ENERGY SAVINGS IN STATE BUILDINGS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Fred R. Hunsaker

Senate Sponsor: Peter C. Knudson

LONG TITLE

General Description:
This bill modifies a portion of the Quality Growth Act and statutes governing the State Building Energy Efficiency Program, the State Building Board, and the Division of Facilities Construction and Management.

Highlighted Provisions:
This bill:
• modifies definitions;
• eliminates the requirement for state agencies to place 50% of net energy savings in the LeRay McAllister Critical Land Conservation Fund;
• provides that the Division of Facilities Construction and Management shall develop and administer the State Building Energy Efficiency Program;
• requires the Division of Facilities Construction and Management to:
  • develop incentives to encourage state entities to conserve energy and reduce energy costs;
  • procure energy efficient products where practicable;
  • analyze energy consumption by state agencies;
  • establish an advisory group to assist with development and implementation of the program; and
  • provide a yearly energy savings report to the governor in addition to the Legislature;
• requires state government entities to appoint a staff member to coordinate and report on energy saving efforts;
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- reduces the maximum term for energy savings agreements entered into by state agencies, modifies terms in the definition of energy savings agreement, and requires the agency to obtain the preapproval of the governor and to notify the Office of Legislative Fiscal Analyst before entering into an agreement;
  - provides that DFCM may establish energy savings design procedures for improvements to existing state facilities;
  - permits the State Building Board to require an entity that benefits from a capital improvement project to repay the capital improvement funds from savings resulting from the project;
  - modifies provisions related to the State Building Board's rulemaking in relation to life cycle cost-effectiveness of state facilities;
  - provides that life-cycle effectiveness shall be determined using the most prudent cost of owning and operating a facility; and
  - makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

**11-38-102**, as last amended by Chapter 16, Laws of Utah 2003

**11-38-301**, as last amended by Chapter 256, Laws of Utah 2002

**63-9-63**, as enacted by Chapter 164, Laws of Utah 1985

**63-9-67**, as enacted by Chapter 24, Laws of Utah 1999

**63-38-3**, as last amended by Chapter 16, Laws of Utah 2003

**63-38-8.1**, as last amended by Chapter 71, Laws of Utah 2005

**63A-5-103**, as last amended by Chapter 142, Laws of Utah 1998

**63A-5-104**, as last amended by Chapter 351, Laws of Utah 2004
Be it enacted by the Legislature of the state of Utah:

Section 1. Section 11-38-102 is amended to read:


As used in this chapter:

(1) "Affordable housing" means housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross income of the applicable municipal or county statistical area for households of the same size.

(2) "Agricultural land" has the same meaning as "land in agricultural use" under Section 59-2-502.

(3) "Brownfield sites" means abandoned, idled, or underused commercial or industrial land where expansion or redevelopment is complicated by real or perceived environmental contamination.

(4) "Commission" means the Quality Growth Commission established in Section 11-38-201.

(5) "Fund" means the LeRay McAllister Critical Land Conservation Fund established in Section 11-38-301.

(6) "Infill development" means residential, commercial, or industrial development on unused or underused land, excluding open land and agricultural land, within existing, otherwise developed urban areas.

(7) "Local entity" means a county, city, or town.

(8) "OPB" means the Governor's Office of Planning and Budget established under Section 63-38d-201.

(9) (a) "Open land" means land that is:
(i) preserved in or restored to a predominantly natural, open, and undeveloped condition; and
(ii) used for:
(A) wildlife habitat;
(B) cultural or recreational use;
(C) watershed protection; or
(D) another use consistent with the preservation of the land in or restoration of the land to a predominantly natural, open, and undeveloped condition.

