

1 **ENERGY SAVINGS IN STATE BUILDINGS**

2 2006 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Fred R. Hunsaker**

5 Senate Sponsor: Peter C. Knudson

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies a portion of the Quality Growth Act and statutes governing the State
10 Building Energy Efficiency Program, the State Building Board, and the Division of
11 Facilities Construction and Management.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ modifies definitions;
- 15 ▶ eliminates the requirement for state agencies to place 50% of net energy savings in
16 the LeRay McAllister Critical Land Conservation Fund;
- 17 ▶ provides that the Division of Facilities Construction and Management shall develop
18 and administer the State Building Energy Efficiency Program;
- 19 ▶ requires the Division of Facilities Construction and Management to:
 - 20 • develop incentives to encourage state entities to conserve energy and reduce
21 energy costs;
 - 22 • procure energy efficient products where practicable;
 - 23 • analyze energy consumption by state agencies;
 - 24 • establish an advisory group to assist with development and implementation of
25 the program; and
 - 26 • provide a yearly energy savings report to the governor in addition to the
27 Legislature;



- 28 ▶ requires state government entities to appoint a staff member to coordinate and
- 29 report on energy saving efforts;
- 30 ▶ reduces the maximum term for energy savings agreements entered into by state
- 31 agencies, modifies terms in the definition of energy savings agreement, and requires
- 32 the agency to obtain the preapproval of the governor and to notify the Office of
- 33 Legislative Fiscal Analyst before entering into an agreement;
- 34 ▶ provides that DFCM may establish energy savings design procedures for
- 35 improvements to existing state facilities;
- 36 ▶ permits the State Building Board to require an entity that benefits from a capital
- 37 improvement project to repay the capital improvement funds from savings resulting
- 38 from the project;
- 39 ▶ modifies provisions related to the State Building Board's rulemaking in relation to
- 40 life cycle cost-effectiveness of state facilities;
- 41 ▶ provides that life-cycle effectiveness shall be determined using the most prudent
- 42 cost of owning and operating a facility; and
- 43 ▶ makes technical changes.

44 Monies Appropriated in this Bill:

45 None

46 Other Special Clauses:

47 None

48 Utah Code Sections Affected:

49 AMENDS:

- 50 **11-38-102**, as last amended by Chapter 16, Laws of Utah 2003
- 51 **11-38-301**, as last amended by Chapter 256, Laws of Utah 2002
- 52 **63-9-63**, as enacted by Chapter 164, Laws of Utah 1985
- 53 **63-9-67**, as enacted by Chapter 24, Laws of Utah 1999
- 54 **63-38-3**, as last amended by Chapter 16, Laws of Utah 2003
- 55 **63-38-8.1**, as last amended by Chapter 71, Laws of Utah 2005
- 56 **63A-5-103**, as last amended by Chapter 142, Laws of Utah 1998
- 57 **63A-5-104**, as last amended by Chapter 351, Laws of Utah 2004
- 58 **63A-5-204**, as last amended by Chapter 34, Laws of Utah 2004

59 **63A-5-206**, as last amended by Chapters 231 and 254, Laws of Utah 2005

60 REPEALS:

61 **63-38-18**, as enacted by Chapter 24, Laws of Utah 1999



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

64 Section 1. Section **11-38-102** is amended to read:

65 **11-38-102. Definitions.**

66 As used in this chapter:

67 (1) "Affordable housing" means housing occupied or reserved for occupancy by
68 households with a gross household income equal to or less than 80% of the median gross
69 income of the applicable municipal or county statistical area for households of the same size.

70 (2) "Agricultural land" has the same meaning as "land in agricultural use" under
71 Section 59-2-502.

72 (3) "Brownfield sites" means abandoned, idled, or underused commercial or industrial
73 land where expansion or redevelopment is complicated by real or perceived environmental
74 contamination.

75 (4) "Commission" means the Quality Growth Commission established in Section
76 11-38-201.

77 (5) "Fund" means the LeRay McAllister Critical Land Conservation Fund established
78 in Section 11-38-301.

79 (6) "Infill development" means residential, commercial, or industrial development on
80 unused or underused land, excluding open land and agricultural land, within existing, otherwise
81 developed urban areas.

