

CAPITAL PROJECTS APPROVAL AND ADMINISTRATION

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Gerry A. Adair

AN ACT RELATING TO THE STATE BUILDING BOARD AND THE DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT; MODIFYING AND ADDING DEFINITIONS; MODIFYING AND CLARIFYING THE PROCESS FOR APPROVALS, REVIEW, AND CONSTRUCTION FOR STATE CAPITAL DEVELOPMENT AND CAPITAL IMPROVEMENT PROJECTS; DIRECTING DISPOSITION OF CERTAIN LANDS; REPEALING OBSOLETE AND REDUNDANT SECTIONS; MAKING TECHNICAL CORRECTIONS; AND PROVIDING A COORDINATION CLAUSE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

- 9-4-1103**, as last amended by Chapter 214, Laws of Utah 1997
- 53B-20-104**, as enacted by Chapter 167, Laws of Utah 1987
- 63A-5-104**, as enacted by Chapter 3, Laws of Utah 1997
- 63A-5-204**, as last amended by Chapter 135, Laws of Utah 1999
- 63A-5-206**, as last amended by Chapters 225 and 285, Laws of Utah 1998
- 63A-5-207**, as renumbered and amended by Chapter 212, Laws of Utah 1993
- 63A-5-209**, as renumbered and amended by Chapters 212 and 292, Laws of Utah 1993
- 63A-5-211**, as renumbered and amended by Chapter 212, Laws of Utah 1993
- 63A-5-220**, as last amended by Chapter 21, Laws of Utah 1999
- 63A-5-222**, as enacted by Chapter 312, Laws of Utah 1999

REPEALS:

- 63A-5-210**, as renumbered and amended by Chapter 212, Laws of Utah 1993
- 63A-5-212**, as last amended by Chapter 285, Laws of Utah 1998
- 63A-5-214**, as renumbered and amended by Chapter 212, Laws of Utah 1993
- 63A-5-217**, as renumbered and amended by Chapter 212, Laws of Utah 1993

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

Section 1. Section **9-4-1103** is amended to read:

9-4-1103. 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 shall, subject to this part, have all powers and authority permitted nonprofit corporations by law.

(4) The corporation shall, subject to approval of the board:

(a) have general management, supervision, and control over all activities relating to the state fair and have charge of all state expositions except as otherwise provided by statute;

(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) establish the time, place, and purpose of state expositions; and

(d) acquire and designate exposition sites.

(5) (a) The corporation shall:

(i) use generally accepted accounting principals in accounting for its assets, liabilities, and operations;

(ii) seek corporate sponsorships for the state fair park and for individual buildings or facilities within the fair park;

(iii) 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;

(iv) develop and maintain a marketing program to promote expositions and the use of the state fair park;

(v) in cooperation with the Division of Facilities Construction and Management, maintain the physical appearance and structural integrity of the state fair park and the buildings located at the state fair park;

(vi) hold an annual exhibition that:

(A) is called the state fair or a similar name;

(B) 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;

(C) includes the award of premiums for the best specimens of the exhibited articles and animals;

(D) permits competition by livestock exhibited by citizens of other states and territories of the United States; and

(E) is arranged according to plans approved by the board;

(vii) fix the conditions of entry to the exposition described in Subsection (5)(a)(vi); and

(viii) publish a list of premiums that will be awarded at the exhibition described in Subsection (5)(a)(vi) for the best specimens of exhibited articles and animals.

(b) In addition to the state fair to be held in accordance with Subsection (5)(a)(vi), 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 its opinion, will best stimulate agricultural, industrial, artistic, and educational pursuits and the sharing of talents among the people of Utah.

(6) The corporation may:

(a) employ advisers, consultants, and agents, including financial experts and independent legal counsel, and fix their compensation;

(b) procure insurance against any loss in connection with its 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 its 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) enter into agreements for the leasing of any of the facilities at the state fair park, if approved by the board; and

(h) sponsor events as approved by the board.

(7) (a) [~~As~~] Except as provided in Subsection (7)(c), as an independent agency of [the state of] Utah, the corporation is exempt from:

(i) Title 63, Chapter 38, Budgetary Procedures Act;

(ii) Title 51, Chapter 7, State Money Management Act;

(iii) Title 63A, Utah Administrative Services Code;

(iv) Title 51, Chapter 5, Funds Consolidation Act;

(v) Title 63, Chapter 56, Utah Procurement Code; and

(vi) Title 67, Chapter 19, Utah State Personnel Management Act.

(b) The board shall adopt policies parallel to and consistent with:

(i) Title 63, Chapter 38, Budgetary Procedures Act;

(ii) Title 51, Chapter 7, State Money Management Act;

(iii) Title 63A, Utah Administrative Services Code;

(iv) Title 51, Chapter 5, Funds Consolidation Act; and

(v) Title 63, Chapter 56, Utah Procurement Code.

(c) The corporation shall comply with the legislative approval requirements for new facilities established in Subsection 63A-5-104(3).

Section 2. Section **53B-20-104** is amended to read:

53B-20-104. Buildings and facilities -- Board approval of construction and purchases -- Rules.

(1) The board shall approve all new construction, repair, or purchase of educational and general buildings and facilities financed from any source at all institutions subject to the jurisdiction of the board.

(2) ~~[No]~~ An institution may not submit plans or specifications to the State Building Board for the construction or alteration of buildings, structures, or facilities or for the purchases of equipment or fixtures for the structure without the authorization of the board.

(3) The board shall make rules establishing the conditions under which facilities may be eligible to request state funds for operations and maintenance.

