

1 **STATE FACILITIES MANAGEMENT AMENDMENTS**

2 2022 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: David G. Buxton**

5 House Sponsor: _____

6

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions relating to the management of state facilities.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ eliminates the State Building Board;
- 13 ▶ gives duties of the former State Building Board to the Division of Facilities
- 14 Construction and Management and the Department of Government Operations;
- 15 ▶ increases the limit of the value of property that the Division of Facilities
- 16 Construction and Management may acquire without legislative approval from
- 17 \$250,000 to \$500,000;
- 18 ▶ with respect to code provisions dealing with the disposal of property owned by the
- 19 Division of Facilities Construction and Management, increases the limit of the value
- 20 of property not subject to those code provisions from \$250,000 to \$500,000;
- 21 ▶ modifies provisions relating to the supervision and control of the allocation of space
- 22 for institutions of higher education and courts;
- 23 ▶ provides that the disposition of property owned by the Division of Facilities
- 24 Construction and Management in connection with the establishment of a state liquor
- 25 store or the construction of student housing is not subject to provisions otherwise
- 26 applicable to the disposition of division-owned property;
- 27 ▶ for a diagnostic, treatment, parole, probation, or other secured facility project,



28 increases the threshold for that project from \$250,000 to \$500,000 to trigger a requirement for
29 the director of the Division of Facilities Construction and Management to notify a local
30 government entity affected by the project; and

31 ▶ makes technical and conforming changes.

32 **Money Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 This bill provides a special effective date.

36 **Utah Code Sections Affected:**

37 AMENDS:

38 **17B-2a-818.5**, as last amended by Laws of Utah 2020, Chapters 32 and 152

39 **19-1-206**, as last amended by Laws of Utah 2020, Chapters 32 and 152

40 **53B-2a-112 (Superseded 07/01/22)**, as last amended by Laws of Utah 2020, Chapter
41 365

42 **53B-2a-112 (Effective 07/01/22)**, as last amended by Laws of Utah 2021, Second
43 Special Session, Chapter 1

44 **53B-2a-117**, as last amended by Laws of Utah 2020, Chapters 152 and 365

45 **53B-7-101**, as last amended by Laws of Utah 2020, Chapter 365

46 **53B-22-204**, as last amended by Laws of Utah 2020, Chapter 152

47 **63A-5b-102**, as last amended by Laws of Utah 2021, Chapter 187

48 **63A-5b-303**, as enacted by Laws of Utah 2020, Chapter 152

49 **63A-5b-402**, as enacted by Laws of Utah 2020, Chapter 152

50 **63A-5b-403**, as last amended by Laws of Utah 2021, Chapter 187

51 **63A-5b-404**, as enacted by Laws of Utah 2020, Chapter 152

52 **63A-5b-503**, as renumbered and amended by Laws of Utah 2020, Chapter 152

53 **63A-5b-601**, as enacted by Laws of Utah 2020, Chapter 152

54 **63A-5b-603**, as enacted by Laws of Utah 2020, Chapter 152

55 **63A-5b-604**, as enacted by Laws of Utah 2020, Chapter 152

56 **63A-5b-802**, as renumbered and amended by Laws of Utah 2020, Chapter 152

57 **63A-5b-803**, as last amended by Laws of Utah 2020, Chapter 365

58 **63A-5b-806**, as renumbered and amended by Laws of Utah 2020, Chapter 152

- 59 **63A-5b-901**, as renumbered and amended by Laws of Utah 2020, Chapter 152
- 60 **63A-5b-902**, as renumbered and amended by Laws of Utah 2020, Chapter 152
- 61 **63A-5b-904**, as renumbered and amended by Laws of Utah 2020, Chapter 152
- 62 **63A-5b-905**, as last amended by Laws of Utah 2021, Chapters 84 and 345
- 63 **63A-5b-907**, as renumbered and amended by Laws of Utah 2020, Chapter 152
- 64 **63A-5b-910**, as renumbered and amended by Laws of Utah 2020, Chapter 152
- 65 **63A-5b-1001**, as enacted by Laws of Utah 2020, Chapter 152
- 66 **63A-5b-1003**, as renumbered and amended by Laws of Utah 2020, Chapter 152
- 67 **63A-5b-1104**, as enacted by Laws of Utah 2020, Chapter 152
- 68 **63B-1-101**, as last amended by Laws of Utah 2003, Chapter 2
- 69 **63B-1-304**, as last amended by Laws of Utah 2020, Chapter 152
- 70 **63C-9-403**, as last amended by Laws of Utah 2020, Chapters 32 and 152
- 71 **63G-6a-103**, as last amended by Laws of Utah 2021, Chapters 179, 179, 344, 344, 345,
- 72 and 345
- 73 **63G-6a-109**, as last amended by Laws of Utah 2020, Chapter 257
- 74 **63G-6a-204**, as last amended by Laws of Utah 2020, Chapters 257 and 354
- 75 **63G-6a-303**, as last amended by Laws of Utah 2021, Chapter 344
- 76 **63G-6a-1302**, as last amended by Laws of Utah 2020, Chapter 257
- 77 **63H-6-103**, as last amended by Laws of Utah 2021, Chapters 33, 84, and 345
- 78 **63H-6-108**, as last amended by Laws of Utah 2016, Third Special Session, Chapter 2
- 79 **72-6-107.5**, as last amended by Laws of Utah 2020, Chapters 32 and 152
- 80 **79-2-404**, as last amended by Laws of Utah 2020, Chapters 32 and 152

81 ENACTS:

82 **63A-5b-907.5**, Utah Code Annotated 1953

83 REPEALS:

- 84 **63A-5b-201**, as last amended by Laws of Utah 2021, Chapter 382
- 85 **63A-5b-202**, as last amended by Laws of Utah 2021, Chapters 187 and 344
- 86 **63A-5b-203**, as enacted by Laws of Utah 2020, Chapter 152



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

89 Section 1. Section **17B-2a-818.5** is amended to read:

90 **17B-2a-818.5. Contracting powers of public transit districts -- Health insurance**
91 **coverage.**

92 (1) As used in this section:

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

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

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

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

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

102 (d) "Health benefit plan" means:

103 (i) the same as that term is defined in Section [31A-1-301](#); or

104 (ii) an employee welfare benefit plan:

105 (A) established under the Employee Retirement Income Security Act of 1974, 29
106 U.S.C. Sec. 1001 et seq.;

107 (B) for an employer with 100 or more employees; and

108 (C) in which the employer establishes a self-funded or partially self-funded group
109 health plan to provide medical care for the employer's employees and dependents of the
110 employees.

111 (e) "Qualified health coverage" means the same as that term is defined in Section
112 [26-40-115](#).

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

114 (g) "Third party administrator" or "administrator" means the same as that term is
115 defined in Section [31A-1-301](#).

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

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

120 (b) a subcontractor of a contractor of a design or construction contract entered into by

121 the public transit district on or after July 1, 2009, if the subcontract is in an aggregate amount
122 equal to or greater than \$1,000,000.

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

- 125 (a) the application of this section jeopardizes the receipt of federal funds;
- 126 (b) the contract is a sole source contract; or
- 127 (c) the contract is an emergency procurement.

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

130 (5) (a) A contractor subject to the requirements of this section shall demonstrate to the
131 public transit district that the contractor has and will maintain an offer of qualified health
132 coverage for the contractor's employees and the employee's dependents during the duration of
133 the contract by submitting to the public transit district a written statement that:

134 (i) the contractor offers qualified health coverage that complies with Section

135 [26-40-115](#);

136 (ii) is from:

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

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

140 (C) if the contractor provides a health benefit plan described in Subsection (1)(d)(ii),
141 an actuary or underwriter selected by a third party administrator; and

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

143 (b) (i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii)
144 shall provide the actuary or underwriter selected by an administrator, as described in
145 Subsection (5)(a)(ii)(C), sufficient information to determine whether the contractor's
146 contribution to the health benefit plan and the actuarial value of the health benefit plan meet the
147 requirements of qualified health coverage.

148 (ii) A contractor may not make a change to the contractor's contribution to the health
149 benefit plan, unless the contractor provides notice to:

150 (A) the actuary or underwriter selected by an administrator as described in Subsection
151 (5)(a)(ii)(C), for the actuary or underwriter to update the written statement described in

152 Subsection (5)(a) in compliance with this section; and

153 (B) the public transit district.

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

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

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

161 (A) the subcontractor offers qualified health coverage that complies with Section
162 [26-40-115](#);

163 (B) is from an actuary selected by the subcontractor or the subcontractor's insurer, an
164 underwriter who is responsible for developing the employer group's premium rates, or if the
165 subcontractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or
166 underwriter selected by an administrator; and

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

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

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

174 (ii) (A) A subcontractor that fails to obtain and maintain an offer of qualified health
175 coverage described in Subsection (5)(c)(i) during the duration of the subcontract is subject to
176 penalties in accordance with an ordinance adopted by the public transit district under
177 Subsection (6).

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

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

181 (a) in coordination with:

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

- 183 (ii) the Department of Natural Resources in accordance with Section 79-2-404;
- 184 (iii) the ~~[State Building Board]~~ Division of Facilities Construction and Management in
185 accordance with Section 63A-5b-607;
- 186 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403; and
- 187 (v) the Department of Transportation in accordance with Section 72-6-107.5; and
- 188 (b) that establish:
 - 189 (i) the requirements and procedures a contractor and a subcontractor shall follow to
190 demonstrate compliance with this section, including:
 - 191 (A) that a contractor or subcontractor's compliance with this section is subject to an
192 audit by the public transit district or the Office of the Legislative Auditor General;
 - 193 (B) that a contractor that is subject to the requirements of this section shall obtain a
194 written statement described in Subsection (5)(a); and
 - 195 (C) that a subcontractor that is subject to the requirements of this section shall obtain a
196 written statement described in Subsection (5)(c)(ii);
 - 197 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
198 violates the provisions of this section, which may include:
 - 199 (A) a three-month suspension of the contractor or subcontractor from entering into
200 future contracts with the public transit district upon the first violation;
 - 201 (B) a six-month suspension of the contractor or subcontractor from entering into future
202 contracts with the public transit district upon the second violation;
 - 203 (C) an action for debarment of the contractor or subcontractor in accordance with
204 Section 63G-6a-904 upon the third or subsequent violation; and
 - 205 (D) monetary penalties which may not exceed 50% of the amount necessary to
206 purchase qualified health coverage for employees and dependents of employees of the
207 contractor or subcontractor who were not offered qualified health coverage during the duration
208 of the contract; and
 - 209 (iii) a website on which the district shall post the commercially equivalent benchmark,
210 for the qualified health coverage identified in Subsection (1)(e), that is provided by the
211 Department of Health, in accordance with Subsection 26-40-115(2).
- 212 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(b)(ii), a contractor
213 or subcontractor who intentionally violates the provisions of this section is liable to the

214 employee for health care costs that would have been covered by qualified health coverage.

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

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

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

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

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

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

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

229 (i) Section [63G-6a-1602](#); or

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

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

234 (10) An administrator, including an administrator's actuary or underwriter, who
235 provides a written statement under Subsection (5)(a) or (c) regarding the qualified health
236 coverage of a contractor or subcontractor who provides a health benefit plan described in
237 Subsection (1)(d)(ii):

238 (a) subject to Subsection (10)(b), is not liable for an error in the written statement,
239 unless the administrator commits gross negligence in preparing the written statement;

240 (b) is not liable for any error in the written statement if the administrator relied in good
241 faith on information from the contractor or subcontractor; and

242 (c) may require as a condition of providing the written statement that a contractor or
243 subcontractor hold the administrator harmless for an action arising under this section.

244 Section 2. Section **19-1-206** is amended to read:

245 **19-1-206. Contracting powers of department -- Health insurance coverage.**

246 (1) As used in this section:

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

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

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

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

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

256 (d) "Health benefit plan" means:

257 (i) the same as that term is defined in Section [31A-1-301](#); or

258 (ii) an employee welfare benefit plan:

259 (A) established under the Employee Retirement Income Security Act of 1974, 29
260 U.S.C. Sec. 1001 et seq.;

261 (B) for an employer with 100 or more employees; and

262 (C) in which the employer establishes a self-funded or partially self-funded group
263 health plan to provide medical care for the employer's employees and dependents of the
264 employees.

265 (e) "Qualified health coverage" means the same as that term is defined in Section
266 [26-40-115](#).

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

268 (g) "Third party administrator" or "administrator" means the same as that term is
269 defined in Section [31A-1-301](#).

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

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

274 (b) a subcontractor of a contractor of a design or construction contract entered into by,
275 or delegated to, the department, or a division or board of the department, on or after July 1,

276 2009, if the subcontract is in an aggregate amount equal to or greater than \$1,000,000.

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

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

280 (b) the contract or agreement is between:

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

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

283 (B) the federal government;

284 (C) another state;

285 (D) an interstate agency;

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

287 (F) a political subdivision of another state;

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

291 (d) the contract is:

292 (i) a sole source contract; or

293 (ii) an emergency procurement.

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

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

300 (i) the contractor offers qualified health coverage that complies with Section
301 [26-40-115](#);

302 (ii) is from:

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

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

306 (C) if the contractor provides a health benefit plan described in Subsection (1)(d)(ii),

307 an actuary or underwriter selected by a third party administrator; and

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

309 (b) (i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii)
310 shall provide the actuary or underwriter selected by an administrator, as described in
311 Subsection (5)(a)(ii)(C), sufficient information to determine whether the contractor's
312 contribution to the health benefit plan and the actuarial value of the health benefit plan meet the
313 requirements of qualified health coverage.

314 (ii) A contractor may not make a change to the contractor's contribution to the health
315 benefit plan, unless the contractor provides notice to:

316 (A) the actuary or underwriter selected by an administrator, as described in Subsection
317 (5)(a)(ii)(C), for the actuary or underwriter to update the written statement described in
318 Subsection (5)(a) in compliance with this section; and

319 (B) the department.

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

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

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

327 (A) the subcontractor offers qualified health coverage that complies with Section
328 [26-40-115](#);

329 (B) is from an actuary selected by the subcontractor or the subcontractor's insurer, an
330 underwriter who is responsible for developing the employer group's premium rates, or if the
331 subcontractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or
332 underwriter selected by an administrator; and

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

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

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

340 (ii) (A) A subcontractor that fails to obtain and maintain an offer of qualified health
341 coverage described in Subsection (5)(c) during the duration of the subcontract is subject to
342 penalties in accordance with administrative rules adopted by the department under Subsection
343 (6).

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

346 (6) The department shall adopt administrative rules:

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

348 (b) in coordination with:

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

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

351 (iii) the ~~[State Building Board]~~ Division of Facilities Construction and Management in
352 accordance with Section [63A-5b-607](#);

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

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

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

356 (c) that establish:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

400 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
401 or construction.

402 (10) An administrator, including an administrator's actuary or underwriter, who
403 provides a written statement under Subsection (5)(a) or (c) regarding the qualified health
404 coverage of a contractor or subcontractor who provides a health benefit plan described in
405 Subsection (1)(d)(ii):

406 (a) subject to Subsection (10)(b), is not liable for an error in the written statement,
407 unless the administrator commits gross negligence in preparing the written statement;

408 (b) is not liable for any error in the written statement if the administrator relied in good
409 faith on information from the contractor or subcontractor; and

410 (c) may require as a condition of providing the written statement that a contractor or
411 subcontractor hold the administrator harmless for an action arising under this section.

412 Section 3. Section **53B-2a-112 (Superseded 07/01/22)** is amended to read:

413 **53B-2a-112 (Superseded 07/01/22). Technical colleges -- Relationships with other**
414 **public and higher education institutions -- Agreements -- Priorities -- New capital**
415 **facilities.**

416 (1) As used in this section, "higher education institution" means:

417 (a) Utah State University for:

418 (i) Bridgerland Technical College;

419 (ii) Tooele Technical College; and

420 (iii) Uintah Basin Technical College;

421 (b) Weber State University for:

422 (i) Ogden-Weber Technical College; and

423 (ii) Davis Technical College;

424 (c) Utah Valley University for Mountainland Technical College;

425 (d) Southern Utah University for Southwest Technical College; and

426 (e) Dixie State University for Dixie Technical College.

427 (2) A technical college may enter into agreements:

428 (a) with other higher education institutions to cultivate cooperative relationships; or

429 (b) with other public and higher education institutions to enhance career and technical
430 education within the technical college's region.

431 (3) Before a technical college develops new instructional facilities, the technical
432 college shall give priority to:

433 (a) maintaining the technical college's existing instructional facilities for both
434 secondary and adult students;

435 (b) coordinating with the president of the technical college's higher education
436 institution and entering into any necessary agreements to provide career and technical
437 education to secondary and adult students that:

438 (i) maintain and support existing higher education career and technical education
439 programs; and

440 (ii) maximize the use of existing higher education facilities; and

441 (c) developing cooperative agreements with school districts, charter schools, other
442 higher education institutions, businesses, industries, and community and private agencies to
443 maximize the availability of career and technical education instructional facilities for both
444 secondary and adult students.

445 (4) (a) Before submitting a funding request pertaining to new capital facilities and land
446 purchases to the board, a technical college shall:

447 (i) ensure that all available instructional facilities are maximized in accordance with
448 Subsections (3)(a) through (c); and

449 (ii) coordinate the request with the president of the technical college's higher education
450 institution, if applicable.

451 (b) The [~~State Building Board~~] Division of Facilities Construction and Management
452 shall make a finding that the requirements of this section are met before the [~~State Building~~
453 ~~Board~~] Division of Facilities Construction and Management may consider a funding request
454 from the board pertaining to new capital facilities and land purchases for a technical college.

455 (c) A technical college may not construct, approve the construction of, plan for the
456 design or construction of, or consent to the construction of a career and technical education
457 facility without approval of the Legislature.

458 (5) Before acquiring new fiscal and administrative support structures, a technical
459 college shall:

460 (a) review the use of existing public or higher education administrative and accounting
461 systems, financial record systems, and student and financial aid systems for the delivery of

462 career and technical education in the region;

463 (b) determine the feasibility of using existing systems; and

464 (c) with the approval of the technical college board of trustees and the board, use the
465 existing systems.

466 Section 4. Section **53B-2a-112 (Effective 07/01/22)** is amended to read:

467 **53B-2a-112 (Effective 07/01/22). Technical colleges -- Relationships with other**
468 **public and higher education institutions -- Agreements -- Priorities -- New capital**
469 **facilities.**

470 (1) As used in this section, "higher education institution" means:

471 (a) Utah State University for:

472 (i) Bridgerland Technical College;

473 (ii) Tooele Technical College; and

474 (iii) Uintah Basin Technical College;

475 (b) Weber State University for:

476 (i) Ogden-Weber Technical College; and

477 (ii) Davis Technical College;

478 (c) Utah Valley University for Mountainland Technical College;

479 (d) Southern Utah University for Southwest Technical College; and

480 (e) Utah Tech University for Dixie Technical College.

481 (2) A technical college may enter into agreements:

482 (a) with other higher education institutions to cultivate cooperative relationships; or

483 (b) with other public and higher education institutions to enhance career and technical
484 education within the technical college's region.

