

Senator Stephen H. Urquhart proposes the following substitute bill:

HIGHER EDUCATION CAPITAL FACILITIES

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen H. Urquhart

House Sponsor: Gage Froerer

LONG TITLE

General Description:

This bill enacts and amends provisions related to capital facilities of institutions of higher education.

Highlighted Provisions:

This bill:

- ▶ creates the Higher Education Capital Developments Account;
- ▶ enacts provisions related to deposits into and use of funds in the account;
- ▶ enacts provisions related to the State Board of Regents' administration of funds in the account;
- ▶ enacts provisions related to how an institution of higher education may use funds from the account;
- ▶ enacts procedures for how an institution of higher education may obtain legislative approval for a capital development project;
- ▶ amends provisions related to capital developments by institutions of higher education; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None



26 **Other Special Clauses:**

27 This bill provides a special effective date.

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **53B-7-101**, as last amended by Laws of Utah 2015, Chapter 361

31 **53B-20-104**, as last amended by Laws of Utah 2012, Chapter 242

32 **63A-5-103**, as last amended by Laws of Utah 2015, Chapter 297

33 **63A-5-104**, as last amended by Laws of Utah 2015, Chapter 297

34 **63A-5-206**, as last amended by Laws of Utah 2011, Chapter 14

35 ENACTS:

36 **53B-7-701**, Utah Code Annotated 1953

37 **53B-7-702**, Utah Code Annotated 1953

38 **53B-7-703**, Utah Code Annotated 1953

39 **53B-7-704**, Utah Code Annotated 1953

40 **53B-7-705**, Utah Code Annotated 1953

41 **53B-7-706**, Utah Code Annotated 1953

42 **63J-1-316**, Utah Code Annotated 1953



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

45 Section 1. Section **53B-7-101** is amended to read:

46 **53B-7-101. Combined requests for appropriations -- Board review of operating**
47 **budgets -- Submission of budgets -- Recommendations -- Hearing request --**
48 **Appropriation formulas -- Allocations -- Dedicated credits -- Financial affairs.**

49 (1) As used in this section:

50 (a) (i) "Higher education institution" or "institution" means an institution of higher
51 education listed in Section **53B-1-102**.

52 (ii) "Higher education institution" or "institution" does not include the Utah College of
53 Applied Technology.

54 (b) "Research university" means the University of Utah or Utah State University.

55 (2) (a) The board shall recommend a combined appropriation for the operating budgets
56 of higher education institutions for inclusion in a state appropriations act.

- 57 (b) The board's combined budget recommendation shall include:
58 (i) employee compensation;
59 (ii) mandatory costs, including building operations and maintenance, fuel, and power;
60 (iii) mission based funding described in Subsection (3);
61 (iv) performance funding described in Subsection (4);
62 (v) statewide and institutional priorities, including scholarships, financial aid, and
63 technology infrastructure; and
64 (vi) unfunded historic growth.

65 (c) The board's recommendations shall be available for presentation to the governor
66 and to the Legislature at least 30 days prior to the convening of the Legislature, and shall
67 include schedules showing the recommended amounts for each institution, including separately
68 funded programs or divisions.

69 (d) The recommended appropriations shall be determined by the board only after it has
70 reviewed the proposed institutional operating budgets, and has consulted with the various
71 institutions and board staff in order to make appropriate adjustments.

72 (3) (a) The board shall establish mission based funding.

73 (b) Mission based funding shall include:

- 74 (i) enrollment growth; and
75 (ii) up to three strategic priorities.

76 (c) The strategic priorities described in Subsection (3)(b)(ii) shall be:

- 77 (i) approved by the board; and
78 (ii) designed to improve the availability, effectiveness, or quality of higher education in
79 the state.

80 (d) Concurrent with recommending mission based funding, the board shall also
81 recommend to the Legislature ways to address funding any inequities for institutions as
82 compared to institutions with similar missions.

83 (4) (a) The board shall establish performance funding.

84 (b) Performance funding shall include metrics approved by the board, including:

- 85 (i) degrees and certificates granted;
86 (ii) services provided to traditionally underserved populations;
87 (iii) responsiveness to workforce needs;

88 (iv) institutional efficiency; and

89 (v) for a research university, graduate research metrics.

90 (c) The board shall:

91 (i) award performance funding appropriated by the Legislature to institutions based on
92 the institution's success in meeting the metrics described in Subsection (4)(b); and

93 (ii) reallocate funding that is not awarded to an institution under Subsection (4)(c)(i)
94 for distribution to other institutions that meet the metrics described in Subsection (4)(b).

