

STATE AGENCY ENERGY EFFICIENCY

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Fred R. Hunsaker

Senate Sponsor: Scott K. Jenkins

LONG TITLE

General Description:

This bill enacts and amends provisions relating to state agency energy efficiency.

Highlighted Provisions:

This bill:

- ▶ requires the Legislature, subject to future budget constraints, to retain energy savings in a state agency's appropriation;
- ▶ requires the Legislature to appropriate a certain percentage of the replacement cost of existing facilities for the State Building Energy Efficiency Program;
- ▶ creates a revolving loan fund to lend monies to state agencies to finance energy efficiency measures;
- ▶ establishes a sunset date for certain provisions of the bill; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63-55-263, as last amended by Laws of Utah 2007, Chapters 216, 306, and 317

63A-5-104, as last amended by Laws of Utah 2007, Chapter 12



28 ENACTS:

29 **63A-5-602**, Utah Code Annotated 1953

30 **63A-5-603**, Utah Code Annotated 1953

31 RENUMBERS AND AMENDS:

32 **63A-5-601**, (Renumbered from 63-9-63, as last amended by Laws of Utah 2006,
33 Chapter 278)



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

36 Section 1. Section **63-55-263** is amended to read:

37 **63-55-263. Repeal dates, Titles 63 to 63E.**

38 (1) Title 63, Chapter 25a, Part 3, Sentencing Commission, is repealed January 1, 2012.

39 (2) The Crime Victims' Reparations Board, created in Section 63-25a-404, is repealed
40 July 1, 2017.

41 (3) The Resource Development Coordinating Committee, created in Section
42 63-38d-501, is repealed July 1, 2015.

43 (4) Title 63, Chapter 38f, Part 4, Enterprise Zone Act, is repealed July 1, 2008.

44 (5) (a) Title 63, Chapter 38f, Part 11, Recycling Market Development Zone Act, is
45 repealed July 1, 2010.

46 (b) Sections 59-7-610 and 59-10-1007 regarding tax credits for certain persons in
47 recycling market development zones, are repealed for taxable years beginning on or after
48 January 1, 2011.

49 (c) Notwithstanding Subsection (5)(b), a person may not claim a tax credit under
50 Section 59-7-610 or 59-10-1007:

51 (i) for the purchase price of machinery or equipment described in Section 59-7-610 or
52 59-10-1007, if the machinery or equipment is purchased on or after July 1, 2010; or

53 (ii) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), if
54 the expenditure is made on or after July 1, 2010.

55 (d) Notwithstanding Subsections (5)(b) and (c), a person may carry forward a tax credit
56 in accordance with Section 59-7-610 or 59-10-1007 if:

57 (i) the person is entitled to a tax credit under Section 59-7-610 or 59-10-1007; and

58 (ii) (A) for the purchase price of machinery or equipment described in Section

59 59-7-610 or 59-10-1007, the machinery or equipment is purchased on or before June 30, 2010;
60 or

61 (B) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), the
62 expenditure is made on or before June 30, 2010.

63 (6) Title 63, Chapter 47, Utah Commission for Women and Families, is repealed July
64 1, 2011.

65 (7) Title 63, Chapter 75, Families, Agencies, and Communities Together for Children
66 and Youth At Risk Act, is repealed July 1, 2016.

67 (8) Title 63, Chapter 88, Navajo Trust Fund, is repealed July 1, 2008.

68 (9) Title 63, Chapter 99, Utah Commission on Aging, is repealed July 1, 2009.

69 (10) Section 63A-4-204, authorizing the Risk Management Fund to provide coverage
70 to any public school district that chooses to participate, is repealed July 1, 2016.

71 (11) The requirement to fund the State Building Energy Efficiency Program in Section
72 63A-5-104(7) is repealed July 1, 2016.

73 (12) Section 63A-5-603, State Facility Energy Efficiency Fund, is repealed July 1,
74 2016.

75 ~~[(H)]~~ (13) Section 63C-8-106, Rural residency training program, is repealed July 1,
76 2015.

77 Section 2. Section **63A-5-104** is amended to read:

78 **63A-5-104. Capital development and capital improvement process -- Approval**
79 **requirements -- Limitations on new projects -- Emergencies.**

80 (1) As used in this section:

81 (a) "Capital developments" means any:

82 (i) remodeling, site, or utility projects with a total cost of \$2,500,000 or more;

83 (ii) new facility with a construction cost of \$500,000 or more; or

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

85 (b) "Capital improvements" means any:

86 (i) remodeling, alteration, replacement, or repair project with a total cost of less than
87 \$2,500,000;

88 (ii) site and utility improvement with a total cost of less than \$2,500,000; or

89 (iii) new facility with a total construction cost of less than \$500,000.

