

SB0082S02 compared with SB0082

~~text~~ shows text that was in SB0082 but was deleted in SB0082S02.

inserted text shows text that was not in SB0082 but was inserted into SB0082S02.

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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: _____

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

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- 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 applicable to the disposition of division-owned property;
 - ▶ for a diagnostic, treatment, parole, probation, or other secured facility project, increases the threshold for that project from \$250,000 to \$500,000 to trigger a requirement for the director of the Division of Facilities Construction and Management to notify a local government entity affected by the project; and
 - ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

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

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

53B-2a-112 (Superseded 07/01/22), as last amended by Laws of Utah 2020, Chapter 365

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

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

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

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

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

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

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

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

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- 63A-5b-404**, as enacted by Laws of Utah 2020, Chapter 152
- 63A-5b-503**, as renumbered and amended by Laws of Utah 2020, Chapter 152
- 63A-5b-601**, as enacted by Laws of Utah 2020, Chapter 152
- 63A-5b-603**, as enacted by Laws of Utah 2020, Chapter 152
- 63A-5b-604**, as enacted by Laws of Utah 2020, Chapter 152
- 63A-5b-802**, as renumbered and amended by Laws of Utah 2020, Chapter 152
- 63A-5b-803**, as last amended by Laws of Utah 2020, Chapter 365
- 63A-5b-806**, as renumbered and amended by Laws of Utah 2020, Chapter 152
- 63A-5b-901**, as renumbered and amended by Laws of Utah 2020, Chapter 152
- 63A-5b-902**, as renumbered and amended by Laws of Utah 2020, Chapter 152
- 63A-5b-904**, as renumbered and amended by Laws of Utah 2020, Chapter 152
- 63A-5b-905**, as last amended by Laws of Utah 2021, Chapters 84 and 345
- 63A-5b-907**, as renumbered and amended by Laws of Utah 2020, Chapter 152
- 63A-5b-910**, as renumbered and amended by Laws of Utah 2020, Chapter 152
- 63A-5b-1001**, as enacted by Laws of Utah 2020, Chapter 152
- 63A-5b-1003**, as renumbered and amended by Laws of Utah 2020, Chapter 152
- 63A-5b-1104**, as enacted by Laws of Utah 2020, Chapter 152
- 63B-1-101**, as last amended by Laws of Utah 2003, Chapter 2
- 63B-1-304**, as last amended by Laws of Utah 2020, Chapter 152
- 63C-9-403**, as last amended by Laws of Utah 2020, Chapters 32 and 152
- 63G-6a-103**, as last amended by Laws of Utah 2021, Chapters 179, 179, 344, ~~344,~~
~~345,~~ and 345
- 63G-6a-109**, as last amended by Laws of Utah 2020, Chapter 257
- 63G-6a-204**, as last amended by Laws of Utah 2020, Chapters 257 and 354
- 63G-6a-303**, as last amended by Laws of Utah 2021, Chapter 344
- 63G-6a-1302**, as last amended by Laws of Utah 2020, Chapter 257
- 63H-6-103**, as last amended by Laws of Utah 2021, Chapters 33, 84, and 345
- 63H-6-108**, as last amended by Laws of Utah 2016, Third Special Session, Chapter 2
- 72-6-107.5**, as last amended by Laws of Utah 2020, Chapters 32 and 152
- 79-2-404**, as last amended by Laws of Utah 2020, Chapters 32 and 152

ENACTS:

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

REPEALS:

63A-5b-201, as last amended by Laws of Utah 2021, Chapter 382

63A-5b-202, as last amended by Laws of Utah 2021, Chapters 187 and 344

63A-5b-203, as enacted by Laws of Utah 2020, Chapter 152

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

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

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

(1) As used in this section:

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

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

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

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

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

(d) "Health benefit plan" means:

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

(ii) an employee welfare benefit plan:

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

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

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

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

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

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

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

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

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

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

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

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

(c) the contract is an emergency procurement.

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

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

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

(ii) is from:

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

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

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

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

(b) (i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii)

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shall provide the actuary or underwriter selected by an administrator, as described in Subsection (5)(a)(ii)(C), sufficient information to determine whether the contractor's contribution to the health benefit plan and the actuarial value of the health benefit plan meet the requirements of qualified health coverage.

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

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

(B) the public transit district.

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

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

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

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

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

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

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

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

(ii) (A) A subcontractor that fails to obtain and maintain an offer of qualified health

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coverage described in Subsection (5)(c)(i) during the duration of the subcontract is subject to penalties in accordance with an ordinance adopted by the public transit district under Subsection (6).

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

(6) The public transit district shall adopt ordinances:

(a) in coordination with:

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

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

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

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

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

(b) that establish:

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

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

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

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

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

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

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

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

(D) monetary penalties which may not exceed 50% of the amount necessary to

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purchase qualified health coverage for employees and dependents of employees of the contractor or subcontractor who were not offered qualified health coverage during the duration of the contract; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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Subsection (1)(d)(ii):

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

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

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

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

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

(1) As used in this section:

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

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

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

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

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

(d) "Health benefit plan" means:

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

(ii) an employee welfare benefit plan:

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

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

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

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

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

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

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

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

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

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

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

(b) the contract or agreement is between:

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

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

(B) the federal government;

(C) another state;

(D) an interstate agency;

(E) a political subdivision of this state; or

(F) a political subdivision of another state;

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

(d) the contract is:

(i) a sole source contract; or

(ii) an emergency procurement.

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

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

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the contract by submitting to the executive director a written statement that:

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

(ii) is from:

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

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

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

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

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

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

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

(B) the department.

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

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

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

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

(B) is from an actuary selected by the subcontractor or the subcontractor's insurer, an

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

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

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

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

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

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

(6) The department shall adopt administrative rules:

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

(b) in coordination with:

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

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

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

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

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

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

(c) that establish:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) Any penalties imposed and collected under this section shall be deposited into the

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Medicaid Restricted Account created in Section 26-18-402.

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

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

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

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

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

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

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

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

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

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

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

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

(a) Utah State University for:

(i) Bridgerland Technical College;

(ii) Tooele Technical College; and

(iii) Uintah Basin Technical College;

(b) Weber State University for:

(i) Ogden-Weber Technical College; and

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- (ii) Davis Technical College;
- (c) Utah Valley University for Mountainland Technical College;
- (d) Southern Utah University for Southwest Technical College; and
- (e) Dixie State University for Dixie Technical College.

(2) A technical college may enter into agreements:

- (a) with other higher education institutions to cultivate cooperative relationships; or
- (b) with other public and higher education institutions to enhance career and technical

education within the technical college's region.

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

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

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

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

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

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

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

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

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

(b) The [~~State Building Board~~] Division of Facilities Construction and Management shall make a finding that the requirements of this section are met before the [~~State Building Board~~] Division of Facilities Construction and Management may consider a funding request

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from the board pertaining to new capital facilities and land purchases for a technical college.

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

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

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

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

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

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

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

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

(a) Utah State University for:

(i) Bridgerland Technical College;

(ii) Tooele Technical College; and

(iii) Uintah Basin Technical College;

(b) Weber State University for:

(i) Ogden-Weber Technical College; and

(ii) Davis Technical College;

(c) Utah Valley University for Mountainland Technical College;

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

(e) Utah Tech University for Dixie Technical College.

(2) A technical college may enter into agreements:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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career and technical education in the region;

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

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

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

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

Prioritization.

(1) As used in this section:

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

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

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

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

(4) The board shall:

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

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

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

and

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

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

(i) the governor;

(ii) the Infrastructure and General Government Appropriations Subcommittee;

(iii) the Higher Education Appropriations Subcommittee; and

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

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

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- (A) recommendation, for the list described in Subsection (4)(b)(i); or
 - (B) recommendation and prioritization, for the list described in Subsection (4)(b)(ii).
- (5) A dedicated project:

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

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

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

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

(b) The board shall establish:

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

described in this section.