95 (5) (a) Institutional operating budgets shall be submitted to the board at least 90 days
96 prior to the convening of the Legislature in accordance with procedures established by the
97 board.

98 (b) ~~Funding~~ Except as provided in Subsection (5)(c), funding requests pertaining to
99 capital facilities and land purchases shall be submitted in accordance with procedures
100 prescribed by the State Building Board.

101 (c) Funding requests pertaining to capital developments shall be submitted in
102 accordance with procedures described in Part 7, Capital Developments.

103 (6) (a) The budget recommendations of the board shall be accompanied by full
104 explanations and supporting data.

105 (b) The appropriations recommended by the board shall be made with the dual
106 objective of:

107 (i) justifying for higher educational institutions appropriations consistent with their
108 needs, and consistent with the financial ability of the state; and

109 (ii) determining an equitable distribution of funds among the respective institutions in
110 accordance with the aims and objectives of the statewide master plan for higher education.

111 (7) (a) The board shall request a hearing with the governor on the recommended
112 appropriations.

113 (b) After the governor delivers his budget message to the Legislature, the board shall
114 request hearings on the recommended appropriations with the appropriate committees of the
115 Legislature.

116 (c) If either the total amount of the state appropriations or its allocation among the
117 institutions as proposed by the Legislature or its committees is substantially different from the
118 recommendations of the board, the board may request further hearings with the Legislature or

119 its appropriate committees to reconsider both the total amount and the allocation.

120 (8) The board may devise, establish, periodically review, and revise formulas for its
121 use and for the use of the governor and the committees of the Legislature in making
122 appropriation recommendations.

123 (9) (a) The board shall recommend to each session of the Legislature the minimum
124 tuitions, resident and nonresident, for each institution which it considers necessary to
125 implement the budget recommendations.

126 (b) The board may fix the tuition, fees, and charges for each institution at levels it finds
127 necessary to meet budget requirements.

128 (10) (a) Money allocated to each institution by legislative appropriation may be
129 budgeted in accordance with institutional work programs approved by the board, provided that
130 the expenditures funded by appropriations for each institution are kept within the
131 appropriations for the applicable period.

132 (b) A president of an institution shall:

133 (i) establish initiatives for the president's institution each year that are:

134 (A) aligned with the strategic priorities described in Subsection (3); and

135 (B) consistent with the institution's mission and role; and

136 (ii) allocate the institution's mission based funding to the initiatives.

137 (11) The dedicated credits, including revenues derived from tuitions, fees, federal
138 grants, and proceeds from sales received by the institutions are appropriated to the respective
139 institutions [~~and~~] to be used in accordance with institutional work programs.

140 (12) Each institution may do its own purchasing, issue its own payrolls, and handle its
141 own financial affairs under the general supervision of the board.

142 (13) (a) If the Legislature appropriates money in accordance with this section, it shall
143 be distributed to the board and higher education institutions to fund the items described in
144 Subsection (2)(b).

145 (b) During each general session of the Legislature following a fiscal year in which the
146 Legislature provides an appropriation for mission based funding or performance funding, the
147 board and institutions shall report to the Legislature's Higher Education Appropriations
148 Subcommittee on the use of the previous year's mission based funding and performance
149 funding, including performance outcomes relating to the strategic initiatives approved by the

150 board.

151 Section 2. Section **53B-7-701** is enacted to read:

152 **Part 7. Capital Developments**

153 **53B-7-701. Title.**

154 This part is known as "Capital Developments."

155 Section 3. Section **53B-7-702** is enacted to read:

156 **53B-7-702. Definitions.**

157 As used in this part:

158 (1) "Account" means the Higher Education Capital Developments Account created in
159 Section [63J-1-316](#).

160 (2) "Capital developments" means the same as that term is defined in Section
161 [63A-5-104](#).

162 (3) "Institution" means:

163 (a) the University of Utah;

164 (b) Utah State University;

165 (c) Southern Utah University;

166 (d) Weber State University;

167 (e) Snow College;

168 (f) Dixie State University;

169 (g) Utah Valley University; or

170 (h) Salt Lake Community College.

171 (4) "Institution's allocation" means the total amount of funds an institution is allocated
172 under Subsection [53B-7-703\(3\)](#).

173 (5) "Institution's award" means the amount of funds an institution is actually awarded
174 from the institution's allocation.

175 Section 4. Section **53B-7-703** is enacted to read:

176 **53B-7-703. Board administration of account -- Improvement plans -- Requests for**
177 **additional funds.**

178 (1) The board shall administer funds in the account in accordance with this part.

