

SB0278S01 compared with SB0278

~~deleted text~~ shows text that was in SB0278 but was deleted in SB0278S01.

inserted text shows text that was not in SB0278 but was inserted into SB0278S01.

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Senator Wayne A. Harper proposes the following substitute bill:

CAPITAL IMPROVEMENT AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions of Title 63A, Chapter 5, State Building Board - Division of Facilities Construction and Management.

Highlighted Provisions:

This bill:

- ▶ requires the State Building Board to include the cost of capital improvements for a new building or facility in the required five-year building plan;
- ▶ provides that the Legislature may not authorize construction of a new building or facility that will be paid for with nonstate funds until the Legislature appropriates ongoing funding for the cost of operations and maintenance and capital improvements;
- ▶ amends appropriations for capital improvements from 1.1% to 0.9% for the 2013-14

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fiscal year;

- ▶ provides that at least ~~{85%}~~80% of the funds appropriated for capital improvements shall be used for maintenance or repair of the existing building or facility;
- ▶ subject to sunset review, repeals certain provisions related to prioritization of capital improvements projects on July 1, 2014; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63A-5-103, as last amended by Laws of Utah 2010, Chapter 338

63A-5-104, as last amended by Laws of Utah 2012, Chapters 129, 242, and 393

63I-1-263 (Effective 05/01/13), as last amended by Laws of Utah 2012, Chapters 126, 206, 347, 369, and 395

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.

- (1) The State Building Board shall:
 - (a) in cooperation with state institutions, departments, commissions, and agencies, prepare a master plan of structures built or contemplated;
 - (b) submit to the governor and the Legislature a comprehensive five-year building plan for the state containing the information required by Subsection (2);
 - (c) amend and keep current the five-year building program for submission to the governor and subsequent legislatures;
 - (d) as a part of the long-range plan, recommend to the governor and Legislature any changes in the law that are necessary to insure an effective, well-coordinated building program for all state institutions;
 - (e) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,

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make rules:

(i) that are necessary to discharge its duties and the duties of the Division of Facilities Construction and Management;

(ii) to establish standards and requirements for life cycle cost-effectiveness of state facility projects; and

(iii) to govern the disposition of real property by the division and establish factors, including appraised value and historical significance, in evaluating the disposition;

(f) with support from the Division of Facilities Construction and Management, establish design criteria, standards, and procedures for planning, design, and construction of new state facilities and for improvements to existing state facilities, including life-cycle costing, cost-effectiveness studies, and other methods and procedures that address:

(i) the need for the building or facility;

(ii) the effectiveness of its design;

(iii) the efficiency of energy use; and

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

(g) prepare and submit a yearly request to the governor and the Legislature for a designated amount of square footage by type of space to be leased by the Division of Facilities Construction and Management in that fiscal year; and

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

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

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

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

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

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

(iv) a summary of all statewide contingency reserve and project reserve balances as of

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the end of the most recent fiscal year;

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

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

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

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

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

(C) the cost of capital improvements to the building or facility, estimated at 1.1% of the replacement cost of the building or facility, on an annual basis;

~~[(C)] (D)~~ the estimated number of new agency full-time employees expected to be housed in the building or facility;

~~[(D)] (E)~~ the estimated cost of new or expanded programs and personnel expected to be housed in the building or facility;

~~[(E)] (F)~~ the estimated lifespan of the building with associated costs for major component replacement over the life of the building; and

~~[(F)] (G)~~ the estimated cost of any required support facilities.

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

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

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

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

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

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

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

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

(1) As used in this section:

(a) "Capital developments" means a:

- (i) remodeling, site, or utility project with a total cost of \$2,500,000 or more;
- (ii) new facility with a construction cost of \$500,000 or more; or
- (iii) purchase of real property where an appropriation is requested to fund the purchase.

(b) "Capital improvements" means a:

- (i) remodeling, alteration, replacement, or repair project with a total cost of less than \$2,500,000;
- (ii) site and utility improvement with a total cost of less than \$2,500,000; or
- (iii) new facility with a total construction cost of less than \$500,000.

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

(ii) "New facility" includes:

- (A) an addition to an existing building; and
- (B) the enclosure of space that was not previously fully enclosed.

(iii) "New facility" does not mean:

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

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

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

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

(2) The State Building Board, on behalf of all state agencies, commissions,

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departments, and institutions shall submit its capital development recommendations and priorities to the Legislature for approval and prioritization.

