

**CAPITAL PROJECT AMENDMENTS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephen D. Clark**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends capital development provisions.

**Highlighted Provisions:**

This bill:

- ▶ requires the State Building Board to establish rules to govern the disposition of real property and define certain capital improvement projects;
- ▶ defines terms;
- ▶ provides that certain capital development projects may not be designed without legislative approval;
- ▶ provides that certain capital development projects may be constructed without legislative approval;
- ▶ provides when certain changes in the scope of a previously approved capital development project require legislative approval;
- ▶ addresses an agency's use of existing funds to design new capital development projects and reimbursement for design expenses;
- ▶ addresses an agency's ability to program new capital development projects and seek reimbursement for programming expenses;
- ▶ provides for legislative approval of certain capital leases;
- ▶ allows the State Building Board to approve the use of funding for design costs of a capital improvement project;



- 28           ▶ allows the State Building Board to use capital improvement funds for statewide
- 29 purposes;
- 30           ▶ provides that legislative approval is not required for acquisitions below the capital
- 31 improvement approval threshold for a new facility;
- 32           ▶ addresses the necessary notifications and approvals for disposals of real property;
- 33           ▶ allows the director of the Division of Facilities Construction and Management to
- 34 resolve certain boundary disputes;
- 35           ▶ addresses the director's supervision of capital improvement projects;
- 36           ▶ addresses the director's expenditure of monies in the Planning Fund;
- 37           ▶ eliminates the need for the governor's budget submission to provide an analysis of
- 38 lease-purchase arrangements;
- 39           ▶ provides that certain minimum funding requirements are not required to be met for
- 40 fiscal year 2010-11; and
- 41           ▶ makes technical changes.

42 **Monies Appropriated in this Bill:**

43           None

44 **Other Special Clauses:**

45           None

46 **Utah Code Sections Affected:**

47 **AMENDS:**

- 48           **63A-5-103**, as last amended by Laws of Utah 2008, Chapter 382
- 49           **63A-5-104**, as last amended by Laws of Utah 2009, Chapters 2 and 183
- 50           **63A-5-204**, as last amended by Laws of Utah 2009, Chapters 183 and 344
- 51           **63A-5-205**, as last amended by Laws of Utah 2009, Chapter 13
- 52           **63A-5-206**, as last amended by Laws of Utah 2008, Chapter 382
- 53           **63A-5-211**, as last amended by Laws of Utah 2000, Chapter 231
- 54           **63J-1-201**, as last amended by Laws of Utah 2009, Chapters 183 and 368
- 55           **63J-3-103**, as last amended by Laws of Utah 2009, Chapter 183



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

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

59           **63A-5-103. Board -- Powers.**

60           (1) The State Building Board shall:

61           (a) in cooperation with state institutions, departments, commissions, and agencies,  
62 prepare a master plan of structures built or contemplated;63           (b) submit to the governor and the Legislature a comprehensive five-year building plan  
64 for the state containing the information required by Subsection (2);65           (c) amend and keep current the five-year building program for submission to the  
66 governor and subsequent legislatures;67           (d) as a part of the long-range plan, recommend to the governor and Legislature any  
68 changes in the law that are necessary to insure an effective, well-coordinated building program  
69 for all state institutions;70           (e) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
71 make rules:72           (i) that are necessary to discharge its duties and the duties of the Division of Facilities  
73 Construction and Management; [~~and~~]74           (ii) to establish standards and requirements for life cycle cost-effectiveness of state  
75 facility projects;76           (iii) to govern the disposition of real property by the division and establish factors,  
77 including appraised value and historical significance, in evaluating the disposition; and78           (iv) to designate the type of statewide purpose capital improvement project that may be  
79 funded with capital improvement funds;80           (f) with support from the Division of Facilities Construction and Management,  
81 establish design criteria, standards, and procedures for planning, design, and construction of  
82 new state facilities and for improvements to existing state facilities, including life-cycle  
83 costing, cost-effectiveness studies, and other methods and procedures that address:

84           (i) the need for the building or facility;

85           (ii) the effectiveness of its design;

86           (iii) the efficiency of energy use; and

87           (iv) the usefulness of the building or facility over its lifetime;

88           (g) prepare and submit a yearly request to the governor and the Legislature for a  
89 designated amount of square footage by type of space to be leased by the Division of Facilities

90 Construction and Management in that fiscal year; and

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

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

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

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

101 (ii) information[;] and space use data for all state-owned and leased facilities;

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

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

105 (v) a list of buildings that:

106 (A) have a completed [ā] comprehensive facility evaluation by an architect/engineer; or

107 (B) are scheduled to have an evaluation;

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

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

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

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

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

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

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

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

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

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

128 (b) In making ~~[those]~~ the rules authorized by this Subsection (4), the State Building  
 129 Board shall provide for the fair and equitable treatment of bidders.

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

133 (b) The State Building Board may take any other action allowed by law.

134 (c) ~~[If any violation of]~~ A person who violates a rule adopted by the State Building  
 135 Board ~~[is also an offense]~~ may be subject to:

136 (i) criminal prosecution under Title 76, Utah Criminal Code~~[-, the violation is subject to~~  
 137 ~~the]; and~~

138 (ii) civil penalty, damages, expenses, and costs ~~[allowed]~~ under ~~[Subsection (1)(e) in~~  
 139 ~~addition to any criminal prosecution]~~ this section.

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

141 **63A-5-104. Capital development and capital improvement process -- Approval**  
 142 **requirements -- Limitations on new projects -- Emergencies -- Capital lease.**

143 (1) As used in this section:

144 (a) "Capital ~~[developments]"~~ development" means a:

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

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

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

148 (b) "Capital ~~[improvements]"~~ improvement" means a:

149 (i) remodeling, alteration, replacement, or repair project with a total cost of less than  
 150 \$2,500,000;

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

152 (iii) new facility with a total construction cost of less than \$500,000.  
153 (c) "Capital lease" means a real property lease that:  
154 (i) transfers ownership of the property to the state by or at the end of the lease term;  
155 (ii) contains an option to purchase the property at a price less than fair market value;  
156 (iii) has a term equal to or greater than 75% of the estimated economic life of the  
157 property, unless the lease begins within the last 25% of the property's estimated economic life;

158 or

159 (iv) provides for a present value of rental and other minimum lease payments, other  
160 than preliminary administrative costs, of 90% or greater than the fair market value of the  
161 property, unless the lease begins within the last 25% of the property's estimated economic life.

