

CAPITAL IMPROVEMENT AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: Gage Froerer

LONG TITLE

General Description:

This bill amends provisions of Title 63A, Chapter 5, State Building Board - Division of Facilities Construction and Management.

Highlighted Provisions:

This bill:

- ▶ requires the State Building Board to include the cost of capital improvements for a new building or facility in the required five-year building plan;
- ▶ provides that the Legislature may not authorize construction of a new building or facility that will be paid for with nonstate funds until the Legislature appropriates ongoing funding for the cost of operations and maintenance and capital improvements;
- ▶ amends appropriations for capital improvements from 1.1% to 0.9% for the 2013-14 fiscal year;
- ▶ provides that at least 80% of the funds appropriated for capital improvements shall be used for maintenance or repair of the existing building or facility;
- ▶ subject to sunset review, repeals certain provisions related to prioritization of capital improvements projects on July 1, 2014; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **63A-5-103**, as last amended by Laws of Utah 2010, Chapter 338

33 **63A-5-104**, as last amended by Laws of Utah 2012, Chapters 129, 242, and 393

34 **63I-1-263 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapters 126,
35 206, 347, 369, and 395



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

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

39 **63A-5-103. Board -- Powers.**

40 (1) The State Building Board shall:

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

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

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

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

50 (e) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
51 make rules:

52 (i) that are necessary to discharge its duties and the duties of the Division of Facilities
53 Construction and Management;

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

56 (iii) to govern the disposition of real property by the division and establish factors,
57 including appraised value and historical significance, in evaluating the disposition;

58 (f) with support from the Division of Facilities Construction and Management,
59 establish design criteria, standards, and procedures for planning, design, and construction of
60 new state facilities and for improvements to existing state facilities, including life-cycle
61 costing, cost-effectiveness studies, and other methods and procedures that address:

- 62 (i) the need for the building or facility;
- 63 (ii) the effectiveness of its design;
- 64 (iii) the efficiency of energy use; and
- 65 (iv) the usefulness of the building or facility over its lifetime;

66 (g) prepare and submit a yearly request to the governor and the Legislature for a
67 designated amount of square footage by type of space to be leased by the Division of Facilities
68 Construction and Management in that fiscal year; and

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

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

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

- 76 (i) a list that prioritizes construction of new buildings for all structures built or
77 contemplated based upon each agency's, department's, commission's, and institution's present
78 and future needs;
- 79 (ii) information, and space use data for all state-owned and leased facilities;
- 80 (iii) substantiating data to support the adequacy of any projected plans;
- 81 (iv) a summary of all statewide contingency reserve and project reserve balances as of
82 the end of the most recent fiscal year;
- 83 (v) a list of buildings that have completed a comprehensive facility evaluation by an
84 architect/engineer or are scheduled to have an evaluation;
- 85 (vi) for those buildings that have completed the evaluation, the estimated costs of

86 needed improvements; and

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

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

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

91 (C) the cost of capital improvements to the building or facility, estimated at 1.1% of
92 the replacement cost of the building or facility, on an annual basis;

93 [~~(C)~~] (D) the estimated number of new agency full-time employees expected to be
94 housed in the building or facility;

95 [~~(D)~~] (E) the estimated cost of new or expanded programs and personnel expected to
96 be housed in the building or facility;

97 [~~(E)~~] (F) the estimated lifespan of the building with associated costs for major
98 component replacement over the life of the building; and

99 [~~(F)~~] (G) the estimated cost of any required support facilities.

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

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

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

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

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

113 (c) If any violation of a rule adopted by the board is also an offense under Title 76,

114 Utah Criminal Code, the violation is subject to the civil penalty, damages, expenses, and costs
115 allowed under Subsection (1)(e) in addition to any criminal prosecution.

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

117 **63A-5-104. Definitions -- Capital development and capital improvement process**
118 **-- Approval requirements -- Limitations on new projects -- Emergencies.**

119 (1) As used in this section:

120 (a) "Capital developments" means a:

- 121 (i) remodeling, site, or utility project with a total cost of \$2,500,000 or more;
- 122 (ii) new facility with a construction cost of \$500,000 or more; or
- 123 (iii) purchase of real property where an appropriation is requested to fund the purchase.

124 (b) "Capital improvements" means a:

125 (i) remodeling, alteration, replacement, or repair project with a total cost of less than
126 \$2,500,000;

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

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

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

131 (ii) "New facility" includes:

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

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

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

135 (A) the replacement of state-owned space that is demolished or that is otherwise
136 removed from state use, if the total construction cost of the replacement space is less than
137 \$2,500,000; or

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

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

142 (e) "State funds" means public money appropriated by the Legislature.

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

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

148 (b) Legislative approval is not required for a capital development project that consists
149 of the design or construction of a new facility if the State Building Board determines that:

150 (i) the requesting state agency, commission, department, or institution has provided
151 adequate assurance that:

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

153 (B) the state agency, commission, department, or institution has a plan for funding in
154 place that will not require increased state funding to cover the cost of operations and
155 maintenance to, or state funding for, immediate or future capital improvements to the resulting
156 facility; and

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

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

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

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

162 (ii) For facilities constructed under the exemption provided in Subsection (3)(b), a state
163 agency, commission, department, or institution may not request:

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

165 (B) state capital improvement funding.

166 (d) Legislative approval is not required for:

167 (i) the renovation, remodeling, or retrofitting of an existing facility with nonstate funds
168 that has been approved by the State Building Board;

169 (ii) a facility to be built with nonstate funds and owned by nonstate entities within

170 research park areas at the University of Utah and Utah State University;

171 (iii) a facility to be built at This is the Place State Park by This is the Place Foundation
172 with funds of the foundation, including grant money from the state, or with donated services or
173 materials;

174 (iv) a capital project that:

175 (A) is funded by:

176 (I) the Uintah Basin Revitalization Fund; or

177 (II) the Navajo Revitalization Fund; and

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

179 (v) a capital project on school and institutional trust lands that is funded by the School
180 and Institutional Trust Lands Administration from the Land Grant Management Fund and that
181 does not fund construction of a new facility for a state agency or higher education institution.

182 (e) (i) Legislative approval is not required for capital development projects to be built
183 for the Department of Transportation:

184 (A) as a result of an exchange of real property under Section 72-5-111; or

185 (B) as a result of a sale or exchange of real property from a maintenance facility if the
186 real property is exchanged for, or the proceeds from the sale of the real property are used for,
187 another maintenance facility, including improvements for a maintenance facility and real
188 property.

189 (ii) When the Department of Transportation approves a sale or exchange under
190 Subsection (3)(e), it shall notify the president of the Senate, the speaker of the House, and the
191 cochairs of the Infrastructure and General Government Appropriations Subcommittee of the
192 Legislature's Joint Appropriation Committee about any new facilities to be built or improved
193 under this exemption.

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

197 (ii) The list shall identify:

- 198 (A) a single project that costs more than \$1,000,000;
- 199 (B) multiple projects within a single building or facility that collectively cost more than
200 \$1,000,000;
- 201 (C) a single project that will be constructed over multiple years with a yearly cost of
202 \$1,000,000 or more and an aggregate cost of more than \$2,500,000;
- 203 (D) multiple projects within a single building or facility with a yearly cost of
204 \$1,000,000 or more and an aggregate cost of more than \$2,500,000;
- 205 (E) a single project previously reported to the Legislature as a capital improvement
206 project under \$1,000,000 that, because of an increase in costs or scope of work, will now cost
207 more than \$1,000,000; and
- 208 (F) multiple projects within a single building or facility previously reported to the
209 Legislature as a capital improvement project under \$1,000,000 that, because of an increase in
210 costs or scope of work, will now cost more than \$1,000,000.

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

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

217 (d) Beginning on July 1, 2013, in prioritizing capital improvements, the State Building
218 Board shall allocate at least 80% of the funds that the Legislature appropriates for capital
219 improvements to:

- 220 (i) projects that address:
 - 221 (A) a structural issue;
 - 222 (B) fire safety;
 - 223 (C) a code violation; or
 - 224 (D) any issue that impacts health and safety;
- 225 (ii) projects that upgrade:

- 226 (A) an HVAC system;
- 227 (B) an electrical system;
- 228 (C) essential equipment;
- 229 (D) an essential building component; or
- 230 (E) infrastructure, including a utility tunnel, water line, gas line, sewer line, roof,
- 231 parking lot, or road; or
- 232 (iii) projects that demolish and replace an existing building that is in extensive
- 233 disrepair and cannot be fixed by repair or maintenance.
- 234 (e) Beginning on July 1, 2013, in prioritizing capital improvements, the State Building
- 235 Board shall allocate no more than 20% of the funds that the Legislature appropriates for capital
- 236 improvements to:
- 237 (i) remodeling and aesthetic upgrades to meet state programmatic needs; or
- 238 (ii) construct an addition to an existing building or facility.
- 239 [~~(d)~~] (f) The State Building Board may require an entity that benefits from a capital
- 240 improvement project to repay the capital improvement funds from savings that result from the
- 241 project.
- 242 [~~(e)~~] (g) The State Building Board may provide capital improvement funding to a
- 243 single project, or to multiple projects within a single building or facility, even if the total cost
- 244 of the project or multiple projects is \$2,500,000 or more, if:
- 245 (i) the capital improvement project or multiple projects require more than one year to
- 246 complete; and
- 247 (ii) the Legislature has affirmatively authorized the capital improvement project or
- 248 multiple projects to be funded in phases.
- 249 (5) The Legislature may authorize:
- 250 (a) the total square feet to be occupied by each state agency; and
- 251 (b) the total square feet and total cost of lease space for each agency.
- 252 (6) If construction of a new building or facility will be paid for by nonstate funds, but
- 253 will require an immediate or future increase in state funding for operations and maintenance or

254 for capital improvements, the Legislature may not authorize the new building or facility until
255 the Legislature appropriates funds for:

256 (a) the portion of operations and maintenance, if any, that will require an immediate or
257 future increase in state funding; and

258 (b) the portion of capital improvements, if any, that will require an immediate or future
259 increase in state funding.

260 [~~6~~] (7) (a) Except as provided in Subsection [~~6~~] (7)(b) or (c), the Legislature may
261 not fund the design or construction of any new capital development projects, except to
262 complete the funding of projects for which partial funding has been previously provided, until
263 the Legislature has appropriated 1.1% of the replacement cost of existing state facilities to
264 capital improvements.

265 (b) (i) As used in this Subsection [~~6~~] (7)(b):

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

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

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

271 (c) (i) The requirements under Subsections (6)(a) and (b) do not apply to the 2008-09,
272 2009-10, 2010-11, 2011-12, and 2012-13 fiscal years.

273 (ii) For the 2013-14 fiscal year, the amount appropriated to capital improvements shall
274 be reduced to 0.9% of the replacement cost of state facilities.

275 [~~7~~] (8) (a) If, after approval of capital development and capital improvement
276 priorities by the Legislature under this section, emergencies arise that create unforeseen critical
277 capital improvement projects, the State Building Board may, notwithstanding the requirements
278 of Title 63J, Chapter 1, Budgetary Procedures Act, reallocate capital improvement funds to
279 address those projects.

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

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

284 ~~[(8)]~~ (9) (a) The State Building Board may adopt a rule allocating to institutions and
285 agencies their proportionate share of capital improvement funding.

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

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

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

292 ~~[(9)]~~ (10) It is the intent of the Legislature that in funding capital improvement
293 requirements under this section the General Fund be considered as a funding source for at least
294 half of those costs.

295 (11) (a) Subject to Subsection (11)(b), at least 80% of the state funds appropriated for
296 capital improvements shall be used for maintenance or repair of the existing building or
297 facility.

298 (b) The State Building Board may modify the requirement described in Subsection
299 (11)(a) if the State Building Board determines that a different allocation of capital
300 improvements funds is in the best interest of the state.

301 Section 3. Section **63I-1-263 (Effective 05/01/13)** is amended to read:

302 **63I-1-263 (Effective 05/01/13). Repeal dates, Titles 63A to 63M.**

303 (1) Section 63A-4-204, authorizing the Risk Management Fund to provide coverage to
304 any public school district which chooses to participate, is repealed July 1, 2016.

305 (2) Subsections 63A-5-104(d) and (e) are repealed on July 1, 2014.

306 ~~[(2)]~~ (3) Section 63A-5-603, State Facility Energy Efficiency Fund, is repealed July 1,
307 2016.

308 ~~[(3)]~~ (4) Section 63C-8-106, rural residency training program, is repealed July 1, 2015.

309 ~~[(4)]~~ (5) Title 63C, Chapter 13, Prison Relocation and Development Authority Act, is

310 repealed July 1, 2014.

311 ~~[(5)]~~ (6) Subsection 63G-6a-1402(7) authorizing certain transportation agencies to
312 award a contract for a design-build transportation project in certain circumstances, is repealed
313 July 1, 2015.

314 ~~[(6)]~~ (7) Title 63H, Chapter 4, Heber Valley Historic Railroad Authority, is repealed
315 July 1, 2020.

316 ~~[(7)]~~ (8) The Resource Development Coordinating Committee, created in Section
317 63J-4-501, is repealed July 1, 2015.

318 ~~[(8)]~~ (9) Title 63M, Chapter 1, Part 4, Enterprise Zone Act, is repealed July 1, 2018.

319 ~~[(9)]~~ (10) (a) Title 63M, Chapter 1, Part 11, Recycling Market Development Zone Act,
320 is repealed January 1, 2021.

321 (b) Subject to Subsection (9)(c), Sections 59-7-610 and 59-10-1007 regarding tax
322 credits for certain persons in recycling market development zones, are repealed for taxable
323 years beginning on or after January 1, 2021.

324 (c) A person may not claim a tax credit under Section 59-7-610 or 59-10-1007:

325 (i) for the purchase price of machinery or equipment described in Section 59-7-610 or
326 59-10-1007, if the machinery or equipment is purchased on or after January 1, 2021; or

327 (ii) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), if
328 the expenditure is made on or after January 1, 2021.

329 (d) Notwithstanding Subsections (9)(b) and (c), a person may carry forward a tax credit
330 in accordance with Section 59-7-610 or 59-10-1007 if:

331 (i) the person is entitled to a tax credit under Section 59-7-610 or 59-10-1007; and

332 (ii) (A) for the purchase price of machinery or equipment described in Section
333 59-7-610 or 59-10-1007, the machinery or equipment is purchased on or before December 31,
334 2020; or

335 (B) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), the
336 expenditure is made on or before December 31, 2020.

337 ~~[(10)]~~ (11) (a) Section 63M-1-2507, Health Care Compact is repealed on July 1, 2014.

338 (b) (i) The Legislature shall, before reauthorizing the Health Care Compact:
339 (A) direct the Health System Reform Task Force to evaluate the issues listed in
340 Subsection (10)(b)(ii), and by January 1, 2013 develop and recommend criteria for the
341 Legislature to use to negotiate the terms of the Health Care Compact; and
342 (B) prior to July 1, 2014, seek amendments to the Health Care Compact among the
343 member states that the Legislature determines are appropriate after considering the
344 recommendations of the Health System Reform Task Force.
345 (ii) The Health System Reform Task Force shall evaluate and develop criteria for the
346 Legislature regarding:
347 (A) the impact of the Supreme Court ruling on the Affordable Care Act;
348 (B) whether Utah is likely to be required to implement any part of the Affordable Care
349 Act prior to negotiating the compact with the federal government, such as Medicaid expansion
350 in 2014;
351 (C) whether the compact's current funding formula, based on adjusted 2010 state
352 expenditures, is the best formula for Utah and other state compact members to use for
353 establishing the block grants from the federal government;
354 (D) whether the compact's calculation of current year inflation adjustment factor,
355 without consideration of the regional medical inflation rate in the current year, is adequate to
356 protect the state from increased costs associated with administering a state based Medicaid and
357 a state based Medicare program;
358 (E) whether the state has the flexibility it needs under the compact to implement and
359 fund state based initiatives, or whether the compact requires uniformity across member states
360 that does not benefit Utah;
361 (F) whether the state has the option under the compact to refuse to take over the federal
362 Medicare program;
363 (G) whether a state based Medicare program would provide better benefits to the
364 elderly and disabled citizens of the state than a federally run Medicare program;
365 (H) whether the state has the infrastructure necessary to implement and administer a

366 better state based Medicare program;

367 (I) whether the compact appropriately delegates policy decisions between the
368 legislative and executive branches of government regarding the development and
369 implementation of the compact with other states and the federal government; and

370 (J) the impact on public health activities, including communicable disease surveillance
371 and epidemiology.

372 [~~(11)~~] (12) The Crime Victim Reparations and Assistance Board, created in Section
373 63M-7-504, is repealed July 1, 2017.

374 [~~(12)~~] (13) Title 63M, Chapter 9, Families, Agencies, and Communities Together for
375 Children and Youth At Risk Act, is repealed July 1, 2016.

376 [~~(13)~~] (14) Title 63M, Chapter 11, Utah Commission on Aging, is repealed July 1,
377 2017.