82 (7) "Local entity" means a county, city, or town.

83 (8) "OPB" means the Governor's Office of Planning and Budget established under
84 Section 63-38d-201.

85 (9) (a) "Open land" means land that is:

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

88 (ii) used for:

89 (A) wildlife habitat;

- 90 (B) cultural or recreational use;
- 91 (C) watershed protection; or
- 92 (D) another use consistent with the preservation of the land in or restoration of the land
- 93 to a predominantly natural, open, and undeveloped condition.

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

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

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

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

103 [~~(10) "State agency" includes each executive, legislative, and judicial branch~~
 104 ~~department, agency, board, commission, or division, however denominated, and each state~~
 105 ~~educational institution.]~~

106 [~~(11) "State Building Energy Efficiency Program" has the meaning as defined in~~
 107 ~~Section 63-9-67.]~~

108 [~~(12)~~] (10) "Surplus land" means real property owned by the Department of
 109 Administrative Services, the Department of Agriculture and Food, the Department of Natural
 110 Resources, or the Department of Transportation that the individual department determines not
 111 to be necessary for carrying out the mission of the department.

112 Section 2. Section **11-38-301** is amended to read:

113 **11-38-301. LeRay McAllister Critical Land Conservation Fund.**

114 (1) There is created a restricted special revenue fund entitled the "LeRay McAllister
 115 Critical Land Conservation Fund," consisting of:

116 (a) money appropriated or otherwise made available by the Legislature;

117 (b) contributions of money, property, or equipment from federal agencies, political
 118 subdivisions of the state, persons, or corporations; and

119 (c) proceeds that a department chooses to place into the fund from the sale of surplus
 120 land under Subsection (2)~~;~~and.

121 [~~(d) funds from the State Building Energy Efficiency Program.~~]

122 (2) The Department of Administrative Services, the Department of Agriculture and
123 Food, the Department of Natural Resources, and the Department of Transportation may place
124 proceeds from the sale of surplus land into the fund.

125 (3) The total amount of money in the fund may not exceed \$6,000,000.

126 Section 3. Section **63-9-63** is amended to read:

127 **63-9-63. Legislative findings and policy.**

128 (1) The Legislature finds the following:

129 (a) The operation of facilities owned and controlled by the state consumes significant
130 amounts of energy.

131 (b) Facilities owned and controlled by the state present a significant opportunity for
132 energy cost savings through the implementation of conservation measures.

133 (c) Principles which produce efficient facility management in the private sector are
134 equally applicable to the management of public buildings and facilities.

135 (d) There exists, in the private sector, favorable alternative methods of financing
136 energy conservation measures which are not readily adaptable to financing state facility energy
137 efficiency improvements due to current budgetary practices.

138 (e) Maximization of energy conservation efforts in light of limited resources requires
139 careful advance planning by responsible agencies.

140 (2) The Legislature declares that it is the policy of the state to:

141 (a) undertake aggressive programs designed to reduce energy use in state facilities in
142 order to reduce the operating costs of state government and to set an example of energy
143 efficiency for the public[-];

144 (b) utilize, to the greatest practical extent, alternative funding sources and methods of
145 financing energy efficiency improvements in state facilities in a manner which minimizes the
146 necessity for increased appropriations[-];

147 (c) employ private sector management incentive principles, to the extent practicable, to
148 implement the policies in Subsections (2)(a) and (b)[-];

149 (d) develop incentives to encourage state entities to conserve energy, reduce energy
150 costs, and utilize renewable energy sources where practicable; and

151 (e) procure and use energy efficient products where practicable.

152 Section 4. Section ~~63-9-67~~ is amended to read:

153 **63-9-67. State Building Energy Efficiency Program.**

154 (1) For purposes of this section:

155 (a) "Division" means the Division of Facilities Construction and Management

156 established in Section 63A-5-201.

157 ~~[(a)]~~ (b) "Energy efficiency measures" means actions taken or initiated by a state
158 agency that reduce the state agency's energy use, increase the state agency's energy efficiency,
159 reduce source energy consumption, reduce water consumption, or lower the costs of energy or
160 water to the state agency.