162 (d) "Design" means detailed architectural and engineering plans, specifications, and  
163 construction documents of a capital development project.

164 (e) (i) "Enterprise operation" means a self-supporting business unit of an institution of  
165 higher education.

166 (ii) "Enterprise operation" includes:

167 (A) an auxiliary enterprise as defined by the Utah State Board of Regents;

168 (B) a health care organization supported primarily from revenues associated with  
169 patient care; and

170 (C) a service unit or organized activity, such as athletics and theater that is supported  
171 primarily from revenues associated with the operation of the service unit or organized activity.

172 (f) "Infrastructure" means a facility or equipment needed to sustain a building, group of  
173 buildings, or higher education campus including:

174 (i) a distribution facility necessary for water, air, steam, sewage, energy, heating, and  
175 cooling; and

176 (ii) surface items such as a sidewalk, curb, gutter, road, or parking lot.

177 ~~(e)~~ (g) (i) "New facility" means the construction of a new building ~~[on state property]~~  
178 regardless of funding source.

179 (ii) "New facility" includes:

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

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

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

183 (A) the replacement of state-owned space that is demolished or that is otherwise  
184 removed from state use, if the total construction cost of the replacement space is less than  
185 \$2,500,000; or

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

187 (h) (i) "Program" means a description of space requirements addressing quantity, type,  
188 and adjacency that is preparatory to design.

189 (ii) "Program" does not mean a feasibility study, master plan, condition assessment,  
190 siting study, traffic and parking study, fund-raising material, or similar preliminary planning  
191 efforts.

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

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

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

199 (3) (a) Except as provided in Subsections (3)(b), (d), and ~~(e)~~, (f), state funds may not  
200 be used without legislative approval for a capital development project ~~may not be~~:

201 (i) designed or constructed on state property ~~without legislative approval~~; or

202 (ii) (A) designed or constructed on property that is not state property; and

203 (B) for use by the state.

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

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

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

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

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

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

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

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

216 (ii) For ~~[facilities]~~ a facility constructed under the exemption provided in Subsection  
217 (3)(b), a higher education institution may not request:

- 218 (A) increased state funds for operations and maintenance; or
- 219 (B) state capital improvement funding.

220 (d) Legislative approval is not required for:

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

222 (ii) construction of an infrastructure project at a higher education institution with  
223 nonstate funds;

224 ~~[(iv)]~~ (iii) a facility to be built with nonstate funds and owned by nonstate entities within  
225 research park areas at the University of Utah and Utah State University;

226 (iv) construction of a facility:

227 (A) that a higher education institution will lease; and

228 (B) on property not owned by the state;

229 ~~[(v)]~~ (v) a facility to be built at This is the Place State Park by This is the Place  
230 Foundation with funds of the foundation, including grant monies from the state, or with  
231 donated services or materials;

232 ~~[(iv)]~~ (vi) a capital development project that:

233 (A) is funded by:

234 (I) the Uintah Basin Revitalization Fund; or

235 (II) the Navajo Revitalization Fund; and

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

237 ~~[or]~~

238 ~~[(v)]~~ (vii) a capital development project on school and institutional trust lands that is  
239 funded by the School and Institutional Trust Lands Administration from the Land Grant  
240 Management Fund and that does not fund construction of a new facility for a state agency or  
241 higher education institution~~[-];~~ or

242 (viii) changes in an approved capital development project that amount to less than a:

243 (A) 10% cumulative increase in square footage for a state-funded capital development  
244 project;



245 (B) 20% increase in total funding for a state-funded capital development project;

246 (C) 20% cumulative increase in square footage for a nonstate-funded capital

247 development project; or

248 (D) 30% increase in nonstate funding for a nonstate-funded capital development

249 project.

250 (e) The State Building Board or the director of the Division of Facilities Construction

251 and Management may not approve a change in an approved capital development project unless

252 the change is presented to the Executive Appropriations Committee if the change is equal to or

253 greater than a:

254 (i) 10% cumulative increase in square footage for a state-funded capital development

255 project;

256 (ii) 20% increase in total funding for a state-funded capital development project;

257 (iii) 20% cumulative increase in square footage for a nonstate-funded capital

258 development project; or

259 (iv) 30% increase in nonstate funding for a nonstate-funded capital development

260 project.

261 ~~[(e)]~~ (f) (i) Legislative approval is not required for a capital development [projects to

262 ~~be] project~~ built for the Department of Transportation as a result of an exchange of real

263 property under Section 72-5-111.

264 (ii) When the Department of Transportation approves [those exchanges] an exchange

265 under this Subsection (3)(f) and plans to build a new facility on the real property, it shall notify

266 the;

267 (A) president of the Senate[;the];

268 (B) speaker of the House[;]; and [the]

269 (C) cochairs of the Capital Facilities and Administrative Services Subcommittee of the

270 Legislature's Joint Appropriation Committee [about any new facilities to be built under this

271 exemption].

272 (g) A capital lease requires prior approval by the Legislature if the sum of the lease

273 payments over the life of the lease contract exceeds the amount specified in Subsection

274 63A-5-104(1)(b)(iii).

275 (h) A capital lease does not require prior approval by the Legislature if:

276 (i) the primary use of the leased property is for a higher education enterprise operation;  
277 and

278 (ii) the requesting higher education institution has provided adequate assurance that the  
279 capital lease will not require increased state funding:

280 (A) to cover the cost of operations and maintenance; or

281 (B) for immediate or future capital improvements.

282 (i) (i) The State Building Board may authorize a state agency or higher education  
283 institution to use nonstate funds to design a capital development project.

284 (ii) If a state agency or higher education institution designs a capital development  
285 project using nonstate funds under Subsection (3)(i)(i), the Division of Facilities Construction  
286 and Management may reimburse the state agency or higher education institution for the design  
287 cost if the Legislature, within three years of the date the State Building Board authorized the  
288 design under Subsection (3)(i)(i):

289 (A) approves the capital development project; and

290 (B) appropriates money for the design cost.

291 (j) The State Building Board may authorize a state agency or higher education  
292 institution to program a:

293 (i) state-funded capital development project if the capital development project is one of  
294 the top five projects prioritized by the State Building Board that was not funded by the  
295 Legislature in the previous annual general session; and

296 (ii) nonstate-funded capital development project.

