

HB0059S01 compared with HB0059

~~{deleted text}~~ shows text that was in HB0059 but was deleted in HB0059S01.

inserted text shows text that was not in HB0059 but was inserted into HB0059S01.

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Representative Ken Ivory proposes the following substitute bill:

FEDERAL FUNDS CONTINGENCY PLANNING

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: Michael S. Kennedy

LONG TITLE

~~{Committee Note:~~

~~——— The Health and Human Services Interim Committee recommended this bill.~~

~~——— Legislative Vote: 9 voting for 4 voting against 6 absent~~

~~}General Description:~~

This bill addresses contingency planning related to federal funds.

Highlighted Provisions:

This bill:

▶ defines terms:

- ▶ requires a state agency to provide a contingency ~~{analysis}~~ disclosure and plan, and a state ~~{sovereignty}~~ jurisdiction evaluation, when submitting a federal funds reauthorization or a new federal funds request above a certain threshold;
- ▶ requires a state agency that meets certain thresholds for federal funding to create a

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contingency plan related to that funding;

- ▶ repeals provisions regarding federal receipts reporting requirements; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26B-3-130, as last amended by Laws of Utah 2023, Chapter 16 and renumbered and amended by Laws of Utah 2023, Chapter 306

63J-5-102, as last amended by Laws of Utah 2018, Chapter 467

63J-5-103, as last amended by Laws of Utah 2017, Chapter 247

63J-5-204, as last amended by Laws of Utah 2016, Chapter 272

ENACTS:

63J-5-301, Utah Code Annotated 1953

63J-5-302, Utah Code Annotated 1953

REPEALS:

63J-1-219, as last amended by Laws of Utah 2022, Chapter 447

63J-5-101, as enacted by Laws of Utah 2008, Chapter 382

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

Section 1. Section **26B-3-130** is amended to read:

26B-3-130. Medicaid intergovernmental transfer report -- Approval requirements.

(1) As used in this section:

(a) (i) "Intergovernmental transfer" means the transfer of public funds from:

(A) a local government entity to another nonfederal governmental entity; or

(B) from a nonfederal, government owned health care facility regulated under Chapter

2, Part 2, Health Care Facility Licensing and Inspection, to another nonfederal governmental entity.

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(ii) "Intergovernmental transfer" does not include:

(A) the transfer of public funds from one state agency to another state agency; or

(B) a transfer of funds from the University of Utah Hospitals and Clinics.

(b) (i) "Intergovernmental transfer program" means a federally approved reimbursement program or category that is authorized by the Medicaid state plan or waiver authority for intergovernmental transfers.

(ii) "Intergovernmental transfer program" does not include the addition of a provider to an existing intergovernmental transfer program.

(c) "Local government entity" means a county, city, town, special service district, special district, or local education agency as that term is defined in Section 63J-5-102.

(d) "Non-state government entity" means a hospital authority, hospital district, health care district, special service district, county, or city.

(2) (a) An entity that receives federal Medicaid dollars from the department as a result of an intergovernmental transfer shall, on or before August 1, 2017, and on or before August 1 each year thereafter, provide the department with:

(i) information regarding the payments funded with the intergovernmental transfer as authorized by and consistent with state and federal law;

(ii) information regarding the entity's ability to repay federal funds, to the extent required by the department in the contract for the intergovernmental transfer; and

(iii) other information reasonably related to the intergovernmental transfer that may be required by the department in the contract for the intergovernmental transfer.

(b) On or before October 15, 2017, and on or before October 15 each subsequent year, the department shall prepare a report for the Executive Appropriations Committee that includes:

(i) the amount of each intergovernmental transfer under Subsection (2)(a);

(ii) a summary of changes to CMS regulations and practices that are known by the department regarding federal funds related to an intergovernmental transfer program; and

(iii) other information the department gathers about the intergovernmental transfer under Subsection (2)(a).

(3) The department shall not create a new intergovernmental transfer program after July 1, 2017, unless the department reports to the Executive Appropriations Committee, in

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accordance with Section 63J-5-206, before submitting the new intergovernmental transfer program for federal approval. The report shall include information required by Subsection [~~63J-5-102(1)(d)~~] 63J-5-102(1)(e) and the analysis required in Subsections (2)(a) and (b).