(4) Before approving the purchase of a building, the board shall:

(a) determine whether or not the building will be eligible for state funds for operations and maintenance by applying the rules adopted under Subsection (3); and

(b) if the annual request for state funding for operations and maintenance will be greater than \$100,000, notify the speaker of the House, the president of the Senate, and the cochairs of the Capital Facilities and Administrative Services subcommittee of the Legislature's Joint Appropriation Committee.

Section 3. Section **63A-5-104** is amended to read:

63A-5-104. Capital development and capital improvement process -- Approval Requirements.

(1) As used in this section:

(a) "Capital developments" means any:

(i) remodeling, site, or utility projects with a total cost of \$1,000,000 or more;

~~[(ii) addition of new space that will cost more than \$100,000; or]~~

(ii) new facility with a construction cost of \$250,000 or more; or

(iii) ~~[land acquisition]~~ purchase of real property where an appropriation is requested to fund the purchase.

(b) "Capital improvements" means any:

(i) remodeling, alteration, replacement, or repair project with a total cost of less than \$1,000,000; ~~[or]~~

(ii) site and utility improvement with a total cost of less than \$1,000,000; or

(iii) new facility with a total construction cost of less than \$250,000.

(c) (i) "New facility" means the construction of any new building on state property regardless of funding source.

(ii) "New facility" includes:

(A) an addition to an existing building; and

(B) the enclosure of space that was not previously fully enclosed.

(iii) "New facility" does not mean:

(A) the replacement of state-owned space that is demolished, if the total construction cost of the replacement space is less than \$1,000,000; or

(B) the construction of facilities that do not fully enclose a space.

~~[(e)]~~ (d) "Replacement cost of existing state buildings" means the replacement cost, as determined by the Division of Risk Management, of state buildings, excluding auxiliary buildings as defined by the State Building Board.

(2) The State Building Board, on behalf of all state agencies, commissions, departments, and institutions shall submit its capital development recommendations and priorities to the Legislature for approval and prioritization.

(3) (a) Except as provided in Subsections (3)(b), (d), and (e), a capital development project may not be constructed on state property without legislative approval.

(b) Legislative approval is not required for a capital development project if the State Building Board determines that:

(i) the requesting agency or institution has provided adequate assurance that state funds will not be used for the construction of, operations and maintenance to, and immediate or future capital

improvements to the resulting facility; and

(ii) the use of the state property is:

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

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

(c) The Division of Facilities Construction and Management shall maintain a record of facilities constructed under the exemption provided in Subsection 63A-5-104(3)(b).

(d) Legislative approval is not required for:

(i) the renovation, remodeling, or retrofitting of an existing facility with nonstate funds;

(ii) facilities to be built with nonstate funds and owned by nonstate entities within research park areas at the University of Utah and Utah State University; or

(iii) facilities to be built at This is the Place State Park by This is the Place Foundation with funds of the foundation, including grant monies from the state, or with donated services or materials.

(e) (i) Legislative approval is not required for capital development projects to be built for the Department of Transportation as a result of an exchange of real property under Section 72-5-111.

(ii) When the Department of Transportation approves those exchanges, it shall notify the president of the Senate, the speaker of the House, and the cochairs of the Capital Facilities and Administrative Services Subcommittee of the Legislature's Joint Appropriation Committee about any new facilities to be built under this exemption.

~~[(3)]~~ (4) (a) The State Building Board, on behalf of all state agencies, commissions, departments, and institutions shall by January 15 of each year, submit a list of anticipated capital improvement requirements to the Legislature for review and approval.

(b) Unless otherwise directed by the Legislature, the building board shall prioritize capital improvements from the list submitted to the Legislature up to the level of appropriation made by the Legislature.

(c) In prioritizing capital improvements, the building board shall consider the results of facility evaluations completed by an architect/engineer as stipulated by the building board's facilities maintenance standards.

~~[(4)]~~ (5) The Legislature may authorize:

- (a) the total square feet to be occupied by each state agency; and
- (b) the total square feet and total cost of lease space for each agency.

~~[(5)]~~ (6) The Legislature may not fund the design or construction of any new capital development projects, except to complete the funding of projects for which partial funding has been previously provided, until the Legislature has appropriated .9% of the replacement cost of existing state buildings to capital improvements.

~~[(6)]~~ (7) (a) If, after approval of capital development and capital improvement priorities by the Legislature under this section, emergencies arise that create unforeseen critical capital improvement projects, the State Building Board may, notwithstanding the requirements of Title 63, Chapter 38, Budgetary Procedures Act, reallocate capital improvement funds to address those projects.

(b) The building board shall report any changes it makes in capital improvement allocations approved by the Legislature to:

- (i) the Office of Legislative Fiscal Analyst within 30 days of the reallocation; and
- (ii) the Legislature at its next annual general session.

~~[(7)]~~ (8) (a) The State Building Board may adopt a rule allocating to institutions and agencies their proportionate share of capital improvement funding.

(b) The building board shall ensure that the rule:

- (i) reserves funds for the Division of Facilities Construction and Management for emergency projects; and
- (ii) allows the delegation of projects to some institutions and agencies with the requirement that a report of expenditures will be filed annually with the Division of Facilities Construction and Management and appropriate governing bodies.

~~[(8)]~~ (9) It is the intent of the Legislature that in funding capital improvement requirements under this section the General Fund be considered as a funding source for at least half of those costs.

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

63A-5-204. Specific powers and duties of director.

- (1) As used in this section, "capitol hill facilities" and "capitol hill grounds" have the same

meaning as provided in Section 63C-9-102.