(b) (i) "Open land" does not include land whose predominant use is as a developed facility for active recreational activities, including baseball, tennis, soccer, golf, or other sporting or similar activity.
(ii) The condition of land does not change from a natural, open, and undeveloped condition because of the development or presence on the land of facilities, including trails, waterways, and grassy areas, that:
(A) enhance the natural, scenic, or aesthetic qualities of the land; or
(B) facilitate the public's access to or use of the land for the enjoyment of its natural, scenic, or aesthetic qualities and for compatible recreational activities.

"State agency" includes each executive, legislative, and judicial branch department, agency, board, commission, or division, however denominated, and each state educational institution.

"State Building Energy Efficiency Program" has the meaning as defined in Section 63-9-67.

"Surplus land" means real property owned by the Department of Administrative Services, the Department of Agriculture and Food, the Department of Natural Resources, or the Department of Transportation that the individual department determines not to be necessary for carrying out the mission of the department.

Section 2. Section 11-38-301 is amended to read:

(1) There is created a restricted special revenue fund entitled the "LeRay McAllister Critical Land Conservation Fund," consisting of:

(a) money appropriated or otherwise made available by the Legislature;

(b) contributions of money, property, or equipment from federal agencies, political subdivisions of the state, persons, or corporations; and

(c) proceeds that a department chooses to place into the fund from the sale of surplus land under Subsection (2)

(d) funds from the State Building Energy Efficiency Program.

(2) The Department of Administrative Services, the Department of Agriculture and Food, the Department of Natural Resources, and the Department of Transportation may place proceeds from the sale of surplus land into the fund.

(3) The total amount of money in the fund may not exceed $6,000,000.

Section 3. Section 63-9-63 is amended to read:

63-9-63. Legislative findings and policy.

(1) The Legislature finds the following:

(a) The operation of facilities owned and controlled by the state consumes significant amounts of energy.

(b) Facilities owned and controlled by the state present a significant opportunity for energy cost savings through the implementation of conservation measures.

(c) Principles which produce efficient facility management in the private sector are equally applicable to the management of public buildings and facilities.

(d) There exists, in the private sector, favorable alternative methods of financing energy conservation measures which are not readily adaptable to financing state facility energy efficiency improvements due to current budgetary practices.

(e) Maximization of energy conservation efforts in light of limited resources requires careful advance planning by responsible agencies.

(2) The Legislature declares that it is the policy of the state to:

(a) undertake aggressive programs designed to reduce energy use in state facilities in
order to reduce the operating costs of state government and to set an example of energy
efficiency for the public[;]

(b) utilize, to the greatest practical extent, alternative funding sources and methods of
financing energy efficiency improvements in state facilities in a manner which minimizes the
necessity for increased appropriations[;]

(c) employ private sector management incentive principles, to the extent practicable, to
implement the policies in Subsections (2)(a) and (b)[;]

(d) develop incentives to encourage state entities to conserve energy, reduce energy
costs, and utilize renewable energy sources where practicable; and

(e) procure and use energy efficient products where practicable.

Section 4. Section 63-9-67 is amended to read:


(1) For purposes of this section:

(a) "Division" means the Division of Facilities Construction and Management

(b) "Energy efficiency measures" means actions taken or initiated by a state
agency that reduce the state agency's energy use, increase the state agency's energy efficiency,
reduce source energy consumption, reduce water consumption, or lower the costs of energy or
water to the state agency.

(c) "Energy savings agreement" means an agreement entered into by a state
agency [participating in the State Building Energy Efficiency Program] whereby the state
agency implements energy efficiency measures and finances the costs associated with
implementation of energy efficiency measures [from] using the stream of expected savings in
[energy] utility costs resulting from implementation of the energy efficiency measures as the
funding source for repayment.

(d) "Net savings" means savings in energy costs that a state agency realizes after
taking into account the costs of implementing the energy efficiency measures or conservation
activities that produce the savings.

[(e) (d) "State agency" [has the meaning as defined in Section 11-38-102:] means each executive, legislative, and judicial branch department, agency, board, commission, or division, and includes a state institution of higher education as defined in Section 53B-3-102.