161 ~~[(b)]~~ (c) "Energy savings agreement" means an agreement entered into by a state
162 agency [participating in the State Building Energy Efficiency Program] whereby the state
163 agency implements energy efficiency measures and finances the costs associated with
164 implementation of energy efficiency measures [from] using the stream of expected savings in
165 [energy] utility costs resulting from implementation of the energy efficiency measures as the
166 funding source for repayment.

167 ~~[(c) "Fund" has the meaning as defined in Section 11-38-102.]~~

168 ~~[(d) "Net savings" means savings in energy costs that a state agency realizes after~~
169 ~~taking into account the costs of implementing the energy efficiency measures or conservation~~
170 ~~activities that produce the savings.]~~

171 ~~[(e)]~~ (d) "State agency" [has the meaning as defined in Section 11-38-102.] means each
172 executive, legislative, and judicial branch department, agency, board, commission, or division,
173 and includes a state institution of higher education as defined in Section 53B-3-102.

174 ~~[(f)]~~ (e) "State Building Energy Efficiency Program" means a program [that the
175 governor may establish by executive order recommending to or requiring state agencies to
176 implement] established under this section for the purpose of improving energy efficiency
177 measures and reducing the energy costs for state facilities.

178 (f) (i) "State facility" means any building, structure, or other improvement that is
179 constructed on property owned by the state, its departments, commissions, institutions, or
180 agencies, or a state institution of higher education.

181 (ii) "State facility" does not mean:

182 (A) an unoccupied structure that is a component of the state highway system; or

183 (B) a privately owned structure that is located on property owned by the state, its
184 departments, commissions, institutions, or agencies, or a state institution of higher education.

185 (2) The division shall:

186 (a) develop and administer the state building energy efficiency program, which shall
187 include guidelines and procedures to improve energy efficiency in the maintenance and
188 management of state facilities;

189 (b) provide information and assistance to state agencies in their efforts to improve
190 energy efficiency;

191 (c) analyze energy consumption by state agencies to identify opportunities for
192 improved energy efficiency;

193 (d) establish an advisory group composed of representatives of state agencies to
194 provide information and assistance in the development and implementation of the state
195 building energy efficiency program; and

196 ~~[(2)(a)]~~ (e) [The person or agency overseeing the state building energy efficiency
197 program, as designated by the governor in an executive order establishing the program, shall]
198 submit [a report annually] to the governor and to the Capital Facilities and Administrative
199 Services Appropriations Subcommittee of the Legislature[:] an annual report that:

200 (i) identifies strategies for long-term improvement in energy efficiency;

201 (ii) identifies goals for energy conservation for the upcoming year; and

202 ~~[(b) Each report under Subsection (2)(a) shall:]~~

203 ~~[(i) specify the amount that represents 50% of the net savings realized by all state~~
204 ~~agencies from participating in the state building energy efficiency program; and]~~

205 ~~[(ii) detail]~~ (iii) details energy management programs and strategies that were
206 undertaken in the previous year to improve the energy efficiency of state agencies and the
207 energy savings achieved.

208 ~~[(c) The amount specified under Subsection (2)(b)(i) may be placed into the fund;~~
209 ~~subject to legislative appropriation during the general session following submission of the~~
210 ~~report under Subsection (2)(a).]~~

211 (3) Each state agency shall:

212 (a) designate a staff member that is responsible for coordinating energy efficiency
213 efforts within the agency;

- 214 (b) provide energy consumption and costs information to the division;
215 (c) develop strategies for improving energy efficiency and reducing energy costs; and
216 (d) provide the division with information regarding the agency's energy efficiency and
217 reduction strategies.

218 ~~[(3) Notwithstanding Subsection (2), a state agency may fulfill the terms of an~~
219 ~~agreement entered into before the effective date of this section providing for the state agency's~~
220 ~~payment for energy efficiency measures.]~~

221 (4) (a) A state agency may enter into an energy savings agreement for a term of up to
222 [25] 20 years.

