

CAPITAL PROJECT AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen D. Clark

Senate Sponsor: _____

LONG TITLE

General Description:

This bill makes changes concerning capital development provisions.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides that certain capital development projects may not be designed without legislative approval;
- ▶ provides that certain changes in the scope of a previously approved capital development project do not require legislative approval;
- ▶ provides that certain changes in the scope of a previously approved capital development project require legislative approval;
- ▶ addresses agency use of existing funds to design new capital development projects and seek reimbursement for design expenses;
- ▶ addresses an agency's ability to program new capital development projects and seek reimbursement for programming expenses;
- ▶ provides for legislative approval of certain capital leases;
- ▶ allows the State Building Board to approve the use of funding for design costs of a capital improvement project;
- ▶ allows the State Building Board to use capital improvement funds for statewide purposes;



- 28 ▶ provides that legislative approval is not required for acquisitions below the capital
- 29 improvement approval threshold for a new facility;
- 30 ▶ addresses the necessary notifications and approvals for disposals of real property;
- 31 ▶ allows the director of the Division of Facilities Construction and Management to
- 32 resolve certain boundary disputes;
- 33 ▶ addresses the director's supervision of capital improvement projects;
- 34 ▶ addresses the director's expenditure of monies in the Planning Fund;
- 35 ▶ eliminates the need for the governor's budget submission to provide an analysis of
- 36 lease-purchase arrangements; and
- 37 ▶ makes technical changes.

38 **Monies Appropriated in this Bill:**

39 None

40 **Other Special Clauses:**

41 None

42 **Utah Code Sections Affected:**

43 AMENDS:

- 44 **63A-5-104**, as last amended by Laws of Utah 2008, Second Special Session, Chapter 3
- 45 **63A-5-204**, as last amended by Laws of Utah 2008, Chapter 382
- 46 **63A-5-206**, as last amended by Laws of Utah 2008, Chapter 382
- 47 **63A-5-211**, as last amended by Laws of Utah 2000, Chapter 231
- 48 **63J-1-201**, as last amended by Laws of Utah 2008, Chapter 213 and renumbered and
- 49 amended by Laws of Utah 2008, Chapter 382



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

52 Section 1. Section **63A-5-104** is amended to read:

53 **63A-5-104. Capital development and capital improvement process -- Approval**
54 **requirements -- Limitations on new projects -- Emergencies.**

55 (1) As used in this section:

56 (a) "Capital developments" means a:

- 57 (i) remodeling, site, or utility project with a total cost of \$2,500,000 or more;
- 58 (ii) new facility with a construction cost of \$500,000 or more; or

59 (iii) purchase of real property where an appropriation is requested to fund the purchase.

60 (b) "Capital improvements" means a:

61 (i) remodeling, alteration, replacement, or repair project with a total cost of less than
62 \$2,500,000;

63 (ii) site and utility improvement with a total cost of less than \$2,500,000; or

64 (iii) new facility with a total construction cost of less than \$500,000.

65 (c) "Capital lease" means a lease that:

66 (i) transfers ownership of the property to the state by, or at, the end of the lease term;

67 (ii) contains an option to purchase the property at a price less than fair market value;

68 (iii) has a term equal to or greater than 75% of the estimated economic life of the
69 property, unless the lease begins within the last 25% of the property's estimated economic life;

70 or

71 (iv) provides for a present value of rental and other minimum lease payments, other
72 than preliminary administrative costs, 90% or greater than the fair market value of the property,
73 unless the lease begins within the last 25% of the property's estimated economic life.

74 (d) "Design" means detailed architectural and engineering plans, specifications, and
75 construction documents of a capital development project.

76 ~~[(e)]~~ (e) (i) "New facility" means the construction of a new building ~~[on state property]~~
77 or infrastructure for state use regardless of funding source.

78 (ii) "New facility" includes:

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

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

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

82 (A) the replacement of state-owned space that is demolished or that is otherwise
83 removed from state use, if the total construction cost of the replacement space is less than
84 \$2,500,000; or

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

86 (f) "Program" means an analysis or planning effort to identify the type, function, and
87 use of a facility.

88 ~~[(d)]~~ (g) "Replacement cost of existing state facilities" means the replacement cost, as
89 determined by the Division of Risk Management, of state facilities, excluding auxiliary

90 facilities as defined by the State Building Board.