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

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

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

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

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

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

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

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

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

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

(1) As used in this section:

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

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

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

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

- (i) employee compensation;
- (ii) mandatory costs, including building operations and maintenance, fuel, and power;
- (iii) performance funding described in Part 7, Performance Funding;
- (iv) statewide and institutional priorities, including scholarships, financial aid, and technology infrastructure; and
- (v) enrollment growth.

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

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

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

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education.

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

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

(5) (a) The budget recommendations of the board shall be accompanied by full explanations and supporting data.

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

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

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

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

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

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

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

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

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

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

(10) The dedicated credits, including revenues derived from tuitions, fees, federal grants, and proceeds from sales received by the institutions are appropriated to the respective institutions to be used in accordance with institutional work programs.

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

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

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

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

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

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

(3) The board shall:

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

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

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

(iii) fulfills a critical institutional facility need;

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

(i) a list of approved dedicated projects; and

(ii) a list of approved nondedicated projects, prioritized in accordance with Subsection (5); and

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

- (i) the governor;
- (ii) the Infrastructure and General Government Appropriations Subcommittee;
- (iii) the Higher Education Appropriations Subcommittee; and
- ~~[(iv) the State Building Board for the State Building Board's:]~~
- (iv) the Division of Facilities Construction and Management for a:
 - (A) recommendation, for the list described in Subsection (3)(b)(i); or
 - (B) recommendation and prioritization, for the list described in Subsection (3)(b)(ii).

(4) A dedicated project:

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

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

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

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

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

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

- (i) up to three nondedicated projects if the ongoing appropriation to the fund is less than \$50,000,000;
- (ii) up to two nondedicated projects if the ongoing appropriation to the fund is at least \$50,000,000 but less than \$100,000,000; or
- (iii) one nondedicated project if the ongoing appropriation to the fund is at least \$100,000,000.

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

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

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

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

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

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

63A-5b-102. Definitions.

As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

(1) (a) The division shall:

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

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

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

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

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

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

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

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

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

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

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

(ix) take all other action that the division is required to do under this chapter or other

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applicable statute.

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

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

(2) The division may:

(a) sue and be sued;

(b) as authorized by the Legislature, buy, lease, or otherwise acquire, by exchange or otherwise, and hold real or personal property necessary for the discharge of the division's duties; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The rules shall include:

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

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

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

(A) the need for the capital development project;

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

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

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

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

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

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

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(1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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project, the institution of higher education will:

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

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

(c) respond to industry demands for trained workers;

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

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

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

(5) The division shall:

(a) (i) assist institutions of higher education in providing the information required by Subsection [~~(3)~~] (4); and

(ii) verify the completion and accuracy of the information submitted by an institution of higher education under Subsection [~~(3)~~] (4);

(b) assist the Utah Board of Higher Education to fulfill the requirements of Section 53B-2a-112 in connection with the finding that the [~~technical college~~] division is required to make under Subsection 53B-2a-112[~~(5)~~](4)(b); and

(c) assist the Utah Board of Higher Education in submitting a list of dedicated projects to the [~~board~~] division for approval and nondedicated projects to the [~~board~~] division for recommendation and prioritization pursuant to Section 53B-22-204.

Section 12. Section **63A-5b-404** is amended to read:

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

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

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

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

(i) the [~~board~~] division determines that the requesting agency has provided adequate

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assurance that state funds will not be used for the design or construction of the facility;

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

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

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

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

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

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

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

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

(ii) increased state capital improvement funding.

(3) Legislative approval is not required for:

(a) a facility:

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

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

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

(c) a project that:

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

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

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

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

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and

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

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

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

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

(A) real property for another maintenance facility; or

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

(b) If the Department of Transportation approves a sale or exchange under Subsection (4)(a) for a capital development project subject to the board's approval, the Department of Transportation shall notify the president of the Senate, the speaker of the House of Representatives, and the cochairs of the Infrastructure and General Government Appropriations Subcommittee of the Legislature's Joint Appropriations Committee about any new facilities to be built or improved.

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

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

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

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

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

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

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

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

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

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

63A-5b-601. Definitions.

As used in this part:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) assume fiduciary control over project finances;

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

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

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

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

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

(6) (a) A project for the construction of a new facility and a project for alterations,

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repairs, and improvements to an existing facility are not subject to Subsection (1) if the project:

- (i) occurs on property under the jurisdiction of the State Capitol Preservation Board;
- (ii) is within a designated research park at the University of Utah or Utah State

University;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) (a) The zoning authority of a local government under ~~[Section 10-9a-305 or~~

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~~17-27a-305~~] Title 10, Chapter 9a, Municipal Land Use, Development, and Management Act, or Title 17, Chapter 27a, County Land Use, Development, and Management Act, does not apply to the use of [state] property that the state owns ~~or leases as a tenant~~ or any improvements constructed on [state] property that the state owns ~~or leases as a tenant~~, including improvements constructed by an entity other than a state entity.

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

Section 17. Section **63A-5b-802** is amended to read:

63A-5b-802. Leasing responsibilities of the director.

(1) The director shall:

(a) prepare and submit a yearly request to the governor and Legislature for a designated amount of square footage by type of space to be leased by the division for that fiscal year;

(b) lease, in the name of the division, all real property space to be occupied by a leasing agency;

(c) in leasing space:

(i) use a process consistent with the best interest of the state, the requirements of the leasing agency, and the anticipated use of the property; and

(ii) comply with any legislative mandates contained in the appropriations act or other legislation;

(d) apply the criteria contained in Subsection (1)(f) to prepare a report evaluating each high-cost lease at least 12 months before the lease expires;

(e) evaluate each lease under the division's control and apply the criteria contained in Subsection (1)(f), as applicable, to evaluate the lease;

(f) in evaluating leases:

(i) determine whether the lease is cost-effective when the needs of the leasing agency to be housed in the leased facilities are considered;

(ii) determine whether another option such as construction, use of other state-owned space, or a lease-purchase agreement is more cost-effective than leasing;

(iii) determine whether the significant lease terms are cost-effective and provide the state with sufficient flexibility and protection from liability;

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(iv) compare the proposed lease payments to the current market rates, and evaluate whether the proposed lease payments are reasonable under current market conditions;

(v) compare proposed significant lease terms to the current market, and recommend whether these proposed terms are reasonable under current market conditions; and

(vi) if applicable, recommend that the lease or modification to a lease be approved or disapproved;

(g) based upon the evaluation, include in the report recommendations that identify viable alternatives to:

(i) make the lease cost-effective; or

(ii) meet the leasing agency's needs when the lease expires; and

(h) upon request, provide the information included in the report to:

(i) the leasing agency benefitted by the lease; and

(ii) the Office of the Legislative Fiscal Analyst.

(2) The director may:

(a) subject to legislative appropriation, enter into a facility lease with a term of up to 10 years if the length of the lease's term is economically advantageous to the state; and

(b) [~~with the approval of the board and~~] subject to legislative appropriation, enter into a facility lease with a term of more than 10 years if the length of the lease's term is economically advantageous to the state.

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

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

(1) The director shall:

(a) prepare a standard form upon which a leasing agency and another state institution or entity can report the current and proposed lease activity of the leasing agency, institution, or entity, including any lease renewal; and

(b) develop procedures and mechanisms within the division to:

(i) obtain and share information about each leasing agency's real property needs; and

(ii) provide oversight and review of lessors and lessees during the term of each lease.

(2) Each leasing agency, the [~~Judicial Council~~] Administrative Office of the Courts, and the board of trustees for each institution of higher education, shall report all current and proposed lease activity on the standard form prepared by the division to:

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- (a) the division; and
- (b) the Office of the Legislative Fiscal Analyst.

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

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

Exception.

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

(2) The rules:

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

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

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

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

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

63A-5b-901. Definitions.

As used in this part:

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

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

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

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

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

~~[(4)]~~ (3) "Division-owned property" means real property, including an interest in real

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property, to which the division holds title, regardless of who occupies or uses the real property.

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

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

~~[(7)]~~ (6) "Private party" means a person who is not a state agency, local government entity, or public purpose nonprofit entity.