297 (k) If a state agency or higher education institution programs a capital development  
298 project using state funds under Subsection (3)(j)(i), the Division of Facilities Construction and  
299 Management may reimburse a state agency or a higher education institution for the program  
300 cost if the Legislature, within three years of the date the State Building Board authorized the  
301 program under Subsection (3)(j)(i):

302 (i) approves the capital development project; and

303 (ii) appropriates money for the program cost.

304 (l) The Division of Facilities Construction and Management may not reimburse a state  
305 agency or higher education institution for a program cost under Subsection (3)(j)(ii).

306 (4) (a) (i) The State Building Board, on behalf of [all state agencies, commissions,

307 ~~departments, and institutions]~~ each state agency, commission, department, and higher  
308 education institution shall by January 15 of each year, submit a list of anticipated capital  
309 ~~[improvement requirements]~~ improvements to the Legislature for review and approval.

310 (ii) The list shall identify:

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

312 (B) multiple projects within a single building or facility that collectively cost more than  
313 \$1,000,000;

314 (C) a single project that will be constructed over multiple years with a yearly cost of  
315 \$1,000,000 or more and an aggregate cost of more than \$2,500,000;

316 (D) multiple projects within a single building or facility with a yearly cost of  
317 \$1,000,000 or more and an aggregate cost of more than \$2,500,000;

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

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

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

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

330 (d) The State Building Board may require an entity [~~that benefits from a capital~~  
331 ~~improvement project]~~ to repay [~~the~~] the funds used to construct a capital improvement [~~funds~~]  
332 from savings that result from the project.

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

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

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

340 (f) The State Building Board may approve the use of capital improvement funds for  
341 design costs of a capital improvement project, subject to any other requirements of law, before  
342 the Legislature approves the construction of the capital improvement project and appropriates  
343 funds for construction of the capital improvement project.

344 (5) The Legislature may authorize:

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

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

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

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

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

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

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

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

359 (7) (a) If, after approval of capital development and capital improvement priorities by  
360 the Legislature under this section, [~~emergencies arise that create~~] an emergency arises that  
361 creates an unforeseen critical capital improvement [~~projects~~] project, the State Building Board  
362 may, notwithstanding the requirements of Title 63J, Chapter 1, Budgetary Procedures Act,  
363 reallocate capital improvement funds to address [~~those projects~~] the capital improvement  
364 project.

365 (b) The State Building Board shall report any [~~changes~~] change it makes in capital  
366 improvement allocations approved by the Legislature to:

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

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

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

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

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

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

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

380 Section 3. Section **63A-5-204** is amended to read:

381 **63A-5-204. Specific powers and duties of director.**

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

384 (2) (a) The director shall:

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

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

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

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

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

- 400 (vi) file a description and impression of the seal with the Division of Archives;
- 401 (vii) collect and maintain all deeds, abstracts of title, and all other documents
- 402 evidencing title to or interest in property belonging to the state or any of its departments, except
- 403 institutions of higher education and the School and Institutional Trust Lands Administration;
- 404 (viii) report all properties acquired by the state, except those acquired by institutions of
- 405 higher education, to the director of the Division of Finance for inclusion in the state's financial
- 406 records;
- 407 (ix) before charging a rate, fee, or other amount for services provided by the division's
- 408 internal service fund to an executive branch agency, or to a subscriber of services other than an
- 409 executive branch agency:
- 410 (A) submit the proposed rates, fees, and cost analysis to the Rate Committee
- 411 established in Section 63A-1-114; and
- 412 (B) obtain the approval of the Legislature as required by Section 63J-1-410;
- 413 (x) conduct a market analysis by July 1, 2005, and periodically thereafter, of proposed
- 414 rates and fees, which analysis shall include a comparison of the division's rates and fees with
- 415 the fees of other public or private sector providers where comparable services and rates are
- 416 reasonably available;
- 417 (xi) implement the State Building Energy Efficiency Program under Section
- 418 63A-5-701; ~~and~~
- 419 (xii) inform the Executive Appropriations Committee of any disposition of real
- 420 property that has an appraised value exceeding the amount specified in Subsection
- 421 63A-5-104(1)(b)(iii); and
- 422 ~~(xii)~~ (xiii) take all other action necessary for carrying out the purposes of this chapter.
- 423 (b) Legislative approval is not required for ~~acquisitions~~ an acquisition by the division
- 424 that ~~cost~~ costs less than ~~[\$250,000]~~ the amount listed in Subsection 63A-5-104(1)(b)(iii).
- 425 (3) (a) The director shall direct or delegate maintenance and operations, preventive
- 426 maintenance, and facilities inspection programs and activities for any department, commission,
- 427 institution, or agency, except:
- 428 (i) the State Capitol Preservation Board; and
- 429 (ii) a state ~~institutions~~ institution of higher education.
- 430 (b) The director may choose to delegate responsibility for these functions only when

431 the director determines that:

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

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

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

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

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

440 (e) Except for the State Capitol Preservation Board, [~~agencies and institutions that are~~]  
441 an agency or institution that is exempt from division oversight shall annually report [~~their~~]  
442 compliance with the facility maintenance standards to the division in the format required by the  
443 division.

444 (f) The division shall:

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

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

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

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

452 (i) conduct studies to determine the actual needs of each department, commission,  
453 institution, or agency; and

454 (ii) comply with the restrictions contained in this Subsection (4).

455 (b) The supervision and control of the legislative area is reserved to the Legislature.

456 (c) The supervision and control of the judicial area is reserved to the judiciary for trial  
457 courts only.

458 (d) The director may not supervise or control the allocation of space for entities in the  
459 public and higher education systems.

460 (e) The supervision and control of capitol hill facilities and capitol hill grounds is  
461 reserved to the State Capitol Preservation Board.

462 (5) The director may:

463 (a) hire or otherwise procure assistance and services, professional, skilled, or  
464 otherwise, that are necessary to carry out the director's responsibilities, and may expend funds  
465 provided for that purpose either through annual operating budget appropriations or from  
466 nonlapsing project funds;

467 (b) sue and be sued in the name of the division; ~~[and]~~

468 (c) hold, buy, lease, and acquire by exchange or otherwise, as authorized by the  
469 Legislature, whatever real or personal property that is necessary for the discharge of the  
470 director's duties[-]; and

471 (d) exchange property to resolve a boundary dispute with an adjacent property owner if  
472 the property exchanged has an appraised value of less than the amount specified in Subsection  
473 63A-5-104(1)(b)(iii).

