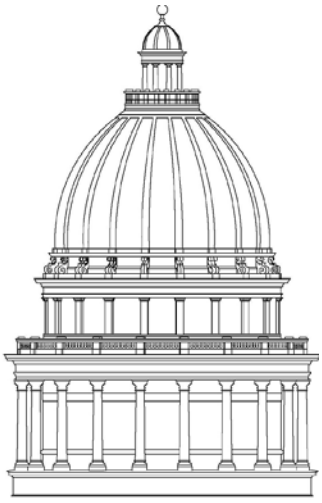
REPORT TO THE

UTAH LEGISLATURE

Number 2014-E



A Follow-Up of Selected Legislative Recommendations for Higher Education Operations and Maintenance

December 2014

Office of the
LEGISLATIVE AUDITOR GENERAL
State of Utah

STATE OF UTAH

Office of the Legislative Auditor General

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Audit Subcommittee of the Legislative Management Committee
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Senator Gene Davis • Representative Jennifer M. Seelig

JOHN M. SCHAFF, CIA
AUDITOR GENERAL

December 18, 2014

TO: THE UTAH STATE LEGISLATURE

Transmitted herewith is our report, **A Follow-Up of Selected Legislative Recommendations for Higher Education Operations and Maintenance** (Report #2014-E). We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,

John M. Schaff

John M. Schaff, CIA
Auditor General

JMS/lm

REPORT TO THE
UTAH LEGISLATURE

Report No. 2014-E

A Follow-Up of Selected Legislative Recommendations for Higher Education Operations and Maintenance

December 2014

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A Follow-Up of Selected Legislative Recommendations for Higher Education Operations and Maintenance

In October 2014, the Legislative Audit Subcommittee prioritized a follow-up on the implementation of recommendations made in Audit Report 2011-08, *A Performance Audit of Higher Education Operations and Maintenance Funding*.[1] That report reviewed legislatively appropriated operations and maintenance (O&M) funding of higher education facilities and resulted in eleven recommendations, five which were directed to the Legislature. One recommendation to the Legislature was previously implemented with Senate Bill 278 (2013 General Session). This report addresses the status of three legislative recommendations not yet acted upon. The status of the remaining legislative recommendation and the six other recommendations will be discussed in a later report.

