

**Senator David G. Buxton** proposes the following substitute bill:

**STATE FACILITIES MANAGEMENT AMENDMENTS**

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: David G. Buxton**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

- ▶ eliminates the State Building Board;
- ▶ gives duties of the former State Building Board to the Division of Facilities

Construction and Management and the Department of Government Operations;

- ▶ increases the limit of the value of property that the Division of Facilities

Construction and Management may acquire without legislative approval from

\$250,000 to \$500,000;

▶ with respect to code provisions dealing with the disposal of property owned by the Division of Facilities Construction and Management, increases the limit of the value of property not subject to those code provisions from \$250,000 to \$500,000;

▶ modifies provisions relating to the supervision and control of the allocation of space for institutions of higher education and courts;

▶ provides that the disposition of property owned by the Division of Facilities

Construction and Management in connection with the establishment of a state liquor

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  
29 requirement for the director of the Division of Facilities Construction and  
30 Management to notify a local 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       **39-2-1**, as last amended by Laws of Utah 2010, Chapter 286  
41       **53B-2a-112 (Superseded 07/01/22)**, as last amended by Laws of Utah 2020, Chapter  
42 365  
43       **53B-2a-112 (Effective 07/01/22)**, as last amended by Laws of Utah 2021, Second  
44 Special Session, Chapter 1  
45       **53B-2a-117**, as last amended by Laws of Utah 2020, Chapters 152 and 365  
46       **53B-7-101**, as last amended by Laws of Utah 2020, Chapter 365  
47       **53B-22-204**, as last amended by Laws of Utah 2020, Chapter 152  
48       **63A-5b-102**, as last amended by Laws of Utah 2021, Chapter 187  
49       **63A-5b-303**, as enacted by Laws of Utah 2020, Chapter 152  
50       **63A-5b-402**, as enacted by Laws of Utah 2020, Chapter 152  
51       **63A-5b-403**, as last amended by Laws of Utah 2021, Chapter 187  
52       **63A-5b-404**, as enacted by Laws of Utah 2020, Chapter 152  
53       **63A-5b-503**, as renumbered and amended by Laws of Utah 2020, Chapter 152  
54       **63A-5b-601**, as enacted by Laws of Utah 2020, Chapter 152  
55       **63A-5b-603**, as enacted by Laws of Utah 2020, Chapter 152  
56       **63A-5b-604**, as enacted by Laws of Utah 2020, Chapter 152

- 57           **63A-5b-802**, as renumbered and amended by Laws of Utah 2020, Chapter 152
- 58           **63A-5b-803**, as last amended by Laws of Utah 2020, Chapter 365
- 59           **63A-5b-806**, as renumbered and amended by Laws of Utah 2020, Chapter 152
- 60           **63A-5b-901**, as renumbered and amended by Laws of Utah 2020, Chapter 152
- 61           **63A-5b-902**, as renumbered and amended by Laws of Utah 2020, Chapter 152
- 62           **63A-5b-904**, as renumbered and amended by Laws of Utah 2020, Chapter 152
- 63           **63A-5b-905**, as last amended by Laws of Utah 2021, Chapters 84 and 345
- 64           **63A-5b-907**, as renumbered and amended by Laws of Utah 2020, Chapter 152
- 65           **63A-5b-910**, as renumbered and amended by Laws of Utah 2020, Chapter 152
- 66           **63A-5b-1001**, as enacted by Laws of Utah 2020, Chapter 152
- 67           **63A-5b-1003**, as renumbered and amended by Laws of Utah 2020, Chapter 152
- 68           **63A-5b-1104**, as enacted by Laws of Utah 2020, Chapter 152
- 69           **63B-1-101**, as last amended by Laws of Utah 2003, Chapter 2
- 70           **63B-1-304**, as last amended by Laws of Utah 2020, Chapter 152
- 71           **63C-9-403**, as last amended by Laws of Utah 2020, Chapters 32 and 152
- 72           **63G-6a-103**, as last amended by Laws of Utah 2021, Chapters 179, 179, 344, 344, 345,
- 73 and 345
- 74           **63G-6a-109**, as last amended by Laws of Utah 2020, Chapter 257
- 75           **63G-6a-204**, as last amended by Laws of Utah 2020, Chapters 257 and 354
- 76           **63G-6a-303**, as last amended by Laws of Utah 2021, Chapter 344
- 77           **63G-6a-1302**, as last amended by Laws of Utah 2020, Chapter 257
- 78           **63H-6-103**, as last amended by Laws of Utah 2021, Chapters 33, 84, and 345
- 79           **63H-6-108**, as last amended by Laws of Utah 2016, Third Special Session, Chapter 2
- 80           **72-6-107.5**, as last amended by Laws of Utah 2020, Chapters 32 and 152
- 81           **79-2-404**, as last amended by Laws of Utah 2020, Chapters 32 and 152

82 ENACTS:

- 83           **63A-5b-907.5**, Utah Code Annotated 1953

84 REPEALS:

- 85           **63A-5b-201**, as last amended by Laws of Utah 2021, Chapter 382
- 86           **63A-5b-202**, as last amended by Laws of Utah 2021, Chapters 187 and 344
- 87           **63A-5b-203**, as enacted by Laws of Utah 2020, Chapter 152

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

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

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

93 (1) As used in this section:

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

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

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

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

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

103 (d) "Health benefit plan" means:

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

105 (ii) an employee welfare benefit plan:

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

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

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

112 (e) "Qualified health coverage" means the same as that term is defined in Section  
113 [26-40-115](#).

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

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

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

118 (a) a contractor of a design or construction contract entered into by the public transit

119 district on or after July 1, 2009, if the prime contract is in an aggregate amount equal to or  
120 greater than \$2,000,000; and

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

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

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

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

128 (c) the contract is an emergency procurement.

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

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

135 (i) the contractor offers qualified health coverage that complies with Section  
136 [26-40-115](#);

137 (ii) is from:

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

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

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

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

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

149 (ii) A contractor may not make a change to the contractor's contribution to the health

150 benefit plan, unless the contractor provides notice to:

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

154 (B) the public transit district.

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

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

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

162 (A) the subcontractor offers qualified health coverage that complies with Section  
163 [26-40-115](#);

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

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

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

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

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

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

- 181 (6) The public transit district shall adopt ordinances:
- 182 (a) in coordination with:
- 183 (i) the Department of Environmental Quality in accordance with Section 19-1-206;
- 184 (ii) the Department of Natural Resources in accordance with Section 79-2-404;
- 185 (iii) the ~~[State Building Board]~~ Division of Facilities Construction and Management in  
186 accordance with Section 63A-5b-607;
- 187 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403; and
- 188 (v) the Department of Transportation in accordance with Section 72-6-107.5; and
- 189 (b) that establish:
- 190 (i) the requirements and procedures a contractor and a subcontractor shall follow to  
191 demonstrate compliance with this section, including:
- 192 (A) that a contractor or subcontractor's compliance with this section is subject to an  
193 audit by the public transit district or the Office of the Legislative Auditor General;
- 194 (B) that a contractor that is subject to the requirements of this section shall obtain a  
195 written statement described in Subsection (5)(a); and
- 196 (C) that a subcontractor that is subject to the requirements of this section shall obtain a  
197 written statement described in Subsection (5)(c)(ii);
- 198 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally  
199 violates the provisions of this section, which may include:
- 200 (A) a three-month suspension of the contractor or subcontractor from entering into  
201 future contracts with the public transit district upon the first violation;
- 202 (B) a six-month suspension of the contractor or subcontractor from entering into future  
203 contracts with the public transit district upon the second violation;
- 204 (C) an action for debarment of the contractor or subcontractor in accordance with  
205 Section 63G-6a-904 upon the third or subsequent violation; and
- 206 (D) monetary penalties which may not exceed 50% of the amount necessary to  
207 purchase qualified health coverage for employees and dependents of employees of the  
208 contractor or subcontractor who were not offered qualified health coverage during the duration  
209 of the contract; and
- 210 (iii) a website on which the district shall post the commercially equivalent benchmark,  
211 for the qualified health coverage identified in Subsection (1)(e), that is provided by the

212 Department of Health, in accordance with Subsection [26-40-115\(2\)](#).

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

246 **19-1-206. Contracting powers of department -- Health insurance coverage.**

247 (1) As used in this section:

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

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

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

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

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

257 (d) "Health benefit plan" means:

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

259 (ii) an employee welfare benefit plan:

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

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

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

266 (e) "Qualified health coverage" means the same as that term is defined in Section  
267 [26-40-115](#).

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

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

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

272 (a) a contractor of a design or construction contract entered into by, or delegated to, the  
273 department, or a division or board of the department, on or after July 1, 2009, if the prime

274 contract is in an aggregate amount equal to or greater than \$2,000,000; and

275 (b) a subcontractor of a contractor of a design or construction contract entered into by,  
276 or delegated to, the department, or a division or board of the department, on or after July 1,  
277 2009, if the subcontract is in an aggregate amount equal to or greater than \$1,000,000.

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

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

281 (b) the contract or agreement is between:

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

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

284 (B) the federal government;

285 (C) another state;

286 (D) an interstate agency;

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

288 (F) a political subdivision of another state;

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

292 (d) the contract is:

293 (i) a sole source contract; or

294 (ii) an emergency procurement.

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

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

301 (i) the contractor offers qualified health coverage that complies with Section  
302 [26-40-115](#);

303 (ii) is from:

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

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

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

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

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

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

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

320 (B) the department.

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

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

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

328 (A) the subcontractor offers qualified health coverage that complies with Section  
329 [26-40-115](#);

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

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

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

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

341 (ii) (A) A subcontractor that fails to obtain and maintain an offer of qualified health  
342 coverage described in Subsection (5)(c) during the duration of the subcontract is subject to  
343 penalties in accordance with administrative rules adopted by the department under Subsection  
344 (6).

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

347 (6) The department shall adopt administrative rules:

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

349 (b) in coordination with:

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

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

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

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

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

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

357 (c) that establish:

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

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

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

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

366 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally

367 violates the provisions of this section, which may include:

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

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

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

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

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

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

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

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

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

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

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

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

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

398 (i) Section 63G-6a-1602; or  
399 (ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and  
400 (b) may not be used by the procurement entity or a prospective bidder, offeror, or  
401 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design  
402 or construction.

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

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

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

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

413 Section 3. Section 39-2-1 is amended to read:

414 **39-2-1. Members -- A body corporate -- Powers -- Expenses.**

415 (1) (a) The State Armory Board shall consist of the governor, the [~~chair of the State~~  
416 ~~Building Board~~] executive director of the Department of Government Operations, and the  
417 adjutant general.

418 (b) It shall be a body corporate with perpetual succession.

419 (c) It may have and use a common seal, and under the name aforesaid may sue and be  
420 sued, and contract and be contracted with.

421 (d) It may take and hold by purchase, gift, devise, grant, or bequest real and personal  
422 property required for its use.

423 (e) It may also convert property received by gift, devise, or bequest, and not suitable for  
424 its uses, into other property so available, or into money.

425 (2) The board shall have power to:

426 (a) borrow money for the purpose of erecting arsenals and armories upon the sole  
427 credit of the real property to which it has the legal title; and

428 (b) may secure such loans by mortgage upon such property:

429 (i) the mortgaged property shall be the sole security for such loan; and  
430 (ii) no deficiency judgment shall be made, rendered, or entered against the board upon  
431 the foreclosure of the mortgage; provided, however, that property in one city shall not be  
432 mortgaged for the purpose of obtaining money for the erection of armories in any other place.  
433 Said board shall be deemed a public corporation, and its property shall be exempt from all  
434 taxes and assessments.

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

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

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

439 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
440 63A-3-107.

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

442 **53B-2a-112 (Superseded 07/01/22). Technical colleges -- Relationships with other**  
443 **public and higher education institutions -- Agreements -- Priorities -- New capital**  
444 **facilities.**

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

446 (a) Utah State University for:

447 (i) Bridgerland Technical College;

448 (ii) Tooele Technical College; and

449 (iii) Uintah Basin Technical College;

450 (b) Weber State University for:

451 (i) Ogden-Weber Technical College; and

452 (ii) Davis Technical College;

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

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

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

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

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

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

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

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

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

467 (i) maintain and support existing higher education career and technical education  
468 programs; and

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

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

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

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

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

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

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

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

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



491 career and technical education in the region;

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

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

495 Section 5. Section **53B-2a-112 (Effective 07/01/22)** is amended to read:

496 **53B-2a-112 (Effective 07/01/22). Technical colleges -- Relationships with other**  
497 **public and higher education institutions -- Agreements -- Priorities -- New capital**  
498 **facilities.**

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

500 (a) Utah State University for:

501 (i) Bridgerland Technical College;

502 (ii) Tooele Technical College; and

503 (iii) Uintah Basin Technical College;

504 (b) Weber State University for:

505 (i) Ogden-Weber Technical College; and

506 (ii) Davis Technical College;

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

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

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

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

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

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

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

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

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

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

522 programs; and

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

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

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

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

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

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

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

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

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

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

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

549 Section 6. Section **53B-2a-117** is amended to read:

550 **53B-2a-117. Legislative approval -- Capital development projects --**  
551 **Prioritization.**

552 (1) As used in this section:

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

555 (b) "Fund" means the Technical Colleges Capital Projects Fund created in Section  
556 [53B-2a-118](#).

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

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

562 (4) The board shall:

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

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

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

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

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

571 (i) the governor;

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

573 (iii) the Higher Education Appropriations Subcommittee; and

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

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

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

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

578 (5) A dedicated project:

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

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

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

584 development projects described in this section based on:

- 585 (i) growth and capacity;
- 586 (ii) effectiveness and support of critical programs;
- 587 (iii) cost effectiveness;
- 588 (iv) building deficiencies and life safety concerns; and
- 589 (v) alternative funding sources.

590 (b) The board shall establish:

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

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

- 596 (i) up to three nondedicated projects if the ongoing appropriation to the fund is less  
597 than \$7,000,000;
- 598 (ii) up to two nondedicated projects if the ongoing appropriation to the fund is at least  
599 \$7,000,000 but less than \$14,000,000; or
- 600 (iii) one nondedicated project if the ongoing appropriation to the fund is at least  
601 \$14,000,000.

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

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

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

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

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

612 **53B-7-101. Combined requests for appropriations -- Board review of operating**  
613 **budgets -- Submission of budgets -- Recommendations -- Hearing request --**  
614 **Appropriation formulas -- Allocations -- Dedicated credits -- Financial affairs.**

615 (1) As used in this section:

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

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

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

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

623 (i) employee compensation;

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

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

626 (iv) statewide and institutional priorities, including scholarships, financial aid, and  
627 technology infrastructure; and

628 (v) enrollment growth.

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

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

636 (3) In the combined request for appropriation, the board shall differentiate between  
637 appropriations requested for academic education and appropriations requested for technical  
638 education.

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

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

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

646 explanations and supporting data.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

684 Section 8. Section **53B-22-204** is amended to read:

685 **53B-22-204. Funding request for capital development project -- Legislative**  
686 **approval -- Board prioritization, approval, and review.**

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

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

691 (3) The board shall:

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

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

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

695 (iii) fulfills a critical institutional facility need;

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

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

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

699 (5); and

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

701 (i) the governor;

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

703 (iii) the Higher Education Appropriations Subcommittee; and

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

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

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

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

708 (4) A dedicated project:

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

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

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

715 (i) capital facility need;

716 (ii) utilization of facilities;

717 (iii) maintenance and condition of facilities; and

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

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

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

722 (ii) procedures for prioritizing requests.

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

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

727 (ii) up to two nondedicated projects if the ongoing appropriation to the fund is at least  
728 \$50,000,000 but less than \$100,000,000; or

729 (iii) one nondedicated project if the ongoing appropriation to the fund is at least  
730 \$100,000,000.

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

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

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

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

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



739 (7)(a).

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

743 Section 9. Section **63A-5b-102** is amended to read:

744 **63A-5b-102. Definitions.**

745 As used in this chapter:

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

747 [~~(2)~~ (1) "Capitol hill facilities" means the same as that term is defined in Section  
748 [63C-9-102](#).

749 [~~(3)~~ (2) "Capitol hill grounds" means the same as that term is defined in Section  
750 [63C-9-102](#).

751 [~~(4)~~ (3) "Compliance agency" means the same as that term is defined in Section  
752 [15A-1-202](#).

753 [~~(5)~~ (4) "Director" means the division director, appointed under Section [63A-5b-302](#).

754 [~~(6)~~ (5) "Division" means the Division of Facilities Construction and Management  
755 created in Section [63A-5b-301](#).

756 [~~(7)~~ (6) "Institution of higher education" means an institution listed in Subsection  
757 [53B-2-101](#)(1).

758 [~~(8)~~ (7) "Trust lands administration" means the School and Institutional Trust Lands  
759 Administration established in Section [53C-1-201](#).

760 [~~(9)~~ (8) "Utah Board of Higher Education" means the Utah Board of Higher Education  
761 established in Section [53B-1-402](#).

