health insurance coverage described in Subsection (5)(b)(i).

(ii) (A) A subcontractor that fails to obtain and maintain an offer of qualified health insurance coverage described in Subsection (5)(b)(i) during the duration of the subcontract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to maintain an offer of qualified health insurance coverage described in Subsection (5)(a).

(6) The department shall adopt administrative rules:

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

(b) in coordination with:

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

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

(iii) the State Building Board in accordance with Section [~~63A-5-205.5~~] 63A-5b-607;

## HB0451S01 compared with HB0451

- (iv) a public transit district in accordance with Section 17B-2a-818.5;
- (v) the Department of Transportation in accordance with Section 72-6-107.5; and
- (vi) the Legislature's Administrative Rules Review Committee; and
- (c) that establish:

(i) the requirements and procedures a contractor and a subcontractor shall follow to demonstrate compliance with this section, including:

(A) that a contractor or subcontractor's compliance with this section is subject to an audit by the department or the Office of the Legislative Auditor General;

(B) that a contractor that is subject to the requirements of this section shall obtain a written statement described in Subsection (5)(a); and

(C) that a subcontractor that is subject to the requirements of this section shall obtain a written statement described in Subsection (5)(b)(ii);

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

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

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

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

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

(iii) a website on which the department shall post the commercially equivalent benchmark, for the qualified health insurance coverage identified in Subsection (1)(e), that is provided by the Department of Health, in accordance with Subsection 26-40-115(2).

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

## HB0451S01 compared with HB0451

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

(A) the employer relied in good faith on a written statement described in Subsection (5)(a) or (5)(b)(ii); or

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

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

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

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

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under:

(i) Section 63G-6a-1602; or

(ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

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

Section ~~{87}~~89. Section **63G-6a-103** is amended to read:

### **63G-6a-103. Definitions.**

As used in this chapter:

(1) "Applicable rulemaking authority" means:

(a) for a legislative procurement unit, the Legislative Management Committee;

(b) for a judicial procurement unit, the Judicial Council;

(c) (i) only to the extent of the procurement authority expressly granted to the procurement unit by statute:

(A) for the building board or the Division of Facilities Construction and Management, created in Section [~~63A-5-201~~] 63A-5b-301, the building board;

(B) for the Office of the Attorney General, the attorney general; and

(C) for the Department of Transportation created in Section 72-1-201, the executive



## HB0451S01 compared with HB0451

director of the Department of Transportation; and

(ii) for each other executive branch procurement unit, the board;

(d) for a local government procurement unit:

(i) the legislative body of the local government procurement unit; or

(ii) an individual or body designated by the legislative body of the local government procurement unit;

(e) for a school district or a public school, the board, except to the extent of a school district's own nonadministrative rules that do not conflict with the provisions of this chapter;

(f) for a state institution of higher education described in:

(i) Subsections 53B-1-102(1)(a) and (c), the State Board of Regents; or

(ii) Subsection 53B-1-102(1)(b), the Utah System of Technical Colleges Board of Trustees;

(g) for the State Board of Education or the Utah Schools for the Deaf and the Blind, the State Board of Education;

(h) for a public transit district, the chief executive of the public transit district;

(i) for a local district other than a public transit district or for a special service district:

(i) before January 1, 2015, the board of trustees of the local district or the governing body of the special service district; or

(ii) on or after January 1, 2015, the board, except to the extent that the board of trustees of the local district or the governing body of the special service district makes its own rules:

(A) with respect to a subject addressed by board rules; or

(B) that are in addition to board rules;

(j) for the Utah Educational Savings Plan, created in Section 53B-8a-103, the board of directors of the Utah Educational Savings Plan;

(k) for the School and Institutional Trust Lands Administration, created in Section 53C-1-201, the School and Institutional Trust Lands Board of Trustees;

(l) for the School and Institutional Trust Fund Office, created in Section 53D-1-201, the School and Institutional Trust Fund Board of Trustees;

(m) for the Utah Communications Authority, established in Section 63H-7a-201, the Utah Communications Authority Board, created in Section 63H-7a-203; or

(n) for any other procurement unit, the board.

## HB0451S01 compared with HB0451

(2) "Approved vendor" means a person who has been approved for inclusion on an approved vendor list through the approved vendor list process.

(3) "Approved vendor list" means a list of approved vendors established under Section 63G-6a-507.

(4) "Approved vendor list process" means the procurement process described in Section 63G-6a-507.

(5) "Bidder" means a person who submits a bid or price quote in response to an invitation for bids.

(6) "Bidding process" means the procurement process described in Part 6, Bidding.

(7) "Board" means the Utah State Procurement Policy Board, created in Section 63G-6a-202.

(8) "Building board" means the State Building Board, created in Section [~~63A-5-101~~] 63A-5b-201.

(9) "Change directive" means a written order signed by the procurement officer that directs the contractor to suspend work or make changes, as authorized by contract, without the consent of the contractor.

(10) "Change order" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract, upon mutual agreement of the parties to the contract.

(11) "Chief procurement officer" means the chief procurement officer appointed under Subsection 63G-6a-302(1).

(12) "Conducting procurement unit" means a procurement unit that conducts all aspects of a procurement:

(a) except:

(i) reviewing a solicitation to verify that it is in proper form; and

(ii) causing the publication of a notice of a solicitation; and

(b) including:

(i) preparing any solicitation document;

(ii) appointing an evaluation committee;

(iii) conducting the evaluation process, except as provided in Subsection 63G-6a-707(6)(b) relating to scores calculated for costs of proposals;

## HB0451S01 compared with HB0451

- (iv) selecting and recommending the person to be awarded a contract;
  - (v) negotiating the terms and conditions of a contract, subject to the issuing procurement unit's approval; and
  - (vi) contract administration.
- (13) "Conservation district" means the same as that term is defined in Section 17D-3-102.
- (14) "Construction":
- (a) means services, including work, and supplies for a project for the construction, renovation, alteration, improvement, or repair of a public facility on real property; and
  - (b) does not include services and supplies for the routine, day-to-day operation, repair, or maintenance of an existing public facility.
- (15) "Construction manager/general contractor":
- (a) means a contractor who enters into a contract:
    - (i) for the management of a construction project; and
    - (ii) that allows the contractor to subcontract for additional labor and materials that are not included in the contractor's cost proposal submitted at the time of the procurement of the contractor's services; and
  - (b) does not include a contractor whose only subcontract work not included in the contractor's cost proposal submitted as part of the procurement of the contractor's services is to meet subcontracted portions of change orders approved within the scope of the project.
- (16) "Construction subcontractor":
- (a) means a person under contract with a contractor or another subcontractor to provide services or labor for the design or construction of a construction project;
  - (b) includes a general contractor or specialty contractor licensed or exempt from licensing under Title 58, Chapter 55, Utah Construction Trades Licensing Act; and
  - (c) does not include a supplier who provides only materials, equipment, or supplies to a contractor or subcontractor for a construction project.
- (17) "Contract" means an agreement for a procurement.
- (18) "Contract administration" means all functions, duties, and responsibilities associated with managing, overseeing, and carrying out a contract between a procurement unit and a contractor, including:

## HB0451S01 compared with HB0451

- (a) implementing the contract;
  - (b) ensuring compliance with the contract terms and conditions by the conducting procurement unit and the contractor;
  - (c) executing change orders;
  - (d) processing contract amendments;
  - (e) resolving, to the extent practicable, contract disputes;
  - (f) curing contract errors and deficiencies;
  - (g) terminating a contract;
  - (h) measuring or evaluating completed work and contractor performance;
  - (i) computing payments under the contract; and
  - (j) closing out a contract.
- (19) "Contractor" means a person who is awarded a contract with a procurement unit.
- (20) "Cooperative procurement" means procurement conducted by, or on behalf of:
- (a) more than one procurement unit; or
  - (b) a procurement unit and a cooperative purchasing organization.
- (21) "Cooperative purchasing organization" means an organization, association, or alliance of purchasers established to combine purchasing power in order to obtain the best value for the purchasers by engaging in procurements in accordance with Section 63G-6a-2105.
- (22) "Cost-plus-a-percentage-of-cost contract" means a contract under which the contractor is paid a percentage of the total actual expenses or costs in addition to the contractor's actual expenses or costs.
- (23) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowed and allocated in accordance with the contract terms and the provisions of this chapter, and a fee, if any.
- (24) "Days" means calendar days, unless expressly provided otherwise.
- (25) "Definite quantity contract" means a fixed price contract that provides for a specified amount of supplies over a specified period, with deliveries scheduled according to a specified schedule.
- (26) "Design professional" means:
- (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects Licensing Act;

## HB0451S01 compared with HB0451

(b) an individual licensed as a professional engineer or professional land surveyor under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act; or

(c) an individual certified as a commercial interior designer under Title 58, Chapter 86, State Certification of Commercial Interior Designers Act.

(27) "Design professional procurement process" means the procurement process described in Part 15, Design Professional Services.

(28) "Design professional services" means:

(a) professional services within the scope of the practice of architecture as defined in Section 58-3a-102;

(b) professional engineering as defined in Section 58-22-102;

(c) master planning and programming services; or

(d) services within the scope of the practice of commercial interior design, as defined in Section 58-86-102.

(29) "Design-build" means the procurement of design professional services and construction by the use of a single contract.

(30) "Director" means the director of the division.

(31) "Division" means the Division of Purchasing and General Services, created in Section 63A-2-101.

(32) "Educational procurement unit" means:

(a) a school district;

(b) a public school, including a local school board or a charter school;

(c) the Utah Schools for the Deaf and the Blind;

(d) the Utah Education and Telehealth Network;

(e) an institution of higher education of the state described in Section 53B-1-102; or

(f) the State Board of Education.

(33) "Established catalogue price" means the price included in a catalogue, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number

## HB0451S01 compared with HB0451

of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(34) "Executive branch procurement unit" means a department, division, office, bureau, agency, or other organization within the state executive branch.

