

1                   **CAPITAL DEVELOPMENT AND IMPROVEMENT PROCESS**

2                   **APPROVAL REQUIREMENTS AMENDMENTS**

3                                   2011 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Chief Sponsor: J. Stuart Adams**

6                                   House Sponsor: Gage Froerer

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8                   **LONG TITLE**

9                   **General Description:**

10                   This bill amends provisions related to the capital development and improvement  
11 process.

12                   **Highlighted Provisions:**

13                   This bill:

- 14                   ▶ modifies the circumstances under which legislative approval is not required for a
- 15 capital development project; and
- 16                   ▶ makes technical and conforming changes.

17                   **Money Appropriated in this Bill:**

18                   None

19                   **Other Special Clauses:**

20                   None

21                   **Utah Code Sections Affected:**

22                   AMENDS:

23                   **63A-5-104**, as last amended by Laws of Utah 2010, Chapter 338

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

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

27                   **63A-5-104. Definitions -- Capital development and capital improvement process**

28                   **-- Approval requirements -- Limitations on new projects -- Emergencies.**

29                   (1) As used in this section:

- 30 (a) "Capital developments" means a:
- 31 (i) remodeling, site, or utility project with a total cost of \$2,500,000 or more;
- 32 (ii) new facility with a construction cost of \$500,000 or more; or
- 33 (iii) purchase of real property where an appropriation is requested to fund the purchase.
- 34 (b) "Capital improvements" means a:
- 35 (i) remodeling, alteration, replacement, or repair project with a total cost of less than
- 36 \$2,500,000;
- 37 (ii) site and utility improvement with a total cost of less than \$2,500,000; or
- 38 (iii) new facility with a total construction cost of less than \$500,000.
- 39 (c) (i) "New facility" means the construction of a new building on state property
- 40 regardless of funding source.
- 41 (ii) "New facility" includes:
- 42 (A) an addition to an existing building; and
- 43 (B) the enclosure of space that was not previously fully enclosed.
- 44 (iii) "New facility" does not mean:
- 45 (A) the replacement of state-owned space that is demolished or that is otherwise
- 46 removed from state use, if the total construction cost of the replacement space is less than
- 47 \$2,500,000; or
- 48 (B) the construction of facilities that do not fully enclose a space.
- 49 (d) "Replacement cost of existing state facilities" means the replacement cost, as
- 50 determined by the Division of Risk Management, of state facilities, excluding auxiliary
- 51 facilities as defined by the State Building Board.
- 52 (e) "State funds" means public money appropriated by the Legislature.
- 53 (2) The State Building Board, on behalf of all state agencies, commissions,
- 54 departments, and institutions shall submit its capital development recommendations and
- 55 priorities to the Legislature for approval and prioritization.
- 56 (3) (a) Except as provided in Subsections (3)(b), (d), and (e), a capital development
- 57 project may not be constructed on state property without legislative approval.

58 (b) Legislative approval is not required for a capital development project that consists  
59 of the design or construction of a new facility if the State Building Board determines that:

60 (i) the requesting [~~higher education~~] state agency, commission, department, or  
61 institution has provided adequate assurance that:

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

63 (B) the [~~higher education~~] state agency, commission, department, or institution has a  
64 plan for funding in place that will not require increased state funding to cover the cost of  
65 operations and maintenance to, or state funding for, immediate or future capital improvements  
66 to the resulting facility; and

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

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

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

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

72 (ii) For facilities constructed under the exemption provided in Subsection (3)(b), [~~a~~  
73 ~~higher education~~] a state agency, commission, department, or institution may not request:

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

75 (B) state capital improvement funding.

76 (d) Legislative approval is not required for:

77 (i) the renovation, remodeling, or retrofitting of an existing facility with nonstate  
78 funds[;] that has been approved by the State Building Board;

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

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

84 (iv) a capital project that:

85 (A) is funded by:

86 (I) the Uintah Basin Revitalization Fund; or  
87 (II) the Navajo Revitalization Fund; and  
88 (B) does not provide a new facility for a state agency or higher education institution; or  
89 (v) a capital project on school and institutional trust lands that is funded by the School  
90 and Institutional Trust Lands Administration from the Land Grant Management Fund and that  
91 does not fund construction of a new facility for a state agency or higher education institution.

92 (e) (i) Legislative approval is not required for capital development projects to be built  
93 for the Department of Transportation as a result of an exchange of real property under Section  
94 72-5-111.

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

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

102 (ii) The list shall identify:

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

104 (B) multiple projects within a single building or facility that collectively cost more than  
105 \$1,000,000;

106 (C) a single project that will be constructed over multiple years with a yearly cost of  
107 \$1,000,000 or more and an aggregate cost of more than \$2,500,000;

108 (D) multiple projects within a single building or facility with a yearly cost of  
109 \$1,000,000 or more and an aggregate cost of more than \$2,500,000;

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

113 (F) multiple projects within a single building or facility previously reported to the

114 Legislature as a capital improvement project under \$1,000,000 that, because of an increase in  
115 costs or scope of work, will now cost more than \$1,000,000.

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

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

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

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

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

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

132 (5) The Legislature may authorize:

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

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

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

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

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

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

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

145 (c) The requirements under Subsections (6)(a) and (b) do not apply to the 2008-09,  
146 2009-10, and 2010-11 fiscal years.

147 (7) (a) If, after approval of capital development and capital improvement priorities by  
148 the Legislature under this section, emergencies arise that create unforeseen critical capital  
149 improvement projects, the State Building Board may, notwithstanding the requirements of Title  
150 63J, Chapter 1, Budgetary Procedures Act, reallocate capital improvement funds to address  
151 those projects.

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

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

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

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

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

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

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