[(f) (e) "State Building Energy Efficiency Program" means a program [that the governor may establish by executive order recommending to or requiring state agencies to implement] established under this section for the purpose of improving energy efficiency measures and reducing the energy costs for state facilities.

(f) (i) "State facility" means any building, structure, or other improvement that is constructed on property owned by the state, its departments, commissions, institutions, or agencies, or a state institution of higher education.

(ii) "State facility" does not mean:

(A) an unoccupied structure that is a component of the state highway system;

(B) a privately owned structure that is located on property owned by the state, its departments, commissions, institutions, or agencies, or a state institution of higher education;

or

(C) a structure that is located on land administered by the School and Institutional Trust Lands Administration under a lease, permit, or contract with the School and Institutional Trust Lands Administration.

(2) The division shall:

(a) develop and administer the state building energy efficiency program, which shall include guidelines and procedures to improve energy efficiency in the maintenance and management of state facilities;

(b) provide information and assistance to state agencies in their efforts to improve energy efficiency;

(c) analyze energy consumption by state agencies to identify opportunities for improved energy efficiency;

(d) establish an advisory group composed of representatives of state agencies to
provide information and assistance in the development and implementation of the state building energy efficiency program; and

[(2) (a) (e) [The person or agency overseeing the state building energy efficiency program, as designated by the governor in an executive order establishing the program, shall] submit [a report annually to the governor and to the Capital Facilities and Administrative Services Appropriations Subcommittee of the Legislature] an annual report that:

(i) identifies strategies for long-term improvement in energy efficiency;

(ii) identifies goals for energy conservation for the upcoming year; and

[(b) Each report under Subsection (2)(a) shall:]

[(i) specify the amount that represents 50% of the net savings realized by all state agencies from participating in the state building energy efficiency program; and]

[(iii) detail energy management programs and strategies that were undertaken in the previous year to improve the energy efficiency of state agencies and the energy savings achieved.]

[(e) The amount specified under Subsection (2)(b)(i) may be placed into the fund, subject to legislative appropriation during the general session following submission of the report under Subsection (2)(a):]

(3) Each state agency shall:

(a) designate a staff member that is responsible for coordinating energy efficiency efforts within the agency;

(b) provide energy consumption and costs information to the division;

(c) develop strategies for improving energy efficiency and reducing energy costs; and

(d) provide the division with information regarding the agency's energy efficiency and reduction strategies.

[(3) Notwithstanding Subsection (2), a state agency may fulfill the terms of an agreement entered into before the effective date of this section providing for the state agency's payment for energy efficiency measures:]

(4) (a) A state agency may enter into an energy savings agreement for a term of up to
(b) Before entering into an energy savings agreement, the state agency shall:

(i) utilize the division to oversee the project unless the project is exempt from the division's oversight or the oversight is delegated to the agency under the provisions of Section 63A-5-206;

(ii) obtain the prior approval of the governor or the governor's designee; and

(iii) provide the Office of Legislative Fiscal Analyst with a copy of the proposed agreement before the agency enters into the agreement.

Section 5. Section 63-38-3 is amended to read:

63-38-3. Appropriations governed by chapter -- Restrictions on expenditures --

Transfer of funds.

(1) All moneys appropriated by the Legislature are appropriated upon the terms and conditions set forth in this chapter, and any department, agency, or institution, except the Legislature and its committees, or where specifically exempted by the appropriating act, which accepts moneys appropriated by the Legislature, does so subject to this chapter.

(2) (a) In providing that certain appropriations are to be expended in accordance with a schedule or other restrictions, if any, set forth after each appropriations item, it is the intent of the Legislature to limit the amount of money to be expended from each appropriations item for certain specified purposes.

(b) Each schedule:

(i) is a restriction or limitation upon the expenditure of the respective appropriation made;

(ii) does not itself appropriate any money; and

(iii) is not itself an item of appropriation.

