

Part 2 Powers

19-1-201 Powers and duties of department -- Rulemaking authority -- Committee.

- (1) The department shall:
 - (a) enter into cooperative agreements with the Department of Health to delineate specific responsibilities to assure that assessment and management of risk to human health from the environment are properly administered;
 - (b) consult with the Department of Health and enter into cooperative agreements, as needed, to ensure efficient use of resources and effective response to potential health and safety threats from the environment, and to prevent gaps in protection from potential risks from the environment to specific individuals or population groups;
 - (c) coordinate implementation of environmental programs to maximize efficient use of resources by developing, in consultation with local health departments, a Comprehensive Environmental Service Delivery Plan that:
 - (i) recognizes that the department and local health departments are the foundation for providing environmental health programs in the state;
 - (ii) delineates the responsibilities of the department and each local health department for the efficient delivery of environmental programs using federal, state, and local authorities, responsibilities, and resources;
 - (iii) provides for the delegation of authority and pass through of funding to local health departments for environmental programs, to the extent allowed by applicable law, identified in the plan, and requested by the local health department; and
 - (iv) is reviewed and updated annually; and
 - (d) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as follows:
 - (i) for a board created in Section 19-1-106, rules regarding:
 - (A) board meeting attendance; and
 - (B) conflicts of interest procedures; and
 - (ii) procedural rules that govern:
 - (A) an adjudicative proceeding, consistent with Section 19-1-301; and
 - (B) a special adjudicative proceeding, consistent with Section 19-1-301.5.
- (2) The department shall establish a committee that consists of:
 - (a) the executive director or the executive director's designee;
 - (b) two representatives of the department appointed by the executive director; and
 - (c) three representatives of local health departments appointed by a group of all the local health departments in the state.
- (3) The committee established in Subsection (2) shall:
 - (a) review the allocation of environmental quality resources between the department and the local health departments;
 - (b) evaluate department policies that affect local health departments;
 - (c) consider policy changes proposed by the department or by local health departments;
 - (d) coordinate the implementation of environmental quality programs to maximize environmental quality resources; and
 - (e) review each department application for any grant from the federal government that affects a local health department before the department submits the application.
- (4) The committee shall create bylaws to govern the committee's operations.

- (5) The department may:
- (a) investigate matters affecting the environment;
 - (b) investigate and control matters affecting the public health when caused by environmental hazards;
 - (c) prepare, publish, and disseminate information to inform the public concerning issues involving environmental quality;
 - (d) establish and operate programs, as authorized by this title, necessary for protection of the environment and public health from environmental hazards;
 - (e) use local health departments in the delivery of environmental health programs to the extent provided by law;
 - (f) enter into contracts with local health departments or others to meet responsibilities established under this title;
 - (g) acquire real and personal property by purchase, gift, devise, and other lawful means;
 - (h) prepare and submit to the governor a proposed budget to be included in the budget submitted by the governor to the Legislature;
 - (i)
 - (i) establish a schedule of fees that may be assessed for actions and services of the department according to the procedures and requirements of Section 63J-1-504; and
 - (ii) in accordance with Section 63J-1-504, all fees shall be reasonable, fair, and reflect the cost of services provided;
 - (j) prescribe by rule reasonable requirements not inconsistent with law relating to environmental quality for local health departments;
 - (k) perform the administrative functions of the boards established by Section 19-1-106, including the acceptance and administration of grants from the federal government and from other sources, public or private, to carry out the board's functions;
 - (l) upon the request of any board or a division director, provide professional, technical, and clerical staff and field and laboratory services, the extent of which are limited by the funds available to the department for the staff and services; and
 - (m) establish a supplementary fee, not subject to Section 63J-1-504, to provide service that the person paying the fee agrees by contract to be charged for the service in order to efficiently utilize department resources, protect department permitting processes, address extraordinary or unanticipated stress on permitting processes, or make use of specialized expertise.
- (6) In providing service under Subsection (5)(m), the department may not provide service in a manner that impairs any other person's service from the department.

Amended by Chapter 441, 2015 General Session

Amended by Chapter 453, 2015 General Session

19-1-202 Duties and powers of the executive director.

- (1) The executive director shall:
- (a) administer and supervise the department;
 - (b) coordinate policies and program activities conducted through boards, divisions, and offices of the department;
 - (c) approve the proposed budget of each board, division, and office within the department;
 - (d) approve all applications for federal grants or assistance in support of any department program;

- (e) with the governor's specific, prior approval, expend funds appropriated by the Legislature necessary for participation by the state in any fund, property, or service provided by the federal government; and
 - (f) in accordance with Section 19-1-301, appoint one or more administrative law judges to hear an adjudicative proceeding within the department.
- (2) The executive director may:
- (a) issue orders to enforce state laws and rules established by the department except where the enforcement power is given to a board created under Section 19-1-106, unless the executive director finds that a condition exists that creates a clear and present hazard to the public health or the environment and requires immediate action, and if the enforcement power is vested with a board created under Section 19-1-106, the executive director may with the concurrence of the governor order any person causing or contributing to the condition to reduce, mitigate, or eliminate the condition;
 - (b) with the approval of the governor, participate in the distribution, disbursement, or administration of any fund or service, advanced, offered, or contributed by the federal government for purposes consistent with the powers and duties of the department;
 - (c) accept and receive funds and gifts available from private and public groups for the purposes of promoting and protecting the public health and the environment and expend the funds as appropriated by the Legislature;
 - (d) make policies not inconsistent with law for the internal administration and government of the department, the conduct of its employees, and the custody, use, and preservation of the records, papers, books, documents, and property of the department;
 - (e) create advisory committees as necessary to assist in carrying out the provisions of this title;
 - (f) appoint division directors who may be removed at the will of the executive director and who shall be compensated in an amount fixed by the executive director;
 - (g) advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, affected groups, political subdivisions, and industries in carrying out the purposes of this title;
 - (h) consistent with Title 67, Chapter 19, Utah State Personnel Management Act, employ employees necessary to meet the requirements of this title;
 - (i) authorize any employee or representative of the division to conduct inspections as permitted in this title;
 - (j) encourage, participate in, or conduct any studies, investigations, research, and demonstrations relating to hazardous materials or substances releases necessary to meet the requirements of this title;
 - (k) collect and disseminate information about hazardous materials or substances releases;
 - (l) review plans, specifications, or other data relating to hazardous substances releases as provided in this title; and
 - (m) maintain, update not less than annually, and make available to the public a record of sites, by name and location, at which response actions for the protection of the public health and environment under Title 19, Chapter 6, Part 3, Hazardous Substances Mitigation Act, or under Title 19, Chapter 8, Voluntary Cleanup Program, have been completed in the previous calendar year, and those that the department plans to address in the upcoming year pursuant to this title, including if upon completion of the response action the site:
 - (i) will be suitable for unrestricted use; or
 - (ii) will be suitable only for restricted use, stating the institutional controls identified in the remedy to which use of the site is subject.