(4) (a) The department shall enter into new Nursing Care Facility Non-State Government-Owned Upper Payment Limit program contracts and contract amendments adding new nursing care facilities and new non-state government entity operators in accordance with this Subsection (4).

(b) (i) If the nursing care facility expects to receive less than \$1,000,000 in federal funds each year from the Nursing Care Facility Non-State Government-Owned Upper Payment Limit program, excluding seed funding and administrative fees paid by the non-state government entity, the department shall enter into a Nursing Care Facility Non-State Government-Owned Upper Payment Limit program contract with the non-state government entity operator of the nursing care facility.

(ii) If the nursing care facility expects to receive between \$1,000,000 and \$10,000,000 in federal funds each year from the Nursing Care Facility Non-State Government-Owned Upper Payment Limit program, excluding seed funding and administrative fees paid by the non-state government entity, the department shall enter into a Nursing Care Facility Non-State Government-Owned Upper Payment Limit program contract with the non-state government entity operator of the nursing care facility after receiving the approval of the Executive Appropriations Committee.

(iii) If the nursing care facility expects to receive more than \$10,000,000 in federal funds each year from the Nursing Care Facility Non-State Government-Owned Upper Payment Limit program, excluding seed funding and administrative fees paid by the non-state government entity, the department may not approve the application without obtaining approval from the Legislature and the governor.

(c) A non-state government entity may not participate in the Nursing Care Facility Non-State Government-Owned Upper Payment Limit program unless the non-state government entity is a special service district, county, or city that operates a hospital or holds a license under Chapter 2, Part 2, Health Care Facility Licensing and Inspection.

(d) Each non-state government entity that participates in the Nursing Care Facility Non-State Government-Owned Upper Payment Limit program shall certify to the department

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that:

(i) the non-state government entity is a local government entity that is able to make an intergovernmental transfer under applicable state and federal law;

(ii) the non-state government entity has sufficient public funds or other permissible sources of seed funding that comply with the requirements in 42 C.F.R. Part 433, Subpart B;

(iii) the funds received from the Nursing Care Facility Non-State Government-Owned Upper Payment Limit program are:

(A) for each nursing care facility, available for patient care until the end of the non-state government entity's fiscal year; and

(B) used exclusively for operating expenses for nursing care facility operations, patient care, capital expenses, rent, royalties, and other operating expenses; and

(iv) the non-state government entity has completed all licensing, enrollment, and other forms and documents required by federal and state law to register a change of ownership with the department and with CMS.

(5) The department shall add a nursing care facility to an existing Nursing Care Facility Non-State Government-Owned Upper Payment Limit program contract if:

(a) the nursing care facility is managed by or affiliated with the same non-state government entity that also manages one or more nursing care facilities that are included in an existing Nursing Care Facility Non-State Government-Owned Upper Payment Limit program contract; and

(b) the non-state government entity makes the certification described in Subsection (4)(d)(ii).

(6) The department may not increase the percentage of the administrative fee paid by a non-state government entity to the department under the Nursing Care Facility Non-State Government-Owned Upper Payment Limit program.

(7) The department may not condition participation in the Nursing Care Facility Non-State Government-Owned Upper Payment Limit program on:

(a) a requirement that the department be allowed to direct or determine the types of patients that a non-state government entity will treat or the course of treatment for a patient in a non-state government nursing care facility; or

(b) a requirement that a non-state government entity or nursing care facility post a

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bond, purchase insurance, or create a reserve account of any kind.

(8) The non-state government entity shall have the primary responsibility for ensuring compliance with Subsection (4)(d)(ii).

(9) (a) The department may not enter into a new Nursing Care Facility Non-State Government-Owned Upper Payment Limit program contract before January 1, 2019.

(b) Subsection (9)(a) does not apply to:

(i) a new Nursing Care Facility Non-State Government-Owned Upper Payment Limit program contract that was included in the federal funds request summary under Section 63J-5-201 for fiscal year 2018; or

(ii) a nursing care facility that is operated or managed by the same company as a nursing care facility that was included in the federal funds request summary under Section 63J-5-201 for fiscal year 2018.

Section 2. Section **63J-5-102** is amended to read:

63J-5-102. Definitions.