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

- (a) is located within the state;
- (b) is not a state agency or local government entity;
- (c) is exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code; and
- (d) operates to fulfill a public purpose.

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

- (a) meets the criteria established by the division by rule under Section 63A-5b-903;
- (b) if submitted by a local government entity or public purpose nonprofit entity, explains the public purpose for which the local government entity or public purpose nonprofit entity seeks a transfer of ownership or lease of the vacant division-owned property; and
- (c) the director determines will, if accepted and implemented, provide a material benefit to the state.

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

- (a) that is authorized to hold title to real property that the state agency occupies or uses, as provided in ~~[Subsection 63A-5b-303(4)]~~ Section 63A-5b-304; and
- (b) for which the division does not hold title to real property that the state agency occupies or uses.

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

~~[(12)]~~ (11) "Transfer of ownership" includes a transfer of the ownership of vacant

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division-owned property that occurs as part of an exchange of the vacant division-owned property for another property.

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

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

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

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

(ii) a transfer of ownership or lease to a secondary state agency, local government entity, public purpose nonprofit entity, or private party.

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

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

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

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

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

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

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

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

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

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

(ii) the construction of student housing.

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

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

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

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

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

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best interests of the state;

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

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

(2) (a) The division may effect a transfer of ownership or lease of vacant division-owned property to an applicant for fair market value if the director determines that the transfer of ownership or lease to that applicant is in the state's best interest.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) identify and describe the vacant division-owned property;
- (b) indicate the availability of the vacant division-owned property;
- (c) invite persons interested in the vacant division-owned property to submit a written proposal to the division;
- (d) indicate the deadline for submitting a written proposal;
- (e) be posted on the division's website for at least 60 consecutive days before the deadline for submitting a written proposal, in a location specifically designated for notices dealing with vacant division-owned property;
- (f) be posted on the Utah Public Notice Website created in Section 63A-16-601 for at least 60 consecutive days before the deadline for submitting a written proposal; and
- (g) be sent by email to each person who has previously submitted to the division a written request to receive notices under this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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highest and same priority.

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

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

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

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

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

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

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

(a) the municipality in which the division-owned property is located, if the division-owned property is within a municipality; or

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

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

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

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

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

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

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

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

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

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

63A-5b-1001. Definitions.

As used in this part:

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

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

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

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

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

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

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

(b) "State facility" does not include:

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

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

(iii) a structure that is located on land administered by the trust lands administration

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under a lease, permit, or contract with the trust lands administration.

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

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

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

(2) The fund shall consist of:

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

(b) money appropriated by the Legislature;

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

(d) interest earned on the fund.

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

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

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

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

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

(i) criteria to determine:

(A) loan eligibility;

(B) energy efficiency measures priority; and

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

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

(b) In making rules that establish prioritization criteria for energy efficiency measures,

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the [board] division may consider:

- (i) possible additional sources of revenue;
- (ii) the feasibility and practicality of the energy efficiency measures;
- (iii) the energy savings attributable to eligible energy efficiency measures;
- (iv) the annual energy savings;
- (v) the projected energy cost payback of eligible energy efficiency measures;
- (vi) other benefits to the state attributable to eligible energy efficiency measures;
- (vii) the availability of federal funds for the energy efficiency measures; and
- (viii) whether to require an agency to provide matching funds for the energy efficiency

measures.

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

- (i) review the loan application and the plans and specifications for the energy efficiency measures;
- (ii) determine whether to grant the loan by applying the loan eligibility criteria; and
- (iii) if the loan is granted, prioritize funding of the energy efficiency measures by applying the prioritization criteria.

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

- (i) uses the proceeds to pay the cost of the energy efficiency measures; and
- (ii) implements the energy efficiency measures.

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

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

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

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

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

- (i) the nature of the project has been significantly altered since an earlier notification;
- (ii) the project would significantly change the nature of the functions presently conducted at the location; or
- (iii) the project is new construction.

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

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

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

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

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

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

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

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

63B-1-101. Definitions.

As used in this title:

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

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

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

(b) any renewal of those notes.

~~[(3)]~~ (2) "Bonds" means any bonds, bond anticipation notes, or other obligations authorized under this title for which the full faith, credit, and resources and ad valorem taxing power of the state have been pledged for the payment of the principal of and interest on the bonds.

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

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

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

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

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

63B-1-304. State Building Ownership Authority created -- Members --

Compensation -- Location in Department of Administrative Services.

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

(a) the governor;

(b) the state treasurer; and

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

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

(a) Section 63A-3-106;

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

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

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

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

Section 32. Section **63C-9-403** is amended to read:

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

(1) As used in this section:

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

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

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

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

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

(d) "Health benefit plan" means:

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

(ii) an employee welfare benefit plan:

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

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

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

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

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

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

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

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

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

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

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

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

(c) the contract is an emergency procurement.

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

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

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

(ii) is from:

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

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

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

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

(b) (i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii)

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shall provide the actuary or underwriter selected by the administrator, as described in Subsection (5)(a)(ii)(C), sufficient information to determine whether the contractor's contribution to the health benefit plan and the health benefit plan's actuarial value meets the requirements of qualified health coverage.

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

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

(B) the executive director.

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

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

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

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

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

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

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

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

(ii) (A) A subcontractor that fails to obtain and maintain an offer of qualified health

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coverage described in Subsection (5)(c)(i) during the duration of the subcontract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

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

(6) The department shall adopt administrative rules:

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

(b) in coordination with:

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

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

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

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

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

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

(c) that establish:

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

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

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

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

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

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

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

(C) an action for debarment of the contractor or subcontractor in accordance with

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Section 63G-6a-904 upon the third or subsequent violation; and

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) An administrator, including the administrator's actuary or underwriter, who

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provides a written statement under Subsection (5)(a) or (c) regarding the qualified health coverage of a contractor or subcontractor who provides a health benefit plan described in Subsection (1)(d)(ii):

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

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

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

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

63G-6a-103. Definitions.

As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

(a) except:

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

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

(b) including:

(i) preparing any solicitation document;

(ii) appointing an evaluation committee;

(iii) conducting the evaluation process, except the process relating to scores calculated for costs of proposals;

(iv) selecting and recommending the person to be awarded a contract;

(v) negotiating the terms and conditions of a contract, subject to the issuing procurement unit's approval; and

(vi) contract administration.

~~[(12)]~~ (11) "Conservation district" means the same as that term is defined in Section 17D-3-102.

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

(a) means a project for the construction, renovation, alteration, improvement, or repair of a public facility on real property, including all services, labor, supplies, and materials for the project; and

(b) does not include services and supplies for the routine, day-to-day operation, repair, or maintenance of an existing public facility.

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

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

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

(ii) that allows the contractor to subcontract for additional labor and materials that are not included in the contractor's cost proposal submitted at the time of the procurement of the contractor's services; and

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

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contractor's cost proposal submitted as part of the procurement of the contractor's services is to meet subcontracted portions of change orders approved within the scope of the project.

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

(a) means a person under contract with a contractor or another subcontractor to provide services or labor for the design or construction of a construction project;

(b) includes a general contractor or specialty contractor licensed or exempt from licensing under Title 58, Chapter 55, Utah Construction Trades Licensing Act; and

(c) does not include a supplier who provides only materials, equipment, or supplies to a contractor or subcontractor for a construction project.

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

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

(a) implementing the contract;

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

(c) executing change orders;

(d) processing contract amendments;

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

(f) curing contract errors and deficiencies;

(g) terminating a contract;

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

(i) computing payments under the contract; and

(j) closing out a contract.

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

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

(a) more than one procurement unit; or

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

~~[(20)]~~ (19) "Cooperative purchasing organization" means an organization, association,

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or alliance of purchasers established to combine purchasing power in order to obtain the best value for the purchasers by engaging in procurements in accordance with Section 63G-6a-2105.

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

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

~~[(23)]~~ (22) "Days" means calendar days, unless expressly provided otherwise.