474 (6) Notwithstanding the provisions of Subsection (2)(a)(iv), the following entities may  
475 hold title to any real property, ~~[buildings, fixtures, and appurtenances]~~ building, fixture, and  
476 appurtenance that are held by ~~[them]~~ the entity for purposes other than administration ~~[that]~~  
477 and are under ~~[their]~~ the entity's control and management:

478 (a) the Office of Trust Administrator;

479 (b) the Department of Transportation;

480 (c) the Division of Forestry, Fire, and State Lands;

481 (d) the Department of Natural Resources;

482 (e) the Utah National Guard;

483 ~~[(f) any area vocational center or other]~~

484 (f) an institution administered by the State Board of Education;

485 ~~[(g) any]~~ (g) an institution of higher education; and

486 ~~[(h)]~~ (h) the Utah Science Technology and Research Governing Authority.

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

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



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

494 (8) Notwithstanding Subsections (2)(a)(iii) and (iv), the School and Institutional Trust  
495 Lands Administration may hold title to any real property, [~~buildings, fixtures, and~~  
496 ~~appurtenances held by it that are under its control~~] building, fixture, or appurtenance that is  
497 held and controlled by the School and Institutional Trust Lands Administration.

498 Section 4. Section **63A-5-205** is amended to read:

499 **63A-5-205. Contracting powers of director -- Retainage -- Health insurance**  
500 **coverage.**

501 (1) As used in this section:

502 [~~(a) "Capital developments" has the same meaning as provided in Section 63A-5-104.]~~

503 [~~(b) "Capital improvements" has the same meaning as provided in Section~~  
504 ~~63A-5-104.]~~

505 [~~(c)~~] (a) "Employee" means an "employee," "worker," or "operative" as defined in  
506 Section 34A-2-104 who:

507 (i) works at least 30 hours per calendar week; and

508 (ii) meets employer eligibility waiting requirements for health care insurance which  
509 may not exceed 90 days from the date of hire.

510 [~~(d)~~] (b) "Health benefit plan" has the same meaning as provided in Section  
511 31A-1-301.

512 [~~(e)~~] (c) "Qualified health insurance coverage" means a health benefit plan that at the  
513 time the contract is entered into or renewed:

514 (i) (A) provides coverage that is actuarially equivalent to the current benefit plan  
515 determined by the Children's Health Insurance Program under Section 26-40-106; and

516 (B) under which the employer pays at least 50% of the premium for the employee and  
517 the dependents of the employee;

518 (ii) (A) is a federally qualified high deductible health plan that has:

519 (I) the lowest deductible permitted for a federally qualified high deductible health plan;  
520 and

521 (II) an out of pocket maximum that does not exceed three times the amount of the  
522 annual deductible; and

523 (B) under which the employer pays 75% of the premium for the employee and the

524 dependents of the employee; or

525 (iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan  
526 determined under Subsection (1)~~(e)~~(c)(i); and

527 (B) under which the employer pays at least 75% of the premium of the employee and  
528 the dependents of the employee.

529 ~~(f)~~ (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

530 (2) In accordance with Title 63G, Chapter 6, Utah Procurement Code, the director may:

531 (a) subject to Subsection (3), enter into contracts for any work or professional services  
532 which the division or the State Building Board may do or have done; and

533 (b) as a condition of any contract for architectural or engineering services, prohibit the  
534 architect or engineer from retaining a sales or agent engineer for the necessary design work.

535 (3) (a) Except as provided in Subsection (3)(b), this Subsection (3) applies to all  
536 contracts entered into by the division or the State Building Board on or after July 1, 2009, if:

537 (i) the contract is for design or construction; and

538 (ii) (A) the prime contract is in the amount of \$1,500,000 or greater; or

539 (B) a subcontract is in the amount of \$750,000 or greater.

540 (b) This Subsection (3) does not apply:

541 (i) if the application of this Subsection (3) jeopardizes the receipt of federal funds;

542 (ii) if the contract is a sole source contract;

543 (iii) if the contract is an emergency procurement; or

544 (iv) to a change order as defined in Section 63G-6-102, or a modification to a contract,  
545 when the contract does not meet the threshold required by Subsection (3)(a).

546 (c) A person who intentionally uses change orders or contract modifications to  
547 circumvent the requirements of Subsection (3)(a) is guilty of an infraction.

548 (d) (i) A contractor subject to Subsection (3)(a) shall demonstrate to the director that  
549 the contractor has and will maintain an offer of qualified health insurance coverage for the  
550 contractor's employees and the employees' dependents.

551 (ii) If a subcontractor of the contractor is subject to Subsection (3)(a), the contractor  
552 shall demonstrate to the director that the subcontractor has and will maintain an offer of  
553 qualified health insurance coverage for the subcontractor's employees and the employees'  
554 dependents.

555 (e) (i) (A) A contractor who fails to meet the requirements of Subsection (3)(d)(i)  
556 during the duration of the contract is subject to penalties in accordance with administrative  
557 rules adopted by the division under Subsection (3)(f).

558 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the  
559 requirements of Subsection (3)(d)(ii).

560 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (3)(d)(ii)  
561 during the duration of the contract is subject to penalties in accordance with administrative  
562 rules adopted by the division under Subsection (3)(f).

563 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the  
564 requirements of Subsection (3)(d)(i).

565 (f) The division shall adopt administrative rules:

566 (i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

567 (ii) in coordination with:

568 (A) the Department of Environmental Quality in accordance with Section 19-1-206;

569 (B) the Department of Natural Resources in accordance with Section 79-2-404;

570 (C) a public transit district in accordance with Section 17B-2a-818.5;

571 (D) the State Capitol Preservation Board in accordance with Section 63C-9-403;

572 (E) the Department of Transportation in accordance with Section 72-6-107.5; and

573 (F) the Legislature's Administrative Rules Review Committee; and

574 (iii) which establish:

575 (A) the requirements and procedures a contractor must follow to demonstrate to the  
576 director compliance with this Subsection (3) which shall include:

577 (I) that a contractor will not have to demonstrate compliance with Subsection [~~(5)~~]

578 (3)(a) or (b) more than twice in any 12-month period; and

579 (II) that the actuarially equivalent determination required in Subsection (1) is met by  
580 the contractor if the contractor provides the department or division with a written statement of  
581 actuarial equivalency from either the Utah Insurance Department or an actuary selected by the  
582 contractor or the contractor's insurer; and

583 (B) the penalties that may be imposed if a contractor or subcontractor intentionally  
584 violates the provisions of this Subsection (3), which may include:

585 (I) a three-month suspension of the contractor or subcontractor from entering into

586 future contracts with the state upon the first violation;

587 (II) a six-month suspension of the contractor or subcontractor from entering into future  
588 contracts with the state upon the second violation;

589 (III) an action for debarment of the contractor or subcontractor in accordance with  
590 Section 63G-6-804 upon the third or subsequent violation; and

591 (IV) monetary penalties which may not exceed 50% of the amount necessary to  
592 purchase qualified health insurance coverage for an employee and the dependents of an  
593 employee of the contractor or subcontractor who was not offered qualified health insurance  
594 coverage during the duration of the contract.