(c) Except as provided in Subsections 63-9-67(2) and 63-38-18(2), an appropriation or any surplus of any appropriation may not be diverted from any department, agency, institution, or division to any other department, agency, institution, or division.

(d) The money appropriated subject to a schedule or restriction may be used only for
the purposes authorized.

(e) (i) If any department, agency, or institution for which money is appropriated requests the transfer of moneys appropriated to it from one purpose or function to another purpose or function within an item of appropriation, the director of the Governor’s Office of Planning and Budget shall require a new work program to be submitted for the fiscal year involved setting forth the purpose and necessity for such transfer.

(ii) The director and fiscal officer shall review the proposed change and submit their findings and recommendations to the governor, who may permit the transfer.

(iii) The state fiscal officer shall notify the Legislature through the Office of the Legislative Fiscal Analyst of action taken by the governor.

(f) [Except as provided in Subsections 63-9-67(2) and 63-38-18(2), monies] Monies may not be transferred from one item of appropriation to any other item of appropriation.

(3) This section does not apply to the Investigation Account of the Water Resources Construction Fund. The investigation account shall continue to be governed by Section 73-10-8.

Section 6. Section 63-38-8.1 is amended to read:


(1) As used in this section:

(a) (i) "Agency" means each department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state.

(ii) "Agency" does not include those entities whose unappropriated and unencumbered balances are made nonlapsing by the operation of Subsection 63-38-8(2).

(b) "Appropriation balance" means the unexpended and unencumbered balance of a line item appropriation made by the Legislature to an agency that exists at the end of a fiscal year.

(c) "Nonlapsing" means that an agency’s appropriation balance is not closed out to the appropriate fund at the end of a fiscal year as required by Section 63-38-8.
(d) "One-time project" means a project or program that can be completed with the appropriation balance and includes such items as employee incentive awards and bonuses, purchase of equipment, and one-time training.

(e) "One-time projects list" means:

(i) a prioritized list of one-time projects, upon which an agency would like to spend any appropriation balance; and

(ii) for each project, the maximum amount the agency is estimating for the project.

(f) "Program" means a service provided by an agency to members of the public, other agencies, or to employees of the agency.

(2) Notwithstanding the requirements of Section 63-38-8, an agency may, by following the procedures and requirements of this section, retain and expend any appropriation balance:

[(b) comply with the requirements of Subsections 63-9-67(2) and 63-38-18(2).]

(3) (a) Each agency that wishes to preserve any part or all of its appropriation balance as nonlapsing shall include a one-time projects list as part of the budget request that it submits to the governor and the Legislature at the annual general session of the Legislature immediately before the end of the fiscal year in which the agency may have an appropriation balance.

(b) An agency may not include a proposed expenditure on its one-time projects list if:

(i) the expenditure creates a new program;

(ii) the expenditure enhances the level of an existing program; or

(iii) the expenditure will require a legislative appropriation in the next fiscal year.

(c) The governor:

(i) may approve some or all of the items from an agency's one-time projects list; and

(ii) shall identify and prioritize any approved one-time projects in the budget that he submits to the Legislature.

(4) The Legislature:

(a) may approve some or all of the specific items from an agency's one-time projects list as authorized expenditures of an agency's appropriation balance;
Sec. 7. Section 63A-5-103 is amended to read:


(1) The State Building Board shall:

(a) in cooperation with state institutions, departments, commissions, and agencies, prepare a master plan of structures built or contemplated;

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

(c) amend and keep current the five-year building program for submission to the governor and subsequent legislatures;

(d) as a part of the long-range plan, recommend to the governor and Legislature any changes in the law that are necessary to insure an effective, well-coordinated building program for all state institutions;

(e) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, make rules:

(i) that are necessary to discharge its duties and the duties of the Division of Facilities Construction and Management; and

