

THIS IS THE PLACE FOUNDATION

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: David L. Buhler

AN ACT RELATING TO PARKS AND RECREATION; AUTHORIZING THE DIVISION OF PARKS AND RECREATION TO MAKE AN AGREEMENT WITH THIS IS THE PLACE FOUNDATION TO MANAGE THIS IS THE PLACE STATE PARK; SPECIFYING TERMS OF THE AGREEMENT; DELINEATING THE AUTHORITY OF THE FOUNDATION TO CONSTRUCT OR MAKE IMPROVEMENTS TO FACILITIES AT THIS IS THE PLACE STATE PARK; AND PROVIDING AN EFFECTIVE DATE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

63A-5-206, as renumbered and amended by Chapters 212 and 263, Laws of Utah 1993

ENACTS:

63-11-3.1, Utah Code Annotated 1953

63-11-3.2, Utah Code Annotated 1953

63-11-3.3, Utah Code Annotated 1953

63A-4-104, Utah Code Annotated 1953

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

Section 1. Section **63-11-3.1** is enacted to read:

63-11-3.1. Definitions.

As used in Sections 63-11-3.1 through 63-11-3.3:

(1) "Board" means the board of trustees of This is the Place Foundation.

(2) "Division" means the Division of Parks and Recreation.

(3) "Foundation" means This is the Place Foundation, a private nonprofit corporation formed pursuant to Title 16, Chapter 6, Article 2, Utah Nonprofit Corporation and Co-operative Association Act.

1 (4) "Monument" means This is the Place Monument at This is the Place State Park.

2 (5) "Park" means This is the Place State Park, property owned by the state of Utah located
3 at 2601 East Sunnyside Avenue, Salt Lake City.

4 Section 2. Section **63-11-3.2** is enacted to read:

5 **63-11-3.2. Agreement to manage This is the Place State Park -- Grants.**

6 (1) In recognition of the need for private funds to continue the expansion and improvement
7 of Old Deseret Village, a living history museum at This is the Place State Park, and the preference
8 of donors to contribute to nonprofit organizations rather than government entities, the Division of
9 Parks and Recreation is authorized to make an agreement with This is the Place Foundation to
10 manage, develop, and promote This is the Place State Park.

11 (2) The division may pay a management fee to the foundation.

12 (3) The division may not require the foundation to remit to the division any portion of the
13 income generated from park operations.

14 Section 3. Section **63-11-3.3** is enacted to read:

15 **63-11-3.3. Terms of agreement.**

16 Any agreement made pursuant to Section 63-11-3.2 shall include the following terms:

17 (1) The foundation shall transfer to the state:

18 (a) title to any real property acquired by the foundation, upon completion of payment, if
19 any, for the property by the foundation; and

20 (b) ownership of any artifacts or collections acquired by the foundation.

21 (2) No fee may be charged to visit the monument.

22 (3) (a) Except as provided in Subsections (3)(b) and (3)(c), a board member may receive
23 no compensation or financial benefit, directly or indirectly, as a result of the member's service on
24 the board.

25 (b) A board member may receive per diem and expenses incurred in the performance of
26 the board member's duties at the rates established by the board.

27 (c) A board member may deal or contract with the foundation, provided that:

28 (i) no person or entity is paid any fee, salary, rent, or other payment of any kind in excess
29 of the fair market value for the service rendered, goods furnished, or facilities or equipment rented;
30 and

31 (ii) at a meeting of the board or subcommittee of the board having authority to authorize

1 or confirm the contract or transaction:

2 (A) a quorum of the board or subcommittee is present;

3 (B) the interest of the board member is disclosed;

4 (C) a majority of the quorum votes to approve the contract or transaction; and

5 (D) in determining a majority under Subsection (3)(c)(ii)(C), the vote of any board
6 member having an interest in the contract or transaction is not counted.

7 (4) The foundation shall obtain an annual audit prepared by an independent public
8 accounting firm. The audit shall be prepared in accordance with generally accepted accounting
9 standards.