(2) (a) The director shall:

~~[(a)]~~ (i) recommend rules to the executive director for the use and management of facilities and grounds owned or occupied by the state for the use of its departments and agencies;

~~[(b)]~~ (ii) supervise and control the allocation of space, in accordance with legislative directive through annual appropriations acts or other specific legislation, to the various departments, commissions, institutions, and agencies in all buildings or space owned, leased, or rented by or to the state, except capitol hill facilities and capitol hill grounds and except as otherwise provided by law;

~~[(c)]~~ (iii) comply with the procedures and requirements of Title 63A, Chapter 5, Part 3, Division of Facilities Construction and Management Leasing;

~~[(d)]~~ (iv) except as provided in Subsection (2)(b), acquire, as authorized by the Legislature through the appropriations act or other specific legislation, and hold title to, in the name of the division, all real property, buildings, fixtures, or appurtenances owned by the state or any of its agencies;

~~[(e)]~~ (v) adopt and use a common seal, of a form and design determined by the director, and of which courts shall take judicial notice;

~~[(f)]~~ (vi) file a description and impression of the seal with the Division of Archives;

~~[(g)]~~ (vii) collect and maintain all deeds, abstracts of title, and all other documents evidencing title to or interest in property belonging to the state or any of its departments, except institutions of higher education and the School and Institutional Trust Lands Administration;

~~[(h)]~~ (viii) report all properties acquired by the state, except those acquired by institutions of higher education, to the director of the Division of Finance for inclusion in the state's financial records; and

~~[(i)]~~ (ix) take all other action necessary for carrying out the purposes of this chapter.

(b) Legislative approval is not required for acquisitions by the division that cost less than \$250,000.

(3) (a) The director shall direct or delegate maintenance and operations, preventive maintenance, and facilities inspection programs and activities for any department, commission,

institution, or agency, except:

(i) the State Capitol Preservation Board; and

(ii) state institutions of higher education.

(b) The director may choose to delegate responsibility for these functions only when the director determines that:

(i) the department or agency has requested the responsibility;

(ii) the department or agency has the necessary resources and skills to comply with facility maintenance standards approved by the State Building Board; and

(iii) the delegation would result in net cost savings to the state as a whole.

(c) The State Capitol Preservation Board and state institutions of higher education are exempt from Division of Facilities Construction and Management oversight.

(d) Each state institution of higher education shall comply with the facility maintenance standards approved by the State Building Board.

(e) Except for the State Capitol Preservation Board, agencies and institutions that are exempt from division oversight shall annually report their compliance with the facility maintenance standards to the division in the format required by the division.

(f) The division shall:

(i) prescribe a standard format for reporting compliance with the facility maintenance standards;

(ii) report agency and institution compliance or noncompliance with the standards to the Legislature; and

(iii) conduct periodic audits of exempt agencies and institutions to ensure that they are complying with the standards.

(4) (a) In making any allocations of space under Subsection (2), the director shall:

(i) conduct studies to determine the actual needs of each department, commission, institution, or agency; and

(ii) comply with the restrictions contained in this Subsection (4).

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

(c) The supervision and control of the judicial area is reserved to the judiciary for trial courts only.

(d) The director may not supervise or control the allocation of space for entities in the public and higher education systems.

(e) The supervision and control of capitol hill facilities and capitol hill grounds is reserved to the State Capitol Preservation Board.

(5) The director may:

(a) hire or otherwise procure assistance and services, professional, skilled, or otherwise, that are necessary to carry out the director's responsibilities, and may expend funds provided for that purpose either through annual operating budget appropriations or from nonlapsing project funds;

(b) sue and be sued in the name of the division; and

(c) hold, buy, lease, and acquire by exchange or otherwise, as authorized by the Legislature [~~through an appropriations act or other specific legislation~~], whatever real or personal property that is necessary for the discharge of the director's duties.

(6) Notwithstanding the provisions of Subsection (2)[~~(b)~~] (a)(iv), the following entities may hold title to any real property, buildings, fixtures, and appurtenances held by them for purposes other than administration that are under their control and management:

(a) the Office of Trust Administrator;

(b) the Department of Transportation;

(c) the Division of Forestry, Fire and State Lands;

(d) the Department of Natural Resources;

(e) the Utah National Guard;

(f) any area vocational center or other institution administered by the State Board of Education; and

(g) any institution of higher education.

(7) The director shall ensure that any firm performing testing and inspection work governed by the American Society for Testing Materials Standard E-329 on public buildings under the director's supervision shall:

- (a) fully comply with the American Society for Testing Materials standard specifications for agencies engaged in the testing and inspection of materials known as ASTM E-329;
- (b) carry a minimum of \$1,000,000 of errors and omissions insurance; and
- (c) when testing concrete, use laboratory facilities that are inspected annually by the Cement and Concrete Reference Laboratory, a division of the National Institute of Standards and Technology.

~~[(8) Notwithstanding any other provision in this part, the Board of Regents may accept buildings, land, or a combination of buildings and land, donated to an eligible higher education institution without obtaining approval of the donation from the director of the Division of Facilities Construction and Management.]~~

~~[(9) Notwithstanding any other provision of this section, if a donor donates land to an eligible institution of higher education and commits to build a building or buildings on that land, and the institution agrees to provide funds for the operations and maintenance costs from sources other than state funds, and agrees that the building or buildings will not be eligible for state capital improvement funding, the higher education institution may:]~~

~~[(a) oversee and manage the construction without involvement, oversight, or management from the Division of Facilities Construction and Management; or]~~

~~[(b) arrange for management of the project by the Division of Facilities Construction and Management.]~~

~~[(10)]~~ (8) Notwithstanding Subsections ~~[(2)(c) and (d)]~~ (2)(a)(iii) and (iv), the School and Institutional Trust Lands Administration may hold title to any real property, buildings, fixtures, and appurtenances held by it that are under its control.