~~[(24)]~~ (23) "Definite quantity contract" means a fixed price contract that provides for a specified amount of supplies over a specified period, with deliveries scheduled according to a specified schedule.

~~[(25)]~~ (24) "Design professional" means:

- (a) an individual licensed as an architect under Title 58, Chapter 3a, Architects Licensing Act;
- (b) an individual licensed as a professional engineer or professional land surveyor under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act; or
- (c) an individual certified as a commercial interior designer under Title 58, Chapter 86, State Certification of Commercial Interior Designers Act.

~~[(26)]~~ (25) "Design professional procurement process" means the procurement process described in Part 15, Design Professional Services.

~~[(27)]~~ (26) "Design professional services" means:

- (a) professional services within the scope of the practice of architecture as defined in Section 58-3a-102;
- (b) professional engineering as defined in Section 58-22-102;
- (c) master planning and programming services; or
- (d) services within the scope of the practice of commercial interior design, as defined in Section 58-86-102.

~~[(28)]~~ (27) "Design-build" means the procurement of design professional services and construction by the use of a single contract.

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~~[(29)]~~ (28) "Division" means the Division of Purchasing and General Services, created in Section 63A-2-101.

~~[(30)]~~ (29) "Educational procurement unit" means:

- (a) a school district;
- (b) a public school, including a local school board or a charter school;
- (c) the Utah Schools for the Deaf and the Blind;
- (d) the Utah Education and Telehealth Network;
- (e) an institution of higher education of the state described in Section 53B-1-102; or
- (f) the State Board of Education.

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

- (a) is regularly maintained by a manufacturer or contractor;
- (b) is published or otherwise available for inspection by customers; and
- (c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

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

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

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

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

- (a) the contract provides, under circumstances specified in the contract, for an adjustment in price that is not based on cost to the contractor; or
- (b) an adjustment is required by law.

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

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

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

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

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

(a) means an irregularity or abnormality that is:

(i) a matter of form that does not affect substance; or

(ii) an inconsequential variation from a requirement of a solicitation that has no, little, or a trivial effect on the procurement process and that is not prejudicial to other vendors; and

(b) includes:

(i) a missing signature, missing acknowledgment of an addendum, or missing copy of a professional license, bond, or insurance certificate;

(ii) a typographical error;

(iii) an error resulting from an inaccuracy or omission in the solicitation; and

(iv) any other error that the procurement official reasonably considers to be immaterial.

~~[(38)]~~ (37) "Indefinite quantity contract" means a fixed price contract that:

(a) is for an indefinite amount of procurement items to be supplied as ordered by a procurement unit; and

(b) (i) does not require a minimum purchase amount; or

(ii) provides a maximum purchase limit.

~~[(39)]~~ (38) "Independent procurement unit" means:

(a) (i) a legislative procurement unit;

(ii) a judicial branch procurement unit;

(iii) an educational procurement unit;

(iv) a local government procurement unit;

(v) a conservation district;

(vi) a local building authority;

(vii) a local district;

(viii) a public corporation;

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(ix) a special service district; or

(x) the Utah Communications Authority, established in Section 63H-7a-201;

(b) ~~[the building board or]~~ the facilities division, but only to the extent of the procurement authority provided under Title 63A, Chapter 5b, Administration of State Facilities;

(c) the attorney general, but only to the extent of the procurement authority provided under Title 67, Chapter 5, Attorney General;

(d) the Department of Transportation, but only to the extent of the procurement authority provided under Title 72, Transportation Code; or

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

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

(a) means a document used to solicit:

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

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

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

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

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

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

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

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

(a) the Utah Supreme Court;

(b) the Utah Court of Appeals;

(c) the Judicial Council;

(d) a state judicial district; or

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

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

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

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

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

- (a) the Legislature;
- (b) the Senate;
- (c) the House of Representatives;
- (d) a staff office of the Legislature, the Senate, or the House of Representatives; or
- (e) a committee, subcommittee, commission, or other organization:
 - (i) within the state legislative branch; or
 - (ii) (A) that is created by statute to advise or make recommendations to the Legislature;
 - (B) the membership of which includes legislators; and
 - (C) for which the Office of Legislative Research and General Counsel provides staff

support.

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

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

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

- (a) a county or municipality, and each office or agency of the county or municipality, unless the county or municipality adopts its own procurement code by ordinance;
- (b) a county or municipality that has adopted this entire chapter by ordinance, and each office or agency of that county or municipality; or
- (c) a county or municipality that has adopted a portion of this chapter by ordinance, to the extent that a term in the ordinance is used in the adopted portion of this chapter, and each office or agency of that county or municipality.

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

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

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

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

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

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

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

~~[(53)]~~ (52) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference under the requirements of this chapter.

~~[(54)]~~ (53) "Procure" means to acquire a procurement item through a procurement.

~~[(55)]~~ (54) "Procurement" means the acquisition of a procurement item through an expenditure of public funds, or an agreement to expend public funds, including an acquisition through a public-private partnership.

~~[(56)]~~ (55) "Procurement item" means an item of personal property, a technology, a service, or a construction project.

~~[(57)]~~ (56) "Procurement official" means:

(a) for a procurement unit other than an independent procurement unit, the chief procurement officer;

(b) for a legislative procurement unit, the individual, individuals, or body designated in a policy adopted by the Legislative Management Committee;

(c) for a judicial procurement unit, the Judicial Council or an individual or body designated by the Judicial Council by rule;

(d) for a local government procurement unit:

(i) the legislative body of the local government procurement unit; or

(ii) an individual or body designated by the local government procurement unit;

(e) for a local district, the board of trustees of the local district or the board of trustees' designee;

(f) for a special service district, the governing body of the special service district or the governing body's designee;

(g) for a local building authority, the board of directors of the local building authority

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or the board of directors' designee;

(h) for a conservation district, the board of supervisors of the conservation district or the board of supervisors' designee;

(i) for a public corporation, the board of directors of the public corporation or the board of directors' designee;

(j) for a school district or any school or entity within a school district, the board of the school district or the board's designee;

(k) for a charter school, the individual or body with executive authority over the charter school or the designee of the individual or body;

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

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

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

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

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

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

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

~~[(iv) (iii) for the Department of Transportation created in Section 72-1-201, and only~~

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to the extent of procurement activities of the Department of Transportation as an independent procurement unit under the procurement authority provided under Title 72, Transportation Code, the executive director of the Department of Transportation or the executive director's designee; or

~~(v)~~ (iv) for any other executive branch department, division, office, or entity that has statutory procurement authority outside this chapter, and only to the extent of the procurement activities of the department, division, office, or entity as an independent procurement unit under the procurement authority provided outside this chapter for the department, division, office, or entity, the chief executive officer of the department, division, office, or entity or the chief executive officer's designee.

~~(58)~~ (57) "Procurement unit":

(a) means:

- (i) a legislative procurement unit;
- (ii) an executive branch procurement unit;
- (iii) a judicial procurement unit;
- (iv) an educational procurement unit;
- (v) the Utah Communications Authority, established in Section 63H-7a-201;
- (vi) a local government procurement unit;
- (vii) a local district;
- (viii) a special service district;
- (ix) a local building authority;
- (x) a conservation district;
- (xi) a public corporation; and

(b) does not include a political subdivision created under Title 11, Chapter 13, Interlocal Cooperation Act.

~~(59)~~ (58) "Professional service" means labor, effort, or work that requires specialized knowledge, expertise, and discretion, including labor, effort, or work in the field of:

- (a) accounting;
- (b) administrative law judge service;
- (c) architecture;
- (d) construction design and management;

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- (e) engineering;
- (f) financial services;
- (g) information technology;
- (h) the law;
- (i) medicine;
- (j) psychiatry; or
- (k) underwriting.

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

(a) for the division or an independent procurement unit:

- (i) the procurement official;
- (ii) the procurement official's designee who is an employee of the procurement unit; or
- (iii) a person designated by rule made by the rulemaking authority; or

(b) for a procurement unit other than an independent procurement unit, the chief procurement officer or the chief procurement officer's designee who is an employee of the division.