(35) "Fixed price contract" means a contract that provides a price, for each procurement item obtained under the contract, that is not subject to adjustment except to the extent that:

(a) the contract provides, under circumstances specified in the contract, for an adjustment in price that is not based on cost to the contractor; or

(b) an adjustment is required by law.

(36) "Fixed price contract with price adjustment" means a fixed price contract that provides for an upward or downward revision of price, precisely described in the contract, that:

(a) is based on the consumer price index or another commercially acceptable index, source, or formula; and

(b) is not based on a percentage of the cost to the contractor.

(37) "Grant" means an expenditure of public funds or other assistance, or an agreement to expend public funds or other assistance, for a public purpose authorized by law, without acquiring a procurement item in exchange.

(38) "Head of a procurement unit" means:

(a) for a legislative procurement unit, any person designated by rule made by the applicable rulemaking authority;

(b) for an executive branch procurement unit:

(i) the director of the division; or

(ii) any other person designated by the board, by rule;

(c) for a judicial procurement unit:

(i) the Judicial Council; or

(ii) any other person designated by the Judicial Council, by rule;

(d) for a local government procurement unit:

(i) the legislative body of the local government procurement unit; or

(ii) any other person designated by the local government procurement unit;

(e) for a local district other than a public transit district, the board of trustees of the

## HB0451S01 compared with HB0451

local district or a designee of the board of trustees;

(f) for a special service district, the governing body of the special service district or a designee of the governing body;

(g) for a local building authority, the board of directors of the local building authority or a designee of the board of directors;

(h) for a conservation district, the board of supervisors of the conservation district or a designee of the board of supervisors;

(i) for a public corporation, the board of directors of the public corporation or a designee of the board of directors;

(j) for a school district or any school or entity within a school district, the board of the school district, or the board's designee;

(k) for a charter school, the individual or body with executive authority over the charter school, or the individual's or body's designee;

(l) for an institution of higher education described in Section 53B-2-101, the president of the institution of higher education, or the president's designee;

(m) for a public transit district, the board of trustees or a designee of the board of trustees;

(n) for the State Board of Education, the State Board of Education or a designee of the State Board of Education; or

(o) for the Utah Communications Authority, established in Section 63H-7a-201, the executive director of the Utah Communications Authority or a designee of the executive director.

(39) "Immaterial error":

(a) means an irregularity or abnormality that is:

(i) a matter of form that does not affect substance; or

(ii) an inconsequential variation from a requirement of a solicitation that has no, little, or a trivial effect on the procurement process and that is not prejudicial to other vendors; and

(b) includes:

(i) a missing signature, missing acknowledgment of an addendum, or missing copy of a professional license, bond, or insurance certificate;

(ii) a typographical error;

## HB0451S01 compared with HB0451

(iii) an error resulting from an inaccuracy or omission in the solicitation; and  
(iv) any other error that the chief procurement officer or the head of a procurement unit with independent procurement authority reasonably considers to be immaterial.

(40) "Indefinite quantity contract" means a fixed price contract that:

(a) is for an indefinite amount of procurement items to be supplied as ordered by a procurement unit; and

(b) (i) does not require a minimum purchase amount; or

(ii) provides a maximum purchase limit.

(41) "Independent procurement authority" means authority granted to a procurement unit under Subsection 63G-6a-106(4)(a).

(42) "Invitation for bids":

(a) means a document used to solicit:

(i) bids to provide a procurement item to a procurement unit; or

(ii) quotes for a price of a procurement item to be provided to a procurement unit; and

(b) includes all documents attached to or incorporated by reference in a document described in Subsection (42)(a).

(43) "Issuing procurement unit" means a procurement unit that:

(a) reviews a solicitation to verify that it is in proper form;

(b) causes the notice of a solicitation to be published; and

(c) negotiates and approves the terms and conditions of a contract.

(44) "Judicial procurement unit" means:

(a) the Utah Supreme Court;

(b) the Utah Court of Appeals;

(c) the Judicial Council;

(d) a state judicial district; or

(e) an office, committee, subcommittee, or other organization within the state judicial branch.

(45) "Labor hour contract" is a contract under which:

(a) the supplies and materials are not provided by, or through, the contractor; and

(b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and profit for a specified number of labor hours or days.



## HB0451S01 compared with HB0451

(46) "Legislative procurement unit" means:

- (a) the Legislature;
- (b) the Senate;
- (c) the House of Representatives;
- (d) a staff office of the Legislature, the Senate, or the House of Representatives; or
- (e) a committee, subcommittee, commission, or other organization:
  - (i) within the state legislative branch; or
  - (ii) (A) that is created by statute to advise or make recommendations to the Legislature;
  - (B) the membership of which includes legislators; and
  - (C) for which the Office of Legislative Research and General Counsel provides staff

support.

(47) "Local building authority" means the same as that term is defined in Section 17D-2-102.

(48) "Local district" means the same as that term is defined in Section 17B-1-102.

(49) "Local government procurement unit" means:

(a) a county or municipality, and each office or agency of the county or municipality, unless the county or municipality adopts its own procurement code by ordinance;

(b) a county or municipality that has adopted this entire chapter by ordinance, and each office or agency of that county or municipality; or

(c) a county or municipality that has adopted a portion of this chapter by ordinance, to the extent that a term in the ordinance is used in the adopted portion of this chapter, and each office or agency of that county or municipality.

(50) "Multiple award contracts" means the award of a contract for an indefinite quantity of a procurement item to more than one person.

(51) "Multiyear contract" means a contract that extends beyond a one-year period, including a contract that permits renewal of the contract, without competition, beyond the first year of the contract.

(52) "Municipality" means a city, town, or metro township.

(53) "Nonadopting local government procurement unit" means:

(a) a county or municipality that has not adopted Part 16, Protests, Part 17, Procurement Appeals Board, Part 18, Appeals to Court and Court Proceedings, and Part 19,

## HB0451S01 compared with HB0451

General Provisions Related to Protest or Appeal; and

(b) each office or agency of a county or municipality described in Subsection (53)(a).

(54) "Offeror" means a person who submits a proposal in response to a request for proposals.

(55) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference under the requirements of this chapter.

(56) "Procure" means to acquire a procurement item through a procurement.

(57) "Procurement":

(a) means a procurement unit's acquisition of a procurement item through an expenditure of public funds, or an agreement to expend public funds, including an acquisition through a public-private partnership;

(b) includes all functions that pertain to the acquisition of a procurement item, including:

(i) preparing and issuing a solicitation; and

(ii) (A) conducting a standard procurement process; or

(B) conducting a procurement process that is an exception to a standard procurement process under Part 8, Exceptions to Procurement Requirements; and

(c) does not include a grant.

(58) "Procurement item" means a supply, a service, or construction.

(59) "Procurement officer" means:

(a) for a procurement unit with independent procurement authority:

(i) the head of the procurement unit;

(ii) a designee of the head of the procurement unit; or

(iii) a person designated by rule made by the applicable rulemaking authority; or

(b) for the division or a procurement unit without independent procurement authority, the chief procurement officer.

(60) "Procurement unit":

(a) means:

(i) a legislative procurement unit;

(ii) an executive branch procurement unit;

(iii) a judicial procurement unit;

## HB0451S01 compared with HB0451

- (iv) an educational procurement unit;
  - (v) the Utah Communications Authority, established in Section 63H-7a-201;
  - (vi) a local government procurement unit;
  - (vii) a local district;
  - (viii) a special service district;
  - (ix) a local building authority;
  - (x) a conservation district;
  - (xi) a public corporation; or
  - (xii) a public transit district; and
- (b) does not include a political subdivision created under Title 11, Chapter 13,

Interlocal Cooperation Act.

(61) "Professional service" means labor, effort, or work that requires an elevated degree of specialized knowledge and discretion, including labor, effort, or work in the field of:

- (a) accounting;
- (b) administrative law judge service;
- (c) architecture;
- (d) construction design and management;
- (e) engineering;
- (f) financial services;
- (g) information technology;
- (h) the law;
- (i) medicine;
- (j) psychiatry; or
- (k) underwriting.

(62) "Protest officer" means:

- (a) for the division or a procurement unit with independent procurement authority:
  - (i) the head of the procurement unit;
  - (ii) the head of the procurement unit's designee who is an employee of the procurement unit; or
  - (iii) a person designated by rule made by the applicable rulemaking authority; or
- (b) for a procurement unit without independent procurement authority, the chief

## HB0451S01 compared with HB0451

procurement officer or the chief procurement officer's designee who is an employee of the division.

(63) "Public corporation" means the same as that term is defined in Section 63E-1-102.

(64) "Public entity" means any government entity of the state or political subdivision of the state, including:

(a) a procurement unit;

(b) a municipality or county, regardless of whether the municipality or county has adopted this chapter or any part of this chapter; and

(c) any other government entity located in the state that expends public funds.

(65) "Public facility" means a building, structure, infrastructure, improvement, or other facility of a public entity.

(66) "Public funds" means money, regardless of its source, including from the federal government, that is owned or held by a procurement unit.

(67) "Public transit district" means a public transit district organized under Title 17B, Chapter 2a, Part 8, Public Transit District Act.

(68) "Public-private partnership" means an arrangement or agreement, occurring on or after January 1, 2017, between a procurement unit and one or more contractors to provide for a public need through the development or operation of a project in which the contractor or contractors share with the procurement unit the responsibility or risk of developing, owning, maintaining, financing, or operating the project.

(69) "Qualified vendor" means a vendor who:

(a) is responsible; and

(b) submits a responsive statement of qualifications under Section 63G-6a-410 that meets the minimum mandatory requirements, evaluation criteria, and any applicable score thresholds set forth in the request for statement of qualifications.