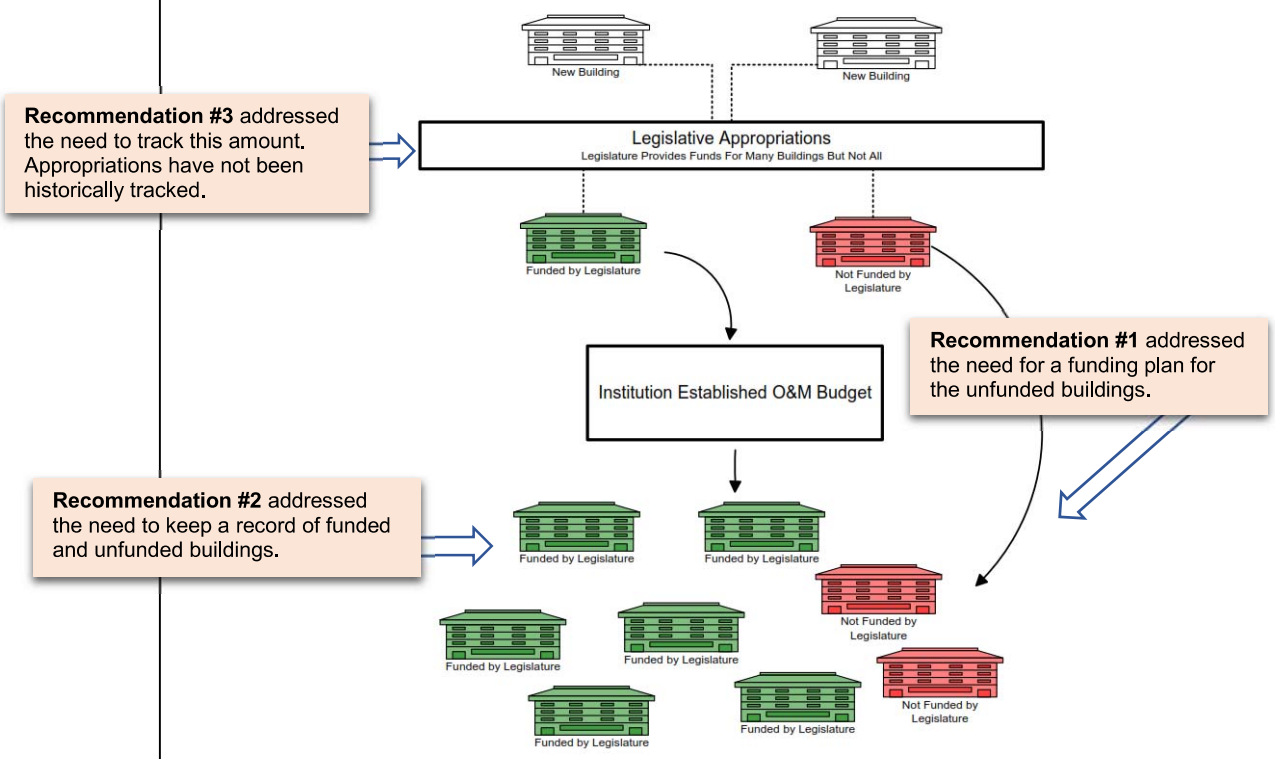
This report follows up on three recommendations made to the Legislature in the 2011 performance audit of higher education O&M.

None of the three recommendations addressed in this report have been fully implemented. Our current work demonstrates that these recommendations are still relevant and more action is needed to correct problems and concerns identified in the 2011 report, affirming the findings in the 2011 audit. Figure 1 graphically illustrates the concerns raised in the 2011 report and denotes the three recommendations they are designed to correct.

Each of the three recommendations included in this follow-up are not yet fully implemented.

[1] Web Link to *"A Performance Audit of Higher Education Operation and Maintenance Funding"* #2011-08 http://le.utah.gov/audit/11_08rpt.pdf

Figure 1 Unfunded Buildings Can Bypass Institutions' Budget Process, Increasing the Strain on Facility Departments.



This is only an illustration and does not represent an actual ratio of funded to unfunded buildings.
*See also Figure 5.2 (page 38) of audit report 2011-08.

The following sections each discuss the need for implementation of the three previously reported recommendations, as well as provide statutory suggestions to fully implement the recommendations.

Legislature Should Require that an O&M Funding Plan Is in Place Prior to Construction

We continue to be concerned that a building could be added to an institution's O&M schedule without an increase in funding.

The 2011 audit reported that "the Legislature should require an O&M funding plan to help ensure that institutions' O&M budgets are not taking on additional buildings without additional resources." This conclusion was based on the concern that a building can be added to an institution's inventory without an increase in O&M funding, thereby diluting the O&M resources provided for state-supported buildings (see report 2011-08, pages 37 to 43). Institutions without an O&M funding plan in place may return to the Legislature to ask for additional, unplanned funding.

Southern Utah University (SUU) Sought O&M Funding for an Art Museum after the Legislature Prohibited the University from Asking for the Funds. During the 2010 General Session, SUU sought approval for construction of a new art museum. Institution officials told the Capitol Facilities and Government Operations Appropriations Subcommittee that they would fund the O&M with other funds. Here is an excerpt from the committee meeting minutes dealing with the O&M for the art museum:

> President Benson stated that he could take part from other areas of his budget and he would entertain an additional student fee to cover part [of the O&M funds].

The Legislature approved the construction of the art museum, but added into H.B. 5 (2010 General Session) that "the university may not request state funds for operation and maintenance costs or capital improvements."