485 (3) Before a technical college develops new instructional facilities, the technical
486 college shall give priority to:

487 (a) maintaining the technical college's existing instructional facilities for both
488 secondary and adult students;

489 (b) coordinating with the president of the technical college's higher education
490 institution and entering into any necessary agreements to provide career and technical
491 education to secondary and adult students that:

492 (i) maintain and support existing higher education career and technical education

493 programs; and

494 (ii) maximize the use of existing higher education facilities; and

495 (c) developing cooperative agreements with school districts, charter schools, other
496 higher education institutions, businesses, industries, and community and private agencies to
497 maximize the availability of career and technical education instructional facilities for both
498 secondary and adult students.

499 (4) (a) Before submitting a funding request pertaining to new capital facilities and land
500 purchases to the board, a technical college shall:

501 (i) ensure that all available instructional facilities are maximized in accordance with
502 Subsections (3)(a) through (c); and

503 (ii) coordinate the request with the president of the technical college's higher education
504 institution, if applicable.

505 (b) The ~~[State Building Board]~~ Division of Facilities Construction and Management
506 shall make a finding that the requirements of this section are met before the ~~[State Building~~
507 ~~Board]~~ Division of Facilities Construction and Management may consider a funding request
508 from the board pertaining to new capital facilities and land purchases for a technical college.

509 (c) A technical college may not construct, approve the construction of, plan for the
510 design or construction of, or consent to the construction of a career and technical education
511 facility without approval of the Legislature.

512 (5) Before acquiring new fiscal and administrative support structures, a technical
513 college shall:

514 (a) review the use of existing public or higher education administrative and accounting
515 systems, financial record systems, and student and financial aid systems for the delivery of
516 career and technical education in the region;

517 (b) determine the feasibility of using existing systems; and

518 (c) with the approval of the technical college board of trustees and the board, use the
519 existing systems.

520 Section 5. Section **53B-2a-117** is amended to read:

521 **53B-2a-117. Legislative approval -- Capital development projects --**
522 **Prioritization.**

523 (1) As used in this section:

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

526 (b) "Fund" means the Technical Colleges Capital Projects Fund created in Section
527 [53B-2a-118](#).

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

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

533 (4) The board shall:

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

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

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

538 and

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

540 (6); and

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

542 (i) the governor;

543 (ii) the Infrastructure and General Government Appropriations Subcommittee;

544 (iii) the Higher Education Appropriations Subcommittee; and

545 [~~(iv) the State Building Board for the State Building Board's;~~]

546 (iv) the Division of Facilities Construction and Management for a:

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

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

549 (5) A dedicated project:

550 (a) is subject to the [~~State Building Board's~~] recommendation of the Division of
551 Facilities Construction and Management as described in Section [63A-5b-403](#); and

552 (b) is not subject to the [~~State Building Board's~~] prioritization of the Division of
553 Facilities Construction and Management as described in Section [63A-5b-403](#).

554 (6) (a) Subject to Subsection (7), the board shall prioritize funding requests for capital

555 development projects described in this section based on:

- 556 (i) growth and capacity;
- 557 (ii) effectiveness and support of critical programs;
- 558 (iii) cost effectiveness;
- 559 (iv) building deficiencies and life safety concerns; and
- 560 (v) alternative funding sources.

561 (b) The board shall establish:

- 562 (i) how the board will measure each factor described in Subsection (6)(a); and
 - 563 (ii) procedures for prioritizing funding requests for capital development projects
- 564 described in this section.

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

- 567 (i) up to three nondedicated projects if the ongoing appropriation to the fund is less
568 than \$7,000,000;
- 569 (ii) up to two nondedicated projects if the ongoing appropriation to the fund is at least
570 \$7,000,000 but less than \$14,000,000; or
- 571 (iii) one nondedicated project if the ongoing appropriation to the fund is at least
572 \$14,000,000.

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

- 576 (i) the Consumer Price Index for the 2019 calendar year; and
- 577 (ii) the Consumer Price Index for the previous calendar year.

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

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

582 Section 6. Section **53B-7-101** is amended to read:

583 **53B-7-101. Combined requests for appropriations -- Board review of operating**
584 **budgets -- Submission of budgets -- Recommendations -- Hearing request --**
585 **Appropriation formulas -- Allocations -- Dedicated credits -- Financial affairs.**

586 (1) As used in this section:

587 (a) "Higher education institution" or "institution" means an institution of higher
588 education listed in Section 53B-1-102.

589 (b) "Research university" means the University of Utah or Utah State University.

590 (2) (a) Subject to Subsection (3), the board shall recommend a combined appropriation
591 for the operating budgets of higher education institutions for inclusion in a state appropriations
592 act.

593 (b) The board's combined budget recommendation shall include:

594 (i) employee compensation;

595 (ii) mandatory costs, including building operations and maintenance, fuel, and power;

596 (iii) performance funding described in Part 7, Performance Funding;

597 (iv) statewide and institutional priorities, including scholarships, financial aid, and
598 technology infrastructure; and

599 (v) enrollment growth.

600 (c) The board's recommendations shall be available for presentation to the governor
601 and to the Legislature at least 30 days before the convening of the Legislature, and shall include
602 schedules showing the recommended amounts for each institution, including separately funded
603 programs or divisions.

604 (d) The recommended appropriations shall be determined by the board only after the
605 board has reviewed the proposed institutional operating budgets, and has consulted with the
606 various institutions and board staff in order to make appropriate adjustments.

607 (3) In the combined request for appropriation, the board shall differentiate between
608 appropriations requested for academic education and appropriations requested for technical
609 education.

610 (4) (a) Institutional operating budgets shall be submitted to the board at least 90 days
611 before the convening of the Legislature in accordance with procedures established by the board.

612 (b) Except as provided in Sections 53B-2a-117 and 53B-22-204, funding requests
613 pertaining to capital facilities and land purchases shall be submitted in accordance with
614 procedures prescribed by the [~~State Building Board~~] Division of Facilities Construction and
615 Management.

616 (5) (a) The budget recommendations of the board shall be accompanied by full

617 explanations and supporting data.

618 (b) The appropriations recommended by the board shall be made with the dual
619 objective of:

620 (i) justifying for higher education institutions appropriations consistent with their
621 needs, and consistent with the financial ability of the state; and

622 (ii) determining an equitable distribution of funds among the respective institutions in
623 accordance with the aims and objectives of the statewide master plan for higher education.

624 (6) (a) The board shall request a hearing with the governor on the recommended
625 appropriations.

626 (b) After the governor delivers his budget message to the Legislature, the board shall
627 request hearings on the recommended appropriations with the Higher Education
628 Appropriations Subcommittee.

629 (c) If either the total amount of the state appropriations or its allocation among the
630 institutions as proposed by the Legislature or the Higher Education Appropriations
631 Subcommittee is substantially different from the recommendations of the board, the board may
632 request further hearings with the Legislature or the Higher Education Appropriations
633 Subcommittee to reconsider both the total amount and the allocation.

634 (7) The board may devise, establish, periodically review, and revise formulas for the
635 board's use and for the use of the governor and the Higher Education Appropriations
636 Subcommittee in making appropriation recommendations.

637 (8) (a) The board shall recommend to each session of the Legislature the minimum
638 tuitions, resident and nonresident, for each institution which it considers necessary to
639 implement the budget recommendations.

640 (b) The board may fix the tuition, fees, and charges for each institution at levels the
641 board finds necessary to meet budget requirements.

642 (9) Money allocated to each institution by legislative appropriation may be budgeted in
643 accordance with institutional work programs approved by the board, provided that the
644 expenditures funded by appropriations for each institution are kept within the appropriations
645 for the applicable period.

646 (10) The dedicated credits, including revenues derived from tuitions, fees, federal
647 grants, and proceeds from sales received by the institutions are appropriated to the respective

648 institutions to be used in accordance with institutional work programs.

649 (11) An institution may do the institution's own purchasing, issue the institution's own
650 payrolls, and handle the institution's own financial affairs under the general supervision of the
651 board.

652 (12) If the Legislature appropriates money in accordance with this section, the money
653 shall be distributed to the board and higher education institutions to fund the items described in
654 Subsection (2)(b).

655 Section 7. Section **53B-22-204** is amended to read:

656 **53B-22-204. Funding request for capital development project -- Legislative**
657 **approval -- Board prioritization, approval, and review.**

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

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

662 (3) The board shall:

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

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

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

666 (iii) fulfills a critical institutional facility need;

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

668 (i) a list of approved dedicated projects; and

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

670 (5); and

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

672 (i) the governor;

673 (ii) the Infrastructure and General Government Appropriations Subcommittee;

674 (iii) the Higher Education Appropriations Subcommittee; and

675 [~~(iv) the State Building Board for the State Building Board's;~~]

676 (iv) the Division of Facilities Construction and Management for a:

677 (A) recommendation, for the list described in Subsection (3)(b)(i); or

678 (B) recommendation and prioritization, for the list described in Subsection (3)(b)(ii).

679 (4) A dedicated project:

680 (a) is subject to the [~~State Building Board's~~] recommendation of the Division of
681 Facilities Construction and Management as described in Section 63A-5b-403; and

682 (b) is not subject to the [~~State Building Board's~~] prioritization of the Division of
683 Facilities Construction and Management as described in Section 63A-5b-403.

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

686 (i) capital facility need;

687 (ii) utilization of facilities;

688 (iii) maintenance and condition of facilities; and

689 (iv) any other factor determined by the board.

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

692 (i) how the board will measure each factor described in Subsection (5)(a); and

693 (ii) procedures for prioritizing requests.

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

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

698 (ii) up to two nondedicated projects if the ongoing appropriation to the fund is at least
699 \$50,000,000 but less than \$100,000,000; or

700 (iii) one nondedicated project if the ongoing appropriation to the fund is at least
701 \$100,000,000.

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

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

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

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

709 (b) The Legislature shall consider an institution's request described in Subsection

710 (7)(a).

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

714 Section 8. Section **63A-5b-102** is amended to read:

715 **63A-5b-102. Definitions.**

716 As used in this chapter:

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

718 [~~(2)~~] (1) "Capitol hill facilities" means the same as that term is defined in Section
719 [63C-9-102](#).

720 [~~(3)~~] (2) "Capitol hill grounds" means the same as that term is defined in Section
721 [63C-9-102](#).

722 [~~(4)~~] (3) "Compliance agency" means the same as that term is defined in Section
723 [15A-1-202](#).

724 [~~(5)~~] (4) "Director" means the division director, appointed under Section [63A-5b-302](#).

725 [~~(6)~~] (5) "Division" means the Division of Facilities Construction and Management
726 created in Section [63A-5b-301](#).

727 [~~(7)~~] (6) "Institution of higher education" means an institution listed in Subsection
728 [53B-2-101](#)(1).

729 [~~(8)~~] (7) "Trust lands administration" means the School and Institutional Trust Lands
730 Administration established in Section [53C-1-201](#).

731 [~~(9)~~] (8) "Utah Board of Higher Education" means the Utah Board of Higher Education
732 established in Section [53B-1-402](#).

733 Section 9. Section **63A-5b-303** is amended to read:

734 **63A-5b-303. Duties and authority of division.**

735 (1) (a) The division shall:

736 (i) subject to Subsection (1)(b), supervise and control the allocation of space, in
737 accordance with legislative directive through annual appropriations acts, other legislation, or
738 statute, to agencies in all buildings or space owned, leased, or rented by or to the state, except
739 as provided in Subsection (3) or as otherwise provided by statute;

740 (ii) assure the efficient use of all building space under the division's supervision and

- 741 control;
- 742 (iii) acquire title to all real property, buildings, fixtures, and appurtenances for use by
743 the state or an agency, as authorized by the Legislature through an appropriation act, other
744 legislation, or statute, subject to Subsection (1)(c);
- 745 (iv) except as otherwise provided by statute, hold title to all real property, buildings,
746 fixtures, and appurtenances owned by the state or an agency;
- 747 (v) collect and maintain all deeds, abstracts of title, and all other documents evidencing
748 title to or an interest in property belonging to the state or [of] to the state's departments, except
749 institutions of higher education and the trust lands administration;
- 750 (vi) (A) periodically conduct a market analysis of proposed rates and fees; and
751 (B) include in a market analysis a comparison of the division's rates and fees with the
752 rates and fees of other public or private sector providers of comparable services, if rates and
753 fees for comparable services are reasonably available;
- 754 (vii) fulfill the division's responsibilities under Part 10, Energy Conservation and
755 Efficiency, including responsibilities:
- 756 (A) to implement the state building energy efficiency program under Section
757 63A-5b-1002; and
- 758 (B) related to the approval of loans from the State Facility Energy Efficiency Fund
759 under Section 63A-5a-1003;
- 760 (viii) convey, lease, or dispose of the real property, water rights, or water shares
761 associated with the Utah State Developmental Center if directed to do so by the Utah State
762 Developmental Center board, as provided in Subsection 62A-5-206.6(2); and
- 763 (ix) take all other action that the division is required to do under this chapter or other
764 applicable statute.
- 765 (b) In making an allocation of space under Subsection (1)(a)(i), the division shall
766 conduct one or more studies to determine the actual needs of each agency.
- 767 (c) The division may, without legislative approval, acquire title to real property for use
768 by the state or an agency if the acquisition cost does not exceed [~~\$250,000~~] \$500,000.
- 769 (2) The division may:
- 770 (a) sue and be sued;
- 771 (b) as authorized by the Legislature, buy, lease, or otherwise acquire, by exchange or

772 otherwise, and hold real or personal property necessary for the discharge of the division's
773 duties; and

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

775 (3) (a) The division may not supervise or control the allocation of space for [~~an~~
776 ~~institution of higher education or~~] an entity in the public education system.

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

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

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

781 (d) (i) Subject to Subsection (3)(d)(ii), the supervision and control of the allocation of
782 space for an institution of higher education is reserved to the Utah Board of Higher Education.

783 (ii) The Utah Board of Higher Education shall consult and cooperate with the division
784 in the establishment and enforcement of standards for the supervision and control of the
785 allocation of space for an institution of higher education.

786 (e) (i) Subject to Subsection (3)(e)(ii), the supervision and control of the allocation of
787 space for the courts of record listed in Subsection [78A-1-101\(1\)](#) is reserved to the
788 Administrative Office of the Courts referred to in Subsection [78A-2-108\(3\)](#).

789 (ii) The Administrative Office of the Courts shall consult and cooperate with the
790 division in the establishment and enforcement of standards for the supervision and control of
791 the allocation of space for the courts of record listed in Subsection [78A-1-101\(1\)](#).

792 (4) Before the division charges a rate, fee, or other amount for a service provided by
793 the division's internal service fund to an executive branch agency, or to a service subscriber
794 other than an executive branch agency, the division shall:

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

797 (b) obtain the approval of the Legislature as required by Section [63J-1-410](#).

798 Section 10. Section **63A-5b-402** is amended to read:

799 **63A-5b-402. Capital development process -- Approval requirements.**

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

803 (2) An agency that requests an appropriation for a capital development project shall
 804 submit to the division for transmission to the ~~[board]~~ Legislature a capital development project
 805 request and a feasibility study relating to the capital development project.

806 (3) (a) The division shall, ~~[in consultation with the board and]~~ in accordance with Title
 807 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules that establish standards and
 808 requirements for a capital development project request and feasibility study.

809 (b) The rules shall include:

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

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

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

816 (A) the need for the capital development project;

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

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

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

820 (4) The division shall verify the completion and accuracy of a feasibility study that an
 821 agency submits under Subsection (2) prior to ~~[transmitting the feasibility study to the board]~~
 822 submitting capital development project recommendations and priorities under Subsection (1).

823 Section 11. Section ~~63A-5b-403~~ is amended to read:

824 **63A-5b-403. Institutions of higher education -- Capital development projects --**
 825 **Dedicated and nondedicated projects -- Recommendations and prioritization.**

826 (1) As used in this section:

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

828 (i) Section [53B-2a-101](#), for a capital development project under Title 53B, Chapter 2a,
 829 Technical Education; or

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

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

833 (i) Section [53B-2a-101](#), for a capital development project under Title 53B, Chapter 2a,

834 Technical Education; or

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

837 (2) (a) The [board] division shall submit recommendations to the Legislature in
838 accordance with:

839 (i) Section 53B-2a-117, for a dedicated project under Title 53B, Chapter 2a, Technical
840 Education; or

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

843 (b) A dedicated project is not subject to prioritization by the [board] division.

844 (3) (a) The [board] division shall prioritize nondedicated projects in accordance with:

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

846 (ii) (A) Section 53B-2a-117, for a nondedicated project under Title 53B, Chapter 2a,
847 Technical Education; or

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

850 (b) In the [boards] division's scoring process for prioritizing nondedicated projects, the
851 [board] division shall give more weight to a request that is designated as a higher priority by
852 the Utah Board of Higher Education than a request that is designated as a lower priority by the
853 Utah Board of Higher Education only for determining the order of prioritization among
854 requests submitted by the Utah Board of Higher Education.

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

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

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

862 (c) respond to industry demands for trained workers;

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

- 865 (e) respond to changing needs in the economy; and
- 866 (f) respond to demands for online or in-class instruction, based on demographics.
- 867 (5) The division shall:
- 868 (a) (i) assist institutions of higher education in providing the information required by
- 869 Subsection ~~[(3)]~~ (4); and
- 870 (ii) verify the completion and accuracy of the information submitted by an institution
- 871 of higher education under Subsection ~~[(3)]~~ (4);
- 872 (b) assist the Utah Board of Higher Education to fulfill the requirements of Section
- 873 [53B-2a-112](#) in connection with the finding that the ~~[technical college]~~ division is required to
- 874 make under Subsection [53B-2a-112](#)~~[(5)]~~(4)(b); and
- 875 (c) assist the Utah Board of Higher Education in submitting a list of dedicated projects
- 876 to the ~~[board]~~ division for approval and nondedicated projects to the ~~[board]~~ division for
- 877 recommendation and prioritization pursuant to Section [53B-22-204](#).
- 878 Section 12. Section **63A-5b-404** is amended to read:
- 879 **63A-5b-404. Exceptions to requirement of legislative approval for capital**
- 880 **development projects.**
- 881 (1) (a) Except as provided in this section, a capital development project may not be
- 882 constructed on state property without legislative approval.
- 883 (b) The ~~[board]~~ division may authorize a capital development project on state property
- 884 without legislative approval only as provided in this section.
- 885 (2) (a) Legislative approval is not required for a capital development project that
- 886 consists of the design or construction of a new facility if:
- 887 (i) the ~~[board]~~ division determines that the requesting agency has provided adequate
- 888 assurance that state funds will not be used for the design or construction of the facility;
- 889 (ii) the agency provides to the ~~[board]~~ division a written document, signed by the head
- 890 of the agency:
- 891 (A) stating that funding or a revenue stream is in place, or will be in place before the
- 892 project is completed, to ensure that increased state funding will not be required to cover the
- 893 cost of operations and maintenance for the resulting facility or for immediate or future capital
- 894 improvements; and
- 895 (B) detailing the source of the funding that will be used for the cost of operations and

896 maintenance and for immediate and future capital improvements to the resulting facility; and
897 (iii) the ~~[board]~~ division determines that the use of the state property:
898 (A) is appropriate and consistent with the master plan for the property; and
899 (B) will not create an adverse impact on the state.
900 (b) For a facility constructed without legislative approval under Subsection (2)(a), an
901 agency may not request:
902 (i) increased state funds for operations and maintenance; or
903 (ii) increased state capital improvement funding.
904 (3) Legislative approval is not required for:
905 (a) a facility:
906 (i) to be built with funds other than state funds and owned by an entity other than a
907 state entity; and
908 (ii) that is within a research park area at the University of Utah or Utah State
909 University;
910 (b) a facility to be built at This is the Place State Park by the This is the Place
911 Foundation with funds of the This is the Place Foundation or with donated services or materials
912 and that may include grant money from the state;
913 (c) a project that:
914 (i) is funded by the Uintah Basin Revitalization Fund or the Navajo Revitalization
915 Fund; and
916 (ii) does not provide a new facility for an agency or institution of higher education; or
917 (d) a project on school and institutional trust lands that:
918 (i) is funded by the trust lands administration from the Land Grant Management Fund;
919 and
920 (ii) does not fund construction of a new facility for an agency or institution of higher
921 education.
922 (4) (a) Legislative approval is not required for a capital development project to be built
923 for the Department of Transportation resulting from:
924 (i) an exchange of real property under Section [72-5-111](#); or
925 (ii) a sale or exchange of real property from a maintenance facility if the proceeds from
926 the sale of the real property are used for, or the real property is exchanged for:

- 927 (A) real property for another maintenance facility; or
- 928 (B) another maintenance facility, including improvements for a maintenance facility.
- 929 (b) If the Department of Transportation approves a sale or exchange under Subsection
- 930 (4)(a) for a capital development project subject to the board's approval, the Department of
- 931 Transportation shall notify the president of the Senate, the speaker of the House of
- 932 Representatives, and the cochairs of the Infrastructure and General Government Appropriations
- 933 Subcommittee of the Legislature's Joint Appropriations Committee about any new facilities to
- 934 be built or improved.