595 (g) (i) In addition to the penalties imposed under Subsection (3)(f)(iii), a contractor or  
596 subcontractor who violates the provisions of this section shall be liable to the employee for  
597 health care costs not covered by insurance.

598 (ii) An employee has a private right of action only against the employee's employer to  
599 enforce the provisions of this Subsection (3)(g).

600 (h) Any penalties imposed and collected under this section shall be deposited into the  
601 Medicaid Restricted Account created by Section 26-18-402.

602 (i) The failure of a contractor or subcontractor to provide health insurance as required  
603 by this section:

604 (i) may not be the basis for a protest or other action from a prospective bidder, offeror,  
605 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,  
606 Legal and Contractual Remedies; and

607 (ii) may not be used by the procurement entity or a prospective bidder, offeror, or  
608 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design  
609 or construction.

610 (4) The judgment of the director as to the responsibility and qualifications of a bidder  
611 is conclusive, except in case of fraud or bad faith.

612 (5) The division shall make all payments to the contractor for completed work in  
613 accordance with the contract and pay the interest specified in the contract on any payments that  
614 are late.

615 (6) If any payment on a contract with a private contractor to do work for the division or  
616 the State Building Board is retained or withheld, it shall be retained or withheld and released as

617 provided in Section 13-8-5.

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

619 **63A-5-206. Construction, alteration, and repair of state facilities -- Powers of**  
620 **director -- Exceptions -- Expenditure of appropriations -- Notification to local**  
621 **governments for construction or modification of certain facilities.**

622 (1) As used in this section:

623 (a) "Capital [~~developments~~] development" and "capital [~~improvements~~]"  
624 improvement" have the same meaning as provided in Section 63A-5-104.

625 (b) "Compliance agency" has the same meaning as provided in Subsection  
626 58-56-3[~~(4)~~](6).

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

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

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

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

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

643 (2) (a) (i) Except as provided in [~~Subsections (3) and (4);~~] Subsection (3) and unless  
644 the State Building Board delegates control over the capital improvement project under  
645 Subsection (4), the director shall exercise direct supervision over the design and construction of  
646 [~~all new facilities, and all alterations, repairs, and improvements to existing facilities~~] a capital  
647 improvement project if the total project construction cost, regardless of the funding source, is:

648 (A) greater than [~~\$100,000.~~] \$150,000; or

649 (B) (I) \$150,000 or less; and

650 (II) the Legislature appropriates funds for the capital improvement project to the  
651 division.

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

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

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

658 (b) The director shall prepare or have prepared by a private [~~firms or individuals]~~ firm  
659 or an individual designs, plans, and specifications for [~~the projects]~~ a project administered by  
660 the division.

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

664 (3) [~~Projects]~~ A project for the construction of new facilities and alterations, repairs,  
665 and improvements to an existing [~~facilities are]~~ facility is not subject to Subsection (2) if the  
666 project:

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

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

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

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

675 (4) (a) (i) The State Building Board may authorize the delegation of control over  
676 design, construction, and all other aspects of [~~any]~~ a project to entities of state government on a  
677 project-by-project basis or for [~~projects]~~ a project within a particular dollar range and a  
678 particular project type.

- 679 (ii) The state entity to whom control is delegated shall:
- 680 (A) assume fiduciary control over project finances~~[-, shall];~~
- 681 (B) assume ~~[aff]~~ responsibility for project budgets and expenditures~~[-];~~ and ~~[shall]~~
- 682 (C) receive all funds appropriated for the project, including any contingency funds
- 683 contained in the appropriated project budget.
- 684 (iii) Delegation of project control does not exempt the state entity from complying with
- 685 the codes and guidelines for design and construction adopted by the division and the State
- 686 Building Board.
- 687 (iv) ~~[State entities that receive]~~ A state entity that receives a delegated project may not
- 688 access, for the delegated project, the division's statewide contingency reserve and project
- 689 reserve authorized in Section 63A-5-209.
- 690 (b) ~~[For facilities that]~~ If a facility will be owned, operated, maintained, and repaired
- 691 by an entity that is not a state agency or institution and ~~[that are]~~ will be located on state
- 692 property, the State Building Board may authorize the owner of the facility to administer the
- 693 design and construction of the project instead of the division.
- 694 (5) Notwithstanding any other provision of this section, ~~[if]~~ a higher education
- 695 institution may oversee and manage the construction of the project without involvement,
- 696 oversight, or management from the division or arrange for management of the project by the
- 697 division if:
- 698 (a) a donor:
- 699 (i) donates land to an eligible institution of higher education; and
- 700 (ii) commits to build a building ~~[or buildings on that]~~ on the donated land~~[-];~~ and
- 701 (b) the institution agrees:
- 702 (i) to provide funds for the operations and maintenance costs from sources other than
- 703 state funds~~[-];~~ and ~~[agrees]~~
- 704 (ii) that the building ~~[or buildings]~~ will not be eligible for state capital improvement
- 705 funding~~[-, the higher education institution may:].~~
- 706 ~~[(a) oversee and manage the construction without involvement, oversight, or~~
- 707 ~~management from the division; or]~~
- 708 ~~[(b) arrange for management of the project by the division.]~~
- 709 (6) (a) The role of compliance agency as provided in Title 58, Chapter 56, Utah

710 Uniform Building Standards Act, shall be provided by:

711 (i) the director, for [~~projects~~] a project administered by the division;

712 (ii) the entity designated by the State Capitol Preservation Board, for [~~projects~~] a  
713 project under Subsection (3)(a);

714 (iii) the local government, for [~~projects~~] a project exempt from the division's  
715 administration under Subsection (3)(b) or administered by This is the Place Foundation under  
716 Subsection (3)(c);

717 (iv) the state entity or local government designated by the State Building Board, for  
718 [~~projects~~] a project under Subsection (4); or

719 (v) the institution, for [~~projects~~] a project exempt from the division's administration  
720 under Subsection (5)(a).