91 [~~(e)~~] (h) "State funds" means public monies appropriated by the Legislature.

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

95 (3) (a) Except as provided in Subsections (3)(b), (d), [~~and~~] (e), and (f), a capital
96 development project may not be designed or constructed on state property, or elsewhere for
97 state use, without legislative approval.

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

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

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

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

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

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

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

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

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

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

113 (B) state capital improvement funding.

114 (d) Legislative approval is not required for:

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

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

118 (iii) a facility to be built at This is the Place State Park by This is the Place Foundation
119 with funds of the foundation, including grant monies from the state, or with donated services or
120 materials;

121 (iv) a capital project that:

122 (A) is funded by:

123 (I) the Uintah Basin Revitalization Fund; or

124 (II) the Navajo Revitalization Fund; and

125 (B) does not provide a new facility for a state agency or higher education institution;

126 [~~or~~]

127 (v) a capital project on school and institutional trust lands that is funded by the School
128 and Institutional Trust Lands Administration from the Land Grant Management Fund and that
129 does not fund construction of a new facility for a state agency or higher education institution[-];
130 and

131 (vi) changes in an already approved capital development project that amount to:

132 (A) less than a 10% increase in square footage of the project or a 10% increase in
133 nonstate funding for a state-funded capital development project; or

134 (B) less than a 20% increase in square footage of the project or a 20% increase in
135 nonstate funding for a nonstate-funded capital improvement project.

136 (e) A change in an already approved capital development project may not be made
137 without first presenting the change to the Legislature's Executive Appropriations Committee if
138 the change:

139 (i) amounts to a 10% or greater increase in square footage of the project or a 10%
140 increase in nonstate funding for a state-funded project; or

141 (ii) amounts to a 20% or greater increase in square footage of the project or a 20%
142 increase in nonstate funding for a nonstate-funded project.

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

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

150 (g) A capital lease, including a lease-purchase, requires prior approval by the
151 Legislature if the cost of the combined lease payment exceeds the capital improvement

152 threshold for a new facility in Subsection (1)(b)(iii).

153 (h) If, under Subsection (3)(a), a state agency or institution designs a capital
154 development project using its existing funds, the agency or institution may not be reimbursed
155 by later appropriation for the costs of design unless the project designed is approved and
156 funded by the Legislature.

157 (i) (i) The State Building Board may authorize a state agency or institution to program
158 a state-funded capital development project, if the capital development project is one of the top
159 five projects prioritized by the State Building Board that was not funded by the Legislature in
160 the previous legislative general session.

161 (ii) The State Building Board may authorize a state agency or institution to program a
162 nonstate-funded capital development project.

163 (iii) The costs of programming a capital development project under Subsection (3)(i)(i)
164 may not be appropriated to a state agency or institution unless the capital development project
165 is later approved and funded by the Legislature.

166 (iv) The costs of programming a capital development project under Subsection
167 (3)(i)(ii) may not be appropriated to the state agency or institution.

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

171 (ii) The list shall identify:

172 (A) a single project that costs more than \$1,000,000;

173 (B) multiple projects within a single building or facility that collectively cost more than
174 \$1,000,000;

175 (C) a single project that will be constructed over multiple years with a yearly cost of
176 \$1,000,000 or more and an aggregate cost of more than \$2,500,000;

177 (D) multiple projects within a single building or facility with a yearly cost of
178 \$1,000,000 or more and an aggregate cost of more than \$2,500,000;

179 (E) a single project previously reported to the Legislature as a capital improvement
180 project under \$1,000,000 that, because of an increase in costs or scope of work, will now cost
181 more than \$1,000,000; and

182 (F) multiple projects within a single building or facility previously reported to the

183 Legislature as a capital improvement project under \$1,000,000 that, because of an increase in
184 costs or scope of work, will now cost more than \$1,000,000.

185 (b) Unless otherwise directed by the Legislature, the State Building Board shall
186 prioritize capital improvements from the list submitted to the Legislature up to the level of
187 appropriation made by the Legislature.

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

191 (d) The State Building Board may require an entity that benefits from a capital
192 improvement project to repay the capital improvement funds from savings that result from the
193 project.