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

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

(i) the requesting state agency, commission, department, or institution has provided adequate assurance that:

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

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

(ii) the use of the state property is:

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

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

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

(ii) For facilities constructed under the exemption provided in Subsection (3)(b), a state agency, commission, department, or institution may not request:

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

(B) state capital improvement funding.

(d) Legislative approval is not required for:

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

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

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

(iv) a capital project that:

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(A) is funded by:

(I) the Uintah Basin Revitalization Fund; or

(II) the Navajo Revitalization Fund; and

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

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

(e) (i) Legislative approval is not required for capital development projects to be built for the Department of Transportation:

(A) as a result of an exchange of real property under Section 72-5-111; or

(B) as a result of a sale or exchange of real property from a maintenance facility if the real property is exchanged for, or the proceeds from the sale of the real property are used for, another maintenance facility, including improvements for a maintenance facility and real property.

(ii) When the Department of Transportation approves a sale or exchange under Subsection (3)(e), it shall notify the president of the Senate, the speaker of the House, and the cochairs of the Infrastructure and General Government Appropriations Subcommittee of the Legislature's Joint Appropriation Committee about any new facilities to be built or improved under this exemption.

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

(ii) The list shall identify:

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

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

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

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

(E) a single project previously reported to the Legislature as a capital improvement

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project under \$1,000,000 that, because of an increase in costs or scope of work, will now cost more than \$1,000,000; and

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

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

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

(d) Beginning on July 1, 3013, in prioritizing capital improvements, the State Building Board shall allocate at least 80% of the funds that the Legislature appropriates for capital improvements to:

(i) projects that address:

(A) a structural issue;

(B) fire safety;

(C) a code violation; or

(D) any issue that impacts health and safety;

(ii) projects that upgrade:

(A) an HVAC system;

(B) an electrical system;

(C) essential equipment;

(D) an essential building component; or

(E) infrastructure, including a utility tunnel, water line, gas line, sewer line, roof, parking lot, or road; or

(iii) projects that demolish and replace an existing building that is in extensive disrepair and cannot be fixed by repair or maintenance.

(e) Beginning on July 1, 2013, in prioritizing capital improvements, the State Building Board shall allocate no more than 20% of the funds that the Legislature appropriates for capital improvements to:

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(i) remodeling and aesthetic upgrades to meet state programmatic needs; or

(ii) construct an addition to an existing building or facility.

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

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

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

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

(5) The Legislature may authorize:

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

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

(6) If construction of a new building or facility will be paid for by nonstate funds, but will require an immediate or future increase in state funding for ~~immediate or future~~ operations and maintenance or for capital improvements, the Legislature may not authorize the new building or facility until the Legislature appropriates funds for:

(a) the portion of operations and maintenance ~~or~~, if any, that will require an immediate or future increase in state funding; and

(b) the portion of capital improvements ~~in accordance with the requirements of this chapter~~, if any, that will require an immediate or future increase in state funding.

~~[(6)]~~ (7) (a) Except as provided in Subsection ~~[(6)]~~ (7)(b) or (c), the Legislature may not fund the design or construction of any new capital development projects, except to complete the funding of projects for which partial funding has been previously provided, until the Legislature has appropriated 1.1% of the replacement cost of existing state facilities to capital improvements.

(b) (i) As used in this Subsection ~~[(6)]~~ (7)(b):

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

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

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

(c) (i) The requirements under Subsections (6)(a) and (b) do not apply to the 2008-09, 2009-10, 2010-11, 2011-12, and 2012-13 fiscal years.

(ii) For the 2013-14 fiscal year, the amount appropriated to capital improvements shall be reduced to 0.9% of the replacement cost of state facilities.

~~[(7)]~~ (8) (a) If, after approval of capital development and capital improvement priorities by the Legislature under this section, emergencies arise that create unforeseen critical capital improvement projects, the State Building Board may, notwithstanding the requirements of Title 63J, Chapter 1, Budgetary Procedures Act, reallocate capital improvement funds to address those projects.

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

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

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

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

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

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

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

(11) ~~f At~~ (a) Subject to Subsection (11)(b), at least ~~f85%~~80% of the state funds appropriated ~~f to a building or facility~~ for capital improvements shall be used for maintenance or repair of the existing building or facility.

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Legislative Review Note

~~as of 3-1-13 3:12 PM~~

~~Office of Legislative Research and General Counsel;~~ (b) The State Building Board may modify the requirement described in Subsection (11)(a) if the State Building Board determines that a different allocation of capital improvements funds is in the best interest of the state.