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

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

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

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

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

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

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

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(a) is responsible; and

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

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

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

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

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

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

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

(a) under which a contractor agrees to provide a procurement unit's entire requirements for certain procurement items at prices specified in the contract during the contract period; and

(b) that:

(i) does not require a minimum purchase amount; or

(ii) provides a maximum purchase limit.

~~[(74)]~~ (73) "Responsible" means being capable, in all respects, of:

(a) meeting all the requirements of a solicitation; and

(b) fully performing all the requirements of the contract resulting from the solicitation, including being financially solvent with sufficient financial resources to perform the contract.

~~[(75)]~~ (74) "Responsive" means conforming in all material respects to the requirements of a solicitation.

~~[(76)]~~ (75) "Rule" includes a policy or regulation adopted by the rulemaking authority, if adopting a policy or regulation is the method the rulemaking authority uses to adopt

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provisions that govern the applicable procurement unit.

[(77)] (76) "Rulemaking authority" means:

- (a) for a legislative procurement unit, the Legislative Management Committee;
- (b) for a judicial procurement unit, the Judicial Council;
- (c) (i) only to the extent of the procurement authority expressly granted to the

procurement unit by statute:

(A) for [~~the building board or~~] the facilities division, the [~~building board~~] facilities division;

(B) for the Office of the Attorney General, the attorney general;

(C) for the Department of Transportation created in Section 72-1-201, the executive director of the Department of Transportation; and

(D) for any other executive branch department, division, office, or entity that has statutory procurement authority outside this chapter, the governing authority of the department, division, office, or entity; and

(ii) for each other executive branch procurement unit, the board;

(d) for a local government procurement unit:

(i) the governing body of the local government unit; or

(ii) an individual or body designated by the local government procurement unit;

(e) for a school district or a public school, the board, except to the extent of a school district's own nonadministrative rules that do not conflict with the provisions of this chapter;

(f) for a state institution of higher education, the Utah Board of Higher Education;

(g) for the State Board of Education or the Utah Schools for the Deaf and the Blind, the State Board of Education;

(h) for a public transit district, the chief executive of the public transit district;

(i) for a local district other than a public transit district or for a special service district, the board, except to the extent that the board of trustees of the local district or the governing body of the special service district makes its own rules:

(i) with respect to a subject addressed by board rules; or

(ii) that are in addition to board rules;

(j) for the Utah Educational Savings Plan, created in Section 53B-8a-103, the Utah Board of Higher Education;

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(k) for the School and Institutional Trust Lands Administration, created in Section 53C-1-201, the School and Institutional Trust Lands Board of Trustees;

(l) for the School and Institutional Trust Fund Office, created in Section 53D-1-201, the School and Institutional Trust Fund Board of Trustees;

(m) for the Utah Communications Authority, established in Section 63H-7a-201, the Utah Communications Authority board, created in Section 63H-7a-203; or

(n) for any other procurement unit, the board.

~~[(78)]~~ (77) "Service":

(a) means labor, effort, or work to produce a result that is beneficial to a procurement unit;

(b) includes a professional service; and

(c) does not include labor, effort, or work provided under an employment agreement or a collective bargaining agreement.

~~[(79)]~~ (78) "Small purchase process" means the procurement process described in Section 63G-6a-506.

~~[(80)]~~ (79) "Sole source contract" means a contract resulting from a sole source procurement.

~~[(81)]~~ (80) "Sole source procurement" means a procurement without competition pursuant to a determination under Subsection 63G-6a-802(1)(a) that there is only one source for the procurement item.

~~[(82)]~~ (81) "Solicitation" means an invitation for bids, request for proposals, or request for statement of qualifications.

~~[(83)]~~ (82) "Solicitation response" means:

(a) a bid submitted in response to an invitation for bids;

(b) a proposal submitted in response to a request for proposals; or

(c) a statement of qualifications submitted in response to a request for statement of qualifications.

~~[(84)]~~ (83) "Special service district" means the same as that term is defined in Section 17D-1-102.

~~[(85)]~~ (84) "Specification" means any description of the physical or functional characteristics or of the nature of a procurement item included in an invitation for bids or a

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request for proposals, or otherwise specified or agreed to by a procurement unit, including a description of:

- (a) a requirement for inspecting or testing a procurement item; or
- (b) preparing a procurement item for delivery.

~~[(86)]~~ (85) "Standard procurement process" means:

- (a) the bidding process;
- (b) the request for proposals process;
- (c) the approved vendor list process;
- (d) the small purchase process; or
- (e) the design professional procurement process.

~~[(87)]~~ (86) "State cooperative contract" means a contract awarded by the division for and in behalf of all public entities.

~~[(88)]~~ (87) "Statement of qualifications" means a written statement submitted to a procurement unit in response to a request for statement of qualifications.

~~[(89)]~~ (88) "Subcontractor":

(a) means a person under contract to perform part of a contractual obligation under the control of the contractor, whether the person's contract is with the contractor directly or with another person who is under contract to perform part of a contractual obligation under the control of the contractor; and

(b) includes a supplier, distributor, or other vendor that furnishes supplies or services to a contractor.

~~[(90)]~~ (89) "Technology" means the same as "information technology," as defined in Section 63A-16-102.

~~[(91)]~~ (90) "Tie bid" means that the lowest responsive bids of responsible bidders are identical in price.

~~[(92)]~~ (91) "Time and materials contract" means a contract under which the contractor is paid:

- (a) the actual cost of direct labor at specified hourly rates;
- (b) the actual cost of materials and equipment usage; and
- (c) an additional amount, expressly described in the contract, to cover overhead and profit, that is not based on a percentage of the cost to the contractor.

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~~[(93)]~~ (92) "Transitional costs":

(a) means the costs of changing:

(i) from an existing provider of a procurement item to another provider of that procurement item; or

(ii) from an existing type of procurement item to another type;

(b) includes:

(i) training costs;

(ii) conversion costs;

(iii) compatibility costs;

(iv) costs associated with system downtime;

(v) disruption of service costs;

(vi) staff time necessary to implement the change;

(vii) installation costs; and

(viii) ancillary software, hardware, equipment, or construction costs; and

(c) does not include:

(i) the costs of preparing for or engaging in a procurement process; or

(ii) contract negotiation or drafting costs.

~~[(94)]~~ (93) "Vendor":

(a) means a person who is seeking to enter into a contract with a procurement unit to provide a procurement item; and

(b) includes:

(i) a bidder;

(ii) an offeror;

(iii) an approved vendor;

(iv) a design professional; and

(v) a person who submits an unsolicited proposal under Section 63G-6a-712.

Section 34. Section **63G-6a-109** is amended to read:

63G-6a-109. Issuing procurement unit and conducting procurement unit.

(1) With respect to a procurement by an executive branch procurement unit, except for a procurement by an executive branch procurement unit that, under Subsection 63G-6a-103~~[(39)]~~(38)(b), (c), (d), or (e), is designated as an independent procurement unit:

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- (a) the division is the issuing procurement unit; and
 - (b) the executive branch procurement unit is the conducting procurement unit and is responsible to ensure that the procurement is conducted in compliance with this chapter.
- (2) With respect to a procurement by any other procurement unit, the procurement unit is both the issuing procurement unit and the conducting procurement unit.
- (3) A conducting procurement unit is responsible for contract administration.

Section 35. Section **63G-6a-204** is amended to read:

63G-6a-204. Applicability of rules of Utah State Procurement Policy Board and Division of Facilities Construction and Management -- Report to interim committee.

- (1) Except as provided in Subsection (2), rules made by the board under this chapter shall govern all procurement units for which the board is the rulemaking authority.
- (2) The [~~building board~~] facilities division rules governing procurement of construction, design professional services, and leases apply to the procurement of construction, design professional services, and leases of real property by the facilities division.
- (3) A rulemaking authority may make its own rules, consistent with this chapter, governing procurement by a person over which the rulemaking authority has rulemaking authority.
- (4) The board shall make a report on or before July 1 of each year to a legislative interim committee, designated by the Legislative Management Committee created under Section 36-12-6, on the establishment, implementation, and enforcement of the rules made under Section 63G-6a-203.

