

Walt Brooks proposes the following substitute bill:

State Facilities Modifications

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Walt Brooks

Senate Sponsor: Don L. Ipson

LONG TITLE

General Description:

This bill addresses state facilities.

Highlighted Provisions:

This bill:

- ▶ establishes the Higher Education Appropriations Subcommittee as the subcommittee to hear and prioritize requests for state funding of capital facility projects within the Utah System of Higher Education;
- ▶ establishes requirements for the proposal of a technical college or degree-granting institution for a capital facility project funding request;
- ▶ requires compliance with the dedicated and non-dedicated project approval process for higher education capital facility projects;
- ▶ clarifies the process for requesting capital development appropriations by distinguishing between architectural programming and design-and-construction phases;
- ▶ authorizes an agency to request funding for architectural programming without requiring the submission of a feasibility study;
- ▶ requires an agency to complete architectural programming before requesting an appropriation for the design and construction of a capital development project;
- ▶ increases, from \$100,000 to \$1,500,000, the maximum project cost for which a state entity may directly supervise the design and construction of a state facility and establishes higher supervisory thresholds for certain institutions within the Utah System of Higher Education;
- ▶ requires a state entity that elects to directly supervise the design and construction of a state facility project to enter into a memorandum of understanding with the Division of Facilities Construction and Management (division) that addresses compliance with division standards;

- 29 ▶ prohibits a state entity described above from accessing the division's statewide
30 contingency reserve or project reserve for the state facility project;
- 31 ▶ authorizes the director of the division to assume control of a project described above
32 when division inspection or review determines that the work is deficient or
33 noncompliant with division design, construction, or code inspection standards;
- 34 ▶ aligns revocation authority for delegated projects by allowing the director of the division
35 to revoke delegation to address inspection-based deficiencies;
- 36 ▶ requires that design criteria exceeding the state construction code to be appropriate for the
37 facility's intended use and cost-effective over the facility's expected useful life;
- 38 ▶ adds required components to a capital development feasibility study by requiring
39 inclusion of a space utilization plan and capital budget estimate approved by the division;
- 40 ▶ authorizes the Legislature to transfer any excess amount from the statewide contingency
41 reserve to the General Fund or the Income Tax Fund;
- 42 ▶ if the excess amount described above is attributable to a higher education or technical
43 college capital project, requires the Legislature to transfer the excess amount to the
44 applicable capital project fund;
- 45 ▶ requires the division to submit an annual request for appropriation to the Legislature for
46 each year covered by the five-year building plan;
- 47 ▶ authorizes the director of the division to approve certain design modifications for capital
48 development projects of institutions of higher education and to allocate resulting
49 construction cost savings between the institution and the state;
- 50 ▶ exempts construction contracts administered by the division from statutory performance
51 and payment bond requirements;
- 52 ▶ authorizes the division to require a performance or payment bond when necessary to
53 protect the division from financial loss or performance risk; and
- 54 ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

56 None

Other Special Clauses:

58 This bill provides a special effective date.

Utah Code Sections Affected:

60 AMENDS:

61 **14-1-19 (Effective upon governor's approval)**, as last amended by Laws of Utah 2012,
62 Chapter 330

63 **53H-1-402 (Effective upon governor's approval) (Partially Repealed 07/01/27)**, as
 64 renumbered and amended by Laws of Utah 2025, First Special Session, Chapter 8
 65 **53H-9-402 (Effective upon governor's approval)**, as renumbered and amended by Laws
 66 of Utah 2025, First Special Session, Chapter 8
 67 **53H-9-504 (Effective upon governor's approval)**, as renumbered and amended by Laws
 68 of Utah 2025, First Special Session, Chapter 8
 69 **53H-9-604 (Effective upon governor's approval)**, as renumbered and amended by Laws
 70 of Utah 2025, First Special Session, Chapter 8
 71 **63A-5b-102 (Effective upon governor's approval)**, as last amended by Laws of Utah
 72 2025, First Special Session, Chapter 9
 73 **63A-5b-402 (Effective upon governor's approval)**, as last amended by Laws of Utah
 74 2022, Chapter 421
 75 **63A-5b-501 (Effective upon governor's approval)**, as enacted by Laws of Utah 2020,
 76 Chapter 152
 77 **63A-5b-502 (Effective upon governor's approval)**, as enacted by Laws of Utah 2020,
 78 Chapter 152
 79 **63A-5b-602 (Effective upon governor's approval)**, as enacted by Laws of Utah 2020,
 80 Chapter 152
 81 **63A-5b-604 (Effective upon governor's approval)**, as last amended by Laws of Utah
 82 2025, First Special Session, Chapter 15
 83 **63A-5b-609 (Effective upon governor's approval)**, as last amended by Laws of Utah
 84 2024, Chapter 368
 85 **63G-6a-1103 (Effective upon governor's approval)**, as last amended by Laws of Utah
 86 2020, Chapter 257

87
 88 *Be it enacted by the Legislature of the state of Utah:*

89 Section 1. Section **14-1-19** is amended to read:

90 **14-1-19 (Effective upon governor's approval). Failure of government entity to**
 91 **obtain payment bond -- Right of action -- Notice.**

92 (1) If the state or a political subdivision fails to obtain a payment bond, it shall, upon
 93 demand by a person who has furnished labor or supplied materials to the contractor or
 94 subcontractor for the work provided for in a contract which is subject to Section 14-1-18,
 95 promptly make payment to that person.

96 (2) A person described in Subsection (1):

- 97 (a) shall have a direct right of action against the state or the political subdivision in any
98 court having jurisdiction in any county in which the contract was to be performed,
99 upon giving written notice to the state or political subdivision within 90 days from
100 the date on which such person performed the last of the labor or supplied the last of
101 the material for which claim is made;
- 102 (b) shall state in the notice a designation of the construction project and its location, the
103 amount claimed, and the name of the party for whom the labor was performed or to
104 whom the material was supplied; and
- 105 (c) shall serve the notice by registered or certified mail, postage prepaid, on the state
106 agency or political subdivision that is a party to the contract.
- 107 (3) An action described in this section may not be commenced later than one year after the
108 day on which the last of the labor was performed or material was supplied by the person
109 bringing the action.
- 110 (4) Unless otherwise specified in a lawful contract between the state or the political
111 subdivision against which the claim is made and the person demanding payment, the
112 interest rate applicable to the payment or claim is the rate described in Subsection
113 15-1-1(2).
- 114 (5) This section does not apply to a construction contract administered by the Division of
115 Facilities Construction and Management.
- 116 (6) Subsection (5) does not affect a right of action that accrued under this section with
117 respect to a construction contract executed before the effective date of this bill.

118 Section 2. Section **53H-1-402** is amended to read:

119 **53H-1-402 (Effective upon governor's approval) (Partially Repealed 07/01/27).**

120 **Reports to and actions of the Higher Education Appropriations Subcommittee.**

- 121 (1) In accordance with applicable provisions and Section 68-3-14, the following recurring
122 reports are due to the Higher Education Appropriations Subcommittee:
- 123 (a) the reports described in Sections 53H-1-502, 53H-1-503, and 53H-1-504;
- 124 (b) the reports described in Section 53H-1-203 by the board on:
- 125 (i) system wide responses to changing demographics and workforce; and
126 (ii) the board's activities and performance against the board's goals and metrics;
- 127 (c) the report described in Section 53H-5-205;
- 128 (d) the report described in Section 53H-8-202 by the board on recommended
129 appropriations for higher education institutions and the board, including the report
130 described in Section 53H-11-406 by the board on the effects of offering nonresident

- 131 partial tuition scholarships;
- 132 (e) the report described in Section 53H-8-306 by the Department of Workforce Services
133 and the Governor's Office of Economic Opportunity on targeted jobs;
- 134 (f) the reports described in Section 53H-8-303 by the board on performance;
- 135 (g) the report described in Section 53H-11-402 by the board on the Opportunity
136 Scholarship Program;
- 137 (h) the report described in Section 53H-13-309 regarding the talent advisory councils;
- 138 (i) the report described in Section 53H-11-414 by the board on the Utah Promise
139 Program;
- 140 (j) the report described in Section 53H-6-202 by the board on an institution
141 compensating a student athlete for the use of the student athlete's name, image, or
142 likeness;
- 143 (k) the report described in Section 53H-1-604 regarding the Higher Education and
144 Corrections Council; and
- 145 (l) the report described in Section 53E-10-308 by the State Board of Education and
146 board on student participation in the concurrent enrollment program.
- 147 (2) In accordance with applicable provisions and Section 68-3-14, the following occasional
148 report is due to the Higher Education Appropriations Subcommittee: the board's report
149 regarding each institution's strategic reinvestment plan described in Section 53H-8-210.
- 150 (3) In accordance with applicable provisions, the Higher Education Appropriations
151 Subcommittee shall complete the following:
- 152 (a) an appropriation recommendation described in Section 53H-1-504 regarding
153 compliance with Subsections 53H-1-504(5) and (14); and
- 154 (b) as required by Section 53H-8-304, the review of performance funding described in
155 Section 53H-8-304.
- 156 (4) The Higher Education Appropriations Subcommittee shall hear and prioritize any
157 requests for capital facilities within the Utah System of Higher Education described in
158 Section 53H-1-102, in accordance with Chapter 9, Part 5, General Capital
159 Developments, and Chapter 9, Part 6, Technical College Leasing and Capital
160 Development.
- 161 [(4)] (5) In consultation with the board, the Higher Education Appropriations Subcommittee
162 shall study a re-design of:
- 163 (a) the performance funding model described in Chapter 8, Part 3, Performance Funding,
164 to better ensure:

- 165 (i) institutional alignment with the statewide system of higher education and the
 166 institution's mission within the statewide system; and
 167 (ii) investment in meeting localized and statewide workforce demands and securing
 168 post-graduation employment outcomes; and
 169 (b) enrollment-based funding, including, for technical colleges, funding distribution
 170 models that:
 171 (i) include equivalent funding value for secondary and adult students; and
 172 (ii) reflect the full responsibility of the technical college's statutorily-required
 173 services.

174 Section 3. Section **53H-9-402** is amended to read:

175 **53H-9-402 (Effective upon governor's approval). Buildings and facilities --**

176 **Board approval of construction and purchases -- Rules.**

- 177 (1) The board shall approve all new construction, repair, or purchase of educational and
 178 general buildings and facilities financed from any source at all institutions subject to the
 179 jurisdiction of the board.
 180 (2) An institution may not[-] :
 181 (a) submit plans or specifications to the Division of Facilities Construction and
 182 Management for the construction or alteration of buildings, structures, or facilities or
 183 for the purchases of equipment or fixtures for the structure without the authorization
 184 of the board[-] ; or
 185 (b) request state funding for a dedicated or non-dedicated project except as provided in
 186 Part 5, General Capital Developments, and Part 6, Technical College Leasing and
 187 Capital Development.
 188 (3) The board shall make rules establishing the conditions under which facilities may be
 189 eligible to request state funds for operations and maintenance.
 190 (4) Before approving the purchase of a building, the board shall:
 191 (a) determine whether or not the building will be eligible for state funds for operations
 192 and maintenance by applying the rules adopted under Subsection (3); and
 193 (b) if the annual request for state funding for operations and maintenance will be greater
 194 than \$100,000, notify the speaker of the House, the president of the Senate, and the
 195 cochairs of the Transportation and Infrastructure Appropriations Subcommittee.

196 Section 4. Section **53H-9-504** is amended to read:

197 **53H-9-504 (Effective upon governor's approval). Funding request for capital**
 198 **development project -- Legislative approval -- Board prioritization, approval, and review.**

- 199 (1) In accordance with this section, a degree-granting institution is required to receive
200 legislative approval in an appropriations act for a dedicated project or a nondedicated
201 project.
- 202 (2) A degree-granting institution shall[-] :
- 203 (a) submit to the board a proposal for a funding request for each dedicated project or
204 nondedicated project for which the institution seeks legislative approval[-] ; and
- 205 (b) ensure that the proposal described in Subsection (2)(a) includes:
- 206 (i) the name of the project;
- 207 (ii) a specification of the intent of the project as a dedicated project or a
208 non-dedicated project;
- 209 (iii) the projected cost of the project and the sources of funding, including internal
210 funds, requested legislative appropriations, matching funds, or debt;
- 211 (iv) a budget for the project, including:
- 212 (A) any land cost;
- 213 (B) architecture and engineering costs;
- 214 (C) any impact fees;
- 215 (D) horizontal development costs, including infrastructure and site work;
- 216 (E) vertical construction costs;
- 217 (F) furniture costs;
- 218 (G) any plan to fund future operations, maintenance, and staffing costs;
- 219 (H) financing costs;
- 220 (I) construction management, project management, or other administrative costs;
221 and
- 222 (J) costs associated with the demolition or remodeling of existing space;
- 223 (v) a rendering of the project;
- 224 (vi) a narrative explaining the use of the facility, including the facility's expected life
225 span;
- 226 (vii) a facility utilization analysis demonstrating that the existing facilities are
227 inadequate to serve the program or function for which the institution is seeking
228 funding; and
- 229 (viii) the amount of square feet of the project, including a breakdown of the uses of
230 the space by square footage, including any:
- 231 (A) classroom space;
- 232 (B) lab space;

- 233 (C) office space;
 234 (D) meeting room space;
 235 (E) entertainment space;
 236 (F) residential space;
 237 (G) garage or storage space;
 238 (H) mechanical space; and
 239 (I) common areas, including any atrium, stairway, restroom, or commons.

240 (3) The board shall:

- 241 (a) review each proposal submitted under Subsection (2) to ensure the proposal:
 242 (i) is cost effective and an efficient use of resources;
 243 (ii) is consistent with the degree-granting institution's mission and master plan; and
 244 (iii) fulfills a critical institutional facility need;
 245 (b) based on the results of the board's review under Subsection (3)(a), create:
 246 (i) a list of approved dedicated projects; and
 247 (ii) a list of approved nondedicated projects, prioritized in accordance with
 248 Subsection (5); and
 249 (c) submit the lists described in Subsection (3)(b), including the relevant proposals, to:
 250 (i) the governor;
 251 [~~(ii) the Transportation and Infrastructure Appropriations Subcommittee;~~]
 252 [~~(iii)~~] (ii) the Higher Education Appropriations Subcommittee; and
 253 [~~(iv)~~] (iii) the Division of Facilities Construction and Management for a:
 254 (A) recommendation, for the list described in Subsection (3)(b)(i); or
 255 (B) recommendation and prioritization, for the list described in Subsection
 256 (3)(b)(ii).

257 (4) A dedicated project:

- 258 (a) is subject to the recommendation of the Division of Facilities Construction and
 259 Management as described in Section 63A-5b-403; and
 260 (b) is not subject to the prioritization of the Division of Facilities Construction and
 261 Management as described in Section 63A-5b-403.

262 (5)(a) Subject to Subsection (6), the board shall prioritize institution requests for funding
 263 for nondedicated projects based on:

- 264 (i) capital facility need;
 265 (ii) utilization of facilities;
 266 (iii) maintenance and condition of facilities; and

- 267 (iv) any other factor determined by the board.
- 268 (b) The board shall establish how the board will prioritize institution requests for
269 funding for nondedicated projects, including:
- 270 (i) how the board will measure each factor described in Subsection (5)(a); and
271 (ii) procedures for prioritizing requests.
- 272 (6)(a) Subject to Subsection (6)(b), and in accordance with Subsection (5), the board
273 may annually prioritize:
- 274 (i) up to three nondedicated projects if the ongoing appropriation to the fund is less
275 than \$50,000,000;
- 276 (ii) up to two nondedicated projects if the ongoing appropriation to the fund is at least
277 \$50,000,000 but less than \$100,000,000; or
- 278 (iii) one nondedicated project if the ongoing appropriation to the fund is at least
279 \$100,000,000.
- 280 (b) For each calendar year, the dollar amounts described in Subsection (6)(a) shall be
281 adjusted by an amount equal to the percentage difference between:
- 282 (i) the Consumer Price Index for the 2019 calendar year; and
283 (ii) the Consumer Price Index for the previous calendar year.
- 284 (7)(a) A degree-granting institution may request operations and maintenance funds for a
285 capital development project approved under this section.
- 286 (b) A degree-granting institution shall make the request described in Subsection (7)(a) at
287 the same time the degree-granting institution submits the proposal described in
288 Subsection (2).
- 289 (c) The Legislature shall consider a degree-granting institution's request described in
290 Subsection (7)(a).
- 291 (8) After a degree-granting institution completes a capital development project described in
292 this section, the board shall review the capital development project, including the costs
293 and design of the capital development project.
- 294 Section 5. Section **53H-9-604** is amended to read:
- 295 **53H-9-604 (Effective upon governor's approval). Legislative approval -- Capital**
296 **development projects -- Prioritization.**
- 297 (1) As used in this section:
- 298 (a) "Consumer Price Index" means the Consumer Price Index for All Urban Consumers
299 as published by the Bureau of Labor Statistics of the United States Department of
300 Labor.

- 301 (b) "Fund" means the Technical Colleges Capital Projects Fund created in Section
302 53H-9-605.
- 303 (2) In accordance with this section, a technical college is required to receive legislative
304 approval in an appropriations act for a dedicated project or a nondedicated project.
- 305 (3) In accordance with Section 53H-9-603, a technical college shall[-] :
- 306 (a) submit to the board a proposal for a funding request for each dedicated project or
307 nondedicated project for which the technical college seeks legislative approval[-] ; and
- 308 (b) ensure that the proposal described in Subsection (3)(a) includes:
- 309 (i) the name of the project;
- 310 (ii) a specification of the intent of the project as a dedicated project or a
311 non-dedicated project;
- 312 (iii) the projected cost of the project and the sources of funding, including internal
313 funds, requested legislative appropriations, matching funds, or debt;
- 314 (iv) a budget for the project, including:
- 315 (A) any land cost;
- 316 (B) architecture and engineering costs;
- 317 (C) any impact fees;
- 318 (D) horizontal development costs, including infrastructure and site work;
- 319 (E) vertical construction costs;
- 320 (F) furniture costs;
- 321 (G) any plan to fund future operations, maintenance, and staffing costs;
- 322 (H) financing costs;
- 323 (I) construction management, project management, or other administrative costs;
324 and
- 325 (J) costs associated with the demolition or remodeling of existing space;
- 326 (v) a rendering of the project;
- 327 (vi) a narrative explaining the use of the facility, including the facility's expected life
328 span;
- 329 (vii) a facility utilization analysis demonstrating that the existing facilities are
330 inadequate to serve the program or function for which the institution is seeking
331 funding; and
- 332 (viii) the amount of square feet of the project, including a breakdown of the uses of
333 the space by square footage, including any:
- 334 (A) classroom space;

- 335 (B) lab space;
 336 (C) office space;
 337 (D) meeting room space;
 338 (E) entertainment space;
 339 (F) residential space;
 340 (G) garage or storage space;
 341 (H) mechanical space; and
 342 (I) common areas, including any atrium, stairway, restroom, or commons.
- 343 (4) The board shall:
- 344 (a) review each proposal submitted under Subsection (3) to ensure that the proposal
 345 complies with Section 53H-9-603;
- 346 (b) based on the results of the board's review under Subsection (4)(a), create:
- 347 (i) a list of approved dedicated projects, prioritized in accordance with Subsection (6);
 348 and
- 349 (ii) a list of approved nondedicated projects, prioritized in accordance with
 350 Subsection (6); and
- 351 (c) submit the lists described in Subsection (4)(b), including the relevant proposals, to:
- 352 (i) the governor;
- 353 ~~[(ii) the Transportation and Infrastructure Appropriations Subcommittee;]~~
- 354 ~~[(iii)]~~ (ii) the Higher Education Appropriations Subcommittee; and
- 355 ~~[(iv)]~~ (iii) the Division of Facilities Construction and Management for a:
- 356 (A) recommendation, for the list described in Subsection (4)(b)(i); or
- 357 (B) recommendation and prioritization, for the list described in Subsection
 358 (4)(b)(ii).
- 359 (5) A dedicated project:
- 360 (a) is subject to the recommendation of the Division of Facilities Construction and
 361 Management as described in Section 63A-5b-403; and
- 362 (b) is not subject to the prioritization of the Division of Facilities Construction and
 363 Management as described in Section 63A-5b-403.
- 364 (6)(a) Subject to Subsection (7), the board shall prioritize funding requests for capital
 365 development projects described in this section based on:
- 366 (i) growth and capacity;
- 367 (ii) effectiveness and support of critical programs;
- 368 (iii) cost effectiveness;

- 369 (iv) building deficiencies and life safety concerns; and
 370 (v) alternative funding sources.
- 371 (b) The board shall establish:
- 372 (i) how the board will measure each factor described in Subsection (6)(a); and
 373 (ii) procedures for prioritizing funding requests for capital development projects
 374 described in this section.
- 375 (7)(a) Subject to Subsection (7)(b), and in accordance with Subsection (6), the board
 376 may annually prioritize:
- 377 (i) up to three nondedicated projects if the ongoing appropriation to the fund is less
 378 than \$7,000,000;
 379 (ii) up to two nondedicated projects if the ongoing appropriation to the fund is at least
 380 \$7,000,000 but less than \$14,000,000; or
 381 (iii) one nondedicated project if the ongoing appropriation to the fund is at least
 382 \$14,000,000.
- 383 (b) For each calendar year, the dollar amounts described in Subsection (7)(a) shall be
 384 adjusted by an amount equal to the percentage difference between:
- 385 (i) the Consumer Price Index for the 2019 calendar year; and
 386 (ii) the Consumer Price Index for the previous calendar year.
- 387 (8)(a) A technical college may request operations and maintenance funds for a capital
 388 development project approved under this section.
- 389 (b) A technical college shall make the request described in Subsection (8)(a) at the same
 390 time the technical college submits the proposal described in Subsection (3).
- 391 (c) The Legislature shall consider a technical college's request described in Subsection
 392 (8)(a).
- 393 Section 6. Section **63A-5b-102** is amended to read:
- 394 **63A-5b-102 (Effective upon governor's approval). Definitions.**
- 395 As used in this chapter:
- 396 (1) "Capitol hill" means the same as that term is defined in Section 63O-1-101.
 397 (2) "Compliance agency" means the same as that term is defined in Section 15A-1-202.
 398 (3) "Director" means the division director, appointed under Section 63A-5b-302.
 399 (4) "Division" means the Division of Facilities Construction and Management created in
 400 Section 63A-5b-301.
 401 (5) "Institution of higher education" means the same as that term is defined in Section
 402 53H-1-101.

- 403 (6) "Program document" means a final document that contains programming information.
 404 (7) "Programming" means services to define the scope and purpose of an anticipated
 405 project, and may include:
 406 (a) researching criteria applicable to the scope and purpose of an anticipated project;
 407 (b) identifying the scale of the project and the type of facilities and the level of
 408 specialized functions that will be required;
 409 (c) identifying and prioritizing values and goals that will impact the project, including
 410 institutional purposes, growth objectives, and cultural, technological, temporal,
 411 aesthetic, symbolic, economic, environmental, safety, sustainability, and other
 412 relevant criteria;
 413 (d) evaluating functional efficiency, user comfort, building economics, environmental
 414 sustainability, and visual quality;
 415 (e) identifying objectives for the project, including such elements as image, efficiencies,
 416 functionality, cost, and schedule;
 417 (f) identifying and evaluating the constraints that will have an impact on the project such
 418 as legal requirements, financial constraints, location, access, visibility, and building
 419 services;
 420 (g) developing standards such as area allowances, space allocation, travel distances, and
 421 furniture and equipment requirements;
 422 (h) establishing general space quality standards related to such elements as lighting
 423 levels, equipment performance, acoustical requirements, security, and aesthetics;
 424 (i) identifying required spaces;
 425 (j) establishing sizes and relationships;
 426 (k) establishing space efficiency factors or the ratio of net square footage to gross square
 427 footage; and
 428 (l) documenting particular space requirements such as special HVAC, plumbing, power,
 429 lighting, acoustical, furnishings, equipment, or security needs.

430 [(6)] (8) "Trust lands administration" means the School and Institutional Trust Lands
 431 Administration established in Section 53C-1-201.

432 [(7)] (9) "Utah Board of Higher Education" means the Utah Board of Higher Education
 433 established in Section 53H-1-203.

434 Section 7. Section **63A-5b-402** is amended to read:

435 **63A-5b-402 (Effective upon governor's approval). Capital development process**
 436 **-- Approval requirements.**

- 437 (1) Except as provided in Section 63A-5b-404, the division shall, on behalf of all agencies,
 438 submit capital development project recommendations and priorities to the Legislature
 439 for approval and prioritization.
- 440 [~~(2) An agency that requests an appropriation for a capital development project shall submit~~
 441 ~~to the division for transmission to the Legislature a capital development project request~~
 442 ~~and a feasibility study relating to the capital development project.~~]
- 443 (2)(a) An agency may request an appropriation for the programming of a capital
 444 development project by submitting the request to the division for transmittal to the
 445 Legislature.
- 446 (b) An agency may, but is not required to, submit a completed feasibility study in
 447 connection with a request described in Subsection (2)(a).
- 448 (c) An agency may request an appropriation for the design and construction of a capital
 449 development project by submitting the request and a program document to the
 450 division for transmittal to the Legislature.
- 451 (3) The division may not transmit to the Legislature a request described in Subsection (2)(c)
 452 unless the agency submits a program document for the capital development project.
- 453 [~~(3)~~] (4)(a) The division shall, in accordance with Title 63G, Chapter 3, Utah
 454 Administrative Rulemaking Act, make rules that establish standards and
 455 requirements for~~[a capital development project request and feasibility study.]~~ :
- 456 (i) a capital development project; and
 457 (ii) if submitted, a feasibility study.
- 458 (b) The rules shall include:
- 459 (i) a deadline by which an agency is required to submit a capital development project
 460 request;
- 461 (ii) conditions under which an agency may modify the agency's capital development
 462 project request after the agency submits the request, and requirements applicable
 463 to a modification; and
- 464 (iii) requirements for the contents of a feasibility study, including:
- 465 (A) the need for the capital development project;
- 466 (B) the appropriateness of the scope of the capital development project;
- 467 (C) any private funding for the capital development project;~~[and]~~
- 468 (D) the economic and community impacts of the capital development project~~[-]~~ ;
- 469 (E) a space utilization plan developed in accordance with rules made by the
 470 division under Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

471 (F) a capital budget estimate approved by the division.

472 [(4)] (5) The division shall verify the completion and accuracy of a feasibility study or
 473 program document that an agency submits under Subsection (2) prior to submitting
 474 capital development project recommendations and priorities under Subsection (1).

475 Section 8. Section **63A-5b-501** is amended to read:

476 **63A-5b-501 (Effective upon governor's approval). Five-year building plan.**

477 (1) The director shall:

478 (a) in cooperation with agencies, prepare a master plan of structures built or
 479 contemplated;

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

482 (c) amend and keep current the five-year building plan that complies with the
 483 requirements described in Subsection (2), for submission to the governor and
 484 subsequent legislatures;[-and]

485 (d) as part of the long-range plan, recommend to the governor and Legislature any
 486 changes in the law that are necessary to ensure an effective, well-coordinated
 487 building program for all agencies[-] ; and

488 (e) for each fiscal year covered by the five-year building plan, submit to the Legislature
 489 a request for appropriation for that fiscal year.

490 (2)(a) The director shall ensure that the five-year building plan required by Subsection

491 (1)(b) includes:

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

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

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

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

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

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

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

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

504 (B) the estimated cost to operate and maintain the building or facility on an annual

- 505 basis;
- 506 (C) the cost of capital improvements to the building or facility, estimated at 1.1%
- 507 of the replacement cost of the building or facility, on an annual basis;
- 508 (D) the estimated number of new agency full-time employees expected to be
- 509 housed in the building or facility;
- 510 (E) the estimated cost of new or expanded programs and personnel expected to be
- 511 housed in the building or facility;
- 512 (F) the estimated lifespan of the building with associated costs for major
- 513 component replacement over the life of the building; and
- 514 (G) the estimated cost of any required support facilities.
- 515 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 516 director may make rules prescribing the format for submitting the information
- 517 required by this Subsection (2).
- 518 (3) To provide adequate information to enable the director to make a recommendation
- 519 described in Subsection (1), an agency requesting new full-time employees for the next
- 520 fiscal year shall report those anticipated requests to the director at least 90 days before
- 521 the annual general session in which the request is made.

522 Section 9. Section **63A-5b-502** is amended to read:

523 **63A-5b-502 (Effective upon governor's approval). Programming.**

524 [~~(1) As used in this section:~~]

525 [~~(a) "Program document" means a final document that contains programming~~

526 ~~information.]~~

527 [~~(b) "Programming" means services to define the scope and purpose of an anticipated~~

528 ~~project, and may include:]~~

529 [~~(i) researching criteria applicable to the scope and purpose of an anticipated project;]~~

530 [~~(ii) identifying the scale of the project and the type of facilities and the level of~~

531 ~~specialized functions that will be required;]~~

532 [~~(iii) identifying and prioritizing values and goals that will impact the project,~~

533 ~~including institutional purposes, growth objectives, and cultural, technological,~~

534 ~~temporal, aesthetic, symbolic, economic, environmental, safety, sustainability, and~~

535 ~~other relevant criteria;]~~

536 [~~(iv) evaluating functional efficiency, user comfort, building economics,~~

537 ~~environmental sustainability, and visual quality;]~~

538 [~~(v) identifying objectives for the project, including such elements as image,~~

- 539 efficiencies, functionality, cost, and schedule;]
- 540 [(vi) identifying and evaluating the constraints that will have an impact on the project
- 541 such as legal requirements, financial constraints, location, access, visibility, and
- 542 building services;]
- 543 [(vii) developing standards such as area allowances, space allocation, travel
- 544 distances, and furniture and equipment requirements;]
- 545 [(viii) establishing general space quality standards related to such elements as
- 546 lighting levels, equipment performance, acoustical requirements, security, and
- 547 aesthetics;]
- 548 [(ix) identifying required spaces;]
- 549 [(x) establishing sizes and relationships;]
- 550 [(xi) establishing space efficiency factors or the ratio of net square footage to gross
- 551 square footage; and]
- 552 [(xii) documenting particular space requirements such as special HVAC, plumbing,
- 553 power, lighting, acoustical, furnishings, equipment, or security needs.]
- 554 [(2)] (1) A program document may:
- 555 (a) incorporate written and graphic materials; and
- 556 (b) include:
- 557 (i) an executive summary;
- 558 (ii) documentation of the methodology used to develop the programming;
- 559 (iii) value and goal statements;
- 560 (iv) relevant facts upon which the programming was based;
- 561 (v) conclusions derived from data analysis;
- 562 (vi) relationship diagrams;
- 563 (vii) flow diagrams;
- 564 (viii) matrices identifying space allocations and relationships;
- 565 (ix) space listings by function and size; and
- 566 (x) space program sheets, including standard requirements and special HVAC,
- 567 plumbing, power, lighting, acoustical, furnishings, equipment, or security needs.
- 568 [(3)] (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 569 director may make rules:
- 570 (a) establishing the types of projects for which programming and a program document
- 571 are required;
- 572 (b) establishing the scope of programming required for defined categories of projects;

- 573 (c) establishing the circumstances under which an agency must obtain authorization
574 from the director to engage in programming;
- 575 (d) governing the funding of programming;
- 576 (e) relating to the administration of programming; and
- 577 (f) regarding any restrictions that may be imposed on a person involved in programming
578 from participating in the preparation of construction documents for a project that is
579 the subject of the programming.

580 Section 10. Section **63A-5b-602** is amended to read:

581 **63A-5b-602 (Effective upon governor's approval). Design criteria, standards,**
582 **and procedures.**

583 (1) The director shall establish design criteria, standards, and procedures for the planning,
584 design, and construction of a new facility and for improvements to an existing facility,
585 including life-cycle costing, cost-effectiveness studies, and other methods and
586 procedures that address:

- 587 (a) the need for the facility;
- 588 (b) the effectiveness of the facility's design;
- 589 (c) the efficiency of energy use; and
- 590 (d) the usefulness of the facility over the facility's lifetime.

591 (2) Before proceeding with construction, the director and the officials charged with the
592 administration of the affairs of the particular agency shall approve the location, design,
593 plans, and specifications.

594 (3) The director shall prepare or have prepared by one or more private persons the designs,
595 plans, and specifications for the projects administered by the division.

596 (4) Before construction may begin, the director shall review the design of projects
597 exempted from the division's administration under Section 63A-5b-604 to determine if
598 the design:

- 599 (a) complies with any restrictions placed on the project by the director; and
- 600 (b) is appropriate for the purpose and setting of the project.

