

**DIVISION OF FACILITIES CONSTRUCTION
AND MANAGEMENT AMENDMENTS**

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: D. Gregg Buxton

Senate Sponsor: John W. Hickman

LONG TITLE

General Description:

This bill modifies the State Building Board and Division of Facilities Construction and Management provisions by adjusting the cost thresholds for certain projects which require legislative approval and amending provisions for state entity supervision of construction of new facilities.

Highlighted Provisions:

This bill:

- ▶ increases the cost thresholds of capital development projects that must have legislative approval prior to construction;
- ▶ increases the cost thresholds of prioritized capital improvements required to be submitted to the Legislature for review and approval;
- ▶ amends certain definitions;
- ▶ requires state entities to assure compliance with certain division standards for new facilities that are under direct supervision of the state entity;
- ▶ modifies definitions to increase the threshold for a high-cost lease; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

30 AMENDS:

31 **63A-5-104**, as last amended by Chapter 278, Laws of Utah 2006

32 **63A-5-206**, as last amended by Chapter 278, Laws of Utah 2006

33 **63A-5-301**, as enacted by Chapter 113, Laws of Utah 1995



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

36 Section 1. Section **63A-5-104** is amended to read:

37 **63A-5-104. Capital development and capital improvement process -- Approval**
38 **requirements -- Limitations on new projects -- Emergencies.**

39 (1) As used in this section:

40 (a) "Capital developments" means any:

41 (i) remodeling, site, or utility projects with a total cost of [~~\$1,500,000~~] \$2,500,000 or
42 more;

43 (ii) new facility with a construction cost of [~~\$250,000~~] \$500,000 or more; or

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

45 (b) "Capital improvements" means any:

46 (i) remodeling, alteration, replacement, or repair project with a total cost of less than
47 [~~\$1,500,000~~] \$2,500,000;

48 (ii) site and utility improvement with a total cost of less than [~~\$1,500,000~~] \$2,500,000;

49 or

50 (iii) new facility with a total construction cost of less than [~~\$250,000~~] \$500,000.

51 (c) (i) "New facility" means the construction of any new building on state property
52 regardless of funding source.

53 (ii) "New facility" includes:

54 (A) an addition to an existing building; and

55 (B) the enclosure of space that was not previously fully enclosed.

56 (iii) "New facility" does not mean:

57 (A) the replacement of state-owned space that is demolished or that is otherwise

58 removed from state use, if the total construction cost of the replacement space is less than
59 [~~\$1,500,000~~] \$2,500,000; or

60 (B) the construction of facilities that do not fully enclose a space.

61 (d) "Replacement cost of existing state facilities" means the replacement cost, as
62 determined by the Division of Risk Management, of state facilities, excluding auxiliary
63 facilities as defined by the State Building Board.

64 (e) "State funds" means public monies appropriated by the Legislature.

65 (2) The State Building Board, on behalf of all state agencies, commissions,
66 departments, and institutions shall submit its capital development recommendations and
67 priorities to the Legislature for approval and prioritization.

68 (3) (a) Except as provided in Subsections (3)(b), (d), and (e), a capital development
69 project may not be constructed on state property without legislative approval.

70 (b) Legislative approval is not required for a capital development project if the State
71 Building Board determines that:

72 (i) the requesting higher education institution has provided adequate assurance that:

73 (A) state funds will not be used for the design or construction of the facility; and

74 (B) the higher education institution has a plan for funding in place that will not require
75 increased state funding to cover the cost of operations and maintenance to, or state funding for,
76 immediate or future capital improvements to the resulting facility; and

77 (ii) the use of the state property is:

78 (A) appropriate and consistent with the master plan for the property; and

79 (B) will not create an adverse impact on the state.

80 (c) (i) The Division of Facilities Construction and Management shall maintain a record
81 of facilities constructed under the exemption provided in Subsection (3)(b).

82 (ii) For facilities constructed under the exemption provided in Subsection (3)(b), a
83 higher education institution may not request:

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

85 (B) state capital improvement funding.