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

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

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

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

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

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

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

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

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

740 (8) The director shall ensure that a state-owned [~~facilities~~] facility, except for



741 [~~facilities~~] a facility under the control of the State Capitol Preservation Board, [~~are~~] is life cycle  
742 cost-effective.

743 (9) The director may expend appropriations for a statewide [~~projects~~] project from  
744 funds provided by the Legislature for those specific purposes and within guidelines established  
745 by the State Building Board.

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

749 (b) The director shall:

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

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

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

757 (a) accelerate the design of [~~projects~~] a project funded by any appropriation act passed  
758 by the Legislature in its annual general session;

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

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

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

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

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

769 (iii) the project is new construction.

770 (b) At the request of either the state entity or the local government entity,

771 [~~representatives~~] a representative from the state entity and the affected local entity shall

772 conduct or participate in a local public hearing [~~or hearings to discuss these issues~~].

773 (13) (a) (i) Before beginning the construction of student housing on property owned by  
774 the state or a public institution of higher education, the director shall provide written notice of  
775 the proposed construction, as provided in Subsection (13)(a)(ii), if [~~any of the~~] a proposed  
776 student housing [~~buildings~~] building is within 300 feet of privately owned residential property.

777 (ii) [~~Each~~] The director shall provide notice under Subsection (13)(a)(i) [~~shall be~~  
778 ~~provided~~] to the legislative body and, if applicable, the mayor of:

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

781 (B) the municipality in whose boundaries the privately owned residential property is  
782 located.

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

786 (ii) If a county or municipality requests a hearing under Subsection (13)(b)(i), the  
787 director and the county or municipality shall jointly hold a public hearing regarding the  
788 proposed student housing construction to:

789 (A) provide information to the public; and [~~to~~]

790 (B) allow the director and the county or municipality to receive input from the public  
791 [~~about the proposed student housing construction~~].

792 Section 6. Section **63A-5-211** is amended to read:

793 **63A-5-211. Planning Fund expenditures authorized -- Ceiling on expenditures --**  
794 **Recovery -- Permanent fund.**

795 (1) The Planning Fund shall be used to make payments for engineering, architectural,  
796 and other planning expenses necessary to make a meaningful cost estimate of [~~any~~] a facility or  
797 improvement with a demonstrable or immediate need.

798 (2) [~~The~~] Subject to legislative appropriation of money into the Planning Fund, the  
799 director may, after notifying the Executive Appropriations Committee, make expenditures from  
800 the Planning Fund in order to provide planning and schematic information to the State Building  
801 Board, the governor, and the Legislature, up to a maximum [~~of \$350,000~~] amount equal to the  
802 amount specified in Subsection 63A-5-104(1)(b)(iii) in outstanding Planning Fund

803 commitments.

804 (3) (a) The director shall authorize ~~[all payments]~~ each payment made from the  
805 Planning Fund.

806 (b) ~~[These payments]~~ A payment shall be a charge on the project for which ~~[they were]~~  
807 it was drawn.

808 (c) The amount paid shall be credited to the Planning Fund when the Legislature  
809 appropriates money for any building project for which planning costs have previously been  
810 paid from the Planning Fund.

811 (4) (a) Money may also be expended from the Planning Fund for architectural and  
812 engineering services incident to the planning and preparation of applications for funds on  
813 construction financed by other than state sources, including federal grants.

814 (b) ~~[However, upon]~~ Upon approval of ~~[such]~~ the financing described in Subsection  
815 (4)(a), the money spent for architectural and engineering services shall be returned as a  
816 reimbursement to the Planning Fund.

817 (5) This fund does not lapse to the General Fund at the end of any year but shall remain  
818 as a permanent fund.

819 Section 7. Section **63J-1-201** is amended to read:

820 **63J-1-201. Governor to submit budget to Legislature -- Contents -- Preparation --**  
821 **Appropriations based on current tax laws and not to exceed estimated revenues.**

822 (1) The governor shall deliver, not later than 30 days before the date the Legislature  
823 convenes in the annual general session, a confidential draft copy of the governor's proposed  
824 budget recommendations to the Office of the Legislative Fiscal Analyst.

825 (2) (a) The governor shall, within the first three days of the annual general session of  
826 the Legislature, submit to the presiding officer of each house of the Legislature:

827 (i) a proposed budget for the ensuing fiscal year;

828 (ii) a schedule for all of the proposed appropriations of the budget, with each  
829 appropriation clearly itemized and classified;

830 (iii) the statement described in Subsection (2)(c); and

831 (iv) as applicable, a document showing proposed expenditures and estimated revenues  
832 that are based on changes in state tax laws or rates.

833 (b) The proposed budget shall include:

- 834 (i) a projection of estimated revenues and expenditures for the next fiscal year;
- 835 (ii) the source of all direct, indirect, and in-kind matching funds for all federal grants or  
836 assistance programs included in the budget;
- 837 (iii) a complete plan of proposed expenditures and estimated revenues for the next  
838 fiscal year that is based upon the current fiscal year state tax laws and rates;
- 839 (iv) an itemized estimate of the proposed appropriations for:
  - 840 (A) the Legislative Department as certified to the governor by the president of the  
841 Senate and the speaker of the House;
  - 842 (B) the Executive Department;
  - 843 (C) the Judicial Department as certified to the governor by the state court  
844 administrator;
  - 845 (D) payment and discharge of the principal and interest of the indebtedness of the state;
  - 846 (E) the salaries payable by the state under the Utah Constitution or under law for the  
847 lease agreements planned for the next fiscal year;
  - 848 (F) other purposes that are set forth in the Utah Constitution or under law; and
  - 849 (G) all other appropriations;
- 850 (v) for each line item, the average annual dollar amount of staff funding associated  
851 with all positions that were vacant during the last fiscal year; and
- 852 (vi) deficits or anticipated deficits.
- 853 (c) The budget shall be accompanied by a statement showing:
  - 854 (i) the revenues and expenditures for the last fiscal year;
  - 855 (ii) the current assets, liabilities, and reserves, surplus or deficit, and the debts and  
856 funds of the state;
  - 857 (iii) an estimate of the state's financial condition as of the beginning and the end of the  
858 period covered by the budget;
  - 859 ~~[(iv) a complete analysis of lease with an option to purchase arrangements entered into  
860 by state agencies;]~~
  - 861 ~~[(v)]~~ (iv) the recommendations for each state agency for new full-time employees for  
862 the next fiscal year, which shall also be provided to the State Building Board as required by  
863 Subsection 63A-5-103(2);
  - 864 ~~[(vi)]~~ (v) any explanation that the governor may desire to make as to the important

865 features of the budget and any suggestion as to methods for the reduction of expenditures or  
866 increase of the state's revenue; and

867 [~~(vii)~~] (vi) information detailing certain fee increases as required by Section 63J-1-504.