Section 5. Section **63A-5-206** is amended to read:

63A-5-206. Construction, alteration, and repair of state facilities -- Powers of director -- Exceptions -- Expenditure of appropriations -- Notification to local governments for construction or modification of certain facilities.

(1) As used in this section:

(a) "Analysis" means an economic assessment of competing design and maintenance alternatives, the object of which is to reduce cost and conserve energy.

(b) "Capital developments" ~~[means any:]~~ and "capital improvements" have the same meaning as provided in Section 63A-5-104.

~~[(i) remodeling, site, or utility projects with a total cost of \$1,000,000 or more;]~~

~~[(ii) addition of new space that will cost more than \$100,000; or]~~

~~[(iii) land acquisition where an appropriation is requested.]~~

~~[(c) "Capital improvements" means any:]~~

~~[(i) remodeling, alteration, repair project with a total cost of less than \$1,000,000; or]~~

~~[(ii) site and utility improvement with a total cost of less than \$1,000,000.]~~

(c) "Compliance agency" has the same meaning as provided in Subsection 58-56-3(4).

(d) (i) "Facility" means any building, structure, or other improvement that is constructed on property owned by the state, its departments, commissions, institutions, or agencies.

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

~~[(d)] (e) "Life cycle cost-effective" means the lowest cost of owning and operating a facility over a 25-year period, including the initial cost, energy costs, operation and maintenance costs, repair costs, and the costs of energy conservation and renewable energy systems.~~

(f) "Local government" means the county, municipality, or local school district that would have jurisdiction to act as the compliance agency if the property on which the project is being constructed were not owned by the state.

~~[(e)] (g) "Renewable energy system" means a system designed to use solar, wind, geothermal power, wood, or other replenishable energy source to heat, cool, or provide electricity to a building.~~

~~[(f) "State-owned facilities" means those facilities identified in Section 63A-5-212.]~~

~~[(2) The director shall prepare or have prepared by private firms or individuals designs, plans, and specifications for the various buildings and improvements, and other work carried out by the division.]~~

~~[(3)] (2) (a) [(i)] Except as provided in [Subsection (3)(a)(ii) or (3)(a)(iii), and except for facilities under the jurisdiction of the State Capitol Preservation Board] Subsections (3) and (4), the director shall [recommend the need for and] exercise direct supervision over the design and~~

construction of all new facilities, and all alterations, repairs, and improvements to [aH] existing facilities [~~of the state, its departments, commissions, institutions, and agencies~~] if the total project construction cost, regardless of the funding source, is greater than \$100,000.

(b) The director shall prepare or have prepared by private firms or individuals designs, plans, and specifications for the projects administered by the division.

(c) Before proceeding with construction, the director and the officials charged with the administration of the affairs of the particular department, commission, institution, or agency shall approve the location, design, plans, and specifications.

~~[(ii) The director may:]~~

~~[(A) authorize a department, commission, institution, or agency to control design and construction of alterations, repairs, and improvements when the total project construction cost is greater than \$100,000 by following the delegation requirements and procedures of Subsection (3)(c); or]~~

~~[(B) by rule, authorize a particular department, commission, institution, or agency to control design and construction on projects within a particular dollar range and a particular project type:]~~

~~[(iii) (A) At the request of This is the Place Foundation, the director may authorize the foundation to control design and construction of alterations, repairs, or improvements to facilities at This is the Place State Park to be made with funds of the foundation, including grant monies from the state, or with donated services or materials:]~~

~~[(B) If the foundation controls design and construction as provided in Subsection (3)(a)(iii)(A), the alterations, repairs, or improvements are subject to plan review and inspection by Salt Lake City for the purpose of assuring compliance with building codes:]~~

~~[(b) (i) Except for the placement or installation of works of art through Title 9, Chapter 6, Part 4, Utah Percent-for-Art Act, or as provided in Subsection (3)(b)(ii), and except for facilities under the jurisdiction of the State Capitol Preservation Board, an existing facility may not be altered, repaired, or improved on the property of any state institution, department, commission, or agency if the total project construction cost exceeds \$100,000 until the location, design, plans, and specifications are approved by the director and the officials charged with the administration of the~~

~~affairs of the particular department, commission, institution, or agency.]~~

~~[(ii) Alterations, repairs, or improvements to facilities at This is the Place State Park to be made by This is the Place Foundation with funds of the foundation, including grant monies from the state, or with donated services or materials, are exempt from Subsection (3)(b)(i).]~~

(3) Projects for the construction of new facilities and alterations, repairs, and improvements to existing facilities are not subject to Subsection (2) if the project:

(a) occurs on property under the jurisdiction of the State Capitol Preservation Board;
(b) is within a designated research park at the University of Utah or Utah State University;
(c) occurs within the boundaries of This is the Place State Park and is administered by This is the Place Foundation except that This is the Place Foundation may request the director to administer the design and construction; or

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

~~[(e)]~~ (4) (a) (i) The [director may delegate] State Building Board may authorize the delegation of control over design, construction, and all other aspects of any project to entities of state government on a project-by-project basis [if the state entity requests that delegation in writing and the State Building Board approves the delegation] or for projects within a particular dollar range and a particular project type.