935 Section 13. Section **63A-5b-503** is amended to read:

936 **63A-5b-503. Planning Fund expenditures authorized -- Ceiling on expenditures --**
937 **Recovery.**

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

941 (2) The director may make expenditures from the Planning Fund in order to provide
942 planning information to [~~the board;~~] the governor[;] and the Legislature, up to a maximum of
943 \$350,000 in outstanding Planning Fund commitments.

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

945 (b) Payments from the Planning Fund shall be a charge on the project for which they
946 were drawn.

947 (c) If the Legislature appropriates money for a building project for which planning
948 costs have previously been paid from the Planning Fund, the director shall credit that amount to
949 the Planning Fund.

950 (4) (a) The director may expend money from the Planning Fund for architectural and
951 engineering services incident to the planning and preparation of applications for funds on
952 construction financed by other than state sources, including federal grants.

953 (b) Upon approval of financing referred to in Subsection (4)(a), the director shall
954 reimburse to the Planning Fund the money spent for architectural and engineering services.

955 Section 14. Section **63A-5b-601** is amended to read:

956 **63A-5b-601. Definitions.**

957 As used in this part:

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

960 (i) on property [~~owned by~~] that the state[;] or any of the state's departments,
961 commissions, institutions, or agencies owns or leases as a tenant; or

962 (ii) by the state[;] or any of the state's departments, commissions, institutions, or
963 agencies on property [~~not owned by~~] that the state does not own or lease as a tenant.

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

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

969 Section 15. Section **63A-5b-603** is amended to read:

970 **63A-5b-603. Contracting powers of director -- Bids -- Retainage.**

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

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

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

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

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

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

987 Section 16. Section **63A-5b-604** is amended to read:

988 **63A-5b-604. Construction, alteration, and repair of state facilities -- Powers of**

989 **director -- Exceptions -- Expenditure of appropriations -- Compliance agency role.**

990 (1) (a) Except as provided in this section and Section 63A-5b-1101, the director shall
991 exercise direct supervision over the design and construction of all new facilities, and all
992 alterations, repairs, and improvements to existing facilities, if the total project construction
993 cost, regardless of the funding source, is greater than \$100,000.

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

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

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

1000 (2) The director may enter into a capital improvement partnering agreement with an
1001 institution of higher education that permits the institution of higher education to exercise direct
1002 supervision for a capital improvement project with oversight from the division.

1003 (3) (a) Subject to Subsection (3)(b), the director may delegate control over design,
1004 construction, and other aspects of any project to entities of state government on a
1005 project-by-project basis.

1006 (b) With respect to a delegation of control under Subsection (3)(a), the director may:

1007 (i) impose terms and conditions on the delegation that the director considers necessary
1008 or advisable to protect the interests of the state; and

1009 (ii) revoke the delegation and assume control of the design, construction, or other
1010 aspect of a delegated project if the director considers the revocation and assumption of control
1011 to be necessary to protect the interests of the state.

1012 (4) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
1013 the [board] director may delegate control over design, construction, and all other aspects of any
1014 project to entities of state government on a categorical basis for projects within a particular
1015 dollar range and a particular project type.

1016 (b) Rules adopted by the [board] director under Subsection (4)(a) may:

1017 (i) impose the terms and conditions on categorical delegation that the [board] director
1018 considers necessary or advisable to protect the interests of the state;

1019 (ii) provide for the revocation of the delegation on a categorical [~~or project specific~~]

1020 basis and for the division to assume control of the design, construction, or other aspect of a
1021 category of delegated projects or a specific delegated project if the [board] director considers
1022 revocation of the delegation and assumption of control to be necessary to protect the interests
1023 of the state;

1024 (iii) require that a categorical delegation be renewed by the [board] director on an
1025 annual basis; and

1026 (iv) require the division's oversight of delegated projects.

1027 (5) (a) A state entity to which project control is delegated under this section shall:

1028 (i) assume fiduciary control over project finances;

1029 (ii) assume all responsibility for project budgets and expenditures; and

1030 (iii) receive all funds appropriated for the project, including any contingency funds
1031 contained in the appropriated project budget.

1032 (b) Notwithstanding a delegation of project control under this section, a state entity to
1033 which control is delegated is required to comply with the division's codes and guidelines for
1034 design and construction.

1035 (c) A state entity to which project control is delegated under this section may not
1036 access, for the delegated project, the division's statewide contingency reserve and project
1037 reserve authorized in Section [63A-5b-609](#).

1038 (d) For a facility that will be owned, operated, maintained, and repaired by an entity
1039 that is not an agency and that is located on [state] property that the state owns or leases as a
1040 tenant, the director may authorize the facility's owner to administer the design and construction
1041 of the project relating to that facility.

1042 (6) (a) A project for the construction of a new facility and a project for alterations,
1043 repairs, and improvements to an existing facility are not subject to Subsection (1) if the project:

1044 (i) occurs on property under the jurisdiction of the State Capitol Preservation Board;

1045 (ii) is within a designated research park at the University of Utah or Utah State
1046 University;

1047 (iii) occurs within the boundaries of This is the Place State Park and is administered by
1048 This is the Place Foundation; or

1049 (iv) is for the creation and installation of art under Title 9, Chapter 6, Part 4, Utah
1050 Percent-for-Art Act.

1051 (b) Notwithstanding Subsection (6)(a)(iii), the This is the Place Foundation may
1052 request the director to administer the design and construction of a project within the boundaries
1053 of This is the Place State Park.

1054 (7) (a) The role of compliance agency under Title 15A, State Construction and Fire
1055 Codes Act, shall be filled by:

1056 (i) the director, for a project administered by the division;

1057 (ii) the entity designated by the State Capitol Preservation Board, for a project under
1058 Subsection (6)(a)(i);

1059 (iii) the local government, for a project that is:

1060 (A) not subject to the division's administration under Subsection (6)(a)(ii); or

1061 (B) administered by This is the Place Foundation under Subsection (6)(a)(iii);

1062 (iv) the compliance agency designated by the director, for a project under Subsection
1063 (2), (3), (4), or (5)(d); and

1064 (v) for the installation of art under Subsection (6)(a)(iv), the entity that is acting as the
1065 compliance officer for the balance of the project for which the art is being installed.

1066 (b) A local government acting as the compliance agency under Subsection (7)(a)(iii)
1067 may:

1068 (i) only review plans and inspect construction to enforce the state construction code or
1069 an approved code under Title 15A, State Construction and Fire Codes Act; and

1070 (ii) charge a building permit fee of no more than the amount the local government
1071 could have charged if the land upon which the improvements are located were not owned by
1072 the state.

1073 (8) (a) The zoning authority of a local government under [~~Section 10-9a-305 or~~
1074 ~~17-27a-305~~] Title 10, Chapter 9a, Municipal Land Use, Development, and Management Act, or
1075 Title 17, Chapter 27a, County Land Use, Development, and Management Act, does not apply
1076 to the use of [state] property that the state owns or leases as a tenant or any improvements
1077 constructed on [state] property that the state owns or leases as a tenant, including
1078 improvements constructed by an entity other than a state entity.

1079 (b) A state entity controlling the use of [state] property that the state owns or leases as a
1080 tenant shall consider any input received from a local government in determining how the
1081 property is to be used.

1082 Section 17. Section **63A-5b-802** is amended to read:
1083 **63A-5b-802. Leasing responsibilities of the director.**
1084 (1) The director shall:
1085 (a) prepare and submit a yearly request to the governor and Legislature for a designated
1086 amount of square footage by type of space to be leased by the division for that fiscal year;
1087 (b) lease, in the name of the division, all real property space to be occupied by a leasing
1088 agency;
1089 (c) in leasing space:
1090 (i) use a process consistent with the best interest of the state, the requirements of the
1091 leasing agency, and the anticipated use of the property; and
1092 (ii) comply with any legislative mandates contained in the appropriations act or other
1093 legislation;
1094 (d) apply the criteria contained in Subsection (1)(f) to prepare a report evaluating each
1095 high-cost lease at least 12 months before the lease expires;
1096 (e) evaluate each lease under the division's control and apply the criteria contained in
1097 Subsection (1)(f), as applicable, to evaluate the lease;
1098 (f) in evaluating leases:
1099 (i) determine whether the lease is cost-effective when the needs of the leasing agency
1100 to be housed in the leased facilities are considered;
1101 (ii) determine whether another option such as construction, use of other state-owned
1102 space, or a lease-purchase agreement is more cost-effective than leasing;
1103 (iii) determine whether the significant lease terms are cost-effective and provide the
1104 state with sufficient flexibility and protection from liability;
1105 (iv) compare the proposed lease payments to the current market rates, and evaluate
1106 whether the proposed lease payments are reasonable under current market conditions;
1107 (v) compare proposed significant lease terms to the current market, and recommend
1108 whether these proposed terms are reasonable under current market conditions; and
1109 (vi) if applicable, recommend that the lease or modification to a lease be approved or
1110 disapproved;
1111 (g) based upon the evaluation, include in the report recommendations that identify
1112 viable alternatives to:

- 1113 (i) make the lease cost-effective; or
- 1114 (ii) meet the leasing agency's needs when the lease expires; and
- 1115 (h) upon request, provide the information included in the report to:
 - 1116 (i) the leasing agency benefitted by the lease; and
 - 1117 (ii) the Office of the Legislative Fiscal Analyst.
- 1118 (2) The director may:
 - 1119 (a) subject to legislative appropriation, enter into a facility lease with a term of up to 10
 - 1120 years if the length of the lease's term is economically advantageous to the state; and
 - 1121 (b) [~~with the approval of the board and~~] subject to legislative appropriation, enter into a
 - 1122 facility lease with a term of more than 10 years if the length of the lease's term is economically
 - 1123 advantageous to the state.

Section 18. Section **63A-5b-803** is amended to read:

63A-5b-803. Reporting of leasing activity.

- 1126 (1) The director shall:
 - 1127 (a) prepare a standard form upon which a leasing agency and another state institution
 - 1128 or entity can report the current and proposed lease activity of the leasing agency, institution, or
 - 1129 entity, including any lease renewal; and
 - 1130 (b) develop procedures and mechanisms within the division to:
 - 1131 (i) obtain and share information about each leasing agency's real property needs; and
 - 1132 (ii) provide oversight and review of lessors and lessees during the term of each lease.
- 1133 (2) Each leasing agency, the [~~Judicial Council~~] Administrative Office of the Courts,
- 1134 and the board of trustees for each institution of higher education, shall report all current and
- 1135 proposed lease activity on the standard form prepared by the division to:
 - 1136 (a) the division; and
 - 1137 (b) the Office of the Legislative Fiscal Analyst.

Section 19. Section **63A-5b-806** is amended to read:

**63A-5b-806. Division rules on the value of property bought or exchanged --
Exception.**

- 1141 (1) The division shall, in accordance with Title 63G, Chapter 3, Utah Administrative
- 1142 Rulemaking Act, make rules to ensure that, if the division buys or exchanges real property, the
- 1143 value of the real property is congruent with the proposed price and other terms of the purchase

1144 or exchange.

1145 (2) The rules:

1146 (a) shall establish procedures for determining the value of the real property;

1147 (b) may provide that an appraisal, as defined in Section 61-2g-102, demonstrates the
1148 real property's value; and

1149 (c) may require that the appraisal be completed by a state-certified general appraiser, as
1150 defined in Section 61-2g-102.

1151 (3) The rules adopted under Subsection (1) do not apply to the purchase or exchange of
1152 real property, or an interest in real property, with a value of less than [~~\$250,000~~] \$500,000, as
1153 estimated by the division.

1154 Section 20. Section 63A-5b-901 is amended to read:

1155 **63A-5b-901. Definitions.**

1156 As used in this part:

1157 (1) "Applicant" means a person who submits a timely, qualified proposal to the
1158 division.

1159 (2) "Condemnee" means the same as that term is defined in Section 78B-6-520.3.

1160 [~~(3) "Convey" means:~~]

1161 [~~(a) to provide for a primary state agency's occupancy or use of vacant division-owned
1162 property; or]~~

1163 [~~(b) to effect a transfer of ownership or lease of vacant division-owned property to a
1164 secondary state agency, local government entity, public purpose nonprofit entity, or private
1165 party.]~~

1166 [~~(4)~~] (3) "Division-owned property" means real property, including an interest in real
1167 property, to which the division holds title, regardless of who occupies or uses the real property.

1168 [~~(5)~~] (4) "Local government entity" means a county, city, town, metro township, local
1169 district, special service district, community development and renewal agency, conservation
1170 district, school district, or other political subdivision of the state.

1171 [~~(6)~~] (5) "Primary state agency" means a state agency for which the division holds title
1172 to real property that the state agency occupies or uses, as provided in Subsection
1173 63A-5b-303(1)(a)(iv).

1174 [~~(7)~~] (6) "Private party" means a person who is not a state agency, local government

1175 entity, or public purpose nonprofit entity.

1176 ~~[(8)]~~ (7) "Public purpose nonprofit entity" means a corporation, association,
1177 organization, or entity that:

1178 (a) is located within the state;

1179 (b) is not a state agency or local government entity;

1180 (c) is exempt from federal income taxation under Section 501(c)(3), Internal Revenue
1181 Code; and

1182 (d) operates to fulfill a public purpose.

1183 ~~[(9)]~~ (8) "Qualified proposal" means a written proposal that:

1184 (a) meets the criteria established by the division by rule under Section [63A-5b-903](#);

1185 (b) if submitted by a local government entity or public purpose nonprofit entity,
1186 explains the public purpose for which the local government entity or public purpose nonprofit
1187 entity seeks a transfer of ownership or lease of the vacant division-owned property; and

1188 (c) the director determines will, if accepted and implemented, provide a material
1189 benefit to the state.

1190 ~~[(10)]~~ (9) "Secondary state agency" means a state agency:

1191 (a) that is authorized to hold title to real property that the state agency occupies or uses,
1192 as provided in ~~[Subsection [63A-5b-303](#)(4)]~~ Section [63A-5b-304](#); and

1193 (b) for which the division does not hold title to real property that the state agency
1194 occupies or uses.

1195 ~~[(11)]~~ (10) "State agency" means a department, division, office, entity, agency, or other
1196 unit of state government.

1197 ~~[(12)]~~ (11) "Transfer of ownership" includes a transfer of the ownership of vacant
1198 division-owned property that occurs as part of an exchange of the vacant division-owned
1199 property for another property.

1200 ~~[(13)]~~ (12) "Vacant division-owned property" means division-owned property that:

1201 (a) a primary state agency ~~[has discontinued to occupy or use]~~ is not occupying or
1202 using; and

1203 (b) the director has determined should be made available for:

1204 (i) use or occupancy by a primary state agency; or

1205 (ii) a transfer of ownership or lease to a secondary state agency, local government

1206 entity, public purpose nonprofit entity, or private party.

1207 ~~[(14)]~~ (13) "Written proposal" means a brief statement in writing that explains:

1208 (a) the proposed use or occupancy, transfer of ownership, or lease of vacant
1209 division-owned property; and

1210 (b) how the state will benefit from the proposed use or occupancy, transfer of
1211 ownership, or lease.

1212 Section 21. Section **63A-5b-902** is amended to read:

1213 **63A-5b-902. Application of part.**

1214 (1) The provisions of this part, other than this section, do not apply to:

1215 (a) a conveyance, lease, or disposal under Subsection **63A-5b-303(1)(a)**~~[(ix)]~~(viii); ~~[or]~~

1216 (b) the division's disposal or lease of division-owned property with a value under
1217 ~~[\$250,000]~~ \$500,000, as estimated by the division~~[-]; or~~

1218 (c) a conveyance, lease, or disposal of division-owned property in connection with:

1219 (i) the establishment of a state store, as defined in Section **32B-1-102**; or

1220 (ii) the construction of student housing.

1221 (2) Nothing in Subsection (1)(b) or (c) may be construed to diminish or eliminate the
1222 division's responsibility to manage division-owned property in the best interests of the state.

1223 Section 22. Section **63A-5b-904** is amended to read:

1224 **63A-5b-904. Division authority with respect to vacant division-owned property --**
1225 **Limitations.**

1226 (1) Subject to Section **63A-5b-909**, the division may~~[, as provided in this part]~~:

1227 (a) provide for a primary state agency's occupancy or use of vacant division-owned
1228 property, if the director determines that the primary state agency's occupancy or use is in the
1229 best interests of the state;

1230 (b) effect a transfer of ownership or lease of vacant division-owned property ~~[to a~~
1231 ~~secondary state agency, local government entity, public purpose nonprofit entity, or private~~
1232 ~~party]~~, as provided in this section; or

1233 (c) refer vacant division-owned property to the Department of Transportation for sale
1234 by auction, as provided in Section **63A-5b-908**.

1235 (2) (a) The division may effect a transfer of ownership or lease of vacant
1236 division-owned property to an applicant for fair market value if the director determines that the

1237 transfer of ownership or lease to that applicant is in the state's best interest.

1238 (b) In determining the state's best interest under Subsection (2)(a), the director may
1239 consider:

1240 (i) the price and financial terms of all qualified proposals; and

1241 (ii) the relative benefits to the state of the proposed uses of the vacant division-owned
1242 property as stated in the qualified proposals.