762 Section 10. Section **63A-5b-303** is amended to read:

763 **63A-5b-303. Duties and authority of division.**

764 (1) (a) The division shall:

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

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

770 control;

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

774 (iv) except as otherwise provided by statute, hold title to all real property, buildings,  
775 fixtures, and appurtenances owned by the state or an agency;

776 (v) collect and maintain all deeds, abstracts of title, and all other documents evidencing  
777 title to or an interest in property belonging to the state or [of] to the state's departments, except  
778 institutions of higher education and the trust lands administration;

779 (vi) (A) periodically conduct a market analysis of proposed rates and fees; and

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

783 (vii) fulfill the division's responsibilities under Part 10, Energy Conservation and  
784 Efficiency, including responsibilities:

785 (A) to implement the state building energy efficiency program under Section  
786 63A-5b-1002; and

787 (B) related to the approval of loans from the State Facility Energy Efficiency Fund  
788 under Section 63A-5a-1003;

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

792 (ix) take all other action that the division is required to do under this chapter or other  
793 applicable statute.

794 (b) In making an allocation of space under Subsection (1)(a)(i), the division shall  
795 conduct one or more studies to determine the actual needs of each agency.

796 (c) The division may, without legislative approval, acquire title to real property for use  
797 by the state or an agency if the acquisition cost does not exceed [~~\$250,000~~] \$500,000.

798 (2) The division may:

799 (a) sue and be sued;

800 (b) as authorized by the Legislature, buy, lease, or otherwise acquire, by exchange or

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

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

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

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

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

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

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

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

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

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

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

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

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

827 Section 11. Section **63A-5b-402** is amended to read:

828 **63A-5b-402. Capital development process -- Approval requirements.**

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

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

835 (3) (a) The division shall, ~~[in consultation with the board and]~~ in accordance with Title  
836 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules that establish standards and  
837 requirements for a capital development project request and feasibility study.

838 (b) The rules shall include:

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

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

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

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

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

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

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

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

852 Section 12. Section ~~63A-5b-403~~ is amended to read:

853 **63A-5b-403. Institutions of higher education -- Capital development projects --**  
854 **Dedicated and nondedicated projects -- Recommendations and prioritization.**

855 (1) As used in this section:

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

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

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

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

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

863 Technical Education; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 894 (e) respond to changing needs in the economy; and
- 895 (f) respond to demands for online or in-class instruction, based on demographics.
- 896 (5) The division shall:
- 897 (a) (i) assist institutions of higher education in providing the information required by
- 898 Subsection ~~[(3)]~~ (4); and
- 899 (ii) verify the completion and accuracy of the information submitted by an institution
- 900 of higher education under Subsection ~~[(3)]~~ (4);
- 901 (b) assist the Utah Board of Higher Education to fulfill the requirements of Section
- 902 [53B-2a-112](#) in connection with the finding that the ~~[technical college]~~ division is required to
- 903 make under Subsection [53B-2a-112](#)~~[(5)]~~(4)(b); and
- 904 (c) assist the Utah Board of Higher Education in submitting a list of dedicated projects
- 905 to the ~~[board]~~ division for approval and nondedicated projects to the ~~[board]~~ division for
- 906 recommendation and prioritization pursuant to Section [53B-22-204](#).
- 907 Section 13. Section **63A-5b-404** is amended to read:
- 908 **63A-5b-404. Exceptions to requirement of legislative approval for capital**
- 909 **development projects.**
- 910 (1) (a) Except as provided in this section, a capital development project may not be
- 911 constructed on state property without legislative approval.
- 912 (b) The ~~[board]~~ division may authorize a capital development project on state property
- 913 without legislative approval only as provided in this section.
- 914 (2) (a) Legislative approval is not required for a capital development project that
- 915 consists of the design or construction of a new facility if:
- 916 (i) the ~~[board]~~ division determines that the requesting agency has provided adequate
- 917 assurance that state funds will not be used for the design or construction of the facility;
- 918 (ii) the agency provides to the ~~[board]~~ division a written document, signed by the head
- 919 of the agency:
- 920 (A) stating that funding or a revenue stream is in place, or will be in place before the
- 921 project is completed, to ensure that increased state funding will not be required to cover the
- 922 cost of operations and maintenance for the resulting facility or for immediate or future capital
- 923 improvements; and
- 924 (B) detailing the source of the funding that will be used for the cost of operations and

925 maintenance and for immediate and future capital improvements to the resulting facility; and  
926 (iii) the ~~[board]~~ division determines that the use of the state property:  
927 (A) is appropriate and consistent with the master plan for the property; and  
928 (B) will not create an adverse impact on the state.  
929 (b) For a facility constructed without legislative approval under Subsection (2)(a), an  
930 agency may not request:  
931 (i) increased state funds for operations and maintenance; or  
932 (ii) increased state capital improvement funding.  
933 (3) Legislative approval is not required for:  
934 (a) a facility:  
935 (i) to be built with funds other than state funds and owned by an entity other than a  
936 state entity; and  
937 (ii) that is within a research park area at the University of Utah or Utah State  
938 University;  
939 (b) a facility to be built at This is the Place State Park by the This is the Place  
940 Foundation with funds of the This is the Place Foundation or with donated services or materials  
941 and that may include grant money from the state;  
942 (c) a project that:  
943 (i) is funded by the Uintah Basin Revitalization Fund or the Navajo Revitalization  
944 Fund; and  
945 (ii) does not provide a new facility for an agency or institution of higher education; or  
946 (d) a project on school and institutional trust lands that:  
947 (i) is funded by the trust lands administration from the Land Grant Management Fund;  
948 and  
949 (ii) does not fund construction of a new facility for an agency or institution of higher  
950 education.  
951 (4) (a) Legislative approval is not required for a capital development project to be built  
952 for the Department of Transportation resulting from:  
953 (i) an exchange of real property under Section [72-5-111](#); or  
954 (ii) a sale or exchange of real property from a maintenance facility if the proceeds from  
955 the sale of the real property are used for, or the real property is exchanged for:

- 956 (A) real property for another maintenance facility; or  
957 (B) another maintenance facility, including improvements for a maintenance facility.  
958 (b) If the Department of Transportation approves a sale or exchange under Subsection  
959 (4)(a) for a capital development project subject to the board's approval, the Department of  
960 Transportation shall notify the president of the Senate, the speaker of the House of  
961 Representatives, and the cochairs of the Infrastructure and General Government Appropriations  
962 Subcommittee of the Legislature's Joint Appropriations Committee about any new facilities to  
963 be built or improved.

964 Section 14. Section **63A-5b-503** is amended to read:

965 **63A-5b-503. Planning Fund expenditures authorized -- Ceiling on expenditures --**  
966 **Recovery.**

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

970 (2) The director may make expenditures from the Planning Fund in order to provide  
971 planning information to [~~the board;~~] the governor[;] and the Legislature, up to a maximum of  
972 \$350,000 in outstanding Planning Fund commitments.

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

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

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

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

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

984 Section 15. Section **63A-5b-601** is amended to read:

985 **63A-5b-601. Definitions.**

986 As used in this part:



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

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

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

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

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

998 Section 16. Section **63A-5b-603** is amended to read:

999 **63A-5b-603. Contracting powers of director -- Bids -- Retainage.**

1000 (1) In accordance with Title 63G, Chapter 6a, Utah Procurement Code, the director  
1001 may enter into a contract for any work or professional service that the division [~~or board~~] may  
1002 do or have done.

1003 (2) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
1004 the director may make rules establishing circumstances under which bids may be modified  
1005 when all bids for a construction project exceed available funds as determined by the director.

1006 (b) In making the rules described in Subsection (2)(a), the director shall provide for the  
1007 fair and equitable treatment of bidders.

1008 (c) The judgment of the director as to the responsibility and qualifications of a bidder is  
1009 conclusive, except in case of fraud or bad faith.

1010 (3) The division shall make all payments to the contractor for completed work in  
1011 accordance with Section 15-6-2 and pay the interest specified in Section 15-6-3 on any  
1012 payments that are late.

1013 (4) If the division retains or withholds a payment on a contract with a private contractor  
1014 to do work for the division, the division shall retain or withhold and release the payment as  
1015 provided in Section 13-8-5.

1016 Section 17. Section **63A-5b-604** is amended to read:

1017 **63A-5b-604. Construction, alteration, and repair of state facilities -- Powers of**

1018 **director -- Exceptions -- Expenditure of appropriations -- Compliance agency role.**

1019 (1) (a) Except as provided in this section and Section 63A-5b-1101, the director shall  
1020 exercise direct supervision over the design and construction of all new facilities, and all  
1021 alterations, repairs, and improvements to existing facilities, if the total project construction  
1022 cost, regardless of the funding source, is greater than \$100,000.

1023 (b) A state entity may exercise direct supervision over the design and construction of  
1024 all new facilities, and over all alterations, repairs, and improvements to existing facilities, if:

1025 (i) the total project construction cost, regardless of the funding sources, is \$100,000 or  
1026 less; and

1027 (ii) the state entity assures compliance with the division's forms and contracts and the  
1028 division's design, construction, alteration, repair, improvement, and code inspection standards.

1029 (2) The director may enter into a capital improvement partnering agreement with an  
1030 institution of higher education that permits the institution of higher education to exercise direct  
1031 supervision for a capital improvement project with oversight from the division.

1032 (3) (a) Subject to Subsection (3)(b), the director may delegate control over design,  
1033 construction, and other aspects of any project to entities of state government on a  
1034 project-by-project basis.

1035 (b) With respect to a delegation of control under Subsection (3)(a), the director may:

1036 (i) impose terms and conditions on the delegation that the director considers necessary  
1037 or advisable to protect the interests of the state; and

1038 (ii) revoke the delegation and assume control of the design, construction, or other  
1039 aspect of a delegated project if the director considers the revocation and assumption of control  
1040 to be necessary to protect the interests of the state.

1041 (4) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
1042 the [board] director may delegate control over design, construction, and all other aspects of any  
1043 project to entities of state government on a categorical basis for projects within a particular  
1044 dollar range and a particular project type.

1045 (b) Rules adopted by the [board] director under Subsection (4)(a) may:

1046 (i) impose the terms and conditions on categorical delegation that the [board] director  
1047 considers necessary or advisable to protect the interests of the state;

1048 (ii) provide for the revocation of the delegation on a categorical [~~or project specific~~]

1049 basis and for the division to assume control of the design, construction, or other aspect of a  
1050 category of delegated projects or a specific delegated project if the [board] director considers  
1051 revocation of the delegation and assumption of control to be necessary to protect the interests  
1052 of the state;

1053 (iii) require that a categorical delegation be renewed by the [board] director on an  
1054 annual basis; and

1055 (iv) require the division's oversight of delegated projects.

1056 (5) (a) A state entity to which project control is delegated under this section shall:

1057 (i) assume fiduciary control over project finances;

1058 (ii) assume all responsibility for project budgets and expenditures; and

1059 (iii) receive all funds appropriated for the project, including any contingency funds  
1060 contained in the appropriated project budget.

1061 (b) Notwithstanding a delegation of project control under this section, a state entity to  
1062 which control is delegated is required to comply with the division's codes and guidelines for  
1063 design and construction.

1064 (c) A state entity to which project control is delegated under this section may not  
1065 access, for the delegated project, the division's statewide contingency reserve and project  
1066 reserve authorized in Section [63A-5b-609](#).

1067 (d) For a facility that will be owned, operated, maintained, and repaired by an entity  
1068 that is not an agency and that is located on [state] property that the state owns or leases as a  
1069 tenant, the director may authorize the facility's owner to administer the design and construction  
1070 of the project relating to that facility.

1071 (6) (a) A project for the construction of a new facility and a project for alterations,  
1072 repairs, and improvements to an existing facility are not subject to Subsection (1) if the project:

1073 (i) occurs on property under the jurisdiction of the State Capitol Preservation Board;

1074 (ii) is within a designated research park at the University of Utah or Utah State  
1075 University;

1076 (iii) occurs within the boundaries of This is the Place State Park and is administered by  
1077 This is the Place Foundation; or

1078 (iv) is for the creation and installation of art under Title 9, Chapter 6, Part 4, Utah  
1079 Percent-for-Art Act.

1080 (b) Notwithstanding Subsection (6)(a)(iii), the This is the Place Foundation may  
1081 request the director to administer the design and construction of a project within the boundaries  
1082 of This is the Place State Park.

1083 (7) (a) The role of compliance agency under Title 15A, State Construction and Fire  
1084 Codes Act, shall be filled by:

1085 (i) the director, for a project administered by the division;

1086 (ii) the entity designated by the State Capitol Preservation Board, for a project under  
1087 Subsection (6)(a)(i);

1088 (iii) the local government, for a project that is:

1089 (A) not subject to the division's administration under Subsection (6)(a)(ii); or

1090 (B) administered by This is the Place Foundation under Subsection (6)(a)(iii);

1091 (iv) the compliance agency designated by the director, for a project under Subsection  
1092 (2), (3), (4), or (5)(d); and

1093 (v) for the installation of art under Subsection (6)(a)(iv), the entity that is acting as the  
1094 compliance officer for the balance of the project for which the art is being installed.

1095 (b) A local government acting as the compliance agency under Subsection (7)(a)(iii)  
1096 may:

1097 (i) only review plans and inspect construction to enforce the state construction code or  
1098 an approved code under Title 15A, State Construction and Fire Codes Act; and

1099 (ii) charge a building permit fee of no more than the amount the local government  
1100 could have charged if the land upon which the improvements are located were not owned by  
1101 the state.

1102 (8) (a) The zoning authority of a local government under [~~Section 10-9a-305 or~~  
1103 ~~17-27a-305~~] Title 10, Chapter 9a, Municipal Land Use, Development, and Management Act, or  
1104 Title 17, Chapter 27a, County Land Use, Development, and Management Act, does not apply  
1105 to the use of [state] property that the state owns or leases as a tenant or any improvements  
1106 constructed on [state] property that the state owns or leases as a tenant, including  
1107 improvements constructed by an entity other than a state entity.

1108 (b) A state entity controlling the use of [state] property that the state owns or leases as a  
1109 tenant shall consider any input received from a local government in determining how the  
1110 property is to be used.

1111 Section 18. Section **63A-5b-802** is amended to read:  
1112 **63A-5b-802. Leasing responsibilities of the director.**  
1113 (1) The director shall:  
1114 (a) prepare and submit a yearly request to the governor and Legislature for a designated  
1115 amount of square footage by type of space to be leased by the division for that fiscal year;  
1116 (b) lease, in the name of the division, all real property space to be occupied by a leasing  
1117 agency;  
1118 (c) in leasing space:  
1119 (i) use a process consistent with the best interest of the state, the requirements of the  
1120 leasing agency, and the anticipated use of the property; and  
1121 (ii) comply with any legislative mandates contained in the appropriations act or other  
1122 legislation;  
1123 (d) apply the criteria contained in Subsection (1)(f) to prepare a report evaluating each  
1124 high-cost lease at least 12 months before the lease expires;  
1125 (e) evaluate each lease under the division's control and apply the criteria contained in  
1126 Subsection (1)(f), as applicable, to evaluate the lease;  
1127 (f) in evaluating leases:  
1128 (i) determine whether the lease is cost-effective when the needs of the leasing agency  
1129 to be housed in the leased facilities are considered;  
1130 (ii) determine whether another option such as construction, use of other state-owned  
1131 space, or a lease-purchase agreement is more cost-effective than leasing;  
1132 (iii) determine whether the significant lease terms are cost-effective and provide the  
1133 state with sufficient flexibility and protection from liability;  
1134 (iv) compare the proposed lease payments to the current market rates, and evaluate  
1135 whether the proposed lease payments are reasonable under current market conditions;  
1136 (v) compare proposed significant lease terms to the current market, and recommend  
1137 whether these proposed terms are reasonable under current market conditions; and  
1138 (vi) if applicable, recommend that the lease or modification to a lease be approved or  
1139 disapproved;  
1140 (g) based upon the evaluation, include in the report recommendations that identify  
1141 viable alternatives to:

- 1142 (i) make the lease cost-effective; or
- 1143 (ii) meet the leasing agency's needs when the lease expires; and
- 1144 (h) upon request, provide the information included in the report to:
  - 1145 (i) the leasing agency benefitted by the lease; and
  - 1146 (ii) the Office of the Legislative Fiscal Analyst.
- 1147 (2) The director may:
  - 1148 (a) subject to legislative appropriation, enter into a facility lease with a term of up to 10
  - 1149 years if the length of the lease's term is economically advantageous to the state; and
  - 1150 (b) [~~with the approval of the board and~~] subject to legislative appropriation, enter into a
  - 1151 facility lease with a term of more than 10 years if the length of the lease's term is economically
  - 1152 advantageous to the state.

1153 Section 19. Section **63A-5b-803** is amended to read:

1154 **63A-5b-803. Reporting of leasing activity.**

- 1155 (1) The director shall:
  - 1156 (a) prepare a standard form upon which a leasing agency and another state institution
  - 1157 or entity can report the current and proposed lease activity of the leasing agency, institution, or
  - 1158 entity, including any lease renewal; and
  - 1159 (b) develop procedures and mechanisms within the division to:
    - 1160 (i) obtain and share information about each leasing agency's real property needs; and
    - 1161 (ii) provide oversight and review of lessors and lessees during the term of each lease.
- 1162 (2) Each leasing agency, the [~~Judicial Council~~] Administrative Office of the Courts,
- 1163 and the board of trustees for each institution of higher education, shall report all current and
- 1164 proposed lease activity on the standard form prepared by the division to:
  - 1165 (a) the division; and
  - 1166 (b) the Office of the Legislative Fiscal Analyst.