~~[(ii) (A) The director, his designee, or the state entity to whom control has been designated pursuant to Subsection (5)(c)(i) shall notify in writing the elected representatives of local government entities directly and substantively affected by any diagnostic, treatment, parole, probation, or other secured facility project exceeding \$250,000, if:]~~

~~[(I) the nature of the project has been significantly altered since prior notification or approval;]~~

~~[(II) the project would significantly change the nature of the functions presently conducted at the location;]~~

~~[(III) the project adds 50% or more square feet to the area of the facility; or]~~

~~[(IV) the project is new construction.]~~

~~[(B) At the request of either 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 these issues.]~~

~~[(iii)]~~ (ii) The state entity to whom control is delegated shall assume fiduciary control over project finances, shall assume all responsibility for project budgets and expenditures, and shall receive all funds appropriated for the project, including any contingency funds contained in the appropriated project budget.

~~[(iv)]~~ (iii) Delegation of project control does not exempt the state entity from complying with the codes and guidelines for design and construction adopted by the division and the State Building Board.

~~[(v)]~~ (iv) State entities that receive a delegated project may not ~~[have access to the building board]~~ access, for the delegated project, the division's statewide contingency [funds] reserve and project reserve authorized in Section 63A-5-209 ~~[for the delegated project]~~.

(b) For facilities that will be owned, operated, maintained, and repaired by an entity that is not a state agency or institution and that are located on state property, the State Building Board may authorize the owner to administer the design and construction of the project instead of the division.

(5) Notwithstanding any other provision of this section, if a donor donates land to an eligible institution of higher education and commits to build a building or buildings on that land, and the institution agrees to provide funds for the operations and maintenance costs from sources other than state funds, and agrees that the building or buildings will not be eligible for state capital improvement funding, the higher education institution may:

(a) oversee and manage the construction without involvement, oversight, or management from the division; or

(b) arrange for management of the project by the division.

(6) (a) The role of compliance agency as provided in Title 58, Chapter 56, Utah Uniform Building Standards Act, shall be provided by:

(i) the director, for projects administered by the division;

(ii) the entity designated by the State Capitol Preservation Board, for projects under

Subsection (3)(a):

(iii) the local government, for projects exempt from the division's administration under Subsection (3)(b) or administered by This is the Place Foundation under Subsection (3)(c):

(iv) the state entity or local government designated by the State Building Board, for projects under Subsection (4); or

(v) the institution, for projects exempt from the division's administration under Subsection (5)(a).

(b) For the installation of art under Subsection (3)(d), the role of compliance agency shall be provided by the entity that is acting in this capacity for the balance of the project as provided in Subsection (6)(a).

(c) The local government acting as the compliance agency under Subsection (6)(a)(iii) may:

(i) only review plans and inspect construction to enforce the building codes as adopted by the Uniform Building Codes Commission; and

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

(d) (i) The use of state property and any improvements constructed on state property, including improvements constructed by nonstate entities, is not subject to the zoning authority of local governments as provided in Section 10-9-105.

(ii) The state entity controlling the use of the state property shall consider any input received from the local government in determining how the property shall be used.

(7) Before construction may begin, the director shall review the design of projects exempted from the division's administration under Subsection (4) to determine if the design:

(a) complies with any restrictions placed on the project by the State Building Board; and

(b) is appropriate for the purpose and setting of the project.

[~~4~~] (8) (a) The director shall ensure that state-owned facilities, except for facilities under the control of the State Capitol Preservation Board, are life cycle cost effective.

(b) The estimated cost of the analysis shall be included in each program budget document and in the project funding request submitted to the State Building Board, the governor, and the

Legislature.

(c) The final cost estimate shall reflect the most life cycle cost-effective building.

(d) The ~~[director]~~ State Building Board, in consultation with the ~~[State Building Board and Division of Energy]~~ director and the State Energy Manager, shall make rules to implement this Subsection (8) by following the procedures and requirements of Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(e) The State Building Board may exempt a facility from being life cycle cost-effective pursuant to rules, after reviewing and concurring with a written request and justification from the director.

~~[(5) (a) Except as provided in Subsection (5)(c) or (5)(d), and except for facilities constructed on property under the jurisdiction of the State Capitol Preservation Board, the director shall recommend the need for and exercise direct supervision over the design and construction of all new facilities of the state, its departments, commissions, institutions, and agencies if the total project construction cost is in excess of \$100,000.]~~

~~[(b) (i) Except for the placement or installation of works of art under Title 9, Chapter 6, Part 4, Utah Percent-for-Art Act, or as provided in Subsection (5)(b)(ii), (5)(b)(iii), or (5)(b)(iv), and except for facilities constructed on property under the jurisdiction of the State Capitol Preservation Board, a new facility may not be constructed on the property of any state department, commission, institution, or agency if the total project construction cost of the facility, regardless of the funding source, exceeds \$100,000, until the construction of the facility has been approved by the Legislature in an Appropriations Act or by other specific legislation, and the location, design, plans, and specifications are approved by the director and the official charged with the administration of the affairs of the particular department, commission, institution, or agency.]~~

~~[(ii) Facilities to be built with nonstate funds and owned and occupied by nonstate entities within research park areas are exempt from this Subsection (5)(b).]~~

~~[(iii) Facilities to be built for the Utah National Guard for which the funding for construction, operations, and maintenance are derived totally from the United States Government are exempt from the requirement of obtaining legislative approval required by this Subsection (5)(b).]~~

~~[(iv) New facilities to be built at This is the Place State Park by This is the Place Foundation with funds of the foundation, including grant monies from the state, or with donated services or materials, are exempt from Subsection (5)(b)(i).]~~

