

SB0188S02 compared with SB0188S01

~~text~~ shows text that was in SB0188S01 but was deleted in SB0188S02.

text shows text that was not in SB0188S01 but was inserted into SB0188S02.

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Senator Stephen H. Urquhart proposes the following substitute bill:

HIGHER EDUCATION CAPITAL FACILITIES

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen H. Urquhart

House Sponsor: ~~_____~~ Gage Froerer

LONG TITLE

General Description:

This bill enacts and amends provisions related to capital facilities of institutions of higher education.

Highlighted Provisions:

This bill:

- ▶ creates the Higher Education Capital Developments Account;
- ▶ enacts provisions related to deposits into and use of funds in the account;
- ▶ enacts provisions related to the State Board of Regents' administration of funds in the account;
- ▶ enacts provisions related to how an institution of higher education may use funds from the account;
- ▶ enacts procedures for how an institution of higher education may obtain legislative

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approval for a capital development project;

- ▶ amends provisions related to capital developments by institutions of higher education; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

53B-7-101, as last amended by Laws of Utah 2015, Chapter 361

53B-20-104, as last amended by Laws of Utah 2012, Chapter 242

63A-5-103, as last amended by Laws of Utah 2015, Chapter 297

63A-5-104, as last amended by Laws of Utah 2015, Chapter 297

63A-5-206, as last amended by Laws of Utah 2011, Chapter 14

ENACTS:

53B-7-701, Utah Code Annotated 1953

53B-7-702, Utah Code Annotated 1953

53B-7-703, Utah Code Annotated 1953

53B-7-704, Utah Code Annotated 1953

53B-7-705, Utah Code Annotated 1953

53B-7-706, Utah Code Annotated 1953

63J-1-316, Utah Code Annotated 1953

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

Section 1. Section **53B-7-101** is amended to read:

53B-7-101. Combined requests for appropriations -- Board review of operating budgets -- Submission of budgets -- Recommendations -- Hearing request -- Appropriation formulas -- Allocations -- Dedicated credits -- Financial affairs.

(1) As used in this section:

(a) (i) "Higher education institution" or "institution" means an institution of higher

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education listed in Section 53B-1-102.

(ii) "Higher education institution" or "institution" does not include the Utah College of Applied Technology.

(b) "Research university" means the University of Utah or Utah State University.

(2) (a) The board shall recommend a combined appropriation for the operating budgets of higher education institutions for inclusion in a state appropriations act.

(b) The board's combined budget recommendation shall include:

(i) employee compensation;

(ii) mandatory costs, including building operations and maintenance, fuel, and power;

(iii) mission based funding described in Subsection (3);

(iv) performance funding described in Subsection (4);

(v) statewide and institutional priorities, including scholarships, financial aid, and technology infrastructure; and

(vi) unfunded historic growth.

(c) The board's recommendations shall be available for presentation to the governor and to the Legislature at least 30 days prior to the convening of the Legislature, and shall include schedules showing the recommended amounts for each institution, including separately funded programs or divisions.

(d) The recommended appropriations shall be determined by the board only after it has reviewed the proposed institutional operating budgets, and has consulted with the various institutions and board staff in order to make appropriate adjustments.

(3) (a) The board shall establish mission based funding.

(b) Mission based funding shall include:

(i) enrollment growth; and

(ii) up to three strategic priorities.

(c) The strategic priorities described in Subsection (3)(b)(ii) shall be:

(i) approved by the board; and

(ii) designed to improve the availability, effectiveness, or quality of higher education in the state.

(d) Concurrent with recommending mission based funding, the board shall also recommend to the Legislature ways to address funding any inequities for institutions as

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compared to institutions with similar missions.

(4) (a) The board shall establish performance funding.

(b) Performance funding shall include metrics approved by the board, including:

(i) degrees and certificates granted;

(ii) services provided to traditionally underserved populations;

(iii) responsiveness to workforce needs;

(iv) institutional efficiency; and

(v) for a research university, graduate research metrics.