(70) "Real property" means land and any building, fixture, improvement, appurtenance, structure, or other development that is permanently affixed to land.

(71) "Request for information" means a nonbinding process through which a procurement unit requests information relating to a procurement item.

(72) "Request for proposals" means a document used to solicit proposals to provide a procurement item to a procurement unit, including all other documents that are attached to that

## HB0451S01 compared with HB0451

document or incorporated in that document by reference.

(73) "Request for proposals process" means the procurement process described in Part 7, Request for Proposals.

(74) "Request for statement of qualifications" means a document used to solicit information about the qualifications of a person interested in responding to a potential procurement, including all other documents attached to that document or incorporated in that document by reference.

(75) "Requirements contract" means a contract:

(a) under which a contractor agrees to provide a procurement unit's entire requirements for certain procurement items at prices specified in the contract during the contract period; and

(b) that:

(i) does not require a minimum purchase amount; or

(ii) provides a maximum purchase limit.

(76) "Responsible" means being capable, in all respects, of:

(a) meeting all the requirements of a solicitation; and

(b) fully performing all the requirements of the contract resulting from the solicitation, including being financially solvent with sufficient financial resources to perform the contract.

(77) "Responsive" means conforming in all material respects to the requirements of a solicitation.

(78) "Sealed" means manually or electronically secured to prevent disclosure.

(79) "Service":

(a) means labor, effort, or work to produce a result that is beneficial to a procurement unit;

(b) includes a professional service; and

(c) does not include labor, effort, or work provided under an employment agreement or a collective bargaining agreement.

(80) "Small purchase process" means the procurement process described in Section 63G-6a-506.

(81) "Sole source contract" means a contract resulting from a sole source procurement.

(82) "Sole source procurement" means a procurement without competition pursuant to a determination under Subsection 63G-6a-802(1)(a) that there is only one source for the

## HB0451S01 compared with HB0451

procurement item.

(83) "Solicitation" means an invitation for bids, request for proposals, request for statement of qualifications, or request for information.

(84) "Solicitation response" means:

- (a) a bid submitted in response to an invitation for bids;
- (b) a proposal submitted in response to a request for proposals; or
- (c) a statement of qualifications submitted in response to a request for statement of qualifications.

(85) "Special service district" means the same as that term is defined in Section 17D-1-102.

(86) "Specification" means any description of the physical or functional characteristics or of the nature of a procurement item included in an invitation for bids or a request for proposals, or otherwise specified or agreed to by a procurement unit, including a description of:

- (a) a requirement for inspecting or testing a procurement item; or
- (b) preparing a procurement item for delivery.

(87) "Standard procurement process" means:

- (a) the bidding process;
- (b) the request for proposals process;
- (c) the approved vendor list process;
- (d) the small purchase process; or
- (e) the design professional procurement process.

(88) "State cooperative contract" means a contract awarded by the division for and in behalf of all public entities.

(89) "Statement of qualifications" means a written statement submitted to a procurement unit in response to a request for statement of qualifications.

(90) "Subcontractor":

(a) means a person under contract to perform part of a contractual obligation under the control of the contractor, whether the person's contract is with the contractor directly or with another person who is under contract to perform part of a contractual obligation under the control of the contractor; and

(b) includes a supplier, distributor, or other vendor that furnishes supplies or services

## HB0451S01 compared with HB0451

to a contractor.

(91) "Supply" means a good, material, technology, piece of equipment, or any other item of personal property.

(92) "Tie bid" means that the lowest responsive bids of responsible bidders are identical in price.

(93) "Time and materials contract" means a contract under which the contractor is paid:

(a) the actual cost of direct labor at specified hourly rates;

(b) the actual cost of materials and equipment usage; and

(c) an additional amount, expressly described in the contract, to cover overhead and profit, that is not based on a percentage of the cost to the contractor.

(94) "Transitional costs":

(a) means the costs of changing:

(i) from an existing provider of a procurement item to another provider of that procurement item; or

(ii) from an existing type of procurement item to another type;

(b) includes:

(i) training costs;

(ii) conversion costs;

(iii) compatibility costs;

(iv) costs associated with system downtime;

(v) disruption of service costs;

(vi) staff time necessary to implement the change;

(vii) installation costs; and

(viii) ancillary software, hardware, equipment, or construction costs; and

(c) does not include:

(i) the costs of preparing for or engaging in a procurement process; or

(ii) contract negotiation or drafting costs.

(95) "Trial use contract" means a contract for a procurement item that the procurement unit acquires for a trial use or testing to determine whether the procurement item will benefit the procurement unit.

(96) "Vendor":

## HB0451S01 compared with HB0451

(a) means a person who is seeking to enter into a contract with a procurement unit to provide a procurement item; and

(b) includes:

(i) a bidder;

(ii) an offeror;

(iii) an approved vendor;

(iv) a design professional; and

(v) a person who submits an unsolicited proposal under Section 63G-6a-712.

Section ~~{88}~~90. Section **63H-6-102** is amended to read:

### **63H-6-102. Definitions.**

As used in this chapter:

(1) "Board" means the board of directors of the corporation.

(2) "Business related experience" means at least three years of professional experience in business administration, marketing, advertising, economic development, or a related field.

(3) "Capital ~~[developments]~~ development" means the same as ~~[that term is]~~ capital development project, as defined in Section ~~[63A-5-104]~~ 63A-5b-401.

(4) "Capital improvements" means the same as that term is defined in Section ~~[63A-5-104]~~ 63A-5b-401.

(5) "Corporation" means the Utah State Fair Corporation created by this chapter.

(6) "Corporation bond" means a bond issued by the corporation in accordance with Part 2, Bonding Authority.

(7) "Division" means the Division of Facilities Construction and Management created in Section ~~[63A-5-201]~~ 63A-5b-301.

(8) "Executive director" means the executive director hired by the board in accordance with Section 63H-6-105.

(9) (a) "State fair park" means the property owned by the state located at:

(i) 155 North 1000 West, Salt Lake City, Utah, consisting of approximately 50 acres;

(ii) 1139 West North Temple, Salt Lake City, Utah, consisting of approximately 10.5 acres; and

(iii) 1220 West North Temple, Salt Lake City, Utah, consisting of approximately two acres.



## HB0451S01 compared with HB0451

(b) "State fair park" includes each building and each improvement on the property described in Subsection (9)(a) that is owned by the state.

Section ~~{89}~~91. Section **63H-6-103** is amended to read:

### **63H-6-103. Utah State Fair Corporation -- Legal status -- Powers.**

(1) There is created an independent public nonprofit corporation known as the "Utah State Fair Corporation."

(2) The board shall file articles of incorporation for the corporation with the Division of Corporations and Commercial Code.

(3) The corporation, subject to this chapter, has all powers and authority permitted nonprofit corporations by law.

(4) The corporation shall:

(a) manage, supervise, and control:

(i) all activities relating to the annual exhibition described in Subsection (4)(j); and

(ii) except as otherwise provided by statute, all state expositions, including setting the time, place, and purpose of any state exposition;

(b) for public entertainment, displays, and exhibits or similar events:

(i) provide, sponsor, or arrange the events;

(ii) publicize and promote the events; and

(iii) secure funds to cover the cost of the exhibits from:

(A) private contributions;

(B) public appropriations;

(C) admission charges; and

(D) other lawful means;

(c) acquire and designate exposition sites;

(d) use generally accepted accounting principles in accounting for the corporation's assets, liabilities, and operations;

(e) seek corporate sponsorships for the state fair park or for individual buildings or facilities within the fair park;

(f) work with county and municipal governments, the Salt Lake Convention and Visitor's Bureau, the Utah Travel Council, and other entities to develop and promote expositions and the use of the state fair park;

## HB0451S01 compared with HB0451

(g) develop and maintain a marketing program to promote expositions and the use of the state fair park;

(h) in accordance with provisions of this part, operate and maintain the state fair park, including the physical appearance and structural integrity of the state fair park and the buildings located at the state fair park;

(i) prepare an economic development plan for the state fair park;

(j) hold an annual exhibition that:

(i) is called the state fair or a similar name;

(ii) promotes and highlights agriculture throughout the state;

(iii) includes expositions of livestock, poultry, agricultural, domestic science, horticultural, floricultural, mineral and industrial products, manufactured articles, and domestic animals that, in the corporation's opinion will best stimulate agricultural, industrial, artistic, and educational pursuits and the sharing of talents among the people of Utah;

(iv) includes the award of premiums for the best specimens of the exhibited articles and animals;

(v) permits competition by livestock exhibited by citizens of other states and territories of the United States; and

(vi) is arranged according to plans approved by the board;

(k) fix the conditions of entry to the annual exhibition described in Subsection (4)(j);

and

(l) publish a list of premiums that will be awarded at the annual exhibition described in Subsection (4)(j) for the best specimens of exhibited articles and animals.

(5) In addition to the annual exhibition described in Subsection (4)(j), the corporation may hold other exhibitions of livestock, poultry, agricultural, domestic science, horticultural, floricultural, mineral and industrial products, manufactured articles, and domestic animals that, in the corporation's opinion, will best stimulate agricultural, industrial, artistic, and educational pursuits and the sharing of talents among the people of Utah.

(6) The corporation may:

(a) employ advisers, consultants, and agents, including financial experts and independent legal counsel, and fix their compensation;

(b) (i) participate in the state's Risk Management Fund created under Section

## HB0451S01 compared with HB0451

63A-4-201; or

(ii) procure insurance against any loss in connection with the corporation's property and other assets, including mortgage loans;

(c) receive and accept aid or contributions of money, property, labor, or other things of value from any source, including any grants or appropriations from any department, agency, or instrumentality of the United States or Utah;

(d) hold, use, loan, grant, and apply that aid and those contributions to carry out the purposes of the corporation, subject to the conditions, if any, upon which the aid and contributions were made;

(e) enter into management agreements with any person or entity for the performance of the corporation's functions or powers;

(f) establish whatever accounts and procedures as necessary to budget, receive, and disburse, account for, and audit all funds received, appropriated, or generated;

(g) subject to Subsection (8), lease any of the facilities at the state fair park;

(h) sponsor events as approved by the board; and

(i) enter into one or more agreements to develop the state fair park.