~~[(c) (i) The director may delegate control over design, construction, and all other aspects of any project to entities of state government on a project-by-project basis if the state entity requests that delegation in writing and the State Building Board approves the delegation.]~~

~~[(ii) The state entity to whom control is delegated shall assume fiduciary control over project finances, shall assume all responsibility for project budgets and expenditures, and shall receive all funds appropriated for the project, including any contingency funds contained in the appropriated project budget.]~~

~~[(iii) Delegation of project control does not exempt the state entity from complying with the codes and guidelines for design and construction adopted by the division and the State Building Board.]~~

~~[(iv) State entities that receive a delegated project may not have access to the building board contingency funds authorized in Section 63A-5-209 for the delegated project.]~~

~~[(d) (i) At the request of This is the Place Foundation, the director may authorize the foundation to control design and construction of any new facility at This is the Place State Park to be built with funds of the foundation, including grant monies from the state, or with donated services or materials.]~~

~~[(ii) If the foundation controls design and construction as provided in Subsection (5)(d)(i), the new facility is subject to plan review and inspection by Salt Lake City for the purpose of assuring compliance with building codes.]~~

~~[(6) (9) The director may expend appropriations for statewide projects from funds provided by the Legislature for those specific purposes and within guidelines established by the State Building Board.~~

~~[(7) (10) (a) The director, with the approval of the Office of Legislative Fiscal Analyst, shall develop standard forms to present capital development and capital improvement cost summary data.~~

~~(b) The director shall:~~

(i) within 30 days after the completion of each capital development project, submit cost summary data for the project on the standard form to the Office of Legislative Fiscal Analyst; and

(ii) upon request, submit cost summary data for a capital improvement project to the Office of Legislative Fiscal Analyst on the standard form.

~~[(8)]~~ (11) Notwithstanding the requirements of Title 63, Chapter 38, Budgetary Procedures Act, the director may:

(a) accelerate the design of projects funded by any appropriation act passed by the Legislature in its annual general session;

(b) use any unencumbered existing account balances to fund that design work; and

(c) reimburse those account balances from the amount funded for those projects when the appropriation act funding the project becomes effective.

(12) (a) The director, his designee, or the state entity to whom control has been designated under Subsection (4), shall notify in writing the elected representatives of local government entities directly and substantively affected by any diagnostic, treatment, parole, probation, or other secured facility project exceeding \$250,000, if:

(i) the nature of the project has been significantly altered since prior 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 either 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 these issues.

Section 6. Section **63A-5-207** is amended to read:

63A-5-207. Availability of appropriated funds -- Excessive obligations prohibited --

Exceptions.

~~[(1) The director may have plans prepared for a facility for which an appropriation has been made by the Legislature, and shall pay for the preparation from the planning fund as soon as:]~~

~~[(a) the measures passed by the Legislature are approved by the governor;]~~

~~[(b) the director receives the written request of the sponsoring institution, and]~~

~~[(c) the state fiscal officer certifies that the Legislature has made an appropriation for the project indicated.]~~

~~[(2) The director may proceed to award contracts for construction of any project if the written request by a sponsoring institution directs the director to proceed and if the state fiscal officer has certified that the Legislature has made an appropriation for the purpose. The director shall promptly notify the director of the Division of Fine Arts, Department of Community and Economic Development, of each request by a sponsoring institution and of each certification by the state fiscal officer.]~~

~~[(3) The funds shall be available upon demand within the year to which the appropriation applies. The director is not required to delay action until the full amount of the appropriation is transferred. However, the state fiscal officer shall make the amount available at times as the director may require to meet the obligations incurred in the development of building projects authorized by the Legislature.]~~

~~[(4)(a) (1) The director shall assure, unless otherwise specifically instructed by the terms of the appropriation of a particular project, that no obligations beyond the [appropriation] authorized funding are incurred in the construction of any project authorized by the Legislature.~~

~~[(b) (2) The director may consent to the drafting of [any] a plan or the awarding of [any] a contract that will exceed in cost the [appropriation] funding currently available for the project in question only if the Legislature has specifically provided for extending construction of a building or the completion of a project into future fiscal periods.~~

~~[(5)(a) The director shall request the state fiscal officer to certify the amount of any funds set aside in an appropriation for deposit in the Percent-for-Art Account at the beginning of the percent-for-art project for which the appropriation is made.]~~

~~[(b) The certified amount shall be released to the director of the Division of Fine Arts, who shall use the fund to administer the Percent-for-Art Program established under Title 64, Chapter 2a.]~~

Section 7. Section **63A-5-209** is amended to read:

63A-5-209. Building appropriations supervised by director -- Disposition of surplus.

(1) The director shall:

(a) supervise the expenditure of funds in providing plans, engineering specifications, sites, and construction of the buildings for which legislative appropriations are made and shall specifically allocate money appropriated when more than one project is included in any single appropriation without legislative directive;

(b) (i) expend the amount necessary from appropriations for planning, engineering, and architectural work; and

(ii) allocate amounts from appropriations necessary to cover expenditures previously made from the planning fund in the preparation of plans, engineering, and specifications shall be returned to the fund; and

(c) hold in a statewide contingency reserve the amount budgeted for contingencies in appropriations for the construction or remodeling of facilities, for contingencies which may be over and above all amounts obligated by contract for planning, engineering, and architectural work, sites, and construction contracts.

(i) The amount budgeted for contingencies shall be based on a sliding scale percentage of the construction cost. The sliding scale shall range from 4-1/2% to 6-1/2% for new construction, and from 6% to 9-1/2% for remodeling projects.

(ii) The statewide contingency funds shall be held by the director to cover costs such as change orders and other unforeseen, necessary costs beyond those specifically budgeted for the project.

(iii) The Legislature shall annually review the percentage and the amount held in the statewide contingency reserve. It may reappropriate to other building needs any amount from the statewide contingency reserve which is determined to be in excess of the reserve required to meet future contingency needs.

(2) The director shall hold in a separate reserve those state appropriated funds accrued through bid savings and project residual as a project reserve.

(a) The director may authorize the use of project reserve funds only for the award of contracts in excess of the construction budget if this is required to meet the intent of the project.

(b) The Legislature shall annually review the amount held in the project reserve for possible reallocation by the Legislature to other building needs.

(3) ~~[In the event]~~ If any part of the appropriation for a building project, other than the part set aside for the Utah Percent-for-Art Program under Title 9, Chapter 6, Part 4, remains unencumbered after the award of construction and professional service contracts, and establishing a reserve for fixed and moveable equipment, the balance of the appropriation shall be dedicated to the ~~[contingency fund described in this section and shall]~~ project reserve and does not revert to the General Fund.

(4) (a) One percent of the amount appropriated for the construction of any new state building or facility may be appropriated and set aside ~~[in an appropriation]~~ for the Utah Percent-for-Art Program administered by the Division of Fine Arts under Title 9, Chapter 6, Part 4.

(b) The director shall release to the Division of Fine Arts any funds included in an appropriation to the division that are designated by the Legislature for the Utah Percent-for-Art Program.

(c) Funds from appropriations for any state building or facility of which any part is derived from the issuance of bonds, to the extent it would jeopardize the federal income tax exemption otherwise allowed for interest paid on bonds, ~~[shall]~~ may not be set aside.

Section 8. Section **63A-5-211** is amended to read:

63A-5-211. Planning Fund expenditures authorized -- Ceiling on expenditures -- Recovery -- Not to revert to General Fund.

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

~~[(b) Planning Fund commitments made prior to February 28, 1987, will not require reimbursement, and any balance existing in the Planning Fund on that date beyond \$350,000 shall be~~

returned to the General Fund.]

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

(b) These payments shall be a charge on the project for which they were drawn.

(c) The amount paid shall be credited to the Planning Fund when the Legislature appropriates money for any building project for which planning costs have previously been paid from the Planning Fund.

(4) (a) Money may also be expended 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) However, upon approval of such financing, the money spent for architectural and engineering services shall be returned as a reimbursement to the Planning Fund.

(5) This fund does not lapse to the General Fund at the end of any year but shall remain as a permanent fund.

Section 9. Section **63A-5-220** is amended to read:

63A-5-220. Definitions -- Creation of Trust Fund for People with Disabilities -- Use of trust fund monies -- Feasibility study and report.

(1) As used in this section:

(a) "Developmental center" means the Utah State Developmental Center described in Section 62A-5-201.

(b) [~~"Division"~~] "DSPD" means the Division of Services for People with Disabilities within the Department of Human Services.

(c) "Fund" means the Trust Fund for People with Disabilities created by this section.

(2) Notwithstanding the provisions of Section 63A-5-215, any monies received by the division or DSPD from the sale, lease, except any lease existing on May 1, 1995, or other disposition of real property associated with the developmental center shall be deposited in the fund.

(3) (a) There is created a restricted account within the General Fund entitled the "Trust Fund for People with Disabilities."

(b) The Division of Finance shall deposit the following revenues into the fund:

(i) revenue from the sale, lease, except any lease existing on May 1, 1995, or other disposition of real property associated with the developmental center;

(ii) revenue from the sale, lease, or other disposition of water rights associated with the developmental center; and

(iii) revenue from voluntary contributions made to the fund.

(c) Notwithstanding the provisions of Section 65A-4-1, any sale or disposition of real property or water rights associated with the developmental center shall be conducted as provided in this Subsection (3)(c).

(i) The division shall secure the concurrence of DSPD and the approval of the governor [~~through the director of the Division of Facilities Construction and Management~~] before making the sale or other disposition of land or water rights.

(ii) The [~~Division of Facilities Construction and Management~~] division shall sell or otherwise dispose of the land or water rights as directed by the governor.

(d) The state treasurer shall invest monies contained in the fund according to the procedures and requirements of Title 51, Chapter 7, State Money Management Act, and all interest shall remain with the fund.

(e) (i) Except as provided in Subsection (3)(e)(ii), no expenditure or appropriation may be made from the fund.

(ii) (A) The Legislature may appropriate interest earned on fund monies invested pursuant to Subsection (3)(d), leases from real property and improvements, leases from water, rents, and fees to [~~the Division of Services for People with Disabilities within the Department of Human Services for use by that division~~] DSPD for programs described in Title 62A, Chapter 5, Services [~~to~~] for People with Disabilities.

(B) Fund monies appropriated each year under Subsection (3)(e)(ii)(A) may not be expended unless approved by the Board of Services for People with Disabilities within the Department of Human Services.

~~[(4) By July 1, 1998, the Board of Regents shall:]~~

~~[(a) review the advisability of leasing developmental center land by Utah Valley State~~

College;]

~~[(b) in conducting their review, consult with the Division of Facilities Construction and Management about the advantages and disadvantages of the leasing and purchasing options;]~~

~~[(c) if the board determines that a lease or purchase is advisable, identify which land should be acquired, the terms of the lease or purchase, and the financing mechanism to be used; and]~~

~~[(d) report its findings, conclusions, and recommendations to the Education Interim Committee, the Health and Human Services Interim Committee, and the Executive Appropriations Interim Committee.]~~

Section 10. Section **63A-5-222** is amended to read:

63A-5-222. Critical land near state prison -- Definitions -- Preservation as open land -- Management and use of land -- Restrictions on transfer -- Wetlands development -- Conservation easement.

