

1 **STATE CONSTRUCTION CONTRACTS AND**
2 **DRUG AND ALCOHOL TESTING**

3 2010 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Karen Mayne**

6 House Sponsor: Melvin R. Brown

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Utah Procurement Code to address requirements for drug and
11 alcohol testing for state construction contracts.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines terms;
- 15 ▶ requires that a state construction contract impose requirements related to drug and
16 alcohol testing;
- 17 ▶ addresses penalties;
- 18 ▶ clarifies that monitoring activities are not required of the state;
- 19 ▶ provides that the state is not liable in actions related to drug and alcohol testing;
- 20 ▶ provides exemptions; and
- 21 ▶ addresses the scope of the provision.

22 **Monies Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 This bill takes effect on July 1, 2010.

26 **Utah Code Sections Affected:**

27 ENACTS:

28 **63G-6-604**, Utah Code Annotated 1953

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

31 Section 1. Section **63G-6-604** is enacted to read:

32 **63G-6-604. Drug and alcohol testing required for state construction contracts.**

33 (1) As used in this section:

34 (a) "Contractor" means a person who is or may be awarded a state construction
35 contract.

36 (b) "Covered individual" means an individual who:

37 (i) on behalf of a contractor or subcontractor provides services directly related to
38 design or construction under a state construction contract; and

39 (ii) is in a safety sensitive position, including a design position that has
40 responsibilities that directly affect the safety of an improvement to real property that is the
41 subject of a state construction contract.

42 (c) "Drug and alcohol testing policy" means a policy under which a contractor or
43 subcontractor tests a covered individual to establish, maintain, or enforce the prohibition of:

44 (i) the manufacture, distribution, dispensing, possession, or use of drugs or alcohol,
45 except the medically prescribed possession and use of a drug; or

46 (ii) the impairment of judgment or physical abilities due to the use of drugs or alcohol.

47 (d) "Random testing" means that a covered individual is subject to periodic testing for
48 drugs and alcohol:

49 (i) in accordance with a drug and alcohol testing policy; and

50 (ii) on the basis of a random selection process.

51 (e) For purposes of Subsection (6), "state" includes any of the following of the state:

52 (i) a department;

53 (ii) a division;

54 (iii) an agency;

55 (iv) a board;

56 (v) a commission;

57 (vi) a council;

58 (vii) a committee; and
59 (viii) an institution, including a state institution of higher education, as defined under
60 Section 53B-3-102.

61 (f) "State construction contract" means a contract for design or construction entered
62 into by a state public procurement unit.

63 (g) (i) "Subcontractor" means a person under contract with a contractor or another
64 subcontractor to provide services or labor for design or construction.

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

66 (iii) "Subcontractor" does not include a supplier who provides only materials,
67 equipment, or supplies to a contractor or subcontractor.

68 (2) Except as provided in Subsection (7), on and after July 1, 2010, a state public
69 procurement unit may not enter into a state construction contract unless the state construction
70 contract requires the following:

71 (a) A contractor shall demonstrate to the state public procurement unit that the
72 contractor:

73 (i) has and will maintain a drug and alcohol testing policy during the period of the
74 state construction contract that applies to the covered individuals hired by the contractor;

75 (ii) posts in one or more conspicuous places notice to covered individuals hired by the
76 contractor that the contractor has the drug and alcohol testing policy described in Subsection
77 (2)(a)(i); and

78 (iii) subjects the covered individuals to random testing under the drug and alcohol
79 testing policy described in Subsection (2)(a)(i) if at any time during the period of the state
80 construction contract there are 10 or more individuals who are covered individuals hired by
81 the contractor.

82 (b) A contractor shall demonstrate to the state public procurement unit that the
83 contractor requires that as a condition of contracting with the contractor, a subcontractor:

84 (i) has and will maintain a drug and alcohol testing policy during the period of the
85 state construction contract that applies to the covered individuals hired by the subcontractor;

86 (ii) posts in one or more conspicuous places notice to covered individuals hired by the
87 subcontractor that the subcontractor has the drug and alcohol testing policy described in
88 Subsection (2)(b)(i); and

89 (iii) subjects the covered individuals hired by the subcontractor to random testing
90 under the drug and alcohol testing policy described in Subsection (2)(b)(i) if at any time
91 during the period of the state construction contract there are 10 or more individuals who are
92 covered individuals hired by the subcontractor.

93 (3) (a) Except as otherwise provided in this Subsection (3), if a contractor or
94 subcontractor fails to comply with Subsection (2), the contractor or subcontractor may be
95 suspended or debarred in accordance with this chapter.

96 (b) On and after July 1, 2010, a state public procurement unit shall include in a state
97 construction contract:

98 (i) a reference to the rules described in Subsection (4)(b); or

99 (ii) if the state public procurement unit has not made the rules described in Subsection
100 (4)(b), a process that provides a contractor or subcontractor reasonable notice and opportunity
101 to cure a violation of this section before suspension or debarment of the contractor or
102 subcontractor in light of the circumstances of the state construction contract or the violation.

103 (c) (i) A contractor is not subject to penalties for the failure of a subcontractor to
104 comply with Subsection (2).

105 (ii) A subcontractor is not subject to penalties for the failure of a contractor to comply
106 with Subsection (2).

107 (4) If otherwise authorized to make rules, in accordance with Title 63G, Chapter 3,
108 Utah Administrative Rulemaking Act, a state public procurement unit:

109 (a) may make rules that establish the requirements and procedures a contractor shall
110 follow to comply with Subsection (2); and

111 (b) shall make rules that establish:

112 (i) the penalties that may be imposed in accordance with Subsection (3); and

113 (ii) a process that provides a contractor or subcontractor reasonable notice and

114 opportunity to cure a violation of this section before suspension or debarment of the contractor
115 or subcontractor in light of the circumstances of the state construction contract or the
116 violation.

117 (5) The failure of a contractor or subcontractor to meet the requirements of Subsection
118 (2):

119 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
120 or contractor under Part 8, Legal and Contractual Remedies; and

121 (b) may not be used by a state public procurement unit, a prospective bidder, an
122 offeror, a contractor, or a subcontractor as a basis for an action that would suspend, disrupt, or
123 terminate the design or construction under a state construction contract.

124 (6) (a) After a state public procurement unit enters into a state construction contract in
125 compliance with this section, the state is not required to audit, monitor, or take any other
126 action to ensure compliance with this section.

127 (b) The state is not liable in any action related to this section, including not being
128 liable in relation to:

129 (i) a contractor or subcontractor having or not having a drug and alcohol testing
130 policy;

131 (ii) failure to test for a drug or alcohol under a contractor's or subcontractor's drug and
132 alcohol testing policy;

133 (iii) the requirements of a contractor's or subcontractor's drug and alcohol testing
134 policy;

135 (iv) a contractor's or subcontractor's implementation of a drug and alcohol testing
136 policy, including procedures for:

137 (A) collection of a sample;

138 (B) testing of a sample;

139 (C) evaluation of a test; or

140 (D) disciplinary or rehabilitative action on the basis of a test result;

141 (v) an individual being under the influence of drugs or alcohol; or

142 (vi) an individual under the influence of drugs or alcohol harming another person or
143 causing property damage.

144 (7) This section does not apply if the state public procurement unit determines that the
145 application of this section would severely disrupt the operation of a state agency to the
146 detriment of the state agency or the general public, including:

147 (a) jeopardizing the receipt of federal funds;

148 (b) the state construction contract being a sole source contract; or

149 (c) the state construction contract being an emergency procurement.

150 (8) If a contractor or subcontractor meets the requirements of this section, this section
151 may not be construed to restrict the contractor's or subcontractor's ability to impose or
152 implement an otherwise lawful provision as part of a drug and alcohol testing policy.

153 Section 2. **Effective date.**

154 This bill takes effect on July 1, 2010.