1167 Section 20. Section **63A-5b-806** is amended to read:

1168 **63A-5b-806. Division rules on the value of property bought or exchanged --**  
1169 **Exception.**

- 1170 (1) The division shall, in accordance with Title 63G, Chapter 3, Utah Administrative
- 1171 Rulemaking Act, make rules to ensure that, if the division buys or exchanges real property, the
- 1172 value of the real property is congruent with the proposed price and other terms of the purchase

1173 or exchange.

1174 (2) The rules:

1175 (a) shall establish procedures for determining the value of the real property;

1176 (b) may provide that an appraisal, as defined in Section 61-2g-102, demonstrates the  
1177 real property's value; and

1178 (c) may require that the appraisal be completed by a state-certified general appraiser, as  
1179 defined in Section 61-2g-102.

1180 (3) The rules adopted under Subsection (1) do not apply to the purchase or exchange of  
1181 real property, or an interest in real property, with a value of less than [~~\$250,000~~] \$500,000, as  
1182 estimated by the division.

1183 Section 21. Section 63A-5b-901 is amended to read:

1184 **63A-5b-901. Definitions.**

1185 As used in this part:

1186 (1) "Applicant" means a person who submits a timely, qualified proposal to the  
1187 division.

1188 (2) "Condemnee" means the same as that term is defined in Section 78B-6-520.3.

1189 [~~(3) "Convey" means:~~]

1190 [~~(a) to provide for a primary state agency's occupancy or use of vacant division-owned  
1191 property; or]~~

1192 [~~(b) to effect a transfer of ownership or lease of vacant division-owned property to a  
1193 secondary state agency, local government entity, public purpose nonprofit entity, or private  
1194 party.]~~

1195 [~~(4)~~] (3) "Division-owned property" means real property, including an interest in real  
1196 property, to which the division holds title, regardless of who occupies or uses the real property.

1197 [~~(5)~~] (4) "Local government entity" means a county, city, town, metro township, local  
1198 district, special service district, community development and renewal agency, conservation  
1199 district, school district, or other political subdivision of the state.

1200 [~~(6)~~] (5) "Primary state agency" means a state agency for which the division holds title  
1201 to real property that the state agency occupies or uses, as provided in Subsection  
1202 63A-5b-303(1)(a)(iv).

1203 [~~(7)~~] (6) "Private party" means a person who is not a state agency, local government

1204 entity, or public purpose nonprofit entity.

1205 ~~[(8)]~~ (7) "Public purpose nonprofit entity" means a corporation, association,  
1206 organization, or entity that:

1207 (a) is located within the state;

1208 (b) is not a state agency or local government entity;

1209 (c) is exempt from federal income taxation under Section 501(c)(3), Internal Revenue  
1210 Code; and

1211 (d) operates to fulfill a public purpose.

1212 ~~[(9)]~~ (8) "Qualified proposal" means a written proposal that:

1213 (a) meets the criteria established by the division by rule under Section [63A-5b-903](#);

1214 (b) if submitted by a local government entity or public purpose nonprofit entity,  
1215 explains the public purpose for which the local government entity or public purpose nonprofit  
1216 entity seeks a transfer of ownership or lease of the vacant division-owned property; and

1217 (c) the director determines will, if accepted and implemented, provide a material  
1218 benefit to the state.

1219 ~~[(10)]~~ (9) "Secondary state agency" means a state agency:

1220 (a) that is authorized to hold title to real property that the state agency occupies or uses,  
1221 as provided in ~~[Subsection [63A-5b-303](#)(4)]~~ Section [63A-5b-304](#); and

1222 (b) for which the division does not hold title to real property that the state agency  
1223 occupies or uses.

1224 ~~[(11)]~~ (10) "State agency" means a department, division, office, entity, agency, or other  
1225 unit of state government.

1226 ~~[(12)]~~ (11) "Transfer of ownership" includes a transfer of the ownership of vacant  
1227 division-owned property that occurs as part of an exchange of the vacant division-owned  
1228 property for another property.

1229 ~~[(13)]~~ (12) "Vacant division-owned property" means division-owned property that:

1230 (a) a primary state agency ~~[has discontinued to occupy or use]~~ is not occupying or  
1231 using; and

1232 (b) the director has determined should be made available for:

1233 (i) use or occupancy by a primary state agency; or

1234 (ii) a transfer of ownership or lease to a secondary state agency, local government



1235 entity, public purpose nonprofit entity, or private party.

1236 ~~[(14)]~~ (13) "Written proposal" means a brief statement in writing that explains:

1237 (a) the proposed use or occupancy, transfer of ownership, or lease of vacant  
1238 division-owned property; and

1239 (b) how the state will benefit from the proposed use or occupancy, transfer of  
1240 ownership, or lease.

1241 Section 22. Section **63A-5b-902** is amended to read:

1242 **63A-5b-902. Application of part.**

1243 (1) The provisions of this part, other than this section, do not apply to:

1244 (a) a conveyance, lease, or disposal under Subsection **63A-5b-303(1)(a)**~~[(ix)]~~[(viii)]; ~~[or]~~

1245 (b) the division's disposal or lease of division-owned property with a value under  
1246 ~~[\$250,000]~~ \$500,000, as estimated by the division~~[-]~~; or

1247 (c) a conveyance, lease, or disposal of division-owned property in connection with:

1248 (i) the establishment of a state store, as defined in Section **32B-1-102**; or

1249 (ii) the construction of student housing.

1250 (2) Nothing in Subsection (1)(b) or (c) may be construed to diminish or eliminate the  
1251 division's responsibility to manage division-owned property in the best interests of the state.

1252 Section 23. Section **63A-5b-904** is amended to read:

1253 **63A-5b-904. Division authority with respect to vacant division-owned property --**  
1254 **Limitations.**

1255 (1) Subject to Section **63A-5b-909**, the division may~~[, as provided in this part]~~:

1256 (a) provide for a primary state agency's occupancy or use of vacant division-owned  
1257 property, if the director determines that the primary state agency's occupancy or use is in the  
1258 best interests of the state;

1259 (b) effect a transfer of ownership or lease of vacant division-owned property ~~[to a~~  
1260 ~~secondary state agency, local government entity, public purpose nonprofit entity, or private~~  
1261 ~~party]~~, as provided in this section; or

1262 (c) refer vacant division-owned property to the Department of Transportation for sale  
1263 by auction, as provided in Section **63A-5b-908**.

1264 (2) (a) The division may effect a transfer of ownership or lease of vacant  
1265 division-owned property to an applicant for fair market value if the director determines that the

1266 transfer of ownership or lease to that applicant is in the state's best interest.

1267 (b) In determining the state's best interest under Subsection (2)(a), the director may  
1268 consider:

1269 (i) the price and financial terms of all qualified proposals; and

1270 (ii) the relative benefits to the state of the proposed uses of the vacant division-owned  
1271 property as stated in the qualified proposals.

1272 [~~2~~] (3) The division may [~~not~~] effect a transfer of ownership or lease of vacant  
1273 division-owned property without receiving fair market value in return [~~unless~~] if:

1274 (a) the director determines that the transfer of ownership or lease is in the best interests  
1275 of the state;

1276 (b) for a proposed transfer of ownership or lease to a local government entity, public  
1277 purpose nonprofit entity, or private party, the director determines that the local government  
1278 entity, public purpose nonprofit entity, or private party intends to use the property to fulfill a  
1279 public purpose;

1280 (c) the director requests and receives a recommendation on the proposed transfer of  
1281 ownership or lease from the Legislative Executive Appropriations Committee;

1282 (d) the director communicates the Executive Appropriations Committee's  
1283 recommendation to the executive director; and

1284 (e) the executive director approves the transfer of ownership or lease.

1285 [~~3~~] (4) (a) If the division effects a transfer of ownership of vacant division-owned  
1286 property without receiving fair market value in return, [~~as provided in this part,~~] the division  
1287 shall require the documents memorializing the transfer of ownership to preserve to the  
1288 division:

1289 (i) in the case of a transfer of ownership of vacant division-owned property to a  
1290 secondary state agency, local government entity, or public purpose nonprofit entity for no or  
1291 nominal consideration, a right of reversion, providing for the ownership of the property to  
1292 revert to the division if the property ceases to be used for the public benefit; or

1293 (ii) in the case of any other transfer of ownership of vacant division-owned property, a  
1294 right of first refusal allowing the division to purchase the property from the transferee for the  
1295 same price that the transferee paid to the division if the transferee wishes to transfer ownership  
1296 of the former vacant division-owned property.

1297 (b) Subsection [~~(3)~~] (4)(a) does not apply to the sale of vacant division-owned property  
 1298 at an auction under Section [63A-5b-908](#).

1299 Section 24. Section **63A-5b-905** is amended to read:

1300 **63A-5b-905. Notice required before division may effect a transfer of ownership**  
 1301 **or lease of division-owned property.**

1302 (1) Before the division may [~~convey~~] effect a transfer of ownership or lease of vacant  
 1303 division-owned property, the division shall give notice as provided in Subsection (2).

1304 (2) A notice required under Subsection (1) shall:

1305 (a) identify and describe the vacant division-owned property;

1306 (b) indicate the availability of the vacant division-owned property;

1307 (c) invite persons interested in the vacant division-owned property to submit a written  
 1308 proposal to the division;

1309 (d) indicate the deadline for submitting a written proposal;

1310 (e) be posted on the division's website for at least 60 consecutive days before the  
 1311 deadline for submitting a written proposal, in a location specifically designated for notices  
 1312 dealing with vacant division-owned property;

1313 (f) be posted on the Utah Public Notice Website created in Section [63A-16-601](#) for at  
 1314 least 60 consecutive days before the deadline for submitting a written proposal; and

1315 (g) be sent by email to each person who has previously submitted to the division a  
 1316 written request to receive notices under this section.

1317 Section 25. Section **63A-5b-907** is amended to read:

1318 **63A-5b-907. Priorities for vacant division-owned property -- Division to convey**  
 1319 **vacant division-owned property.**

1320 (1) This section applies to a proposed transfer of ownership or lease of vacant  
 1321 division-owned property at less than fair market value.

1322 [~~(1)~~] (2) (a) [~~A~~] An applicant that is a state agency has priority for vacant  
 1323 division-owned property over an applicant that is a local government entity, a public purpose  
 1324 nonprofit entity, and a private party.

1325 (b) [~~A~~] An applicant that is a local government entity and an applicant that is a public  
 1326 purpose nonprofit entity have:

1327 (i) priority for vacant division-owned property over an applicant that is a private party;

1328 and

1329 (ii) between them the same priority for vacant division-owned property.

1330 ~~[(2)]~~ (3) If the division receives multiple timely qualified proposals from applicants  
1331 with the highest and same priority, the division shall:

1332 (a) notify the ~~[board]~~ executive director of:

1333 (i) the availability of the vacant division-owned property; and

1334 (ii) the applicants with the highest and same priority that have submitted qualified  
1335 proposals; and

1336 (b) provide the ~~[board]~~ executive director with a copy of the timely qualified proposals  
1337 submitted by the applicants with the highest and same priority.

1338 ~~[(3)]~~ (4) Within 30 days after being notified under Subsection ~~[(2)]~~ (3), the ~~[board]~~  
1339 executive director shall:

1340 (a) determine which applicant's qualified proposal is most likely to result in the highest  
1341 and best public benefit; and

1342 (b) notify the division of the ~~[board's]~~ executive director's decision under Subsection  
1343 ~~[(3)]~~ (4)(a).

1344 ~~[(4)]~~ (5) The division shall ~~[convey]~~ effect a transfer or ownership or lease of the  
1345 vacant division-owned property to:

1346 (a) the applicant with the highest priority under Subsection ~~[(1)]~~ (2), if the division  
1347 receives a timely qualified proposal from a single applicant with the highest priority; or

1348 (b) the applicant whose qualified proposal was determined by the ~~[board]~~ executive  
1349 director under Subsection ~~[(3)]~~ (4) to be most likely to result in the highest and best public  
1350 benefit, if the division receives multiple timely qualified proposals from applicants with the  
1351 highest and same priority.

1352 ~~[(5) (a) If the division leases vacant division-owned property to a private party, the~~  
1353 ~~division shall, within 30 days after a lease agreement is executed, provide written notice of the~~  
1354 ~~lease to:]~~

1355 ~~[(i) the municipality in which the vacant division-owned property is located, if the~~  
1356 ~~vacant division-owned property is within a municipality; or]~~

1357 ~~[(ii) the county in whose unincorporated area the vacant division-owned property is~~  
1358 ~~located, if the vacant division-owned property is not located within a municipality.]~~

1359 ~~[(b) Nothing in this chapter may be used by a private party leasing division-owned~~  
1360 ~~property as a basis for not complying with applicable local land use ordinances and~~  
1361 ~~regulations.]~~

1362 Section 26. Section **63A-5b-907.5** is enacted to read:

1363 **63A-5b-907.5. Lease of division-owned property to a private party.**

1364 (1) If the division leases division-owned property to a private party, the division shall,  
1365 within 30 days after a lease agreement is executed, provide written notice of the lease to:

1366 (a) the municipality in which the division-owned property is located, if the

1367 division-owned property is within a municipality; or

1368 (b) the county in whose unincorporated area the division-owned property is located, if  
1369 the division-owned property is not located within a municipality.

1370 (2) Nothing in this part may be used by a private party leasing division-owned property  
1371 as a basis for not complying with applicable local land use ordinances and regulations.

1372 Section 27. Section **63A-5b-910** is amended to read:

1373 **63A-5b-910. Disposition of proceeds received by division from sale of vacant**  
1374 **division-owned property.**

1375 (1) (a) Except as provided in Section [62A-5-206.7](#), the division shall pay into the state  
1376 treasury the money received from the transfer of ownership or lease of vacant division-owned  
1377 property.

1378 (b) Money paid into the state treasury under Subsection (1)(a):

1379 (i) becomes a part of the funds provided by law for carrying out the building program  
1380 of the state; and

1381 (ii) is appropriated for the purpose described in Subsection (1)(b)(i).

1382 (2) The proceeds from the transfer of ownership or lease of vacant division-owned  
1383 property belonging to or used by a particular state agency shall, to the extent practicable, be  
1384 expended for the construction of buildings or in the performance of other work for the benefit  
1385 of that state agency.

1386 Section 28. Section **63A-5b-1001** is amended to read:

1387 **63A-5b-1001. Definitions.**

1388 As used in this part:

1389 (1) "Energy efficiency measure" means an action taken or initiated by an agency that:

1390 (a) reduces the agency's energy or fuel use or resource energy consumption, water or  
1391 other resource consumption, operation and maintenance costs, or cost of energy, fuel, water, or  
1392 other resource; or

1393 (b) increases the agency's energy or fuel efficiency or resource consumption efficiency.

1394 (2) "Energy efficiency program" means a program established under Section  
1395 [63A-5b-1002](#) for the purpose of improving energy efficiency measures and reducing the energy  
1396 costs for state facilities.

1397 (3) "Fund" means the State Facility Energy Efficiency Fund created in Section  
1398 [63A-5b-1003](#).

1399 (4) "Performance efficiency agreement" means an agreement entered into by an agency  
1400 whereby the agency implements one or more energy efficiency measures and finances the costs  
1401 associated with implementation of performance efficiency measures using the stream of  
1402 expected savings in costs resulting from implementation of the performance efficiency  
1403 measures as a funding source for repayment.

1404 (5) (a) "State facility" means any building, structure, or other improvement that is  
1405 constructed on property [~~owned by~~] that the state, any of the state's departments, commissions,  
1406 institutions, or agencies, or a state institution of higher education owns or leases as a tenant.

1407 (b) "State facility" does not include:

1408 (i) an unoccupied structure that is a component of the state highway system;

1409 (ii) a privately owned structure that is located on property [~~owned by~~] that the state,  
1410 any of the state's departments, commissions, institutions, or agencies, or a state institution of  
1411 higher education owns or leases as a tenant; or

1412 (iii) a structure that is located on land administered by the trust lands administration  
1413 under a lease, permit, or contract with the trust lands administration.

1414 Section 29. Section **63A-5b-1003** is amended to read:

1415 **63A-5b-1003. State Facility Energy Efficiency Fund -- Contents -- Use of fund**  
1416 **money.**

1417 (1) There is created a revolving loan fund known as the "State Facility Energy  
1418 Efficiency Fund."

1419 (2) The fund shall consist of:

1420 (a) money transferred from the Stripper Well-Petroleum Violation Escrow Fund;

1421 (b) money appropriated by the Legislature;

1422 (c) money received for the repayment of loans made from the fund; and

1423 (d) interest earned on the fund.

1424 (3) The [board] division shall make a loan from the fund to an agency to finance all or  
1425 part of energy efficiency measures.

1426 (4) (a) (i) An agency requesting a loan shall submit an application to the [board]  
1427 division in the form and containing the information that the [board] division requires, including  
1428 plans and specifications for the proposed energy efficiency measures.

1429 (ii) An agency may request a loan to fund all or part of the cost of energy efficiency  
1430 measures.

1431 (b) If the [board] division rejects the application, the [board] division shall notify the  
1432 applicant stating the reasons for the rejection.

1433 (5) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
1434 the [board] division shall make rules establishing:

1435 (i) criteria to determine:

1436 (A) loan eligibility;

1437 (B) energy efficiency measures priority; and

1438 (C) ways to measure energy savings that take into account fluctuations in energy costs  
1439 and temperature; and

1440 (ii) a method of monitoring actual savings resulting from energy efficiency measures  
1441 implemented using loan money from the fund, using objective and verifiable post-construction  
1442 measures, if available.