(7) (a) Except as provided in Subsection (7)(c), as an independent agency of Utah, the corporation is exempt from:

(i) Title 51, Chapter 5, Funds Consolidation Act;

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

(iii) Title 63A, Utah Administrative Services Code;

(iv) Title 63J, Chapter 1, Budgetary Procedures Act; and

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

(b) The board shall adopt policies parallel to and consistent with:

(i) Title 51, Chapter 5, Funds Consolidation Act;

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

(iii) Title 63A, Utah Administrative Services Code; and

(iv) Title 63J, Chapter 1, Budgetary Procedures Act.

(c) The corporation shall comply with:

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

(ii) Title 63G, Chapter 2, Government Records Access and Management Act;

## HB0451S01 compared with HB0451

- (iii) the provisions of Title 63A, Chapter 1, Part 2, Utah Public Finance Website;
- (iv) Title 63G, Chapter 6a, Utah Procurement Code, except for a procurement for:
  - (A) entertainment provided at the state fair park;
  - (B) judges for competitive exhibits; or
  - (C) sponsorship of an event at the state fair park; and
- (v) the legislative approval requirements for new facilities established in ~~Subsection 63A-5-104(3)~~ Section 63A-5b-404(3).

(8) (a) Before the corporation executes a lease described in Subsection (6)(g) with a term of 10 or more years, the corporation shall:

(i) submit the proposed lease to the State Building Board for the State Building Board's approval or rejection; and

(ii) if the State Building Board approves the proposed lease, submit the proposed lease to the Executive Appropriations Committee for the Executive Appropriation Committee's review and recommendation in accordance with Subsection (8)(b).

(b) The Executive Appropriations Committee shall review a proposed lease submitted in accordance with Subsection (8)(a) and recommend to the corporation that the corporation:

- (i) execute the proposed sublease; or
- (ii) reject the proposed sublease.

Section ~~90~~92. Section **63I-1-263** is amended to read:

### **63I-1-263. Repeal dates, Titles 63A to 63N.**

(1) In relation to the Utah Transparency Advisory Board, on January 1, 2025:

(a) Subsection 63A-1-201(1) is repealed;

(b) Subsection 63A-1-202(2)(c), the language that states "using criteria established by the board" is repealed;

(c) Section 63A-1-203 is repealed;

(d) Subsections 63A-1-204(1) and (2), the language that states "After consultation with the board, and" is repealed; and

(e) Subsection 63A-1-204(1)(b), the language that states "using the standards provided in Subsection 63A-1-203(3)(c)" is repealed.

(2) Subsection [~~63A-5-228(2)(h)~~] 63A-5b-405(5), relating to prioritizing and allocating capital improvement funding, is repealed on July 1, 2024.

## HB0451S01 compared with HB0451

- (3) Section [~~63A-5-603~~] 63A-5b-1003, State Facility Energy Efficiency Fund, is repealed July 1, 2023.
- (4) Title 63C, Chapter 4a, Constitutional and Federalism Defense Act, is repealed July 1, 2028.
- (5) Title 63C, Chapter 6, Utah Seismic Safety Commission, is repealed January 1, 2025.
- (6) Title 63C, Chapter 16, Prison Development Commission Act, is repealed July 1, 2020.
- (7) Title 63C, Chapter 17, Point of the Mountain Development Commission Act, is repealed July 1, 2021.
- (8) Title 63C, Chapter 18, Mental Health Crisis Line Commission, is repealed July 1, 2023.
- (9) Title 63G, Chapter 21, Agreements to Provide State Services, is repealed July 1, 2025.
- (10) Title 63H, Chapter 4, Heber Valley Historic Railroad Authority, is repealed July 1, 2020.
- (11) In relation to the State Fair Corporation Board of Directors, on January 1, 2025:
- (a) Subsection 63H-6-104(2)(c), related to a Senate appointment, is repealed;
  - (b) Subsection 63H-6-104(2)(d), related to a House appointment, is repealed;
  - (c) in Subsection 63H-6-104(2)(e), the language that states ", of whom only one may be a legislator, in accordance with Subsection (3)(e)," is repealed;
  - (d) Subsection 63H-6-104(3)(a)(i) is amended to read:  
"(3)(a)(i) Except as provided in Subsection (3)(a)(ii), a board member appointed under Subsection (2)(e) or (f) shall serve a term that expires on the December 1 four years after the year that the board member was appointed.";
  - (e) in Subsections 63H-6-104(3)(a)(ii), (c)(ii), and (d), the language that states "the president of the Senate, the speaker of the House, the governor," is repealed and replaced with "the governor"; and
  - (f) Subsection 63H-6-104(3)(e), related to limits on the number of legislators, is repealed.
- (12) Title 63H, Chapter 8, Utah Housing Corporation Act, is repealed July 1, 2026.

## HB0451S01 compared with HB0451

(13) Section 63M-7-212 is repealed on December 31, 2019.

(14) On July 1, 2025:

(a) in Subsection 17-27a-404(3)(c)(ii), the language that states "the Resource Development Coordinating Committee," is repealed;

(b) Subsection 23-14-21(2)(c) is amended to read "(c) provide notification of proposed sites for the transplant of species to local government officials having jurisdiction over areas that may be affected by a transplant.";

(c) in Subsection 23-14-21(3), the language that states "and the Resource Development Coordinating Committee" is repealed;

(d) in Subsection 23-21-2.3(1), the language that states "the Resource Development Coordinating Committee created in Section 63J-4-501 and" is repealed;

(e) in Subsection 23-21-2.3(2), the language that states "the Resource Development Coordinating Committee and" is repealed;

(f) Subsection 63J-4-102(1) is repealed and the remaining subsections are renumbered accordingly;

(g) Subsections 63J-4-401(5)(a) and (c) are repealed;

(h) Subsection 63J-4-401(5)(b) is renumbered to Subsection 63J-4-401(5)(a) and the word "and" is inserted immediately after the semicolon;

(i) Subsection 63J-4-401(5)(d) is renumbered to Subsection 63J-4-401(5)(b);

(j) Sections 63J-4-501, 63J-4-502, 63J-4-503, 63J-4-504, and 63J-4-505 are repealed;  
and

(k) Subsection 63J-4-603(1)(e)(iv) is repealed and the remaining subsections are renumbered accordingly.

(15) Subsection 63J-1-602.1(13), Nurse Home Visiting Restricted Account is repealed July 1, 2026.

(16) Subsection 63J-1-602.2(4), referring to dedicated credits to the Utah Marriage Commission, is repealed July 1, 2023.

(17) Subsection 63J-1-602.2(5), referring to the Trip Reduction Program, is repealed July 1, 2022.

(18) (a) Subsection 63J-1-602.1(53), relating to the Utah Statewide Radio System Restricted Account, is repealed July 1, 2022.

## HB0451S01 compared with HB0451

(b) When repealing Subsection 63J-1-602.1(53), the Office of Legislative Research and General Counsel shall, in addition to the office's authority under Subsection 36-12-12(3), make necessary changes to subsection numbering and cross references.

(19) Subsection 63J-1-602.2(23), related to the Utah Seismic Safety Commission, is repealed January 1, 2025.

(20) Subsection 63J-4-708(1), in relation to the Talent Ready Utah Board, on January 1, 2023, is amended to read:

"(1) On or before October 1, the board shall provide an annual written report to the Social Services Appropriations Subcommittee and the Economic Development and Workforce Services Interim Committee."

(21) In relation to the Utah Substance Use and Mental Health Advisory Council, on January 1, 2023:

(a) Sections 63M-7-301, 63M-7-302, 63M-7-303, 63M-7-304, and 63M-7-306 are repealed;

(b) Section 63M-7-305, the language that states "council" is replaced with "commission";

(c) Subsection 63M-7-305(1) is repealed and replaced with:

"(1) "Commission" means the Commission on Criminal and Juvenile Justice."; and

(d) Subsection 63M-7-305(2) is repealed and replaced with:

"(2) The commission shall:

(a) provide ongoing oversight of the implementation, functions, and evaluation of the Drug-Related Offenses Reform Act; and

(b) coordinate the implementation of Section 77-18-1.1 and related provisions in Subsections 77-18-1(5)(b)(iii) and (iv)."

(22) The Crime Victim Reparations and Assistance Board, created in Section 63M-7-504, is repealed July 1, 2027.

(23) Title 63M, Chapter 11, Utah Commission on Aging, is repealed July 1, 2021.

(24) Subsection 63N-1-301(4)(c), related to the Talent Ready Utah Board, is repealed on January 1, 2023.

(25) Title 63N, Chapter 2, Part 2, Enterprise Zone Act, is repealed July 1, 2028.

(26) (a) Title 63N, Chapter 2, Part 4, Recycling Market Development Zone Act, is

## HB0451S01 compared with HB0451

repealed January 1, 2021.

(b) Subject to Subsection (26)(c), Sections 59-7-610 and 59-10-1007 regarding tax credits for certain persons in recycling market development zones, are repealed for taxable years beginning on or after January 1, 2021.

(c) A person may not claim a tax credit under Section 59-7-610 or 59-10-1007:

(i) for the purchase price of machinery or equipment described in Section 59-7-610 or 59-10-1007, if the machinery or equipment is purchased on or after January 1, 2021; or

(ii) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), if the expenditure is made on or after January 1, 2021.