(1) For purposes of this section:

(a) "Corrections" means the Department of Corrections created under Section 64-13-2.

(b) "Critical land" means a parcel of approximately 250 acres of land owned by the division and located on the east edge of the Jordan River between about 12300 South and 14600 South in Salt Lake County, approximately the southern half of whose eastern boundary abuts the Denver and Rio Grande Western Railroad right of way.

~~[(c) "Division" means the Division of Facilities Construction and Management created under Section 63A-5-201.]~~

~~[(d)]~~ (c) (i) "Open land" means land that is:

(A) preserved in or restored to a predominantly natural, open, and undeveloped condition; and

(B) used for:

(I) wildlife habitat;

(II) cultural or recreational use;

(III) watershed protection; or

(IV) another use consistent with the preservation of the land in or restoration of the land to

a predominantly natural, open, and undeveloped condition.

(ii) (A) "Open land" does not include land whose predominant use is as a developed facility for active recreational activities, including baseball, tennis, soccer, golf, or other sporting or similar activity.

(B) The condition of land does not change from a natural, open, and undeveloped condition because of the development or presence on the land of facilities, including trails, waterways, and grassy areas, that:

(I) enhance the natural, scenic, or aesthetic qualities of the land; or

(II) facilitate the public's access to or use of the land for the enjoyment of its natural, scenic, or aesthetic qualities and for compatible recreational activities.

(2) (a) (i) The critical land shall be preserved in perpetuity as open land.

(ii) The long-term ownership and management of the critical land should eventually be turned over to the Department of Natural Resources created under Section 63-34-3 or another agency or entity that is able to accomplish the purposes and intent of this section.

(b) Notwithstanding Subsection (2)(a)(i) and as funding is available, certain actions should be taken on or with respect to the critical land, including:

(i) the development and implementation of a program to eliminate noxious vegetation and restore and facilitate the return of natural vegetation on the critical land;

(ii) the development of a system of trails through the critical land that is compatible with the preservation of the critical land as open land;

(iii) the development and implementation of a program to restore the natural features of and improve the flows of the Jordan River as it crosses the critical land;

(iv) the preservation of the archeological site discovered on the critical land and the development of an interpretive site in connection with the archeological discovery;

(v) in restoring features on the critical land, the adoption of methods and plans that will enhance the critical land's function as a wildlife habitat;

(vi) taking measures to reduce safety risks on the critical land; and

(vii) the elimination or rehabilitation of a prison dump site on the critical land.

(3) (a) Except as provided in Subsection (3)(b), no interest in the critical land may be sold, assigned, leased, or otherwise transferred unless measures are taken to ensure that the critical land that is transferred will be preserved as open land in perpetuity.

(b) Notwithstanding Subsection (3)(a), exchanges of property may be undertaken to resolve boundary disputes with adjacent property owners and easements may be granted for trails and other purposes consistent with Subsection (2)(b) and with the preservation of the critical land as open land.

(4) The division shall use the funds remaining from the appropriation under Chapter 399, Laws of Utah 1998, for the purposes of:

- (a) determining the boundaries and legal description of the critical land;
- (b) determining the boundaries and legal description of the adjacent property owned by the division;
- (c) fencing the critical land and adjacent land owned by the division where appropriate and needed; and
- (d) assisting to carry out the intent of this section.

(5) (a) Notwithstanding Subsection (2)(a)(i), the division or its successor in title to the critical land may develop or allow a public agency or private entity to develop more wetlands on the critical land than exist naturally or existed previously.

(b) (i) Subject to Subsections (3)(a) and (5)(b)(ii), the division or its successor in title may transfer jurisdiction of all or a portion of the critical land to a public agency or private entity to provide for the development and management of wetlands and designated wetland buffer areas.

(ii) Before transferring jurisdiction of any part of the critical land under Subsection (5)(b)(i), the division or its successor in title shall assure that reasonable efforts are made to obtain approval from the appropriate federal agency to allow mitigation credits in connection with the critical land to be used for impacts occurring anywhere along the Wasatch Front.

(6) Notwithstanding any other provision of this section, corrections shall have access to the cooling pond located on the critical land as long as that access to and use of the cooling pond are not inconsistent with the preservation of the critical land as open land.

(7) [~~a~~] The Department of Corrections, the division, and all other state departments,

divisions, or agencies shall cooperate together to carry out the intent of this section.

~~[(b) The division, with the cooperation and assistance of the Governor's Office of Planning and Budget established under Section 63-38-1.4, shall report to the Political Subdivisions Interim Committee of the Legislature no later than November 30, 1999, concerning the efforts and actions of the division and other state agencies under this section to carry out the intent of this section.]~~

(8) In order to ensure that the land referred to in this section is preserved as open land, the division shall, as soon as practicable, place the land under a perpetual conservation easement in favor of an independent party such as a reputable land conservation organization or a state or local government agency with experience in conservation easements.

Section 11. Repealer.

This act repeals:

Section 63A-5-210, Liquidation of assets.

Section 63A-5-212, Buildings for which director responsible.

Section 63A-5-214, Transfer of title to real property from DFCM to the State Board of Education.

Section 63A-5-217, No unauthorized expenditures for facilities.

Section 12. Coordination clause.

If this bill and H B. 153, Utah Department of Transportation Maintenance Sheds, both pass, it is the intent of the Legislature that the amendments to Section 63A-5-206 in H.B.153 may not be given effect.