868 (3) (a) (i) For the purpose of preparing and reporting the proposed budget, the governor  
869 shall require the proper state officials, including ~~[all]~~ each public and higher education  
870 ~~[officials, all heads]~~ official, each head of executive and administrative departments and state  
871 institutions, bureaus, boards, commissions, and agencies expending or supervising the  
872 expenditure of the state monies, and ~~[all institutions]~~ each institution applying for state monies  
873 and appropriations, to provide itemized estimates of revenues and expenditures.

874 (ii) The governor may also require other information under these guidelines and at  
875 times as the governor may direct, which may include a requirement for program productivity  
876 and performance measures, where appropriate, with emphasis on outcome indicators.

877 (b) The governor may require representatives of public and higher education, state  
878 departments and institutions, and other institutions or individuals applying for state  
879 appropriations to attend budget meetings.

880 (c) (i) (A) In submitting the budgets for the Departments of Health and Human  
881 Services and the Office of the Attorney General, the governor shall consider a separate  
882 recommendation in the governor's budget for funds to be contracted to:

883 (I) local mental health authorities under Section 62A-15-110;

884 (II) local substance abuse authorities under Section 62A-15-110;

885 (III) area agencies under Section 62A-3-104.2;

886 (IV) programs administered directly by and for operation of the Divisions of Substance  
887 Abuse and Mental Health and Aging and Adult Services;

888 (V) local health departments under Title 26A, Chapter 1, Local Health Departments;  
889 and

890 (VI) counties for the operation of Children's Justice Centers under Section 67-5b-102.

891 (B) In the governor's budget recommendations under Subsections (3)(c)(i)(A)(I), (II),  
892 and (III), the governor shall consider an amount sufficient to grant local health departments,  
893 local mental health authorities, local substance abuse authorities, and area agencies the same  
894 percentage increase for wages and benefits that the governor includes in the governor's budget  
895 for persons employed by the state.

896 (C) If the governor does not include in the governor's budget an amount sufficient to  
897 grant the increase described in Subsection (3)(c)(i)(B), the governor shall include a message to  
898 the Legislature regarding the governor's reason for not including that amount.

899 (ii) (A) In submitting the budget for the Department of Agriculture, the governor shall  
900 consider an amount sufficient to grant local conservation districts and Utah Association of  
901 Conservation District employees the same percentage increase for wages and benefits that the  
902 governor includes in the governor's budget for persons employed by the state.

903 (B) If the governor does not include in the governor's budget an amount sufficient to  
904 grant the increase described in Subsection (3)(c)(ii)(A), the governor shall include a message to  
905 the Legislature regarding the governor's reason for not including that amount.

906 (iii) (A) In submitting the budget for the Utah State Office of Rehabilitation and the  
907 Division of Services for People with Disabilities, the Division of Child and Family Services,  
908 and the Division of Juvenile Justice Services within the Department of Human Services, the  
909 governor shall consider an amount sufficient to grant employees of corporations that provide  
910 direct services under contract with those divisions, the same percentage increase for  
911 cost-of-living that the governor includes in the governor's budget for persons employed by the  
912 state.

913 (B) If the governor does not include in the governor's budget an amount sufficient to  
914 grant the increase described in Subsection (3)(c)(iii)(A), the governor shall include a message  
915 to the Legislature regarding the governor's reason for not including that amount.

916 (iv) (A) The Families, Agencies, and Communities Together Council may propose a  
917 budget recommendation to the governor for collaborative service delivery systems operated  
918 under Section 63M-9-402, as provided under Subsection 63M-9-201(4)(e).

919 (B) The Legislature may, through a specific program schedule, designate funds  
920 appropriated for collaborative service delivery systems operated under Section 63M-9-402.

921 (v) The governor shall include in the governor's budget the state's portion of the budget  
922 for the Utah Communications Agency Network established in Title 63C, Chapter 7, Utah  
923 Communications Agency Network Act.

924 (vi) (A) The governor shall include a separate recommendation in the governor's  
925 budget for funds to maintain the operation and administration of the Utah Comprehensive  
926 Health Insurance Pool.

927 (B) In making the recommendation, the governor may consider:

928 (I) actuarial analysis of growth or decline in enrollment projected over a period of at  
929 least three years;

930 (II) actuarial analysis of the medical and pharmacy claims costs projected over a period  
931 of at least three years;

932 (III) the annual Medical Care Consumer Price Index;

933 (IV) the annual base budget for the pool established by the Commerce and Revenue  
934 Appropriations Subcommittee for each fiscal year;

935 (V) the growth or decline in insurance premium taxes and fees collected by the State  
936 Tax Commission and the Insurance Department; and

937 (VI) the availability of surplus General Fund revenue under Section 63J-1-312 and  
938 Subsection 59-14-204(5)(b).

939 (d) (i) The governor may revise all estimates, except those relating to the Legislative  
940 Department, the Judicial Department, and those providing for the payment of principal and  
941 interest to the state debt and for the salaries and expenditures specified by the Utah  
942 Constitution or under the laws of the state.

943 (ii) The estimate for the Legislative Department, as certified by the presiding officers  
944 of both houses, shall be included in the budget without revision by the governor.

945 (iii) The estimate for the Judicial Department, as certified by the state court  
946 administrator, shall also be included in the budget without revision, but the governor may make  
947 separate recommendations on the estimate.

948 (e) The total appropriations requested for expenditures authorized by the budget may  
949 not exceed the estimated revenues from taxes, fees, and all other sources for the next ensuing  
950 fiscal year.

951 (4) In considering the factors in Subsections (3)(c)(vi)(B)(I), (II), and (III) and  
952 Subsections (5)(b)(ii)(A), (B), and (C), the governor and the Legislature may consider the  
953 actuarial data and projections prepared for the board of the Utah Comprehensive Health  
954 Insurance Pool as it develops its financial statements and projections for each fiscal year.

955 (5) (a) In adopting a budget for each fiscal year, the Legislature shall consider an  
956 amount sufficient to grant local health departments, local mental health authorities, local  
957 substance abuse authorities, area agencies on aging, conservation districts, and Utah

958 Association of Conservation District employees the same percentage increase for wages and  
959 benefits that is included in the budget for persons employed by the state.