(d) Notwithstanding Subsections (26)(b) and (c), a person may carry forward a tax credit in accordance with Section 59-7-610 or 59-10-1007 if:

(i) the person is entitled to a tax credit under Section 59-7-610 or 59-10-1007; and

(ii) (A) for the purchase price of machinery or equipment described in Section 59-7-610 or 59-10-1007, the machinery or equipment is purchased on or before December 31, 2020; or

(B) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), the expenditure is made on or before December 31, 2020.

(27) Section 63N-2-512 is repealed on July 1, 2021.

(28) (a) Title 63N, Chapter 2, Part 6, Utah Small Business Jobs Act, is repealed January 1, 2021.

(b) Section 59-9-107 regarding tax credits against premium taxes is repealed for calendar years beginning on or after January 1, 2021.

(c) Notwithstanding Subsection (28)(b), an entity may carry forward a tax credit in accordance with Section 59-9-107 if:

(i) the person is entitled to a tax credit under Section 59-9-107 on or before December 31, 2020; and

(ii) the qualified equity investment that is the basis of the tax credit is certified under Section 63N-2-603 on or before December 31, 2023.

(29) Subsections 63N-3-109(2)(e) and 63N-3-109(2)(f)(i) are repealed July 1, 2023.

(30) Title 63N, Chapter 4, Part 4, Rural Employment Expansion Program, is repealed July 1, 2023.



## HB0451S01 compared with HB0451

(31) Title 63N, Chapter 9, Part 2, Outdoor Recreational Infrastructure Grant Program, is repealed January 1, 2023.

(32) In relation to the Pete Suazo Utah Athletic Commission, on January 1, 2021:

(a) Subsection 63N-10-201(2)(a) is amended to read:

"(2) (a) The governor shall appoint five commission members with the advice and consent of the Senate.";

(b) Subsection 63N-10-201(2)(b), related to legislative appointments, is repealed;

(c) in Subsection 63N-10-201(3)(a), the language that states ", president, or speaker, respectively," is repealed; and

(d) Subsection 63N-10-201(3)(d) is amended to read:

"(d) The governor may remove a commission member for any reason and replace the commission member in accordance with this section."

(33) In relation to the Talent Ready Utah Board, on January 1, 2023:

(a) Subsection 9-22-102(16) is repealed;

(b) in Subsection 9-22-114(2), the language that states "Talent Ready Utah," is repealed; and

(c) in Subsection 9-22-114(5), the language that states "representatives of Talent Ready Utah," is repealed.

(34) Title 63N, Chapter 12, Part 5, Talent Ready Utah Center, is repealed January 1, 2023.

Section ~~911~~93. Section **63J-1-201 (Superseded 07/01/20)** is amended to read:

**63J-1-201 (Superseded 07/01/20). Governor's proposed budget to Legislature -- Contents -- Preparation -- Appropriations based on current tax laws and not to exceed estimated revenues.**

(1) The governor shall deliver, not later than 30 days before the date the Legislature convenes in the annual general session, a confidential draft copy of the governor's proposed budget recommendations to the Office of the Legislative Fiscal Analyst according to the requirements of this section.

(2) (a) When submitting a proposed budget, the governor shall, within the first three days of the annual general session of the Legislature, submit to the presiding officer of each house of the Legislature:

## HB0451S01 compared with HB0451

- (i) a proposed budget for the ensuing fiscal year;
  - (ii) a schedule for all of the proposed changes to appropriations in the proposed budget, with each change clearly itemized and classified; and
  - (iii) as applicable, a document showing proposed changes in estimated revenues that are based on changes in state tax laws or rates.
- (b) The proposed budget shall include:
- (i) a projection of:
    - (A) estimated revenues by major tax type;
    - (B) 15-year trends for each major tax type;
    - (C) estimated receipts of federal funds;
    - (D) 15-year trends for federal fund receipts; and
    - (E) appropriations for the next fiscal year;
  - (ii) the source of changes to all direct, indirect, and in-kind matching funds for all federal grants or assistance programs included in the budget;
  - (iii) changes to debt service;
  - (iv) a plan of proposed changes to appropriations and estimated revenues for the next fiscal year that is based upon the current fiscal year state tax laws and rates and considers projected changes in federal grants or assistance programs included in the budget;
  - (v) an itemized estimate of the proposed changes to appropriations for:
    - (A) the Legislative Department as certified to the governor by the president of the Senate and the speaker of the House;
    - (B) the Executive Department;
    - (C) the Judicial Department as certified to the governor by the state court administrator;
    - (D) changes to salaries payable by the state under the Utah Constitution or under law for lease agreements planned for the next fiscal year; and
    - (E) all other changes to ongoing or one-time appropriations, including dedicated credits, restricted funds, nonlapsing balances, grants, and federal funds;
  - (vi) for each line item, the average annual dollar amount of staff funding associated with all positions that were vacant during the last fiscal year;
  - (vii) deficits or anticipated deficits;

## HB0451S01 compared with HB0451

(viii) the recommendations for each state agency for new full-time employees for the next fiscal year, which shall also be provided to the [~~State Building Board~~] director of the Division of Facilities Construction and Management as required by Subsection [~~63A-5-103(5)~~] 63A-5b-501(3);

(ix) a written description and itemized report submitted by a state agency to the Governor's Office of Management and Budget under Section 63J-1-220, including:

(A) a written description and an itemized report provided at least annually detailing the expenditure of the state money, or the intended expenditure of any state money that has not been spent; and

(B) a final written itemized report when all the state money is spent;

(x) any explanation that the governor may desire to make as to the important features of the budget and any suggestion as to methods for the reduction of expenditures or increase of the state's revenue; and

(xi) information detailing certain fee increases as required by Section 63J-1-504.

(3) For the purpose of preparing and reporting the proposed budget:

(a) The governor shall require the proper state officials, including all public and higher education officials, all heads of executive and administrative departments and state institutions, bureaus, boards, commissions, and agencies expending or supervising the expenditure of the state money, and all institutions applying for state money and appropriations, to provide itemized estimates of changes in revenues and appropriations.

(b) The governor may require the persons and entities subject to Subsection (3)(a) to provide other information under these guidelines and at times as the governor may direct, which may include a requirement for program productivity and performance measures, where appropriate, with emphasis on outcome indicators.

(c) The governor may require representatives of public and higher education, state departments and institutions, and other institutions or individuals applying for state appropriations to attend budget meetings.

(4) (a) The Governor's Office of Management and Budget shall provide to the Office of Legislative Fiscal Analyst, as soon as practicable, but no later than 30 days before the date the Legislature convenes in the annual general session, data, analysis, or requests used in preparing the governor's budget recommendations, notwithstanding the restrictions imposed on such

## HB0451S01 compared with HB0451

recommendations by available revenue.

(b) The information under Subsection (4)(a) shall include:

(i) actual revenues and expenditures for the fiscal year ending the previous June 30;

(ii) estimated or authorized revenues and expenditures for the current fiscal year;

(iii) requested revenues and expenditures for the next fiscal year;

(iv) detailed explanations of any differences between the amounts appropriated by the Legislature in the current fiscal year and the amounts reported under Subsections (4)(b)(ii) and (iii);

(v) a statement of agency and program objectives, effectiveness measures, and program size indicators; and

(vi) other budgetary information required by the Legislature in statute.

(c) The budget information under Subsection (4)(a) shall cover:

(i) all items of appropriation, funds, and accounts included in appropriations acts for the current and previous fiscal years; and

(ii) any new appropriation, fund, or account items requested for the next fiscal year.

(d) The information provided under Subsection (4)(a) may be provided as a shared record under Section 63G-2-206 as considered necessary by the Governor's Office of Management and Budget.

(5) (a) In submitting the budget for the Department of Public Safety, the governor shall include a separate recommendation in the governor's budget for maintaining a sufficient number of alcohol-related law enforcement officers to maintain the enforcement ratio equal to or below the number specified in Subsection 32B-1-201(2).

(b) If the governor does not include in the governor's budget an amount sufficient to maintain the number of alcohol-related law enforcement officers described in Subsection (5)(a), the governor shall include a message to the Legislature regarding the governor's reason for not including that amount.

(6) (a) The governor may revise all estimates, except those relating to the Legislative Department, the Judicial Department, and those providing for the payment of principal and interest to the state debt and for the salaries and expenditures specified by the Utah Constitution or under the laws of the state.

(b) The estimate for the Judicial Department, as certified by the state court

## HB0451S01 compared with HB0451

administrator, shall also be included in the budget without revision, but the governor may make separate recommendations on the estimate.

(7) The total appropriations requested for expenditures authorized by the budget may not exceed the estimated revenues from taxes, fees, and all other sources for the next ensuing fiscal year.

(8) If any item of the budget as enacted is held invalid upon any ground, the invalidity does not affect the budget itself or any other item in it.

Section ~~92~~94. Section **63J-1-201 (Effective 07/01/20)** is amended to read:

**63J-1-201 (Effective 07/01/20). Governor's proposed budget to Legislature -- Contents -- Preparation -- Appropriations based on current tax laws and not to exceed estimated revenues.**

(1) The governor shall deliver, not later than 30 days before the date the Legislature convenes in the annual general session, a confidential draft copy of the governor's proposed budget recommendations to the Office of the Legislative Fiscal Analyst according to the requirements of this section.

(2) (a) When submitting a proposed budget, the governor shall, within the first three days of the annual general session of the Legislature, submit to the presiding officer of each house of the Legislature:

- (i) a proposed budget for the ensuing fiscal year;
- (ii) a schedule for all of the proposed changes to appropriations in the proposed budget, with each change clearly itemized and classified; and
- (iii) as applicable, a document showing proposed changes in estimated revenues that are based on changes in state tax laws or rates.