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

92 (ii) "New facility" includes:

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

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

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

96 (A) the replacement of state-owned space that is demolished or that is otherwise
97 removed from state use, if the total construction cost of the replacement space is less than
98 \$2,500,000; or

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

100 (d) "Operating deficit" means that estimated General Fund or Uniform School Fund
101 revenues are less than budgeted for the current or next fiscal year.

102 [~~(d)~~] (e) "Replacement cost of existing state facilities" means the replacement cost, as
103 determined by the Division of Risk Management, of state facilities, excluding auxiliary
104 facilities as defined by the State Building Board.

105 [~~(e)~~] (f) "State funds" means public monies appropriated by the Legislature.

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

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

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

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

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

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

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

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

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

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

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

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

126 (B) state capital improvement funding.

127 (d) Legislative approval is not required for:

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

129 (ii) facilities to be built with nonstate funds and owned by nonstate entities within
130 research park areas at the University of Utah and Utah State University;

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

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

137 (v) capital projects on school and institutional trust lands that are funded by the School
138 and Institutional Trust Lands Administration from the Land Grant Management Fund and that
139 do not fund construction of a new facility for a state agency or higher education institution.

140 (e) (i) Legislative approval is not required for capital development projects to be built
141 for the Department of Transportation as a result of an exchange of real property under Section
142 72-5-111.

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

147 (4) (a) The State Building Board, on behalf of all state agencies, commissions,
148 departments, and institutions shall by January 15 of each year, submit a list of anticipated
149 capital improvement requirements to the Legislature for review and approval.

150 (b) Unless otherwise directed by the Legislature, the building board shall prioritize
151 capital improvements from the list submitted to the Legislature up to the level of appropriation

152 made by the Legislature.

153 (c) In prioritizing capital improvements, the building board shall consider the results of
154 facility evaluations completed by an architect/engineer as stipulated by the building board's
155 facilities maintenance standards.

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

158 (5) The Legislature may authorize:

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

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

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

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

168 ~~[(ii) (b) If the Legislature determines that an operating deficit exists, the Legislature
169 may, in eliminating the deficit, reduce the amount appropriated to capital improvements to
170 0.9% of the replacement cost of state buildings.~~

171 (7) (a) Except as provided in Subsection (7)(b), the Legislature may not fund the design
172 or construction of new capital developments until the Legislature has appropriated 0.065% of
173 the replacement cost of existing state facilities to the Division of Facilities Construction and
174 Management for the State Building Energy Efficiency Program.

175 (b) If the Legislature determines that an operating deficit exists, the Legislature may, in
176 eliminating the deficit, reduce the amount appropriated to the State Building Energy Efficiency
177 Program to 0.045% of the replacement cost of existing state facilities.

178 ~~[(7)] (8) (a) If, after approval of capital development and capital improvement
179 priorities by the Legislature under this section, emergencies arise that create unforeseen critical
180 capital improvement projects, the State Building Board may, notwithstanding the requirements
181 of Title 63, Chapter 38, Budgetary Procedures Act, reallocate capital improvement funds to
182 address those projects.~~

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

- 185 (i) the Office of Legislative Fiscal Analyst within 30 days of the reallocation; and
- 186 (ii) the Legislature at its next annual general session.

187 [~~8~~] (9) (a) The State Building Board may adopt a rule allocating to institutions and
188 agencies their proportionate share of capital improvement funding.

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

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

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

195 [~~9~~] (10) It is the intent of the Legislature that in funding capital improvement
196 requirements under this section the General Fund be considered as a funding source for at least
197 half of those costs.

198 Section 3. Section **63A-5-601**, which is renumbered from Section 63-9-63 is
199 renumbered and amended to read:

200 **Part 6. Energy Conservation and Alternative Financing**

201 **[~~63-9-63~~]. 63A-5-601. Legislative findings and policy.**

202 (1) The Legislature finds the following:

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

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

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

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

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

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

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

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

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

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

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

226 Section 4. Section **63A-5-602** is enacted to read:

227 **63A-5-602. Appropriation for energy efficiency measures.**

228 (1) For purposes of this part:

229 (a) "Energy efficiency measures" is as defined in Section 63-9-67.

230 (b) "Energy savings" means monies not expended by a state agency as the result of
231 energy efficiency measures.

232 (c) "State agency" is as defined in Section 63-9-67.

233 (2) Subject to future budget constraints, the Legislature may not remove energy savings
234 from a state agency's appropriation.

235 (3) A state agency shall use energy savings to:

236 (a) fund the cost of the energy efficiency measures; and

237 (b) if funds are available after meeting the requirements of Subsection (3)(a), fund and
238 implement new energy efficiency measures.