Section 36. Section **63G-6a-303** is amended to read:

63G-6a-303. Role, duties, and authority of chief procurement officer.

- (1) The chief procurement officer:
- (a) is the director of the division;
 - (b) serves as the central procurement officer of the state;
 - (c) serves as a voting member of the board; and
 - (d) serves as the protest officer for a protest relating to a procurement of an executive branch procurement, except an executive branch procurement unit designated under Subsection 63G-6a-103[~~(39)~~](38)(b), (c), (d), or (e) as an independent procurement unit, or a state cooperative contract procurement, unless the chief procurement officer designates another to

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serve as protest officer, as authorized in this chapter.

(2) Except as otherwise provided in this chapter, the chief procurement officer shall:

(a) develop procurement policies and procedures supporting ethical procurement practices, fair and open competition among vendors, and transparency within the state's procurement process;

(b) administer the state's cooperative purchasing program, including state cooperative contracts and associated administrative fees;

(c) enter into an agreement with a public entity for services provided by the division, if the agreement is in the best interest of the state;

(d) ensure the division's compliance with any applicable law, rule, or policy, including a law, rule, or policy applicable to the division's role as an issuing procurement unit or conducting procurement unit, or as the state's central procurement organization;

(e) manage the division's electronic procurement system;

(f) oversee the recruitment, training, career development, certification requirements, and performance evaluation of the division's procurement personnel;

(g) make procurement training available to procurement units and persons who do business with procurement units;

(h) provide exemplary customer service and continually improve the division's procurement operations;

(i) exercise all other authority, fulfill all other duties and responsibilities, and perform all other functions authorized under this chapter; and

(j) ensure that any training described in this Subsection (2) complies with Title 63G, Chapter 22, State Training and Certification Requirements.

(3) With respect to a procurement or contract over which the chief procurement officer has authority under this chapter, the chief procurement officer, except as otherwise provided in this chapter:

(a) shall:

(i) manage and supervise a procurement to ensure to the extent practicable that taxpayers receive the best value;

(ii) prepare and issue standard specifications for procurement items;

(iii) review contracts, coordinate contract compliance, conduct contract audits, and

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approve change orders;

(iv) in accordance with Section 63A-16-204, coordinate with the Division of Technology Services, created in Section 63A-16-103, with respect to the procurement of information technology services by an executive branch procurement unit;

(v) correct, amend, or cancel a procurement at any stage of the procurement process if the procurement is out of compliance with this chapter or a board rule;

(vi) after consultation with the attorney general's office, correct, amend, or cancel a contract at any time during the term of the contract if:

(A) the contract is out of compliance with this chapter or a board rule; and

(B) the chief procurement officer determines that correcting, amending, or canceling the contract is in the best interest of the state; and

(vii) make a reasonable attempt to resolve a contract dispute, in coordination with the attorney general's office; and

(b) may:

(i) delegate limited purchasing authority to a state agency, with appropriate oversight and control to ensure compliance with this chapter;

(ii) delegate duties and authority to an employee of the division, as the chief procurement officer considers appropriate;

(iii) negotiate and settle contract overcharges, undercharges, and claims, in accordance with the law and after consultation with the attorney general's office;

(iv) authorize a procurement unit to make a procurement pursuant to a regional solicitation, as defined in Subsection 63G-6a-2105(7), even if the procurement item is also offered under a state cooperative contract, if the chief procurement officer determines that the procurement pursuant to a regional solicitation is in the best interest of the acquiring procurement unit; and

(v) remove an individual from the procurement process or contract administration for:

(A) having a conflict of interest or the appearance of a conflict of interest with a person responding to a solicitation or with a contractor;

(B) having a bias or the appearance of bias for or against a person responding to a solicitation or for or against a contractor;

(C) making an inconsistent or unexplainable score for a solicitation response;

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(D) having inappropriate contact or communication with a person responding to a solicitation;

(E) socializing inappropriately with a person responding to a solicitation or with a contractor;

(F) engaging in any other action or having any other association that causes the chief procurement officer to conclude that the individual cannot fairly evaluate a solicitation response or administer a contract; or

(G) any other violation of a law, rule, or policy.

(4) The chief procurement officer may not delegate to an individual outside the division the chief procurement officer's authority over a procurement described in Subsection (3)(a)(iv).

(5) The chief procurement officer has final authority to determine whether an executive branch procurement unit's anticipated expenditure of public funds, anticipated agreement to expend public funds, or provision of a benefit constitutes a procurement that is subject to this chapter.

(6) Except as otherwise provided in this chapter, the chief procurement officer shall review, monitor, and audit the procurement activities and delegated procurement authority of an executive branch procurement unit, except to the extent that an executive branch procurement unit is designated under Subsection 63G-6a-103(39)(b), (c), (d), or (e) as an independent procurement unit, to ensure compliance with this chapter, rules made by the applicable rulemaking authority, and division policies.

Section 37. Section **63G-6a-1302** is amended to read:

63G-6a-1302. Alternative methods of construction contracting management.

(1) A rulemaking authority shall, by rule provide as many alternative methods of construction contracting management as determined to be feasible.

(2) The rules described in Subsection (1) shall:

(a) grant to the procurement official responsible for carrying out the construction project the discretion to select the appropriate method of construction contracting management for a particular project; and

(b) require the procurement official to execute and include in the contract file a written statement describing the facts that led to the selection of a particular method of construction

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contracting management for each project.

(3) Before choosing a construction contracting management method, the procurement official responsible for carrying out the construction project shall consider the following factors:

- (a) when the project must be ready to be occupied;
- (b) the type of project;
- (c) the extent to which the requirements of the procurement unit, and the way they are to be met are known;
- (d) the location of the project;
- (e) the size, scope, complexity, and economics of the project;
- (f) the source of funding and any resulting constraints necessitated by the funding source;
- (g) the availability, qualification, and experience of public personnel to be assigned to the project and the amount of time that the public personnel can devote to the project; and
- (h) the availability, qualifications, and experience of outside consultants and contractors to complete the project under the various methods being considered.

(4) A rulemaking authority may make rules that authorize the use of a construction manager/general contractor as one method of construction contracting management.

- (5) The rules described in Subsection (2) shall require that:
- (a) the construction manager/general contractor be selected using:
 - (i) a standard procurement process; or
 - (ii) an exception to the requirement to use a standard procurement process, described in Part 8, Exceptions to Procurement Requirements; and

(b) when entering into a subcontract that was not specifically included in the construction manager/general contractor's cost proposal, the construction manager/general contractor shall procure the subcontractor by using a standard procurement process, or an exception to the requirement to use a standard procurement process, described in Part 8, Exceptions to Procurement Requirements, in the same manner as if the subcontract work was procured directly by the procurement unit.

(6) Procurement rules adopted by the [~~building board~~] facilities division under Subsections (1) through (3) for state building construction projects may authorize the use of a

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design-build provider as one method of construction contracting management.

(7) A design-build contract may include a provision for obtaining the site for the construction project.

(8) A design-build contract or a construction manager/general contractor contract may include provision by the contractor of operations, maintenance, or financing.

Section 38. Section **63H-6-103** is amended to read:

63H-6-103. Utah State Fair Corporation -- Legal status -- Powers.

(1) There is created an independent public nonprofit corporation known as the "Utah State Fair Corporation."

(2) The board shall file articles of incorporation for the corporation with the Division of Corporations and Commercial Code.

(3) The corporation, subject to this chapter, has all powers and authority permitted nonprofit corporations by law.