(b) The proposed budget shall include:

- (i) a projection of:
  - (A) estimated revenues by major tax type;
  - (B) 15-year trends for each major tax type;
  - (C) estimated receipts of federal funds;
  - (D) 15-year trends for federal fund receipts; and
  - (E) appropriations for the next fiscal year;
- (ii) the source of changes to all direct, indirect, and in-kind matching funds for all

## HB0451S01 compared with HB0451

federal grants or assistance programs included in the budget;

(iii) changes to debt service;

(iv) a plan of proposed changes to appropriations and estimated revenues for the next fiscal year that is based upon the current fiscal year state tax laws and rates and considers projected changes in federal grants or assistance programs included in the budget;

(v) an itemized estimate of the proposed changes to appropriations for:

(A) the Legislative Department as certified to the governor by the president of the Senate and the speaker of the House;

(B) the Executive Department;

(C) the Judicial Department as certified to the governor by the state court administrator;

(D) changes to salaries payable by the state under the Utah Constitution or under law for lease agreements planned for the next fiscal year; and

(E) all other changes to ongoing or one-time appropriations, including dedicated credits, restricted funds, nonlapsing balances, grants, and federal funds;

(vi) for each line item, the average annual dollar amount of staff funding associated with all positions that were vacant during the last fiscal year;

(vii) deficits or anticipated deficits;

(viii) the recommendations for each state agency for new full-time employees for the next fiscal year, which shall also be provided to the [~~State Building Board~~] director of the Division of Facilities Construction and Management as required by Subsection [~~63A-5-103(5)~~] 63A-5b-501(3);

(ix) a written description and itemized report submitted by a state agency to the Governor's Office of Management and Budget under Section 63J-1-220, including:

(A) a written description and an itemized report provided at least annually detailing the expenditure of the state money, or the intended expenditure of any state money that has not been spent; and

(B) a final written itemized report when all the state money is spent;

(x) any explanation that the governor may desire to make as to the important features of the budget and any suggestion as to methods for the reduction of expenditures or increase of the state's revenue; and

## HB0451S01 compared with HB0451

(xi) information detailing certain fee increases as required by Section 63J-1-504.

(3) For the purpose of preparing and reporting the proposed budget:

(a) The governor shall require the proper state officials, including all public and higher education officials, all heads of executive and administrative departments and state institutions, bureaus, boards, commissions, and agencies expending or supervising the expenditure of the state money, and all institutions applying for state money and appropriations, to provide itemized estimates of changes in revenues and appropriations.

(b) The governor may require the persons and entities subject to Subsection (3)(a) to provide other information under these guidelines and at times as the governor may direct, which may include a requirement for program productivity and performance measures, where appropriate, with emphasis on outcome indicators.

(c) The governor may require representatives of public and higher education, state departments and institutions, and other institutions or individuals applying for state appropriations to attend budget meetings.

(4) (a) The Governor's Office of Management and Budget shall provide to the Office of Legislative Fiscal Analyst, as soon as practicable, but no later than 30 days before the date the Legislature convenes in the annual general session, data, analysis, or requests used in preparing the governor's budget recommendations, notwithstanding the restrictions imposed on such recommendations by available revenue.

(b) The information under Subsection (4)(a) shall include:

(i) actual revenues and expenditures for the fiscal year ending the previous June 30;

(ii) estimated or authorized revenues and expenditures for the current fiscal year;

(iii) requested revenues and expenditures for the next fiscal year;

(iv) detailed explanations of any differences between the amounts appropriated by the Legislature in the current fiscal year and the amounts reported under Subsections (4)(b)(ii) and (iii);

(v) a statement of:

(A) agency and program objectives, effectiveness measures, and program size indicators;

(B) the final status of the program objectives, effectiveness measures, and program size indicators included in the appropriations act for the fiscal year ending the previous June 30; and

## HB0451S01 compared with HB0451

(C) the current status of the program objectives, effectiveness measures, and program size indicators included in the appropriations act for the current fiscal year; and

(vi) other budgetary information required by the Legislature in statute.

(c) The budget information under Subsection (4)(a) shall cover:

(i) all items of appropriation, funds, and accounts included in appropriations acts for the current and previous fiscal years; and

(ii) any new appropriation, fund, or account items requested for the next fiscal year.

(d) The information provided under Subsection (4)(a) may be provided as a shared record under Section 63G-2-206 as considered necessary by the Governor's Office of Management and Budget.

(5) (a) In submitting the budget for the Department of Public Safety, the governor shall include a separate recommendation in the governor's budget for maintaining a sufficient number of alcohol-related law enforcement officers to maintain the enforcement ratio equal to or below the number specified in Subsection 32B-1-201(2).

(b) If the governor does not include in the governor's budget an amount sufficient to maintain the number of alcohol-related law enforcement officers described in Subsection (5)(a), the governor shall include a message to the Legislature regarding the governor's reason for not including that amount.

(6) (a) The governor may revise all estimates, except those relating to the Legislative Department, the Judicial Department, and those providing for the payment of principal and interest to the state debt and for the salaries and expenditures specified by the Utah Constitution or under the laws of the state.

(b) The estimate for the Judicial Department, as certified by the state court administrator, shall also be included in the budget without revision, but the governor may make separate recommendations on the estimate.

(7) The total appropriations requested for expenditures authorized by the budget may not exceed the estimated revenues from taxes, fees, and all other sources for the next ensuing fiscal year.

(8) If any item of the budget as enacted is held invalid upon any ground, the invalidity does not affect the budget itself or any other item in it.

Section ~~93~~95. Section **63J-1-206** is amended to read:



## HB0451S01 compared with HB0451

### **63J-1-206. Appropriations governed by chapter -- Restrictions on expenditures -- Transfer of funds -- Exclusion.**

(1) (a) Except as provided in Subsections (1)(b) and (2)(e), or where expressly exempted in the appropriating act:

(i) all money appropriated by the Legislature is appropriated upon the terms and conditions set forth in this chapter; and

(ii) any department, agency, or institution that accepts money appropriated by the Legislature does so subject to the requirements of this chapter.

(b) This section does not apply to:

(i) the Legislature and its committees; and

(ii) the Investigation Account of the Water Resources Construction Fund, which is governed by Section 73-10-8.

(2) (a) Each item of appropriation is to be expended subject to any schedule of programs and any restriction attached to the item of appropriation, as designated by the Legislature.

(b) Each schedule of programs or restriction attached to an appropriation item:

(i) is a restriction or limitation upon the expenditure of the respective appropriation made;

(ii) does not itself appropriate any money; and

(iii) is not itself an item of appropriation.

(c) (i) Except as provided in Subsection (2)(c)(ii), an appropriation or any surplus of any appropriation may not be diverted from any department, agency, institution, division, or line item to any other department, agency, institution, division, or line item.

(ii) The state superintendent may transfer money appropriated for the Minimum School Program between line items in accordance with Section 53F-2-205.

(iii) If the money appropriated to an agency to pay lease payments under the program established in [~~Subsection 63A-5-228(3)~~] Section 63A-5b-703 exceeds the amount required for the agency's lease payments to the Division of Facilities Construction and Management, the agency may:

(A) transfer money from the lease payments line item to other line items within the agency; and

## HB0451S01 compared with HB0451

(B) retain and use the excess money for other purposes.

(d) The money appropriated subject to a schedule of programs or restriction may be used only for the purposes authorized.

(e) In order for a department, agency, or institution to transfer money appropriated to it from one program to another program within a line item, the department, agency, or institution shall revise its budget execution plan as provided in Section 63J-1-209.

(f) (i) The procedures for transferring money between programs within a line item as provided by Subsection (2)(e) do not apply to money appropriated to the State Board of Education for the Minimum School Program or capital outlay programs created in Title 53F, Chapter 3, State Funding -- Capital Outlay Programs.

(ii) The state superintendent may transfer money appropriated for the programs specified in Subsection (2)(f)(i) only as provided by Section 53F-2-205.

Section ~~94~~96. Section **63J-1-602.2** is amended to read:

### **63J-1-602.2. List of nonlapsing appropriations to programs.**

Appropriations made to the following programs are nonlapsing:

- (1) The Legislature and its committees.
- (2) The Percent-for-Art Program created in Section 9-6-404.
- (3) The LeRay McAllister Critical Land Conservation Program created in Section 11-38-301.
- (4) Dedicated credits accrued to the Utah Marriage Commission as provided under Subsection 17-16-21(2)(d)(ii).
- (5) The Trip Reduction Program created in Section 19-2a-104.
- (6) The Division of Wildlife Resources for the appraisal and purchase of lands under the Pelican Management Act, as provided in Section 23-21a-6.
- (7) The primary care grant program created in Section 26-10b-102.
- (8) Sanctions collected as dedicated credits from Medicaid provider under Subsection 26-18-3(7).
- (9) The Utah Health Care Workforce Financial Assistance Program created in Section 26-46-102.
- (10) The Rural Physician Loan Repayment Program created in Section 26-46a-103.
- (11) The Opiate Overdose Outreach Pilot Program created in Section 26-55-107.

## **HB0451S01 compared with HB0451**

(12) Funds that the Department of Alcoholic Beverage Control retains in accordance with Subsection 32B-2-301(7)(a) or (b).

(13) The General Assistance program administered by the Department of Workforce Services, as provided in Section 35A-3-401.

(14) A new program or agency that is designated as nonlapsing under Section 36-24-101.

(15) The Utah National Guard, created in Title 39, Militia and Armories.

(16) The State Tax Commission under Section 41-1a-1201 for the:

(a) purchase and distribution of license plates and decals; and

(b) administration and enforcement of motor vehicle registration requirements.

(17) The Search and Rescue Financial Assistance Program, as provided in Section 53-2a-1102.

(18) The Motorcycle Rider Education Program, as provided in Section 53-3-905.

(19) The State Board of Regents for teacher preparation programs, as provided in Section 53B-6-104.

(20) The Medical Education Program administered by the Medical Education Council, as provided in Section 53B-24-202.

(21) The State Board of Education, as provided in Section 53F-2-205.

(22) The Division of Services for People with Disabilities, as provided in Section 62A-5-102.

(23) The Division of Fleet Operations for the purpose of upgrading underground storage tanks under Section 63A-9-401.

(24) The Utah Seismic Safety Commission, as provided in Section 63C-6-104.

(25) Appropriations to the Department of Technology Services for technology innovation as provided under Section 63F-4-202.

(26) The Office of Administrative Rules for publishing, as provided in Section 63G-3-402.

(27) The Utah Science Technology and Research Initiative created in Section 63M-2-301.

(28) The Governor's Office of Economic Development to fund the Enterprise Zone Act, as provided in Title 63N, Chapter 2, Part 2, Enterprise Zone Act.

## HB0451S01 compared with HB0451

(29) Appropriations to fund the Governor's Office of Economic Development's Rural Employment Expansion Program, as described in Title 63N, Chapter 4, Part 4, Rural Employment Expansion Program.

(30) The Department of Human Resource Management user training program, as provided in Section 67-19-6.

(31) A public safety answering point's emergency telecommunications service fund, as provided in Section 69-2-301.

(32) The Traffic Noise Abatement Program created in Section 72-6-112.

(33) The Judicial Council for compensation for special prosecutors, as provided in Section 77-10a-19.

(34) A state rehabilitative employment program, as provided in Section 78A-6-210.

(35) The Utah Geological Survey, as provided in Section 79-3-401.

(36) The Bonneville Shoreline Trail Program created under Section 79-5-503.

(37) Adoption document access as provided in Sections 78B-6-141, 78B-6-144, and 78B-6-144.5.

(38) Indigent defense as provided in Title 78B, Chapter 22, Part 4, Utah Indigent Defense Commission.

(39) The program established by the Division of Facilities Construction and Management under [~~Subsection 63A-5-228(3)~~ Section 63A-5b-703] under which state agencies receive an appropriation and pay lease payments for the use and occupancy of buildings owned by the Division of Facilities Construction and Management.

Section ~~95~~97. Section **63J-3-103** is amended to read:

### **63J-3-103. Definitions.**

As used in this chapter:

(1) (a) "Appropriations" means actual unrestricted capital and operating appropriations from unrestricted General Fund and Education Fund sources.

(b) "Appropriations" includes appropriations that are contingent upon available surpluses in the General Fund and Education Fund.

(c) "Appropriations" does not mean:

(i) public education expenditures;

(ii) Utah Education and Telehealth Network expenditures in support of public

## HB0451S01 compared with HB0451

education;

(iii) Utah System of Technical Colleges expenditures in support of public education;

(iv) State Tax Commission expenditures related to collection of income taxes in

support of public education;

(v) debt service expenditures;

(vi) emergency expenditures;

(vii) expenditures from all other fund or subfund sources;

(viii) transfers or appropriations from the Education Fund to the Uniform School Fund;

(ix) transfers into, or appropriations made to, the General Fund Budget Reserve

Account established in Section 63J-1-312;

(x) transfers into, or appropriations made to, the Education Budget Reserve Account established in Section 63J-1-313;

(xi) transfers in accordance with Section 63J-1-314 into, or appropriations made to the Wildland Fire Suppression Fund created in Section 65A-8-204 or the State Disaster Recovery Restricted Account created in Section 53-2a-603;

(xii) money appropriated to fund the total one-time project costs for the construction of capital [~~developments~~] development projects as defined in Section [~~63A-5-104~~] 63A-5b-401;

(xiii) transfers or deposits into or appropriations made to the Centennial Highway Fund created by Section 72-2-118;

(xiv) transfers or deposits into or appropriations made to the Transportation Investment Fund of 2005 created by Section 72-2-124;

(xv) transfers or deposits into or appropriations made to:

(A) the Department of Transportation from any source; or

(B) any transportation-related account or fund from any source; or

(xvi) supplemental appropriations from the General Fund to the Division of Forestry, Fire, and State Lands to provide money for wildland fire control expenses incurred during the current or previous fire years.

(2) "Base year real per capita appropriations" means the result obtained for the state by dividing the fiscal year 1985 actual appropriations of the state less debt money by:

(a) the state's July 1, 1983 population; and

(b) the fiscal year 1983 inflation index divided by 100.

## **HB0451S01 compared with HB0451**

(3) "Calendar year" means the time period beginning on January 1 of any given year and ending on December 31 of the same year.

(4) "Fiscal emergency" means an extraordinary occurrence requiring immediate expenditures and includes the settlement under Laws of Utah 1988, Fourth Special Session, Chapter 4.

(5) "Fiscal year" means the time period beginning on July 1 of any given year and ending on June 30 of the subsequent year.

(6) "Fiscal year 1985 actual base year appropriations" means fiscal year 1985 actual capital and operations appropriations from General Fund and non-Uniform School Fund income tax revenue sources, less debt money.

(7) "Inflation index" means the change in the general price level of goods and services as measured by the Gross National Product Implicit Price Deflator of the Bureau of Economic Analysis, U.S. Department of Commerce calculated as provided in Section 63J-3-202.

(8) (a) "Maximum allowable appropriations limit" means the appropriations that could be, or could have been, spent in any given year under the limitations of this chapter.

(b) "Maximum allowable appropriations limit" does not mean actual appropriations spent or actual expenditures.

(9) "Most recent fiscal year's inflation index" means the fiscal year inflation index two fiscal years previous to the fiscal year for which the maximum allowable inflation and population appropriations limit is being computed under this chapter.

(10) "Most recent fiscal year's population" means the fiscal year population two fiscal years previous to the fiscal year for which the maximum allowable inflation and population appropriations limit is being computed under this chapter.

(11) "Population" means the number of residents of the state as of July 1 of each year as calculated by the Governor's Office of Management and Budget according to the procedures and requirements of Section 63J-3-202.

(12) "Revenues" means the revenues of the state from every tax, penalty, receipt, and other monetary exaction and interest connected with it that are recorded as unrestricted revenue of the General Fund and from non-Uniform School Fund income tax revenues, except as specifically exempted by this chapter.

(13) "Security" means any bond, note, warrant, or other evidence of indebtedness,

## HB0451S01 compared with HB0451

whether or not the bond, note, warrant, or other evidence of indebtedness is or constitutes an "indebtedness" within the meaning of any provision of the constitution or laws of this state.

Section ~~96~~98. Section **65A-4-1** is amended to read:

### **65A-4-1. Acquisition and disposition of land by state agencies.**

(1) All state agencies may acquire land by gift, devise, bequest, exchange, compensation for public resource value loss, or in satisfaction of a debt and are authorized to sell, lease, or otherwise dispose of land no longer needed for public purposes, unless otherwise provided by law.

(2) The proceeds from the sale, lease, or other disposition of land shall go to the state agency using or holding the land unless:

(a) the governor or the Legislature order its deposit in the fund from which the state agency receives its appropriations; or

(b) the use or disposition of the proceeds is specified elsewhere in law.

(3) Subsections (1) and (2) do not apply to division-owned property, as defined in Section ~~63A-5a-102~~ 63A-5b-901.

Section ~~97~~99. Section **72-6-107.5** is amended to read:

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

(1) As used in this section:

(a) "Aggregate" means the sum of all contracts, change orders, and modifications related to a single project.

(b) "Change order" means the same as that term is defined in Section 63G-6a-103.

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

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

(ii) meets employer eligibility waiting requirements for health care insurance, which may not exceed the first day of the calendar month following 60 days after the day on which the individual is hired.

(d) "Health benefit plan" means the same as that term is defined in Section 31A-1-301.

(e) "Qualified health insurance coverage" means the same as that term is defined in Section 26-40-115.

## HB0451S01 compared with HB0451

(f) "Subcontractor" means the same as that term is defined in Section [~~63A-5-208~~]  
63A-5b-605.

(2) Except as provided in Subsection (3), the requirements of this section apply to:

(a) a contractor of a design or construction contract entered into by the department on or after July 1, 2009, if the prime contract is in an aggregate amount equal to or greater than \$2,000,000; and

(b) a subcontractor of a contractor of a design or construction contract entered into by the department on or after July 1, 2009, if the subcontract is in an aggregate amount equal to or greater than \$1,000,000.

(3) The requirements of this section do not apply to a contractor or subcontractor described in Subsection (2) if:

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

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

(c) the contract is an emergency procurement.

(4) A person that intentionally uses change orders, contract modifications, or multiple contracts to circumvent the requirements of this section is guilty of an infraction.

(5) (a) A contractor subject to the requirements of this section shall demonstrate to the department that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents during the duration of the contract by submitting to the department a written statement that:

(i) the contractor offers qualified health insurance coverage that complies with Section 26-40-115;

(ii) is from:

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

(B) an underwriter who is responsible for developing the employer group's premium rates; and

(iii) was created within one year before the day on which the statement is submitted.

(b) A contractor that is subject to the requirements of this section shall:

(i) place a requirement in each of the contractor's subcontracts that a subcontractor that is subject to the requirements of this section shall obtain and maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents



## HB0451S01 compared with HB0451

during the duration of the subcontract; and

(ii) obtain from a subcontractor that is subject to the requirements of this section a written statement that:

(A) the subcontractor offers qualified health insurance coverage that complies with Section 26-40-115;

(B) is from an actuary selected by the subcontractor or the subcontractor's insurer, or an underwriter who is responsible for developing the employer group's premium rates; and

(C) was created within one year before the day on which the contractor obtains the statement.

(c) (i) (A) A contractor that fails to maintain an offer of qualified health insurance coverage described in Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A contractor is not subject to penalties for the failure of a subcontractor to obtain and maintain an offer of qualified health insurance coverage described in Subsection (5)(b)(i).

(ii) (A) A subcontractor that fails to obtain and maintain an offer of qualified health insurance coverage described in Subsection (5)(b) during the duration of the subcontract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to maintain an offer of qualified health insurance coverage described in Subsection (5)(a).