194 (e) The State Building Board may provide capital improvement funding to a single
195 project, or to multiple projects within a single building or facility, even if the total cost of the
196 project or multiple projects is \$2,500,000 or more, if:

197 (i) the capital improvement project or multiple projects require more than one year to
198 complete; and

199 (ii) the Legislature has affirmatively authorized the capital improvement project or
200 multiple projects to be funded in phases.

201 (f) The State Building Board may approve the use of capital improvement funds for
202 design costs of a capital improvement project, subject to any other approval requirements,
203 before funding is approved for construction of the capital improvement project.

204 (g) The State Building Board may approve the use of capital improvement funds for
205 the following statewide capital improvement purposes:

206 (i) preventative maintenance;

207 (ii) paving;

208 (iii) roofing;

209 (iv) hazardous material abatement;

210 (v) facility condition assessments;

211 (vi) facility maintenance audits;

212 (vii) project management;

213 (viii) emergency repairs;

214 (ix) planning and design of projects; and

215 (x) funding of land options.

216 (5) The Legislature may authorize:

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

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

219 (6) (a) Except as provided in Subsection (6)(b), the Legislature may not fund the design

220 or construction of any new capital development projects, except to complete the funding of

221 projects for which partial funding has been previously provided, until the Legislature has

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

223 (b) (i) As used in this Subsection (6)(b):

224 (A) "Education Fund budget deficit" is as defined in Subsection 63J-1-202(1)(a); and

225 (B) "General Fund budget deficit" is as defined in Subsection 63J-1-202(1)(c).

226 (ii) If the Legislature determines that an Education Fund budget deficit or a General

227 Fund budget deficit exists, the Legislature may, in eliminating the deficit, reduce the amount

228 appropriated to capital improvements to 0.9% of the replacement cost of state buildings.

229 (7) (a) If, after approval of capital development and capital improvement priorities by

230 the Legislature under this section, emergencies arise that create unforeseen critical capital

231 improvement projects, the State Building Board may, notwithstanding the requirements of Title

232 63J, Chapter 1, Budgetary Procedures Act, reallocate capital improvement funds to address

233 those projects.

234 (b) The State Building Board shall report any changes it makes in capital improvement
235 allocations approved by the Legislature to:

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

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

238 (8) (a) The State Building Board may adopt a rule allocating to institutions and

239 agencies their proportionate share of capital improvement funding.

240 (b) The State Building Board shall ensure that the rule:

241 (i) reserves funds for the Division of Facilities Construction and Management for

242 emergency projects; and

243 (ii) allows the delegation of projects to some institutions and agencies with the

244 requirement that a report of expenditures will be filed annually with the Division of Facilities

245 Construction and Management and appropriate governing bodies.

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

249 Section 2. Section **63A-5-204** is amended to read:

250 **63A-5-204. Specific powers and duties of director.**

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

253 (2) (a) The director shall:

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

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

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

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

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

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

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

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

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

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

281 (B) obtain the approval of the Legislature as required by Section 63J-1-306;

282 (x) conduct a market analysis by July 1, 2005, and periodically thereafter, of proposed
283 rates and fees, which analysis shall include a comparison of the division's rates and fees with
284 the fees of other public or private sector providers where comparable services and rates are
285 reasonably available;

286 (xi) implement the State Building Energy Efficiency Program under Section
287 63A-5-701; and

288 (xii) take all other action necessary for carrying out the purposes of this chapter.

289 (b) Legislative approval is not required for acquisitions by the division that cost less
290 than [\$250,000] the capital improvement threshold for a new facility found in Subsection
291 63A-5-104(1)(b)(iii).

292 (c) The division may not sell or otherwise dispose of real property unless:

293 (i) the recommended sale or other disposal is presented to the Legislature's Executive
294 Appropriations Committee, for real property with an appraised value of less than \$500,000; or

295 (ii) the recommended sale or other disposal is approved by the Legislature, for real
296 property with an appraised value of \$500,000 or more.

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

300 (i) the State Capitol Preservation Board; and

301 (ii) state institutions of higher education.