- 86 (d) Legislative approval is not required for:
- 87 (i) the renovation, remodeling, or retrofitting of an existing facility with nonstate funds;
- 88 (ii) facilities to be built with nonstate funds and owned by nonstate entities within
- 89 research park areas at the University of Utah and Utah State University;
- 90 (iii) facilities to be built at This is the Place State Park by This is the Place Foundation
- 91 with funds of the foundation, including grant monies from the state, or with donated services or
- 92 materials;
- 93 (iv) capital projects that are funded by the Navajo Trust Fund Board from Navajo Trust
- 94 Fund monies and the Uintah Basin Revitalization Fund that do not provide a new facility for a
- 95 state agency or higher education institution; or
- 96 (v) capital projects on school and institutional trust lands that are funded by the School
- 97 and Institutional Trust Lands Administration from the Land Grant Management Fund and that
- 98 do not fund construction of a new facility for a state agency or higher education institution.
- 99 (e) (i) Legislative approval is not required for capital development projects to be built
- 100 for the Department of Transportation as a result of an exchange of real property under Section
- 101 72-5-111.
- 102 (ii) When the Department of Transportation approves those exchanges, it shall notify
- 103 the president of the Senate, the speaker of the House, and the cochairs of the Capital Facilities
- 104 and Administrative Services Subcommittee of the Legislature's Joint Appropriation Committee
- 105 about any new facilities to be built under this exemption.
- 106 (4) (a) The State Building Board, on behalf of all state agencies, commissions,
- 107 departments, and institutions shall by January 15 of each year, submit a list of anticipated
- 108 capital improvement requirements to the Legislature for review and approval.
- 109 (b) Unless otherwise directed by the Legislature, the building board shall prioritize
- 110 capital improvements from the list submitted to the Legislature up to the level of appropriation
- 111 made by the Legislature.
- 112 (c) In prioritizing capital improvements, the building board shall consider the results of
- 113 facility evaluations completed by an architect/engineer as stipulated by the building board's

114 facilities maintenance standards.

115 (d) The building board may require an entity that benefits from a capital improvement
116 project to repay the capital improvement funds from savings that result from the project.

117 (5) The Legislature may authorize:

118 (a) the total square feet to be occupied by each state agency; and

119 (b) the total square feet and total cost of lease space for each agency.

120 (6) (a) Except as provided in Subsection (6)(b), the Legislature may not fund the design
121 or construction of any new capital development projects, except to complete the funding of
122 projects for which partial funding has been previously provided, until the Legislature has
123 appropriated 1.1% of the replacement cost of existing state facilities to capital improvements.

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

127 (ii) If the Legislature determines that an operating deficit exists, the Legislature may, in
128 eliminating the deficit, reduce the amount appropriated to capital improvements to 0.9% of the
129 replacement cost of state buildings.

130 (7) (a) If, after approval of capital development and capital improvement priorities by
131 the Legislature under this section, emergencies arise that create unforeseen critical capital
132 improvement projects, the State Building Board may, notwithstanding the requirements of Title
133 63, Chapter 38, Budgetary Procedures Act, reallocate capital improvement funds to address
134 those projects.

135 (b) The building board shall report any changes it makes in capital improvement
136 allocations approved by the Legislature to:

137 (i) the Office of Legislative Fiscal Analyst within 30 days of the reallocation; and

138 (ii) the Legislature at its next annual general session.

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

141 (b) The building board shall ensure that the rule:

142 (i) reserves funds for the Division of Facilities Construction and Management for
143 emergency projects; and

144 (ii) allows the delegation of projects to some institutions and agencies with the
145 requirement that a report of expenditures will be filed annually with the Division of Facilities
146 Construction and Management and appropriate governing bodies.

147 (9) It is the intent of the Legislature that in funding capital improvement requirements
148 under this section the General Fund be considered as a funding source for at least half of those
149 costs.

150 Section 2. Section **63A-5-206** is amended to read:

151 **63A-5-206. Construction, alteration, and repair of state facilities -- Powers of**
152 **director -- Exceptions -- Expenditure of appropriations -- Notification to local**
153 **governments for construction or modification of certain facilities.**

154 (1) As used in this section:

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

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

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

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

163 (d) "Life cycle cost-effective" means, as provided for in rules adopted by the State
164 Building Board, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking
165 Act, the most prudent cost of owning and operating a facility, including the initial cost, energy
166 costs, operation and maintenance costs, repair costs, and the costs of energy conservation and
167 renewable energy systems.