223 (b) Before entering into an energy savings agreement, the state agency shall:

224 (i) utilize the division to oversee the project unless the project is exempt from the
225 division's oversight or the oversight is delegated to the agency under the provisions of Section
226 63A-5-206;

227 (ii) obtain the prior approval of the governor or the governor's designee; and

228 (iii) provide the Office of Legislative Fiscal Analyst with a copy of the proposed
229 agreement before the agency enters into the agreement.

230 Section 5. Section **63-38-3** is amended to read:

231 **63-38-3. Appropriations governed by chapter -- Restrictions on expenditures --**
232 **Transfer of funds.**

233 (1) All moneys appropriated by the Legislature are appropriated upon the terms and
234 conditions set forth in this chapter, and any department, agency, or institution, except the
235 Legislature and its committees, or where specifically exempted by the appropriating act, which
236 accepts moneys appropriated by the Legislature, does so subject to this chapter.

237 (2) (a) In providing that certain appropriations are to be expended in accordance with a
238 schedule or other restrictions, if any, set forth after each appropriations item, it is the intent of
239 the Legislature to limit the amount of money to be expended from each appropriations item for
240 certain specified purposes.

241 (b) Each schedule:

242 (i) is a restriction or limitation upon the expenditure of the respective appropriation
243 made;

244 (ii) does not itself appropriate any money; and

245 (iii) is not itself an item of appropriation.

246 (c) [~~Except as provided in Subsections 63-9-67(2) and 63-38-18(2), an~~] An
247 appropriation or any surplus of any appropriation may not be diverted from any department,
248 agency, institution, or division to any other department, agency, institution, or division.

249 (d) The money appropriated subject to a schedule or restriction may be used only for
250 the purposes authorized.

251 (e) (i) If any department, agency, or institution for which money is appropriated
252 requests the transfer of moneys appropriated to it from one purpose or function to another
253 purpose or function within an item of appropriation, the director of the Governor's Office of
254 Planning and Budget shall require a new work program to be submitted for the fiscal year
255 involved setting forth the purpose and necessity for such transfer.

256 (ii) The director and fiscal officer shall review the proposed change and submit their
257 findings and recommendations to the governor, who may permit the transfer.

258 (iii) The state fiscal officer shall notify the Legislature through the Office of the
259 Legislative Fiscal Analyst of action taken by the governor.

260 (f) [~~Except as provided in Subsections 63-9-67(2) and 63-38-18(2), monies~~] Monies
261 may not be transferred from one item of appropriation to any other item of appropriation.

262 (3) This section does not apply to the Investigation Account of the Water Resources
263 Construction Fund. The investigation account shall continue to be governed by Section
264 73-10-8.

265 Section 6. Section **63-38-8.1** is amended to read:

266 **63-38-8.1. Nonlapsing authority.**

267 (1) As used in this section:

268 (a) (i) "Agency" means each department, commission, board, council, agency,
269 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,
270 unit, bureau, panel, or other administrative unit of the state.

271 (ii) "Agency" does not include those entities whose unappropriated and unencumbered
272 balances are made nonlapsing by the operation of Subsection 63-38-8(2).

273 (b) "Appropriation balance" means the unexpended and unencumbered balance of a
274 line item appropriation made by the Legislature to an agency that exists at the end of a fiscal
275 year.

276 (c) "Nonlapsing" means that an agency's appropriation balance is not closed out to the
277 appropriate fund at the end of a fiscal year as required by Section 63-38-8.

278 (d) "One-time project" means a project or program that can be completed with the
279 appropriation balance and includes such items as employee incentive awards and bonuses,
280 purchase of equipment, and one-time training.

281 (e) "One-time projects list" means:

282 (i) a prioritized list of one-time projects, upon which an agency would like to spend
283 any appropriation balance; and

284 (ii) for each project, the maximum amount the agency is estimating for the project.

285 (f) "Program" means a service provided by an agency to members of the public, other
286 agencies, or to employees of the agency.

287 (2) Notwithstanding the requirements of Section 63-38-8, an agency may~~[-(a)]~~, by
288 following the procedures and requirements of this section, retain and expend any appropriation
289 balance~~[-and]~~.