960 (b) (i) In adopting a budget each year for the Utah Comprehensive Health Insurance  
961 Pool, the Legislature shall determine an amount that is sufficient to fund the pool for each  
962 fiscal year.

963 (ii) When making a determination under Subsection (5)(b)(i), the Legislature shall  
964 consider factors it determines are appropriate, which may include:

965 (A) actuarial analysis of growth or decline in enrollment projected over a period of at  
966 least three years;

967 (B) actuarial analysis of the medical and pharmacy claims costs projected over a period  
968 of at least three years;

969 (C) the annual Medical Care Consumer Price Index;

970 (D) the annual base budget for the pool established by the Commerce and Revenue  
971 Appropriations Subcommittee for each fiscal year;

972 (E) the growth or decline in insurance premium taxes and fees collected by the tax  
973 commission and the insurance department from the previous fiscal year; and

974 (F) the availability of surplus General Fund revenue under Section 63J-1-312 and  
975 Subsection 59-14-204(5)(b).

976 (iii) The funds appropriated by the Legislature to fund the Utah Comprehensive Health  
977 Insurance Pool as determined under Subsection (5)(b)(i):

978 (A) shall be deposited into the fund established by Section 31A-29-120; and

979 (B) are restricted and are to be used to maintain the operation, administration, and  
980 management of the Utah Comprehensive Health Insurance Pool created by Section  
981 31A-29-104.

982 (6) If any item of the budget as enacted is held invalid upon any ground, the invalidity  
983 does not affect the budget itself or any other item in it.

984 Section 8. Section **63J-3-103** is amended to read:

985 **63J-3-103. Definitions.**

986 As used in this chapter:

987 (1) (a) "Appropriations" means actual unrestricted capital and operating appropriations  
988 from unrestricted General Fund sources and from non-Uniform School Fund income tax



989 revenues as presented in the governor's executive budgets.

990 (b) "Appropriations" includes appropriations that are contingent upon available  
991 surpluses in the General Fund.

992 (c) "Appropriations" does not mean:

993 (i) debt service expenditures;

994 (ii) emergency expenditures;

995 (iii) expenditures from all other fund or subfund sources presented in the executive  
996 budgets;

997 (iv) transfers or appropriations from the Education Fund to the Uniform School Fund;

998 (v) transfers into, or appropriations made to, the General Fund Budget Reserve

999 Account established in Section 63J-1-312;

1000 (vi) transfers into, or appropriations made to, the Education Budget Reserve Account  
1001 established in Section 63J-1-313;

1002 (vii) transfers in accordance with Section 63J-1-314 into, or appropriations made to the  
1003 State Disaster Recovery Restricted Account created in Section 53-2-403;

1004 (viii) monies appropriated to fund the total one-time project costs for the construction  
1005 of capital [~~developments~~] development as defined in Section 63A-5-104;

1006 (ix) transfers or deposits into or appropriations made to the Centennial Highway Fund  
1007 Restricted Account created by Section 72-2-118;

1008 (x) transfers or deposits into or appropriations made to the Transportation Investment  
1009 Fund of 2005 created by Section 72-2-124;

1010 (xi) transfers or deposits into or appropriations made to:

1011 (A) the Department of Transportation from any source; or

1012 (B) any transportation-related account or fund from any source; or

1013 (xii) supplemental appropriations from the General Fund to the Division of Forestry,  
1014 Fire, and State Lands to provide monies for wildland fire control expenses incurred during the  
1015 current or previous fire years.

1016 (2) "Base year real per capita appropriations" means the result obtained for the state by  
1017 dividing the fiscal year 1985 actual appropriations of the state less debt monies by:

1018 (a) the state's July 1, 1983 population; and

1019 (b) the fiscal year 1983 inflation index divided by 100.

1020 (3) "Calendar year" means the time period beginning on January 1 of any given year  
1021 and ending on December 31 of the same year.

1022 (4) "Fiscal emergency" means an extraordinary occurrence requiring immediate  
1023 expenditures and includes the settlement under Laws of Utah 1988, Fourth Special Session,  
1024 Chapter 4.

1025 (5) "Fiscal year" means the time period beginning on July 1 of any given year and  
1026 ending on June 30 of the subsequent year.

1027 (6) "Fiscal year 1985 actual base year appropriations" means fiscal year 1985 actual  
1028 capital and operations appropriations from General Fund and non-Uniform School Fund  
1029 income tax revenue sources, less debt monies.

1030 (7) "Inflation index" means the change in the general price level of goods and services  
1031 as measured by the Gross National Product Implicit Price Deflator of the Bureau of Economic  
1032 Analysis, U.S. Department of Commerce calculated as provided in Section 63J-3-202.

1033 (8) (a) "Maximum allowable appropriations limit" means the appropriations that could  
1034 be, or could have been, spent in any given year under the limitations of this chapter.

1035 (b) "Maximum allowable appropriations limit" does not mean actual appropriations  
1036 spent or actual expenditures.

1037 (9) "Most recent fiscal year's inflation index" means the fiscal year inflation index two  
1038 fiscal years previous to the fiscal year for which the maximum allowable inflation and  
1039 population appropriations limit is being computed under this chapter.

1040 (10) "Most recent fiscal year's population" means the fiscal year population two fiscal  
1041 years previous to the fiscal year for which the maximum allowable inflation and population  
1042 appropriations limit is being computed under this chapter.

1043 (11) "Population" means the number of residents of the state as of July 1 of each year  
1044 as calculated by the Governor's Office of Planning and Budget according to the procedures and  
1045 requirements of Section 63J-3-202.

1046 (12) "Revenues" means the revenues of the state from every tax, penalty, receipt, and  
1047 other monetary exaction and interest connected with it that are recorded as unrestricted revenue  
1048 of the General Fund and from non-Uniform School Fund income tax revenues, except as  
1049 specifically exempted by this chapter.

1050 (13) "Security" means any bond, note, warrant, or other evidence of indebtedness,

1051 whether or not the bond, note, warrant, or other evidence of indebtedness is or constitutes an  
1052 "indebtedness" within the meaning of any provision of the constitution or laws of this state.

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**Legislative Review Note**  
as of **2-23-10 2:51 PM**

**Office of Legislative Research and General Counsel**

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**H.B. 370 - Capital Project Amendments**

**Fiscal Note**

2010 General Session  
State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**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.

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