239 (4) A state agency may consult with the State Building Energy Efficiency Program
240 manager in the Division of Facilities and Construction Management regarding:

241 (a) the cost effectiveness of energy efficiency measures; and

242 (b) ways to measure energy savings that take into account fluctuations in energy costs
243 and temperature.

244 Section 5. Section **63A-5-603** is enacted to read:

245 63A-5-603. State Facility Energy Efficiency Fund -- Contents -- Use of fund
246 monies.

247 (1) As used in this section:

248 (a) "Board" means the State Building Board.

249 (b) "Division" means the Division of Facilities Construction and Management.

250 (c) "Fund" means the State Facility Energy Efficiency Fund created by this section.

251 (2) There is created a revolving loan fund known as the "State Facility Energy
252 Efficiency Fund."

253 (3) To capitalize the fund, the Division of Finance shall, at the end of fiscal year
254 2007-08, transfer all unobligated balances in the Stripper Well-Petroleum Violation Escrow
255 Fund to the fund.

256 (4) The fund shall consist of:

257 (a) monies transferred under Subsection (3);

258 (b) monies appropriated by the Legislature;

259 (c) monies received for the repayment of loans made from the fund; and

260 (d) interest earned on the fund.

261 (5) The board shall make a loan from the fund to a state agency to, wholly or in part,
262 finance energy efficiency measures.

263 (6) (a) (i) A state agency requesting a loan shall submit an application to the board in
264 the form and containing the information that the board requires, including plans and
265 specifications for the proposed energy efficiency measures.

266 (ii) A state agency may request a loan to fund all or part of the cost of energy efficiency
267 measures.

268 (b) If the board rejects the application, the board shall notify the applicant stating the
269 reasons for the rejection.

270 (7) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
271 the board shall make rules establishing criteria to determine:

272 (i) loan eligibility;

273 (ii) energy efficiency measures priority; and

274 (iii) ways to measure energy savings that take into account fluctuations in energy costs
275 and temperature.

276 (b) In making rules that establish prioritization criteria for energy efficiency measures,
277 the board may consider:

- 278 (i) possible additional sources of revenue;
- 279 (ii) the feasibility and practicality of the energy efficiency measures;
- 280 (iii) the energy savings attributable to eligible energy efficiency measures;
- 281 (iv) the annual energy savings;
- 282 (v) the projected energy cost payback of eligible energy efficiency measures;
- 283 (vi) other benefits to the state attributable to eligible energy efficiency measures;
- 284 (vii) the availability of federal funds for the energy efficiency measures; and
- 285 (viii) whether to require a state agency to provide matching funds for the energy
286 efficiency measures.

287 (8) (a) In reviewing energy efficiency measures for possible funding, the board shall:

- 288 (i) review the loan application and the plans and specifications for the energy
289 efficiency measures;
- 290 (ii) determine whether to grant the loan by applying the loan eligibility criteria; and
- 291 (iii) if the loan is granted, prioritize funding of the energy efficiency measures by
292 applying the prioritization criteria.

293 (b) The board may condition approval of a loan application and the availability of
294 funds on assurances from the state agency that the board considers necessary to ensure that the
295 state agency:

- 296 (i) uses the proceeds to pay the cost of the energy efficiency measures; and
- 297 (ii) implements the energy efficiency measures.

298 (9) The State Building Energy Efficiency Program shall provide staff support when the
299 board performs the duties established in this section.

Legislative Review Note
as of 2-5-08 3:42 PM

Office of Legislative Research and General Counsel

H.B. 198 - State Agency Energy Efficiency

Fiscal Note

2008 General Session
State of Utah

State Impact

Enactment of this bill would require an appropriation of \$4,895,000 to the State Building Energy Efficiency Program beginning in FY 2010. The required appropriation would increase each year as the replacement cost of existing state facilities increases.

This bill would also direct the Division of Finance to transfer all unobligated balances in the Stripper Well - Petroleum Violation Escrow Account to the State Facility Energy Efficiency Revolving Loan Fund at the end of FY 2008. Current estimates are that approximately \$4,800,000 will be available for transfer.

State agencies and institutions may realize energy savings as a result of this bill.

	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>	<u>FY 2010</u> <u>Revenue</u>
General Fund	\$0	\$2,447,500	\$2,447,500	\$0	\$0	\$0
General Fund, One-Time	\$0	(\$2,447,500)	\$0	\$0	\$0	\$0
Education Fund	\$0	\$2,447,500	\$2,447,500	\$0	\$0	\$0
Education Fund, One-Time	\$0	(\$2,447,500)	\$0	\$0	\$0	\$0
Restricted Funds	\$0	\$0	\$0	\$0	\$4,800,000	\$0
Oil Overcharge	\$0	\$0	\$0	\$0	(\$4,800,000)	\$0
Total	\$0	\$0	\$4,895,000	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.