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

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

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

- 307 (iii) the delegation would result in net cost savings to the state as a whole.
- 308 (c) The State Capitol Preservation Board and state institutions of higher education are
- 309 exempt from Division of Facilities Construction and Management oversight.
- 310 (d) Each state institution of higher education shall comply with the facility
- 311 maintenance standards approved by the State Building Board.
- 312 (e) Except for the State Capitol Preservation Board, agencies and institutions that are
- 313 exempt from division oversight shall annually report their compliance with the facility
- 314 maintenance standards to the division in the format required by the division.
- 315 (f) The division shall:
- 316 (i) prescribe a standard format for reporting compliance with the facility maintenance
- 317 standards;
- 318 (ii) report agency and institution compliance or noncompliance with the standards to
- 319 the Legislature; and
- 320 (iii) conduct periodic audits of exempt agencies and institutions to ensure that they are
- 321 complying with the standards.
- 322 (4) (a) In making any allocations of space under Subsection (2), the director shall:
- 323 (i) conduct studies to determine the actual needs of each department, commission,
- 324 institution, or agency; and
- 325 (ii) comply with the restrictions contained in this Subsection (4).
- 326 (b) The supervision and control of the legislative area is reserved to the Legislature.
- 327 (c) The supervision and control of the judicial area is reserved to the judiciary for trial
- 328 courts only.
- 329 (d) The director may not supervise or control the allocation of space for entities in the
- 330 public and higher education systems.
- 331 (e) The supervision and control of capitol hill facilities and capitol hill grounds is
- 332 reserved to the State Capitol Preservation Board.
- 333 (5) The director may:
- 334 (a) hire or otherwise procure assistance and services, professional, skilled, or
- 335 otherwise, that are necessary to carry out the director's responsibilities, and may expend funds
- 336 provided for that purpose either through annual operating budget appropriations or from
- 337 nonlapsing project funds;

338 (b) sue and be sued in the name of the division; [~~and~~]

339 (c) hold, buy, lease, and acquire by exchange or otherwise, as authorized by the
340 Legislature, whatever real or personal property that is necessary for the discharge of the
341 director's duties[-]; and

342 (d) exchange property to resolve boundary disputes with adjacent property owners if
343 the property exchanged has an appraised value of less than the capital improvement threshold
344 in Subsection 63A-5-104(1)(b)(iii).

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

348 (a) the Office of Trust Administrator;

349 (b) the Department of Transportation;

350 [~~(c) the Division of Forestry, Fire and State Lands;~~]

351 [~~(d)~~] (c) the Department of Natural Resources;

352 [~~(e)~~] (d) the Utah National Guard;

353 [~~(f)~~] (e) [~~any area vocational center or other~~] an institution administered by the State
354 Board of Education;

355 [~~(g)~~] (f) any institution of higher education; and

356 [~~(h)~~] (g) the Utah Science Technology and Research Governing Authority.

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

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

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

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

367 Section 3. Section **63A-5-206** is amended to read:

368 **63A-5-206. Construction, alteration, and repair of state facilities -- Powers of**

369 **director -- Exceptions -- Expenditure of appropriations -- Notification to local**
370 **governments for construction or modification of certain facilities.**

371 (1) As used in this section:

372 (a) "Capital developments" and "capital improvements" have the same meaning as
373 provided in Section 63A-5-104.

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

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

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

380 (d) "Life cycle cost-effective" means, as provided for in rules adopted by the State
381 Building Board, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
382 Act, the most prudent cost of owning and operating a facility, including the initial cost, energy
383 costs, operation and maintenance costs, repair costs, and the costs of energy conservation and
384 renewable energy systems.

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

388 (f) "Renewable energy system" means a system designed to use solar, wind, geothermal
389 power, wood, or other replenishable energy source to heat, cool, or provide electricity to a
390 building.

391 (2) (a) (i) Except as provided in Subsections (3) and (4), the director shall exercise
392 direct supervision over the design and construction of all [~~new facilities, and all alterations,~~
393 ~~repairs, and improvements to existing facilities~~] capital improvement projects if the total
394 project construction cost, regardless of the funding source, is:

395 (A) greater than \$100,000, unless project supervision is delegated by the State Building
396 Board; or

397 (B) \$100,000 or less and funds were appropriated to the division, unless project
398 supervision is delegated by the State Building Board.

399 (ii) A state entity may exercise direct supervision over the design and construction of

400 all new facilities, and all alterations, repairs, and improvements to existing facilities if:

401 (A) the total project construction cost, regardless of the funding sources, is \$100,000 or
402 less; and

403 (B) the state entity assures compliance with the division's forms and contracts and the
404 division's design, construction, alteration, repair, improvements, and code inspection standards.