290 ~~[(b) comply with the requirements of Subsections 63-9-67(2) and 63-38-18(2).]~~

291 (3) (a) Each agency that wishes to preserve any part or all of its appropriation balance
292 as nonlapsing shall include a one-time projects list as part of the budget request that it submits
293 to the governor and the Legislature at the annual general session of the Legislature immediately
294 before the end of the fiscal year in which the agency may have an appropriation balance.

295 (b) An agency may not include a proposed expenditure on its one-time projects list if:

296 (i) the expenditure creates a new program;

297 (ii) the expenditure enhances the level of an existing program; or

298 (iii) the expenditure will require a legislative appropriation in the next fiscal year.

299 (c) The governor:

300 (i) may approve some or all of the items from an agency's one-time projects list; and

301 (ii) shall identify and prioritize any approved one-time projects in the budget that he
302 submits to the Legislature.

303 (4) The Legislature:

304 (a) may approve some or all of the specific items from an agency's one-time projects
305 list as authorized expenditures of an agency's appropriation balance;

306 (b) shall identify any authorized one-time projects in the appropriate line item

307 appropriation; and

308 (c) may prioritize one-time projects in intent language.

309 Section 7. Section **63A-5-103** is amended to read:

310 **63A-5-103. Board -- Powers.**

311 (1) The State Building Board shall:

312 (a) in cooperation with state institutions, departments, commissions, and agencies,
313 prepare a master plan of structures built or contemplated;

314 (b) submit to the governor and the Legislature a comprehensive five-year building plan
315 for the state containing the information required by Subsection (2);

316 (c) amend and keep current the five-year building program for submission to the
317 governor and subsequent legislatures;

318 (d) as a part of the long-range plan, recommend to the governor and Legislature any
319 changes in the law that are necessary to insure an effective, well-coordinated building program
320 for all state institutions;

321 (e) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
322 make rules;

323 (i) that are necessary to discharge its duties and the duties of the Division of Facilities
324 Construction and Management [by following the procedures and requirements of Title 63,
325 Chapter 46a, Utah Administrative Rulemaking Act]; and

326 (ii) to establish standards and requirements for life cycle cost-effectiveness of state
327 facility projects;

328 (f) with support from the Division of Facilities Construction and Management,
329 establish design criteria, standards, and procedures for [~~the use of state agencies and~~
330 ~~institutions in the planning for~~] planning, design, and construction of new state [buildings and]
331 facilities and for improvements to existing state facilities, including life-cycle costing,
332 cost-effectiveness studies, and other methods and procedures that [~~demonstrate~~] address:

333 (i) the need for the building or facility;

334 (ii) the effectiveness of its design;

335 (iii) the efficiency of energy use; and

336 (iv) the usefulness of the building or facility over its lifetime;

337 (g) prepare and submit a yearly request to the governor and the Legislature for a

338 designated amount of square footage by type of space to be leased by the Division of Facilities
339 Construction and Management in that fiscal year; and

340 (h) assure the efficient use of all building space.

341 (2) In order to provide adequate information upon which the State Building Board may
342 make its recommendation under Subsection (1), any state agency requesting new full-time
343 employees for the next fiscal year shall report those anticipated requests to the building board
344 at least 90 days before the annual general session in which the request is made.

345 (3) (a) The State Building Board shall ensure that the five-year building plan required
346 by Subsection (1)(c) includes:

347 (i) a list that prioritizes construction of new buildings for all structures built or
348 contemplated based upon each agency's, department's, commission's, and institution's present
349 and future needs;

350 (ii) information, and space use data for all state-owned and leased facilities;

351 (iii) substantiating data to support the adequacy of any projected plans;

352 (iv) a summary of all statewide contingency reserve and project reserve balances as of
353 the end of the most recent fiscal year;

354 (v) a list of buildings that have completed a comprehensive facility evaluation by an
355 architect/engineer or are scheduled to have an evaluation;

356 (vi) for those buildings that have completed the evaluation, the estimated costs of
357 needed improvements; and

358 (vii) for projects recommended in the first two years of the five-year building plan:

359 (A) detailed estimates of the cost of each project;

360 (B) the estimated cost to operate and maintain the building or facility on an annual
361 basis;

362 (C) the estimated number of new agency full-time employees expected to be housed in
363 the building or facility;

364 (D) the estimated cost of new or expanded programs and personnel expected to be
365 housed in the building or facility;

366 (E) the estimated lifespan of the building with associated costs for major component
367 replacement over the life of the building; and

368 (F) the estimated cost of any required support facilities.