When institutions do not have a funding plan in place, they may come back to the Legislature for funding.

However, two years later, in the 2012 General Session, SUU came back to the Executive Appropriations Committee (EAC) asking for O&M funding for the art museum, hoping a new Legislature would fund the O&M for the building. Representative Hughes told the EAC that other institutions had also been prohibited from asking for O&M in past years. Representative Hughes cautioned the committee, saying, ". . . if the Legislature wants to explore a policy change, there will be a line of institutions that will want the same opportunity."

SUU came back to the Legislature for O&M funding two years after it told the Legislature it would fund O&M out of its own budget and student fees.

Utah State University (USU) Sought Funding for a North End Zone Building after the Legislature Prohibited the University from Making the Request. In another instance, USU gained approval for a North End Zone building in 2004. Again, the Legislature wrote into statute that the university could not request O&M or capital improvements for the building. After approval, USU changed the design of the building and once again asked for O&M funding from the Legislature. The Legislative Fiscal Analyst's Office recommended against funding the O&M since it had been previously prohibited in statute.

We believe the institutions should be required to have a written and specific funding plan when O&M funding is not appropriated by the Legislature.

We believe that a specific written funding plan should be required in these instances. The funding plan should specify the source and amount of funding and be approved by the Legislature and the State Building Board. Otherwise, accountability suffers and there is less certainty that the institutions will follow through with their plans, as was the case with SUU.

Figure 2 provides the language of our past recommendation, the action that has been taken on the recommendation, and the additional action we believe could be taken.

Figure 2 All Buildings Should Have an O&M Funding Plan.

2011 Audit Recommendation:
"We recommend that the Legislature require all buildings to have an O&M funding plan in place before construction. The funding plan should show at least the amount of funds to be added to the institution's O&M budget and the source of the funds."

2012 Self-Reported Follow-Up Status:
This recommendation was reported as in the process of being implemented.

2014 Auditor Follow-Up Status:
This recommendation was partially implemented by Senate Bill 278 in the 2013 General Session by added language that provides for some O&M funding information but not a full plan when constructing a building with nonstate funds. S.B. 278 states,

> "If construction of a new building or facility will be paid for by nonstate funds, but will require an immediate or future increase in state funding for operations and maintenance or for capital improvements, the Legislature may not authorize the new building or facility until the Legislature appropriates funds for: the portion of operations and maintenance. . . "

Additional Legislative Action Needed to Implement the Recommendation:
To complete the implementation of this recommendation, the Legislature should consider amending the statute to strengthen the O&M funding plan requirement. Below, we present two scenarios illustrating possible language to strengthen the O&M funding plan requirement.

Scenario One: State Building Board Approval. Statutory Language Could Be Added to Strengthen O&M Funding Plan Requirement

Utah Code 63A-5-104 allows the State Building Board sole O&M funding approval for buildings meeting the following four criteria:

- State funds will not be used for design or construction
- Agency or higher education institution has a plan in place for O&M and capital improvements that will not require an increase in state funding
- Building is appropriate and consistent with the master plan of the property
- Will not create an adverse impact on the state

The State Building Board has required specific and detailed information on O&M funding plans before approving new buildings under its jurisdiction. We are encouraged by this action. However, some officials have reported that, in the past, the State Building Board had a lower requirement. Past audit work showed that accountability and transparency of O&M funds was weak. Current audit work shows that this continues to be a concern.

The State Building Board has not always required a specific O&M funding plan.

Statutory Language Could Strengthen O&M Plan Requirement. To strengthen the O&M funding requirement for State Building Board-approved buildings, and to ensure the building board remains diligent in requiring detailed O&M funding plans, the statute could be amended. For example, ***Utah Code*** 63A-5-104(3)(b)(i)(B) could be changed as follows,

> The state agency, commission, department, or institution has ~~a plan for funding in place~~ a plan that identifies the specific funding source in place that will not require increased state funding to cover the cost of operations and maintenance. . . .