1243 [~~2~~] (3) The division may [~~not~~] effect a transfer of ownership or lease of vacant
1244 division-owned property without receiving fair market value in return [~~unless~~] if:

1245 (a) the director determines that the transfer of ownership or lease is in the best interests
1246 of the state;

1247 (b) for a proposed transfer of ownership or lease to a local government entity, public
1248 purpose nonprofit entity, or private party, the director determines that the local government
1249 entity, public purpose nonprofit entity, or private party intends to use the property to fulfill a
1250 public purpose;

1251 (c) the director requests and receives a recommendation on the proposed transfer of
1252 ownership or lease from the Legislative Executive Appropriations Committee;

1253 (d) the director communicates the Executive Appropriations Committee's
1254 recommendation to the executive director; and

1255 (e) the executive director approves the transfer of ownership or lease.

1256 [~~3~~] (4) (a) If the division effects a transfer of ownership of vacant division-owned
1257 property without receiving fair market value in return, [~~as provided in this part,~~] the division
1258 shall require the documents memorializing the transfer of ownership to preserve to the
1259 division:

1260 (i) in the case of a transfer of ownership of vacant division-owned property to a
1261 secondary state agency, local government entity, or public purpose nonprofit entity for no or
1262 nominal consideration, a right of reversion, providing for the ownership of the property to
1263 revert to the division if the property ceases to be used for the public benefit; or

1264 (ii) in the case of any other transfer of ownership of vacant division-owned property, a
1265 right of first refusal allowing the division to purchase the property from the transferee for the
1266 same price that the transferee paid to the division if the transferee wishes to transfer ownership
1267 of the former vacant division-owned property.

1268 (b) Subsection [(3)] (4)(a) does not apply to the sale of vacant division-owned property
1269 at an auction under Section 63A-5b-908.

1270 Section 23. Section 63A-5b-905 is amended to read:

1271 **63A-5b-905. Notice required before division may effect a transfer of ownership**
1272 **or lease of division-owned property.**

1273 (1) Before the division may [~~convey~~] effect a transfer of ownership or lease of vacant
1274 division-owned property, the division shall give notice as provided in Subsection (2).

1275 (2) A notice required under Subsection (1) shall:

1276 (a) identify and describe the vacant division-owned property;

1277 (b) indicate the availability of the vacant division-owned property;

1278 (c) invite persons interested in the vacant division-owned property to submit a written
1279 proposal to the division;

1280 (d) indicate the deadline for submitting a written proposal;

1281 (e) be posted on the division's website for at least 60 consecutive days before the
1282 deadline for submitting a written proposal, in a location specifically designated for notices
1283 dealing with vacant division-owned property;

1284 (f) be posted on the Utah Public Notice Website created in Section 63A-16-601 for at
1285 least 60 consecutive days before the deadline for submitting a written proposal; and

1286 (g) be sent by email to each person who has previously submitted to the division a
1287 written request to receive notices under this section.

1288 Section 24. Section 63A-5b-907 is amended to read:

1289 **63A-5b-907. Priorities for vacant division-owned property -- Division to convey**
1290 **vacant division-owned property.**

1291 (1) This section applies to a proposed transfer of ownership or lease of vacant
1292 division-owned property at less than fair market value.

1293 [(1)] (2) (a) [~~A~~] An applicant that is a state agency has priority for vacant
1294 division-owned property over an applicant that is a local government entity, a public purpose
1295 nonprofit entity, and a private party.

1296 (b) [~~A~~] An applicant that is a local government entity and an applicant that is a public
1297 purpose nonprofit entity have:

1298 (i) priority for vacant division-owned property over an applicant that is a private party;

1299 and

1300 (ii) between them the same priority for vacant division-owned property.

1301 ~~[(2)]~~ (3) If the division receives multiple timely qualified proposals from applicants
1302 with the highest and same priority, the division shall:

1303 (a) notify the ~~[board]~~ executive director of:

1304 (i) the availability of the vacant division-owned property; and

1305 (ii) the applicants with the highest and same priority that have submitted qualified
1306 proposals; and

1307 (b) provide the ~~[board]~~ executive director with a copy of the timely qualified proposals
1308 submitted by the applicants with the highest and same priority.

1309 ~~[(3)]~~ (4) Within 30 days after being notified under Subsection ~~[(2)]~~ (3), the ~~[board]~~
1310 executive director shall:

1311 (a) determine which applicant's qualified proposal is most likely to result in the highest
1312 and best public benefit; and

1313 (b) notify the division of the ~~[board's]~~ executive director's decision under Subsection
1314 ~~[(3)]~~ (4)(a).

1315 ~~[(4)]~~ (5) The division shall ~~[convey]~~ effect a transfer or ownership or lease of the
1316 vacant division-owned property to:

1317 (a) the applicant with the highest priority under Subsection ~~[(1)]~~ (2), if the division
1318 receives a timely qualified proposal from a single applicant with the highest priority; or

1319 (b) the applicant whose qualified proposal was determined by the ~~[board]~~ executive
1320 director under Subsection ~~[(3)]~~ (4) to be most likely to result in the highest and best public
1321 benefit, if the division receives multiple timely qualified proposals from applicants with the
1322 highest and same priority.

1323 ~~[(5) (a) If the division leases vacant division-owned property to a private party, the~~
1324 ~~division shall, within 30 days after a lease agreement is executed, provide written notice of the~~
1325 ~~lease to:]~~

1326 ~~[(i) the municipality in which the vacant division-owned property is located, if the~~
1327 ~~vacant division-owned property is within a municipality; or]~~

1328 ~~[(ii) the county in whose unincorporated area the vacant division-owned property is~~
1329 ~~located, if the vacant division-owned property is not located within a municipality.]~~

1330 ~~[(b) Nothing in this chapter may be used by a private party leasing division-owned~~
1331 ~~property as a basis for not complying with applicable local land use ordinances and~~
1332 ~~regulations.]~~

1333 Section 25. Section **63A-5b-907.5** is enacted to read:

1334 **63A-5b-907.5. Lease of division-owned property to a private party.**

1335 (1) If the division leases division-owned property to a private party, the division shall,
1336 within 30 days after a lease agreement is executed, provide written notice of the lease to:

1337 (a) the municipality in which the division-owned property is located, if the

1338 division-owned property is within a municipality; or

1339 (b) the county in whose unincorporated area the division-owned property is located, if
1340 the division-owned property is not located within a municipality.

1341 (2) Nothing in this part may be used by a private party leasing division-owned property
1342 as a basis for not complying with applicable local land use ordinances and regulations.

1343 Section 26. Section **63A-5b-910** is amended to read:

1344 **63A-5b-910. Disposition of proceeds received by division from sale of vacant**
1345 **division-owned property.**

1346 (1) (a) Except as provided in Section [62A-5-206.7](#), the division shall pay into the state
1347 treasury the money received from the transfer of ownership or lease of vacant division-owned
1348 property.

1349 (b) Money paid into the state treasury under Subsection (1)(a):

1350 (i) becomes a part of the funds provided by law for carrying out the building program
1351 of the state; and

1352 (ii) is appropriated for the purpose described in Subsection (1)(b)(i).

1353 (2) The proceeds from the transfer of ownership or lease of vacant division-owned
1354 property belonging to or used by a particular state agency shall, to the extent practicable, be
1355 expended for the construction of buildings or in the performance of other work for the benefit
1356 of that state agency.

1357 Section 27. Section **63A-5b-1001** is amended to read:

1358 **63A-5b-1001. Definitions.**

1359 As used in this part:

1360 (1) "Energy efficiency measure" means an action taken or initiated by an agency that:

1361 (a) reduces the agency's energy or fuel use or resource energy consumption, water or
1362 other resource consumption, operation and maintenance costs, or cost of energy, fuel, water, or
1363 other resource; or

1364 (b) increases the agency's energy or fuel efficiency or resource consumption efficiency.

1365 (2) "Energy efficiency program" means a program established under Section
1366 63A-5b-1002 for the purpose of improving energy efficiency measures and reducing the energy
1367 costs for state facilities.

1368 (3) "Fund" means the State Facility Energy Efficiency Fund created in Section
1369 63A-5b-1003.

1370 (4) "Performance efficiency agreement" means an agreement entered into by an agency
1371 whereby the agency implements one or more energy efficiency measures and finances the costs
1372 associated with implementation of performance efficiency measures using the stream of
1373 expected savings in costs resulting from implementation of the performance efficiency
1374 measures as a funding source for repayment.

1375 (5) (a) "State facility" means any building, structure, or other improvement that is
1376 constructed on property [~~owned by~~] that the state, any of the state's departments, commissions,
1377 institutions, or agencies, or a state institution of higher education owns or leases as a tenant.

1378 (b) "State facility" does not include:

1379 (i) an unoccupied structure that is a component of the state highway system;

1380 (ii) a privately owned structure that is located on property [~~owned by~~] that the state,
1381 any of the state's departments, commissions, institutions, or agencies, or a state institution of
1382 higher education owns or leases as a tenant; or

1383 (iii) a structure that is located on land administered by the trust lands administration
1384 under a lease, permit, or contract with the trust lands administration.

1385 Section 28. Section **63A-5b-1003** is amended to read:

1386 **63A-5b-1003. State Facility Energy Efficiency Fund -- Contents -- Use of fund**
1387 **money.**

1388 (1) There is created a revolving loan fund known as the "State Facility Energy
1389 Efficiency Fund."

1390 (2) The fund shall consist of:

1391 (a) money transferred from the Stripper Well-Petroleum Violation Escrow Fund;

1392 (b) money appropriated by the Legislature;

1393 (c) money received for the repayment of loans made from the fund; and

1394 (d) interest earned on the fund.

1395 (3) The [board] division shall make a loan from the fund to an agency to finance all or
1396 part of energy efficiency measures.

1397 (4) (a) (i) An agency requesting a loan shall submit an application to the [board]
1398 division in the form and containing the information that the [board] division requires, including
1399 plans and specifications for the proposed energy efficiency measures.

1400 (ii) An agency may request a loan to fund all or part of the cost of energy efficiency
1401 measures.

1402 (b) If the [board] division rejects the application, the [board] division shall notify the
1403 applicant stating the reasons for the rejection.

1404 (5) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
1405 the [board] division shall make rules establishing:

1406 (i) criteria to determine:

1407 (A) loan eligibility;

1408 (B) energy efficiency measures priority; and

1409 (C) ways to measure energy savings that take into account fluctuations in energy costs
1410 and temperature; and

1411 (ii) a method of monitoring actual savings resulting from energy efficiency measures
1412 implemented using loan money from the fund, using objective and verifiable post-construction
1413 measures, if available.

1414 (b) In making rules that establish prioritization criteria for energy efficiency measures,
1415 the [board] division may consider:

1416 (i) possible additional sources of revenue;

1417 (ii) the feasibility and practicality of the energy efficiency measures;

1418 (iii) the energy savings attributable to eligible energy efficiency measures;

1419 (iv) the annual energy savings;

1420 (v) the projected energy cost payback of eligible energy efficiency measures;

1421 (vi) other benefits to the state attributable to eligible energy efficiency measures;

1422 (vii) the availability of federal funds for the energy efficiency measures; and

1423 (viii) whether to require an agency to provide matching funds for the energy efficiency
1424 measures.

1425 (6) (a) In reviewing energy efficiency measures for possible funding, the [board]
1426 division shall:

1427 (i) review the loan application and the plans and specifications for the energy
1428 efficiency measures;

1429 (ii) determine whether to grant the loan by applying the loan eligibility criteria; and

1430 (iii) if the loan is granted, prioritize funding of the energy efficiency measures by
1431 applying the prioritization criteria.

1432 (b) The [board] division may condition approval of a loan application and the
1433 availability of funds on assurances from the agency that the [board] division considers
1434 necessary to ensure that the agency:

1435 (i) uses the proceeds to pay the cost of the energy efficiency measures; and

1436 (ii) implements the energy efficiency measures.

1437 (7) The division shall annually report to the Government Operations Interim
1438 Committee of the Legislature the actual savings resulting from energy efficiency measures
1439 implemented using loan money from the fund, as monitored pursuant to rules adopted under
1440 Subsection (5)(a)(ii).

1441 ~~[(8) The manager of the energy efficiency program shall provide staff support when the
1442 board performs the duties established in this section.]~~

1443 Section 29. Section **63A-5b-1104** is amended to read:

1444 **63A-5b-1104. Notification to local governments for construction or modification**
1445 **of certain facilities.**

1446 (1) (a) The director or the director's designee shall notify in writing the elected
1447 representatives of a local government entity directly and substantively affected by any
1448 diagnostic, treatment, parole, probation, or other secured facility project exceeding [~~\$250,000~~]
1449 \$500,000, if:

1450 (i) the nature of the project has been significantly altered since an earlier notification;

1451 (ii) the project would significantly change the nature of the functions presently
1452 conducted at the location; or

1453 (iii) the project is new construction.

1454 (b) At the request of the state entity or the local government entity, representatives
1455 from the state entity and the affected local entity shall conduct or participate in a local public
1456 hearing or hearings to discuss the issues described in Subsection (1)(a).

1457 (2) (a) (i) Before beginning the construction of student housing on property owned by
1458 the state or an institution of higher education, the director shall provide written notice of the
1459 proposed construction, as provided in Subsection (2)(a)(ii), if any of the proposed student
1460 housing buildings is within 300 feet of privately owned residential property.

1461 (ii) Each notice under Subsection (2)(a)(i) shall be provided to the legislative body and,
1462 if applicable, the mayor of:

1463 (A) the county in whose unincorporated area the privately owned residential property is
1464 located; or

1465 (B) the municipality in whose boundary the privately owned residential property is
1466 located.

1467 (b) (i) Within 21 days after receiving the notice required by Subsection (2)(a)(i), a
1468 county or municipality entitled to the notice may submit a written request to the director for a
1469 public hearing on the proposed student housing construction.

1470 (ii) If a county or municipality requests a hearing under Subsection (2)(b)(i), the
1471 director and the county or municipality shall jointly hold a public hearing to provide
1472 information to the public and to allow the director and the county or municipality to receive
1473 input from the public about the proposed student housing construction.

1474 Section 30. Section **63B-1-101** is amended to read:

1475 **63B-1-101. Definitions.**

1476 As used in this title:

1477 [~~(1) "Board" means the State Building Board.~~]

1478 [~~(2)~~] (1) "Bond anticipation note" means:

1479 (a) any financing note issued according to the procedures and requirements of this title
1480 in anticipation of the receipt of the proceeds of the sale of the bonds authorized under this title;
1481 and

1482 (b) any renewal of those notes.

1483 [~~(3)~~] (2) "Bonds" means any bonds, bond anticipation notes, or other obligations
1484 authorized under this title for which the full faith, credit, and resources and ad valorem taxing

1485 power of the state have been pledged for the payment of the principal of and interest on the
1486 bonds.

1487 [(4)] (3) "Capital project" means any land, building, facility, highway, improvement,
1488 equipment, or other property, or combination of them, that the state of Utah or any of its
1489 agencies, divisions, institutions, or other administrative subunits are authorized by law to
1490 acquire or construct.

1491 [(5)] (4) "Commission" means the State Bonding Commission created in Section
1492 63B-1-201.

1493 [(6)] (5) "Division" means the Division of Facilities Construction and Management.

1494 [(7)] (6) "Sinking fund" means the fund or account established as provided in this title
1495 to hold money to pay the principal and interest on each series of bonds as they become due.

1496 Section 31. Section 63B-1-304 is amended to read:

1497 **63B-1-304. State Building Ownership Authority created -- Members --**
1498 **Compensation -- Location in Department of Administrative Services.**

1499 (1) There is created a body politic and corporate to be known as the State Building
1500 Ownership Authority composed of:

1501 (a) the governor;

1502 (b) the state treasurer; and

1503 (c) the ~~[chair of the state building board created under Section 63A-5b-201]~~ executive
1504 director of the Department of Government Operations.

1505 (2) A member may not receive compensation or benefits for the member's service, but
1506 may receive per diem and travel expenses in accordance with:

1507 (a) Section 63A-3-106;

1508 (b) Section 63A-3-107; and

1509 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
1510 63A-3-107.

1511 (3) (a) Upon request, the division shall provide staff support to the State Building
1512 Ownership Authority.

1513 (b) The State Building Ownership Authority may seek and obtain independent financial
1514 advice, support, and information from the state financial advisor created under Section
1515 67-4-16.

- 1516 Section 32. Section **63C-9-403** is amended to read:
- 1517 **63C-9-403. Contracting power of executive director -- Health insurance coverage.**
- 1518 (1) As used in this section:
- 1519 (a) "Aggregate" means the sum of all contracts, change orders, and modifications
1520 related to a single project.
- 1521 (b) "Change order" means the same as that term is defined in Section [63G-6a-103](#).
- 1522 (c) "Employee" means, as defined in Section [34A-2-104](#), an "employee," "worker," or
1523 "operative" who:
- 1524 (i) works at least 30 hours per calendar week; and
- 1525 (ii) meets employer eligibility waiting requirements for health care insurance, which
1526 may not exceed the first of the calendar month following 60 days after the day on which the
1527 individual is hired.
- 1528 (d) "Health benefit plan" means:
- 1529 (i) the same as that term is defined in Section [31A-1-301](#); or
- 1530 (ii) an employee welfare benefit plan:
- 1531 (A) established under the Employee Retirement Income Security Act of 1974, 29
1532 U.S.C. Sec. 1001 et seq.;
- 1533 (B) for an employer with 100 or more employees; and
- 1534 (C) in which the employer establishes a self-funded or partially self-funded group
1535 health plan to provide medical care for the employer's employees and dependents of the
1536 employees.
- 1537 (e) "Qualified health coverage" means the same as that term is defined in Section
1538 [26-40-115](#).
- 1539 (f) "Subcontractor" means the same as that term is defined in Section [63A-5b-605](#).
- 1540 (g) "Third party administrator" or "administrator" means the same as that term is
1541 defined in Section [31A-1-301](#).
- 1542 (2) Except as provided in Subsection (3), the requirements of this section apply to:
- 1543 (a) a contractor of a design or construction contract entered into by the board, or on
1544 behalf of the board, on or after July 1, 2009, if the prime contract is in an aggregate amount
1545 equal to or greater than \$2,000,000; and
- 1546 (b) a subcontractor of a contractor of a design or construction contract entered into by

1547 the board, or on behalf of the board, on or after July 1, 2009, if the subcontract is in an
1548 aggregate amount equal to or greater than \$1,000,000.

1549 (3) The requirements of this section do not apply to a contractor or subcontractor
1550 described in Subsection (2) if:

1551 (a) the application of this section jeopardizes the receipt of federal funds;

1552 (b) the contract is a sole source contract; or

1553 (c) the contract is an emergency procurement.

1554 (4) A person that intentionally uses change orders, contract modifications, or multiple
1555 contracts to circumvent the requirements of this section is guilty of an infraction.

1556 (5) (a) A contractor subject to the requirements of this section shall demonstrate to the
1557 executive director that the contractor has and will maintain an offer of qualified health
1558 coverage for the contractor's employees and the employees' dependents during the duration of
1559 the contract by submitting to the executive director a written statement that:

1560 (i) the contractor offers qualified health coverage that complies with Section

1561 [26-40-115](#);

1562 (ii) is from:

1563 (A) an actuary selected by the contractor or the contractor's insurer;

1564 (B) an underwriter who is responsible for developing the employer group's premium
1565 rates; or

1566 (C) if the contractor provides a health benefit plan described in Subsection (1)(d)(ii),
1567 an actuary or underwriter selected by a third party administrator; and

1568 (iii) was created within one year before the day on which the statement is submitted.