(c) The board shall:

(i) award performance funding appropriated by the Legislature to institutions based on the institution's success in meeting the metrics described in Subsection (4)(b); and

(ii) reallocate funding that is not awarded to an institution under Subsection (4)(c)(i) for distribution to other institutions that meet the metrics described in Subsection (4)(b).

(5) (a) Institutional operating budgets shall be submitted to the board at least 90 days prior to the convening of the Legislature in accordance with procedures established by the board.

(b) ~~Funding~~ Except as provided in Subsection (5)(c), funding requests pertaining to capital facilities and land purchases shall be submitted in accordance with procedures prescribed by the State Building Board.

(c) Funding requests pertaining to capital developments shall be submitted in accordance with procedures described in Part 7, Capital Developments.

(6) (a) The budget recommendations of the board shall be accompanied by full explanations and supporting data.

(b) The appropriations recommended by the board shall be made with the dual objective of:

(i) justifying for higher educational institutions appropriations consistent with their needs, and consistent with the financial ability of the state; and

(ii) determining an equitable distribution of funds among the respective institutions in accordance with the aims and objectives of the statewide master plan for higher education.

(7) (a) The board shall request a hearing with the governor on the recommended appropriations.

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(b) After the governor delivers his budget message to the Legislature, the board shall request hearings on the recommended appropriations with the appropriate committees of the Legislature.

(c) If either the total amount of the state appropriations or its allocation among the institutions as proposed by the Legislature or its committees is substantially different from the recommendations of the board, the board may request further hearings with the Legislature or its appropriate committees to reconsider both the total amount and the allocation.

(8) The board may devise, establish, periodically review, and revise formulas for its use and for the use of the governor and the committees of the Legislature in making appropriation recommendations.

(9) (a) The board shall recommend to each session of the Legislature the minimum tuitions, resident and nonresident, for each institution which it considers necessary to implement the budget recommendations.

(b) The board may fix the tuition, fees, and charges for each institution at levels it finds necessary to meet budget requirements.

(10) (a) Money allocated to each institution by legislative appropriation may be budgeted in accordance with institutional work programs approved by the board, provided that the expenditures funded by appropriations for each institution are kept within the appropriations for the applicable period.

(b) A president of an institution shall:

(i) establish initiatives for the president's institution each year that are:

(A) aligned with the strategic priorities described in Subsection (3); and

(B) consistent with the institution's mission and role; and

(ii) allocate the institution's mission based funding to the initiatives.

(11) The dedicated credits, including revenues derived from tuitions, fees, federal grants, and proceeds from sales received by the institutions are appropriated to the respective institutions [~~and~~] to be used in accordance with institutional work programs.

(12) Each institution may do its own purchasing, issue its own payrolls, and handle its own financial affairs under the general supervision of the board.

(13) (a) If the Legislature appropriates money in accordance with this section, it shall be distributed to the board and higher education institutions to fund the items described in

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Subsection (2)(b).

(b) During each general session of the Legislature following a fiscal year in which the Legislature provides an appropriation for mission based funding or performance funding, the board and institutions shall report to the Legislature's Higher Education Appropriations Subcommittee on the use of the previous year's mission based funding and performance funding, including performance outcomes relating to the strategic initiatives approved by the board.

Section 2. Section **53B-7-701** is enacted to read:

Part 7. Capital Developments

53B-7-701. Title.

This part is known as "Capital Developments."

Section 3. Section **53B-7-702** is enacted to read:

53B-7-702. Definitions.

As used in this part:

(1) "Account" means the Higher Education Capital Developments Account created in Section 63J-1-316.

(2) "Capital developments" means the same as that term is defined in Section 63A-5-104.

(3) "Institution" means:

(a) the University of Utah;

(b) Utah State University;

(c) Southern Utah University;

(d) Weber State University;

(e) Snow College;

(f) Dixie State University;

(g) Utah Valley University; or

(h) Salt Lake Community College.

(4) "Institution's allocation" means the total amount of funds an institution is allocated under Subsection 53B-7-703(3).

(5) "Institution's award" means the amount of funds an institution is actually awarded from the institution's allocation.