1443 (b) In making rules that establish prioritization criteria for energy efficiency measures,  
1444 the [board] division may consider:

1445 (i) possible additional sources of revenue;

1446 (ii) the feasibility and practicality of the energy efficiency measures;

1447 (iii) the energy savings attributable to eligible energy efficiency measures;

1448 (iv) the annual energy savings;

1449 (v) the projected energy cost payback of eligible energy efficiency measures;

1450 (vi) other benefits to the state attributable to eligible energy efficiency measures;

1451 (vii) the availability of federal funds for the energy efficiency measures; and

1452 (viii) whether to require an agency to provide matching funds for the energy efficiency  
1453 measures.

1454 (6) (a) In reviewing energy efficiency measures for possible funding, the [board]  
1455 division shall:

1456 (i) review the loan application and the plans and specifications for the energy  
1457 efficiency measures;

1458 (ii) determine whether to grant the loan by applying the loan eligibility criteria; and

1459 (iii) if the loan is granted, prioritize funding of the energy efficiency measures by  
1460 applying the prioritization criteria.

1461 (b) The [board] division may condition approval of a loan application and the  
1462 availability of funds on assurances from the agency that the [board] division considers  
1463 necessary to ensure that the agency:

1464 (i) uses the proceeds to pay the cost of the energy efficiency measures; and

1465 (ii) implements the energy efficiency measures.

1466 (7) The division shall annually report to the Government Operations Interim  
1467 Committee of the Legislature the actual savings resulting from energy efficiency measures  
1468 implemented using loan money from the fund, as monitored pursuant to rules adopted under  
1469 Subsection (5)(a)(ii).

1470 ~~[(8) The manager of the energy efficiency program shall provide staff support when the~~  
1471 ~~board performs the duties established in this section.]~~

1472 Section 30. Section **63A-5b-1104** is amended to read:

1473 **63A-5b-1104. Notification to local governments for construction or modification**  
1474 **of certain facilities.**

1475 (1) (a) The director or the director's designee shall notify in writing the elected  
1476 representatives of a local government entity directly and substantively affected by any  
1477 diagnostic, treatment, parole, probation, or other secured facility project exceeding [~~\$250,000~~]  
1478 \$500,000, if:

1479 (i) the nature of the project has been significantly altered since an earlier notification;

1480 (ii) the project would significantly change the nature of the functions presently  
1481 conducted at the location; or

1482 (iii) the project is new construction.



1483 (b) At the request of the state entity or the local government entity, representatives  
1484 from the state entity and the affected local entity shall conduct or participate in a local public  
1485 hearing or hearings to discuss the issues described in Subsection (1)(a).

1486 (2) (a) (i) Before beginning the construction of student housing on property owned by  
1487 the state or an institution of higher education, the director shall provide written notice of the  
1488 proposed construction, as provided in Subsection (2)(a)(ii), if any of the proposed student  
1489 housing buildings is within 300 feet of privately owned residential property.

1490 (ii) Each notice under Subsection (2)(a)(i) shall be provided to the legislative body and,  
1491 if applicable, the mayor of:

1492 (A) the county in whose unincorporated area the privately owned residential property is  
1493 located; or

1494 (B) the municipality in whose boundary the privately owned residential property is  
1495 located.

1496 (b) (i) Within 21 days after receiving the notice required by Subsection (2)(a)(i), a  
1497 county or municipality entitled to the notice may submit a written request to the director for a  
1498 public hearing on the proposed student housing construction.

1499 (ii) If a county or municipality requests a hearing under Subsection (2)(b)(i), the  
1500 director and the county or municipality shall jointly hold a public hearing to provide  
1501 information to the public and to allow the director and the county or municipality to receive  
1502 input from the public about the proposed student housing construction.

1503 Section 31. Section **63B-1-101** is amended to read:

1504 **63B-1-101. Definitions.**

1505 As used in this title:

1506 [~~(1) "Board" means the State Building Board.~~]

1507 [~~(2)~~] (1) "Bond anticipation note" means:

1508 (a) any financing note issued according to the procedures and requirements of this title  
1509 in anticipation of the receipt of the proceeds of the sale of the bonds authorized under this title;  
1510 and

1511 (b) any renewal of those notes.

1512 [~~(3)~~] (2) "Bonds" means any bonds, bond anticipation notes, or other obligations  
1513 authorized under this title for which the full faith, credit, and resources and ad valorem taxing

1514 power of the state have been pledged for the payment of the principal of and interest on the  
1515 bonds.

1516 [(4)] (3) "Capital project" means any land, building, facility, highway, improvement,  
1517 equipment, or other property, or combination of them, that the state of Utah or any of its  
1518 agencies, divisions, institutions, or other administrative subunits are authorized by law to  
1519 acquire or construct.

1520 [(5)] (4) "Commission" means the State Bonding Commission created in Section  
1521 63B-1-201.

1522 [(6)] (5) "Division" means the Division of Facilities Construction and Management.

1523 [(7)] (6) "Sinking fund" means the fund or account established as provided in this title  
1524 to hold money to pay the principal and interest on each series of bonds as they become due.

1525 Section 32. Section 63B-1-304 is amended to read:

1526 **63B-1-304. State Building Ownership Authority created -- Members --**  
1527 **Compensation -- Location in Department of Administrative Services.**

1528 (1) There is created a body politic and corporate to be known as the State Building  
1529 Ownership Authority composed of:

1530 (a) the governor;

1531 (b) the state treasurer; and

1532 (c) the ~~[chair of the state building board created under Section 63A-5b-201]~~ executive  
1533 director of the Department of Government Operations.

1534 (2) A member may not receive compensation or benefits for the member's service, but  
1535 may receive per diem and travel expenses in accordance with:

1536 (a) Section 63A-3-106;

1537 (b) Section 63A-3-107; and

1538 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
1539 63A-3-107.

1540 (3) (a) Upon request, the division shall provide staff support to the State Building  
1541 Ownership Authority.

1542 (b) The State Building Ownership Authority may seek and obtain independent financial  
1543 advice, support, and information from the state financial advisor created under Section  
1544 67-4-16.

1545 Section 33. Section **63C-9-403** is amended to read:

1546 **63C-9-403. Contracting power of executive director -- Health insurance coverage.**

1547 (1) As used in this section:

1548 (a) "Aggregate" means the sum of all contracts, change orders, and modifications  
1549 related to a single project.

1550 (b) "Change order" means the same as that term is defined in Section [63G-6a-103](#).

1551 (c) "Employee" means, as defined in Section [34A-2-104](#), an "employee," "worker," or  
1552 "operative" who:

1553 (i) works at least 30 hours per calendar week; and

1554 (ii) meets employer eligibility waiting requirements for health care insurance, which  
1555 may not exceed the first of the calendar month following 60 days after the day on which the  
1556 individual is hired.

1557 (d) "Health benefit plan" means:

1558 (i) the same as that term is defined in Section [31A-1-301](#); or

1559 (ii) an employee welfare benefit plan:

1560 (A) established under the Employee Retirement Income Security Act of 1974, 29  
1561 U.S.C. Sec. 1001 et seq.;

1562 (B) for an employer with 100 or more employees; and

1563 (C) in which the employer establishes a self-funded or partially self-funded group  
1564 health plan to provide medical care for the employer's employees and dependents of the  
1565 employees.

1566 (e) "Qualified health coverage" means the same as that term is defined in Section  
1567 [26-40-115](#).

1568 (f) "Subcontractor" means the same as that term is defined in Section [63A-5b-605](#).

1569 (g) "Third party administrator" or "administrator" means the same as that term is  
1570 defined in Section [31A-1-301](#).

1571 (2) Except as provided in Subsection (3), the requirements of this section apply to:

1572 (a) a contractor of a design or construction contract entered into by the board, or on  
1573 behalf of the board, on or after July 1, 2009, if the prime contract is in an aggregate amount  
1574 equal to or greater than \$2,000,000; and

1575 (b) a subcontractor of a contractor of a design or construction contract entered into by

1576 the board, or on behalf of the board, on or after July 1, 2009, if the subcontract is in an  
1577 aggregate amount equal to or greater than \$1,000,000.

1578 (3) The requirements of this section do not apply to a contractor or subcontractor  
1579 described in Subsection (2) if:

1580 (a) the application of this section jeopardizes the receipt of federal funds;

1581 (b) the contract is a sole source contract; or

1582 (c) the contract is an emergency procurement.

1583 (4) A person that intentionally uses change orders, contract modifications, or multiple  
1584 contracts to circumvent the requirements of this section is guilty of an infraction.

1585 (5) (a) A contractor subject to the requirements of this section shall demonstrate to the  
1586 executive director that the contractor has and will maintain an offer of qualified health  
1587 coverage for the contractor's employees and the employees' dependents during the duration of  
1588 the contract by submitting to the executive director a written statement that:

1589 (i) the contractor offers qualified health coverage that complies with Section  
1590 [26-40-115](#);

1591 (ii) is from:

1592 (A) an actuary selected by the contractor or the contractor's insurer;

1593 (B) an underwriter who is responsible for developing the employer group's premium  
1594 rates; or

1595 (C) if the contractor provides a health benefit plan described in Subsection (1)(d)(ii),  
1596 an actuary or underwriter selected by a third party administrator; and

1597 (iii) was created within one year before the day on which the statement is submitted.

1598 (b) (i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii)  
1599 shall provide the actuary or underwriter selected by the administrator, as described in  
1600 Subsection (5)(a)(ii)(C), sufficient information to determine whether the contractor's  
1601 contribution to the health benefit plan and the health benefit plan's actuarial value meets the  
1602 requirements of qualified health coverage.

1603 (ii) A contractor may not make a change to the contractor's contribution to the health  
1604 benefit plan, unless the contractor provides notice to:

1605 (A) the actuary or underwriter selected by the administrator, as described in Subsection  
1606 (5)(a)(ii)(C), for the actuary or underwriter to update the written statement described in

1607 Subsection (5)(a) in compliance with this section; and

1608 (B) the executive director.

1609 (c) A contractor that is subject to the requirements of this section shall:

1610 (i) place a requirement in each of the contractor's subcontracts that a subcontractor that  
1611 is subject to the requirements of this section shall obtain and maintain an offer of qualified  
1612 health coverage for the subcontractor's employees and the employees' dependents during the  
1613 duration of the subcontract; and

1614 (ii) obtain from a subcontractor that is subject to the requirements of this section a  
1615 written statement that:

1616 (A) the subcontractor offers qualified health coverage that complies with Section  
1617 [26-40-115](#);

1618 (B) is from an actuary selected by the subcontractor or the subcontractor's insurer, an  
1619 underwriter who is responsible for developing the employer group's premium rates, or if the  
1620 subcontractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or  
1621 underwriter selected by an administrator; and

1622 (C) was created within one year before the day on which the contractor obtains the  
1623 statement.

1624 (d) (i) (A) A contractor that fails to maintain an offer of qualified health coverage as  
1625 described in Subsection (5)(a) during the duration of the contract is subject to penalties in  
1626 accordance with administrative rules adopted by the division under Subsection (6).

1627 (B) A contractor is not subject to penalties for the failure of a subcontractor to obtain  
1628 and maintain an offer of qualified health coverage described in Subsection (5)(c)(i).

1629 (ii) (A) A subcontractor that fails to obtain and maintain an offer of qualified health  
1630 coverage described in Subsection (5)(c)(i) during the duration of the subcontract is subject to  
1631 penalties in accordance with administrative rules adopted by the department under Subsection  
1632 (6).

1633 (B) A subcontractor is not subject to penalties for the failure of a contractor to maintain  
1634 an offer of qualified health coverage described in Subsection (5)(a).

1635 (6) The department shall adopt administrative rules:

1636 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

1637 (b) in coordination with:

- 1638 (i) the Department of Environmental Quality in accordance with Section 19-1-206;
- 1639 (ii) the Department of Natural Resources in accordance with Section 79-2-404;
- 1640 (iii) the ~~[State Building Board]~~ Division of Facilities Construction and Management in  
1641 accordance with Section 63A-5b-607;
- 1642 (iv) a public transit district in accordance with Section 17B-2a-818.5;
- 1643 (v) the Department of Transportation in accordance with Section 72-6-107.5; and
- 1644 (vi) the Legislature's Administrative Rules Review Committee; and
- 1645 (c) that establish:
  - 1646 (i) the requirements and procedures a contractor and a subcontractor shall follow to  
1647 demonstrate compliance with this section, including:
    - 1648 (A) that a contractor or subcontractor's compliance with this section is subject to an  
1649 audit by the department or the Office of the Legislative Auditor General;
    - 1650 (B) that a contractor that is subject to the requirements of this section shall obtain a  
1651 written statement described in Subsection (5)(a); and
    - 1652 (C) that a subcontractor that is subject to the requirements of this section shall obtain a  
1653 written statement described in Subsection (5)(c)(ii);
  - 1654 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally  
1655 violates the provisions of this section, which may include:
    - 1656 (A) a three-month suspension of the contractor or subcontractor from entering into  
1657 future contracts with the state upon the first violation;
    - 1658 (B) a six-month suspension of the contractor or subcontractor from entering into future  
1659 contracts with the state upon the second violation;
    - 1660 (C) an action for debarment of the contractor or subcontractor in accordance with  
1661 Section 63G-6a-904 upon the third or subsequent violation; and
    - 1662 (D) monetary penalties which may not exceed 50% of the amount necessary to  
1663 purchase qualified health coverage for employees and dependents of employees of the  
1664 contractor or subcontractor who were not offered qualified health coverage during the duration  
1665 of the contract; and
  - 1666 (iii) a website on which the department shall post the commercially equivalent  
1667 benchmark, for the qualified health coverage identified in Subsection (1)(e), that is provided by  
1668 the Department of Health, in accordance with Subsection 26-40-115(2).

1669 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c)(ii), a contractor  
1670 or subcontractor who intentionally violates the provisions of this section is liable to the  
1671 employee for health care costs that would have been covered by qualified health coverage.

1672 (ii) An employer has an affirmative defense to a cause of action under Subsection  
1673 (7)(a)(i) if:

1674 (A) the employer relied in good faith on a written statement described in Subsection  
1675 (5)(a) or (5)(c)(ii); or

1676 (B) the department determines that compliance with this section is not required under  
1677 the provisions of Subsection (3).

1678 (b) An employee has a private right of action only against the employee's employer to  
1679 enforce the provisions of this Subsection (7).

1680 (8) Any penalties imposed and collected under this section shall be deposited into the  
1681 Medicaid Restricted Account created in Section [26-18-402](#).

1682 (9) The failure of a contractor or subcontractor to provide qualified health coverage as  
1683 required by this section:

1684 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,  
1685 or contractor under:

1686 (i) Section [63G-6a-1602](#); or

1687 (ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

1688 (b) may not be used by the procurement entity or a prospective bidder, offeror, or  
1689 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design  
1690 or construction.

1691 (10) An administrator, including the administrator's actuary or underwriter, who  
1692 provides a written statement under Subsection (5)(a) or (c) regarding the qualified health  
1693 coverage of a contractor or subcontractor who provides a health benefit plan described in  
1694 Subsection (1)(d)(ii):

1695 (a) subject to Subsection (10)(b), is not liable for an error in the written statement,  
1696 unless the administrator commits gross negligence in preparing the written statement;

1697 (b) is not liable for any error in the written statement if the administrator relied in good  
1698 faith on information from the contractor or subcontractor; and

1699 (c) may require as a condition of providing the written statement that a contractor or

1700 subcontractor hold the administrator harmless for an action arising under this section.

1701 Section 34. Section **63G-6a-103** is amended to read:

1702 **63G-6a-103. Definitions.**

1703 As used in this chapter:

1704 (1) "Approved vendor" means a person who has been approved for inclusion on an  
1705 approved vendor list through the approved vendor list process.

1706 (2) "Approved vendor list" means a list of approved vendors established under Section  
1707 [63G-6a-507](#).

1708 (3) "Approved vendor list process" means the procurement process described in  
1709 Section [63G-6a-507](#).

1710 (4) "Bidder" means a person who submits a bid or price quote in response to an  
1711 invitation for bids.

1712 (5) "Bidding process" means the procurement process described in Part 6, Bidding.

1713 (6) "Board" means the Utah State Procurement Policy Board, created in Section  
1714 [63G-6a-202](#).

1715 [~~(7)~~] ~~"Building board" means the State Building Board, created in Section~~  
1716 ~~[63A-5b-201](#)~~:-

1717 [~~(8)~~] (7) "Change directive" means a written order signed by the procurement officer  
1718 that directs the contractor to suspend work or make changes, as authorized by contract, without  
1719 the consent of the contractor.

1720 [~~(9)~~] (8) "Change order" means a written alteration in specifications, delivery point,  
1721 rate of delivery, period of performance, price, quantity, or other provisions of a contract, upon  
1722 mutual agreement of the parties to the contract.

1723 [~~(10)~~] (9) "Chief procurement officer" means the individual appointed under Section  
1724 [63A-2-102](#).

1725 [~~(11)~~] (10) "Conducting procurement unit" means a procurement unit that conducts all  
1726 aspects of a procurement:

1727 (a) except:

1728 (i) reviewing a solicitation to verify that it is in proper form; and

1729 (ii) causing the publication of a notice of a solicitation; and

1730 (b) including:



- 1731 (i) preparing any solicitation document;
- 1732 (ii) appointing an evaluation committee;
- 1733 (iii) conducting the evaluation process, except the process relating to scores calculated
- 1734 for costs of proposals;
- 1735 (iv) selecting and recommending the person to be awarded a contract;
- 1736 (v) negotiating the terms and conditions of a contract, subject to the issuing
- 1737 procurement unit's approval; and
- 1738 (vi) contract administration.