1569 (b) (i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii)
1570 shall provide the actuary or underwriter selected by the administrator, as described in
1571 Subsection (5)(a)(ii)(C), sufficient information to determine whether the contractor's
1572 contribution to the health benefit plan and the health benefit plan's actuarial value meets the
1573 requirements of qualified health coverage.

1574 (ii) A contractor may not make a change to the contractor's contribution to the health
1575 benefit plan, unless the contractor provides notice to:

1576 (A) the actuary or underwriter selected by the administrator, as described in Subsection
1577 (5)(a)(ii)(C), for the actuary or underwriter to update the written statement described in

1578 Subsection (5)(a) in compliance with this section; and

1579 (B) the executive director.

1580 (c) A contractor that is subject to the requirements of this section shall:

1581 (i) place a requirement in each of the contractor's subcontracts that a subcontractor that
1582 is subject to the requirements of this section shall obtain and maintain an offer of qualified
1583 health coverage for the subcontractor's employees and the employees' dependents during the
1584 duration of the subcontract; and

1585 (ii) obtain from a subcontractor that is subject to the requirements of this section a
1586 written statement that:

1587 (A) the subcontractor offers qualified health coverage that complies with Section
1588 [26-40-115](#);

1589 (B) is from an actuary selected by the subcontractor or the subcontractor's insurer, an
1590 underwriter who is responsible for developing the employer group's premium rates, or if the
1591 subcontractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or
1592 underwriter selected by an administrator; and

1593 (C) was created within one year before the day on which the contractor obtains the
1594 statement.

1595 (d) (i) (A) A contractor that fails to maintain an offer of qualified health coverage as
1596 described in Subsection (5)(a) during the duration of the contract is subject to penalties in
1597 accordance with administrative rules adopted by the division under Subsection (6).

1598 (B) A contractor is not subject to penalties for the failure of a subcontractor to obtain
1599 and maintain an offer of qualified health coverage described in Subsection (5)(c)(i).

1600 (ii) (A) A subcontractor that fails to obtain and maintain an offer of qualified health
1601 coverage described in Subsection (5)(c)(i) during the duration of the subcontract is subject to
1602 penalties in accordance with administrative rules adopted by the department under Subsection
1603 (6).

1604 (B) A subcontractor is not subject to penalties for the failure of a contractor to maintain
1605 an offer of qualified health coverage described in Subsection (5)(a).

1606 (6) The department shall adopt administrative rules:

1607 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

1608 (b) in coordination with:

- 1609 (i) the Department of Environmental Quality in accordance with Section 19-1-206;
- 1610 (ii) the Department of Natural Resources in accordance with Section 79-2-404;
- 1611 (iii) the ~~[State Building Board]~~ Division of Facilities Construction and Management in
1612 accordance with Section 63A-5b-607;
- 1613 (iv) a public transit district in accordance with Section 17B-2a-818.5;
- 1614 (v) the Department of Transportation in accordance with Section 72-6-107.5; and
- 1615 (vi) the Legislature's Administrative Rules Review Committee; and
- 1616 (c) that establish:
 - 1617 (i) the requirements and procedures a contractor and a subcontractor shall follow to
1618 demonstrate compliance with this section, including:
 - 1619 (A) that a contractor or subcontractor's compliance with this section is subject to an
1620 audit by the department or the Office of the Legislative Auditor General;
 - 1621 (B) that a contractor that is subject to the requirements of this section shall obtain a
1622 written statement described in Subsection (5)(a); and
 - 1623 (C) that a subcontractor that is subject to the requirements of this section shall obtain a
1624 written statement described in Subsection (5)(c)(ii);
 - 1625 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
1626 violates the provisions of this section, which may include:
 - 1627 (A) a three-month suspension of the contractor or subcontractor from entering into
1628 future contracts with the state upon the first violation;
 - 1629 (B) a six-month suspension of the contractor or subcontractor from entering into future
1630 contracts with the state upon the second violation;
 - 1631 (C) an action for debarment of the contractor or subcontractor in accordance with
1632 Section 63G-6a-904 upon the third or subsequent violation; and
 - 1633 (D) monetary penalties which may not exceed 50% of the amount necessary to
1634 purchase qualified health coverage for employees and dependents of employees of the
1635 contractor or subcontractor who were not offered qualified health coverage during the duration
1636 of the contract; and
 - 1637 (iii) a website on which the department shall post the commercially equivalent
1638 benchmark, for the qualified health coverage identified in Subsection (1)(e), that is provided by
1639 the Department of Health, in accordance with Subsection 26-40-115(2).

1640 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c)(ii), a contractor
1641 or subcontractor who intentionally violates the provisions of this section is liable to the
1642 employee for health care costs that would have been covered by qualified health coverage.

1643 (ii) An employer has an affirmative defense to a cause of action under Subsection
1644 (7)(a)(i) if:

1645 (A) the employer relied in good faith on a written statement described in Subsection
1646 (5)(a) or (5)(c)(ii); or

1647 (B) the department determines that compliance with this section is not required under
1648 the provisions of Subsection (3).

1649 (b) An employee has a private right of action only against the employee's employer to
1650 enforce the provisions of this Subsection (7).

1651 (8) Any penalties imposed and collected under this section shall be deposited into the
1652 Medicaid Restricted Account created in Section [26-18-402](#).

1653 (9) The failure of a contractor or subcontractor to provide qualified health coverage as
1654 required by this section:

1655 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
1656 or contractor under:

1657 (i) Section [63G-6a-1602](#); or

1658 (ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

1659 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
1660 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
1661 or construction.

1662 (10) An administrator, including the administrator's actuary or underwriter, who
1663 provides a written statement under Subsection (5)(a) or (c) regarding the qualified health
1664 coverage of a contractor or subcontractor who provides a health benefit plan described in
1665 Subsection (1)(d)(ii):

1666 (a) subject to Subsection (10)(b), is not liable for an error in the written statement,
1667 unless the administrator commits gross negligence in preparing the written statement;

1668 (b) is not liable for any error in the written statement if the administrator relied in good
1669 faith on information from the contractor or subcontractor; and

1670 (c) may require as a condition of providing the written statement that a contractor or

1671 subcontractor hold the administrator harmless for an action arising under this section.

1672 Section 33. Section **63G-6a-103** is amended to read:

1673 **63G-6a-103. Definitions.**

1674 As used in this chapter:

1675 (1) "Approved vendor" means a person who has been approved for inclusion on an
1676 approved vendor list through the approved vendor list process.

1677 (2) "Approved vendor list" means a list of approved vendors established under Section
1678 [63G-6a-507](#).

1679 (3) "Approved vendor list process" means the procurement process described in
1680 Section [63G-6a-507](#).

1681 (4) "Bidder" means a person who submits a bid or price quote in response to an
1682 invitation for bids.

1683 (5) "Bidding process" means the procurement process described in Part 6, Bidding.

1684 (6) "Board" means the Utah State Procurement Policy Board, created in Section
1685 [63G-6a-202](#).

1686 [~~(7)~~] ~~"Building board" means the State Building Board, created in Section~~
1687 ~~[63A-5b-201](#)~~:-

1688 [~~(8)~~] (7) "Change directive" means a written order signed by the procurement officer
1689 that directs the contractor to suspend work or make changes, as authorized by contract, without
1690 the consent of the contractor.

1691 [~~(9)~~] (8) "Change order" means a written alteration in specifications, delivery point,
1692 rate of delivery, period of performance, price, quantity, or other provisions of a contract, upon
1693 mutual agreement of the parties to the contract.

1694 [~~(10)~~] (9) "Chief procurement officer" means the individual appointed under Section
1695 [63A-2-102](#).

1696 [~~(11)~~] (10) "Conducting procurement unit" means a procurement unit that conducts all
1697 aspects of a procurement:

1698 (a) except:

1699 (i) reviewing a solicitation to verify that it is in proper form; and

1700 (ii) causing the publication of a notice of a solicitation; and

1701 (b) including:

- 1702 (i) preparing any solicitation document;
- 1703 (ii) appointing an evaluation committee;
- 1704 (iii) conducting the evaluation process, except the process relating to scores calculated
- 1705 for costs of proposals;
- 1706 (iv) selecting and recommending the person to be awarded a contract;
- 1707 (v) negotiating the terms and conditions of a contract, subject to the issuing
- 1708 procurement unit's approval; and
- 1709 (vi) contract administration.

1710 [~~12~~] (11) "Conservation district" means the same as that term is defined in Section

1711 [17D-3-102](#).

1712 [~~13~~] (12) "Construction project":

1713 (a) means a project for the construction, renovation, alteration, improvement, or repair

1714 of a public facility on real property, including all services, labor, supplies, and materials for the

1715 project; and

1716 (b) does not include services and supplies for the routine, day-to-day operation, repair,

1717 or maintenance of an existing public facility.

1718 [~~14~~] (13) "Construction manager/general contractor":

1719 (a) means a contractor who enters into a contract:

1720 (i) for the management of a construction project; and

1721 (ii) that allows the contractor to subcontract for additional labor and materials that are

1722 not included in the contractor's cost proposal submitted at the time of the procurement of the

1723 contractor's services; and

1724 (b) does not include a contractor whose only subcontract work not included in the

1725 contractor's cost proposal submitted as part of the procurement of the contractor's services is to

1726 meet subcontracted portions of change orders approved within the scope of the project.

1727 [~~15~~] (14) "Construction subcontractor":

1728 (a) means a person under contract with a contractor or another subcontractor to provide

1729 services or labor for the design or construction of a construction project;

1730 (b) includes a general contractor or specialty contractor licensed or exempt from

1731 licensing under Title 58, Chapter 55, Utah Construction Trades Licensing Act; and

1732 (c) does not include a supplier who provides only materials, equipment, or supplies to a

1733 contractor or subcontractor for a construction project.

1734 ~~[(16)]~~ (15) "Contract" means an agreement for a procurement.

1735 ~~[(17)]~~ (16) "Contract administration" means all functions, duties, and responsibilities
1736 associated with managing, overseeing, and carrying out a contract between a procurement unit
1737 and a contractor, including:

1738 (a) implementing the contract;

1739 (b) ensuring compliance with the contract terms and conditions by the conducting
1740 procurement unit and the contractor;

1741 (c) executing change orders;

1742 (d) processing contract amendments;

1743 (e) resolving, to the extent practicable, contract disputes;

1744 (f) curing contract errors and deficiencies;

1745 (g) terminating a contract;

1746 (h) measuring or evaluating completed work and contractor performance;

1747 (i) computing payments under the contract; and

1748 (j) closing out a contract.

1749 ~~[(18)]~~ (17) "Contractor" means a person who is awarded a contract with a procurement
1750 unit.

1751 ~~[(19)]~~ (18) "Cooperative procurement" means procurement conducted by, or on behalf
1752 of:

1753 (a) more than one procurement unit; or

1754 (b) a procurement unit and a cooperative purchasing organization.

1755 ~~[(20)]~~ (19) "Cooperative purchasing organization" means an organization, association,
1756 or alliance of purchasers established to combine purchasing power in order to obtain the best
1757 value for the purchasers by engaging in procurements in accordance with Section [63G-6a-2105](#).

1758 ~~[(21)]~~ (20) "Cost-plus-a-percentage-of-cost contract" means a contract under which the
1759 contractor is paid a percentage of the total actual expenses or costs in addition to the
1760 contractor's actual expenses or costs.

1761 ~~[(22)]~~ (21) "Cost-reimbursement contract" means a contract under which a contractor
1762 is reimbursed for costs which are allowed and allocated in accordance with the contract terms
1763 and the provisions of this chapter, and a fee, if any.

- 1764 [~~(23)~~] (22) "Days" means calendar days, unless expressly provided otherwise.
- 1765 [~~(24)~~] (23) "Definite quantity contract" means a fixed price contract that provides for a
1766 specified amount of supplies over a specified period, with deliveries scheduled according to a
1767 specified schedule.
- 1768 [~~(25)~~] (24) "Design professional" means:
- 1769 (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects
1770 Licensing Act;
- 1771 (b) an individual licensed as a professional engineer or professional land surveyor
1772 under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing
1773 Act; or
- 1774 (c) an individual certified as a commercial interior designer under Title 58, Chapter 86,
1775 State Certification of Commercial Interior Designers Act.
- 1776 [~~(26)~~] (25) "Design professional procurement process" means the procurement process
1777 described in Part 15, Design Professional Services.
- 1778 [~~(27)~~] (26) "Design professional services" means:
- 1779 (a) professional services within the scope of the practice of architecture as defined in
1780 Section [58-3a-102](#);
- 1781 (b) professional engineering as defined in Section [58-22-102](#);
- 1782 (c) master planning and programming services; or
- 1783 (d) services within the scope of the practice of commercial interior design, as defined
1784 in Section [58-86-102](#).
- 1785 [~~(28)~~] (27) "Design-build" means the procurement of design professional services and
1786 construction by the use of a single contract.
- 1787 [~~(29)~~] (28) "Division" means the Division of Purchasing and General Services, created
1788 in Section [63A-2-101](#).
- 1789 [~~(30)~~] (29) "Educational procurement unit" means:
- 1790 (a) a school district;
- 1791 (b) a public school, including a local school board or a charter school;
- 1792 (c) the Utah Schools for the Deaf and the Blind;
- 1793 (d) the Utah Education and Telehealth Network;
- 1794 (e) an institution of higher education of the state described in Section [53B-1-102](#); or

1795 (f) the State Board of Education.

1796 [~~(31)~~] (30) "Established catalogue price" means the price included in a catalogue, price
1797 list, schedule, or other form that:

1798 (a) is regularly maintained by a manufacturer or contractor;

1799 (b) is published or otherwise available for inspection by customers; and

1800 (c) states prices at which sales are currently or were last made to a significant number
1801 of any category of buyers or buyers constituting the general buying public for the supplies or
1802 services involved.

1803 [~~(32)~~] (31) (a) "Executive branch procurement unit" means a department, division,
1804 office, bureau, agency, or other organization within the state executive branch.

1805 (b) "Executive branch procurement unit" does not include the Colorado River
1806 Authority of Utah as provided in Section 63M-14-210.

1807 [~~(33)~~] (32) "Facilities division" means the Division of Facilities Construction and
1808 Management, created in Section 63A-5b-301.

1809 [~~(34)~~] (33) "Fixed price contract" means a contract that provides a price, for each
1810 procurement item obtained under the contract, that is not subject to adjustment except to the
1811 extent that:

1812 (a) the contract provides, under circumstances specified in the contract, for an
1813 adjustment in price that is not based on cost to the contractor; or

1814 (b) an adjustment is required by law.

1815 [~~(35)~~] (34) "Fixed price contract with price adjustment" means a fixed price contract
1816 that provides for an upward or downward revision of price, precisely described in the contract,
1817 that:

1818 (a) is based on the consumer price index or another commercially acceptable index,
1819 source, or formula; and

1820 (b) is not based on a percentage of the cost to the contractor.

1821 [~~(36)~~] (35) "Grant" means an expenditure of public funds or other assistance, or an
1822 agreement to expend public funds or other assistance, for a public purpose authorized by law,
1823 without acquiring a procurement item in exchange.

1824 [~~(37)~~] (36) "Immaterial error":

1825 (a) means an irregularity or abnormality that is:

- 1826 (i) a matter of form that does not affect substance; or
- 1827 (ii) an inconsequential variation from a requirement of a solicitation that has no, little,
- 1828 or a trivial effect on the procurement process and that is not prejudicial to other vendors; and
- 1829 (b) includes:
- 1830 (i) a missing signature, missing acknowledgment of an addendum, or missing copy of a
- 1831 professional license, bond, or insurance certificate;
- 1832 (ii) a typographical error;
- 1833 (iii) an error resulting from an inaccuracy or omission in the solicitation; and
- 1834 (iv) any other error that the procurement official reasonably considers to be immaterial.
- 1835 [~~(38)~~] (37) "Indefinite quantity contract" means a fixed price contract that:
- 1836 (a) is for an indefinite amount of procurement items to be supplied as ordered by a
- 1837 procurement unit; and
- 1838 (b) (i) does not require a minimum purchase amount; or
- 1839 (ii) provides a maximum purchase limit.
- 1840 [~~(39)~~] (38) "Independent procurement unit" means:
- 1841 (a) (i) a legislative procurement unit;
- 1842 (ii) a judicial branch procurement unit;
- 1843 (iii) an educational procurement unit;
- 1844 (iv) a local government procurement unit;
- 1845 (v) a conservation district;
- 1846 (vi) a local building authority;
- 1847 (vii) a local district;
- 1848 (viii) a public corporation;
- 1849 (ix) a special service district; or
- 1850 (x) the Utah Communications Authority, established in Section [63H-7a-201](#);
- 1851 (b) [~~the building board or~~] the facilities division, but only to the extent of the
- 1852 procurement authority provided under Title 63A, Chapter 5b, Administration of State
- 1853 Facilities;
- 1854 (c) the attorney general, but only to the extent of the procurement authority provided
- 1855 under Title 67, Chapter 5, Attorney General;
- 1856 (d) the Department of Transportation, but only to the extent of the procurement

1857 authority provided under Title 72, Transportation Code; or

1858 (e) any other executive branch department, division, office, or entity that has statutory
1859 procurement authority outside this chapter, but only to the extent of that statutory procurement
1860 authority.

1861 [~~(40)~~] (39) "Invitation for bids":

1862 (a) means a document used to solicit:

1863 (i) bids to provide a procurement item to a procurement unit; or

1864 (ii) quotes for a price of a procurement item to be provided to a procurement unit; and

1865 (b) includes all documents attached to or incorporated by reference in a document
1866 described in Subsection [~~(40)~~] (39)(a).

1867 [~~(41)~~] (40) "Issuing procurement unit" means a procurement unit that:

1868 (a) reviews a solicitation to verify that it is in proper form;

1869 (b) causes the notice of a solicitation to be published; and

1870 (c) negotiates and approves the terms and conditions of a contract.

1871 [~~(42)~~] (41) "Judicial procurement unit" means:

1872 (a) the Utah Supreme Court;

1873 (b) the Utah Court of Appeals;

1874 (c) the Judicial Council;

1875 (d) a state judicial district; or

1876 (e) an office, committee, subcommittee, or other organization within the state judicial
1877 branch.

1878 [~~(43)~~] (42) "Labor hour contract" is a contract under which:

1879 (a) the supplies and materials are not provided by, or through, the contractor; and

1880 (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and
1881 profit for a specified number of labor hours or days.

1882 [~~(44)~~] (43) "Legislative procurement unit" means:

1883 (a) the Legislature;

1884 (b) the Senate;

1885 (c) the House of Representatives;

1886 (d) a staff office of the Legislature, the Senate, or the House of Representatives; or

1887 (e) a committee, subcommittee, commission, or other organization:

1888 (i) within the state legislative branch; or
1889 (ii) (A) that is created by statute to advise or make recommendations to the Legislature;
1890 (B) the membership of which includes legislators; and
1891 (C) for which the Office of Legislative Research and General Counsel provides staff
1892 support.

1893 [~~(45)~~] (44) "Local building authority" means the same as that term is defined in Section
1894 17D-2-102.

1895 [~~(46)~~] (45) "Local district" means the same as that term is defined in Section
1896 17B-1-102.

1897 [~~(47)~~] (46) "Local government procurement unit" means:

1898 (a) a county or municipality, and each office or agency of the county or municipality,
1899 unless the county or municipality adopts its own procurement code by ordinance;

1900 (b) a county or municipality that has adopted this entire chapter by ordinance, and each
1901 office or agency of that county or municipality; or

1902 (c) a county or municipality that has adopted a portion of this chapter by ordinance, to
1903 the extent that a term in the ordinance is used in the adopted portion of this chapter, and each
1904 office or agency of that county or municipality.

1905 [~~(48)~~] (47) "Multiple award contracts" means the award of a contract for an indefinite
1906 quantity of a procurement item to more than one person.

1907 [~~(49)~~] (48) "Multiyear contract" means a contract that extends beyond a one-year
1908 period, including a contract that permits renewal of the contract, without competition, beyond
1909 the first year of the contract.

1910 [~~(50)~~] (49) "Municipality" means a city, town, or metro township.

1911 [~~(51)~~] (50) "Nonadopting local government procurement unit" means:

1912 (a) a county or municipality that has not adopted Part 16, Protests, Part 17,
1913 Procurement Appeals Board, Part 18, Appeals to Court and Court Proceedings, and Part 19,
1914 General Provisions Related to Protest or Appeal; and

1915 (b) each office or agency of a county or municipality described in Subsection [~~(51)~~]
1916 (50)(a).

1917 [~~(52)~~] (51) "Offeror" means a person who submits a proposal in response to a request
1918 for proposals.

- 1919 [~~(53)~~] (52) "Preferred bidder" means a bidder that is entitled to receive a reciprocal
1920 preference under the requirements of this chapter.
- 1921 [~~(54)~~] (53) "Procure" means to acquire a procurement item through a procurement.
- 1922 [~~(55)~~] (54) "Procurement" means the acquisition of a procurement item through an
1923 expenditure of public funds, or an agreement to expend public funds, including an acquisition
1924 through a public-private partnership.
- 1925 [~~(56)~~] (55) "Procurement item" means an item of personal property, a technology, a
1926 service, or a construction project.
- 1927 [~~(57)~~] (56) "Procurement official" means:
- 1928 (a) for a procurement unit other than an independent procurement unit, the chief
1929 procurement officer;
- 1930 (b) for a legislative procurement unit, the individual, individuals, or body designated in
1931 a policy adopted by the Legislative Management Committee;
- 1932 (c) for a judicial procurement unit, the Judicial Council or an individual or body
1933 designated by the Judicial Council by rule;
- 1934 (d) for a local government procurement unit:
- 1935 (i) the legislative body of the local government procurement unit; or
1936 (ii) an individual or body designated by the local government procurement unit;
- 1937 (e) for a local district, the board of trustees of the local district or the board of trustees'
1938 designee;
- 1939 (f) for a special service district, the governing body of the special service district or the
1940 governing body's designee;
- 1941 (g) for a local building authority, the board of directors of the local building authority
1942 or the board of directors' designee;
- 1943 (h) for a conservation district, the board of supervisors of the conservation district or
1944 the board of supervisors' designee;
- 1945 (i) for a public corporation, the board of directors of the public corporation or the board
1946 of directors' designee;
- 1947 (j) for a school district or any school or entity within a school district, the board of the
1948 school district or the board's designee;
- 1949 (k) for a charter school, the individual or body with executive authority over the charter

1950 school or the designee of the individual or body;

1951 (l) for an institution of higher education described in Section 53B-2-101, the president
1952 of the institution of higher education or the president's designee;

1953 (m) for the State Board of Education, the State Board of Education or the State Board
1954 of Education's designee;

1955 (n) for the Utah Board of Higher Education, the Commissioner of Higher Education or
1956 the designee of the Commissioner of Higher Education;

1957 (o) for the Utah Communications Authority, established in Section 63H-7a-201, the
1958 executive director of the Utah Communications Authority or the executive director's designee;
1959 or

1960 ~~[(p) (i) for the building board, and only to the extent of procurement activities of the~~
1961 ~~building board as an independent procurement unit under the procurement authority provided~~
1962 ~~under Title 63A, Chapter 5b, Administration of State Facilities, the director of the building~~
1963 ~~board or the director's designee;]~~

1964 ~~[(ii) (i) for the facilities division, and only to the extent of procurement activities~~
1965 ~~of the facilities division as an independent procurement unit under the procurement authority~~
1966 ~~provided under Title 63A, Chapter 5b, Administration of State Facilities, the director of the~~
1967 ~~facilities division or the director's designee;~~

1968 ~~[(iii) (ii) for the attorney general, and only to the extent of procurement activities of~~
1969 ~~the attorney general as an independent procurement unit under the procurement authority~~
1970 ~~provided under Title 67, Chapter 5, Attorney General, the attorney general or the attorney~~
1971 ~~general's designee;~~

1972 ~~[(iv) (iii) for the Department of Transportation created in Section 72-1-201, and only~~
1973 ~~to the extent of procurement activities of the Department of Transportation as an independent~~
1974 ~~procurement unit under the procurement authority provided under Title 72, Transportation~~
1975 ~~Code, the executive director of the Department of Transportation or the executive director's~~
1976 ~~designee; or~~

1977 ~~[(v) (iv) for any other executive branch department, division, office, or entity that has~~
1978 ~~statutory procurement authority outside this chapter, and only to the extent of the procurement~~
1979 ~~activities of the department, division, office, or entity as an independent procurement unit~~
1980 ~~under the procurement authority provided outside this chapter for the department, division,~~

1981 office, or entity, the chief executive officer of the department, division, office, or entity or the
1982 chief executive officer's designee.

1983 [~~58~~] (57) "Procurement unit":

1984 (a) means:

1985 (i) a legislative procurement unit;

1986 (ii) an executive branch procurement unit;

1987 (iii) a judicial procurement unit;

1988 (iv) an educational procurement unit;

1989 (v) the Utah Communications Authority, established in Section [63H-7a-201](#);

1990 (vi) a local government procurement unit;

1991 (vii) a local district;

1992 (viii) a special service district;

1993 (ix) a local building authority;

1994 (x) a conservation district;

1995 (xi) a public corporation; and

1996 (b) does not include a political subdivision created under Title 11, Chapter 13,

1997 Interlocal Cooperation Act.

1998 [~~59~~] (58) "Professional service" means labor, effort, or work that requires specialized

1999 knowledge, expertise, and discretion, including labor, effort, or work in the field of:

2000 (a) accounting;

2001 (b) administrative law judge service;

2002 (c) architecture;

2003 (d) construction design and management;

2004 (e) engineering;

2005 (f) financial services;

2006 (g) information technology;

2007 (h) the law;

2008 (i) medicine;

2009 (j) psychiatry; or

2010 (k) underwriting.

2011 [~~60~~] (59) "Protest officer" means:

2012 (a) for the division or an independent procurement unit:
2013 (i) the procurement official;
2014 (ii) the procurement official's designee who is an employee of the procurement unit; or
2015 (iii) a person designated by rule made by the rulemaking authority; or
2016 (b) for a procurement unit other than an independent procurement unit, the chief
2017 procurement officer or the chief procurement officer's designee who is an employee of the
2018 division.

2019 ~~[(61)]~~ (60) "Public corporation" means the same as that term is defined in Section
2020 [63E-1-102](#).

2021 ~~[(62)]~~ (61) "Public entity" means the state or any other government entity within the
2022 state that expends public funds.

2023 ~~[(63)]~~ (62) "Public facility" means a building, structure, infrastructure, improvement,
2024 or other facility of a public entity.

2025 ~~[(64)]~~ (63) "Public funds" means money, regardless of its source, including from the
2026 federal government, that is owned or held by a procurement unit.

2027 ~~[(65)]~~ (64) "Public transit district" means a public transit district organized under Title
2028 17B, Chapter 2a, Part 8, Public Transit District Act.

2029 ~~[(66)]~~ (65) "Public-private partnership" means an arrangement or agreement, occurring
2030 on or after January 1, 2017, between a procurement unit and one or more contractors to provide
2031 for a public need through the development or operation of a project in which the contractor or
2032 contractors share with the procurement unit the responsibility or risk of developing, owning,
2033 maintaining, financing, or operating the project.

2034 ~~[(67)]~~ (66) "Qualified vendor" means a vendor who:

2035 (a) is responsible; and

2036 (b) submits a responsive statement of qualifications under Section [63G-6a-410](#) that
2037 meets the minimum mandatory requirements, evaluation criteria, and any applicable score
2038 thresholds set forth in the request for statement of qualifications.

2039 ~~[(68)]~~ (67) "Real property" means land and any building, fixture, improvement,
2040 appurtenance, structure, or other development that is permanently affixed to land.

2041 ~~[(69)]~~ (68) "Request for information" means a nonbinding process through which a
2042 procurement unit requests information relating to a procurement item.

2043 [(70)] (69) "Request for proposals" means a document used to solicit proposals to
2044 provide a procurement item to a procurement unit, including all other documents that are
2045 attached to that document or incorporated in that document by reference.

2046 [(71)] (70) "Request for proposals process" means the procurement process described
2047 in Part 7, Request for Proposals.

2048 [(72)] (71) "Request for statement of qualifications" means a document used to solicit
2049 information about the qualifications of a person interested in responding to a potential
2050 procurement, including all other documents attached to that document or incorporated in that
2051 document by reference.

2052 [(73)] (72) "Requirements contract" means a contract:

2053 (a) under which a contractor agrees to provide a procurement unit's entire requirements
2054 for certain procurement items at prices specified in the contract during the contract period; and

2055 (b) that:

2056 (i) does not require a minimum purchase amount; or

2057 (ii) provides a maximum purchase limit.

2058 [(74)] (73) "Responsible" means being capable, in all respects, of:

2059 (a) meeting all the requirements of a solicitation; and

2060 (b) fully performing all the requirements of the contract resulting from the solicitation,
2061 including being financially solvent with sufficient financial resources to perform the contract.

2062 [(75)] (74) "Responsive" means conforming in all material respects to the requirements
2063 of a solicitation.

2064 [(76)] (75) "Rule" includes a policy or regulation adopted by the rulemaking authority,
2065 if adopting a policy or regulation is the method the rulemaking authority uses to adopt
2066 provisions that govern the applicable procurement unit.

2067 [(77)] (76) "Rulemaking authority" means:

2068 (a) for a legislative procurement unit, the Legislative Management Committee;

2069 (b) for a judicial procurement unit, the Judicial Council;

2070 (c) (i) only to the extent of the procurement authority expressly granted to the
2071 procurement unit by statute:

2072 (A) for ~~[the building board or]~~ the facilities division, the ~~[building board]~~ facilities
2073 division;

- 2074 (B) for the Office of the Attorney General, the attorney general;
- 2075 (C) for the Department of Transportation created in Section [72-1-201](#), the executive
- 2076 director of the Department of Transportation; and
- 2077 (D) for any other executive branch department, division, office, or entity that has
- 2078 statutory procurement authority outside this chapter, the governing authority of the department,
- 2079 division, office, or entity; and
- 2080 (ii) for each other executive branch procurement unit, the board;
- 2081 (d) for a local government procurement unit:
- 2082 (i) the governing body of the local government unit; or
- 2083 (ii) an individual or body designated by the local government procurement unit;
- 2084 (e) for a school district or a public school, the board, except to the extent of a school
- 2085 district's own nonadministrative rules that do not conflict with the provisions of this chapter;
- 2086 (f) for a state institution of higher education, the Utah Board of Higher Education;
- 2087 (g) for the State Board of Education or the Utah Schools for the Deaf and the Blind, the
- 2088 State Board of Education;
- 2089 (h) for a public transit district, the chief executive of the public transit district;
- 2090 (i) for a local district other than a public transit district or for a special service district,
- 2091 the board, except to the extent that the board of trustees of the local district or the governing
- 2092 body of the special service district makes its own rules:
- 2093 (i) with respect to a subject addressed by board rules; or
- 2094 (ii) that are in addition to board rules;
- 2095 (j) for the Utah Educational Savings Plan, created in Section [53B-8a-103](#), the Utah
- 2096 Board of Higher Education;
- 2097 (k) for the School and Institutional Trust Lands Administration, created in Section
- 2098 [53C-1-201](#), the School and Institutional Trust Lands Board of Trustees;
- 2099 (l) for the School and Institutional Trust Fund Office, created in Section [53D-1-201](#),
- 2100 the School and Institutional Trust Fund Board of Trustees;
- 2101 (m) for the Utah Communications Authority, established in Section [63H-7a-201](#), the
- 2102 Utah Communications Authority board, created in Section [63H-7a-203](#); or
- 2103 (n) for any other procurement unit, the board.
- 2104 [~~78~~] (77) "Service":

2105 (a) means labor, effort, or work to produce a result that is beneficial to a procurement
2106 unit;

2107 (b) includes a professional service; and

2108 (c) does not include labor, effort, or work provided under an employment agreement or
2109 a collective bargaining agreement.

2110 ~~[(79)]~~ (78) "Small purchase process" means the procurement process described in
2111 Section [63G-6a-506](#).

2112 ~~[(80)]~~ (79) "Sole source contract" means a contract resulting from a sole source
2113 procurement.

2114 ~~[(81)]~~ (80) "Sole source procurement" means a procurement without competition
2115 pursuant to a determination under Subsection [63G-6a-802\(1\)\(a\)](#) that there is only one source
2116 for the procurement item.

2117 ~~[(82)]~~ (81) "Solicitation" means an invitation for bids, request for proposals, or request
2118 for statement of qualifications.

2119 ~~[(83)]~~ (82) "Solicitation response" means:

2120 (a) a bid submitted in response to an invitation for bids;

2121 (b) a proposal submitted in response to a request for proposals; or

2122 (c) a statement of qualifications submitted in response to a request for statement of
2123 qualifications.

2124 ~~[(84)]~~ (83) "Special service district" means the same as that term is defined in Section
2125 [17D-1-102](#).

2126 ~~[(85)]~~ (84) "Specification" means any description of the physical or functional
2127 characteristics or of the nature of a procurement item included in an invitation for bids or a
2128 request for proposals, or otherwise specified or agreed to by a procurement unit, including a
2129 description of:

2130 (a) a requirement for inspecting or testing a procurement item; or

2131 (b) preparing a procurement item for delivery.

2132 ~~[(86)]~~ (85) "Standard procurement process" means:

2133 (a) the bidding process;

2134 (b) the request for proposals process;

2135 (c) the approved vendor list process;

2136 (d) the small purchase process; or

2137 (e) the design professional procurement process.

2138 ~~[(87)]~~ (86) "State cooperative contract" means a contract awarded by the division for
2139 and in behalf of all public entities.

2140 ~~[(88)]~~ (87) "Statement of qualifications" means a written statement submitted to a
2141 procurement unit in response to a request for statement of qualifications.

2142 ~~[(89)]~~ (88) "Subcontractor":

2143 (a) means a person under contract to perform part of a contractual obligation under the
2144 control of the contractor, whether the person's contract is with the contractor directly or with
2145 another person who is under contract to perform part of a contractual obligation under the
2146 control of the contractor; and

2147 (b) includes a supplier, distributor, or other vendor that furnishes supplies or services
2148 to a contractor.

2149 ~~[(90)]~~ (89) "Technology" means the same as "information technology," as defined in
2150 Section [63A-16-102](#).

2151 ~~[(91)]~~ (90) "Tie bid" means that the lowest responsive bids of responsible bidders are
2152 identical in price.

2153 ~~[(92)]~~ (91) "Time and materials contract" means a contract under which the contractor
2154 is paid:

2155 (a) the actual cost of direct labor at specified hourly rates;

2156 (b) the actual cost of materials and equipment usage; and

2157 (c) an additional amount, expressly described in the contract, to cover overhead and
2158 profit, that is not based on a percentage of the cost to the contractor.

2159 ~~[(93)]~~ (92) "Transitional costs":

2160 (a) means the costs of changing:

2161 (i) from an existing provider of a procurement item to another provider of that
2162 procurement item; or

2163 (ii) from an existing type of procurement item to another type;

2164 (b) includes:

2165 (i) training costs;

2166 (ii) conversion costs;

- 2167 (iii) compatibility costs;
- 2168 (iv) costs associated with system downtime;
- 2169 (v) disruption of service costs;
- 2170 (vi) staff time necessary to implement the change;
- 2171 (vii) installation costs; and
- 2172 (viii) ancillary software, hardware, equipment, or construction costs; and
- 2173 (c) does not include:
- 2174 (i) the costs of preparing for or engaging in a procurement process; or
- 2175 (ii) contract negotiation or drafting costs.

2176 [(94)] (93) "Vendor":

2177 (a) means a person who is seeking to enter into a contract with a procurement unit to
2178 provide a procurement item; and

2179 (b) includes:

- 2180 (i) a bidder;
- 2181 (ii) an offeror;
- 2182 (iii) an approved vendor;
- 2183 (iv) a design professional; and
- 2184 (v) a person who submits an unsolicited proposal under Section 63G-6a-712.

2185 Section 34. Section 63G-6a-109 is amended to read:

2186 **63G-6a-109. Issuing procurement unit and conducting procurement unit.**

2187 (1) With respect to a procurement by an executive branch procurement unit, except for
2188 a procurement by an executive branch procurement unit that, under Subsection
2189 63G-6a-103[(39)](38)(b), (c), (d), or (e), is designated as an independent procurement unit:

- 2190 (a) the division is the issuing procurement unit; and
- 2191 (b) the executive branch procurement unit is the conducting procurement unit and is
2192 responsible to ensure that the procurement is conducted in compliance with this chapter.

2193 (2) With respect to a procurement by any other procurement unit, the procurement unit
2194 is both the issuing procurement unit and the conducting procurement unit.

2195 (3) A conducting procurement unit is responsible for contract administration.

2196 Section 35. Section 63G-6a-204 is amended to read:

2197 **63G-6a-204. Applicability of rules of Utah State Procurement Policy Board and**

2198 **Division of Facilities Construction and Management -- Report to interim committee.**

2199 (1) Except as provided in Subsection (2), rules made by the board under this chapter
2200 shall govern all procurement units for which the board is the rulemaking authority.

2201 (2) The [~~building board~~] facilities division rules governing procurement of
2202 construction, design professional services, and leases apply to the procurement of construction,
2203 design professional services, and leases of real property by the facilities division.

2204 (3) A rulemaking authority may make its own rules, consistent with this chapter,
2205 governing procurement by a person over which the rulemaking authority has rulemaking
2206 authority.

2207 (4) The board shall make a report on or before July 1 of each year to a legislative
2208 interim committee, designated by the Legislative Management Committee created under
2209 Section [36-12-6](#), on the establishment, implementation, and enforcement of the rules made
2210 under Section [63G-6a-203](#).

2211 Section 36. Section **63G-6a-303** is amended to read:

2212 **63G-6a-303. Role, duties, and authority of chief procurement officer.**

2213 (1) The chief procurement officer:

2214 (a) is the director of the division;

2215 (b) serves as the central procurement officer of the state;

2216 (c) serves as a voting member of the board; and

2217 (d) serves as the protest officer for a protest relating to a procurement of an executive
2218 branch procurement, except an executive branch procurement unit designated under Subsection
2219 [63G-6a-103](#)~~(39)~~(38)(b), (c), (d), or (e) as an independent procurement unit, or a state
2220 cooperative contract procurement, unless the chief procurement officer designates another to
2221 serve as protest officer, as authorized in this chapter.

2222 (2) Except as otherwise provided in this chapter, the chief procurement officer shall:

2223 (a) develop procurement policies and procedures supporting ethical procurement
2224 practices, fair and open competition among vendors, and transparency within the state's
2225 procurement process;

2226 (b) administer the state's cooperative purchasing program, including state cooperative
2227 contracts and associated administrative fees;

2228 (c) enter into an agreement with a public entity for services provided by the division, if

2229 the agreement is in the best interest of the state;

2230 (d) ensure the division's compliance with any applicable law, rule, or policy, including
2231 a law, rule, or policy applicable to the division's role as an issuing procurement unit or
2232 conducting procurement unit, or as the state's central procurement organization;

2233 (e) manage the division's electronic procurement system;

2234 (f) oversee the recruitment, training, career development, certification requirements,
2235 and performance evaluation of the division's procurement personnel;

2236 (g) make procurement training available to procurement units and persons who do
2237 business with procurement units;

2238 (h) provide exemplary customer service and continually improve the division's
2239 procurement operations;

2240 (i) exercise all other authority, fulfill all other duties and responsibilities, and perform
2241 all other functions authorized under this chapter; and

2242 (j) ensure that any training described in this Subsection (2) complies with Title 63G,
2243 Chapter 22, State Training and Certification Requirements.

2244 (3) With respect to a procurement or contract over which the chief procurement officer
2245 has authority under this chapter, the chief procurement officer, except as otherwise provided in
2246 this chapter:

2247 (a) shall:

2248 (i) manage and supervise a procurement to ensure to the extent practicable that
2249 taxpayers receive the best value;

2250 (ii) prepare and issue standard specifications for procurement items;

2251 (iii) review contracts, coordinate contract compliance, conduct contract audits, and
2252 approve change orders;

2253 (iv) in accordance with Section [63A-16-204](#), coordinate with the Division of
2254 Technology Services, created in Section [63A-16-103](#), with respect to the procurement of
2255 information technology services by an executive branch procurement unit;

2256 (v) correct, amend, or cancel a procurement at any stage of the procurement process if
2257 the procurement is out of compliance with this chapter or a board rule;

2258 (vi) after consultation with the attorney general's office, correct, amend, or cancel a
2259 contract at any time during the term of the contract if:

- 2260 (A) the contract is out of compliance with this chapter or a board rule; and
- 2261 (B) the chief procurement officer determines that correcting, amending, or canceling
- 2262 the contract is in the best interest of the state; and
- 2263 (vii) make a reasonable attempt to resolve a contract dispute, in coordination with the
- 2264 attorney general's office; and
- 2265 (b) may:
- 2266 (i) delegate limited purchasing authority to a state agency, with appropriate oversight
- 2267 and control to ensure compliance with this chapter;
- 2268 (ii) delegate duties and authority to an employee of the division, as the chief
- 2269 procurement officer considers appropriate;
- 2270 (iii) negotiate and settle contract overcharges, undercharges, and claims, in accordance
- 2271 with the law and after consultation with the attorney general's office;
- 2272 (iv) authorize a procurement unit to make a procurement pursuant to a regional
- 2273 solicitation, as defined in Subsection [63G-6a-2105\(7\)](#), even if the procurement item is also
- 2274 offered under a state cooperative contract, if the chief procurement officer determines that the
- 2275 procurement pursuant to a regional solicitation is in the best interest of the acquiring
- 2276 procurement unit; and
- 2277 (v) remove an individual from the procurement process or contract administration for:
- 2278 (A) having a conflict of interest or the appearance of a conflict of interest with a person
- 2279 responding to a solicitation or with a contractor;
- 2280 (B) having a bias or the appearance of bias for or against a person responding to a
- 2281 solicitation or for or against a contractor;
- 2282 (C) making an inconsistent or unexplainable score for a solicitation response;
- 2283 (D) having inappropriate contact or communication with a person responding to a
- 2284 solicitation;
- 2285 (E) socializing inappropriately with a person responding to a solicitation or with a
- 2286 contractor;
- 2287 (F) engaging in any other action or having any other association that causes the chief
- 2288 procurement officer to conclude that the individual cannot fairly evaluate a solicitation
- 2289 response or administer a contract; or
- 2290 (G) any other violation of a law, rule, or policy.

2291 (4) The chief procurement officer may not delegate to an individual outside the
2292 division the chief procurement officer's authority over a procurement described in Subsection
2293 (3)(a)(iv).

2294 (5) The chief procurement officer has final authority to determine whether an executive
2295 branch procurement unit's anticipated expenditure of public funds, anticipated agreement to
2296 expend public funds, or provision of a benefit constitutes a procurement that is subject to this
2297 chapter.

2298 (6) Except as otherwise provided in this chapter, the chief procurement officer shall
2299 review, monitor, and audit the procurement activities and delegated procurement authority of
2300 an executive branch procurement unit, except to the extent that an executive branch
2301 procurement unit is designated under Subsection 63G-6a-103(39)(b), (c), (d), or (e) as an
2302 independent procurement unit, to ensure compliance with this chapter, rules made by the
2303 applicable rulemaking authority, and division policies.

2304 Section 37. Section **63G-6a-1302** is amended to read:

2305 **63G-6a-1302. Alternative methods of construction contracting management.**

2306 (1) A rulemaking authority shall, by rule provide as many alternative methods of
2307 construction contracting management as determined to be feasible.

2308 (2) The rules described in Subsection (1) shall:

2309 (a) grant to the procurement official responsible for carrying out the construction
2310 project the discretion to select the appropriate method of construction contracting management
2311 for a particular project; and

2312 (b) require the procurement official to execute and include in the contract file a written
2313 statement describing the facts that led to the selection of a particular method of construction
2314 contracting management for each project.

2315 (3) Before choosing a construction contracting management method, the procurement
2316 official responsible for carrying out the construction project shall consider the following
2317 factors:

2318 (a) when the project must be ready to be occupied;

2319 (b) the type of project;

2320 (c) the extent to which the requirements of the procurement unit, and the way they are
2321 to be met are known;

- 2322 (d) the location of the project;
- 2323 (e) the size, scope, complexity, and economics of the project;
- 2324 (f) the source of funding and any resulting constraints necessitated by the funding
- 2325 source;
- 2326 (g) the availability, qualification, and experience of public personnel to be assigned to
- 2327 the project and the amount of time that the public personnel can devote to the project; and
- 2328 (h) the availability, qualifications, and experience of outside consultants and
- 2329 contractors to complete the project under the various methods being considered.
- 2330 (4) A rulemaking authority may make rules that authorize the use of a construction
- 2331 manager/general contractor as one method of construction contracting management.
- 2332 (5) The rules described in Subsection (2) shall require that:
- 2333 (a) the construction manager/general contractor be selected using:
- 2334 (i) a standard procurement process; or
- 2335 (ii) an exception to the requirement to use a standard procurement process, described in
- 2336 Part 8, Exceptions to Procurement Requirements; and
- 2337 (b) when entering into a subcontract that was not specifically included in the
- 2338 construction manager/general contractor's cost proposal, the construction manager/general
- 2339 contractor shall procure the subcontractor by using a standard procurement process, or an
- 2340 exception to the requirement to use a standard procurement process, described in Part 8,
- 2341 Exceptions to Procurement Requirements, in the same manner as if the subcontract work was
- 2342 procured directly by the procurement unit.
- 2343 (6) Procurement rules adopted by the [~~building board~~] facilities division under
- 2344 Subsections (1) through (3) for state building construction projects may authorize the use of a
- 2345 design-build provider as one method of construction contracting management.
- 2346 (7) A design-build contract may include a provision for obtaining the site for the
- 2347 construction project.
- 2348 (8) A design-build contract or a construction manager/general contractor contract may
- 2349 include provision by the contractor of operations, maintenance, or financing.
- 2350 Section 38. Section **63H-6-103** is amended to read:
- 2351 **63H-6-103. Utah State Fair Corporation -- Legal status -- Powers.**
- 2352 (1) There is created an independent public nonprofit corporation known as the "Utah

2353 State Fair Corporation."

2354 (2) The board shall file articles of incorporation for the corporation with the Division
2355 of Corporations and Commercial Code.

2356 (3) The corporation, subject to this chapter, has all powers and authority permitted
2357 nonprofit corporations by law.

2358 (4) The corporation shall:

2359 (a) manage, supervise, and control:

2360 (i) all activities relating to the annual exhibition described in Subsection (4)(j); and

2361 (ii) except as otherwise provided by statute, all state expositions, including setting the
2362 time, place, and purpose of any state exposition;

2363 (b) for public entertainment, displays, and exhibits or similar events:

2364 (i) provide, sponsor, or arrange the events;

2365 (ii) publicize and promote the events; and

2366 (iii) secure funds to cover the cost of the exhibits from:

2367 (A) private contributions;

2368 (B) public appropriations;

2369 (C) admission charges; and

2370 (D) other lawful means;

2371 (c) acquire and designate exposition sites;

2372 (d) use generally accepted accounting principles in accounting for the corporation's
2373 assets, liabilities, and operations;

2374 (e) seek corporate sponsorships for the state fair park or for individual buildings or
2375 facilities within the fair park;

2376 (f) work with county and municipal governments, the Salt Lake Convention and
2377 Visitor's Bureau, the Utah Travel Council, and other entities to develop and promote
2378 expositions and the use of the state fair park;

2379 (g) develop and maintain a marketing program to promote expositions and the use of
2380 the state fair park;

2381 (h) in accordance with provisions of this part, operate and maintain the state fair park,
2382 including the physical appearance and structural integrity of the state fair park and the
2383 buildings located at the state fair park;

- 2384 (i) prepare an economic development plan for the state fair park;
- 2385 (j) hold an annual exhibition that:
- 2386 (i) is called the state fair or a similar name;
- 2387 (ii) promotes and highlights agriculture throughout the state;
- 2388 (iii) includes expositions of livestock, poultry, agricultural, domestic science,
- 2389 horticultural, floricultural, mineral and industrial products, manufactured articles, and domestic
- 2390 animals that, in the corporation's opinion will best stimulate agricultural, industrial, artistic, and
- 2391 educational pursuits and the sharing of talents among the people of Utah;
- 2392 (iv) includes the award of premiums for the best specimens of the exhibited articles
- 2393 and animals;
- 2394 (v) permits competition by livestock exhibited by citizens of other states and territories
- 2395 of the United States; and
- 2396 (vi) is arranged according to plans approved by the board;
- 2397 (k) fix the conditions of entry to the annual exhibition described in Subsection (4)(j);
- 2398 and
- 2399 (l) publish a list of premiums that will be awarded at the annual exhibition described in
- 2400 Subsection (4)(j) for the best specimens of exhibited articles and animals.
- 2401 (5) In addition to the annual exhibition described in Subsection (4)(j), the corporation
- 2402 may hold other exhibitions of livestock, poultry, agricultural, domestic science, horticultural,
- 2403 floricultural, mineral and industrial products, manufactured articles, and domestic animals that,
- 2404 in the corporation's opinion, will best stimulate agricultural, industrial, artistic, and educational
- 2405 pursuits and the sharing of talents among the people of Utah.
- 2406 (6) The corporation may:
- 2407 (a) employ advisers, consultants, and agents, including financial experts and
- 2408 independent legal counsel, and fix their compensation;
- 2409 (b) (i) participate in the state's Risk Management Fund created under Section
- 2410 [63A-4-201](#) or any captive insurance company created by the risk manager; or
- 2411 (ii) procure insurance against any loss in connection with the corporation's property
- 2412 and other assets, including mortgage loans;
- 2413 (c) receive and accept aid or contributions of money, property, labor, or other things of
- 2414 value from any source, including any grants or appropriations from any department, agency, or

2415 instrumentality of the United States or Utah;

2416 (d) hold, use, loan, grant, and apply that aid and those contributions to carry out the
2417 purposes of the corporation, subject to the conditions, if any, upon which the aid and
2418 contributions were made;

2419 (e) enter into management agreements with any person or entity for the performance of
2420 the corporation's functions or powers;

2421 (f) establish whatever accounts and procedures as necessary to budget, receive, and
2422 disburse, account for, and audit all funds received, appropriated, or generated;

2423 (g) subject to Subsection (8), lease any of the facilities at the state fair park;

2424 (h) sponsor events as approved by the board; and

2425 (i) enter into one or more agreements to develop the state fair park.

2426 (7) (a) Except as provided in Subsection (7)(c), as an independent agency of Utah, the
2427 corporation is exempt from:

2428 (i) Title 51, Chapter 5, Funds Consolidation Act;

2429 (ii) Title 51, Chapter 7, State Money Management Act;

2430 (iii) Title 63A, Utah Government Operations Code;

2431 (iv) Title 63J, Chapter 1, Budgetary Procedures Act; and

2432 (v) Title 63A, Chapter 17, Utah State Personnel Management Act.

2433 (b) The board shall adopt policies parallel to and consistent with:

2434 (i) Title 51, Chapter 5, Funds Consolidation Act;

2435 (ii) Title 51, Chapter 7, State Money Management Act;

2436 (iii) Title 63A, Utah Government Operations Code; and

2437 (iv) Title 63J, Chapter 1, Budgetary Procedures Act.

2438 (c) The corporation shall comply with:

2439 (i) Title 52, Chapter 4, Open and Public Meetings Act;

2440 (ii) Title 63G, Chapter 2, Government Records Access and Management Act;

2441 (iii) the provisions of Section [67-3-12](#);

2442 (iv) Title 63G, Chapter 6a, Utah Procurement Code, except for a procurement for:

2443 (A) entertainment provided at the state fair park;

2444 (B) judges for competitive exhibits; or

2445 (C) sponsorship of an event at the state fair park; and

2446 (v) the legislative approval requirements for new facilities established in Section
2447 63A-5b-404.

2448 (8) (a) Before the corporation executes a lease described in Subsection (6)(g) with a
2449 term of 10 or more years, the corporation shall:

2450 (i) submit the proposed lease to the [~~State Building Board~~] division for the [~~State~~
2451 ~~Building Board's~~] division's approval or rejection; and

2452 (ii) if the [~~State Building Board~~] division approves the proposed lease, submit the
2453 proposed lease to the Executive Appropriations Committee for the Executive Appropriation
2454 Committee's review and recommendation in accordance with Subsection (8)(b).

2455 (b) The Executive Appropriations Committee shall review a proposed lease submitted
2456 in accordance with Subsection (8)(a) and recommend to the corporation that the corporation:

2457 (i) execute the proposed sublease; or

2458 (ii) reject the proposed sublease.

2459 Section 39. Section **63H-6-108** is amended to read:

2460 **63H-6-108. Operation of the state fair park.**

2461 (1) The corporation shall:

2462 (a) operate and maintain the state fair park in accordance with the facility maintenance
2463 standards approved by the [~~State Building Board~~] division;

2464 (b) pay for all costs associated with operating and maintaining the state fair park;

2465 (c) obtain approval from the division before the corporation commences capital
2466 developments or capital improvements on the state fair park that involve:

2467 (i) a construction project that costs more than \$250,000; or

2468 (ii) the construction of a new building that costs more than \$1,000,000;

2469 (d) obtain a building permit from the division before commencing an activity that
2470 requires a building permit;

2471 (e) ensure that:

2472 (i) any design plan related to the state fair park satisfies any applicable design standards
2473 established by the division [~~or the State Building Board~~]; and

2474 (ii) construction performed on the state fair park satisfies any applicable construction
2475 standards established by the division [~~or the State Building Board~~];

2476 (f) for any new construction project on the state fair park that costs \$250,000 or more:

- 2477 (i) notify the division before commencing the new construction project; and
- 2478 (ii) coordinate with the division regarding review of design plans and construction
- 2479 management;
- 2480 (g) obtain approval from the division before the corporation makes any alteration or
- 2481 addition to the water system, heating system, plumbing system, air conditioning system, or
- 2482 electrical system;
- 2483 (h) obtain approval from the ~~[State Building Board]~~ division before the corporation
- 2484 demolishes a building or facility on the state fair park;
- 2485 (i) keep the state fair park fully insured to protect against loss or damage by fire,
- 2486 vandalism, or malicious mischief;
- 2487 (j) in accordance with Subsection (3), at the corporation's expense, and for the mutual
- 2488 benefit of the division, maintain general public liability insurance in an amount equal to at least
- 2489 \$1,000,000 through one or more companies that are:
- 2490 (i) licensed to do business in the state;
- 2491 (ii) selected by the corporation; and
- 2492 (iii) approved by the division and the Division of Risk Management;
- 2493 (k) ensure that the division is an additional insured with primary coverage on each
- 2494 insurance policy that the corporation obtains in accordance with this section;
- 2495 (l) give the division notice at least 30 days before the day on which the corporation
- 2496 cancels any insurance policy that the corporation obtains in accordance with this section; and
- 2497 (m) if any lien is recorded or filed against the state fair park as a result of an act or
- 2498 omission of the corporation, cause the lien to be satisfied or cancelled within 10 days after the
- 2499 day on which the corporation receives notice of the lien.
- 2500 (2) ~~[The State Building Board]~~ At least 90 calendar days before demolition work
- 2501 begins, the division shall notify the State Historic Preservation Office of any ~~[State Building~~
- 2502 ~~Board meeting at which the State Building Board will consider approval]~~ division plan to
- 2503 demolish a facility on the state fair park.
- 2504 (3) The general public liability insurance described in Subsection (1)(j) shall:
- 2505 (a) insure against any claim for personal injury, death, or property damage that occurs
- 2506 at the state fair park; and
- 2507 (b) be a blanket policy that covers all activities of the corporation.

2508 (4) The division shall administer any capital improvements on the state fair park that
2509 cost more than \$250,000.

2510 (5) Upon 24 hours notice to the corporation, the division may enter the state fair park
2511 to inspect the state fair park and make any repairs that the division determines necessary.

2512 (6) If the corporation no longer operates as an independent public nonprofit corporation
2513 as described in this chapter, the state shall assume the responsibilities of the corporation under
2514 any contract that is:

2515 (a) in effect as of the day on which the status of the corporation changes; and

2516 (b) for the lease, construction, or development of a building or facility on the state fair
2517 park.

2518 (7) (a) A debt or obligation contracted by the corporation is a debt or obligation of the
2519 corporation.

2520 (b) The state is not liable and assumes no responsibility for any debt or obligation
2521 described in Subsection (7)(a), unless the Legislature expressly:

2522 (i) authorizes the corporation to contract for the debt or obligation; and

2523 (ii) accepts liability or assumes responsibility for the debt or obligation.

2524 (8) The provisions of this section apply notwithstanding any contrary provision in Title
2525 63A, Chapter 5b, Administration of State Facilities.

2526 Section 40. Section **72-6-107.5** is amended to read:

2527 **72-6-107.5. Construction of improvements of highway -- Contracts -- Health**
2528 **insurance coverage.**

2529 (1) As used in this section:

2530 (a) "Aggregate" means the sum of all contracts, change orders, and modifications
2531 related to a single project.

2532 (b) "Change order" means the same as that term is defined in Section [63G-6a-103](#).

2533 (c) "Employee" means, as defined in Section [34A-2-104](#), an "employee," "worker," or
2534 "operative" who:

2535 (i) works at least 30 hours per calendar week; and

2536 (ii) meets employer eligibility waiting requirements for health care insurance, which
2537 may not exceed the first day of the calendar month following 60 days after the day on which
2538 the individual is hired.

- 2539 (d) "Health benefit plan" means:
- 2540 (i) the same as that term is defined in Section 31A-1-301; or
- 2541 (ii) an employee welfare benefit plan:
- 2542 (A) established under the Employee Retirement Income Security Act of 1974, 29
- 2543 U.S.C. Sec. 1001 et seq.;
- 2544 (B) for an employer with 100 or more employees; and
- 2545 (C) in which the employer establishes a self-funded or partially self-funded group
- 2546 health plan to provide medical care for the employer's employees and dependents of the
- 2547 employees.
- 2548 (e) "Qualified health coverage" means the same as that term is defined in Section
- 2549 26-40-115.
- 2550 (f) "Subcontractor" means the same as that term is defined in Section 63A-5b-605.
- 2551 (g) "Third party administrator" or "administrator" means the same as that term is
- 2552 defined in Section 31A-1-301.
- 2553 (2) Except as provided in Subsection (3), the requirements of this section apply to:
- 2554 (a) a contractor of a design or construction contract entered into by the department on
- 2555 or after July 1, 2009, if the prime contract is in an aggregate amount equal to or greater than
- 2556 \$2,000,000; and
- 2557 (b) a subcontractor of a contractor of a design or construction contract entered into by
- 2558 the department on or after July 1, 2009, if the subcontract is in an aggregate amount equal to or
- 2559 greater than \$1,000,000.
- 2560 (3) The requirements of this section do not apply to a contractor or subcontractor
- 2561 described in Subsection (2) if:
- 2562 (a) the application of this section jeopardizes the receipt of federal funds;
- 2563 (b) the contract is a sole source contract; or
- 2564 (c) the contract is an emergency procurement.
- 2565 (4) A person that intentionally uses change orders, contract modifications, or multiple
- 2566 contracts to circumvent the requirements of this section is guilty of an infraction.
- 2567 (5) (a) A contractor subject to the requirements of this section shall demonstrate to the
- 2568 department that the contractor has and will maintain an offer of qualified health coverage for
- 2569 the contractor's employees and the employees' dependents during the duration of the contract

2570 by submitting to the department a written statement that:

2571 (i) the contractor offers qualified health coverage that complies with Section
2572 26-40-115;

2573 (ii) is from:

2574 (A) an actuary selected by the contractor or the contractor's insurer;

2575 (B) an underwriter who is responsible for developing the employer group's premium
2576 rates; or

2577 (C) if the contractor provides a health benefit plan described in Subsection (1)(d)(ii),
2578 an actuary or underwriter selected by a third party administrator; and

2579 (iii) was created within one year before the day on which the statement is submitted.

2580 (b) (i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii)
2581 shall provide the actuary or underwriter selected by an administrator, as described in
2582 Subsection (5)(a)(ii)(C), sufficient information to determine whether the contractor's
2583 contribution to the health benefit plan and the actuarial value of the health benefit plan meet the
2584 requirements of qualified health coverage.

2585 (ii) A contractor may not make a change to the contractor's contribution to the health
2586 benefit plan, unless the contractor provides notice to:

2587 (A) the actuary or underwriter selected by an administrator, as described in Subsection
2588 (5)(a)(ii)(C), for the actuary or underwriter to update the written statement described in
2589 Subsection (5)(a) in compliance with this section; and

2590 (B) the department.

2591 (c) A contractor that is subject to the requirements of this section shall:

2592 (i) place a requirement in each of the contractor's subcontracts that a subcontractor that
2593 is subject to the requirements of this section shall obtain and maintain an offer of qualified
2594 health coverage for the subcontractor's employees and the employees' dependents during the
2595 duration of the subcontract; and

2596 (ii) obtain from a subcontractor that is subject to the requirements of this section a
2597 written statement that:

2598 (A) the subcontractor offers qualified health coverage that complies with Section
2599 26-40-115;

2600 (B) is from an actuary selected by the subcontractor or the subcontractor's insurer, an

2601 underwriter who is responsible for developing the employer group's premium rates, or if the
2602 subcontractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or
2603 underwriter selected by an administrator; and

2604 (C) was created within one year before the day on which the contractor obtains the
2605 statement.

2606 (d) (i) (A) A contractor that fails to maintain an offer of qualified health coverage
2607 described in Subsection (5)(a) during the duration of the contract is subject to penalties in
2608 accordance with administrative rules adopted by the department under Subsection (6).

2609 (B) A contractor is not subject to penalties for the failure of a subcontractor to obtain
2610 and maintain an offer of qualified health coverage described in Subsection (5)(c)(i).

2611 (ii) (A) A subcontractor that fails to obtain and maintain an offer of qualified health
2612 coverage described in Subsection (5)(c) during the duration of the subcontract is subject to
2613 penalties in accordance with administrative rules adopted by the department under Subsection
2614 (6).

2615 (B) A subcontractor is not subject to penalties for the failure of a contractor to maintain
2616 an offer of qualified health coverage described in Subsection (5)(a).

2617 (6) The department shall adopt administrative rules:

2618 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

2619 (b) in coordination with:

2620 (i) the Department of Environmental Quality in accordance with Section [19-1-206](#);

2621 (ii) the Department of Natural Resources in accordance with Section [79-2-404](#);

2622 (iii) the ~~[State Building Board]~~ Division of Facilities Construction and Management in
2623 accordance with Section [63A-5b-607](#);

2624 (iv) the State Capitol Preservation Board in accordance with Section [63C-9-403](#);

2625 (v) a public transit district in accordance with Section [17B-2a-818.5](#); and

2626 (vi) the Legislature's Administrative Rules Review Committee; and

2627 (c) that establish:

2628 (i) the requirements and procedures a contractor and a subcontractor shall follow to
2629 demonstrate compliance with this section, including:

2630 (A) that a contractor or subcontractor's compliance with this section is subject to an
2631 audit by the department or the Office of the Legislative Auditor General;

2632 (B) that a contractor that is subject to the requirements of this section shall obtain a
2633 written statement described in Subsection (5)(a); and

2634 (C) that a subcontractor that is subject to the requirements of this section shall obtain a
2635 written statement described in Subsection (5)(c)(ii);

2636 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
2637 violates the provisions of this section, which may include:

2638 (A) a three-month suspension of the contractor or subcontractor from entering into
2639 future contracts with the state upon the first violation;

2640 (B) a six-month suspension of the contractor or subcontractor from entering into future
2641 contracts with the state upon the second violation;

2642 (C) an action for debarment of the contractor or subcontractor in accordance with
2643 Section [63G-6a-904](#) upon the third or subsequent violation; and

2644 (D) monetary penalties which may not exceed 50% of the amount necessary to
2645 purchase qualified health coverage for an employee and a dependent of the employee of the
2646 contractor or subcontractor who was not offered qualified health coverage during the duration
2647 of the contract; and

2648 (iii) a website on which the department shall post the commercially equivalent
2649 benchmark, for the qualified health coverage identified in Subsection (1)(e), that is provided by
2650 the Department of Health, in accordance with Subsection [26-40-115\(2\)](#).

2651 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c)(ii), a contractor
2652 or subcontractor who intentionally violates the provisions of this section is liable to the
2653 employee for health care costs that would have been covered by qualified health coverage.

2654 (ii) An employer has an affirmative defense to a cause of action under Subsection
2655 (7)(a)(i) if:

2656 (A) the employer relied in good faith on a written statement described in Subsection
2657 (5)(a) or (5)(c)(ii); or

2658 (B) the department determines that compliance with this section is not required under
2659 the provisions of Subsection (3).

2660 (b) An employee has a private right of action only against the employee's employer to
2661 enforce the provisions of this Subsection (7).

2662 (8) Any penalties imposed and collected under this section shall be deposited into the

2663 Medicaid Restricted Account created in Section [26-18-402](#).

2664 (9) The failure of a contractor or subcontractor to provide qualified health coverage as
2665 required by this section:

2666 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
2667 or contractor under:

2668 (i) Section [63G-6a-1602](#); or

2669 (ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

2670 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
2671 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
2672 or construction.

2673 (10) An administrator, including an administrator's actuary or underwriter, who
2674 provides a written statement under Subsection (5)(a) or (c) regarding the qualified health
2675 coverage of a contractor or subcontractor who provides a health benefit plan described in
2676 Subsection (1)(d)(ii):

2677 (a) subject to Subsection (10)(b), is not liable for an error in the written statement,
2678 unless the administrator commits gross negligence in preparing the written statement;

2679 (b) is not liable for any error in the written statement if the administrator relied in good
2680 faith on information from the contractor or subcontractor; and

2681 (c) may require as a condition of providing the written statement that a contractor or
2682 subcontractor hold the administrator harmless for an action arising under this section.

2683 Section 41. Section **79-2-404** is amended to read:

2684 **79-2-404. Contracting powers of department -- Health insurance coverage.**

2685 (1) As used in this section:

2686 (a) "Aggregate" means the sum of all contracts, change orders, and modifications
2687 related to a single project.

2688 (b) "Change order" means the same as that term is defined in Section [63G-6a-103](#).

2689 (c) "Employee" means, as defined in Section [34A-2-104](#), an "employee," "worker," or
2690 "operative" who:

2691 (i) works at least 30 hours per calendar week; and

2692 (ii) meets employer eligibility waiting requirements for health care insurance, which
2693 may not exceed the first day of the calendar month following 60 days after the day on which

2694 the individual is hired.

2695 (d) "Health benefit plan" means:

2696 (i) the same as that term is defined in Section 31A-1-301; or

2697 (ii) an employee welfare benefit plan:

2698 (A) established under the Employee Retirement Income Security Act of 1974, 29
2699 U.S.C. Sec. 1001 et seq.;

2700 (B) for an employer with 100 or more employees; and

2701 (C) in which the employer establishes a self-funded or partially self-funded group
2702 health plan to provide medical care for the employer's employees and dependents of the
2703 employees.

2704 (e) "Qualified health coverage" means the same as that term is defined in Section
2705 26-40-115.

2706 (f) "Subcontractor" means the same as that term is defined in Section 63A-5b-605.

2707 (g) "Third party administrator" or "administrator" means the same as that term is
2708 defined in Section 31A-1-301.

2709 (2) Except as provided in Subsection (3), the requirements of this section apply to:

2710 (a) a contractor of a design or construction contract entered into by, or delegated to, the
2711 department or a division, board, or council of the department on or after July 1, 2009, if the
2712 prime contract is in an aggregate amount equal to or greater than \$2,000,000; and

2713 (b) a subcontractor of a contractor of a design or construction contract entered into by,
2714 or delegated to, the department or a division, board, or council of the department on or after
2715 July 1, 2009, if the subcontract is in an aggregate amount equal to or greater than \$1,000,000.

2716 (3) This section does not apply to contracts entered into by the department or a
2717 division, board, or council of the department if:

2718 (a) the application of this section jeopardizes the receipt of federal funds;

2719 (b) the contract or agreement is between:

2720 (i) the department or a division, board, or council of the department; and

2721 (ii) (A) another agency of the state;

2722 (B) the federal government;

2723 (C) another state;

2724 (D) an interstate agency;

2725 (E) a political subdivision of this state; or
2726 (F) a political subdivision of another state; or
2727 (c) the contract or agreement is:
2728 (i) for the purpose of disbursing grants or loans authorized by statute;
2729 (ii) a sole source contract; or
2730 (iii) an emergency procurement.
2731 (4) A person that intentionally uses change orders, contract modifications, or multiple
2732 contracts to circumvent the requirements of this section is guilty of an infraction.
2733 (5) (a) A contractor subject to the requirements of this section shall demonstrate to the
2734 department that the contractor has and will maintain an offer of qualified health coverage for
2735 the contractor's employees and the employees' dependents during the duration of the contract
2736 by submitting to the department a written statement that:
2737 (i) the contractor offers qualified health coverage that complies with Section
2738 [26-40-115](#);
2739 (ii) is from:
2740 (A) an actuary selected by the contractor or the contractor's insurer;
2741 (B) an underwriter who is responsible for developing the employer group's premium
2742 rates; or
2743 (C) if the contractor provides a health benefit plan described in Subsection (1)(d)(ii),
2744 an actuary or underwriter selected by a third party administrator; and
2745 (iii) was created within one year before the day on which the statement is submitted.
2746 (b) (i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii)
2747 shall provide the actuary or underwriter selected by an administrator, as described in
2748 Subsection (5)(a)(ii)(C), sufficient information to determine whether the contractor's
2749 contribution to the health benefit plan and the actuarial value of the health benefit plan meet the
2750 requirements of qualified health coverage.
2751 (ii) A contractor may not make a change to the contractor's contribution to the health
2752 benefit plan, unless the contractor provides notice to:
2753 (A) the actuary or underwriter selected by an administrator, as described in Subsection
2754 (5)(a)(ii)(C), for the actuary or underwriter to update the written statement described in
2755 Subsection (5)(a) in compliance with this section; and

2756 (B) the department.

2757 (c) A contractor that is subject to the requirements of this section shall:

2758 (i) place a requirement in each of the contractor's subcontracts that a subcontractor that

2759 is subject to the requirements of this section shall obtain and maintain an offer of qualified

2760 health coverage for the subcontractor's employees and the employees' dependents during the

2761 duration of the subcontract; and

2762 (ii) obtain from a subcontractor that is subject to the requirements of this section a

2763 written statement that:

2764 (A) the subcontractor offers qualified health coverage that complies with Section

2765 [26-40-115](#);

2766 (B) is from an actuary selected by the subcontractor or the subcontractor's insurer, an

2767 underwriter who is responsible for developing the employer group's premium rates, or if the

2768 subcontractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or

2769 underwriter selected by an administrator; and

2770 (C) was created within one year before the day on which the contractor obtains the

2771 statement.

2772 (d) (i) (A) A contractor that fails to maintain an offer of qualified health coverage

2773 described in Subsection (5)(a) during the duration of the contract is subject to penalties in

2774 accordance with administrative rules adopted by the department under Subsection (6).

2775 (B) A contractor is not subject to penalties for the failure of a subcontractor to obtain

2776 and maintain an offer of qualified health coverage described in Subsection (5)(c)(i).

2777 (ii) (A) A subcontractor that fails to obtain and maintain an offer of qualified health

2778 coverage described in Subsection (5)(c) during the duration of the subcontract is subject to

2779 penalties in accordance with administrative rules adopted by the department under Subsection

2780 (6).

2781 (B) A subcontractor is not subject to penalties for the failure of a contractor to maintain

2782 an offer of qualified health coverage described in Subsection (5)(a).

2783 (6) The department shall adopt administrative rules:

2784 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

2785 (b) in coordination with:

2786 (i) the Department of Environmental Quality in accordance with Section [19-1-206](#);

- 2787 (ii) a public transit district in accordance with Section [17B-2a-818.5](#);
- 2788 (iii) the [~~State Building Board~~] Division of Facilities Construction and Management in
2789 accordance with Section [63A-5b-607](#);
- 2790 (iv) the State Capitol Preservation Board in accordance with Section [63C-9-403](#);
- 2791 (v) the Department of Transportation in accordance with Section [72-6-107.5](#); and
- 2792 (vi) the Legislature's Administrative Rules Review Committee; and
- 2793 (c) that establish:
- 2794 (i) the requirements and procedures a contractor and a subcontractor shall follow to
2795 demonstrate compliance with this section, including:
- 2796 (A) that a contractor or subcontractor's compliance with this section is subject to an
2797 audit by the department or the Office of the Legislative Auditor General;
- 2798 (B) that a contractor that is subject to the requirements of this section shall obtain a
2799 written statement described in Subsection (5)(a); and
- 2800 (C) that a subcontractor that is subject to the requirements of this section shall obtain a
2801 written statement described in Subsection (5)(c)(ii);
- 2802 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
2803 violates the provisions of this section, which may include:
- 2804 (A) a three-month suspension of the contractor or subcontractor from entering into
2805 future contracts with the state upon the first violation;
- 2806 (B) a six-month suspension of the contractor or subcontractor from entering into future
2807 contracts with the state upon the second violation;
- 2808 (C) an action for debarment of the contractor or subcontractor in accordance with
2809 Section [63G-6a-904](#) upon the third or subsequent violation; and
- 2810 (D) monetary penalties which may not exceed 50% of the amount necessary to
2811 purchase qualified health coverage for an employee and a dependent of an employee of the
2812 contractor or subcontractor who was not offered qualified health coverage during the duration
2813 of the contract; and
- 2814 (iii) a website on which the department shall post the commercially equivalent
2815 benchmark, for the qualified health coverage identified in Subsection (1)(e), provided by the
2816 Department of Health, in accordance with Subsection [26-40-115\(2\)](#).
- 2817 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c)(ii), a contractor

2818 or subcontractor who intentionally violates the provisions of this section is liable to the
2819 employee for health care costs that would have been covered by qualified health coverage.

2820 (ii) An employer has an affirmative defense to a cause of action under Subsection
2821 (7)(a)(i) if:

2822 (A) the employer relied in good faith on a written statement described in Subsection
2823 (5)(a) or (5)(c)(ii); or

2824 (B) the department determines that compliance with this section is not required under
2825 the provisions of Subsection (3).

2826 (b) An employee has a private right of action only against the employee's employer to
2827 enforce the provisions of this Subsection (7).

2828 (8) Any penalties imposed and collected under this section shall be deposited into the
2829 Medicaid Restricted Account created in Section [26-18-402](#).

2830 (9) The failure of a contractor or subcontractor to provide qualified health coverage as
2831 required by this section:

2832 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
2833 or contractor under:

2834 (i) Section [63G-6a-1602](#); or

2835 (ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

2836 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
2837 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
2838 or construction.

2839 (10) An administrator, including an administrator's actuary or underwriter, who
2840 provides a written statement under Subsection (5)(a) or (c) regarding the qualified health
2841 coverage of a contractor or subcontractor who provides a health benefit plan described in
2842 Subsection (1)(d)(ii):

2843 (a) subject to Subsection (10)(b), is not liable for an error in the written statement,
2844 unless the administrator commits gross negligence in preparing the written statement;

2845 (b) is not liable for any error in the written statement if the administrator relied in good
2846 faith on information from the contractor or subcontractor; and

2847 (c) may require as a condition of providing the written statement that a contractor or
2848 subcontractor hold the administrator harmless for an action arising under this section.

2849 Section 42. **Repealer.**
2850 This bill repeals:
2851 Section **63A-5b-201**, **Creation of state building board -- Composition --**
2852 **Appointment -- Per diem and expenses -- Board officers.**
2853 Section **63A-5b-202**, **State Building Board powers and duties.**
2854 Section **63A-5b-203**, **Meetings of state building board -- Rules of procedure --**
2855 **Quorum.**
2856 Section 43. **Effective date.**
2857 This bill takes effect on May 4, 2022, except that the amendments to Section
2858 [53B-2a-112](#) (Effective 07/01/22) take effect on July 1, 2022.