10 Section 4. Section **63A-5-206** is amended to read:

11 **63A-5-206. Construction, alteration, and repair of state facilities -- Powers of**
12 **director -- Expenditure of appropriations.**

13 (1) As used in this section:

14 (a) "Analysis" means an economic assessment of competing design and maintenance
15 alternatives, the object of which is to reduce cost and conserve energy.

16 (b) "Capital developments" means any:

17 (i) remodeling, site, or utility projects with a total cost of \$1,000,000 or more;

18 (ii) addition of new space that will cost more than \$100,000; or

19 (iii) land acquisition where an appropriation is requested.

20 (c) "Capital improvements" means any:

21 (i) remodeling, alteration, repair project with a total cost of less than \$1,000,000; or

22 (ii) site and utility improvement with a total cost of less than \$1,000,000.

23 (d) "Life cycle cost-effective" means the lowest cost of owning and operating a facility
24 over a 25-year period, including the initial cost, energy costs, operation and maintenance costs,
25 repair costs, and the costs of energy conservation and renewable energy systems.

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

29 (f) "State-owned facilities" means those facilities identified in Section 63A-5-212.

30 (2) The director shall prepare or have prepared by private firms or individuals designs,
31 plans, and specifications for the various buildings and improvements, and other work carried out

1 by the division.

2 (3) (a) (i) Except as provided in Subsection (3)(a)(ii) or (3)(a)(iii), the director shall
3 recommend the need for and exercise direct supervision over the design and construction of all
4 alterations, repairs, and improvements to all existing facilities of the state, its departments,
5 commissions, institutions, and agencies if the total project construction cost is greater than
6 \$100,000.

7 (ii) The director may:

8 (A) authorize a department, commission, institution, or agency to control design and
9 construction of alterations, repairs, and improvements when the total project construction cost is
10 greater than \$100,000 by following the delegation requirements and procedures of Subsection
11 (3)(c); or

12 (B) by rule, authorize a particular department, commission, institution, or agency to
13 control design and construction on projects within a particular dollar range and a particular project
14 type.

15 (iii) (A) At the request of This is the Place Foundation, the director may authorize the
16 foundation to control design and construction of alterations, repairs, or improvements to facilities
17 at This is the Place State Park to be made with funds of the foundation, including grant monies
18 from the state, or with donated services or materials.

19 (B) If the foundation controls design and construction as provided in Subsection
20 (3)(a)(iii)(A), the alterations, repairs, or improvements are subject to plan review and inspection
21 by Salt Lake City for the purpose of assuring compliance with building codes.

22 (b) (i) Except for the placement or installation of works of art through Title 9, Chapter 6,
23 Part 4, Utah Percent-for-Art Act or as provided in Subsection (3)(b)(ii), an existing facility may
24 not be altered, repaired, or improved on the property of any state institution, department,
25 commission, or agency if the total project construction cost exceeds \$100,000 until the location,
26 design, plans, and specifications are approved by the director and the officials charged with the
27 administration of the affairs of the particular department, commission, institution, or agency.

28 (ii) Alterations, repairs, or improvements to facilities at This is the Place State Park to be
29 made by This is the Place Foundation with funds of the foundation, including grant monies from
30 the state, or with donated services or materials, are exempt from Subsection (3)(b)(i).

31 (c) (i) The director may delegate control over design, construction, and all other aspects

1 of any project to entities of state government on a project-by-project basis if the state entity
2 requests that delegation in writing and the State Building Board approves the delegation.

3 (ii) (A) The director, his designee, or the state entity to whom control has been designated
4 pursuant to Subsection (5)(c)(i) shall notify in writing the elected representatives of local
5 government entities directly and substantively affected by any diagnostic, treatment, parole,
6 probation, or other secured facility project exceeding \$250,000, if:

7 (I) the nature of the project has been significantly altered since prior notification or
8 approval;

9 (II) the project would significantly change the nature of the functions presently conducted
10 at the location;

11 (III) the project adds 50% or more square feet to the area of the facility; or

12 (IV) the project is new construction.

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

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

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

23 (v) State entities that receive a delegated project may not have access to the building board
24 contingency funds authorized in Section 63A-5-209 for the delegated project.

25 (4) (a) The director shall be responsible to ensure that state-owned facilities are life cycle
26 cost-effective.

27 (b) The estimated cost of the analysis shall be included in each program budget document
28 and in the project funding request submitted to the State Building Board, the governor, and the
29 Legislature.

30 (c) The final cost estimate shall reflect the most life cycle cost-effective building.

31 (d) The director, in consultation with the State Building Board and Division of Energy,

1 shall make rules to implement this subsection by following the procedures and requirements of
2 Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

3 (e) The State Building Board may exempt a facility from being life cycle cost-effective
4 pursuant to rules, after reviewing and concurring with a written request and justification from the
5 director.

6 (5) (a) [The] Except as provided in Subsection (5)(c) or (5)(d), director shall recommend
7 the need for and exercise direct supervision over the design and construction of all new facilities
8 of the state, its departments, commissions, institutions, and agencies if the total project
9 construction cost is in excess of \$100,000.

10 (b) (i) Except for the placement or installation of works of art under Title 9, Chapter 6, Part
11 4, Utah Percent-for-Art Act or as provided in Subsection (5)(b)(ii), (5)(b)(iii), or (5)(b)(iv), a new
12 facility may not be constructed on the property of any state department, commission, institution,
13 or agency if the total project construction cost of the facility, regardless of the funding source,
14 exceeds \$100,000, until the construction of the facility has been approved by the Legislature in an
15 Appropriations Act or by other specific legislation, and the location, design, plans, and
16 specifications are approved by the director and the official charged with the administration of the
17 affairs of the particular department, commission, institution, or agency.

18 (ii) Facilities to be built with nonstate funds and owned and occupied by nonstate entities
19 within research park areas are exempt from this Subsection (5)(b).

20 (iii) Facilities to be built for the Utah National Guard for which the funding for
21 construction, operations, and maintenance are derived totally from the United States Government
22 are exempt from the requirement of obtaining legislative approval required by this Subsection
23 (5)(b).

24 (iv) New facilities to be built at This is the Place State Park by This is the Place
25 Foundation with funds of the foundation, including grant monies from the state, or with donated
26 services or materials, are exempt from Subsection (5)(b)(i).

27 (c) (i) The director may delegate control over design, construction, and all other aspects
28 of any project to entities of state government on a project-by-project basis if the state entity
29 requests that delegation in writing and the State Building Board approves the delegation.

30 (ii) The state entity to whom control is delegated shall assume fiduciary control over
31 project finances, shall assume all responsibility for project budgets and expenditures, and shall

1 receive all funds appropriated for the project, including any contingency funds contained in the
2 appropriated project budget.

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

6 (iv) State entities that receive a delegated project may not have access to the building
7 board contingency funds authorized in Section 63A-5-209 for the delegated project.

8 (d) (i) At the request of This is the Place Foundation, the director may authorize the
9 foundation to control design and construction of any new facility at This is the Place State Park
10 to be built with funds of the foundation, including grant monies from the state, or with donated
11 services or materials.

12 (ii) If the foundation controls design and construction as provided in Subsection (5)(d)(i),
13 the new facility is subject to plan review and inspection by Salt Lake City for the purpose of
14 assuring compliance with building codes.

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

18 (7) (a) The director, with the approval of the Office of Legislative Fiscal Analyst, shall
19 develop standard forms to present capital development and capital improvement cost summary
20 data.

21 (b) The director shall:

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

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

26 (8) Notwithstanding the requirements of Title 63, Chapter 38, Budgetary Procedures Act,
27 the director may:

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

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

31 (c) reimburse those account balances from the amount funded for those projects when the

1 appropriation act funding the project becomes effective.

2 Section 5. Section **63A-4-104** is enacted to read:

3 **63A-4-104. Course-of-construction insurance for facilities constructed by This is the**
4 **Place Foundation.**

5 The risk manager may provide course-of-construction insurance for facilities constructed
6 by This is the Place Foundation at This is the Place State Park and bill the Division of Parks and
7 Recreation for the cost of the insurance.

8 Section 6. **Effective date.**

9 If approved by two-thirds of all the members elected to each house, this act takes effect
10 upon approval by the governor, or the day following the constitutional time limit of Utah
11 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the
12 date of veto override.

Legislative Review Note

as of **1-14-98 10:08 AM**

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel