

**Effective 5/10/2016**

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

(1) As used in this section:

(a)

(i) "Capital developments" means a:

- (A) remodeling, site, or utility project with a total cost of \$3,500,000 or more;
- (B) new facility with a construction cost of \$500,000 or more; or
- (C) purchase of real property where an appropriation is requested to fund the purchase.

(ii) "Capital developments" does not include a project described in Subsection (1)(b)(iii).

(b) "Capital improvements" means:

- (i) a remodeling, alteration, replacement, or repair project with a total cost of less than \$3,500,000;
- (ii) a site or utility improvement with a total cost of less than \$3,500,000;
- (iii) a utility infrastructure improvement project that:
  - (A) has a total cost of less than \$7,000,000;
  - (B) consists of two or more projects that, if done separately, would each cost less than \$3,500,000; and
  - (C) the State Building Board determines is more cost effective or feasible to be completed as a single project; or
- (iv) a 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 include:

- (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 \$3,500,000; 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 State Building Board, on behalf of all state agencies, shall submit its 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 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;
  - (ii) verify the completion and accuracy of the feasibility study described in Subsection (2)(b)(i);
  - (iii) require that an institution described in Section 53B-1-102 that submits a request for a capital development project address whether and how, as a result of the project, the institution will:
    - (A) offer courses or other resources that will help meet demand for jobs, training, and employment in the current market and the projected market for the next five years;
    - (B) respond to individual skilled and technical job demand over the next 3, 5, and 10 years;
    - (C) respond to industry demands for trained workers;
    - (D) help meet commitments made by the Governor's Office of Economic Development, including relating to training and incentives;
    - (E) respond to changing needs in the economy; and
    - (F) based on demographics, respond to demands for on-line or in-class instruction; and
  - (iv) only when determining the order of prioritization among requests submitted by the State Board of Regents, give more weight, in the State Building Board's scoring process, to a request that is designated as a higher priority by the State Board of Regents than a request that is designated as a lower priority by the State Board of Regents.
  - (c) An agency may not modify a capital development project request after the deadline for submitting the request, except to the extent that a modification of the scope of the project, or the amount of funds requested, is necessary due to increased construction costs or other factors outside of the agency's control.
- (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:
    - (i) the State Building Board determines that the requesting state agency has provided adequate assurance that state funds will not be used for the design or construction of the facility;
    - (ii) the state agency provides to the State Building Board a written document, signed by the head of the state agency:
      - (A) stating that funding or a revenue stream is in place, or will be in place before the project is completed, to ensure that increased state funding will not be required to cover the cost of operations and maintenance to the resulting facility for immediate or future capital improvements; and
      - (B) detailing the source of the funding that will be used for the cost of operations and maintenance for immediate and future capital improvements to the resulting facility; and
    - (iii) the State Building Board determines that 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 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 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 \$3,500,000;
    - (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 \$3,500,000;
    - (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;
    - (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; and
    - (G) projects approved under Subsection (1)(b)(iii).

- (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.
  - (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 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 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 \$3,500,000 or more, if:
    - (i) the capital improvement project is a project described in Subsection (1)(b)(iii); and
    - (ii) the Legislature has not refused to fund the project with capital improvement funds.
  - (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 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), 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 defined in Section 63J-1-312; and
    - (B) "General Fund budget deficit" is as 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.
- (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 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 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 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.

Amended by Chapter 298, 2016 General Session