168 (e) "Local government" means the county, municipality, or local school district that
169 would have jurisdiction to act as the compliance agency if the property on which the project is

170 being constructed were not owned by the state.

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

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

178 (ii) A state entity may exercise direct supervision over the design and construction of
179 all new facilities, and all alterations, repairs, and improvements to existing facilities if:

180 (A) the total project construction cost, regardless of the funding sources, is \$100,000 or
181 less; and

182 (B) the state entity assures compliance with the division's forms and contracts and the
183 division's design, construction, alteration, repair, improvements, and code inspection standards.

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

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

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

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

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

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

197 (d) is for the creation and installation of art under Title 9, Chapter 6, Part 4, Utah

198 Percent-for-Art Act.

199 (4) (a) (i) The State Building Board may authorize the delegation of control over
200 design, construction, and all other aspects of any project to entities of state government on a
201 project-by-project basis or for projects within a particular dollar range and a particular project
202 type.

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

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

210 (iv) State entities that receive a delegated project may not access, for the delegated
211 project, the division's statewide contingency reserve and project reserve authorized in Section
212 63A-5-209.

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

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

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

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

225 (6) (a) The role of compliance agency as provided in Title 58, Chapter 56, Utah

226 Uniform Building Standards Act, shall be provided by:

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

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

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

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

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

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

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

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

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

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

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

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

252 (a) complies with any restrictions placed on the project by the State Building Board;
253 and

254 (b) is appropriate for the purpose and setting of the project.

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

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

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

263 (b) The director shall:

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

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

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

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

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

274 (c) reimburse those account balances from the amount funded for those projects when
275 the appropriation act funding the project becomes effective.

276 (12) (a) The director, his designee, or the state entity to whom control has been
277 designated under Subsection (4), shall notify in writing the elected representatives of local
278 government entities directly and substantively affected by any diagnostic, treatment, parole,
279 probation, or other secured facility project exceeding \$250,000, if:

280 (i) the nature of the project has been significantly altered since prior notification;

281 (ii) the project would significantly change the nature of the functions presently

282 conducted at the location; or

283 (iii) the project is new construction.

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

287 (13) (a) (i) Before beginning the construction of student housing on property owned by
288 the state or a public institution of higher education, the director shall provide written notice of
289 the proposed construction, as provided in Subsection (13)(a)(ii), if any of the proposed student
290 housing buildings is within 300 feet of privately owned residential property.

291 (ii) Each notice under Subsection (13)(a)(i) shall be provided to the legislative body
292 and, if applicable, the mayor of:

293 (A) the county in whose unincorporated area the privately owned residential property is
294 located; or

295 (B) the municipality in whose boundaries the privately owned residential property is
296 located.

297 (b) (i) Within 21 days after receiving the notice required by Subsection (13)(a)(i), a
298 county or municipality entitled to the notice may submit a written request to the director for a
299 public hearing on the proposed student housing construction.

300 (ii) If a county or municipality requests a hearing under Subsection (13)(b)(i), the
301 director and the county or municipality shall jointly hold a public hearing to provide
302 information to the public and to allow the director and the county or municipality to receive
303 input from the public about the proposed student housing construction.

304 Section 3. Section **63A-5-301** is amended to read:

305 **63A-5-301. Definitions.**

306 As used in this part:

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

- 310 (b) "Agency" does not include:
- 311 (i) the legislative branch;
- 312 (ii) the judicial branch; and
- 313 (iii) a higher education institution.
- 314 (2) "Agency optional term" means an option that is exclusively exercisable by an
- 315 agency to extend the lease term.
- 316 (3) "Director" means director of the Division of Facilities Construction and
- 317 Management.
- 318 (4) "Division" means the Division of Facilities Construction and Management.
- 319 (5) "High-cost lease" means a real property lease that:
- 320 (a) has an initial term including any agency optional term of ten years or more; or
- 321 (b) will require lease payments of more than [~~\$1,000,000~~] \$5,000,000 over the term of
- 322 the lease including any agency optional term.
- 323 (6) "Significant lease terms" includes the duration of the lease, the frequency of the
- 324 periodic payments, renewal clauses, purchase options, cancellation clauses, repair and
- 325 maintenance clauses, and restrictions on use of the property.