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

(f) with support from the Division of Facilities Construction and Management, establish design criteria, standards, and procedures for the use of state agencies and institutions in the planning for planning, design, and construction of new state buildings and facilities and for improvements to existing state facilities, including life-cycle costing, cost-effectiveness studies, and other methods and procedures that demonstrate addressing:

(i) the need for the building or facility;
(ii) the effectiveness of its design;
(iii) the efficiency of energy use; and
(iv) the usefulness of the building or facility over its lifetime;
(g) prepare and submit a yearly request to the governor and the Legislature for a designated amount of square footage by type of space to be leased by the Division of Facilities Construction and Management in that fiscal year; and
(h) assure the efficient use of all building space.
(2) In order to provide adequate information upon which the State Building Board may make its recommendation under Subsection (1), any state agency requesting new full-time employees for the next fiscal year shall report those anticipated requests to the building board at least 90 days before the annual general session in which the request is made.
(3) (a) The State Building Board shall ensure that the five-year building plan required by Subsection (1)(c) includes:
(i) a list that prioritizes construction of new buildings for all structures built or contemplated based upon each agency's, department's, commission's, and institution's present and future needs;
(ii) information, and space use data for all state-owned and leased facilities;
(iii) substantiating data to support the adequacy of any projected plans;
(iv) a summary of all statewide contingency reserve and project reserve balances as of the end of the most recent fiscal year;
(v) a list of buildings that have completed a comprehensive facility evaluation by an architect/engineer or are scheduled to have an evaluation;
(vi) for those buildings that have completed the evaluation, the estimated costs of needed improvements; and
(vii) for projects recommended in the first two years of the five-year building plan: (A) detailed estimates of the cost of each project; (B) the estimated cost to operate and maintain the building or facility on an annual basis;
(C) the estimated number of new agency full-time employees expected to be housed in the building or facility;

(D) the estimated cost of new or expanded programs and personnel expected to be housed in the building or facility;

(E) the estimated lifespan of the building with associated costs for major component replacement over the life of the building; and

(F) the estimated cost of any required support facilities.

(b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the State Building Board may make rules prescribing the format for submitting the information required by this Subsection (3).

(4) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the State Building Board may make rules establishing circumstances under which bids may be modified when all bids for a construction project exceed available funds as certified by the director.

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

Section 8. Section 63A-5-104 is amended to read:

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

(1) As used in this section:

(a) "Capital developments" means any:

(i) remodeling, site, or utility projects with a total cost of $1,500,000 or more;

(ii) new facility with a construction cost of $250,000 or more; or

(iii) purchase of real property where an appropriation is requested to fund the purchase.

(b) "Capital improvements" means any:

(i) remodeling, alteration, replacement, or repair project with a total cost of less than $1,500,000;

(ii) site and utility improvement with a total cost of less than $1,500,000; or
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394 (iii) new facility with a total construction cost of less than $250,000.
395 (c) (i) "New facility" means the construction of any new building on state property
396 regardless of funding source.
397 (ii) "New facility" includes:
398 (A) an addition to an existing building; and
399 (B) the enclosure of space that was not previously fully enclosed.
400 (iii) "New facility" does not mean:
401 (A) the replacement of state-owned space that is demolished, if the total construction
402 cost of the replacement space is less than $1,500,000; or
403 (B) the construction of facilities that do not fully enclose a space.
404 (d) "Replacement cost of existing state facilities" means the replacement cost, as
405 determined by the Division of Risk Management, of state facilities, excluding auxiliary
406 facilities as defined by the State Building Board.
407 (e) "State funds" means public monies appropriated by the Legislature.
408 (2) The State Building Board, on behalf of all state agencies, commissions,
409 departments, and institutions shall submit its capital development recommendations and
410 priorities to the Legislature for approval and prioritization.
411 (3) (a) Except as provided in Subsections (3)(b), (d), and (e), a capital development
412 project may not be constructed on state property without legislative approval.
413 (b) Legislative approval is not required for a capital development project if the State
414 Building Board determines that:
415 (i) the requesting higher education institution has provided adequate assurance that:
416 (A) state funds will not be used for the design or construction of the facility; and
417 (B) the higher education institution has a plan for funding in place that will not require
418 increased state funding to cover the cost of operations and maintenance to, or state funding for,
419 immediate or future capital improvements to the resulting facility; and
420 (ii) the use of the state property is:
421 (A) appropriate and consistent with the master plan for the property; and
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(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 higher education institution may not request:

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

(B) state capital improvement funding.