(1) As used in this chapter:

(a) (i) "Agency" means a department, division, committee, commission, council, court, or other administrative subunit of the state.

(ii) "Agency" includes:

(A) executive branch entities;

(B) judicial branch entities; and

(C) the State Board of Education.

(iii) "Agency" does not mean higher education institutions or political subdivisions.

(b) "Contingency ~~analysis~~ disclosure and plan" means, with respect to a federal funds reauthorization or new federal funds request, the submitting or requesting agency's:

(i) ~~analysis~~ disclosure of:

(A) the likelihood that the amount or value of the federal funds will be reduced, and how that likelihood changes over time; and

(B) the likelihood that the federal funds will become unavailable, and how that likelihood changes over time;

(ii) explanation of:

(A) whether accepting the federal funds may create an expectation of ongoing funding

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by any beneficiary of the funds; and

(B) as applicable, how the agency will communicate to stakeholders that services funded by the federal funds may or will be temporary;

(iii) plan for how the agency will:

(A) proceed if the amount or value of the federal funds are unexpectedly reduced in any material degree or amount;

(B) proceed if the federal funds become unavailable unexpectedly;

(C) wind down the program or services funded by the federal funds when the federal funds are exhausted; and

(D) transition any beneficiaries of the funds to a different program or service provider if the agency is unable to continue providing the same program or services due to a decrease or loss of federal funds; and

(iv) designation of the federal funds and the program or purpose for which the funds will be used as either:

(A) mandatory under federal or state law;

(B) high priority; or

(C) low priority.

~~[(b)]~~ (c) (i) "Federal funds" means cash or other money received from the United States government or from other individuals or entities for or on behalf of the United States and deposited with the state treasurer or any agency of the state.

(ii) "Federal funds" includes federal assistance and federal assistance programs, however described.

~~[(iii) "Federal funds" does not include money received from the United States government to reimburse the state or local government entity for money expended by the state or local government entity.]~~

~~[(c)]~~ (d) "Federal funds reauthorization" means:

(i) the formal submission from an agency to the federal government applying for or seeking reauthorization of federal funds which the state is currently receiving;

(ii) the formal submission from an agency to the federal government applying for or seeking reauthorization to participate in a federal program in which the state is currently participating that will result in federal funds being transferred to an agency; or

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(iii) that period after the first year of a previously authorized and awarded grant or funding award, during which federal funds are disbursed or are scheduled to be disbursed after the first year because the term of the grant or financial award extends for more than one year.

~~[(d)]~~ (e) (i) "Federal funds request summary" means a document detailing:

(A) the amount of money that is being requested or is available to be received by the state from the federal government for each federal funds reauthorization or new federal funds request;

(B) those federal funds reauthorizations and new federal funds requests that are included as part of the agency's proposed budget for the fiscal year, and the amount of those requests;

~~{ (C) a contingency analysis and plan for each federal funds reauthorization and each new federal funds request;~~

~~{~~ ~~{(C)}~~ ~~{(D)}~~ the amount of new state money, if any, that will be required to receive the federal funds or participate in the federal program;

~~{(D)}~~ ~~{(E)}~~ the number of additional permanent full-time employees, additional permanent part-time employees, or combination of additional permanent full-time employees and additional permanent part-time employees, if any, that the state estimates are needed in order to receive the federal funds or participate in the federal program; ~~[and]~~

~~{(E)}~~ ~~{(F)}~~ any requirements that the state must meet as a condition for receiving the federal funds or participating in the federal program~~[-]; and~~

~~{(G) a state sovereignty evaluation as defined in Subsection (1)(n)}~~ ~~{(F)}~~ for each federal funds reauthorization for qualifying federal funds and each new federal funds request for qualifying federal funds, a contingency disclosure and plan, and a state jurisdiction evaluation.

(ii) "Federal funds request summary" includes, if available:

(A) the letter awarding an agency a grant of federal funds or other official documentation awarding an agency a grant of federal funds; and

(B) a document detailing federal maintenance of effort requirements.

~~[(e)]~~ (f) "Federal maintenance of effort requirements" means any matching, level of effort, or earmarking requirements, as defined in Office of Management and Budget requirements, that are imposed on an agency as a condition of receiving federal funds.

~~[(f)]~~ (g) (i) "Intergovernmental transfer program" means an existing reimbursement

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program or category that is authorized by the Medicaid state plan or waiver authority for intergovernmental transfers.

(ii) "Intergovernmental transfer program" does not include the addition of a provider to an existing intergovernmental transfer program.

~~[(g)]~~ (h) "Local education agency" or "LEA" means:

- (i) a school district;
- (ii) a charter school; or
- (iii) the Utah Schools for the Deaf and the Blind.

~~[(h)]~~ (i) "New federal funds" means:

(i) federal assistance or other federal funds that are available from the federal government that:

(A) the state is not currently receiving; or

(B) exceed the federal funds amount most recently approved by the Legislature by more than 25% for a federal grant or program in which the state is currently participating;

(ii) a federal assistance program or other federal program in which the state is not currently participating; or

(iii) a one-time TANF request.

~~[(i)]~~ (j) "New federal funds request" means:

(i) the formal submission from an agency to the federal government:

(A) applying for or otherwise seeking to obtain new federal funds; or

(B) applying for or seeking to participate in a new federal program that will result in federal funds being transferred to an agency; or

(ii) a one-time TANF request.

~~[(j)]~~ (k) (i) "New state money" means money, whether specifically appropriated by the Legislature or not, that the federal government requires Utah to expend as a condition for receiving the federal funds or participating in the federal program.

(ii) "New state money" includes money expended to meet federal maintenance of effort requirements.

~~[(k)]~~ (l) "One-time TANF request" means a proposed expenditure by the Department of Workforce Services from its reserves of federal Temporary Assistance for Needy Families funds:

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(i) for a project or program that will last for a fixed amount of time and is not an ongoing project or program of the Department of Workforce Services; and

(ii) that is greater than \$1,000,000 over the amount most recently approved by the Legislature.

~~[(f)(i) "Pass-through federal funds" means federal funds provided to an agency that are distributed to local governments or private entities without being used by the agency.]~~

~~[(ii) "Pass-through federal funds" does not include federal funds provided to the State Board of Education that are distributed to a local education agency or other subrecipient without being used by the State Board of Education.]~~

(m) "Qualifying federal funds" means federal funds that are:

(i) greater than 10% of the receiving entity's annual budget; or

(ii) greater than \$2,000,000.

~~{m}n~~ "State" means the state of Utah and all of its agencies, and any administrative subunits of those agencies.

~~{n} {i}o~~ "State ~~{sovereignty} jurisdiction~~ evaluation" means ~~{an analysis of}~~:

(i) a disclosure of:

(A) whether accepting the federal funds or participating in the federal program will require the use of state funds or increase the administrative costs of the state or agency;

(B) the extent to which accepting the federal funds or participating in the federal program ~~{may} will~~ impair ~~{, restrict,} or {limit} impact~~ the ~~{sovereignty of the state or the} exclusive~~ police power jurisdiction of the state ~~;~~

~~—— (ii) "State sovereignty evaluation" includes the consideration of:~~

~~—— (A) the possible impacts of accepting the federal funds, alone;~~

~~—— (B) the possible impacts of to protect or provide for the health, safety, welfare, and morals of the state; and~~

~~—— (C) the extent to which accepting the federal funds or participating in ~~{light of other federal funds or} the federal {programs the agency receives or participates in, and~~~~

~~—— (C) the possible impacts of program will impair or impact the jurisdiction of the state over federal areas within the state; and~~

(ii) to the extent that accepting the federal funds ~~{at the time the federal funds would be accepted and throughout the anticipated duration of the federal funding} or participating in~~

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the federal program will impair or impact the state's jurisdiction as described in Subsection (1)(o)(i)(B) or (C), an identification of the constitutional authority supporting federal assertion of jurisdiction or authority for the funding, program, or an associated regulation or restriction.

(2) When this chapter describes an employee as a "permanent full-time employee" or a "permanent part-time employee," it is not intended to, and may not be construed to, affect the employee's status as an at-will employee.

Section 3. Section **63J-5-103** is amended to read:

63J-5-103. Scope and applicability of chapter.

(1) Except as [~~provided in Subsection (2), and except as~~] otherwise provided by a statute superseding provisions of this chapter by explicit reference to this chapter, the provisions of this chapter apply to each agency and govern each federal funds request.

~~[(2)(a) This chapter does not govern federal funds requests for:]~~

~~[(i) except as provided in Section 63J-5-206, the Medical Assistance Program, commonly known as Medicaid; and]~~

~~[(ii) except as provided in Section 63J-5-206, the Children's Health Insurance Program.]~~

~~[(b) Until Subsections (2)(c) and (d) apply, this chapter does not govern federal funds requests for:]~~

~~[(i) the Women, Infant, and Children program;]~~

~~[(ii) the Temporary Assistance for Needy Families program, except for a one-time TANF request as defined in Section 63J-5-102;]~~

~~[(iii) Social Security Act money;]~~

~~[(iv) the Substance Abuse Prevention and Treatment program;]~~

~~[(v) Child Care and Development Block Grant;]~~

~~[(vi) SNAP Administration and Training money;]~~

~~[(vii) Unemployment Insurance Operations money;]~~

~~[(viii) Federal Highway Administration money;]~~

~~[(ix) the Utah National Guard; or]~~

~~[(x) pass-through federal funds.]~~

~~[(c) Federal funds requests described in Subsection (2)(b) are subject to the provisions of this chapter:]~~

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~~[(i) beginning on January 1, 2018, for each agency that receives more than \$200,000,000 annually in federal funds; or]~~

~~[(ii) beginning on July 1, 2018, for each agency that receives \$200,000,000 or less annually in federal funds.]~~

~~[(d) Maintenance of effort reporting requirements described in Subsection 63J-5-102(1)(d)(ii)(B) may not be required until:]~~

~~[(i) January 1, 2018, for each agency that receives more than \$200,000,000 annually in federal funds; or]~~

~~[(ii) July 1, 2018, for each agency that receives \$200,000,000 or less annually in federal funds.]~~

~~[(3)] (2)~~ The governor need not seek legislative review or approval of federal funds received by the state if:

(a) the governor has declared a state of emergency; and

(b) the federal funds are received to assist victims of the state of emergency under Section 53-2a-204.

Section 4. Section **63J-5-204** is amended to read:

63J-5-204. Legislative review and approval of certain federal funds requests.

(1) As used in this section:

(a) "High impact federal funds request" means a new federal funds request that will or could:

(i) result in the state receiving total payments of \$10,000,000 or more per year from the federal government;

(ii) require the state to add 11 or more permanent full-time employees, 11 or more permanent part-time employees, or combination of permanent full-time and permanent part-time employees equal to 11 or more in order to receive the new federal funds or participate in the new federal program; or

(iii) require the state to expend more than \$1,000,000 of new state money in a fiscal year in order to receive or administer the new federal funds or participate in the new federal program.

(b) "Medium impact federal funds request" means a new federal funds request that will or could:

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(i) result in the state receiving total payments of more than \$1,000,000 but less than \$10,000,000 per year from the federal government;

(ii) require the state to add more than zero but less than 11 permanent full-time employees, more than zero but less than 11 permanent part-time employees, or a combination of permanent full-time employees and permanent part-time employees equal to more than zero but less than 11 in order to receive or administer the new federal funds or participate in the new federal program; or

(iii) require the state to expend \$1 to \$1,000,000 of new state money in a fiscal year in order to receive or administer the new federal funds or participate in the new federal program.

(2) (a) (i) Before obligating the state to accept or receive new federal funds or to participate in a new federal program under a medium impact federal funds request that was not authorized during a legislative session as provided in Section 63J-5-201, an agency shall:

(A) submit the federal funds request summary to the governor, the Judicial Council, or the State Board of Education, as appropriate, for approval or rejection; and

(B) if the governor, the Judicial Council, or the State Board of Education approves the new federal funds request, submit the federal funds request summary to the Legislative Executive Appropriations Committee for its review and recommendations.

(ii) The procedures required under Subsection (2)(a)(i) shall be performed, if possible, before the date that the medium impact funds request is formally submitted, but not later than three months after the date of formal submission.

(b) The Legislative Executive Appropriations Committee shall review the federal funds request summary and may:

(i) recommend that the agency accept the new federal funds;

(ii) recommend that the agency not accept the new federal funds; or

(iii) recommend to the governor that the governor call a special session of the Legislature to review and approve or reject the acceptance of the new federal funds.

(3) (a) (i) Before obligating the state to accept or receive new federal funds or to participate in a new federal program under a high impact federal funds request that was not authorized during a legislative session as provided in Section 63J-5-201, an agency shall:

(A) submit the federal funds request summary to the governor, the Judicial Council, or the State Board of Education, as appropriate, for approval or rejection; and

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(B) if the governor, the Judicial Council, or the State Board of Education approves the new federal funds request, submit the federal funds request summary to the Legislature for its approval or rejection in an annual general session or a special session.

(ii) ~~[The]~~ Except as provided in Subsection (3)(a)(iii), the procedures required under Subsection (3)(a)(i) shall be performed, if possible, before the date that the high impact funds request is formally submitted, but not later than three months after the date of formal submission.

(iii) For a high impact federal funds request for the Medical Assistance Program, commonly known as Medicaid, or the Children's Health Insurance Program, the procedures required under Subsection (3)(a)(i) shall be performed, if possible, before the date that the high impact funds request is formally submitted, but not later than the end of the earlier of the next annual general session or special session of the Legislature after the date of formal submission.

(b) (i) If the Legislature approves the new federal funds request, the agency may accept the new federal funds or participate in the new federal program.

(ii) If the Legislature fails to approve the new federal funds request, the agency may not accept the new federal funds or participate in the new federal program.

(4) If an agency fails to comply with the procedures of this section or fails to obtain the Legislature's approval:

(a) the governor, the Judicial Council, or the State Board of Education, as appropriate, may require the agency to withdraw the new federal funds request or refuse or return the new federal funds;

(b) the Legislature may, if federal law allows, opt out or decline to participate in the new federal program or decline to receive the new federal funds; or

(c) the Legislature may reduce the agency's General Fund appropriation in an amount less than, equal to, or greater than the amount of federal funds received by the agency.

(5) If a letter or other official documentation awarding an agency a grant of federal funds is not available to be included in the agency's federal funds request summary to the governor, the Judicial Council, or the State Board of Education, as appropriate, under this section, the agency shall submit to the governor, the Judicial Council, or the State Board of Education, as appropriate, the letter or other official documentation awarding the agency a grant of federal funds before expending the federal funds granted.

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Section 5. Section **63J-5-301** is enacted to read:

Part 3. Federal Funds Contingency Plan

63J-5-301. Definitions.

As used in this part:

(1) "Federal receipts" means the federal financial assistance, as defined in 31 U.S.C. Sec. 7501, that is reported as part of a single audit.

(2) "Qualifying agency" means an agency that, in a single fiscal year, has federal receipts composing more than 33% of the agency's total budget.

(3) "Single audit" means the same as that term is defined in 31 U.S.C. Sec. 7501.

Section 6. Section **63J-5-302** is enacted to read:

63J-5-302. Federal funds contingency plan.

(1) A qualifying agency shall prepare a federal funds contingency plan that meets the requirements described in Subsection (2).

(2) A federal funds contingency plan shall:

(a) identify short-term and long-term risks to the agency if there is a reduction in the amount or value of federal funds the agency receives;

(b) identify short-term and long-term strategies the agency may use to respond to the risks described in Subsection (2)(a); and

(c) designate agency personnel who are responsible for implementing the strategies described in Subsection (2)(b).

(3) A qualifying agency shall update the agency's federal funds contingency plan:

(a) at least every other year; and

(b) in any year in which the qualifying agency submits a new federal funds request that exceeds \$10,000,000.

(4) On or before December ~~15~~31 of each year that a qualifying agency prepares a federal funds contingency plan or an update to a federal funds contingency plan, the qualifying agency shall provide a copy of the contingency plan or update to:

(a) the Governor's Office of Planning and Budget;

(b) the Executive Appropriations Committee; and

(c) the Legislative Fiscal Analyst.

Section 7. **Repealer.**

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This bill repeals:

Section **63J-1-219, Definitions -- Federal receipts reporting requirements.**

Section **63J-5-101, Title.**

Section 8. **Effective date.**

This bill takes effect on May 1, 2024.