1739 [~~(12)~~] (11) "Conservation district" means the same as that term is defined in Section

1740 [17D-3-102](#).

1741 [~~(13)~~] (12) "Construction project":

1742 (a) means a project for the construction, renovation, alteration, improvement, or repair

1743 of a public facility on real property, including all services, labor, supplies, and materials for the

1744 project; and

1745 (b) does not include services and supplies for the routine, day-to-day operation, repair,

1746 or maintenance of an existing public facility.

1747 [~~(14)~~] (13) "Construction manager/general contractor":

1748 (a) means a contractor who enters into a contract:

1749 (i) for the management of a construction project; and

1750 (ii) that allows the contractor to subcontract for additional labor and materials that are

1751 not included in the contractor's cost proposal submitted at the time of the procurement of the

1752 contractor's services; and

1753 (b) does not include a contractor whose only subcontract work not included in the

1754 contractor's cost proposal submitted as part of the procurement of the contractor's services is to

1755 meet subcontracted portions of change orders approved within the scope of the project.

1756 [~~(15)~~] (14) "Construction subcontractor":

1757 (a) means a person under contract with a contractor or another subcontractor to provide

1758 services or labor for the design or construction of a construction project;

1759 (b) includes a general contractor or specialty contractor licensed or exempt from

1760 licensing under Title 58, Chapter 55, Utah Construction Trades Licensing Act; and

1761 (c) does not include a supplier who provides only materials, equipment, or supplies to a

1762 contractor or subcontractor for a construction project.

1763 ~~[(16)]~~ (15) "Contract" means an agreement for a procurement.

1764 ~~[(17)]~~ (16) "Contract administration" means all functions, duties, and responsibilities  
1765 associated with managing, overseeing, and carrying out a contract between a procurement unit  
1766 and a contractor, including:

1767 (a) implementing the contract;

1768 (b) ensuring compliance with the contract terms and conditions by the conducting  
1769 procurement unit and the contractor;

1770 (c) executing change orders;

1771 (d) processing contract amendments;

1772 (e) resolving, to the extent practicable, contract disputes;

1773 (f) curing contract errors and deficiencies;

1774 (g) terminating a contract;

1775 (h) measuring or evaluating completed work and contractor performance;

1776 (i) computing payments under the contract; and

1777 (j) closing out a contract.

1778 ~~[(18)]~~ (17) "Contractor" means a person who is awarded a contract with a procurement  
1779 unit.

1780 ~~[(19)]~~ (18) "Cooperative procurement" means procurement conducted by, or on behalf  
1781 of:

1782 (a) more than one procurement unit; or

1783 (b) a procurement unit and a cooperative purchasing organization.

1784 ~~[(20)]~~ (19) "Cooperative purchasing organization" means an organization, association,  
1785 or alliance of purchasers established to combine purchasing power in order to obtain the best  
1786 value for the purchasers by engaging in procurements in accordance with Section [63G-6a-2105](#).

1787 ~~[(21)]~~ (20) "Cost-plus-a-percentage-of-cost contract" means a contract under which the  
1788 contractor is paid a percentage of the total actual expenses or costs in addition to the  
1789 contractor's actual expenses or costs.

1790 ~~[(22)]~~ (21) "Cost-reimbursement contract" means a contract under which a contractor  
1791 is reimbursed for costs which are allowed and allocated in accordance with the contract terms  
1792 and the provisions of this chapter, and a fee, if any.

- 1793            [~~(23)~~] (22) "Days" means calendar days, unless expressly provided otherwise.
- 1794            [~~(24)~~] (23) "Definite quantity contract" means a fixed price contract that provides for a  
1795 specified amount of supplies over a specified period, with deliveries scheduled according to a  
1796 specified schedule.
- 1797            [~~(25)~~] (24) "Design professional" means:
- 1798            (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects  
1799 Licensing Act;
- 1800            (b) an individual licensed as a professional engineer or professional land surveyor  
1801 under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing  
1802 Act; or
- 1803            (c) an individual certified as a commercial interior designer under Title 58, Chapter 86,  
1804 State Certification of Commercial Interior Designers Act.
- 1805            [~~(26)~~] (25) "Design professional procurement process" means the procurement process  
1806 described in Part 15, Design Professional Services.
- 1807            [~~(27)~~] (26) "Design professional services" means:
- 1808            (a) professional services within the scope of the practice of architecture as defined in  
1809 Section [58-3a-102](#);
- 1810            (b) professional engineering as defined in Section [58-22-102](#);
- 1811            (c) master planning and programming services; or
- 1812            (d) services within the scope of the practice of commercial interior design, as defined  
1813 in Section [58-86-102](#).
- 1814            [~~(28)~~] (27) "Design-build" means the procurement of design professional services and  
1815 construction by the use of a single contract.
- 1816            [~~(29)~~] (28) "Division" means the Division of Purchasing and General Services, created  
1817 in Section [63A-2-101](#).
- 1818            [~~(30)~~] (29) "Educational procurement unit" means:
- 1819            (a) a school district;
- 1820            (b) a public school, including a local school board or a charter school;
- 1821            (c) the Utah Schools for the Deaf and the Blind;
- 1822            (d) the Utah Education and Telehealth Network;
- 1823            (e) an institution of higher education of the state described in Section [53B-1-102](#); or

1824 (f) the State Board of Education.

1825 [~~31~~] (30) "Established catalogue price" means the price included in a catalogue, price  
1826 list, schedule, or other form that:

1827 (a) is regularly maintained by a manufacturer or contractor;

1828 (b) is published or otherwise available for inspection by customers; and

1829 (c) states prices at which sales are currently or were last made to a significant number  
1830 of any category of buyers or buyers constituting the general buying public for the supplies or  
1831 services involved.

1832 [~~32~~] (31) (a) "Executive branch procurement unit" means a department, division,  
1833 office, bureau, agency, or other organization within the state executive branch.

1834 (b) "Executive branch procurement unit" does not include the Colorado River  
1835 Authority of Utah as provided in Section 63M-14-210.

1836 [~~33~~] (32) "Facilities division" means the Division of Facilities Construction and  
1837 Management, created in Section 63A-5b-301.

1838 [~~34~~] (33) "Fixed price contract" means a contract that provides a price, for each  
1839 procurement item obtained under the contract, that is not subject to adjustment except to the  
1840 extent that:

1841 (a) the contract provides, under circumstances specified in the contract, for an  
1842 adjustment in price that is not based on cost to the contractor; or

1843 (b) an adjustment is required by law.

1844 [~~35~~] (34) "Fixed price contract with price adjustment" means a fixed price contract  
1845 that provides for an upward or downward revision of price, precisely described in the contract,  
1846 that:

1847 (a) is based on the consumer price index or another commercially acceptable index,  
1848 source, or formula; and

1849 (b) is not based on a percentage of the cost to the contractor.

1850 [~~36~~] (35) "Grant" means an expenditure of public funds or other assistance, or an  
1851 agreement to expend public funds or other assistance, for a public purpose authorized by law,  
1852 without acquiring a procurement item in exchange.

1853 [~~37~~] (36) "Immaterial error":

1854 (a) means an irregularity or abnormality that is:

- 1855 (i) a matter of form that does not affect substance; or  
1856 (ii) an inconsequential variation from a requirement of a solicitation that has no, little,  
1857 or a trivial effect on the procurement process and that is not prejudicial to other vendors; and  
1858 (b) includes:  
1859 (i) a missing signature, missing acknowledgment of an addendum, or missing copy of a  
1860 professional license, bond, or insurance certificate;  
1861 (ii) a typographical error;  
1862 (iii) an error resulting from an inaccuracy or omission in the solicitation; and  
1863 (iv) any other error that the procurement official reasonably considers to be immaterial.  
1864 ~~[(38)]~~ (37) "Indefinite quantity contract" means a fixed price contract that:  
1865 (a) is for an indefinite amount of procurement items to be supplied as ordered by a  
1866 procurement unit; and  
1867 (b) (i) does not require a minimum purchase amount; or  
1868 (ii) provides a maximum purchase limit.  
1869 ~~[(39)]~~ (38) "Independent procurement unit" means:  
1870 (a) (i) a legislative procurement unit;  
1871 (ii) a judicial branch procurement unit;  
1872 (iii) an educational procurement unit;  
1873 (iv) a local government procurement unit;  
1874 (v) a conservation district;  
1875 (vi) a local building authority;  
1876 (vii) a local district;  
1877 (viii) a public corporation;  
1878 (ix) a special service district; or  
1879 (x) the Utah Communications Authority, established in Section [63H-7a-201](#);  
1880 (b) ~~[the building board or]~~ the facilities division, but only to the extent of the  
1881 procurement authority provided under Title 63A, Chapter 5b, Administration of State  
1882 Facilities;  
1883 (c) the attorney general, but only to the extent of the procurement authority provided  
1884 under Title 67, Chapter 5, Attorney General;  
1885 (d) the Department of Transportation, but only to the extent of the procurement

1886 authority provided under Title 72, Transportation Code; or

1887 (e) any other executive branch department, division, office, or entity that has statutory  
1888 procurement authority outside this chapter, but only to the extent of that statutory procurement  
1889 authority.

1890 [~~40~~] (39) "Invitation for bids":

1891 (a) means a document used to solicit:

1892 (i) bids to provide a procurement item to a procurement unit; or

1893 (ii) quotes for a price of a procurement item to be provided to a procurement unit; and

1894 (b) includes all documents attached to or incorporated by reference in a document  
1895 described in Subsection [~~40~~] (39)(a).

1896 [~~41~~] (40) "Issuing procurement unit" means a procurement unit that:

1897 (a) reviews a solicitation to verify that it is in proper form;

1898 (b) causes the notice of a solicitation to be published; and

1899 (c) negotiates and approves the terms and conditions of a contract.

1900 [~~42~~] (41) "Judicial procurement unit" means:

1901 (a) the Utah Supreme Court;

1902 (b) the Utah Court of Appeals;

1903 (c) the Judicial Council;

1904 (d) a state judicial district; or

1905 (e) an office, committee, subcommittee, or other organization within the state judicial  
1906 branch.

1907 [~~43~~] (42) "Labor hour contract" is a contract under which:

1908 (a) the supplies and materials are not provided by, or through, the contractor; and

1909 (b) the contractor is paid a fixed rate that includes the cost of labor, overhead, and  
1910 profit for a specified number of labor hours or days.

1911 [~~44~~] (43) "Legislative procurement unit" means:

1912 (a) the Legislature;

1913 (b) the Senate;

1914 (c) the House of Representatives;

1915 (d) a staff office of the Legislature, the Senate, or the House of Representatives; or

1916 (e) a committee, subcommittee, commission, or other organization:

1917 (i) within the state legislative branch; or  
 1918 (ii) (A) that is created by statute to advise or make recommendations to the Legislature;  
 1919 (B) the membership of which includes legislators; and  
 1920 (C) for which the Office of Legislative Research and General Counsel provides staff  
 1921 support.

1922 [~~(45)~~] (44) "Local building authority" means the same as that term is defined in Section  
 1923 17D-2-102.

1924 [~~(46)~~] (45) "Local district" means the same as that term is defined in Section  
 1925 17B-1-102.

1926 [~~(47)~~] (46) "Local government procurement unit" means:  
 1927 (a) a county or municipality, and each office or agency of the county or municipality,  
 1928 unless the county or municipality adopts its own procurement code by ordinance;  
 1929 (b) a county or municipality that has adopted this entire chapter by ordinance, and each  
 1930 office or agency of that county or municipality; or  
 1931 (c) a county or municipality that has adopted a portion of this chapter by ordinance, to  
 1932 the extent that a term in the ordinance is used in the adopted portion of this chapter, and each  
 1933 office or agency of that county or municipality.

1934 [~~(48)~~] (47) "Multiple award contracts" means the award of a contract for an indefinite  
 1935 quantity of a procurement item to more than one person.

1936 [~~(49)~~] (48) "Multiyear contract" means a contract that extends beyond a one-year  
 1937 period, including a contract that permits renewal of the contract, without competition, beyond  
 1938 the first year of the contract.

1939 [~~(50)~~] (49) "Municipality" means a city, town, or metro township.

1940 [~~(51)~~] (50) "Nonadopting local government procurement unit" means:  
 1941 (a) a county or municipality that has not adopted Part 16, Protests, Part 17,  
 1942 Procurement Appeals Board, Part 18, Appeals to Court and Court Proceedings, and Part 19,  
 1943 General Provisions Related to Protest or Appeal; and  
 1944 (b) each office or agency of a county or municipality described in Subsection [~~(51)~~]  
 1945 (50)(a).

1946 [~~(52)~~] (51) "Offeror" means a person who submits a proposal in response to a request  
 1947 for proposals.

- 1948            [~~(53)~~] (52) "Preferred bidder" means a bidder that is entitled to receive a reciprocal  
1949 preference under the requirements of this chapter.
- 1950            [~~(54)~~] (53) "Procure" means to acquire a procurement item through a procurement.
- 1951            [~~(55)~~] (54) "Procurement" means the acquisition of a procurement item through an  
1952 expenditure of public funds, or an agreement to expend public funds, including an acquisition  
1953 through a public-private partnership.
- 1954            [~~(56)~~] (55) "Procurement item" means an item of personal property, a technology, a  
1955 service, or a construction project.
- 1956            [~~(57)~~] (56) "Procurement official" means:
- 1957            (a) for a procurement unit other than an independent procurement unit, the chief  
1958 procurement officer;
- 1959            (b) for a legislative procurement unit, the individual, individuals, or body designated in  
1960 a policy adopted by the Legislative Management Committee;
- 1961            (c) for a judicial procurement unit, the Judicial Council or an individual or body  
1962 designated by the Judicial Council by rule;
- 1963            (d) for a local government procurement unit:
- 1964            (i) the legislative body of the local government procurement unit; or
- 1965            (ii) an individual or body designated by the local government procurement unit;
- 1966            (e) for a local district, the board of trustees of the local district or the board of trustees'  
1967 designee;
- 1968            (f) for a special service district, the governing body of the special service district or the  
1969 governing body's designee;
- 1970            (g) for a local building authority, the board of directors of the local building authority  
1971 or the board of directors' designee;
- 1972            (h) for a conservation district, the board of supervisors of the conservation district or  
1973 the board of supervisors' designee;
- 1974            (i) for a public corporation, the board of directors of the public corporation or the board  
1975 of directors' designee;
- 1976            (j) for a school district or any school or entity within a school district, the board of the  
1977 school district or the board's designee;
- 1978            (k) for a charter school, the individual or body with executive authority over the charter



1979 school or the designee of the individual or body;

1980 (l) for an institution of higher education described in Section 53B-2-101, the president  
1981 of the institution of higher education or the president's designee;

1982 (m) for the State Board of Education, the State Board of Education or the State Board  
1983 of Education's designee;

1984 (n) for the Utah Board of Higher Education, the Commissioner of Higher Education or  
1985 the designee of the Commissioner of Higher Education;

1986 (o) for the Utah Communications Authority, established in Section 63H-7a-201, the  
1987 executive director of the Utah Communications Authority or the executive director's designee;  
1988 or

1989 ~~[(p) (i) for the building board, and only to the extent of procurement activities of the~~  
1990 ~~building board as an independent procurement unit under the procurement authority provided~~  
1991 ~~under Title 63A, Chapter 5b, Administration of State Facilities, the director of the building~~  
1992 ~~board or the director's designee;]~~

1993 ~~[(ii) (i) for the facilities division, and only to the extent of procurement activities~~  
1994 ~~of the facilities division as an independent procurement unit under the procurement authority~~  
1995 ~~provided under Title 63A, Chapter 5b, Administration of State Facilities, the director of the~~  
1996 ~~facilities division or the director's designee;~~

1997 ~~[(iii) (ii) for the attorney general, and only to the extent of procurement activities of~~  
1998 ~~the attorney general as an independent procurement unit under the procurement authority~~  
1999 ~~provided under Title 67, Chapter 5, Attorney General, the attorney general or the attorney~~  
2000 ~~general's designee;~~

2001 ~~[(iv) (iii) for the Department of Transportation created in Section 72-1-201, and only~~  
2002 ~~to the extent of procurement activities of the Department of Transportation as an independent~~  
2003 ~~procurement unit under the procurement authority provided under Title 72, Transportation~~  
2004 ~~Code, the executive director of the Department of Transportation or the executive director's~~  
2005 ~~designee; or~~

2006 ~~[(v) (iv) for any other executive branch department, division, office, or entity that has~~  
2007 ~~statutory procurement authority outside this chapter, and only to the extent of the procurement~~  
2008 ~~activities of the department, division, office, or entity as an independent procurement unit~~  
2009 ~~under the procurement authority provided outside this chapter for the department, division,~~

2010 office, or entity, the chief executive officer of the department, division, office, or entity or the  
2011 chief executive officer's designee.