369 (b) [~~The~~] In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking
370 Act, the State Building Board may make rules prescribing the format for submitting the
371 information required by this Subsection (3).

372 (4) (a) [~~The~~] In accordance with Title 63, Chapter 46a, Utah Administrative
373 Rulemaking Act, the State Building Board may make rules establishing circumstances under
374 which bids may be modified when all bids for a construction project exceed available funds as
375 certified by the director.

376 (b) In making those rules, the State Building Board shall provide for the fair and
377 equitable treatment of bidders.

378 Section 8. Section **63A-5-104** is amended to read:

379 **63A-5-104. Capital development and capital improvement process -- Approval**
380 **requirements -- Limitations on new projects -- Emergencies.**

381 (1) As used in this section:

382 (a) "Capital developments" means any:

- 383 (i) remodeling, site, or utility projects with a total cost of \$1,500,000 or more;
384 (ii) new facility with a construction cost of \$250,000 or more; or
385 (iii) purchase of real property where an appropriation is requested to fund the purchase.

386 (b) "Capital improvements" means any:

387 (i) remodeling, alteration, replacement, or repair project with a total cost of less than
388 \$1,500,000;

389 (ii) site and utility improvement with a total cost of less than \$1,500,000; or

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

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

393 (ii) "New facility" includes:

394 (A) an addition to an existing building; and

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

396 (iii) "New facility" does not mean:

397 (A) the replacement of state-owned space that is demolished, if the total construction
398 cost of the replacement space is less than \$1,500,000; or

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

400 (d) "Replacement cost of existing state facilities" means the replacement cost, as
401 determined by the Division of Risk Management, of state facilities, excluding auxiliary
402 facilities as defined by the State Building Board.

403 (e) "State funds" means public monies appropriated by the Legislature.

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

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

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

411 (i) the requesting higher education institution has provided adequate assurance that:

412 (A) state funds will not be used for the design or construction of the facility; and

413 (B) the higher education institution has a plan for funding in place that will not require
414 increased state funding to cover the cost of operations and maintenance to, or state funding for,
415 immediate or future capital improvements to the resulting facility; and

416 (ii) the use of the state property is:

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

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

419 (c) (i) The Division of Facilities Construction and Management shall maintain a record
420 of facilities constructed under the exemption provided in Subsection (3)(b).

421 (ii) For facilities constructed under the exemption provided in Subsection (3)(b), a
422 higher education institution may not request:

423 (A) increased state funds for operations and maintenance; or

424 (B) state capital improvement funding.

425 (d) Legislative approval is not required for:

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

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

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

431 materials;

432 (iv) capital projects that are funded by the Navajo Trust Fund Board from Navajo Trust
433 Fund monies and the Uintah Basin Revitalization Fund that do not provide a new facility for a
434 state agency or higher education institution; or

435 (v) capital projects on school and institutional trust lands that are funded by the School
436 and Institutional Trust Lands Administration from the Land Grant Management Fund and that
437 do not fund construction of a new facility for a state agency or higher education institution.

438 (e) (i) Legislative approval is not required for capital development projects to be built
439 for the Department of Transportation as a result of an exchange of real property under Section
440 72-5-111.

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

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

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

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

454 (d) The building board may require an entity that benefits from a capital improvement
455 project to repay the capital improvement funds from savings that result from the project.

456 (5) The Legislature may authorize:

457 (a) the total square feet to be occupied by each state agency; and

458 (b) the total square feet and total cost of lease space for each agency.

459 (6) (a) Except as provided in Subsection (6)(b), the Legislature may not fund the design
460 or construction of any new capital development projects, except to complete the funding of
461 projects for which partial funding has been previously provided, until the Legislature has

462 appropriated 1.1% of the replacement cost of existing state facilities to capital improvements.

463 (b) (i) As used in this Subsection (6)(b), "operating deficit" means that estimated
464 General Fund or Uniform School Fund revenues are less than budgeted for the current or next
465 fiscal year.

