

CAPITAL PROJECT AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen D. Clark

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill amends capital development provisions.

Highlighted Provisions:

This bill:

- ▶ requires the State Building Board to establish a rule to govern the disposition of real property;
- ▶ postpones the effective date of the provision prohibiting the Legislature from funding developments without funding improvements; and
- ▶ addresses the director's supervision of capital improvement projects.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63A-5-103, as last amended by Laws of Utah 2008, Chapter 382

63A-5-104, as last amended by Laws of Utah 2009, Chapters 2 and 183

63A-5-206, as last amended by Laws of Utah 2008, Chapter 382

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

Section 1. Section **63A-5-103** is amended to read:

63A-5-103. Board -- Powers.

- 30 (1) The State Building Board shall:
- 31 (a) in cooperation with state institutions, departments, commissions, and agencies,
32 prepare a master plan of structures built or contemplated;
- 33 (b) submit to the governor and the Legislature a comprehensive five-year building plan
34 for the state containing the information required by Subsection (2);
- 35 (c) amend and keep current the five-year building program for submission to the
36 governor and subsequent legislatures;
- 37 (d) as a part of the long-range plan, recommend to the governor and Legislature any
38 changes in the law that are necessary to insure an effective, well-coordinated building program
39 for all state institutions;
- 40 (e) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
41 make rules:
- 42 (i) that are necessary to discharge its duties and the duties of the Division of Facilities
43 Construction and Management; [~~and~~]
- 44 (ii) to establish standards and requirements for life cycle cost-effectiveness of state
45 facility projects; and
- 46 (iii) to govern the disposition of real property by the division and establish factors,
47 including appraised value and historical significance, in evaluating the disposition;
- 48 (f) with support from the Division of Facilities Construction and Management,
49 establish design criteria, standards, and procedures for planning, design, and construction of
50 new state facilities and for improvements to existing state facilities, including life-cycle
51 costing, cost-effectiveness studies, and other methods and procedures that address:
- 52 (i) the need for the building or facility;
- 53 (ii) the effectiveness of its design;
- 54 (iii) the efficiency of energy use; and
- 55 (iv) the usefulness of the building or facility over its lifetime;
- 56 (g) prepare and submit a yearly request to the governor and the Legislature for a
57 designated amount of square footage by type of space to be leased by the Division of Facilities

58 Construction and Management in that fiscal year; and

59 (h) assure the efficient use of all building space.

60 (2) In order to provide adequate information upon which the State Building Board
61 may make its recommendation under Subsection (1), any state agency requesting new
62 full-time employees for the next fiscal year shall report those anticipated requests to the
63 building board at least 90 days before the annual general session in which the request is made.

64 (3) (a) The State Building Board shall ensure that the five-year building plan required
65 by Subsection (1)(c) includes:

66 (i) a list that prioritizes construction of new buildings for all structures built or
67 contemplated based upon each agency's, department's, commission's, and institution's present
68 and future needs;

69 (ii) information, and space use data for all state-owned and leased facilities;

70 (iii) substantiating data to support the adequacy of any projected plans;

71 (iv) a summary of all statewide contingency reserve and project reserve balances as of
72 the end of the most recent fiscal year;

73 (v) a list of buildings that have completed a comprehensive facility evaluation by an
74 architect/engineer or are scheduled to have an evaluation;

75 (vi) for those buildings that have completed the evaluation, the estimated costs of
76 needed improvements; and

77 (vii) for projects recommended in the first two years of the five-year building plan:

78 (A) detailed estimates of the cost of each project;

79 (B) the estimated cost to operate and maintain the building or facility on an annual
80 basis;

81 (C) the estimated number of new agency full-time employees expected to be housed in
82 the building or facility;

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

85 (E) the estimated lifespan of the building with associated costs for major component

86 replacement over the life of the building; and

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

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

91 (4) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
92 the State Building Board may make rules establishing circumstances under which bids may be
93 modified when all bids for a construction project exceed available funds as certified by the
94 director.

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

97 (5) (a) A person who violates a rule adopted by the board under Subsection (1)(e) is
98 subject to a civil penalty not to exceed \$2,500 for each violation plus the amount of any actual
99 damages, expenses, and costs related to the violation of the rule that are incurred by the state.

100 (b) The board may take any other action allowed by law.

101 (c) If any violation of a rule adopted by the board is also an offense under Title 76,
102 Utah Criminal Code, the violation is subject to the civil penalty, damages, expenses, and costs
103 allowed under Subsection (1)(e) in addition to any criminal prosecution.