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

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

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

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

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

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

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

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

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

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

431 (iv) State entities that receive a delegated project may not access, for the delegated
432 project, the division's statewide contingency reserve and project reserve authorized in Section
433 63A-5-209.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

484 (b) The director shall:

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

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

490 (11) Notwithstanding the requirements of Title 63J, Chapter 1, Budgetary Procedures
491 Act, the director may:

492 (a) accelerate the design of projects funded by any appropriation act passed by the

493 Legislature in its annual general session;

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

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

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

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

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

504 (iii) the project is new construction.

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

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

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

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

516 (B) the municipality in whose boundaries the privately owned residential property is
517 located.

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

521 (ii) If a county or municipality requests a hearing under Subsection (13)(b)(i), the
522 director and the county or municipality shall jointly hold a public hearing to provide
523 information to the public and to allow the director and the county or municipality to receive

524 input from the public about the proposed student housing construction.

525 Section 4. Section **63A-5-211** is amended to read:

526 **63A-5-211. Planning Fund expenditures authorized -- Ceiling on expenditures --**
527 **Recovery -- Permanent fund.**

528 (1) The Planning Fund shall be used to make payments for engineering, architectural,
529 and other planning expenses necessary to make a meaningful cost estimate of any facility or
530 improvement with a demonstrable or immediate need.

531 (2) ~~[The]~~ Subject to legislative appropriation of monies into the Planning Fund, the
532 director may, after notifying the Legislature's Executive Appropriations Committee, make
533 expenditures from the Planning Fund in order to provide planning and schematic information
534 to the State Building Board, the governor, and the Legislature, up to a maximum [~~of \$350,000~~]
535 amount equal to the threshold for a new facility found in Subsection 63A-5-104(1)(b)(iii) in
536 outstanding Planning Fund commitments.

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

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

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

542 (4) (a) Money may also be expended from the Planning Fund for architectural and
543 engineering services incident to the planning and preparation of applications for funds on
544 construction financed by other than state sources, including federal grants.

545 (b) However, upon approval of such financing, the money spent for architectural and
546 engineering services shall be returned as a reimbursement to the Planning Fund.

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

549 Section 5. Section **63J-1-201** is amended to read:

550 **63J-1-201. Governor to submit budget to Legislature -- Contents -- Preparation --**
551 **Appropriations based on current tax laws and not to exceed estimated revenues.**

552 (1) (a) The governor shall, within three days after the convening of the Legislature in
553 the annual general session, submit a budget for the ensuing fiscal year by delivering it to the
554 presiding officer of each house of the Legislature together with a schedule for all of the

555 proposed appropriations of the budget, clearly itemized and classified.

556 (b) The budget message shall include:

557 (i) a projection of estimated revenues and expenditures for the next fiscal year; and

558 (ii) the source of all direct, indirect, or in-kind matching funds for all federal grants or
559 assistance programs included in the budget.

560 (2) At least 34 days before the submission of any budget, the governor shall deliver a
561 confidential draft copy of the governor's proposed budget recommendations to the Office of the
562 Legislative Fiscal Analyst.

563 (3) (a) The budget shall contain a complete plan of proposed expenditures and
564 estimated revenues for the next fiscal year based upon the current fiscal year state tax laws and
565 rates.

566 (b) The budget may be accompanied by a separate document showing proposed
567 expenditures and estimated revenues based on changes in state tax laws or rates.

568 (4) The budget shall be accompanied by a statement showing:

569 (a) the revenues and expenditures for the last fiscal year;

570 (b) the current assets, liabilities, and reserves, surplus or deficit, and the debts and
571 funds of the state;

572 (c) an estimate of the state's financial condition as of the beginning and the end of the
573 period covered by the budget;

574 [~~(d) a complete analysis of lease with an option to purchase arrangements entered into~~
575 ~~by state agencies;~~]

576 [~~(e)~~] (d) the recommendations for each state agency for new full-time employees for
577 the next fiscal year; which recommendation should be provided also to the State Building
578 Board under Subsection 63A-5-103(2);

579 [~~(f)~~] (e) any explanation the governor may desire to make as to the important features
580 of the budget and any suggestion as to methods for the reduction of expenditures or increase of
581 the state's revenue; and

582 [~~(g)~~] (f) the information detailing certain regulatory fee increases required by Section
583 63J-1-303.