466 (ii) If the Legislature determines that an operating deficit exists, the Legislature may, in
467 eliminating the deficit, reduce the amount appropriated to capital improvements to 0.9% of the
468 replacement cost of state buildings.

469 (7) (a) If, after approval of capital development and capital improvement priorities by
470 the Legislature under this section, emergencies arise that create unforeseen critical capital
471 improvement projects, the State Building Board may, notwithstanding the requirements of Title
472 63, Chapter 38, Budgetary Procedures Act, reallocate capital improvement funds to address
473 those projects.

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

476 (i) the Office of Legislative Fiscal Analyst within 30 days of the reallocation; and

477 (ii) the Legislature at its next annual general session.

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

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

481 (i) reserves funds for the Division of Facilities Construction and Management for
482 emergency projects; and

483 (ii) allows the delegation of projects to some institutions and agencies with the
484 requirement that a report of expenditures will be filed annually with the Division of Facilities
485 Construction and Management and appropriate governing bodies.

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

489 Section 9. Section **63A-5-204** is amended to read:

490 **63A-5-204. Specific powers and duties of director.**

491 (1) As used in this section, "capitol hill facilities" and "capitol hill grounds" have the
492 same meaning as provided in Section 63C-9-102.

493 (2) (a) The director shall:

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

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

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

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

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

509 (vi) file a description and impression of the seal with the Division of Archives;

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

513 (viii) report all properties acquired by the state, except those acquired by institutions of
514 higher education, to the director of the Division of Finance for inclusion in the state's financial
515 records;

516 (ix) before charging a rate, fee, or other amount for services provided by the division's
517 internal service fund to an executive branch agency, or to a subscriber of services other than an
518 executive branch agency:

519 (A) submit the proposed rates, fees, and cost analysis to the Rate Committee
520 established in Section 63A-1-114; and

521 (B) obtain the approval of the Legislature as required by Section 63-38-3.5;

522 (x) conduct a market analysis by July 1, 2005, and periodically thereafter, of proposed
523 rates and fees, which analysis shall include a comparison of the division's rates and fees with

524 the fees of other public or private sector providers where comparable services and rates are
525 reasonably available; [~~and~~]

526 (xi) implement the State Building Energy Efficiency Program under Section 63-9-67;
527 and

528 [~~(xi)~~] (xii) take all other action necessary for carrying out the purposes of this chapter.

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

531 (3) (a) The director shall direct or delegate maintenance and operations, preventive
532 maintenance, and facilities inspection programs and activities for any department, commission,
533 institution, or agency, except:

534 (i) the State Capitol Preservation Board; and

535 (ii) state institutions of higher education.

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

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

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

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

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

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

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

549 (f) The division shall:

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

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

554 (iii) conduct periodic audits of exempt agencies and institutions to ensure that they are

555 complying with the standards.

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

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

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

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

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

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

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

567 (5) The director may:

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

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

573 (c) hold, buy, lease, and acquire by exchange or otherwise, as authorized by the
574 Legislature, whatever real or personal property that is necessary for the discharge of the
575 director's duties.

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

579 (a) the Office of Trust Administrator;

580 (b) the Department of Transportation;

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

582 (d) the Department of Natural Resources;

583 (e) the Utah National Guard;

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

586 (g) any institution of higher education.

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

590 (a) fully comply with the American Society for Testing Materials standard
591 specifications for agencies engaged in the testing and inspection of materials known as ASTM
592 E-329; and

593 (b) carry a minimum of \$1,000,000 of errors and omissions insurance.

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

597 Section 10. Section **63A-5-206** is amended to read:

598 **63A-5-206. Construction, alteration, and repair of state facilities -- Powers of**
599 **director -- Exceptions -- Expenditure of appropriations -- Notification to local**
600 **governments for construction or modification of certain facilities.**

601 (1) As used in this section:

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

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

606 [~~(c)~~] (b) "Compliance agency" has the same meaning as provided in Subsection
607 58-56-3(4).

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

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

613 [~~(e)~~] (d) "Life cycle cost-effective" means, as provided for in rules adopted by the State
614 Building Board, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking
615 Act, the [lowest] most prudent cost of owning and operating a facility [over a 25-year period],
616 including the initial cost, energy costs, operation and maintenance costs, repair costs, and the

617 costs of energy conservation and renewable energy systems.

