

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 85% of the funds appropriated for capital improvements shall be used for maintenance or repair of the existing building or facility; and

- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **63A-5-103**, as last amended by Laws of Utah 2010, Chapter 338

31 **63A-5-104**, as last amended by Laws of Utah 2012, Chapters 129, 242, and 393

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

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

35 **63A-5-103. Board -- Powers.**

36 (1) The State Building Board shall:

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

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

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

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

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

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

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

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

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

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

- 59 (ii) the effectiveness of its design;
- 60 (iii) the efficiency of energy use; and
- 61 (iv) the usefulness of the building or facility over its lifetime;
- 62 (g) prepare and submit a yearly request to the governor and the Legislature for a
63 designated amount of square footage by type of space to be leased by the Division of Facilities
64 Construction and Management in that fiscal year; and
- 65 (h) assure the efficient use of all building space.
- 66 (2) In order to provide adequate information upon which the State Building Board may
67 make its recommendation under Subsection (1), any state agency requesting new full-time
68 employees for the next fiscal year shall report those anticipated requests to the building board
69 at least 90 days before the annual general session in which the request is made.
- 70 (3) (a) The State Building Board shall ensure that the five-year building plan required
71 by Subsection (1)(c) includes:
- 72 (i) a list that prioritizes construction of new buildings for all structures built or
73 contemplated based upon each agency's, department's, commission's, and institution's present
74 and future needs;
- 75 (ii) information, and space use data for all state-owned and leased facilities;
- 76 (iii) substantiating data to support the adequacy of any projected plans;
- 77 (iv) a summary of all statewide contingency reserve and project reserve balances as of
78 the end of the most recent fiscal year;
- 79 (v) a list of buildings that have completed a comprehensive facility evaluation by an
80 architect/engineer or are scheduled to have an evaluation;
- 81 (vi) for those buildings that have completed the evaluation, the estimated costs of
82 needed improvements; and
- 83 (vii) for projects recommended in the first two years of the five-year building plan:
- 84 (A) detailed estimates of the cost of each project;
- 85 (B) the estimated cost to operate and maintain the building or facility on an annual
86 basis;
- 87 (C) the cost of capital improvements to the building or facility, estimated at 1.1% of
88 the replacement cost of the building or facility, on an annual basis;
- 89 [~~C~~] (D) the estimated number of new agency full-time employees expected to be

90 housed in the building or facility;

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

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

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

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

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

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

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

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

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

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

113 **63A-5-104. Definitions -- Capital development and capital improvement process**

114 **-- Approval requirements -- Limitations on new projects -- Emergencies.**

115 (1) As used in this section:

116 (a) "Capital developments" means a:

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

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

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

120 (b) "Capital improvements" means a:

121 (i) remodeling, alteration, replacement, or repair project with a total cost of less than
122 \$2,500,000;

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

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

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

127 (ii) "New facility" includes:

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

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

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

131 (A) the replacement of state-owned space that is demolished or that is otherwise
132 removed from state use, if the total construction cost of the replacement space is less than
133 \$2,500,000; or

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

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

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

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

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

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

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

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

149 (B) the state agency, commission, department, or institution has a plan for funding in
150 place that will not require increased state funding to cover the cost of operations and
151 maintenance to, or state funding for, immediate or future capital improvements to the resulting

152 facility; and

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

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

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

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

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

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

161 (B) state capital improvement funding.

162 (d) Legislative approval is not required for:

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

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

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

170 (iv) a capital project that:

171 (A) is funded by:

172 (I) the Uintah Basin Revitalization Fund; or

173 (II) the Navajo Revitalization Fund; and

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

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

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

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

181 (B) as a result of a sale or exchange of real property from a maintenance facility if the
182 real property is exchanged for, or the proceeds from the sale of the real property are used for,

183 another maintenance facility, including improvements for a maintenance facility and real
184 property.

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

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

193 (ii) The list shall identify:

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

195 (B) multiple projects within a single building or facility that collectively cost more than
196 \$1,000,000;

197 (C) a single project that will be constructed over multiple years with a yearly cost of
198 \$1,000,000 or more and an aggregate cost of more than \$2,500,000;

199 (D) multiple projects within a single building or facility with a yearly cost of
200 \$1,000,000 or more and an aggregate cost of more than \$2,500,000;

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

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

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

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

213 (d) The State Building Board may require an entity that benefits from a capital

214 improvement project to repay the capital improvement funds from savings that result from the
215 project.

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

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

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

223 (5) The Legislature may authorize:

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

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

226 (6) If construction of a new building or facility will be paid for by nonstate funds, but
227 will require an increase in state funding for immediate or future operations and maintenance or
228 for capital improvements, the Legislature may not authorize the new building or facility until
229 the Legislature appropriates funds for the operations and maintenance or capital improvements
230 in accordance with the requirements of this chapter.

231 [~~(6)~~] (7) (a) Except as provided in Subsection [~~(6)~~] (7)(b) or (c), the Legislature may
232 not fund the design or construction of any new capital development projects, except to
233 complete the funding of projects for which partial funding has been previously provided, until
234 the Legislature has appropriated 1.1% of the replacement cost of existing state facilities to
235 capital improvements.

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

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

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

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

242 (c) (i) The requirements under Subsections (6)(a) and (b) do not apply to the 2008-09,
243 2009-10, 2010-11, 2011-12, and 2012-13 fiscal years.

244 (ii) For the 2013-14 fiscal year, the amount appropriated to capital improvements shall

245 be reduced to 0.9% of the replacement cost of state facilities.

246 [~~7~~] (8) (a) If, after approval of capital development and capital improvement
247 priorities by the Legislature under this section, emergencies arise that create unforeseen critical
248 capital improvement projects, the State Building Board may, notwithstanding the requirements
249 of Title 63J, Chapter 1, Budgetary Procedures Act, reallocate capital improvement funds to
250 address those projects.

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

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

255 [~~8~~] (9) (a) The State Building Board may adopt a rule allocating to institutions and
256 agencies their proportionate share of capital improvement funding.

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

- 258 (i) reserves funds for the Division of Facilities Construction and Management for
259 emergency projects; and

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

263 [~~9~~] (10) It is the intent of the Legislature that in funding capital improvement
264 requirements under this section the General Fund be considered as a funding source for at least
265 half of those costs.

266 (11) At least 85% of the state funds appropriated to a building or facility for capital
267 improvements shall be used for maintenance or repair of the existing building or facility.

Legislative Review Note
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Office of Legislative Research and General Counsel