(4) The corporation shall:

(a) manage, supervise, and control:

(i) all activities relating to the annual exhibition described in Subsection (4)(j); and

(ii) except as otherwise provided by statute, all state expositions, including setting the time, place, and purpose of any state exposition;

(b) for public entertainment, displays, and exhibits or similar events:

(i) provide, sponsor, or arrange the events;

(ii) publicize and promote the events; and

(iii) secure funds to cover the cost of the exhibits from:

(A) private contributions;

(B) public appropriations;

(C) admission charges; and

(D) other lawful means;

(c) acquire and designate exposition sites;

(d) use generally accepted accounting principles in accounting for the corporation's assets, liabilities, and operations;

(e) seek corporate sponsorships for the state fair park or for individual buildings or facilities within the fair park;

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(f) work with county and municipal governments, the Salt Lake Convention and Visitor's Bureau, the Utah Travel Council, and other entities to develop and promote expositions and the use of the state fair park;

(g) develop and maintain a marketing program to promote expositions and the use of the state fair park;

(h) in accordance with provisions of this part, operate and maintain the state fair park, including the physical appearance and structural integrity of the state fair park and the buildings located at the state fair park;

(i) prepare an economic development plan for the state fair park;

(j) hold an annual exhibition that:

(i) is called the state fair or a similar name;

(ii) promotes and highlights agriculture throughout the state;

(iii) includes expositions of livestock, poultry, agricultural, domestic science, horticultural, floricultural, mineral and industrial products, manufactured articles, and domestic animals that, in the corporation's opinion will best stimulate agricultural, industrial, artistic, and educational pursuits and the sharing of talents among the people of Utah;

(iv) includes the award of premiums for the best specimens of the exhibited articles and animals;

(v) permits competition by livestock exhibited by citizens of other states and territories of the United States; and

(vi) is arranged according to plans approved by the board;

(k) fix the conditions of entry to the annual exhibition described in Subsection (4)(j);

and

(l) publish a list of premiums that will be awarded at the annual exhibition described in Subsection (4)(j) for the best specimens of exhibited articles and animals.

(5) In addition to the annual exhibition described in Subsection (4)(j), the corporation may hold other exhibitions of livestock, poultry, agricultural, domestic science, horticultural, floricultural, mineral and industrial products, manufactured articles, and domestic animals that, in the corporation's opinion, will best stimulate agricultural, industrial, artistic, and educational pursuits and the sharing of talents among the people of Utah.

(6) The corporation may:

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- (a) employ advisers, consultants, and agents, including financial experts and independent legal counsel, and fix their compensation;
 - (b) (i) participate in the state's Risk Management Fund created under Section 63A-4-201 or any captive insurance company created by the risk manager; or
 - (ii) procure insurance against any loss in connection with the corporation's property and other assets, including mortgage loans;
 - (c) receive and accept aid or contributions of money, property, labor, or other things of value from any source, including any grants or appropriations from any department, agency, or instrumentality of the United States or Utah;
 - (d) hold, use, loan, grant, and apply that aid and those contributions to carry out the purposes of the corporation, subject to the conditions, if any, upon which the aid and contributions were made;
 - (e) enter into management agreements with any person or entity for the performance of the corporation's functions or powers;
 - (f) establish whatever accounts and procedures as necessary to budget, receive, and disburse, account for, and audit all funds received, appropriated, or generated;
 - (g) subject to Subsection (8), lease any of the facilities at the state fair park;
 - (h) sponsor events as approved by the board; and
 - (i) enter into one or more agreements to develop the state fair park.
- (7) (a) Except as provided in Subsection (7)(c), as an independent agency of Utah, the corporation is exempt from:
- (i) Title 51, Chapter 5, Funds Consolidation Act;
 - (ii) Title 51, Chapter 7, State Money Management Act;
 - (iii) Title 63A, Utah Government Operations Code;
 - (iv) Title 63J, Chapter 1, Budgetary Procedures Act; and
 - (v) Title 63A, Chapter 17, Utah State Personnel Management Act.
- (b) The board shall adopt policies parallel to and consistent with:
- (i) Title 51, Chapter 5, Funds Consolidation Act;
 - (ii) Title 51, Chapter 7, State Money Management Act;
 - (iii) Title 63A, Utah Government Operations Code; and
 - (iv) Title 63J, Chapter 1, Budgetary Procedures Act.

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(c) The corporation shall comply with:

- (i) Title 52, Chapter 4, Open and Public Meetings Act;
- (ii) Title 63G, Chapter 2, Government Records Access and Management Act;
- (iii) the provisions of Section 67-3-12;
- (iv) Title 63G, Chapter 6a, Utah Procurement Code, except for a procurement for:
 - (A) entertainment provided at the state fair park;
 - (B) judges for competitive exhibits; or
 - (C) sponsorship of an event at the state fair park; and
- (v) the legislative approval requirements for new facilities established in Section

63A-5b-404.

(8) (a) Before the corporation executes a lease described in Subsection (6)(g) with a term of 10 or more years, the corporation shall:

(i) submit the proposed lease to the [~~State Building Board~~] division for the [~~State Building Board's~~] division's approval or rejection; and

(ii) if the [~~State Building Board~~] division approves the proposed lease, submit the proposed lease to the Executive Appropriations Committee for the Executive Appropriation Committee's review and recommendation in accordance with Subsection (8)(b).

(b) The Executive Appropriations Committee shall review a proposed lease submitted in accordance with Subsection (8)(a) and recommend to the corporation that the corporation:

- (i) execute the proposed sublease; or
- (ii) reject the proposed sublease.

Section 39. Section **63H-6-108** is amended to read:

63H-6-108. Operation of the state fair park.

(1) The corporation shall:

(a) operate and maintain the state fair park in accordance with the facility maintenance standards approved by the [~~State Building Board~~] division;

(b) pay for all costs associated with operating and maintaining the state fair park;

(c) obtain approval from the division before the corporation commences capital developments or capital improvements on the state fair park that involve:

- (i) a construction project that costs more than \$250,000; or
- (ii) the construction of a new building that costs more than \$1,000,000;

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- (d) obtain a building permit from the division before commencing an activity that requires a building permit;
- (e) ensure that:
 - (i) any design plan related to the state fair park satisfies any applicable design standards established by the division [~~or the State Building Board~~]; and
 - (ii) construction performed on the state fair park satisfies any applicable construction standards established by the division [~~or the State Building Board~~];
- (f) for any new construction project on the state fair park that costs \$250,000 or more:
 - (i) notify the division before commencing the new construction project; and
 - (ii) coordinate with the division regarding review of design plans and construction management;
- (g) obtain approval from the division before the corporation makes any alteration or addition to the water system, heating system, plumbing system, air conditioning system, or electrical system;
- (h) obtain approval from the [~~State Building Board~~] division before the corporation demolishes a building or facility on the state fair park;
- (i) keep the state fair park fully insured to protect against loss or damage by fire, vandalism, or malicious mischief;
- (j) in accordance with Subsection (3), at the corporation's expense, and for the mutual benefit of the division, maintain general public liability insurance in an amount equal to at least \$1,000,000 through one or more companies that are:
 - (i) licensed to do business in the state;
 - (ii) selected by the corporation; and
 - (iii) approved by the division and the Division of Risk Management;
- (k) ensure that the division is an additional insured with primary coverage on each insurance policy that the corporation obtains in accordance with this section;
- (l) give the division notice at least 30 days before the day on which the corporation cancels any insurance policy that the corporation obtains in accordance with this section; and
- (m) if any lien is recorded or filed against the state fair park as a result of an act or omission of the corporation, cause the lien to be satisfied or cancelled within 10 days after the day on which the corporation receives notice of the lien.

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(2) ~~[The State Building Board]~~ At least 90 calendar days before demolition work begins, the division shall notify the State Historic Preservation Office of any ~~[State Building Board meeting at which the State Building Board will consider approval]~~ division plan to demolish a facility on the state fair park.

(3) The general public liability insurance described in Subsection (1)(j) shall:

(a) insure against any claim for personal injury, death, or property damage that occurs at the state fair park; and

(b) be a blanket policy that covers all activities of the corporation.

(4) The division shall administer any capital improvements on the state fair park that cost more than \$250,000.