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

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

624 (2) (a) Except as provided in Subsections (3) and (4), the director shall exercise direct
625 supervision over the design and construction of all new facilities, and all alterations, repairs,
626 and improvements to existing facilities if the total project construction cost, regardless of the
627 funding source, is greater than \$100,000.

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

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

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

635 (a) occurs on property under the jurisdiction of the State Capitol Preservation Board;

636 (b) is within a designated research park at the University of Utah or Utah State
637 University;

638 (c) occurs within the boundaries of This is the Place State Park and is administered by
639 This is the Place Foundation except that This is the Place Foundation may request the director
640 to administer the design and construction; or

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

643 (4) (a) (i) The State Building Board may authorize the delegation of control over
644 design, construction, and all other aspects of any project to entities of state government on a
645 project-by-project basis or for projects within a particular dollar range and a particular project
646 type.

647 (ii) The state entity to whom control is delegated shall assume fiduciary control over

648 project finances, shall assume all responsibility for project budgets and expenditures, and shall
649 receive all funds appropriated for the project, including any contingency funds contained in the
650 appropriated project budget.

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

654 (iv) State entities that receive a delegated project may not access, for the delegated
655 project, the division's statewide contingency reserve and project reserve authorized in Section
656 63A-5-209.

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

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

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

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

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

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

672 (ii) the entity designated by the State Capitol Preservation Board, for projects under
673 Subsection (3)(a);

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

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

678 (v) the institution, for projects exempt from the division's administration under

679 Subsection (5)(a).

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

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

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

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

689 (d) (i) The use of state property and any improvements constructed on state property,
690 including improvements constructed by nonstate entities, is not subject to the zoning authority
691 of local governments as provided in Sections 10-9a-304 and 17-27a-304.

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

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

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

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

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

701 ~~[(b) The estimated cost of the analysis shall be included in each program budget~~
702 ~~document and in the project funding request submitted to the State Building Board, the~~
703 ~~governor, and the Legislature.]~~

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

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

708 ~~[(e) The State Building Board may exempt a facility from being life cycle~~
709 ~~cost-effective pursuant to rules, after reviewing and concurring with a written request and~~

710 ~~justification from the director.]~~

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

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

717 (b) The director shall:

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

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

723 (11) Notwithstanding the requirements of Title 63, Chapter 38, Budgetary Procedures
724 Act, the director may:

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

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

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

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

734 (i) the nature of the project has been significantly altered since prior notification;

735 (ii) the project would significantly change the nature of the functions presently
736 conducted at the location; or

737 (iii) the project is new construction.

738 (b) At the request of either the state entity or the local government entity,
739 representatives from the state entity and the affected local entity shall conduct or participate in
740 a local public hearing or hearings to discuss these issues.

741 (13) (a) (i) Before beginning the construction of student housing on property owned by
742 the state or a public institution of higher education, the director shall provide written notice of
743 the proposed construction, as provided in Subsection (13)(a)(ii), if any of the proposed student
744 housing buildings is within 300 feet of privately owned residential property.

745 (ii) Each notice under Subsection (13)(a)(i) shall be provided to the legislative body
746 and, if applicable, the mayor of:

747 (A) the county in whose unincorporated area the privately owned residential property is
748 located; or

749 (B) the municipality in whose boundaries the privately owned residential property is
750 located.

751 (b) (i) Within 21 days after receiving the notice required by Subsection (13)(a)(i), a
752 county or municipality entitled to the notice may submit a written request to the director for a
753 public hearing on the proposed student housing construction.

754 (ii) If a county or municipality requests a hearing under Subsection (13)(b)(i), the
755 director and the county or municipality shall jointly hold a public hearing to provide
756 information to the public and to allow the director and the county or municipality to receive
757 input from the public about the proposed student housing construction.

758 Section 11. **Repealer.**

759 This bill repeals:

760 Section **63-38-18, Refund for electrical service to be deposited into the LeRay**
761 **McAllister Fund.**

Legislative Review Note

as of 12-20-05 3:20 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel