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2026 S.B. 164: School Construction Amendments

2026 S.B. 164, "School Construction Amendments" transfers oversight of public school construction from the State Board of Education to the Division of Facilities Construction and Management (DFCM).

Policy Analysis

S.B. 164 would comprehensively restructure public school construction oversight in Utah. The bill transfers primary authority over school construction projects from the State Board of Education to DFCM within the Department of Government Operations. Additionally, the bill establishes new regulatory frameworks covering permitting, inspection, cost oversight, and compliance requirements for local education agencies (LEAs), including both school districts and charter schools.

Under the new framework, DFCM gains exclusive permitting authority for public school construction, superseding local municipal and county building permits. The bill establishes detailed requirements for construction delivery methods, architect cost oversight, plan review procedures, and mandatory inspections.

Key Policy Changes & Line Numbers

- **DFCM to oversee school construction (Lines 598-639):** Requires DFCM to make rules establishing comprehensive standards for public school construction
- **Mandatory cost controls (Lines 857-880):** Requires all projects to fit within DFCM established cost matrices before approval, with LEAs required to justify any costs exceeding benchmarks by more than 10% and obtain DFCM approval for contracts over \$1,000,000.
- **Construction oversight fee (Lines 1269-1315):** Imposes a 1.25% fee on total project costs for all public school construction projects to fund DFCM oversight activities, paid in quarterly installments throughout the project.
- **Centralized permitting and inspections (Lines 171-186, 380-394, 1433-1448, 1488-1510):** Establishes DFCM as exclusive permitting authority and requires use of DFCM approved inspectors from a qualified roster with International Code Council certifications, eliminating local inspection authority. The legislation prohibits DFCM from overriding local zoning ordinances or land use regulations, except as is specifically authorized by statute.

- **Architect cost caps (Lines 767-834):** Sets maximum allowable fees for architect and design professional services based on project size and complexity, requiring DFCM verification of all contracts before execution. If an LEA believes a project requires fees exceeding DFCM’s maximum allowable fees, the LEA may submit a detailed written request to DFCM before soliciting proposals, provide documentation of unique project circumstances requiring specialized expertise, demonstrate that the project cannot be completed within the fee schedule, and obtain written approval from DFCM before proceeding.
- **Construction delivery restrictions (Lines 707-767):** Limits use of construction manager or general contractor delivery methods to projects meeting specific criteria with DFCM approval, while encouraging design-build approaches.
- **Mandatory reporting systems (Lines 1085-1167):** Requires standardized cost reporting using Construction Specifications Institute categories, annual deferred maintenance reports beginning in 2029, and submission of all documentation through a new online management system.
- **Enforcement mechanisms (Lines 1318-1347):** Grants DFCM authority to impose administrative penalties up to \$25,000, suspend construction permits, require mandatory compliance audits for 10% of projects annually, and mandate DFCM managed services for LEAs with repeated violations.
- **Three-member appeals panel (Lines 1512-1607):** Creates an appeals panel consisting of the Executive Director of the Department of Government Operations (chair), the school construction liaison, and a jointly-selected expert with relevant expertise, to resolve disputes between LEAs and DFCM regarding construction permits, delivery methods, cost determinations, architect fees, enforcement actions, DFCM managed construction services, contractor registry decisions, design prototypes, plan reviews, occupancy certificates, or any other decision made by DFCM that substantively affects an LEA’s ability to complete a construction project in accordance with Utah Code.

Responsibilities

Responsibilities of DFCM

- Set comprehensive standards for public school construction, including:
 - Minimum and maximum real property requirements
 - Cost per square foot parameters
 - Building material quality standards
 - Parking and access requirements
 - Standardized cost reporting requirements
 - Other construction-related requirements (Lines 598-646)
- Establish mandatory plan review and approval procedures before construction can begin, with review timelines within 10 business days for standard projects (Lines 837-900)
- Create and maintain cost matrices that projects must fit within before receiving approval, with required justification for any costs exceeding benchmarks by more than 10% (Lines 857-900)
- Develop and publish maximum allowable fees for architect and design professional services based on project size, complexity, regional market conditions, and industry standards (Lines 769-834)
- Review LEA requests for fees exceeding maximums, evaluate documentation of unique project needs, determine whether the fee schedule is insufficient, issue written approval before projects proceed, respond

within 15 business days with explanations for any required changes, and update cost benchmarks annually (Lines 782-792)