(6) The department shall adopt administrative rules:

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

(b) in coordination with:

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

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

(iii) the State Building Board in accordance with Section [~~63A-5-205.5~~] 63A-5b-607;

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

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

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

(c) that establish:

## HB0451S01 compared with HB0451

(i) the requirements and procedures a contractor and a subcontractor shall follow to demonstrate compliance with this section, including:

(A) that a contractor or subcontractor's compliance with this section is subject to an audit by the department or the Office of the Legislative Auditor General;

(B) that a contractor that is subject to the requirements of this section shall obtain a written statement described in Subsection (5)(a); and

(C) that a subcontractor that is subject to the requirements of this section shall obtain a written statement described in Subsection (5)(b)(ii);

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

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

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

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

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

(iii) a website on which the department shall post the commercially equivalent benchmark, for the qualified health insurance coverage identified in Subsection (1)(e), that is provided by the Department of Health, in accordance with Subsection 26-40-115(2).

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

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

(A) the employer relied in good faith on a written statement described in Subsection (5)(a) or (5)(b)(ii); or

## HB0451S01 compared with HB0451

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

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

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

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

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under:

(i) Section 63G-6a-1602; or

(ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

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

Section ~~98~~100. Section **79-2-404** is amended to read:

### **79-2-404. Contracting powers of department -- Health insurance coverage.**

(1) As used in this section:

(a) "Aggregate" means the sum of all contracts, change orders, and modifications related to a single project.

(b) "Change order" means the same as that term is defined in Section 63G-6a-103.

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

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

(ii) meets employer eligibility waiting requirements for health care insurance, which may not exceed the first day of the calendar month following 60 days after the day on which the individual is hired.

(d) "Health benefit plan" means the same as that term is defined in Section 31A-1-301.

(e) "Qualified health insurance coverage" means the same as that term is defined in Section 26-40-115.

(f) "Subcontractor" means the same as that term is defined in Section [~~63A-5-208~~]

## HB0451S01 compared with HB0451

### 63A-5b-605.

(2) Except as provided in Subsection (3), the requirements of this section apply to:

(a) a contractor of a design or construction contract entered into by, or delegated to, the department or a division, board, or council of the department on or after July 1, 2009, if the prime contract is in an aggregate amount equal to or greater than \$2,000,000; and

(b) a subcontractor of a contractor of a design or construction contract entered into by, or delegated to, the department or a division, board, or council of the department on or after July 1, 2009, if the subcontract is in an aggregate amount equal to or greater than \$1,000,000.

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

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

(b) the contract or agreement is between:

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

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

(B) the federal government;

(C) another state;

(D) an interstate agency;

(E) a political subdivision of this state; or

(F) a political subdivision of another state; or

(c) the contract or agreement is:

(i) for the purpose of disbursing grants or loans authorized by statute;

(ii) a sole source contract; or

(iii) an emergency procurement.

(4) A person that intentionally uses change orders, contract modifications, or multiple contracts to circumvent the requirements of this section is guilty of an infraction.

(5) (a) A contractor subject to the requirements of this section shall demonstrate to the department that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents during the duration of the contract by submitting to the department a written statement that:

(i) the contractor offers qualified health insurance coverage that complies with Section 26-40-115;

## HB0451S01 compared with HB0451

(ii) is from:

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

(B) an underwriter who is responsible for developing the employer group's premium rates; and

(iii) was created within one year before the day on which the statement is submitted.

(b) A contractor that is subject to the requirements of this section shall:

(i) place a requirement in each of the contractor's subcontracts that a subcontractor that is subject to the requirements of this section shall obtain and maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the subcontract; and

(ii) obtain from a subcontractor that is subject to the requirements of this section a written statement that:

(A) the subcontractor offers qualified health insurance coverage that complies with Section 26-40-115;

(B) is from an actuary selected by the subcontractor or the subcontractor's insurer, or an underwriter who is responsible for developing the employer group's premium rates; and

(C) was created within one year before the day on which the contractor obtains the statement.

(c) (i) (A) A contractor that fails to maintain an offer of qualified health insurance coverage described in Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A contractor is not subject to penalties for the failure of a subcontractor to obtain and maintain an offer of qualified health insurance coverage described in Subsection (5)(b)(i).

(ii) (A) A subcontractor that fails to obtain and maintain an offer of qualified health insurance coverage described in Subsection (5)(b) during the duration of the subcontract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to maintain an offer of qualified health insurance coverage described in Subsection (5)(a).

(6) The department shall adopt administrative rules:

## HB0451S01 compared with HB0451

- (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- (b) in coordination with:
  - (i) the Department of Environmental Quality in accordance with Section 19-1-206;
  - (ii) a public transit district in accordance with Section 17B-2a-818.5;
  - (iii) the State Building Board in accordance with Section [~~63A-5-205.5~~] 63A-5b-607;
  - (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;
  - (v) the Department of Transportation in accordance with Section 72-6-107.5; and
  - (vi) the Legislature's Administrative Rules Review Committee; and
- (c) that establish:
  - (i) the requirements and procedures a contractor and a subcontractor shall follow to demonstrate compliance with this section, including:
    - (A) that a contractor or subcontractor's compliance with this section is subject to an audit by the department or the Office of the Legislative Auditor General;
    - (B) that a contractor that is subject to the requirements of this section shall obtain a written statement described in Subsection (5)(a); and
    - (C) that a subcontractor that is subject to the requirements of this section shall obtain a written statement described in Subsection (5)(b)(ii);
  - (ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:
    - (A) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;
    - (B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;
    - (C) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-904 upon the third or subsequent violation; and
    - (D) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for an employee and a dependent of an employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract; and
  - (iii) a website on which the department shall post the commercially equivalent benchmark, for the qualified health insurance coverage identified in Subsection (1)(e),

## HB0451S01 compared with HB0451

provided by the Department of Health, in accordance with Subsection 26-40-115(2).

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

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

(A) the employer relied in good faith on a written statement described in Subsection (5)(a) or (5)(b)(ii); or

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

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

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

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

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under:

(i) Section 63G-6a-1602; or

(ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

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

Section ~~99~~101. **Repealer.**

This bill repeals:

Section **63A-5-100, Definitions.**

Section **63A-5-101, Creation -- Composition -- Appointment -- Per diem and expenses -- Administrative services.**

Section **63A-5-101.5, State Building Board composition -- Appointment -- Per diem and expenses -- Administrative services.**

## HB0451S01 compared with HB0451

Section 63A-5-102, Meetings of board -- Rules of procedure -- Quorum.

Section 63A-5-103, Board -- Powers.

Section 63A-5-104, Definitions -- Capital development and capital improvement process -- Approval requirements -- Limitations on new projects -- Emergencies.

Section 63A-5-202, Definitions.

Section 63A-5-204, Specific powers and duties of director.

Section 63A-5-205, Contracting powers of director -- Retainage.

Section 63A-5-206, Construction, alteration, and repair of state facilities -- Powers of director -- Exceptions -- Expenditure of appropriations -- Notification to local governments for construction or modification of certain facilities.

Section 63A-5-216, Gifts, grants, and donations to division.

Section 63A-5-223, Contracts -- Certain indemnification provisions forbidden.

Section 63A-5-301, Definitions.

Section 63A-5-501, Making keys to buildings of state, political subdivisions or colleges and universities without permission prohibited.

Section 63A-5-502, Violation -- Misdemeanor.

Section 63A-5-601, Legislative findings and policy.

Section 63A-5-602, Appropriation for energy efficiency measures.

Section 63A-5a-101, Title.

Section ~~{100}~~102. Effective date.

This bill takes effect on May 12, 2020, except that the amendments to Section 63J-1-201 (Effective 07/01/20) take effect on July 1, 2020.

**Section 103. Coordinating H.B. 451 with H.B. 37 -- Superseding substantive and technical amendments.**

**If H.B. 451 and H.B. 37, Insurance Amendments, both pass and become law, it is the intent of the Legislature that when the Office of Legislative Research and General Counsel prepares the Utah Code database for publication:**

**(1) the amendments in H.B. 37 to Subsection 63A-5-205.5(1)(d), defining "health benefit plan," supersede the amendments in H.B. 451 to Subsection 63A-5-205.5(1)(d), renumbered in H.B. 451 to Subsection 63A-5b-607(1)(d), defining "health benefit plan";**

**(2) (a) the amendments in H.B. 451 to Subsections 63A-5b-607(6)(a)(ii) and (b)**



## HB0451S01 compared with HB0451

supersede the amendments in H.B. 37 to Subsection 63A-5-205.5(5)(c)(ii); and

(b) Subsections 63A-5b-607(6)(a)(ii) and (b) shall be amended to read:

"(ii) obtain from a subcontractor ~~[that is subject to the requirements of this section]~~ referred to in Subsection (6)(a)(i) a written statement demonstrating that~~[:]~~ the subcontractor offers qualified health coverage to eligible employees and eligible employees' dependents.

~~[(A) the subcontractor offers qualified health insurance coverage that complies with Section 26-40-115;]~~

~~[(B) is]~~ (b) A statement under Subsection (6)(a)(ii):

(i) shall be from:

(A) an actuary selected by the subcontractor or the subcontractor's insurer~~[: or]~~;

(B) an underwriter who is responsible for developing the employer group's premium rates; ~~[and] or~~

(C) if the subcontractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or underwriter selected by an administrator; and

~~[(C) was]~~ (ii) may not be created ~~[within]~~ more than one year before the day on which the contractor obtains the statement from the subcontractor";

(3) the amendments in H.B. 451 to Subsection 63A-5b-607(11)(a)(ii)(A) supersede the amendments in H.B. 37 to Subsection 63A-5-205.5(8)(a)(ii)(A); and

(4) the phrase "qualified health insurance coverage" in Subsection 63A-5b-607(14) shall be amended to read "qualified health coverage."