

1 **CAPITAL IMPROVEMENT AND DEVELOPMENT PROJECT**

2 **AMENDMENTS**

3 2015 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Wayne A. Harper**

6 House Sponsor: Gage Froerer

7

8 **LONG TITLE**

9 **General Description:**

10 This bill amends provisions relating to capital improvement and capital development
11 projects.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ modifies the State Building Board's duties;
- 15 ▶ addresses the process by which the State Building Board recommends and
16 prioritizes capital development projects;
- 17 ▶ requires the State Building Board to complete a process report relating to operations
18 and maintenance costs; and
- 19 ▶ makes technical and conforming changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **63A-5-103**, as last amended by Laws of Utah 2013, Chapter 250

27 **63A-5-104**, as last amended by Laws of Utah 2014, Chapters 113 and 195



28 **63I-2-263**, as last amended by Laws of Utah 2014, Chapters 172, 423, and 427

29 ENACTS:

30 **63A-5-104.1**, Utah Code Annotated 1953

31

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

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

34 **63A-5-103. Board -- Powers.**

35 (1) The State Building Board shall:

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

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

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

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

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

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

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

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

53 (iv) to establish standards and requirements for a capital development project request,
54 including a requirement for a feasibility study; and

55 (v) to establish standards and requirements for reporting operations and maintenance
56 expenditures for state-owned facilities, including standards and requirements relating to utility
57 metering;

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[-]; and
70 (i) conduct an annual audit of operations and maintenance programs in state-owned
71 facilities.

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

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

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

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

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

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

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

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

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

- 90 (A) detailed estimates of the cost of each project;
- 91 (B) the estimated cost to operate and maintain the building or facility on an annual
- 92 basis;
- 93 (C) the cost of capital improvements to the building or facility, estimated at 1.1% of
- 94 the replacement cost of the building or facility, on an annual basis;
- 95 (D) the estimated number of new agency full-time employees expected to be housed in
- 96 the building or facility;
- 97 (E) the estimated cost of new or expanded programs and personnel expected to be
- 98 housed in the building or facility;
- 99 (F) the estimated lifespan of the building with associated costs for major component
- 100 replacement over the life of the building; and
- 101 (G) the estimated cost of any required support facilities.

102 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

103 State Building Board may make rules prescribing the format for submitting the information

104 required by this Subsection (3).

105 (4) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,

106 the State Building Board may make rules establishing circumstances under which bids may be

107 modified when all bids for a construction project exceed available funds as certified by the

108 director.

109 (b) In making those rules, the State Building Board shall provide for the fair and

110 equitable treatment of bidders.

111 (5) (a) A person who violates a rule adopted by the board under Subsection (1)(e) is

112 subject to a civil penalty not to exceed \$2,500 for each violation plus the amount of any actual

113 damages, expenses, and costs related to the violation of the rule that are incurred by the state.

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

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

116 Utah Criminal Code, the violation is subject to the civil penalty, damages, expenses, and costs

117 allowed under Subsection (1)(e) in addition to any criminal prosecution.

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

119 **63A-5-104. Definitions -- Capital development and capital improvement process**

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

- 121 (1) As used in this section:
- 122 (a) "Capital developments" means a:
- 123 (i) remodeling, site, or utility project with a total cost of \$2,500,000 or more;
- 124 (ii) new facility with a construction cost of \$500,000 or more; or
- 125 (iii) purchase of real property where an appropriation is requested to fund the purchase.
- 126 (b) "Capital improvements" means a:
- 127 (i) remodeling, alteration, replacement, or repair project with a total cost of less than
- 128 \$2,500,000;
- 129 (ii) site and utility improvement with a total cost of less than \$2,500,000; or
- 130 (iii) new facility with a total construction cost of less than \$500,000.
- 131 (c) (i) "New facility" means the construction of a new building on state property
- 132 regardless of funding source.
- 133 (ii) "New facility" includes:
- 134 (A) an addition to an existing building; and
- 135 (B) the enclosure of space that was not previously fully enclosed.
- 136 (iii) "New facility" does not mean:
- 137 (A) the replacement of state-owned space that is demolished or that is otherwise
- 138 removed from state use, if the total construction cost of the replacement space is less than
- 139 \$2,500,000; or
- 140 (B) the construction of facilities that do not fully enclose a space.
- 141 (d) "Replacement cost of existing state facilities and infrastructure" means the
- 142 replacement cost, as determined by the Division of Risk Management, of state facilities,
- 143 excluding auxiliary facilities as defined by the State Building Board and the replacement cost
- 144 of infrastructure as defined by the State Building Board.
- 145 (e) "State funds" means public money appropriated by the Legislature.
- 146 (2) (a) The State Building Board, on behalf of all state agencies, commissions,
- 147 departments, and institutions shall submit its capital development recommendations and
- 148 priorities to the Legislature for approval and prioritization.
- 149 (b) In developing the State Building Board's capital development recommendations and
- 150 priorities, the State Building Board shall:
- 151 (i) require each state agency, commission, department, or institution requesting an