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Section 4. Section 53B-7-703 is enacted to read:

53B-7-703. Board administration of account -- ~~{Remedial}~~ Improvement plans --

Requests for additional funds.

(1) The board shall administer funds in the account in accordance with this part.

(2) The board may only distribute the increase described in Subsection 63J-1-316(3)(a) to an institution to use for operations and maintenance costs for a capital development project that has been fully constructed at the time of the distribution.

(3) In accordance with the rules described in Subsection 53B-7-704(1), the board shall assign an allocation to each institution.

(4) ~~{(a)}~~ The board shall award an institution all or a portion of the institution's allocation ~~{in accordance with Subsections (4)(b) and (4)(c)}.~~

~~(b) To determine an institution's award, the board shall:~~

~~(i) rank the institutions in order } based on ~~{each}~~ the institution's success in meeting the performance funding metrics described in Section 53B-7-101 ~~{; and~~~~

~~(ii) subtract 2% of an institution's allocation for each ranking the institution is below first.~~

~~(c) An institution may not have the same ranking as another institution}.~~

(5) (a) For an institution that is not awarded all of the institution's allocation under Subsection (4), the board shall place the unawarded portion of the institution's allocation in escrow for the institution for two years.

(b) (i) The institution may earn the unawarded portion of the institution's allocation through ~~{a remedial}~~ an improvement plan that is approved by the board and reported to the Higher Education Appropriations Subcommittee.

(ii) If an institution does not earn the unawarded portion of the institution's allocation as described in Subsection (5)(a) within two years of the day on which the unawarded portion was placed in escrow, the board shall take the unawarded portion out of escrow and deposit the unawarded portion into the account.

(6) (a) An institution may submit a request to the board for funds in addition to the institution's allocation or award.

(b) If an institution submits a request described in Subsection (6)(a), the board shall report the request, with the board's recommendations related to the request, to the Infrastructure

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and General Government Appropriations Subcommittee.

(c) Any funds awarded to an institution under this Subsection (6) shall be a debit against the institution's future awards.

Section 5. Section **53B-7-704** is enacted to read:

53B-7-704. Board rulemaking.

On or before ~~January~~ July 1, 2017, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules that:

(1) establish factors, and assign weights to the factors, to determine how to allocate funds from the account among all institutions; ~~and~~

(2) establish required components for ~~a remedial~~ ~~an improvement~~ plan described in Section 53B-7-703 that provide measurable outcomes of progress ~~;~~ ~~and~~;

~~(3) establish the board's methods and criteria for ranking the institutions as described in Subsection 53B-7-703(4);~~

† Section 6. Section **53B-7-705** is enacted to read:

53B-7-705. Institution use of award -- Accrual of awards.

(1) An institution may use the institution's award:

(a) for a capital development project approved by the Legislature;

(b) for ongoing operations and maintenance costs for any capital development projects approved by the Legislature; or

(c) to pay debt service on a bond approved by the Legislature.

(2) An institution may accumulate the institution's awards over more than one year to use for a capital development project.

Section 7. Section **53B-7-706** is enacted to read:

53B-7-706. Legislative approval of a capital development project -- Oversight.

(1) ~~Notwithstanding any other provision of law~~ ~~Except as provided in Subsection 63A-5-104(3),~~ an institution shall obtain legislative approval for a capital development project in accordance with this part.

(2) An institution shall submit to the board a proposal for each capital development project for which the institution seeks board approval.

(3) The board shall:

(i) review each submission for approval received in accordance with Subsection (2);

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(ii) based on the submissions described in Subsection (2), create a list of approved capital development projects;

(iii) submit the list described in Subsection (3)(a)(ii) to:

(A) the Infrastructure and General Government Appropriations Subcommittee;

(B) the Division of Facilities Construction and Management; and

(C) the State Building Board;

(iv) submit a report to the Higher Education Appropriations Subcommittee regarding the procedures under this section; and

(v) obtain approval for each capital development project, on behalf of an institution, from the Legislature in an appropriations act.