584 (5) The budget shall include an itemized estimate of the appropriations for:

585 (a) the Legislative Department as certified to the governor by the president of the

586 Senate and the speaker of the House;

587 (b) the Executive Department;

588 (c) the Judicial Department as certified to the governor by the state court administrator;

589 (d) payment and discharge of the principal and interest of the indebtedness of the state;

590 (e) the salaries payable by the state under the Utah Constitution or under law for the
591 lease agreements planned for the next fiscal year;

592 (f) other purposes that are set forth in the Utah Constitution or under law; and

593 (g) all other appropriations.

594 (6) Deficits or anticipated deficits shall be included in the budget.

595 (7) (a) (i) For the purpose of preparing and reporting the budget, the governor shall
596 require from the proper state officials, including public and higher education officials, all heads
597 of executive and administrative departments and state institutions, bureaus, boards,
598 commissions, and agencies expending or supervising the expenditure of the state moneys, and
599 all institutions applying for state moneys and appropriations, itemized estimates of revenues
600 and expenditures.

601 (ii) (A) The governor may also require other information under these guidelines and at
602 times as the governor may direct.

603 (B) These guidelines may include a requirement for program productivity and
604 performance measures, where appropriate, with emphasis on outcome indicators.

605 (b) The estimate for the Legislative Department as certified by the presiding officers of
606 both houses shall be included in the budget without revision by the governor.

607 (c) The estimate for the Judicial Department, as certified by the state court
608 administrator, shall also be included in the budget without revision, but the governor may make
609 separate recommendations on it.

610 (d) The governor may require the attendance at budget meetings of representatives of
611 public and higher education, state departments and institutions, and other institutions or
612 individuals applying for state appropriations.

613 (e) The governor may revise all estimates, except those relating to the Legislative
614 Department, the Judicial Department, and those providing for the payment of principal and
615 interest to the state debt and for the salaries and expenditures specified by the Utah
616 Constitution or under the laws of the state.

617 (8) The total appropriations requested for expenditures authorized by the budget may
618 not exceed the estimated revenues from taxes, fees, and all other sources for the next ensuing
619 fiscal year.

620 (9) If any item of the budget as enacted is held invalid upon any ground, the invalidity
621 does not affect the budget itself or any other item in it.

622 (10) (a) In submitting the budgets for the Departments of Health and Human Services
623 and the Office of the Attorney General, the governor shall consider a separate recommendation
624 in the governor's budget for funds to be contracted to:

625 (i) local mental health authorities under Section 62A-15-110;

626 (ii) local substance abuse authorities under Section 62A-15-110;

627 (iii) area agencies under Section 62A-3-104.2;

628 (iv) programs administered directly by and for operation of the Divisions of Substance
629 Abuse and Mental Health and Aging and Adult Services;

630 (v) local health departments under Title 26A, Chapter 1, Local Health Departments;

631 and

632 (vi) counties for the operation of Children's Justice Centers under Section 67-5b-102.

633 (b) In the governor's budget recommendations under Subsections (10)(a)(i), (ii), and
634 (iii), the governor shall consider an amount sufficient to grant local health departments, local
635 mental health authorities, local substance abuse authorities, and area agencies the same
636 percentage increase for wages and benefits that the governor includes in the governor's budget
637 for persons employed by the state.

638 (c) If the governor does not include in the governor's budget an amount sufficient to
639 grant the increase described in Subsection (10)(b), the governor shall include a message to the
640 Legislature regarding the governor's reason for not including that amount.

641 (11) (a) In submitting the budget for the Department of Agriculture, the governor shall
642 consider an amount sufficient to grant local conservation districts and Utah Association of
643 Conservation District employees the same percentage increase for wages and benefits that the
644 governor includes in the governor's budget for persons employed by the state.

645 (b) If the governor does not include in the governor's budget an amount sufficient to
646 grant the increase described in Subsection (11)(a), the governor shall include a message to the
647 Legislature regarding the governor's reason for not including that amount.