152 appropriation for a capital development project to complete a feasibility study that:

153 (A) demonstrates the need for the capital development project;

154 (B) demonstrates that the scope of the capital development project is appropriate;

155 (C) identifies any private funding for the capital development project; and

156 (D) analyzes the economic and community impacts of the capital development project;

157 and

158 (ii) verify the completion and accuracy of the feasibility study described in Subsection

159 (2)(b)(i).

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

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

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

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

167 (B) the state agency, commission, department, or institution has a plan for funding in
168 place that will not require increased state funding to cover the cost of operations and

169 maintenance to, or state funding for, immediate or future capital improvements to the resulting
170 facility; and

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

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

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

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

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

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

179 (B) state capital improvement funding.

180 (d) Legislative approval is not required for:

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

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

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

188 (iv) a capital project that:

189 (A) is funded by:

190 (I) the Uintah Basin Revitalization Fund; or

191 (II) the Navajo Revitalization Fund; and

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

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

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

198 (A) as a result of an exchange of real property under Section [72-5-111](#); or

199 (B) as a result of a sale or exchange of real property from a maintenance facility if the
200 real property is exchanged for, or the proceeds from the sale of the real property are used for,
201 another maintenance facility, including improvements for a maintenance facility and real
202 property.

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

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

211 (ii) The list shall identify:

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

213 (B) multiple projects within a single building or facility that collectively cost more than

214 \$1,000,000;

215 (C) a single project that will be constructed over multiple years with a yearly cost of
216 \$1,000,000 or more and an aggregate cost of more than \$2,500,000;

217 (D) multiple projects within a single building or facility with a yearly cost of
218 \$1,000,000 or more and an aggregate cost of more than \$2,500,000;

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

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

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

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

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

234 (i) projects that address:

235 (A) a structural issue;

236 (B) fire safety;

237 (C) a code violation; or

238 (D) any issue that impacts health and safety;

239 (ii) projects that upgrade:

240 (A) an HVAC system;

241 (B) an electrical system;

242 (C) essential equipment;

243 (D) an essential building component; or

244 (E) infrastructure, including a utility tunnel, water line, gas line, sewer line, roof,

245 parking lot, or road; or

246 (iii) projects that demolish and replace an existing building that is in extensive
247 disrepair and cannot be fixed by repair or maintenance.

248 (e) Beginning on July 1, 2013, in prioritizing capital improvements, the State Building
249 Board shall allocate no more than 20% of the funds that the Legislature appropriates for capital
250 improvements to:

251 (i) remodeling and aesthetic upgrades to meet state programmatic needs; or

252 (ii) construct an addition to an existing building or facility.

253 (f) The State Building Board may require an entity that benefits from a capital
254 improvement project to repay the capital improvement funds from savings that result from the
255 project.

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

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

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

263 (h) In prioritizing and allocating capital improvement funding, the State Building
264 Board shall comply with the requirement in Subsection [63B-23-101\(2\)\(f\)](#).

265 (5) The Legislature may authorize:

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

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

268 (6) If construction of a new building or facility will be paid for by nonstate funds, but
269 will require an immediate or future increase in state funding for operations and maintenance or
270 for capital improvements, the Legislature may not authorize the new building or facility until
271 the Legislature appropriates funds for:

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

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

276 (7) (a) Except as provided in Subsection (7)(b) or (c), the Legislature may not fund the
277 design or construction of any new capital development projects, except to complete the funding
278 of projects for which partial funding has been previously provided, until the Legislature has
279 appropriated 1.1% of the replacement cost of existing state facilities and infrastructure to
280 capital improvements.

281 (b) (i) As used in this Subsection (7)(b):

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

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

284 (ii) If the Legislature determines that an Education Fund budget deficit or a General
285 Fund budget deficit exists, the Legislature may, in eliminating the deficit, reduce the amount
286 appropriated to capital improvements to 0.9% of the replacement cost of state buildings and
287 infrastructure.

288 (c) (i) The requirements under Subsections (6)(a) and (b) do not apply to the 2008-09,
289 2009-10, 2010-11, 2011-12, and 2012-13 fiscal years.

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

292 (8) It is the policy of the Legislature that a new building or facility be approved and
293 funded for construction in a single budget action, therefore the Legislature may not fund the
294 programming, design, and construction of a new building or facility in phases over more than
295 one year unless the Legislature has approved each phase of the funding for the construction of
296 the new building or facility by the affirmative vote of two-thirds of all the members elected to
297 each house.

298 (9) (a) If, after approval of capital development and capital improvement priorities by
299 the Legislature under this section, emergencies arise that create unforeseen critical capital
300 improvement projects, the State Building Board may, notwithstanding the requirements of Title
301 63J, Chapter 1, Budgetary Procedures Act, reallocate capital improvement funds to address
302 those projects.

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

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

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

307 (10) (a) The State Building Board may adopt a rule allocating to institutions and
308 agencies their proportionate share of capital improvement funding.

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

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

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

315 (11) It is the intent of the Legislature that in funding capital improvement requirements
316 under this section the General Fund be considered as a funding source for at least half of those
317 costs.

318 (12) (a) Subject to Subsection (12)(b), at least 80% of the state funds appropriated for
319 capital improvements shall be used for maintenance or repair of the existing building or
320 facility.

321 (b) The State Building Board may modify the requirement described in Subsection
322 (12)(a) if the State Building Board determines that a different allocation of capital
323 improvements funds is in the best interest of the state.

324 Section 3. Section **63A-5-104.1** is enacted to read:

325 **63A-5-104.1. State Building Board -- Process study and recommendations.**

326 (1) (a) The State Building Board, in collaboration with the Board of Regents and any
327 other state entity that the State Building Board invites to participate, shall prepare a report that
328 proposes:

329 (i) a process for tracking direct and indirect operations and maintenance costs on an
330 individual building basis; and

331 (ii) alternative funding mechanisms for operations and maintenance costs for
332 state-owned and state-operated facilities that incorporate actual expenses, the purpose for
333 which the facility is used, the age of the facility, the condition of the facility, and the location of
334 the facility.

335 (b) In preparing a proposal described in Subsection (1)(a)(ii), the State Building Board
336 shall consider an internal service fund, individual appropriation line items, and a formula to
337 determine funding.

338 (2) No later than September 1, 2015, the State Building Board shall submit the report
339 described in Subsection (1) to:

340 (a) the legislative fiscal analyst; and

341 (b) the Infrastructure and General Government Appropriations Subcommittee.

342 Section 4. Section **63I-2-263** is amended to read:

343 **63I-2-263. Repeal dates, Title 63A to Title 63M.**

344 [~~(1) Section 63A-1-115 is repealed on July 1, 2014.~~]

345 (1) Section 63A-5-104.1 is repealed on January 1, 2016.

346 (2) Section 63C-9-501.1 is repealed on July 1, 2015.

347 [~~(3) Subsection 63J-1-218(3) is repealed on December 1, 2013.~~]

348 [~~(4) Subsection 63J-1-218(4) is repealed on December 1, 2013.~~]

349 [~~(5) Section 63M-1-207 is repealed on December 1, 2014.~~]

350 [~~(6)~~ (3) Subsection 63M-1-903(1)(d) is repealed on July 1, 2015.

351 [~~(7) Subsection 63M-1-1406(9) is repealed on January 1, 2015.~~]

Legislative Review Note
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Office of Legislative Research and General Counsel