(d) Legislative approval is not required for:

(i) the renovation, remodeling, or retrofitting of an existing facility with nonstate funds;

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

(iv) capital projects that are funded by the Navajo Trust Fund Board from Navajo Trust Fund monies and the Uintah Basin Revitalization Fund that do not provide a new facility for a state agency or higher education institution; or

(v) capital projects on school and institutional trust lands that are funded by the School and Institutional Trust Lands Administration from the Land Grant Management Fund and that do 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 as a result of an exchange of real property under Section 72-5-111.

(ii) When the Department of Transportation approves those exchanges, it shall notify the president of the Senate, the speaker of the House, and the cochairs of the Capital Facilities and Administrative Services Subcommittee of the Legislature’s Joint Appropriation Committee about any new facilities to be built under this exemption.

(4) (a) 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.

(b) Unless otherwise directed by the Legislature, the 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 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) The 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.

(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) (a) Except as provided in Subsection (6)(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 to capital improvements.

(b) (i) As used in this Subsection (6)(b), "operating deficit" means that estimated
General Fund or Uniform School Fund revenues are less than budgeted for the current or next
fiscal year.

(ii) If the Legislature determines that an operating 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.

(7) (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
63, Chapter 38, Budgetary Procedures Act, reallocate capital improvement funds to address
those projects.
(b) The 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.

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

(b) The 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.

(9) 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.

Section 9. Section 63A-5-204 is amended to read:

63A-5-204. Specific powers and duties of director.

(1) As used in this section, "capitol hill facilities" and "capitol hill grounds" have the same meaning as provided in Section 63C-9-102.

(2) (a) The director shall:

(i) recommend rules to the executive director for the use and management of facilities and grounds owned or occupied by the state for the use of its departments and agencies;

(ii) supervise and control the allocation of space, in accordance with legislative directive through annual appropriations acts or other specific legislation, to the various departments, commissions, institutions, and agencies in all buildings or space owned, leased, or rented by or to the state, except capitol hill facilities and capitol hill grounds and except as otherwise provided by law;

(iii) comply with the procedures and requirements of Title 63A, Chapter 5, Part 3,
Division of Facilities Construction and Management Leasing;

(iv) except as provided in Subsection (2)(b), acquire, as authorized by the Legislature through the appropriations act or other specific legislation, and hold title to, in the name of the division, all real property, buildings, fixtures, or appurtenances owned by the state or any of its agencies;

(v) adopt and use a common seal, of a form and design determined by the director, and of which courts shall take judicial notice;

(vi) file a description and impression of the seal with the Division of Archives;

(vii) collect and maintain all deeds, abstracts of title, and all other documents evidencing title to or interest in property belonging to the state or any of its departments, except institutions of higher education and the School and Institutional Trust Lands Administration;

(viii) report all properties acquired by the state, except those acquired by institutions of higher education, to the director of the Division of Finance for inclusion in the state’s financial records;

(ix) before charging a rate, fee, or other amount for services provided by the division’s internal service fund to an executive branch agency, or to a subscriber of services other than an executive branch agency:

(A) submit the proposed rates, fees, and cost analysis to the Rate Committee established in Section 63A-1-114; and

(B) obtain the approval of the Legislature as required by Section 63-38-3.5;

(x) conduct a market analysis by July 1, 2005, and periodically thereafter, of proposed rates and fees, which analysis shall include a comparison of the division’s rates and fees with the fees of other public or private sector providers where comparable services and rates are reasonably available; [and]

(xi) implement the State Building Energy Efficiency Program under Section 63-9-67;

and

(xii) take all other action necessary for carrying out the purposes of this chapter.

(b) Legislative approval is not required for acquisitions by the division that cost less
than $250,000.

(3) (a) The director shall direct or delegate maintenance and operations, preventive
maintenance, and facilities inspection programs and activities for any department, commission,
institution, or agency, except:

(i) the State Capitol Preservation Board; and

(ii) state institutions of higher education.

(b) The director may choose to delegate responsibility for these functions only when
the director determines that:

(i) the department or agency has requested the responsibility;

(ii) the department or agency has the necessary resources and skills to comply with
facility maintenance standards approved by the State Building Board; and

(iii) the delegation would result in net cost savings to the state as a whole.

(c) The State Capitol Preservation Board and state institutions of higher education are
exempt from Division of Facilities Construction and Management oversight.

(d) Each state institution of higher education shall comply with the facility
maintenance standards approved by the State Building Board.

(e) Except for the State Capitol Preservation Board, agencies and institutions that are
exempt from division oversight shall annually report their compliance with the facility
maintenance standards to the division in the format required by the division.

(f) The division shall:

(i) prescribe a standard format for reporting compliance with the facility maintenance
standards;

(ii) report agency and institution compliance or noncompliance with the standards to
the Legislature; and

(iii) conduct periodic audits of exempt agencies and institutions to ensure that they are
complying with the standards.

(4) (a) In making any allocations of space under Subsection (2), the director shall:

(i) conduct studies to determine the actual needs of each department, commission,
institutions, or agencies; and
(ii) comply with the restrictions contained in this Subsection (4).
(b) The supervision and control of the legislative area is reserved to the Legislature.
(c) The supervision and control of the judicial area is reserved to the judiciary for trial
courts only.
(d) The director may not supervise or control the allocation of space for entities in the
public and higher education systems.
(e) The supervision and control of capitol hill facilities and capitol hill grounds is
reserved to the State Capitol Preservation Board.
(5) The director may:
(a) hire or otherwise procure assistance and services, professional, skilled, or
otherwise, that are necessary to carry out the director's responsibilities, and may expend funds
provided for that purpose either through annual operating budget appropriations or from
nonlapsing project funds;
(b) sue and be sued in the name of the division; and
(c) hold, buy, lease, and acquire by exchange or otherwise, as authorized by the
Legislature, whatever real or personal property that is necessary for the discharge of the
director's duties.
(6) Notwithstanding the provisions of Subsection (2)(a)(iv), the following entities may
hold title to any real property, buildings, fixtures, and appurtenances held by them for purposes
other than administration that are under their control and management:
(a) the Office of Trust Administrator;
(b) the Department of Transportation;
(c) the Division of Forestry, Fire and State Lands;
(d) the Department of Natural Resources;
(e) the Utah National Guard;
(f) any area vocational center or other institution administered by the State Board of
Education; and
any institution of higher education.

(7) The director shall ensure that any firm performing testing and inspection work governed by the American Society for Testing Materials Standard E-329 on public buildings under the director's supervision shall:

(a) fully comply with the American Society for Testing Materials standard specifications for agencies engaged in the testing and inspection of materials known as ASTM E-329; and

(b) carry a minimum of $1,000,000 of errors and omissions insurance.

(8) Notwithstanding Subsections (2)(a)(iii) and (iv), the School and Institutional Trust Lands Administration may hold title to any real property, buildings, fixtures, and appurtenances held by it that are under its control.

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

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

(1) As used in this section:

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

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

[(c) (b) "Compliance agency" has the same meaning as provided in Subsection 58-56-3(4).