- Develop and maintain standardized school design templates and prototypes that provide pre-approved options for common school types, reduce architectural costs through standardization and reduced design scope, and accelerate approvals through pre-approved systems and streamlined reviews. These designs may be modified for site-specific needs and must be updated every five years to reflect current educational needs and building standards (Lines 793-814)
- Maintain a pre-qualification registry that sets uniform contractor standards, tracks performance, supports cost comparisons, and enables efficiencies such as volume purchasing, while preserving competitive procurement requirements. Contractors must register, meet qualification, licensing, insurance, evaluation, and training requirements to bid on school projects over \$500,000, and LEAs must still select contractors through standard procurement processes (Lines 1350-1372)
- May establish preferred contractor programs to reward strong performance and ensure statewide coverage, and both LEAs and contractors may appeal registry decisions through the established appeals process (Lines 1373-1380)
- Set construction delivery method criteria and approval procedures, with specific restrictions on the use of construction manager or general contractor delivery methods (Lines 707-745)
- Create qualified inspector and plan reviewer rosters with International Code Council certification requirements (Lines 1488-1510)
- Develop standardized cost reporting requirements and maintain a comprehensive construction cost database (Lines 1085-1167)
- Establish an online document management system for construction documentation and compliance tracking and provide training and technical support for LEAs (Lines 923-929, 935-936)
- Require building commissioning for all new construction and major renovations exceeding \$5,000,000 (Lines 692-704)
- Require facility condition assessments every five years for all facilities over 20 years old (Lines 614-618, 700-704)
- Consult with the state fire marshal and state security chief on mandatory safety and security standards (Lines 647-676)

Additionally, DFCM is granted authority to provide fee-based construction management services to LEAs, with administrative fees not exceeding 3% of total project cost (Lines 1227-1266). DFCM may require such services for LEAs with repeated compliance failures (Lines 1242). DFCM may contract with the state fire marshal, state security chief, or local governmental entities to examine plans, verify inspections, and perform other functions necessary to ensure compliance (Lines 676-680).

DFCM must report annually to the Education Interim Committee and the Transportation and Infrastructure Appropriations Subcommittee on items including:

- Implementation progress
- Cost database development
- Construction cost trends
- Deferred maintenance trends
- Compliance audit results
- Construction oversight fee revenue and expenditures (Lines 1155-1167).

Responsibilities of a Local Education Agency

- Submit pre-construction applications to DFCM before beginning any public school construction project, demonstrating that the project fits within the cost matrix established by DFCM rule (Lines 865-880)
- Before approving any construction contract over \$1,000,000, submit costs for benchmark review, justify costs exceeding benchmarks by more than 10%, and follow standardized procurement procedures. Final DFCM approval is required before the contract can be executed (Lines 857-864)
- Obtain construction permits exclusively from DFCM, as municipalities and counties may not require separate permits for public school construction (Lines 1433-1443)
- Use only inspectors and plan reviewers from DFCM's approved roster, which requires International Code Council certification and DFCM approved training (Lines 171-185, 380-394, 1488-1510)
- Submit all required documentation through the online document management system, including inspection reports, cost data, and project milestones (Lines 930-934)
- Pay a construction oversight fee equal to 1.25% of total project cost for all public school construction projects, paid in quarterly installments throughout the project (Lines 1269-1315)
- Comply with standardized cost reporting requirements using Construction Specifications Institute MasterFormat categories (Lines 1085-1104)
- Submit annual deferred maintenance reports beginning July 1, 2029, identifying all maintenance items exceeding \$25,000 that were deferred during the fiscal year (Lines 1129-1138)
- Use construction delivery methods authorized under Section 63G-6a-1302, with specific restrictions on construction manager or general contractor methods requiring DFCM approval (Lines 707-766)
- Select contractors only from the qualified contractor registry for projects exceeding \$500,000 (Lines 755-761, 1358-1364)
- Provide written notice to municipalities, counties, affected utility companies, relevant transportation authorities, and local fire authorities at least 30 days before purchasing property or entering into lease agreements for school construction or school use (Lines 551-559)
- Upon written request from DFCM, provide historical project documentation and information regarding past construction projects, including those completed before the effective date of the bill (Lines 1032-1082)

Utah State Board of Education Responsibilities

The state board shall designate a school construction liaison who serves as the primary point of contact between the state board and DFCM on school construction matters, coordinates educational programming requirements that may affect construction standards, participates in administrative rule development and review processes, provides input on educational facility needs and trends, assists with training programs for LEA officials, and facilitates the resolution of construction-related issues affecting educational programs. (Lines 1204-1212)

The school construction liaison must be an employee of the state board with expertise in school construction, educational facilities, or related fields, participate in relevant DFCM meetings and committees, maintain regular communication with DFCM staff, and report to the state board on construction oversight activities and related issues. (Lines 1213-1218)

The state board and DFCM are required to establish a memorandum of understanding that defines roles and responsibilities for school construction oversight, establishes communication protocols and meeting schedules, addresses coordination on policy development and implementation, provides for information sharing and joint training activities, and includes dispute resolution procedures. (1219-1224)

Additional Policies

Charter School Alternative Compliance

S.B. 164 provides charter schools with alternative compliance options for projects under \$5,000,000 (Lines 1383-1430). Charter schools with projects exceeding \$5,000,000 must comply with all requirements applicable to LEAs (Lines 1387-1388). Charter schools may elect to comply through full compliance with all sections applicable to LEAs or through alternative compliance with reduced requirements (Lines 1383-1386).

Under alternative compliance, charter schools must comply with architect cost oversight requirements, submit to standardized cost reporting, use qualified certified inspectors from DFCM's approved roster, comply with all safety and security standards, notify affected entities for any construction or major alteration project, and receive DFCM approval for plan compliance verification (Lines 1389-1396).

Charter schools using alternative compliance are exempt from mandatory use of the online document management system, detailed monthly construction reporting requirements, and mandatory compliance audits unless the charter school has demonstrated repeated violations, the project cost exceeds \$3,000,000, or the charter school has violated safety standards (Lines 1411-1416). For projects under \$500,000, charter schools pay a reduced construction oversight fee of 0.75% of total project cost (Line 1312).

Appeals Panel

S.B. 164 creates an appeals panel to resolve disputes between an LEA and DFCM regarding decisions made by DFCM in relation to school construction (Lines 1513-1607). The appeals panel consists of three members: the executive director of the Department of Government Operations or designee as panel chair, the school construction liaison designated by the State Board of Education, and a third member with relevant expertise relevant to the specific matter under appeal selected jointly by the other two members (Lines 1515-1532).

An LEA may appeal various DFCM decisions including:

- Denial or conditional approval of construction permits
- Denial of alternative delivery method requests
- Cost matrix determinations
- Architect and design professional fee determinations
- Enforcement actions and penalties
- Requirements for DFCM managed construction services
- Contractor registry determinations
- Plan review determinations
- Inspection and occupancy certificate determinations
- Any other DFCM decision that substantively affects an LEA's ability to complete a construction project in compliance with the provisions of the bill (Lines 1533-1547)

Enforcement and Penalties

DFCM is granted enforcement authority to ensure LEA compliance with requirements (Lines 1318-1347). If an LEA fails to comply, DFCM may issue written warnings and compliance orders, suspend or revoke construction permits, require additional inspections at the LEA's expense, impose administrative penalties, and refer matters to appropriate authorities for further action (Lines 1318-1324).

Administrative penalties are capped at \$1,000 for minor violations, \$5,000 for significant violations, and \$25,000 for violations that pose safety risks or involve willful noncompliance (Lines 1325-1328). Before imposing penalties, DFCM must provide written notice of alleged violations, allow reasonable time for correction, provide opportunity for a hearing, and consider the LEA's compliance history and efforts to remedy violations (Lines 1329-1333).

DFCM must conduct mandatory compliance audits of 10% of all projects annually selected randomly, any project exceeding cost benchmarks by more than 20%, any LEA with previous compliance violations, and any project with reported safety concerns (Lines 1338-1342). For serious violations involving life safety, DFCM may require immediate work stoppage, mandate third-party oversight at LEA expense, require remedial training for LEA officials, and refer matters to applicable professional licensing boards (Lines 1343-1347).

Implementation Timeline

S.B. 164 establishes a phased implementation timeline (Lines 1610-1624). Before January 1, 2027, DFCM must adopt comprehensive rules implementing the provisions of the bill, establish the online document management system, develop standardized forms and procedures, create training programs for LEA officials, and coordinate with the State Board of Education to repeal or substantially revise State Board of Education administrative rules related to school construction (Lines 1610-1620).

All projects beginning construction after January 1, 2027, must comply fully with the provisions of the bill (Lines 1621-1622). DFCM must conduct remedial audits of projects completed in 2024, 2025, and 2026 to identify systemic issues requiring immediate attention (Lines 1623-1624).

Public School Construction Oversight Restricted Account

S.B. 164 creates a restricted account within the General Fund known as the "Public School Construction Oversight Restricted Account" (Lines 1451-1485). The account would be funded by construction oversight fees collected from LEAs, administrative fees collected for DFCM managed construction services, and any penalties collected under enforcement provisions (Lines 1453-1457). Money in the account is to be used exclusively for public school construction oversight activities (Lines 1458-1464).