(5) Upon 24 hours notice to the corporation, the division may enter the state fair park to inspect the state fair park and make any repairs that the division determines necessary.

(6) If the corporation no longer operates as an independent public nonprofit corporation as described in this chapter, the state shall assume the responsibilities of the corporation under any contract that is:

(a) in effect as of the day on which the status of the corporation changes; and

(b) for the lease, construction, or development of a building or facility on the state fair park.

(7) (a) A debt or obligation contracted by the corporation is a debt or obligation of the corporation.

(b) The state is not liable and assumes no responsibility for any debt or obligation described in Subsection (7)(a), unless the Legislature expressly:

(i) authorizes the corporation to contract for the debt or obligation; and

(ii) accepts liability or assumes responsibility for the debt or obligation.

(8) The provisions of this section apply notwithstanding any contrary provision in Title 63A, Chapter 5b, Administration of State Facilities.

Section 40. Section ~~72-6-107.5~~ is amended to read:

72-6-107.5. Construction of improvements of highway -- Contracts -- Health insurance coverage.

(1) As used in this section:

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

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related to a single project.

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

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

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

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

(d) "Health benefit plan" means:

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

(ii) an employee welfare benefit plan:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) is from:

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

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

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

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

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

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

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

(B) the department.

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

(i) place a requirement in each of the contractor's subcontracts that a subcontractor that

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is subject to the requirements of this section shall obtain and maintain an offer of qualified health coverage for the subcontractor's employees and the employees' dependents during the duration of the subcontract; and

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

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

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

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

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

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

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

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

(6) The department shall adopt administrative rules:

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

(b) in coordination with:

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

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

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

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

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

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

(c) that establish:

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

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

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

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

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

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

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

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

(D) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health coverage for an employee and a dependent of the employee of the contractor or subcontractor who was not offered qualified health coverage during the duration of the contract; and

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

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

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

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(7)(a)(i) if:

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 41. Section **79-2-404** is amended to read:

79-2-404. Contracting powers of department -- Health insurance coverage.

(1) As used in this section:

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

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

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

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

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

(d) "Health benefit plan" means:

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

(ii) an employee welfare benefit plan:

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

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

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

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

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

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

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

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

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

(3) This section does not apply to contracts entered into by the department or a

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division, board, or council of the department if:

- (a) the application of this section jeopardizes the receipt of federal funds;
- (b) the contract or agreement is between:
 - (i) the department or a division, board, or council of the department; and
 - (ii) (A) another agency of the state;
 - (B) the federal government;
 - (C) another state;
 - (D) an interstate agency;
 - (E) a political subdivision of this state; or
 - (F) a political subdivision of another state; or
- (c) the contract or agreement is:
 - (i) for the purpose of disbursing grants or loans authorized by statute;
 - (ii) a sole source contract; or
 - (iii) an emergency procurement.

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

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

- (i) the contractor offers qualified health coverage that complies with Section 26-40-115;
- (ii) is from:
 - (A) an actuary selected by the contractor or the contractor's insurer;
 - (B) an underwriter who is responsible for developing the employer group's premium rates; or
 - (C) if the contractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or underwriter selected by a third party administrator; and
 - (iii) was created within one year before the day on which the statement is submitted.
- (b) (i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii) shall provide the actuary or underwriter selected by an administrator, as described in

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Subsection (5)(a)(ii)(C), sufficient information to determine whether the contractor's contribution to the health benefit plan and the actuarial value of the health benefit plan meet the requirements of qualified health coverage.

(ii) A contractor may not make a change to the contractor's contribution to the health benefit plan, unless the contractor provides notice to:

(A) the actuary or underwriter selected by an administrator, as described in Subsection (5)(a)(ii)(C), for the actuary or underwriter to update the written statement described in Subsection (5)(a) in compliance with this section; and

(B) the department.

(c) A contractor that is subject to the requirements of this section shall:

(i) place a requirement in each of the contractor's subcontracts that a subcontractor that is subject to the requirements of this section shall obtain and maintain an offer of qualified health coverage for the subcontractor's employees and the employees' dependents during the duration of the subcontract; and

(ii) obtain from a subcontractor that is subject to the requirements of this section a written statement that:

(A) the subcontractor offers qualified health coverage that complies with Section 26-40-115;

(B) is from an actuary selected by the subcontractor or the subcontractor's insurer, an underwriter who is responsible for developing the employer group's premium rates, or if the subcontractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or underwriter selected by an administrator; and

(C) was created within one year before the day on which the contractor obtains the statement.

(d) (i) (A) A contractor that fails to maintain an offer of qualified health coverage described in Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A contractor is not subject to penalties for the failure of a subcontractor to obtain and maintain an offer of qualified health coverage described in Subsection (5)(c)(i).

(ii) (A) A subcontractor that fails to obtain and maintain an offer of qualified health coverage described in Subsection (5)(c) during the duration of the subcontract is subject to

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penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to maintain an offer of qualified health coverage described in Subsection (5)(a).

(6) The department shall adopt administrative rules:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(b) in coordination with:

(i) the Department of Environmental Quality in accordance with Section 19-1-206;

(ii) a public transit district in accordance with Section 17B-2a-818.5;

(iii) the ~~[State Building Board]~~ Division of Facilities Construction and Management in accordance with Section 63A-5b-607;

(iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

(v) the Department of Transportation in accordance with Section 72-6-107.5; and

(vi) the Legislature's Administrative Rules Review Committee; and

(c) that establish:

(i) the requirements and procedures a contractor and a subcontractor shall follow to demonstrate compliance with this section, including:

(A) that a contractor or subcontractor's compliance with this section is subject to an audit by the department or the Office of the Legislative Auditor General;

(B) that a contractor that is subject to the requirements of this section shall obtain a written statement described in Subsection (5)(a); and

(C) that a subcontractor that is subject to the requirements of this section shall obtain a written statement described in Subsection (5)(c)(ii);

(ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:

(A) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;

(B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;

(C) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-904 upon the third or subsequent violation; and

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(D) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health coverage for an employee and a dependent of an employee of the contractor or subcontractor who was not offered qualified health coverage during the duration of the contract; and

(iii) a website on which the department shall post the commercially equivalent benchmark, for the qualified health coverage identified in Subsection (1)(e), provided by the Department of Health, in accordance with Subsection 26-40-115(2).

(7) (a) (i) In addition to the penalties imposed under Subsection (6)(c)(ii), a contractor or subcontractor who intentionally violates the provisions of this section is liable to the employee for health care costs that would have been covered by qualified health coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection (7)(a)(i) if:

(A) the employer relied in good faith on a written statement described in Subsection (5)(a) or (5)(c)(ii); or

(B) the department determines that compliance with this section is not required under the provisions of Subsection (3).

(b) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (7).

(8) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created in Section 26-18-402.

(9) The failure of a contractor or subcontractor to provide qualified health coverage as required by this section:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under:

(i) Section 63G-6a-1602; or

(ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

(10) An administrator, including an administrator's actuary or underwriter, who provides a written statement under Subsection (5)(a) or (c) regarding the qualified health

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coverage of a contractor or subcontractor who provides a health benefit plan described in Subsection (1)(d)(ii):

(a) subject to Subsection (10)(b), is not liable for an error in the written statement, unless the administrator commits gross negligence in preparing the written statement;

(b) is not liable for any error in the written statement if the administrator relied in good faith on information from the contractor or subcontractor; and

(c) may require as a condition of providing the written statement that a contractor or subcontractor hold the administrator harmless for an action arising under this section.

Section 42. Repealer.

This bill repeals:

Section 63A-5b-201, Creation of state building board -- Composition -- Appointment -- Per diem and expenses -- Board officers.

Section 63A-5b-202, State Building Board powers and duties.

Section 63A-5b-203, Meetings of state building board -- Rules of procedure -- Quorum.

Section 43. Effective date.

This bill takes effect on May 4, 2022, except that the amendments to Section 53B-2a-112 (Effective 07/01/22) take effect on July 1, 2022.