2012 [~~58~~] (57) "Procurement unit":

2013 (a) means:

2014 (i) a legislative procurement unit;

2015 (ii) an executive branch procurement unit;

2016 (iii) a judicial procurement unit;

2017 (iv) an educational procurement unit;

2018 (v) the Utah Communications Authority, established in Section [63H-7a-201](#);

2019 (vi) a local government procurement unit;

2020 (vii) a local district;

2021 (viii) a special service district;

2022 (ix) a local building authority;

2023 (x) a conservation district;

2024 (xi) a public corporation; and

2025 (b) does not include a political subdivision created under Title 11, Chapter 13,

2026 Interlocal Cooperation Act.

2027 [~~59~~] (58) "Professional service" means labor, effort, or work that requires specialized

2028 knowledge, expertise, and discretion, including labor, effort, or work in the field of:

2029 (a) accounting;

2030 (b) administrative law judge service;

2031 (c) architecture;

2032 (d) construction design and management;

2033 (e) engineering;

2034 (f) financial services;

2035 (g) information technology;

2036 (h) the law;

2037 (i) medicine;

2038 (j) psychiatry; or

2039 (k) underwriting.

2040 [~~60~~] (59) "Protest officer" means:

2041 (a) for the division or an independent procurement unit:  
2042 (i) the procurement official;  
2043 (ii) the procurement official's designee who is an employee of the procurement unit; or  
2044 (iii) a person designated by rule made by the rulemaking authority; or  
2045 (b) for a procurement unit other than an independent procurement unit, the chief  
2046 procurement officer or the chief procurement officer's designee who is an employee of the  
2047 division.

2048 [~~(61)~~] (60) "Public corporation" means the same as that term is defined in Section  
2049 [63E-1-102](#).

2050 [~~(62)~~] (61) "Public entity" means the state or any other government entity within the  
2051 state that expends public funds.

2052 [~~(63)~~] (62) "Public facility" means a building, structure, infrastructure, improvement,  
2053 or other facility of a public entity.

2054 [~~(64)~~] (63) "Public funds" means money, regardless of its source, including from the  
2055 federal government, that is owned or held by a procurement unit.

2056 [~~(65)~~] (64) "Public transit district" means a public transit district organized under Title  
2057 17B, Chapter 2a, Part 8, Public Transit District Act.

2058 [~~(66)~~] (65) "Public-private partnership" means an arrangement or agreement, occurring  
2059 on or after January 1, 2017, between a procurement unit and one or more contractors to provide  
2060 for a public need through the development or operation of a project in which the contractor or  
2061 contractors share with the procurement unit the responsibility or risk of developing, owning,  
2062 maintaining, financing, or operating the project.

2063 [~~(67)~~] (66) "Qualified vendor" means a vendor who:

2064 (a) is responsible; and

2065 (b) submits a responsive statement of qualifications under Section [63G-6a-410](#) that  
2066 meets the minimum mandatory requirements, evaluation criteria, and any applicable score  
2067 thresholds set forth in the request for statement of qualifications.

2068 [~~(68)~~] (67) "Real property" means land and any building, fixture, improvement,  
2069 appurtenance, structure, or other development that is permanently affixed to land.

2070 [~~(69)~~] (68) "Request for information" means a nonbinding process through which a  
2071 procurement unit requests information relating to a procurement item.

2072 [(70)] (69) "Request for proposals" means a document used to solicit proposals to  
2073 provide a procurement item to a procurement unit, including all other documents that are  
2074 attached to that document or incorporated in that document by reference.

2075 [(71)] (70) "Request for proposals process" means the procurement process described  
2076 in Part 7, Request for Proposals.

2077 [(72)] (71) "Request for statement of qualifications" means a document used to solicit  
2078 information about the qualifications of a person interested in responding to a potential  
2079 procurement, including all other documents attached to that document or incorporated in that  
2080 document by reference.

2081 [(73)] (72) "Requirements contract" means a contract:

2082 (a) under which a contractor agrees to provide a procurement unit's entire requirements  
2083 for certain procurement items at prices specified in the contract during the contract period; and

2084 (b) that:

2085 (i) does not require a minimum purchase amount; or

2086 (ii) provides a maximum purchase limit.

2087 [(74)] (73) "Responsible" means being capable, in all respects, of:

2088 (a) meeting all the requirements of a solicitation; and

2089 (b) fully performing all the requirements of the contract resulting from the solicitation,  
2090 including being financially solvent with sufficient financial resources to perform the contract.

2091 [(75)] (74) "Responsive" means conforming in all material respects to the requirements  
2092 of a solicitation.

2093 [(76)] (75) "Rule" includes a policy or regulation adopted by the rulemaking authority,  
2094 if adopting a policy or regulation is the method the rulemaking authority uses to adopt  
2095 provisions that govern the applicable procurement unit.

2096 [(77)] (76) "Rulemaking authority" means:

2097 (a) for a legislative procurement unit, the Legislative Management Committee;

2098 (b) for a judicial procurement unit, the Judicial Council;

2099 (c) (i) only to the extent of the procurement authority expressly granted to the  
2100 procurement unit by statute:

2101 (A) for ~~[the building board or]~~ the facilities division, the ~~[building board]~~ facilities  
2102 division;

- 2103 (B) for the Office of the Attorney General, the attorney general;
- 2104 (C) for the Department of Transportation created in Section [72-1-201](#), the executive  
2105 director of the Department of Transportation; and
- 2106 (D) for any other executive branch department, division, office, or entity that has  
2107 statutory procurement authority outside this chapter, the governing authority of the department,  
2108 division, office, or entity; and
- 2109 (ii) for each other executive branch procurement unit, the board;
- 2110 (d) for a local government procurement unit:
- 2111 (i) the governing body of the local government unit; or
- 2112 (ii) an individual or body designated by the local government procurement unit;
- 2113 (e) for a school district or a public school, the board, except to the extent of a school  
2114 district's own nonadministrative rules that do not conflict with the provisions of this chapter;
- 2115 (f) for a state institution of higher education, the Utah Board of Higher Education;
- 2116 (g) for the State Board of Education or the Utah Schools for the Deaf and the Blind, the  
2117 State Board of Education;
- 2118 (h) for a public transit district, the chief executive of the public transit district;
- 2119 (i) for a local district other than a public transit district or for a special service district,  
2120 the board, except to the extent that the board of trustees of the local district or the governing  
2121 body of the special service district makes its own rules:
- 2122 (i) with respect to a subject addressed by board rules; or
- 2123 (ii) that are in addition to board rules;
- 2124 (j) for the Utah Educational Savings Plan, created in Section [53B-8a-103](#), the Utah  
2125 Board of Higher Education;
- 2126 (k) for the School and Institutional Trust Lands Administration, created in Section  
2127 [53C-1-201](#), the School and Institutional Trust Lands Board of Trustees;
- 2128 (l) for the School and Institutional Trust Fund Office, created in Section [53D-1-201](#),  
2129 the School and Institutional Trust Fund Board of Trustees;
- 2130 (m) for the Utah Communications Authority, established in Section [63H-7a-201](#), the  
2131 Utah Communications Authority board, created in Section [63H-7a-203](#); or
- 2132 (n) for any other procurement unit, the board.
- 2133 [~~78~~] (77) "Service":

2134 (a) means labor, effort, or work to produce a result that is beneficial to a procurement  
2135 unit;

2136 (b) includes a professional service; and

2137 (c) does not include labor, effort, or work provided under an employment agreement or  
2138 a collective bargaining agreement.

2139 ~~[(79)]~~ (78) "Small purchase process" means the procurement process described in  
2140 Section [63G-6a-506](#).

2141 ~~[(80)]~~ (79) "Sole source contract" means a contract resulting from a sole source  
2142 procurement.

2143 ~~[(81)]~~ (80) "Sole source procurement" means a procurement without competition  
2144 pursuant to a determination under Subsection [63G-6a-802\(1\)\(a\)](#) that there is only one source  
2145 for the procurement item.

2146 ~~[(82)]~~ (81) "Solicitation" means an invitation for bids, request for proposals, or request  
2147 for statement of qualifications.

2148 ~~[(83)]~~ (82) "Solicitation response" means:

2149 (a) a bid submitted in response to an invitation for bids;

2150 (b) a proposal submitted in response to a request for proposals; or

2151 (c) a statement of qualifications submitted in response to a request for statement of  
2152 qualifications.

2153 ~~[(84)]~~ (83) "Special service district" means the same as that term is defined in Section  
2154 [17D-1-102](#).

2155 ~~[(85)]~~ (84) "Specification" means any description of the physical or functional  
2156 characteristics or of the nature of a procurement item included in an invitation for bids or a  
2157 request for proposals, or otherwise specified or agreed to by a procurement unit, including a  
2158 description of:

2159 (a) a requirement for inspecting or testing a procurement item; or

2160 (b) preparing a procurement item for delivery.

2161 ~~[(86)]~~ (85) "Standard procurement process" means:

2162 (a) the bidding process;

2163 (b) the request for proposals process;

2164 (c) the approved vendor list process;

2165 (d) the small purchase process; or

2166 (e) the design professional procurement process.

2167 [~~(87)~~] (86) "State cooperative contract" means a contract awarded by the division for  
2168 and in behalf of all public entities.

2169 [~~(88)~~] (87) "Statement of qualifications" means a written statement submitted to a  
2170 procurement unit in response to a request for statement of qualifications.

2171 [~~(89)~~] (88) "Subcontractor":

2172 (a) means a person under contract to perform part of a contractual obligation under the  
2173 control of the contractor, whether the person's contract is with the contractor directly or with  
2174 another person who is under contract to perform part of a contractual obligation under the  
2175 control of the contractor; and

2176 (b) includes a supplier, distributor, or other vendor that furnishes supplies or services  
2177 to a contractor.

2178 [~~(90)~~] (89) "Technology" means the same as "information technology," as defined in  
2179 Section [63A-16-102](#).

2180 [~~(91)~~] (90) "Tie bid" means that the lowest responsive bids of responsible bidders are  
2181 identical in price.

2182 [~~(92)~~] (91) "Time and materials contract" means a contract under which the contractor  
2183 is paid:

2184 (a) the actual cost of direct labor at specified hourly rates;

2185 (b) the actual cost of materials and equipment usage; and

2186 (c) an additional amount, expressly described in the contract, to cover overhead and  
2187 profit, that is not based on a percentage of the cost to the contractor.

2188 [~~(93)~~] (92) "Transitional costs":

2189 (a) means the costs of changing:

2190 (i) from an existing provider of a procurement item to another provider of that  
2191 procurement item; or

2192 (ii) from an existing type of procurement item to another type;

2193 (b) includes:

2194 (i) training costs;

2195 (ii) conversion costs;

2196 (iii) compatibility costs;  
2197 (iv) costs associated with system downtime;  
2198 (v) disruption of service costs;  
2199 (vi) staff time necessary to implement the change;  
2200 (vii) installation costs; and  
2201 (viii) ancillary software, hardware, equipment, or construction costs; and  
2202 (c) does not include:  
2203 (i) the costs of preparing for or engaging in a procurement process; or  
2204 (ii) contract negotiation or drafting costs.  
2205 [(94)] (93) "Vendor":  
2206 (a) means a person who is seeking to enter into a contract with a procurement unit to  
2207 provide a procurement item; and  
2208 (b) includes:  
2209 (i) a bidder;  
2210 (ii) an offeror;  
2211 (iii) an approved vendor;  
2212 (iv) a design professional; and  
2213 (v) a person who submits an unsolicited proposal under Section 63G-6a-712.  
2214 Section 35. Section 63G-6a-109 is amended to read:  
2215 **63G-6a-109. Issuing procurement unit and conducting procurement unit.**  
2216 (1) With respect to a procurement by an executive branch procurement unit, except for  
2217 a procurement by an executive branch procurement unit that, under Subsection  
2218 63G-6a-103[(39)](38)(b), (c), (d), or (e), is designated as an independent procurement unit:  
2219 (a) the division is the issuing procurement unit; and  
2220 (b) the executive branch procurement unit is the conducting procurement unit and is  
2221 responsible to ensure that the procurement is conducted in compliance with this chapter.  
2222 (2) With respect to a procurement by any other procurement unit, the procurement unit  
2223 is both the issuing procurement unit and the conducting procurement unit.  
2224 (3) A conducting procurement unit is responsible for contract administration.  
2225 Section 36. Section 63G-6a-204 is amended to read:  
2226 **63G-6a-204. Applicability of rules of Utah State Procurement Policy Board and**



2227 **Division of Facilities Construction and Management -- Report to interim committee.**

2228 (1) Except as provided in Subsection (2), rules made by the board under this chapter  
2229 shall govern all procurement units for which the board is the rulemaking authority.

2230 (2) The [~~building board~~] facilities division rules governing procurement of  
2231 construction, design professional services, and leases apply to the procurement of construction,  
2232 design professional services, and leases of real property by the facilities division.

2233 (3) A rulemaking authority may make its own rules, consistent with this chapter,  
2234 governing procurement by a person over which the rulemaking authority has rulemaking  
2235 authority.

2236 (4) The board shall make a report on or before July 1 of each year to a legislative  
2237 interim committee, designated by the Legislative Management Committee created under  
2238 Section [36-12-6](#), on the establishment, implementation, and enforcement of the rules made  
2239 under Section [63G-6a-203](#).

2240 Section 37. Section **63G-6a-303** is amended to read:

2241 **63G-6a-303. Role, duties, and authority of chief procurement officer.**

2242 (1) The chief procurement officer:

2243 (a) is the director of the division;

2244 (b) serves as the central procurement officer of the state;

2245 (c) serves as a voting member of the board; and

2246 (d) serves as the protest officer for a protest relating to a procurement of an executive  
2247 branch procurement, except an executive branch procurement unit designated under Subsection  
2248 [63G-6a-103](#)~~[(39)]~~[(38)](b), (c), (d), or (e) as an independent procurement unit, or a state  
2249 cooperative contract procurement, unless the chief procurement officer designates another to  
2250 serve as protest officer, as authorized in this chapter.

2251 (2) Except as otherwise provided in this chapter, the chief procurement officer shall:

2252 (a) develop procurement policies and procedures supporting ethical procurement  
2253 practices, fair and open competition among vendors, and transparency within the state's  
2254 procurement process;

2255 (b) administer the state's cooperative purchasing program, including state cooperative  
2256 contracts and associated administrative fees;

2257 (c) enter into an agreement with a public entity for services provided by the division, if

2258 the agreement is in the best interest of the state;

2259 (d) ensure the division's compliance with any applicable law, rule, or policy, including  
2260 a law, rule, or policy applicable to the division's role as an issuing procurement unit or  
2261 conducting procurement unit, or as the state's central procurement organization;

2262 (e) manage the division's electronic procurement system;

2263 (f) oversee the recruitment, training, career development, certification requirements,  
2264 and performance evaluation of the division's procurement personnel;

2265 (g) make procurement training available to procurement units and persons who do  
2266 business with procurement units;

2267 (h) provide exemplary customer service and continually improve the division's  
2268 procurement operations;

2269 (i) exercise all other authority, fulfill all other duties and responsibilities, and perform  
2270 all other functions authorized under this chapter; and

2271 (j) ensure that any training described in this Subsection (2) complies with Title 63G,  
2272 Chapter 22, State Training and Certification Requirements.

2273 (3) With respect to a procurement or contract over which the chief procurement officer  
2274 has authority under this chapter, the chief procurement officer, except as otherwise provided in  
2275 this chapter:

2276 (a) shall:

2277 (i) manage and supervise a procurement to ensure to the extent practicable that  
2278 taxpayers receive the best value;

2279 (ii) prepare and issue standard specifications for procurement items;

2280 (iii) review contracts, coordinate contract compliance, conduct contract audits, and  
2281 approve change orders;

2282 (iv) in accordance with Section [63A-16-204](#), coordinate with the Division of  
2283 Technology Services, created in Section [63A-16-103](#), with respect to the procurement of  
2284 information technology services by an executive branch procurement unit;

2285 (v) correct, amend, or cancel a procurement at any stage of the procurement process if  
2286 the procurement is out of compliance with this chapter or a board rule;

2287 (vi) after consultation with the attorney general's office, correct, amend, or cancel a  
2288 contract at any time during the term of the contract if:

- 2289 (A) the contract is out of compliance with this chapter or a board rule; and
- 2290 (B) the chief procurement officer determines that correcting, amending, or canceling
- 2291 the contract is in the best interest of the state; and
- 2292 (vii) make a reasonable attempt to resolve a contract dispute, in coordination with the
- 2293 attorney general's office; and
- 2294 (b) may:
- 2295 (i) delegate limited purchasing authority to a state agency, with appropriate oversight
- 2296 and control to ensure compliance with this chapter;
- 2297 (ii) delegate duties and authority to an employee of the division, as the chief
- 2298 procurement officer considers appropriate;
- 2299 (iii) negotiate and settle contract overcharges, undercharges, and claims, in accordance
- 2300 with the law and after consultation with the attorney general's office;
- 2301 (iv) authorize a procurement unit to make a procurement pursuant to a regional
- 2302 solicitation, as defined in Subsection [63G-6a-2105\(7\)](#), even if the procurement item is also
- 2303 offered under a state cooperative contract, if the chief procurement officer determines that the
- 2304 procurement pursuant to a regional solicitation is in the best interest of the acquiring
- 2305 procurement unit; and
- 2306 (v) remove an individual from the procurement process or contract administration for:
- 2307 (A) having a conflict of interest or the appearance of a conflict of interest with a person
- 2308 responding to a solicitation or with a contractor;
- 2309 (B) having a bias or the appearance of bias for or against a person responding to a
- 2310 solicitation or for or against a contractor;
- 2311 (C) making an inconsistent or unexplainable score for a solicitation response;
- 2312 (D) having inappropriate contact or communication with a person responding to a
- 2313 solicitation;
- 2314 (E) socializing inappropriately with a person responding to a solicitation or with a
- 2315 contractor;
- 2316 (F) engaging in any other action or having any other association that causes the chief
- 2317 procurement officer to conclude that the individual cannot fairly evaluate a solicitation
- 2318 response or administer a contract; or
- 2319 (G) any other violation of a law, rule, or policy.