648 (12) (a) In submitting the budget for the Utah State Office of Rehabilitation and the
649 Division of Services for People with Disabilities, the Division of Child and Family Services,
650 and the Division of Juvenile Justice Services within the Department of Human Services, the
651 governor shall consider an amount sufficient to grant employees of corporations that provide
652 direct services under contract with those divisions, the same percentage increase for
653 cost-of-living that the governor includes in the governor's budget for persons employed by the
654 state.

655 (b) If the governor does not include in the governor's budget an amount sufficient to
656 grant the increase described in Subsection (12)(a), the governor shall include a message to the
657 Legislature regarding the governor's reason for not including that amount.

658 (13) (a) The Families, Agencies, and Communities Together Council may propose to
659 the governor under Subsection 63M-9-201(4)(e) a budget recommendation for collaborative
660 service delivery systems operated under Section 63M-9-402.

661 (b) The Legislature may, through a specific program schedule, designate funds
662 appropriated for collaborative service delivery systems operated under Section 63M-9-402.

663 (14) The governor shall include in the governor's budget the state's portion of the
664 budget for the Utah Communications Agency Network established in Title 63C, Chapter 7,
665 Utah Communications Agency Network Act.

666 (15) (a) The governor shall include a separate recommendation in the governor's
667 budget for funds to maintain the operation and administration of the Utah Comprehensive
668 Health Insurance Pool.

669 (b) In making the recommendation the governor may consider:

670 (i) actuarial analysis of growth or decline in enrollment projected over a period of at
671 least three years;

672 (ii) actuarial analysis of the medical and pharmacy claims costs projected over a period
673 of at least three years;

674 (iii) the annual Medical Care Consumer Price Index;

675 (iv) the annual base budget for the pool established by the Commerce and Revenue
676 Appropriations Subcommittee for each fiscal year;

677 (v) the growth or decline in insurance premium taxes and fees collected by the tax
678 commission and the insurance department; and

679 (vi) the availability of surplus General Fund revenue under Section 63J-1-202 and
680 Subsection 59-14-204(5)(b).

681 (16) In adopting a budget for each fiscal year, the Legislature shall consider an amount
682 sufficient to grant local health departments, local mental health authorities, local substance
683 abuse authorities, area agencies on aging, conservation districts, and Utah Association of
684 Conservation District employees the same percentage increase for wages and benefits that is
685 included in the budget for persons employed by the state.

686 (17) (a) In adopting a budget each year for the Utah Comprehensive Health Insurance
687 Pool, the Legislature shall determine an amount that is sufficient to fund the pool for each
688 fiscal year.

689 (b) When making a determination under Subsection (17)(a), the Legislature shall
690 consider factors it determines are appropriate, which may include:

691 (i) actuarial analysis of growth or decline in enrollment projected over a period of at
692 least three years;

693 (ii) actuarial analysis of the medical and pharmacy claims costs projected over a period
694 of at least three years;

695 (iii) the annual Medical Care Consumer Price Index;

696 (iv) the annual base budget for the pool established by the Commerce and Revenue
697 Appropriations Subcommittee for each fiscal year;

698 (v) the growth or decline in insurance premium taxes and fees collected by the tax
699 commission and the insurance department from the previous fiscal year; and

700 (vi) the availability of surplus General Fund revenue under Section 63J-1-202 and
701 Subsection 59-14-204(5)(b).

702 (c) The funds appropriated by the Legislature to fund the Utah Comprehensive Health
703 Insurance Pool as determined under Subsection (17)(a):

704 (i) shall be deposited into the enterprise fund established by Section 31A-29-120; and

705 (ii) are restricted and are to be used to maintain the operation, administration, and
706 management of the Utah Comprehensive Health Insurance Pool created by Section
707 31A-29-104.

708 (18) In considering the factors in Subsections (15)(b)(i), (ii), and (iii) and Subsections
709 (17)(b)(i), (ii), and (iii), the governor and the Legislature may consider the actuarial data and

710 projections prepared for the board of the Utah Comprehensive Health Insurance Pool as it
711 develops its financial statements and projections for each fiscal year.

712 (19) The governor shall report, for each line item, the average annual dollar amount of
713 staff funding associated with all positions that were vacant during the last fiscal year.

Legislative Review Note
as of 2-12-09 12:28 PM

Office of Legislative Research and General Counsel

H.B. 354 - Capital Project Amendments

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