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

- 603 (a) accelerate the design of a project funded by an appropriation act passed by the
604 Legislature in the Legislature's annual general session;
- 605 (b) use an unencumbered existing account balance to fund that design work; and
- 606 (c) reimburse the account balance from the amount funded for the project when the

607 appropriation act funding the project becomes effective.

608 (6) If the director establishes design criteria or standards that exceed the minimum
 609 requirements of the State Construction Code adopted under Title 15A, State
 610 Construction and Fire Codes Act, the director shall ensure that the additional criteria or
 611 standards are:

612 (a) appropriate for the intended use and setting of the facility; and

613 (b) cost-effective over the expected useful life of the facility.

614 Section 11. Section **63A-5b-604** is amended to read:

615 **63A-5b-604 (Effective upon governor's approval). Construction, alteration, and**
 616 **repair of state facilities -- Powers of director -- Exceptions -- Expenditure of**
 617 **appropriations -- Compliance agency role.**

618 (1)(a) Except as provided in this section and Section 63A-5b-1101, the director shall
 619 exercise direct supervision over the design and construction of all new facilities, and
 620 all alterations, repairs, and improvements to existing facilities, if the total project
 621 construction cost, regardless of the funding source, is greater than [~~\$100,000~~]
 622 \$1,500,000.

623 (b) [~~A~~] Subject to Subsections (1)(c) and (d), a state entity may exercise direct
 624 supervision over the design and construction of all new facilities, and over all
 625 alterations, repairs, and improvements to existing facilities, if:

626 (i) except as provided in Subsection (1)(e), the total project construction cost,
 627 regardless of the funding sources, is [~~\$100,000~~] \$1,500,000 or less; and

628 (ii) the state entity assures compliance with the division's forms and contracts and the
 629 division's design, construction, alteration, repair, improvement, and code
 630 inspection standards.

631 (c) Before exercising direct supervision under Subsection (1)(b), a state entity shall enter
 632 into a memorandum of understanding with the division, in a form developed by the
 633 division, that addresses:

634 (i) the state entity's compliance with Subsection (1)(b)(ii); and

635 (ii) other matters the division considers necessary and appropriate to facilitate the
 636 state entity's supervision of the project, including provisions governing the use of
 637 capital improvement funds to ensure expenditures are consistent with legislative
 638 appropriations and the five-year building plan.

639 (d) The director may assume direct supervision over the design and construction of a
 640 project described in Subsection (1)(b) if the division determines, through inspection

- 641 or review conducted in accordance with the division's design, construction, or code
642 inspection standards, that the work is deficient, substandard, or noncompliant.
- 643 (e) For purposes of Subsection (1)(b)(i), a state entity that is an institution of higher
644 education described in Subsection 53H-1-102(1)(a) or (b) may exercise direct
645 supervision if the total project construction cost is:
- 646 (i) \$30,000,000 or less for the University of Utah;
647 (ii) \$10,000,000 or less for Utah State University;
648 (iii) \$2,500,000 or less for a university described in Subsections 53H-1-102(1)(a)(iii),
649 (iv), (vi), or (vii); or
650 (iv) \$1,000,000 or less for:
- 651 (A) Snow College;
652 (B) Salt Lake Community College; or
653 (C) a technical college described in Subsection 53H-1-102(1)(b).
- 654 (f) A state entity that exercises direct supervision under Subsection (1)(b) may not
655 access, for the supervised project, the division's statewide contingency reserve or
656 project reserve authorized in Section 63A-5b-609.
- 657 (2) The director may enter into a capital improvement partnering agreement with an
658 institution of higher education that permits the institution of higher education to exercise
659 direct supervision for a capital improvement project with oversight from the division.
- 660 (3)(a) Subject to Subsection (3)(b), the director may delegate control over design,
661 construction, and other aspects of any project to entities of state government on a
662 project-by-project basis.
- 663 (b) With respect to a delegation of control under Subsection (3)(a), the director may:
- 664 (i) impose terms and conditions on the delegation that the director considers
665 necessary or advisable to protect the interests of the state; and
666 (ii) revoke the delegation and assume control of the design, construction, or other
667 aspect of a delegated project if the director considers the revocation and
668 assumption of control to be necessary to:
- 669 (A) address a circumstance described in Subsection (1)(d); or
670 (B) otherwise protect the interests of the state.
- 671 (4)(a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
672 the director may delegate control over design, construction, and all other aspects of
673 any project to entities of state government on a categorical basis for projects within a
674 particular dollar range and a particular project type.

- 675 (b) Rules adopted by the director under Subsection (4)(a) may:
- 676 (i) impose the terms and conditions on categorical delegation that the director
- 677 considers necessary or advisable to protect the interests of the state;
- 678 (ii) provide for the revocation of the delegation on a categorical basis and for the
- 679 division to assume control of the design, construction, or other aspect of a
- 680 category of delegated projects or a specific delegated project if the director
- 681 considers revocation of the delegation and assumption of control to be necessary
- 682 to protect the interests of the state;
- 683 (iii) require that a categorical delegation be renewed by the director on an annual
- 684 basis; and
- 685 (iv) require the division's oversight of delegated projects.
- 686 (5)(a) A state entity to which project control is delegated under this section shall:
- 687 (i) assume fiduciary control over project finances;
- 688 (ii) assume all responsibility for project budgets and expenditures; and
- 689 (iii) receive all funds appropriated for the project, including any contingency funds
- 690 contained in the appropriated project budget.
- 691 (b) Notwithstanding a delegation of project control under this section, a state entity to
- 692 which control is delegated is required to comply with the division's codes and
- 693 guidelines for design and construction.
- 694 (c) A state entity to which project control is delegated under this section may not access,
- 695 for the delegated project, the division's statewide contingency reserve and project
- 696 reserve authorized in Section 63A-5b-609.
- 697 (d) For a facility that will be owned, operated, maintained, and repaired by an entity that
- 698 is not an agency and that is located on property that the state owns or leases as a
- 699 tenant, the director may authorize the facility's owner to administer the design and
- 700 construction of the project relating to that facility.
- 701 (6)(a) A project for the construction of a new facility and a project for alterations,
- 702 repairs, and improvements to an existing facility are not subject to Subsection (1) if
- 703 the project:
- 704 (i) occurs on property under the jurisdiction of the State Capitol Preservation Board;
- 705 (ii) is within a designated research park at the University of Utah or Utah State
- 706 University;
- 707 (iii) occurs within the boundaries of This is the Place State Park and is administered
- 708 by This is the Place Foundation; or

- 709 (iv) is for the creation and installation of art under Title 9, Chapter 6, Part 4, Utah
710 Percent-for-Art Act.
- 711 (b) Notwithstanding Subsection (6)(a)(iii), the This is the Place Foundation may request
712 the director to administer the design and construction of a project within the
713 boundaries of This is the Place State Park.
- 714 (7)(a) The role of compliance agency under Title 15A, State Construction and Fire
715 Codes Act, shall be filled by:
- 716 (i) the director, for a project administered by the division;
717 (ii) the entity designated by the State Capitol Preservation Board, for a project under
718 Subsection (6)(a)(i);
719 (iii) the local government, for a project that is:
720 (A) not subject to the division's administration under Subsection (6)(a)(ii); or
721 (B) administered by This is the Place Foundation under Subsection (6)(a)(iii);
722 (iv) the compliance agency designated by the director, for a project under Subsection
723 (2), (3), (4), or (5)(d); and
724 (v) for the installation of art under Subsection (6)(a)(iv), the entity that is acting as
725 the compliance officer for the balance of the project for which the art is being
726 installed.
- 727 (b) A local government acting as the compliance agency under Subsection (7)(a)(iii)
728 may:
- 729 (i) only review plans and inspect construction to enforce the state construction code
730 or an approved code under Title 15A, State Construction and Fire Codes Act; and
731 (ii) charge a building permit fee of no more than the amount the local government
732 could have charged if the land upon which the improvements are located were not
733 owned by the state.
- 734 (8)(a) The zoning authority of a local government under Title 10, Chapter 20, Municipal
735 Land Use, Development, and Management Act, or Title 17, Chapter 79, County Land
736 Use, Development, and Management Act, does not apply to the use of property that
737 the state owns or any improvements constructed on property that the state owns,
738 including improvements constructed by an entity other than a state entity.
- 739 (b) A state entity controlling the use of property that the state owns shall consider any
740 input received from a local government in determining how the property is to be used.
741 Section 12. Section **63A-5b-609** is amended to read:
742 **63A-5b-609 (Effective upon governor's approval). Expenditure of appropriated**

743 **funds supervised by director -- Contingencies -- Disposition of project reserve funds --**
 744 **Set aside for Utah Percent-for-Art Program.**

- 745 (1) The director shall:
- 746 (a)(i) supervise the expenditure of funds in providing plans, engineering
 747 specifications, sites, and construction of the buildings for which legislative
 748 appropriations are made; and
- 749 (ii) specifically allocate money appropriated if more than one project is included in
 750 any single appropriation without legislative directive;
- 751 (b)(i) expend the amount necessary from appropriations for planning, engineering,
 752 and architectural work; and
- 753 (ii)(A) allocate amounts from appropriations necessary to cover expenditures
 754 previously made from the planning fund under Section 63A-5b-503 in the
 755 preparation of plans, engineering, and specifications; and
- 756 (B) return the amounts described in Subsection (1)(b)(ii)(A) to the planning fund;
 757 and
- 758 (c) hold in a statewide contingency reserve the amount budgeted for contingencies:
- 759 (i) in appropriations for the construction or remodeling of facilities; and
- 760 (ii) that are over and above all amounts obligated by contract for planning,
 761 engineering, architectural work, sites, and construction contracts.
- 762 (2)(a) The director shall base the amount budgeted for contingencies on a sliding scale
 763 percentage of the construction cost ranging from:
- 764 (i) 4.5% to 6.5% for new construction; and
- 765 (ii) 6% to 9.5% for remodeling projects.
- 766 (b) The director shall hold the statewide contingency funds to cover:
- 767 (i) costs of change orders; and
- 768 (ii) unforeseen, necessary costs beyond those specifically budgeted for the project.
- 769 (c)[(i)] The Legislature shall annually review the percentage and the amount held in
 770 the statewide contingency reserve.
- 771 [~~(ii) The Legislature may reappropriate to other building needs, including the cost of~~
 772 ~~administering building projects, any amount from the statewide contingency~~
 773 ~~reserve that is in excess of the reserve required to meet future contingency needs.]~~
- 774 (d) If any amount from the statewide contingency reserve is in excess of the amount
 775 required to meet future contingency needs, the Legislature:
- 776 (i) may reappropriate the excess amount to other building needs, including the cost of

- 777 administering building projects;
- 778 (ii) may transfer the excess amount to the General Fund or the Income Tax Fund, in
- 779 proportion to the amounts originally appropriated from each fund for the projects
- 780 to which the excess amount is attributable; or
- 781 (iii) if the excess amount is attributable to an appropriation for the programming or
- 782 design and construction of a project described in Title 53H, Chapter 9, Part 5,
- 783 General Capital Developments, or Title 53H, Chapter 9, Part 6, Technical College
- 784 Leasing and Capital Development, shall, instead of taking the action described in
- 785 Subsection (2)(d)(i) or (ii), transfer the excess amount, as applicable, to:
- 786 (A) the Higher Education Capital Projects Fund, created in Section 53H-9-502; or
- 787 (B) the Technical Colleges Capital Projects Fund, created in Section 53H-9-605.
- 788 (3)(a) The director shall hold in a separate project reserve state appropriated funds
- 789 accrued through bid savings and project residual.
- 790 (b) The director shall account for the funds accrued under Subsection (3)(a) in separate
- 791 accounts as follows:
- 792 (i) bid savings and project residual from a capital improvement project, as defined in
- 793 Section 63A-5b-401; and
- 794 (ii) bid savings and project residual from a capital development project, as defined in
- 795 Section 63A-5b-401.
- 796 (c) The director may use project reserve funds in the account described in Subsection
- 797 (3)(b)(i) for a capital improvement project:
- 798 (i) approved under Section 63A-5b-405; and
- 799 (ii) for which funds are not allocated.
- 800 (d) The director may:
- 801 (i) authorize the use of project reserve funds in the accounts described in Subsection
- 802 (3)(b) for the award of contracts in excess of a project's construction budget if the
- 803 use is required to meet the intent of the project;
- 804 (ii) transfer money from the account described in Subsection (3)(b)(i) to the account
- 805 described in Subsection (3)(b)(ii) if a capital development project has exceeded its
- 806 construction budget; and
- 807 (iii) use project reserve funds for any emergency capital improvement project,
- 808 whether or not the emergency capital improvement project is related to a project
- 809 that has exceeded its construction budget.
- 810 (e) The director shall report to the Office of the Legislative Fiscal Analyst within 30

- 811 days:
- 812 (i) an expenditure under Subsection (3)(c); or
- 813 (ii) a transfer under Subsection (3)(d).
- 814 (f) The Legislature shall annually review the amount held in the project reserve for
- 815 possible reallocation by the Legislature to other building needs, including the cost of
- 816 administering building projects.
- 817 (4) If any part of the appropriation for a building project, other than the part set aside for the
- 818 Utah Percent-for-Art Program under Title 9, Chapter 6, Part 4, Utah Percent-for-Art Act,
- 819 remains unencumbered after the award of construction and professional service contracts
- 820 and establishing a reserve for fixed and moveable equipment, the balance of the
- 821 appropriation is dedicated to the project reserve and does not revert to the General Fund.
- 822 (5)(a)(i) One percent of the amount appropriated for the construction of any new state
- 823 building or facility may be appropriated and set aside for the Utah Percent-for-Art
- 824 Program administered by the Division of Fine Arts under Title 9, Chapter 6, Part
- 825 4, Utah Percent-for-Art Act.
- 826 (ii) The total amount appropriated and set aside under Subsection (5)(a)(i) may not
- 827 exceed:
- 828 (A) \$200,000, if the new state building or facility is not located in a county of the
- 829 first class; and
- 830 (B) \$250,000, if the new state building or facility is located in a county of the first
- 831 class.
- 832 (b) The director shall release to the Division of Fine Arts any funds included in an
- 833 appropriation to the division that are designated by the Legislature for the Utah
- 834 Percent-for-Art Program.
- 835 (c) Funds from appropriations for a state building or facility may not be set aside:
- 836 (i) if any part of the funds is derived from the issuance of bonds; and
- 837 (ii) to the extent the set aside of funds would jeopardize the federal income tax
- 838 exemption otherwise allowed for interest paid on bonds.
- 839 (6)(a) After funds are appropriated for a non-dedicated project of an institution of higher
- 840 education, the director may approve a modification to the design of the project before
- 841 final project closeout if:
- 842 (i) the modification is requested by the institution of higher education; and
- 843 (ii) the modification does not:
- 844 (A) result in a material reduction in the legislatively approved program scope,

- 845 capacity, performance standards, durability, intended useful life, or intended
 846 use of the project; or
 847 (B) eliminate or defer legislatively approved program elements, including through
 848 downsizing or removal of project components.
- 849 (b) If a modification approved under Subsection (6)(a) results in a documented reduction
 850 in the total project cost attributable to efficiencies in design refinement, engineering
 851 optimization, procurement strategy, material selection, scheduling, or construction
 852 methodology, the director shall distribute the resulting cost savings as follows:
 853 (i) an amount, as determined by the director, not to exceed 50% of the cost savings:
 854 (A) for a degree-granting institution described in Subsection 53H-1-102(1)(a), to
 855 the institution's allocation within the Higher Education Capital Projects Fund;
 856 or
 857 (B) for a technical college described in Subsection 53H-1-102(1)(b), to the
 858 technical college for use on a capital improvement project; and
 859 (ii) the remaining amount to the state, to be deposited into the General Fund or the
 860 Income Tax Fund in proportion to the amounts originally appropriated from each
 861 fund for the project.
- 862 (c) Cost savings allocated under Subsection (6)(b) are not bid savings, including bid
 863 savings that result from competitive procurement, or project residual under
 864 Subsection (3).

865 Section 13. Section **63G-6a-1103** is amended to read:

866 **63G-6a-1103 (Effective upon governor's approval). Bonds or security necessary**
 867 **when contract is awarded -- Waiver -- Action -- Attorney fees.**

868 (1) [~~When~~] Except as provided in Subsection (5), if a construction contract is awarded under
 869 this chapter, the contractor to whom the contract is awarded shall deliver the following
 870 bonds or security to the procurement unit, which shall become binding on the parties
 871 upon the execution of the contract:

- 872 (a) a performance bond satisfactory to the procurement unit that is in an amount equal to
 873 100% of the price specified in the contract and is executed by a surety company
 874 authorized to do business in the state or any other form satisfactory to the
 875 procurement unit; and
- 876 (b) a payment bond satisfactory to the procurement unit that is in an amount equal to
 877 100% of the price specified in the contract and is executed by a surety company
 878 authorized to do business in the state or any other form satisfactory to the

879 procurement unit, which is for the protection of each person supplying labor, service,
880 equipment, or material for the performance of the work provided for in the contract.

881 (2)(a) When a construction contract is awarded under this chapter, the procurement
882 official responsible for carrying out the construction project may not require a
883 contractor to whom a contract is awarded to obtain a bond of the types [~~referred to~~]
884 described in Subsection (1) from a specific insurance or surety company, producer,
885 agent, or broker.

886 (b) A person who violates Subsection (2)(a) is guilty of an infraction.

887 (3) Rules of a rulemaking authority may provide for waiver of the requirement of a bid,
888 performance, or payment bond for circumstances in which the procurement official
889 considers any or all of the bonds to be unnecessary to protect the procurement unit.

890 (4)(a) [A] If a payment bond is required to be delivered under Subsection (1)(b) or (5)(c),
891 a person has a right of action on [a] the payment bond under this section for any
892 unpaid amount due to the person if:

893 [(a)] (i) the person has furnished labor, service, equipment, or material for the work
894 provided for in the contract for which the payment bond is furnished under this
895 section; and

896 [(b)] (ii) the person has not been paid in full within 90 days after the last day on which
897 the person performed the labor or service or supplied the equipment or material
898 for which the claim is made.

899 [(5)] (b) An action upon a payment bond may only be brought in a court of competent
900 jurisdiction in a county where the construction contract was to be performed.

901 (c) The action is barred if not commenced within one year after the last day on which the
902 claimant performed the labor or service or supplied the equipment or material on
903 which the claim is based.

904 (d) The obligee named in the bond need not be joined as a party to the action.

905 [(6)] (e) In any suit upon a payment bond, the court shall award reasonable attorney fees
906 to the prevailing party, which fees shall be taxed as costs in the action.

907 (5)(a) As used in this Subsection (5), "division" means the Division of Facilities
908 Construction and Management created in Section 63A-5b-301.

909 (b) The division is not required to obtain from a contractor a performance bond or
910 payment bond for a construction contract administered by the division.

911 (c) Subject to Subsection (2), the division may require a performance bond, payment
912 bond, or both for a construction contract administered by the division if the division

913 determines that the bond is necessary to protect the division from financial loss or
914 performance risk.

915 (6) Subsection (5)(b) does not affect the validity or enforceability of a performance bond or
916 payment bond required under this section with respect to a construction contract
917 executed before the effective date of this bill.

918 Section 14. **Effective Date.**

919 This bill takes effect:

920 (1) except as provided in Subsection (2), May 6, 2026; or

921 (2) if approved by two-thirds of all members elected to each house:

922 (a) upon approval by the governor;

923 (b) without the governor's signature, the day following the constitutional time limit of
924 Utah Constitution, Article VII, Section 8; or

925 (c) in the case of a veto, the date of veto override.