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

105 **63A-5-104. Capital development and capital improvement process -- Approval**
106 **requirements -- Limitations on new projects -- Emergencies.**

107 (1) As used in this section:

108 (a) "Capital developments" means a:

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

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

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

113 (b) "Capital improvements" means a:

114 (i) remodeling, alteration, replacement, or repair project with a total cost of less than
115 \$2,500,000;

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

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

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

120 (ii) "New facility" includes:

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

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

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

124 (A) the replacement of state-owned space that is demolished or that is otherwise
125 removed from state use, if the total construction cost of the replacement space is less than
126 \$2,500,000; or

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

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

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

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

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

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

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

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

141 (B) the higher education institution has a plan for funding in place that will not require

142 increased state funding to cover the cost of operations and maintenance to, or state funding
143 for, immediate or future capital improvements to the resulting facility; and

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

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

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

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

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

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

152 (B) state capital improvement funding.

153 (d) Legislative approval is not required for:

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

156 (ii) a facility to be built with nonstate funds and owned by nonstate entities within
157 research park areas at the University of Utah and Utah State University;

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

161 (iv) a capital project that:

162 (A) is funded by:

163 (I) the Uintah Basin Revitalization Fund; or

164 (II) the Navajo Revitalization Fund; and

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

166 or

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

170 (e) (i) Legislative approval is not required for capital development projects to be built
171 for the Department of Transportation as a result of an exchange of real property under Section
172 72-5-111.

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

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

180 (ii) The list shall identify:

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

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

184 (C) a single project that will be constructed over multiple years with a yearly cost of
185 \$1,000,000 or more and an aggregate cost of more than \$2,500,000;

186 (D) multiple projects within a single building or facility with a yearly cost of
187 \$1,000,000 or more and an aggregate cost of more than \$2,500,000;

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

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

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

197 (c) In prioritizing capital improvements, the State Building Board shall consider the

198 results of facility evaluations completed by an architect/engineer as stipulated by the building
199 board's facilities maintenance standards.

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

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

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

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

210 (5) The Legislature may authorize:

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

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

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

218 (b) (i) As used in this Subsection (6)(b):

219 (A) "Education Fund budget deficit" is as defined in Section 63J-1-312; and

220 (B) "General Fund budget deficit" is as defined in Section 63J-1-312.

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

224 (c) The requirements under Subsections (6)(a) and (b) do not apply to the 2008-09,
225 [~~and~~] 2009-10, and 2010-11 fiscal years.

226 (7) (a) If, after approval of capital development and capital improvement priorities by
227 the Legislature under this section, emergencies arise that create unforeseen critical capital
228 improvement projects, the State Building Board may, notwithstanding the requirements of
229 Title 63J, Chapter 1, Budgetary Procedures Act, reallocate capital improvement funds to
230 address those projects.

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

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

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

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

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

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

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

246 Section 3. Section **63A-5-206** is amended to read:

247 **63A-5-206. Construction, alteration, and repair of state facilities -- Powers of**
248 **director -- Exceptions -- Expenditure of appropriations -- Notification to local**
249 **governments for construction or modification of certain facilities.**

250 (1) As used in this section:

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

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

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

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

259 (d) "Life cycle cost-effective" means, as provided for in rules adopted by the State
260 Building Board, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
261 Act, the most prudent cost of owning and operating a facility, including the initial cost, energy
262 costs, operation and maintenance costs, repair costs, and the costs of energy conservation and
263 renewable energy systems.

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

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

270 (2) (a) (i) Except as provided in Subsections (3) and (4), the director shall exercise
271 direct supervision over the design and construction of all new facilities, and all alterations,
272 repairs, and improvements to existing facilities if the total project construction cost, regardless
273 of the funding source, is greater than \$100,000[-], unless there is memorandum of
274 understanding between the director and an institution of higher education that permits the
275 institution of higher education to exercise direct supervision for a project with a total project
276 construction cost of not greater than \$250,000.

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

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

281 (B) the state entity assures compliance with the division's forms and contracts and the

282 division's design, construction, alteration, repair, improvements, and code inspection
283 standards.

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

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

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

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

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

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

297 (d) is for the creation and installation of art under Title 9, Chapter 6, Part 4, Utah
298 Percent-for-Art Act.

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

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

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

310 (iv) State entities that receive a delegated project may not access, for the delegated
311 project, the division's statewide contingency reserve and project reserve authorized in Section
312 63A-5-209.

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

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

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

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

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

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

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

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

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

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

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

338 provided in Subsection (6)(a).

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

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

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

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

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

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

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

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

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

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

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

363 (b) The director shall:

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

366 Analyst; and

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

369 (11) Notwithstanding the requirements of Title 63J, Chapter 1, Budgetary Procedures
370 Act, the director may:

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

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

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

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

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

381 (ii) the project would significantly change the nature of the functions presently
382 conducted at the location; or

383 (iii) the project is new construction.

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

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

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

393 (A) the county in whose unincorporated area the privately owned residential property

394 is located; or

395 (B) the municipality in whose boundaries the privately owned residential property is
396 located.

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

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