Amended by Chapter 377, 2009 General Session

19-1-203 Representatives of department authorized to enter regulated premises.

- (1) Authorized representatives of the department, upon presentation of appropriate credentials, may enter at reasonable times upon the premises of properties regulated under this title to perform inspections to insure compliance with rules made by the department.
- (2) The inspection authority provided in this section does not apply to chapters in this title which provide for specific inspection procedures and authority.

Enacted by Chapter 112, 1991 General Session

19-1-204 Legal advice and representation for department.

- (1) The attorney general is the legal adviser for the department and the executive director and shall defend them in all actions and proceedings brought against either of them.
- (2) The attorney general or the county attorney of the county in which a cause of action arises or a public offense occurs shall bring any civil or criminal action requested by the executive director or any board created in Section 19-1-106 to abate a condition which exists in violation of, or to prosecute for the violation of or for the enforcement of, the laws or standards, orders, and rules of the department.

Enacted by Chapter 112, 1991 General Session

19-1-205 Assumption of responsibilities.

The department assumes all the policymaking functions, regulatory and enforcement powers, rights, duties, and responsibilities of the Division of Environmental Health, the Air Conservation Committee, the Solid and Hazardous Waste Committee, the Utah Safe Drinking Water Committee, and the Water Pollution Control Committee previously vested in the Department of Health and its executive director:

- (1) including programs for individual wastewater disposal systems, liquid scavenger operations, and vault and earthen pit privies; but
- (2) excluding all other sanitation programs, which shall be administered by the Department of Health.

Enacted by Chapter 112, 1991 General Session

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

- (1) For purposes of this section:
 - (a) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 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 from the date of hire.
 - (b) "Health benefit plan" means the same as that term is defined in Section 31A-1-301.
 - (c) "Qualified health insurance coverage" means the same as that term is defined in Section 26-40-115.
 - (d) "Subcontractor" means the same as that term is defined in Section 63A-5-208.
- (2)

- (a) Except as provided in Subsection (3), this section applies to 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, and to a prime contractor or subcontractor in accordance with Subsection (2)(b).
- (b)
 - (i) A prime contractor is subject to this section if the prime contract is in the amount of \$2,000,000 or greater at the original execution of the contract.
 - (ii) A subcontractor is subject to this section if a subcontract is in the amount of \$1,000,000 or greater at the original execution of the contract.
- (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) This section does not apply to a change order as defined in Section 63G-6a-103, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection (2).
 - (b) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection (2) is guilty of an infraction.
- (5)
 - (a) A contractor subject to Subsection (2) shall demonstrate to the executive director that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents during the duration of the contract.
 - (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall:
 - (i) place a requirement in the subcontract that the subcontractor shall obtain and maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependants during the duration of the subcontract; and
 - (ii) certify to the executive director that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the prime contract.
 - (c)
 - (i)

- (A) A contractor who fails to comply with 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 meet the requirements of Subsection (5)(b).
- (ii)
 - (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract 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 meet the requirements of 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 in accordance with Section 63A-5-205;
 - (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 shall follow to demonstrate to the public transit district compliance with this section that shall include:
 - (A) that a contractor shall demonstrate compliance with Subsection (5)(a) or (b) at the time of the execution of each initial contract described in Subsection (2)(b);
 - (B) that the contractor's compliance is subject to an audit by the department or the Office of the Legislative Auditor General; and
 - (C) that the actuarially equivalent determination required for the qualified health insurance coverage in Subsection (1) is met by the contractor if the contractor provides the department or division with a written statement of actuarial equivalency, which is no more than one year old, regarding the contractor's offer of qualified health coverage from an actuary selected by the contractor or the contractor's insurer, or an underwriter who is responsible for developing the employer group's premium rates;
 - (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 insurance coverage for an employee and the dependents of an employee of the contractor or subcontractor who was not offered qualified health insurance 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 insurance coverage identified in Subsection (1)(c), 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), a contractor or subcontractor who intentionally violates the provisions of this section shall be liable to the employee for health care costs that would have been covered by qualified health insurance 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 of actuarial equivalency provided by:
 - (I) an actuary; or
 - (II) an underwriter who is responsible for developing the employer group's premium rates; or
 - (B) the department determines that compliance with this section is not required under the provisions of Subsection (3) or (4).
 - (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 insurance 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 Section 63G-6a-1602 or 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.

Amended by Chapter 20, 2016 General Session
Amended by Chapter 355, 2016 General Session