Statute could be amended to strengthen the O&M funding plan when a building is approved by the State Building Board.

Scenario Two: Legislature Approves Bonding Authority, But Does Not Appropriate O&M

In some cases, the Legislature approves bonding authority for a building, then forbids the institutions from requesting O&M or capital improvements for the approved building. Often, these buildings are considered auxiliary buildings that should already have a separate funding source for O&M. However, we believe that an O&M funding source still needs to be approved, especially in light of findings in the 2011 audit that identified some auxiliary buildings that were inappropriately using institution O&M funding.

A more specific funding plan can be required for buildings approved for bonding and not allowed to receive state-funded O&M.

In the 2014 Legislative General Session, the Legislature approved bonding authority for two buildings. Since these buildings were considered auxiliary no request was made for O&M from the Legislature, and the Legislature disallowed the use of the bond or state funds for O&M or capital improvements on these buildings. Both buildings, listed below, are located at the University of Utah (U of U).

- Lassonde Living Center
- Alumni House

The Regents do require a needs statement for buildings that lists the O&M funding source. We believe that an approved O&M funding plan for these buildings can further help ensure adequate funds are in place to pay for the O&M needs on these buildings.

Statutory Language Could Require an O&M Funding Plan for Bonded Buildings. To strengthen the O&M funding plan requirement, a new subsection could be added to ***Utah Code*** 63A-5-104 to say:

> An O&M funding plan must be approved by the State Building Board and the Legislature before construction can begin on a building approved for construction through bonding.

Legislature Should Direct Board of Regents to Maintain a Funding Record for All Buildings

A record is needed to track whether buildings do or do not receive state funded O&M funds.

The 2011 audit found that the Utah System of Higher Education (USHE) does keep detailed records on their buildings. While the records track building space and use, they are not adequate for determining what buildings or parts of buildings are eligible for state O&M funds. Without this information, it is not possible to make a determination on the appropriateness of using state O&M funds for certain buildings. Further, it is not possible to identify whether legislatively allocated O&M funds for new buildings have been used for non-O&M expenditures, nor is it possible to determine if funding originally intended for other academic or institutional purposes has been used for O&M.

Accordingly, we could not substantiate complaints we received about certain buildings inappropriately receiving institutional O&M funds. Since a record had not been kept, we could not determine which buildings were eligible for state funding and which were not. For additional information on our findings in Report 2011-08, please see pages 27 to 33. Our current work found that these concerns continue today. Figure 3 provides a summary of our 2011 recommendation and a summary of the action needed to address the recommendation.

Without an adequate record, a building's eligibility for state funding cannot be determined.

Figure 3 State Board of Regents Should Maintain a Record of Buildings' O&M Funding Sources.

2011 Audit Recommendation: We recommend that the Legislature consider directing the Board of Regents to maintain a record of all buildings built on campus that denotes the O&M funding source as being either state-funded or other. If the funding source does not come from state funds, the record should specifically indicate the source of the O&M funding.
2012 Self-Reported Follow-Up Status: The Board of Regents reported this recommendation as implemented in 2012. Though the Legislature did not direct the Regents to keep the record, Regent staff reported they had begun keeping the record.
2014 Auditor Follow-Up Status: This recommendation is not implemented. The Legislature has not yet required the Board of Regents to implement the recommendation. The Regent's staff reported that they began working on this record but it was not available or up to date when we began our audit work. Regent staff did eventually provide us a document but it was after this report was written, consequently we did not have time to review it.
Suggested Additional Action: The Legislature should require, in statute, that the Board of Regents maintain a record of all USHE buildings that lists the O&M funding source. This record should be added as one of the regular annual reports completed by the Regents and submitted to the Legislative Fiscal Analyst. This would help ensure the record is regularly maintained.

