LEGISLATIVE GENERAL COUNSEL
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CAPITAL IMPROVEMENT AMENDMENTS

2008 SECOND SPECIAL SESSION

STATE OF UTAH

Chief Sponsor: Kevin S. Garn

Senate Sponsor: Scott K. Jenkins

LONG TITLE

General Description:

This bill addresses reduced appropriations for capital improvements if a General Fund budget deficit exists.

Highlighted Provisions:

This bill:

- defines terms;
- allows the Legislature to reduce the amount appropriated to capital improvements when the Legislature determines the existence of a General Fund budget deficit or an Education Fund budget deficit, instead of an "operating deficit"; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

63A-5-104, as last amended by Laws of Utah 2008, Chapters 202, 281, and 382

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

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

H.B. 2003

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 a:

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

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

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

(b) "Capital improvements" means a:

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

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

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

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

(ii) "New facility" includes:

(A) an addition to an existing building; and

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

(iii) "New facility" does not mean:

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

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

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

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

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

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

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

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

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

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

(ii) the use of the state property is:

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

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

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

(ii) For facilities constructed under the exemption provided in Subsection (3)(b), a 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) a facility to be built with nonstate funds and owned by nonstate entities within research park areas at the University of Utah and Utah State University;

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

(iv) a capital project that:

(A) is funded by:

(I) the Uintah Basin Revitalization Fund; or

(II) the Navajo Revitalization Fund; and

(B) does not provide a new facility for a state agency or higher education institution; or

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

(e) (i) Legislative approval is not required for capital development projects to be built for the Department of Transportation 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) (i) The State Building Board, on behalf of all state agencies, commissions, departments, and institutions shall by January 15 of each year, submit a list of anticipated capital improvement requirements to the Legislature for review and approval.

(ii) The list shall identify:

(A) a single project that costs more than $1,000,000;

(B) multiple projects within a single building or facility that collectively cost more than $1,000,000;

(C) a single project that will be constructed over multiple years with a yearly cost of $1,000,000 or more and an aggregate cost of more than $2,500,000;

(D) multiple projects within a single building or facility with a yearly cost of $1,000,000 or more and an aggregate cost of more than $2,500,000;

(E) a single project previously reported to the Legislature as a capital improvement project under $1,000,000 that, because of an increase in costs or scope of work, will now cost more than $1,000,000; and

(F) multiple projects within a single building or facility previously reported to the Legislature as a capital improvement project under $1,000,000 that, because of an increase in costs or scope of work, will now cost more than $1,000,000.

(b) Unless otherwise directed by the Legislature, the State Building Board shall prioritize capital improvements from the list submitted to the Legislature up to the level of appropriation made by the Legislature.

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

(d) The State Building Board may require an entity that benefits from a capital improvement project to repay the capital improvement funds from savings that result from the project.

(e) The State Building Board may provide capital improvement funding to a single project, or to multiple projects within a single building or facility, even if the total cost of the project or multiple projects is $2,500,000 or more, if:

(i) the capital improvement project or multiple projects require more than one year to complete; and

(ii) the Legislature has affirmatively authorized the capital improvement project or multiple projects to be funded in phases.

(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.~~]:

(A) "Education Fund budget deficit" is as defined in Subsection 63J-1-202(1)(a); and

(B) "General Fund budget deficit" is as defined in Subsection 63J-1-202(1)(c).

(ii) If the Legislature determines that [~~an operating deficit exists~~] an Education Fund budget deficit or a General Fund budget deficit exists, the Legislature may, in eliminating the deficit, reduce the amount appropriated to capital improvements to 0.9% of the replacement cost of state buildings.

(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 63J, Chapter 1, Budgetary Procedures Act, reallocate capital improvement funds to address those projects.

(b) The State Building Board shall report any changes it makes in capital improvement allocations approved by the Legislature to:

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

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

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

(b) The State Building Board shall ensure that the rule:

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

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

(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 2. **Effective date.**

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

Legislative Review Note
as of 9-24-08 11:17 AM

Office of Legislative Research and General Counsel

Fiscal Note

H.B. 2003 - Capital Improvement Amendments

2008 Second Special Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

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.