(4) After receiving the list described in Subsection (3)(a)(ii), the State Building Board and the Division of Facilities Construction and Management shall, based on the capital development projects on the list, submit capital development recommendations to the Infrastructure and General Government Appropriations Subcommittee.

(5) Except as authorized by this part, the State Building Board and the Division of Facilities Construction and Management may not oversee capital development projects for an institution.

(6) An institution may:

(a) oversee and manage a capital development project without involvement, oversight, or management from the Division of Facilities Construction and Management; or

(b) arrange for management of the project by the Division of Facilities Construction and Management.

(7) (a) An institution may request the State Building Board to consult with the institution regarding a capital development project.

(b) If an institution makes a request under Subsection (7)(a), the State Building Board shall consult with the institution.

Section 8. Section **53B-20-104** is amended to read:

53B-20-104. Capital facilities projects recommendations -- Rules.

(1) The board shall approve all new construction, repair, or purchase of educational and general buildings and facilities financed from any source at all institutions subject to the jurisdiction of the board.

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(2) An institution may not submit plans or specifications to the State Building Board for the construction or alteration of buildings, structures, or facilities or for the purchases of equipment or fixtures for the structure without the authorization of the board.

(3) ~~[The]~~ In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules establishing the conditions under which facilities may be eligible to request state funds for operations and maintenance.

(4) Before approving the purchase of a building, the board shall:

(a) determine whether or not the building will be eligible for state funds for operations and maintenance by applying the rules adopted under Subsection (3); and

(b) if the annual request for state funding for operations and maintenance will be greater than \$100,000, notify the speaker of the House, the president of the Senate, and the cochairs of the Infrastructure and General Government subcommittee of the Legislature's Joint Appropriation Committee.

(5) Before a capital development project may be submitted to the Legislature, the board shall comply with the approval requirements described in Section 53B-7-706.

Section 9. 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)]~~ (3);

(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;

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

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

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

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

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

(h) assure the efficient use of all building space; and

(i) conduct ongoing facilities maintenance audits for state-owned facilities.

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

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

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

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- (ii) information, and space use data for all state-owned and leased facilities;
- (iii) substantiating data to support the adequacy of any projected plans;
- (iv) a summary of all statewide contingency reserve and project reserve balances as of the end of the most recent fiscal year;
- (v) a list of buildings that have completed a comprehensive facility evaluation by an architect/engineer or are scheduled to have an evaluation;
- (vi) for those buildings that have completed the evaluation, the estimated costs of needed improvements; and
- (vii) for projects recommended in the first two years of the five-year building plan:
 - (A) detailed estimates of the cost of each project;
 - (B) the estimated cost to operate and maintain the building or facility on an annual basis;
 - (C) the cost of capital improvements to the building or facility, estimated at 1.1% of the replacement cost of the building or facility, on an annual basis;
 - (D) the estimated number of new agency full-time employees expected to be housed in the building or facility;
 - (E) the estimated cost of new or expanded programs and personnel expected to be housed in the building or facility;
 - (F) the estimated lifespan of the building with associated costs for major component replacement over the life of the building; and
 - (G) the estimated cost of any required support facilities.

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

(4) Capital developments by an institution listed in Section 53B-7-702 are exempt from State Building Board oversight and are governed by the procedures described in Section 53B-7-706.

~~(4)~~ (5) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the State Building Board may make rules establishing circumstances under which bids may be modified when all bids for a construction project exceed available funds as certified by the director.

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

~~(5)~~ (6) (a) A person who violates a rule adopted by the board under Subsection (1)(e) is subject to a civil penalty not to exceed \$2,500 for each violation plus the amount of any actual damages, expenses, and costs related to the violation of the rule that are incurred by the state.