2320 (4) The chief procurement officer may not delegate to an individual outside the  
2321 division the chief procurement officer's authority over a procurement described in Subsection  
2322 (3)(a)(iv).

2323 (5) The chief procurement officer has final authority to determine whether an executive  
2324 branch procurement unit's anticipated expenditure of public funds, anticipated agreement to  
2325 expend public funds, or provision of a benefit constitutes a procurement that is subject to this  
2326 chapter.

2327 (6) Except as otherwise provided in this chapter, the chief procurement officer shall  
2328 review, monitor, and audit the procurement activities and delegated procurement authority of  
2329 an executive branch procurement unit, except to the extent that an executive branch  
2330 procurement unit is designated under Subsection 63G-6a-103(39)(b), (c), (d), or (e) as an  
2331 independent procurement unit, to ensure compliance with this chapter, rules made by the  
2332 applicable rulemaking authority, and division policies.

2333 Section 38. Section **63G-6a-1302** is amended to read:

2334 **63G-6a-1302. Alternative methods of construction contracting management.**

2335 (1) A rulemaking authority shall, by rule provide as many alternative methods of  
2336 construction contracting management as determined to be feasible.

2337 (2) The rules described in Subsection (1) shall:

2338 (a) grant to the procurement official responsible for carrying out the construction  
2339 project the discretion to select the appropriate method of construction contracting management  
2340 for a particular project; and

2341 (b) require the procurement official to execute and include in the contract file a written  
2342 statement describing the facts that led to the selection of a particular method of construction  
2343 contracting management for each project.

2344 (3) Before choosing a construction contracting management method, the procurement  
2345 official responsible for carrying out the construction project shall consider the following  
2346 factors:

2347 (a) when the project must be ready to be occupied;

2348 (b) the type of project;

2349 (c) the extent to which the requirements of the procurement unit, and the way they are  
2350 to be met are known;

- 2351 (d) the location of the project;
- 2352 (e) the size, scope, complexity, and economics of the project;
- 2353 (f) the source of funding and any resulting constraints necessitated by the funding
- 2354 source;
- 2355 (g) the availability, qualification, and experience of public personnel to be assigned to
- 2356 the project and the amount of time that the public personnel can devote to the project; and
- 2357 (h) the availability, qualifications, and experience of outside consultants and
- 2358 contractors to complete the project under the various methods being considered.
- 2359 (4) A rulemaking authority may make rules that authorize the use of a construction
- 2360 manager/general contractor as one method of construction contracting management.
- 2361 (5) The rules described in Subsection (2) shall require that:
- 2362 (a) the construction manager/general contractor be selected using:
- 2363 (i) a standard procurement process; or
- 2364 (ii) an exception to the requirement to use a standard procurement process, described in
- 2365 Part 8, Exceptions to Procurement Requirements; and
- 2366 (b) when entering into a subcontract that was not specifically included in the
- 2367 construction manager/general contractor's cost proposal, the construction manager/general
- 2368 contractor shall procure the subcontractor by using a standard procurement process, or an
- 2369 exception to the requirement to use a standard procurement process, described in Part 8,
- 2370 Exceptions to Procurement Requirements, in the same manner as if the subcontract work was
- 2371 procured directly by the procurement unit.
- 2372 (6) Procurement rules adopted by the [~~building board~~] facilities division under
- 2373 Subsections (1) through (3) for state building construction projects may authorize the use of a
- 2374 design-build provider as one method of construction contracting management.
- 2375 (7) A design-build contract may include a provision for obtaining the site for the
- 2376 construction project.
- 2377 (8) A design-build contract or a construction manager/general contractor contract may
- 2378 include provision by the contractor of operations, maintenance, or financing.
- 2379 Section 39. Section **63H-6-103** is amended to read:
- 2380 **63H-6-103. Utah State Fair Corporation -- Legal status -- Powers.**
- 2381 (1) There is created an independent public nonprofit corporation known as the "Utah

2382 State Fair Corporation."

2383 (2) The board shall file articles of incorporation for the corporation with the Division  
2384 of Corporations and Commercial Code.

2385 (3) The corporation, subject to this chapter, has all powers and authority permitted  
2386 nonprofit corporations by law.

2387 (4) The corporation shall:

2388 (a) manage, supervise, and control:

2389 (i) all activities relating to the annual exhibition described in Subsection (4)(j); and

2390 (ii) except as otherwise provided by statute, all state expositions, including setting the  
2391 time, place, and purpose of any state exposition;

2392 (b) for public entertainment, displays, and exhibits or similar events:

2393 (i) provide, sponsor, or arrange the events;

2394 (ii) publicize and promote the events; and

2395 (iii) secure funds to cover the cost of the exhibits from:

2396 (A) private contributions;

2397 (B) public appropriations;

2398 (C) admission charges; and

2399 (D) other lawful means;

2400 (c) acquire and designate exposition sites;

2401 (d) use generally accepted accounting principles in accounting for the corporation's  
2402 assets, liabilities, and operations;

2403 (e) seek corporate sponsorships for the state fair park or for individual buildings or  
2404 facilities within the fair park;

2405 (f) work with county and municipal governments, the Salt Lake Convention and  
2406 Visitor's Bureau, the Utah Travel Council, and other entities to develop and promote  
2407 expositions and the use of the state fair park;

2408 (g) develop and maintain a marketing program to promote expositions and the use of  
2409 the state fair park;

2410 (h) in accordance with provisions of this part, operate and maintain the state fair park,  
2411 including the physical appearance and structural integrity of the state fair park and the  
2412 buildings located at the state fair park;

- 2413 (i) prepare an economic development plan for the state fair park;
- 2414 (j) hold an annual exhibition that:
- 2415 (i) is called the state fair or a similar name;
- 2416 (ii) promotes and highlights agriculture throughout the state;
- 2417 (iii) includes expositions of livestock, poultry, agricultural, domestic science,
- 2418 horticultural, floricultural, mineral and industrial products, manufactured articles, and domestic
- 2419 animals that, in the corporation's opinion will best stimulate agricultural, industrial, artistic, and
- 2420 educational pursuits and the sharing of talents among the people of Utah;
- 2421 (iv) includes the award of premiums for the best specimens of the exhibited articles
- 2422 and animals;
- 2423 (v) permits competition by livestock exhibited by citizens of other states and territories
- 2424 of the United States; and
- 2425 (vi) is arranged according to plans approved by the board;
- 2426 (k) fix the conditions of entry to the annual exhibition described in Subsection (4)(j);
- 2427 and
- 2428 (l) publish a list of premiums that will be awarded at the annual exhibition described in
- 2429 Subsection (4)(j) for the best specimens of exhibited articles and animals.
- 2430 (5) In addition to the annual exhibition described in Subsection (4)(j), the corporation
- 2431 may hold other exhibitions of livestock, poultry, agricultural, domestic science, horticultural,
- 2432 floricultural, mineral and industrial products, manufactured articles, and domestic animals that,
- 2433 in the corporation's opinion, will best stimulate agricultural, industrial, artistic, and educational
- 2434 pursuits and the sharing of talents among the people of Utah.
- 2435 (6) The corporation may:
- 2436 (a) employ advisers, consultants, and agents, including financial experts and
- 2437 independent legal counsel, and fix their compensation;
- 2438 (b) (i) participate in the state's Risk Management Fund created under Section
- 2439 [63A-4-201](#) or any captive insurance company created by the risk manager; or
- 2440 (ii) procure insurance against any loss in connection with the corporation's property
- 2441 and other assets, including mortgage loans;
- 2442 (c) receive and accept aid or contributions of money, property, labor, or other things of
- 2443 value from any source, including any grants or appropriations from any department, agency, or

2444 instrumentality of the United States or Utah;

2445 (d) hold, use, loan, grant, and apply that aid and those contributions to carry out the  
2446 purposes of the corporation, subject to the conditions, if any, upon which the aid and  
2447 contributions were made;

2448 (e) enter into management agreements with any person or entity for the performance of  
2449 the corporation's functions or powers;

2450 (f) establish whatever accounts and procedures as necessary to budget, receive, and  
2451 disburse, account for, and audit all funds received, appropriated, or generated;

2452 (g) subject to Subsection (8), lease any of the facilities at the state fair park;

2453 (h) sponsor events as approved by the board; and

2454 (i) enter into one or more agreements to develop the state fair park.

2455 (7) (a) Except as provided in Subsection (7)(c), as an independent agency of Utah, the  
2456 corporation is exempt from:

2457 (i) Title 51, Chapter 5, Funds Consolidation Act;

2458 (ii) Title 51, Chapter 7, State Money Management Act;

2459 (iii) Title 63A, Utah Government Operations Code;

2460 (iv) Title 63J, Chapter 1, Budgetary Procedures Act; and

2461 (v) Title 63A, Chapter 17, Utah State Personnel Management Act.

2462 (b) The board shall adopt policies parallel to and consistent with:

2463 (i) Title 51, Chapter 5, Funds Consolidation Act;

2464 (ii) Title 51, Chapter 7, State Money Management Act;

2465 (iii) Title 63A, Utah Government Operations Code; and

2466 (iv) Title 63J, Chapter 1, Budgetary Procedures Act.

2467 (c) The corporation shall comply with:

2468 (i) Title 52, Chapter 4, Open and Public Meetings Act;

2469 (ii) Title 63G, Chapter 2, Government Records Access and Management Act;

2470 (iii) the provisions of Section [67-3-12](#);

2471 (iv) Title 63G, Chapter 6a, Utah Procurement Code, except for a procurement for:

2472 (A) entertainment provided at the state fair park;

2473 (B) judges for competitive exhibits; or

2474 (C) sponsorship of an event at the state fair park; and



2475 (v) the legislative approval requirements for new facilities established in Section  
2476 63A-5b-404.

2477 (8) (a) Before the corporation executes a lease described in Subsection (6)(g) with a  
2478 term of 10 or more years, the corporation shall:

2479 (i) submit the proposed lease to the [~~State Building Board~~] division for the [~~State~~  
2480 ~~Building Board's~~] division's approval or rejection; and

2481 (ii) if the [~~State Building Board~~] division approves the proposed lease, submit the  
2482 proposed lease to the Executive Appropriations Committee for the Executive Appropriation  
2483 Committee's review and recommendation in accordance with Subsection (8)(b).

2484 (b) The Executive Appropriations Committee shall review a proposed lease submitted  
2485 in accordance with Subsection (8)(a) and recommend to the corporation that the corporation:

2486 (i) execute the proposed sublease; or

2487 (ii) reject the proposed sublease.

2488 Section 40. Section **63H-6-108** is amended to read:

2489 **63H-6-108. Operation of the state fair park.**

2490 (1) The corporation shall:

2491 (a) operate and maintain the state fair park in accordance with the facility maintenance  
2492 standards approved by the [~~State Building Board~~] division;

2493 (b) pay for all costs associated with operating and maintaining the state fair park;

2494 (c) obtain approval from the division before the corporation commences capital  
2495 developments or capital improvements on the state fair park that involve:

2496 (i) a construction project that costs more than \$250,000; or

2497 (ii) the construction of a new building that costs more than \$1,000,000;

2498 (d) obtain a building permit from the division before commencing an activity that  
2499 requires a building permit;

2500 (e) ensure that:

2501 (i) any design plan related to the state fair park satisfies any applicable design standards  
2502 established by the division [~~or the State Building Board~~]; and

2503 (ii) construction performed on the state fair park satisfies any applicable construction  
2504 standards established by the division [~~or the State Building Board~~];

2505 (f) for any new construction project on the state fair park that costs \$250,000 or more:

- 2506 (i) notify the division before commencing the new construction project; and  
2507 (ii) coordinate with the division regarding review of design plans and construction  
2508 management;
- 2509 (g) obtain approval from the division before the corporation makes any alteration or  
2510 addition to the water system, heating system, plumbing system, air conditioning system, or  
2511 electrical system;
- 2512 (h) obtain approval from the ~~[State Building Board]~~ division before the corporation  
2513 demolishes a building or facility on the state fair park;
- 2514 (i) keep the state fair park fully insured to protect against loss or damage by fire,  
2515 vandalism, or malicious mischief;
- 2516 (j) in accordance with Subsection (3), at the corporation's expense, and for the mutual  
2517 benefit of the division, maintain general public liability insurance in an amount equal to at least  
2518 \$1,000,000 through one or more companies that are:
- 2519 (i) licensed to do business in the state;  
2520 (ii) selected by the corporation; and  
2521 (iii) approved by the division and the Division of Risk Management;
- 2522 (k) ensure that the division is an additional insured with primary coverage on each  
2523 insurance policy that the corporation obtains in accordance with this section;
- 2524 (l) give the division notice at least 30 days before the day on which the corporation  
2525 cancels any insurance policy that the corporation obtains in accordance with this section; and
- 2526 (m) if any lien is recorded or filed against the state fair park as a result of an act or  
2527 omission of the corporation, cause the lien to be satisfied or cancelled within 10 days after the  
2528 day on which the corporation receives notice of the lien.
- 2529 (2) ~~[The State Building Board]~~ At least 90 calendar days before demolition work  
2530 begins, the division shall notify the State Historic Preservation Office of any ~~[State Building~~  
2531 ~~Board meeting at which the State Building Board will consider approval]~~ division plan to  
2532 demolish a facility on the state fair park.
- 2533 (3) The general public liability insurance described in Subsection (1)(j) shall:
- 2534 (a) insure against any claim for personal injury, death, or property damage that occurs  
2535 at the state fair park; and  
2536 (b) be a blanket policy that covers all activities of the corporation.

2537 (4) The division shall administer any capital improvements on the state fair park that  
2538 cost more than \$250,000.

2539 (5) Upon 24 hours notice to the corporation, the division may enter the state fair park  
2540 to inspect the state fair park and make any repairs that the division determines necessary.

2541 (6) If the corporation no longer operates as an independent public nonprofit corporation  
2542 as described in this chapter, the state shall assume the responsibilities of the corporation under  
2543 any contract that is:

2544 (a) in effect as of the day on which the status of the corporation changes; and

2545 (b) for the lease, construction, or development of a building or facility on the state fair  
2546 park.

2547 (7) (a) A debt or obligation contracted by the corporation is a debt or obligation of the  
2548 corporation.

2549 (b) The state is not liable and assumes no responsibility for any debt or obligation  
2550 described in Subsection (7)(a), unless the Legislature expressly:

2551 (i) authorizes the corporation to contract for the debt or obligation; and

2552 (ii) accepts liability or assumes responsibility for the debt or obligation.

2553 (8) The provisions of this section apply notwithstanding any contrary provision in Title  
2554 63A, Chapter 5b, Administration of State Facilities.

2555 Section 41. Section **72-6-107.5** is amended to read:

2556 **72-6-107.5. Construction of improvements of highway -- Contracts -- Health**  
2557 **insurance coverage.**

2558 (1) As used in this section:

2559 (a) "Aggregate" means the sum of all contracts, change orders, and modifications  
2560 related to a single project.

2561 (b) "Change order" means the same as that term is defined in Section [63G-6a-103](#).

2562 (c) "Employee" means, as defined in Section [34A-2-104](#), an "employee," "worker," or  
2563 "operative" who:

2564 (i) works at least 30 hours per calendar week; and

2565 (ii) meets employer eligibility waiting requirements for health care insurance, which  
2566 may not exceed the first day of the calendar month following 60 days after the day on which  
2567 the individual is hired.

- 2568 (d) "Health benefit plan" means:
- 2569 (i) the same as that term is defined in Section 31A-1-301; or
- 2570 (ii) an employee welfare benefit plan:
- 2571 (A) established under the Employee Retirement Income Security Act of 1974, 29
- 2572 U.S.C. Sec. 1001 et seq.;
- 2573 (B) for an employer with 100 or more employees; and
- 2574 (C) in which the employer establishes a self-funded or partially self-funded group
- 2575 health plan to provide medical care for the employer's employees and dependents of the
- 2576 employees.
- 2577 (e) "Qualified health coverage" means the same as that term is defined in Section
- 2578 26-40-115.
- 2579 (f) "Subcontractor" means the same as that term is defined in Section 63A-5b-605.
- 2580 (g) "Third party administrator" or "administrator" means the same as that term is
- 2581 defined in Section 31A-1-301.
- 2582 (2) Except as provided in Subsection (3), the requirements of this section apply to:
- 2583 (a) a contractor of a design or construction contract entered into by the department on
- 2584 or after July 1, 2009, if the prime contract is in an aggregate amount equal to or greater than
- 2585 \$2,000,000; and
- 2586 (b) a subcontractor of a contractor of a design or construction contract entered into by
- 2587 the department on or after July 1, 2009, if the subcontract is in an aggregate amount equal to or
- 2588 greater than \$1,000,000.
- 2589 (3) The requirements of this section do not apply to a contractor or subcontractor
- 2590 described in Subsection (2) if:
- 2591 (a) the application of this section jeopardizes the receipt of federal funds;
- 2592 (b) the contract is a sole source contract; or
- 2593 (c) the contract is an emergency procurement.
- 2594 (4) A person that intentionally uses change orders, contract modifications, or multiple
- 2595 contracts to circumvent the requirements of this section is guilty of an infraction.
- 2596 (5) (a) A contractor subject to the requirements of this section shall demonstrate to the
- 2597 department that the contractor has and will maintain an offer of qualified health coverage for
- 2598 the contractor's employees and the employees' dependents during the duration of the contract

2599 by submitting to the department a written statement that:

2600 (i) the contractor offers qualified health coverage that complies with Section

2601 26-40-115;

2602 (ii) is from:

2603 (A) an actuary selected by the contractor or the contractor's insurer;

2604 (B) an underwriter who is responsible for developing the employer group's premium

2605 rates; or

2606 (C) if the contractor provides a health benefit plan described in Subsection (1)(d)(ii),

2607 an actuary or underwriter selected by a third party administrator; and

2608 (iii) was created within one year before the day on which the statement is submitted.

