

Representative Stephen D. Clark proposes the following substitute bill:

CAPITAL PROJECT AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen D. Clark

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill amends capital development provisions.

Highlighted Provisions:

This bill:

- ▶ requires the State Building Board to establish a rule to govern the disposition of real property;
- ▶ postpones the effective date of the provision prohibiting the Legislature from funding developments without funding improvements; and
- ▶ addresses the director's supervision of capital improvement projects.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63A-5-103, as last amended by Laws of Utah 2008, Chapter 382

63A-5-104, as last amended by Laws of Utah 2009, Chapters 2 and 183

63A-5-206, as last amended by Laws of Utah 2008, Chapter 382



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

Section 1. Section **63A-5-103** is amended to read:

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

(1) The State Building Board shall:

- (a) in cooperation with state institutions, departments, commissions, and agencies, prepare a master plan of structures built or contemplated;
- (b) submit to the governor and the Legislature a comprehensive five-year building plan for the state containing the information required by Subsection (2);
- (c) amend and keep current the five-year building program for submission to the governor and subsequent legislatures;
- (d) as a part of the long-range plan, recommend to the governor and Legislature any changes in the law that are necessary to insure an effective, well-coordinated building program for all state institutions;
- (e) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules:
 - (i) that are necessary to discharge its duties and the duties of the Division of Facilities Construction and Management; [~~and~~]
 - (ii) to establish standards and requirements for life cycle cost-effectiveness of state facility projects; and
 - (iii) to govern the disposition of real property by the division and establish factors, including appraised value and historical significance, in evaluating the disposition;
- (f) with support from the Division of Facilities Construction and Management, establish design criteria, standards, and procedures for planning, design, and construction of new state facilities and for improvements to existing state facilities, including life-cycle costing, cost-effectiveness studies, and other methods and procedures that address:
 - (i) the need for the building or facility;
 - (ii) the effectiveness of its design;
 - (iii) the efficiency of energy use; and
 - (iv) the usefulness of the building or facility over its lifetime;
- (g) prepare and submit a yearly request to the governor and the Legislature for a

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

88 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
89 State Building Board may make rules prescribing the format for submitting the information
90 required by this Subsection (3).

91 (4) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
92 the State Building Board may make rules establishing circumstances under which bids may be
93 modified when all bids for a construction project exceed available funds as certified by the
94 director.

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

97 (5) (a) A person who violates a rule adopted by the board under Subsection (1)(e) is
98 subject to a civil penalty not to exceed \$2,500 for each violation plus the amount of any actual
99 damages, expenses, and costs related to the violation of the rule that are incurred by the state.

100 (b) The board may take any other action allowed by law.

101 (c) If any violation of a rule adopted by the board is also an offense under Title 76,
102 Utah Criminal Code, the violation is subject to the civil penalty, damages, expenses, and costs
103 allowed under Subsection (1)(e) in addition to any criminal prosecution.

104 Section 2. Section **63A-5-104** is amended to read:

105 **63A-5-104. Capital development and capital improvement process -- Approval**
106 **requirements -- Limitations on new projects -- Emergencies.**

107 (1) As used in this section:

108 (a) "Capital developments" means a:

109 (i) remodeling, site, or utility project with a total cost of \$2,500,000 or more;

110 (ii) new facility with a construction cost of \$500,000 or more; or

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

112 (b) "Capital improvements" means a:

113 (i) remodeling, alteration, replacement, or repair project with a total cost of less than
114 \$2,500,000;

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

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

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

- 119 (ii) "New facility" includes:
- 120 (A) an addition to an existing building; and
- 121 (B) the enclosure of space that was not previously fully enclosed.
- 122 (iii) "New facility" does not mean:
- 123 (A) the replacement of state-owned space that is demolished or that is otherwise
- 124 removed from state use, if the total construction cost of the replacement space is less than
- 125 \$2,500,000; or
- 126 (B) the construction of facilities that do not fully enclose a space.
- 127 (d) "Replacement cost of existing state facilities" means the replacement cost, as
- 128 determined by the Division of Risk Management, of state facilities, excluding auxiliary
- 129 facilities as defined by the State Building Board.
- 130 (e) "State funds" means public monies appropriated by the Legislature.
- 131 (2) The State Building Board, on behalf of all state agencies, commissions,
- 132 departments, and institutions shall submit its capital development recommendations and
- 133 priorities to the Legislature for approval and prioritization.
- 134 (3) (a) Except as provided in Subsections (3)(b), (d), and (e), a capital development
- 135 project may not be constructed on state property without legislative approval.
- 136 (b) Legislative approval is not required for a capital development project if the State
- 137 Building Board determines that:
- 138 (i) the requesting higher education institution has provided adequate assurance that:
- 139 (A) state funds will not be used for the design or construction of the facility; and
- 140 (B) the higher education institution has a plan for funding in place that will not require
- 141 increased state funding to cover the cost of operations and maintenance to, or state funding for,
- 142 immediate or future capital improvements to the resulting facility; and
- 143 (ii) the use of the state property is:
- 144 (A) appropriate and consistent with the master plan for the property; and
- 145 (B) will not create an adverse impact on the state.
- 146 (c) (i) The Division of Facilities Construction and Management shall maintain a record
- 147 of facilities constructed under the exemption provided in Subsection (3)(b).
- 148 (ii) For facilities constructed under the exemption provided in Subsection (3)(b), a
- 149 higher education institution may not request:

- 150 (A) increased state funds for operations and maintenance; or
151 (B) state capital improvement funding.
152 (d) Legislative approval is not required for:
153 (i) the renovation, remodeling, or retrofitting of an existing facility with nonstate funds;
154 (ii) a facility to be built with nonstate funds and owned by nonstate entities within
155 research park areas at the University of Utah and Utah State University;
156 (iii) a facility to be built at This is the Place State Park by This is the Place Foundation
157 with funds of the foundation, including grant monies from the state, or with donated services or
158 materials;
159 (iv) a capital project that:
160 (A) is funded by:
161 (I) the Uintah Basin Revitalization Fund; or
162 (II) the Navajo Revitalization Fund; and
163 (B) does not provide a new facility for a state agency or higher education institution; or
164 (v) a capital project on school and institutional trust lands that is funded by the School
165 and Institutional Trust Lands Administration from the Land Grant Management Fund and that
166 does not fund construction of a new facility for a state agency or higher education institution.
167 (e) (i) Legislative approval is not required for capital development projects to be built
168 for the Department of Transportation as a result of an exchange of real property under Section
169 72-5-111.
170 (ii) When the Department of Transportation approves those exchanges, it shall notify
171 the president of the Senate, the speaker of the House, and the cochairs of the Capital Facilities
172 and Administrative Services Subcommittee of the Legislature's Joint Appropriation Committee
173 about any new facilities to be built under this exemption.
174 (4) (a) (i) The State Building Board, on behalf of all state agencies, commissions,
175 departments, and institutions shall by January 15 of each year, submit a list of anticipated
176 capital improvement requirements to the Legislature for review and approval.
177 (ii) The list shall identify:
178 (A) a single project that costs more than \$1,000,000;
179 (B) multiple projects within a single building or facility that collectively cost more than
180 \$1,000,000;

181 (C) a single project that will be constructed over multiple years with a yearly cost of
182 \$1,000,000 or more and an aggregate cost of more than \$2,500,000;

183 (D) multiple projects within a single building or facility with a yearly cost of
184 \$1,000,000 or more and an aggregate cost of more than \$2,500,000;

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

188 (F) multiple projects within a single building or facility previously reported to the
189 Legislature as a capital improvement project under \$1,000,000 that, because of an increase in
190 costs or scope of work, will now cost more than \$1,000,000.

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

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

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

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

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

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

207 (5) The Legislature may authorize:

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

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

210 (6) (a) Except as provided in Subsection (6)(b) or (c), the Legislature may not fund the
211 design or construction of any new capital development projects, except to complete the funding

212 of projects for which partial funding has been previously provided, until the Legislature has
213 appropriated 1.1% of the replacement cost of existing state facilities to capital improvements.

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

215 (A) "Education Fund budget deficit" is as defined in Section 63J-1-312; and

216 (B) "General Fund budget deficit" is as defined in Section 63J-1-312.

217 (ii) If the Legislature determines that an Education Fund budget deficit or a General
218 Fund budget deficit exists, the Legislature may, in eliminating the deficit, reduce the amount
219 appropriated to capital improvements to 0.9% of the replacement cost of state buildings.

220 (c) The requirements under Subsections (6)(a) and (b) do not apply to the 2008-09,
221 [~~and~~] 2009-10, and 2010-11 fiscal years.

222 (7) (a) If, after approval of capital development and capital improvement priorities by
223 the Legislature under this section, emergencies arise that create unforeseen critical capital
224 improvement projects, the State Building Board may, notwithstanding the requirements of Title
225 63J, Chapter 1, Budgetary Procedures Act, reallocate capital improvement funds to address
226 those projects.

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

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

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

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

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

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

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

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

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

243 **63A-5-206. Construction, alteration, and repair of state facilities -- Powers of**
244 **director -- Exceptions -- Expenditure of appropriations -- Notification to local**
245 **governments for construction or modification of certain facilities.**

246 (1) As used in this section:

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

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

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

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

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

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

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

266 (2) (a) (i) Except as provided in Subsections (3) and (4), the director shall exercise
267 direct supervision over the design and construction of all new facilities, and all alterations,
268 repairs, and improvements to existing facilities if the total project construction cost, regardless
269 of the funding source, is greater than \$100,000[-] unless there is memorandum of
270 understanding between the director and an institution of higher education that permits the
271 institution of higher education to exercise direct supervision.

272 (ii) A state entity may exercise direct supervision over the design and construction of
273 all new facilities, and all alterations, repairs, and improvements to existing facilities if:

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

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

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

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

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

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

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

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

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

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

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

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

304 (iv) State entities that receive a delegated project may not access, for the delegated

305 project, the division's statewide contingency reserve and project reserve authorized in Section
306 63A-5-209.

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

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

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

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

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

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

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

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

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

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

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

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

335 (i) only review plans and inspect construction to enforce the building codes as adopted

336 by the Uniform Building Codes Commission; and

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

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

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

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

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

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

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

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

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

357 (b) The director shall:

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

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

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

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

367 (b) use any unencumbered existing account balances to fund that design work; and
368 (c) reimburse those account balances from the amount funded for those projects when
369 the appropriation act funding the project becomes effective.

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

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

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

377 (iii) the project is new construction.

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

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

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

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

389 (B) the municipality in whose boundaries the privately owned residential property is
390 located.

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

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

H.B. 370 1st Sub. (Buff) - Capital Project Amendments

Fiscal Note

2010 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.