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

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

Section 10. Section **63A-5-104** is amended to read:

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

(1) As used in this section:

(a) "Capital developments" means a:

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

(b) "Capital improvements" means a:

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

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

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

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

(ii) "New facility" includes:

(A) an addition to an existing building; and

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

(iii) "New facility" does not mean:

(A) the replacement of state-owned space that is demolished or that is otherwise removed from state use, if the total construction cost of the replacement space is less than

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\$2,500,000; or

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

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

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

(2) (a) ~~[The]~~ Except as provided in Subsection (2)(c), the State Building Board, on behalf of all state agencies, commissions, departments, and institutions shall submit [its] the State Building Board's capital development recommendations and priorities to the Legislature for approval and prioritization.

(b) In developing the State Building Board's capital development recommendations and priorities, the State Building Board shall:

(i) require each state agency, commission, department, or institution requesting an appropriation for a capital development project to complete a study that demonstrates the feasibility of the capital development project, including:

(A) the need for the capital development project;

(B) the appropriateness of the scope of the capital development project;

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

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

(ii) verify the completion and accuracy of the feasibility study described in Subsection (2)(b)(i).

(c) The State Building Board shall submit the State Building Board's capital development recommendations for an institution listed in Section 53B-7-702 in accordance with Section 53B-7-706.

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

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

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

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

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

(ii) the use of the state property is:

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

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

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

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

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

(B) state capital improvement funding.

(d) Legislative approval is not required for:

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

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

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

(iv) a capital project that:

(A) is funded by:

(I) the Uintah Basin Revitalization Fund; or

(II) the Navajo Revitalization Fund; and

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

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

(e) (i) Legislative approval is not required for capital development projects to be built

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for the Department of Transportation:

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

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

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

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

(ii) The list shall identify:

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

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

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

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

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

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

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

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

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

(i) projects that address:

(A) a structural issue;

(B) fire safety;

(C) a code violation; or

(D) any issue that impacts health and safety;

(ii) projects that upgrade:

(A) an HVAC system;

(B) an electrical system;

(C) essential equipment;

(D) an essential building component; or

(E) infrastructure, including a utility tunnel, water line, gas line, sewer line, roof, parking lot, or road; or

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

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

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

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

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

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

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

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

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

(5) The Legislature may authorize:

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

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

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

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

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

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

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

(A) "Education Fund budget deficit" [~~is as~~] means the same as that term is defined in Section 63J-1-312; and

(B) "General Fund budget deficit" [~~is as~~] means the same as that term is defined in Section 63J-1-312.

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

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

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

(8) ~~[It is the policy of the Legislature that a new building or facility be approved and funded for construction in a single budget action, therefore]~~ Except as provided in Title 53B, Chapter 7, Part 7, Capital Developments, the Legislature may not fund the programming, design, and construction of a new building or facility in phases over more than one year unless the Legislature has approved each phase of the funding for the construction of the new building or facility by the affirmative vote of two-thirds of all the members elected to each house.

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

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

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

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

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

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

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

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

(12) (a) Subject to Subsection (12)(b), at least 80% of the state funds appropriated for

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capital improvements shall be used for maintenance or repair of the existing building or facility.

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

Section 11. Section **63A-5-206** is amended to read:

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

(1) As used in this section:

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

(b) "Compliance agency" has the same meaning as provided in Section 15A-1-202.

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

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

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

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

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

(2) (a) (i) Except as provided in Subsections (3) and (4), the director shall exercise direct supervision over the design and construction of all new facilities, and all alterations,

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repairs, and improvements to existing facilities if the total project construction cost, regardless of the funding source, is greater than \$100,000~~{}}~~, unless there is memorandum of understanding between the director and an institution of higher education that permits the institution of higher education to exercise direct supervision for a project with a total project construction cost of not greater than \$250,000~~{}}~~.

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

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

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

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

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

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

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

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

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

(d) is for the creation and installation of art under Title 9, Chapter 6, Part 4, Utah Percent-for-Art Act~~[-]; or~~

(e) is a capital development project of an institution listed in Section 53B-7-702.

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

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

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

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

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

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

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

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

(6) (a) The role of compliance agency as provided in Title 15A, State Construction and Fire Codes Act, shall be provided by:

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

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

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

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

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(v) the institution, for projects exempt from the division's administration under Subsection ~~[(5)(a)]~~ (3)(e).