2609 (b) (i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii)

2610 shall provide the actuary or underwriter selected by an administrator, as described in

2611 Subsection (5)(a)(ii)(C), sufficient information to determine whether the contractor's

2612 contribution to the health benefit plan and the actuarial value of the health benefit plan meet the

2613 requirements of qualified health coverage.

2614 (ii) A contractor may not make a change to the contractor's contribution to the health

2615 benefit plan, unless the contractor provides notice to:

2616 (A) the actuary or underwriter selected by an administrator, as described in Subsection

2617 (5)(a)(ii)(C), for the actuary or underwriter to update the written statement described in

2618 Subsection (5)(a) in compliance with this section; and

2619 (B) the department.

2620 (c) A contractor that is subject to the requirements of this section shall:

2621 (i) place a requirement in each of the contractor's subcontracts that a subcontractor that

2622 is subject to the requirements of this section shall obtain and maintain an offer of qualified

2623 health coverage for the subcontractor's employees and the employees' dependents during the

2624 duration of the subcontract; and

2625 (ii) obtain from a subcontractor that is subject to the requirements of this section a

2626 written statement that:

2627 (A) the subcontractor offers qualified health coverage that complies with Section

2628 26-40-115;

2629 (B) is from an actuary selected by the subcontractor or the subcontractor's insurer, an

2630 underwriter who is responsible for developing the employer group's premium rates, or if the  
2631 subcontractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or  
2632 underwriter selected by an administrator; and

2633 (C) was created within one year before the day on which the contractor obtains the  
2634 statement.

2635 (d) (i) (A) A contractor that fails to maintain an offer of qualified health coverage  
2636 described in Subsection (5)(a) during the duration of the contract is subject to penalties in  
2637 accordance with administrative rules adopted by the department under Subsection (6).

2638 (B) A contractor is not subject to penalties for the failure of a subcontractor to obtain  
2639 and maintain an offer of qualified health coverage described in Subsection (5)(c)(i).

2640 (ii) (A) A subcontractor that fails to obtain and maintain an offer of qualified health  
2641 coverage described in Subsection (5)(c) during the duration of the subcontract is subject to  
2642 penalties in accordance with administrative rules adopted by the department under Subsection  
2643 (6).

2644 (B) A subcontractor is not subject to penalties for the failure of a contractor to maintain  
2645 an offer of qualified health coverage described in Subsection (5)(a).

2646 (6) The department shall adopt administrative rules:

2647 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

2648 (b) in coordination with:

2649 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

2650 (ii) the Department of Natural Resources in accordance with Section 79-2-404;

2651 (iii) the [~~State Building Board~~] Division of Facilities Construction and Management in  
2652 accordance with Section 63A-5b-607;

2653 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

2654 (v) a public transit district in accordance with Section 17B-2a-818.5; and

2655 (vi) the Legislature's Administrative Rules Review Committee; and

2656 (c) that establish:

2657 (i) the requirements and procedures a contractor and a subcontractor shall follow to  
2658 demonstrate compliance with this section, including:

2659 (A) that a contractor or subcontractor's compliance with this section is subject to an  
2660 audit by the department or the Office of the Legislative Auditor General;

2661 (B) that a contractor that is subject to the requirements of this section shall obtain a  
2662 written statement described in Subsection (5)(a); and

2663 (C) that a subcontractor that is subject to the requirements of this section shall obtain a  
2664 written statement described in Subsection (5)(c)(ii);

2665 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally  
2666 violates the provisions of this section, which may include:

2667 (A) a three-month suspension of the contractor or subcontractor from entering into  
2668 future contracts with the state upon the first violation;

2669 (B) a six-month suspension of the contractor or subcontractor from entering into future  
2670 contracts with the state upon the second violation;

2671 (C) an action for debarment of the contractor or subcontractor in accordance with  
2672 Section [63G-6a-904](#) upon the third or subsequent violation; and

2673 (D) monetary penalties which may not exceed 50% of the amount necessary to  
2674 purchase qualified health coverage for an employee and a dependent of the employee of the  
2675 contractor or subcontractor who was not offered qualified health coverage during the duration  
2676 of the contract; and

2677 (iii) a website on which the department shall post the commercially equivalent  
2678 benchmark, for the qualified health coverage identified in Subsection (1)(e), that is provided by  
2679 the Department of Health, in accordance with Subsection [26-40-115\(2\)](#).

2680 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c)(ii), a contractor  
2681 or subcontractor who intentionally violates the provisions of this section is liable to the  
2682 employee for health care costs that would have been covered by qualified health coverage.

2683 (ii) An employer has an affirmative defense to a cause of action under Subsection  
2684 (7)(a)(i) if:

2685 (A) the employer relied in good faith on a written statement described in Subsection  
2686 (5)(a) or (5)(c)(ii); or

2687 (B) the department determines that compliance with this section is not required under  
2688 the provisions of Subsection (3).

2689 (b) An employee has a private right of action only against the employee's employer to  
2690 enforce the provisions of this Subsection (7).

2691 (8) Any penalties imposed and collected under this section shall be deposited into the

2692 Medicaid Restricted Account created in Section [26-18-402](#).

2693 (9) The failure of a contractor or subcontractor to provide qualified health coverage as  
2694 required by this section:

2695 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,  
2696 or contractor under:

2697 (i) Section [63G-6a-1602](#); or

2698 (ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

2699 (b) may not be used by the procurement entity or a prospective bidder, offeror, or  
2700 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design  
2701 or construction.

2702 (10) An administrator, including an administrator's actuary or underwriter, who  
2703 provides a written statement under Subsection (5)(a) or (c) regarding the qualified health  
2704 coverage of a contractor or subcontractor who provides a health benefit plan described in  
2705 Subsection (1)(d)(ii):

2706 (a) subject to Subsection (10)(b), is not liable for an error in the written statement,  
2707 unless the administrator commits gross negligence in preparing the written statement;

2708 (b) is not liable for any error in the written statement if the administrator relied in good  
2709 faith on information from the contractor or subcontractor; and

2710 (c) may require as a condition of providing the written statement that a contractor or  
2711 subcontractor hold the administrator harmless for an action arising under this section.

2712 Section 42. Section **79-2-404** is amended to read:

2713 **79-2-404. Contracting powers of department -- Health insurance coverage.**

2714 (1) As used in this section:

2715 (a) "Aggregate" means the sum of all contracts, change orders, and modifications  
2716 related to a single project.

2717 (b) "Change order" means the same as that term is defined in Section [63G-6a-103](#).

2718 (c) "Employee" means, as defined in Section [34A-2-104](#), an "employee," "worker," or  
2719 "operative" who:

2720 (i) works at least 30 hours per calendar week; and

2721 (ii) meets employer eligibility waiting requirements for health care insurance, which  
2722 may not exceed the first day of the calendar month following 60 days after the day on which



2723 the individual is hired.

2724 (d) "Health benefit plan" means:

2725 (i) the same as that term is defined in Section 31A-1-301; or

2726 (ii) an employee welfare benefit plan:

2727 (A) established under the Employee Retirement Income Security Act of 1974, 29

2728 U.S.C. Sec. 1001 et seq.;

2729 (B) for an employer with 100 or more employees; and

2730 (C) in which the employer establishes a self-funded or partially self-funded group

2731 health plan to provide medical care for the employer's employees and dependents of the

2732 employees.

2733 (e) "Qualified health coverage" means the same as that term is defined in Section

2734 26-40-115.

2735 (f) "Subcontractor" means the same as that term is defined in Section 63A-5b-605.

2736 (g) "Third party administrator" or "administrator" means the same as that term is

2737 defined in Section 31A-1-301.

2738 (2) Except as provided in Subsection (3), the requirements of this section apply to:

2739 (a) a contractor of a design or construction contract entered into by, or delegated to, the

2740 department or a division, board, or council of the department on or after July 1, 2009, if the

2741 prime contract is in an aggregate amount equal to or greater than \$2,000,000; and

2742 (b) a subcontractor of a contractor of a design or construction contract entered into by,

2743 or delegated to, the department or a division, board, or council of the department on or after

2744 July 1, 2009, if the subcontract is in an aggregate amount equal to or greater than \$1,000,000.

2745 (3) This section does not apply to contracts entered into by the department or a

2746 division, board, or council of the department if:

2747 (a) the application of this section jeopardizes the receipt of federal funds;

2748 (b) the contract or agreement is between:

2749 (i) the department or a division, board, or council of the department; and

2750 (ii) (A) another agency of the state;

2751 (B) the federal government;

2752 (C) another state;

2753 (D) an interstate agency;

2754 (E) a political subdivision of this state; or

2755 (F) a political subdivision of another state; or

2756 (c) the contract or agreement is:

2757 (i) for the purpose of disbursing grants or loans authorized by statute;

2758 (ii) a sole source contract; or

2759 (iii) an emergency procurement.

2760 (4) A person that intentionally uses change orders, contract modifications, or multiple  
2761 contracts to circumvent the requirements of this section is guilty of an infraction.

2762 (5) (a) A contractor subject to the requirements of this section shall demonstrate to the  
2763 department that the contractor has and will maintain an offer of qualified health coverage for  
2764 the contractor's employees and the employees' dependents during the duration of the contract  
2765 by submitting to the department a written statement that:

2766 (i) the contractor offers qualified health coverage that complies with Section  
2767 [26-40-115](#);

2768 (ii) is from:

2769 (A) an actuary selected by the contractor or the contractor's insurer;

2770 (B) an underwriter who is responsible for developing the employer group's premium  
2771 rates; or

2772 (C) if the contractor provides a health benefit plan described in Subsection (1)(d)(ii),  
2773 an actuary or underwriter selected by a third party administrator; and

2774 (iii) was created within one year before the day on which the statement is submitted.

2775 (b) (i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii)  
2776 shall provide the actuary or underwriter selected by an administrator, as described in  
2777 Subsection (5)(a)(ii)(C), sufficient information to determine whether the contractor's  
2778 contribution to the health benefit plan and the actuarial value of the health benefit plan meet the  
2779 requirements of qualified health coverage.

2780 (ii) A contractor may not make a change to the contractor's contribution to the health  
2781 benefit plan, unless the contractor provides notice to:

2782 (A) the actuary or underwriter selected by an administrator, as described in Subsection  
2783 (5)(a)(ii)(C), for the actuary or underwriter to update the written statement described in  
2784 Subsection (5)(a) in compliance with this section; and

2785 (B) the department.

2786 (c) A contractor that is subject to the requirements of this section shall:

2787 (i) place a requirement in each of the contractor's subcontracts that a subcontractor that  
2788 is subject to the requirements of this section shall obtain and maintain an offer of qualified  
2789 health coverage for the subcontractor's employees and the employees' dependents during the  
2790 duration of the subcontract; and

2791 (ii) obtain from a subcontractor that is subject to the requirements of this section a  
2792 written statement that:

2793 (A) the subcontractor offers qualified health coverage that complies with Section  
2794 [26-40-115](#);

2795 (B) is from an actuary selected by the subcontractor or the subcontractor's insurer, an  
2796 underwriter who is responsible for developing the employer group's premium rates, or if the  
2797 subcontractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or  
2798 underwriter selected by an administrator; and

2799 (C) was created within one year before the day on which the contractor obtains the  
2800 statement.

2801 (d) (i) (A) A contractor that fails to maintain an offer of qualified health coverage  
2802 described in Subsection (5)(a) during the duration of the contract is subject to penalties in  
2803 accordance with administrative rules adopted by the department under Subsection (6).

2804 (B) A contractor is not subject to penalties for the failure of a subcontractor to obtain  
2805 and maintain an offer of qualified health coverage described in Subsection (5)(c)(i).

2806 (ii) (A) A subcontractor that fails to obtain and maintain an offer of qualified health  
2807 coverage described in Subsection (5)(c) during the duration of the subcontract is subject to  
2808 penalties in accordance with administrative rules adopted by the department under Subsection  
2809 (6).

2810 (B) A subcontractor is not subject to penalties for the failure of a contractor to maintain  
2811 an offer of qualified health coverage described in Subsection (5)(a).

2812 (6) The department shall adopt administrative rules:

2813 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

2814 (b) in coordination with:

2815 (i) the Department of Environmental Quality in accordance with Section [19-1-206](#);

- 2816 (ii) a public transit district in accordance with Section [17B-2a-818.5](#);
- 2817 (iii) the [~~State Building Board~~] Division of Facilities Construction and Management in  
2818 accordance with Section [63A-5b-607](#);
- 2819 (iv) the State Capitol Preservation Board in accordance with Section [63C-9-403](#);
- 2820 (v) the Department of Transportation in accordance with Section [72-6-107.5](#); and
- 2821 (vi) the Legislature's Administrative Rules Review Committee; and
- 2822 (c) that establish:
- 2823 (i) the requirements and procedures a contractor and a subcontractor shall follow to  
2824 demonstrate compliance with this section, including:
- 2825 (A) that a contractor or subcontractor's compliance with this section is subject to an  
2826 audit by the department or the Office of the Legislative Auditor General;
- 2827 (B) that a contractor that is subject to the requirements of this section shall obtain a  
2828 written statement described in Subsection (5)(a); and
- 2829 (C) that a subcontractor that is subject to the requirements of this section shall obtain a  
2830 written statement described in Subsection (5)(c)(ii);
- 2831 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally  
2832 violates the provisions of this section, which may include:
- 2833 (A) a three-month suspension of the contractor or subcontractor from entering into  
2834 future contracts with the state upon the first violation;
- 2835 (B) a six-month suspension of the contractor or subcontractor from entering into future  
2836 contracts with the state upon the second violation;
- 2837 (C) an action for debarment of the contractor or subcontractor in accordance with  
2838 Section [63G-6a-904](#) upon the third or subsequent violation; and
- 2839 (D) monetary penalties which may not exceed 50% of the amount necessary to  
2840 purchase qualified health coverage for an employee and a dependent of an employee of the  
2841 contractor or subcontractor who was not offered qualified health coverage during the duration  
2842 of the contract; and
- 2843 (iii) a website on which the department shall post the commercially equivalent  
2844 benchmark, for the qualified health coverage identified in Subsection (1)(e), provided by the  
2845 Department of Health, in accordance with Subsection [26-40-115\(2\)](#).
- 2846 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c)(ii), a contractor

2847 or subcontractor who intentionally violates the provisions of this section is liable to the  
2848 employee for health care costs that would have been covered by qualified health coverage.

2849 (ii) An employer has an affirmative defense to a cause of action under Subsection  
2850 (7)(a)(i) if:

2851 (A) the employer relied in good faith on a written statement described in Subsection  
2852 (5)(a) or (5)(c)(ii); or

2853 (B) the department determines that compliance with this section is not required under  
2854 the provisions of Subsection (3).

2855 (b) An employee has a private right of action only against the employee's employer to  
2856 enforce the provisions of this Subsection (7).

2857 (8) Any penalties imposed and collected under this section shall be deposited into the  
2858 Medicaid Restricted Account created in Section [26-18-402](#).

2859 (9) The failure of a contractor or subcontractor to provide qualified health coverage as  
2860 required by this section:

2861 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,  
2862 or contractor under:

2863 (i) Section [63G-6a-1602](#); or

2864 (ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

2865 (b) may not be used by the procurement entity or a prospective bidder, offeror, or  
2866 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design  
2867 or construction.

2868 (10) An administrator, including an administrator's actuary or underwriter, who  
2869 provides a written statement under Subsection (5)(a) or (c) regarding the qualified health  
2870 coverage of a contractor or subcontractor who provides a health benefit plan described in  
2871 Subsection (1)(d)(ii):

2872 (a) subject to Subsection (10)(b), is not liable for an error in the written statement,  
2873 unless the administrator commits gross negligence in preparing the written statement;

2874 (b) is not liable for any error in the written statement if the administrator relied in good  
2875 faith on information from the contractor or subcontractor; and

2876 (c) may require as a condition of providing the written statement that a contractor or  
2877 subcontractor hold the administrator harmless for an action arising under this section.

2878 Section 43. **Repealer.**  
2879 This bill repeals:  
2880 Section **63A-5b-201**, **Creation of state building board -- Composition --**  
2881 **Appointment -- Per diem and expenses -- Board officers.**  
2882 Section **63A-5b-202**, **State Building Board powers and duties.**  
2883 Section **63A-5b-203**, **Meetings of state building board -- Rules of procedure --**  
2884 **Quorum.**  
2885 Section 44. **Effective date.**  
2886 This bill takes effect on May 4, 2022, except that the amendments to Section  
2887 [53B-2a-112](#) (Effective 07/01/22) take effect on July 1, 2022.