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

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

[(e) (d) "Life cycle cost-effective" means, as provided for in rules adopted by the State
Building Board, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the [lowest] most prudent cost of owning and operating a facility [over a 25-year period], including the initial cost, energy costs, operation and maintenance costs, repair costs, and the costs of energy conservation and renewable energy systems.

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

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

(2) (a) Except as provided in Subsections (3) and (4), the director shall exercise direct supervision over the design and construction of all new facilities, and all alterations, repairs, and improvements to existing facilities if the total project construction cost, regardless of the funding source, is greater than $100,000.

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

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

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

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

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

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

(d) is for the creation and installation of art under Title 9, Chapter 6, Part 4, Utah
(4) (a) (i) The State Building Board may authorize the delegation of control over design, construction, and all other aspects of any project to entities of state government on a project-by-project basis or for projects within a particular dollar range and a particular project type.

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

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

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

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

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

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

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

(6) (a) The role of compliance agency as provided in Title 58, Chapter 56, Utah
Uniform Building Standards Act, shall be provided by:

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

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

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

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

(v) the institution, for projects exempt from the division's administration under Subsection (5)(a).

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

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

(i) only review plans and inspect construction to enforce the building codes as adopted by the Uniform Building Codes Commission; and

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

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

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

(7) Before construction may begin, the director shall review the design of projects exempted from the division's administration under Subsection (4) to determine if the design:

(a) complies with any restrictions placed on the project by the State Building Board; and
(b) is appropriate for the purpose and setting of the project.

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

[(b) The estimated cost of the analysis shall be included in each program budget document and in the project funding request submitted to the State Building Board, the governor, and the Legislature:] [(c) The final cost estimate shall reflect the most life cycle cost-effective building.] [(d) The State Building Board, in consultation with the director and the State Energy Manager, shall make rules to implement this Subsection (8) by following the procedures and requirements of Title 63, Chapter 46a, Utah Administrative Rulemaking Act:] [(e) The State Building Board may exempt a facility from being life cycle cost-effective pursuant to rules, after reviewing and concurring with a written request and justification from the director.]

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

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

(b) The director shall:

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

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

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

(a) accelerate the design of projects funded by any appropriation act passed by the
Legislature in its annual general session;
(b) use any unencumbered existing account balances to fund that design work; and
(c) reimburse those account balances from the amount funded for those projects when
the appropriation act funding the project becomes effective.

(12) (a) The director, his designee, or the state entity to whom control has been
designated under Subsection (4), shall notify in writing the elected representatives of local
government entities directly and substantively affected by any diagnostic, treatment, parole,
probation, or other secured facility project exceeding $250,000, if:
(i) the nature of the project has been significantly altered since prior notification;
(ii) the project would significantly change the nature of the functions presently
conducted at the location; or
(iii) the project is new construction.

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

(13) (a) (i) Before beginning the construction of student housing on property owned by
the state or a public institution of higher education, the director shall provide written notice of
the proposed construction, as provided in Subsection (13)(a)(ii), if any of the proposed student
housing buildings is within 300 feet of privately owned residential property.
(ii) Each notice under Subsection (13)(a)(i) shall be provided to the legislative body
and, if applicable, the mayor of:
(A) the county in whose unincorporated area the privately owned residential property is
located; or
(B) the municipality in whose boundaries the privately owned residential property is
located.

(b) (i) Within 21 days after receiving the notice required by Subsection (13)(a)(i), a
county or municipality entitled to the notice may submit a written request to the director for a
public hearing on the proposed student housing construction.
(ii) If a county or municipality requests a hearing under Subsection (13)(b)(i), the director and the county or municipality shall jointly hold a public hearing to provide information to the public and to allow the director and the county or municipality to receive input from the public about the proposed student housing construction.

Section 11. **Repealer.**

This bill repeals:

Section 63-38-18, **Refund for electrical service to be deposited into the LeRay McAllister Fund.**