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

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

(i) only review plans and inspect construction to enforce the State Construction Code or an approved code under Title 15A, State Construction and Fire Codes Act; and

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

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

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

(7) ~~Before~~ (a) Except as provided in Subsection (7)(b), before construction may begin, the director shall review the design of projects exempted from the division's administration under Subsection ~~[(4)]~~ (3) to determine if the design:

~~[(a)]~~ (i) complies with any restrictions placed on the project by the State Building Board; and

~~[(b)]~~ (ii) is appropriate for the purpose and setting of the project.

(b) Capital developments by an institution listed in Section 53B-7-702 are exempt from oversight of the State Building Board or the division and are governed by the procedures described in Section 53B-7-706.

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

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

(10) (a) The director, with the approval of the Office of the Legislative Fiscal Analyst,

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shall develop standard forms to present capital development and capital improvement cost summary data.

(b) The director shall:

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

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

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

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

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

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

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

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

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

(iii) the project is new construction.

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

(13) (a) (i) Before beginning the construction of student housing on property owned by the state, or on property owned by a public institution of higher education in accordance with Section 53B-7-706, the director shall provide written notice of the proposed construction, as provided in Subsection (13)(a)(ii), if any of the proposed student housing buildings is within 300 feet of privately owned residential property.

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

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

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

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

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

Section 12. Section **63J-1-316** is enacted to read:

63J-1-316. Establishing a Higher Education Capital Developments Account -- Providing for deposits into the account -- Providing for interest generated by the account.

(1) As used in this section:

(a) "Account" means the Higher Education Capital Developments Account, created in Subsection (2)(a).

(b) "Capital developments" means the same as that term is defined in Section 63A-5-104.

(c) "Education Fund revenue surplus" means the same as that term is defined in Section 63J-1-313.

(d) "Operating deficit" means the same as that term is defined in Section 63J-1-313.

(2) (a) There is created within the Education Fund a restricted account known as the Higher Education Capital Developments Account.

(b) The account shall be funded by legislative appropriations, the surplus revenue required to be deposited into the account by this section, and other funds required to be deposited into the account under Section 53B-7-703.

(c) The account may accrue interest, which shall be deposited into the account.

(3) (a) Subject to future budget constraints, each year the Legislature shall increase the

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amount appropriated to the account by 3% of the capital developments amounts provided by legislative appropriations described in Subsection (2)(b).

(b) The State Board of Regents shall ensure that the increase described in Subsection (3)(a) is used exclusively to fund operations and maintenance costs for capital development projects approved by the Legislature.

(4) (a) At the end of any fiscal year in which the Division of Finance, in consultation with the legislative fiscal analyst and in conjunction with the completion of the annual audit by the state auditor, determines that there is an Education Fund revenue surplus, the Division of Finance shall transfer 12.5% of the Education Fund revenue surplus into the account.

(b) The Division of Finance shall calculate the amount to be transferred under this Subsection (4) excluding any direct legislative appropriation made to the account.

(c) The Division of Finance shall transfer the amount required under this Subsection (4):

(i) after transferring the Education Fund revenue surplus required to be transferred in accordance with Section 63J-1-313; and

(ii) before transferring from the Education Fund revenue surplus any other year-end contingency appropriations, year-end set-asides, or other year-end transfers required by law.

(d) Notwithstanding Subsection (4)(a), if, at the end of a fiscal year, the Division of Finance determines that an operating deficit exists, the Division of Finance may reduce the transfer to the account by the amount necessary to eliminate the operating deficit.

(5) Expenditures from the account shall be made in accordance with Section 53B-7-703.

Section 13. Effective date.

(1) Except as provided in Subsection (2), this bill takes effect on May 10, 2016.

(2) The following sections take effect on January 1, 2020:

(a) Section 53B-7-101;

(b) Section 53B-7-703;

(c) Section 53B-7-705;

(d) Section 53B-7-706;

(e) Section 53B-20-104;

(f) Section 63A-5-103;

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(g) Section 63A-5-104; and

(h) Section 63A-5-206.