The State Board of Regents (SBR) reported for our annual follow-up (conducted in 2012) that they implemented the recommendation to maintain the O&M funding source information on new buildings. However, this record was not available when we began our current follow-up work in 2014. Further, Regents staff admitted it had not been updated for about two years. Regent staff did eventually provide us a document but it was after this report was written, consequently we did not have time to review it.

The SBR reportedly began maintaining a record of all buildings built on campus and their O&M funding sources, but the record was not available or up to date when we began our audit work.

Statutory Language Could Require Regents to Track O&M Funding Source. A new subsection could be added to ***Utah Code*** 63A-5-104 or the higher education section of statute (53B) that stipulates the SBR must maintain a building record with O&M funding sources. For example,

> The State Board of Regents shall maintain and annually update an inventory record of all buildings within the Utah System of Higher Education that denotes the O&M funding source of each building as state-funded or other. If the funding source is not state funds, the record should specifically indicate the source of the O&M funding.

A provision could be added to statute that requires the SBR to track buildings' O&M funding sources.

Legislature Should Consider Creating an Appropriation Unit to Better Track O&M Funding

Because legislatively appropriated O&M funding is commingled at the institution level and thereby loses its identity, it is not possible to determine if it is being used for its originally allocated purpose. We reported in 2011 that inadequate information limited our ability to address the initial scope of our audit, which was to determine if legislatively appropriated O&M funding was being used according to its original purpose. We could not make this determination because O&M funds are commingled with education and general (E&G) funds so the historical amount provided through appropriations is unknown.

To help bolster accountability and transparency, we recommended in 2011 that the Legislature track O&M with an appropriation unit.

While funding information on some buildings can go back 75 years or more, we could not get reliable information on other buildings just 15 or 20 years old. In addition to incomplete building records, incomplete records on cost-of-living adjustments for maintenance workers, utility funding adjustments, and budget reductions further complicated the O&M funding analysis (for more information, see Report 2011-08, pages 7 to 17).

In addition, it is important to note that neither in 2011 nor today can we substantiate concerns that O&M funding is inadequate for buildings for which the Legislature has agreed to provide O&M funds. The absence of data simply provides no basis for such an analysis.

To help address this problem, we recommended in 2011 that the Legislature track the appropriated amount of O&M through an

appropriation unit within the E&G line item. Figure 4 provides a summary of the recommendation and suggested action.

Figure 4 The Legislature Should Consider Funding O&M as an Appropriation Unit Within the E&G Line Item.

2011 Audit Recommendation: We recommend that the Legislature consider funding O&M as an appropriation unit within the E&G line item.
2012 Self-Reported Follow-Up Status: This recommendation was reported as not implemented
2014 Auditor Follow-Up Status: Discussion occurred in the Higher Education Appropriations Committee, but no immediate action was taken. This recommendation has still not been implemented.
Suggested Action: The Legislature could instruct the Legislative Fiscal Analyst's Office to track O&M funding as an appropriation unit within the E&G line item.

As suggested in the figure above, implementation of this recommendation may be as simple as directing the Legislative Fiscal Analyst to track O&M funding as an appropritation unit through intent language. Statutory changes could also be considered to accomplish this recommendation.

Implementation of an appropriation unit to track O&M could be accomplished through the Legislative Fiscal Analyst's Office or through statute.

Recommendations

These are the same recommendations found in Report 2011-08. They are repeated here with slight changes for ease of reference.

1. We recommend that the Legislature require all buildings to have an O&M funding plan in place before construction. The funding plan should show at least the amount of funds to be added to the institution's O&M budget and the source of the funds.

2. We recommend that the Legislature consider directing the State Board of Regents to maintain a record of all buildings built on campus that denotes the O&M funding source as being either state-funded or other. If the funding source does not come from state funds, the record should specifically indicate the source of the O&M funding.

3. We recommend that the Legislature consider instructing the Legislative Fiscal Analyst's Office to track O&M as an appropriation unit within the E&G line item.

Agency Response

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December 8, 2014

Mr. John Schaff
Legislative Auditor General
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Dear Mr. Schaff,

I appreciate the opportunity to respond to the report entitled **A Follow-up of Selected Legislative Recommendations for Higher Education O&M**. The Utah System of Higher Education (USHE) desires to continue working with the Legislature and addressing any concerns pertaining to O&M funding. In particular, we recognize and appreciate legislative support over many years for institutional efforts to construct campus facilities without the use of state-tax funds where possible, as well as the need for accountability in the use of O&M funding.

This follow-up report does not address, and yet it is important to note, USHE's demonstrated strong commitment to providing adequate support of operation and maintenance of state facilities. A study by the Office of the Commissioner several years ago and updated to the current fiscal year is the compilation of an O&M budget history since FY 1988. This history compares legislative funding for O&M during that period with USHE institutions' O&M operating budgets. Those data show that for FY 2015, in aggregate, the amounts the institutions have budgeted for O&M support exceed funds appropriated for that purpose by approximately $27 million.

As reported in the 2011 audit of O&M expenditures, current levels of state O&M funding are the byproduct of countless individual funding decisions made over the years including appropriations in good times as well as decreases occasioned by economic downturns. In addition, there have been numerous changes in state laws, policies, and practices regarding funding and budgets over the years, with some of the most recent changes to practice being the direct result of the 2008 recession. USHE affirms that the appropriate level of funding for O&M and capital improvements *is essential* to the long-term care and operation of our facilities. The following issues ought to be present in the discussion of O&M funding within USHE:

- O&M funding is an essential component in sustaining the efficient and effective operation of facilities needed to instruct Utah's students.
- Growth in the number of students is inevitable and the demand for buildings to instruct these students— while also providing the latest technological and programmatic capabilities— is ever increasing.

Future O&M Funding is Needed

During the past twenty years or so, information is more readily available on O&M funding decisions and is thereby easier to track, although some challenges remain. The older historical information has been lost or was not even initially recorded. Furthermore, budget cuts imposed as a result of the most recent recession were accompanied by a period of record USHE institutional enrollments and with no new funding for O&M on core-mission non-state funded buildings. The unfunded O&M costs on these new buildings have been partly covered by institutional efficiencies and reallocations, but also by increased student charges.

Historically, the USHE policies have been reexamined and amended from time to time, culminating in the adoption of the current Regent O&M policy in December of 1998. In that revision, specific conditions were implemented that needed to be met to qualify non-state funded facilities for state-appropriated support of O&M costs. The Regents affirmed that facilities to be used for "*approved academic and training purposes and associated support*" were eligible for state-appropriated support. They also acknowledged that other non-state funded projects could be eligible for state appropriated O&M funding on a case by case basis to the extent that they "*relate to important institutional activities such as instruction, research generating student credits, and service within the institution's role statement.*"

Prior to the 2008 recession, the Legislature was supportive and responded with appropriation of O&M support for non-state funded projects qualifying under this policy language. The scarcity of funds available during the recession years resulted in discontinuation of such funding. Hopefully, with the restoration of economic stability, a return to funding O&M support for needed and qualifying core mission facilities built with generous donations from committed citizens and other non-state sources can be reinstituted.

Summary

USHE institutions value the O&M funding for their facilities and take great care to use it appropriately. In some cases, institutions have reallocated funds from other parts of their budget or from other funding sources in order to provide additional funding for O&M when the state-appropriated funds were not adequate to meet needs. In other instances, providing funding from tuition increases has been required to meet the needs, and far too often, institutions have had to find ways to cover the needs with existing budgets, thereby diluting the O&M resources available.

We look forward to responding to questions and suggestions as this audit report is presented to the relevant legislative committees.

Sincerely,

David L. Buhler
Commissioner of Higher Education