Section 3. Section 63I-1-263 (Effective 05/01/13) is amended to read:

63I-1-263 (Effective 05/01/13). Repeal dates, Titles 63A to 63M.

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

(2) Subsections 63A-5-104(d) and (e) are repealed on July 1, 2014.

[(2)] (3) Section 63A-5-603, State Facility Energy Efficiency Fund, is repealed July 1, 2016.

[(3)] (4) Section 63C-8-106, rural residency training program, is repealed July 1, 2015.

[(4)] (5) Title 63C, Chapter 13, Prison Relocation and Development Authority Act, is repealed July 1, 2014.

[(5)] (6) Subsection 63G-6a-1402(7) authorizing certain transportation agencies to award a contract for a design-build transportation project in certain circumstances, is repealed July 1, 2015.

[(6)] (7) Title 63H, Chapter 4, Heber Valley Historic Railroad Authority, is repealed July 1, 2020.

[(7)] (8) The Resource Development Coordinating Committee, created in Section 63J-4-501, is repealed July 1, 2015.

[(8)] (9) Title 63M, Chapter 1, Part 4, Enterprise Zone Act, is repealed July 1, 2018.

[(9)] (10) (a) Title 63M, Chapter 1, Part 11, Recycling Market Development Zone Act, is repealed January 1, 2021.

(b) Subject to Subsection (9)(c), Sections 59-7-610 and 59-10-1007 regarding tax credits for certain persons in recycling market development zones, are repealed for taxable years beginning on or after January 1, 2021.

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(c) A person may not claim a tax credit under Section 59-7-610 or 59-10-1007:

(i) for the purchase price of machinery or equipment described in Section 59-7-610 or 59-10-1007, if the machinery or equipment is purchased on or after January 1, 2021; or

(ii) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), if the expenditure is made on or after January 1, 2021.

(d) Notwithstanding Subsections (9)(b) and (c), a person may carry forward a tax credit in accordance with Section 59-7-610 or 59-10-1007 if:

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

(ii) (A) for the purchase price of machinery or equipment described in Section 59-7-610 or 59-10-1007, the machinery or equipment is purchased on or before December 31, 2020; or

(B) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), the expenditure is made on or before December 31, 2020.

~~[(10)]~~ (11) (a) Section 63M-1-2507, Health Care Compact is repealed on July 1, 2014.

(b) (i) The Legislature shall, before reauthorizing the Health Care Compact:

(A) direct the Health System Reform Task Force to evaluate the issues listed in Subsection (10)(b)(ii), and by January 1, 2013 develop and recommend criteria for the Legislature to use to negotiate the terms of the Health Care Compact; and

(B) prior to July 1, 2014, seek amendments to the Health Care Compact among the member states that the Legislature determines are appropriate after considering the recommendations of the Health System Reform Task Force.

(ii) The Health System Reform Task Force shall evaluate and develop criteria for the Legislature regarding:

(A) the impact of the Supreme Court ruling on the Affordable Care Act;

(B) whether Utah is likely to be required to implement any part of the Affordable Care Act prior to negotiating the compact with the federal government, such as Medicaid expansion in 2014;

(C) whether the compact's current funding formula, based on adjusted 2010 state expenditures, is the best formula for Utah and other state compact members to use for establishing the block grants from the federal government;

(D) whether the compact's calculation of current year inflation adjustment factor,

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without consideration of the regional medical inflation rate in the current year, is adequate to protect the state from increased costs associated with administering a state based Medicaid and a state based Medicare program;

(E) whether the state has the flexibility it needs under the compact to implement and fund state based initiatives, or whether the compact requires uniformity across member states that does not benefit Utah;

(F) whether the state has the option under the compact to refuse to take over the federal Medicare program;

(G) whether a state based Medicare program would provide better benefits to the elderly and disabled citizens of the state than a federally run Medicare program;

(H) whether the state has the infrastructure necessary to implement and administer a better state based Medicare program;

(I) whether the compact appropriately delegates policy decisions between the legislative and executive branches of government regarding the development and implementation of the compact with other states and the federal government; and

(J) the impact on public health activities, including communicable disease surveillance and epidemiology.

~~[(11)]~~ (12) The Crime Victim Reparations and Assistance Board, created in Section 63M-7-504, is repealed July 1, 2017.

~~[(12)]~~ (13) Title 63M, Chapter 9, Families, Agencies, and Communities Together for Children and Youth At Risk Act, is repealed July 1, 2016.

~~[(13)]~~ (14) Title 63M, Chapter 11, Utah Commission on Aging, is repealed July 1, 2017.