179 (2) The board may only distribute the increase described in Subsection [63J-1-316\(3\)\(a\)](#)
180 to an institution to use for operations and maintenance costs for a capital development project

181 that has been fully constructed at the time of the distribution.

182 (3) In accordance with the rules described in Subsection 53B-7-704(1), the board shall
183 assign an allocation to each institution.

184 (4) The board shall award an institution all or a portion of the institution's allocation
185 based on the institution's success in meeting the performance funding metrics described in
186 Section 53B-7-101.

187 (5) (a) For an institution that is not awarded all of the institution's allocation under
188 Subsection (4), the board shall place the unawarded portion of the institution's allocation in
189 escrow for the institution for two years.

190 (b) (i) The institution may earn the unawarded portion of the institution's allocation
191 through an improvement plan that is approved by the board and reported to the Higher
192 Education Appropriations Subcommittee.

193 (ii) If an institution does not earn the unawarded portion of the institution's allocation
194 as described in Subsection (5)(a) within two years of the day on which the unawarded portion
195 was placed in escrow, the board shall take the unawarded portion out of escrow and deposit the
196 unawarded portion into the account.

197 (6) (a) An institution may submit a request to the board for funds in addition to the
198 institution's allocation or award.

199 (b) If an institution submits a request described in Subsection (6)(a), the board shall
200 report the request, with the board's recommendations related to the request, to the Infrastructure
201 and General Government Appropriations Subcommittee.

202 (c) Any funds awarded to an institution under this Subsection (6) shall be a debit
203 against the institution's future awards.

204 Section 5. Section **53B-7-704** is enacted to read:

205 **53B-7-704. Board rulemaking.**

206 On or before July 1, 2017, in accordance with Title 63G, Chapter 3, Utah
207 Administrative Rulemaking Act, the board shall make rules that:

208 (1) establish factors, and assign weights to the factors, to determine how to allocate
209 funds from the account among all institutions; and

210 (2) establish required components for an improvement plan described in Section
211 53B-7-703 that provide measurable outcomes of progress.

212 Section 6. Section **53B-7-705** is enacted to read:

213 **53B-7-705. Institution use of award -- Accrual of awards.**

214 (1) An institution may use the institution's award:

215 (a) for a capital development project approved by the Legislature;

216 (b) for ongoing operations and maintenance costs for any capital development projects
217 approved by the Legislature; or

218 (c) to pay debt service on a bond approved by the Legislature.

219 (2) An institution may accumulate the institution's awards over more than one year to
220 use for a capital development project.

221 Section 7. Section **53B-7-706** is enacted to read:

222 **53B-7-706. Legislative approval of a capital development project -- Oversight.**

223 (1) Except as provided in Subsection 63A-5-104(3), an institution shall obtain
224 legislative approval for a capital development project in accordance with this part.

225 (2) An institution shall submit to the board a proposal for each capital development
226 project for which the institution seeks board approval.

227 (3) The board shall:

228 (i) review each submission for approval received in accordance with Subsection (2);

229 (ii) based on the submissions described in Subsection (2), create a list of approved
230 capital development projects;

231 (iii) submit the list described in Subsection (3)(a)(ii) to:

232 (A) the Infrastructure and General Government Appropriations Subcommittee;

233 (B) the Division of Facilities Construction and Management; and

234 (C) the State Building Board;

235 (iv) submit a report to the Higher Education Appropriations Subcommittee regarding
236 the procedures under this section; and

237 (v) obtain approval for each capital development project, on behalf of an institution,
238 from the Legislature in an appropriations act.

239 (4) After receiving the list described in Subsection (3)(a)(ii), the State Building Board
240 and the Division of Facilities Construction and Management shall, based on the capital
241 development projects on the list, submit capital development recommendations to the
242 Infrastructure and General Government Appropriations Subcommittee.

243 (5) Except as authorized by this part, the State Building Board and the Division of
244 Facilities Construction and Management may not oversee capital development projects for an
245 institution.

246 (6) An institution may:

247 (a) oversee and manage a capital development project without involvement, oversight,
248 or management from the Division of Facilities Construction and Management; or

249 (b) arrange for management of the project by the Division of Facilities Construction
250 and Management.

251 (7) (a) An institution may request the State Building Board to consult with the
252 institution regarding a capital development project.

253 (b) If an institution makes a request under Subsection (7)(a), the State Building Board
254 shall consult with the institution.

255 Section 8. Section **53B-20-104** is amended to read:

256 **53B-20-104. Capital facilities projects recommendations -- Rules.**

257 (1) The board shall approve all new construction, repair, or purchase of educational
258 and general buildings and facilities financed from any source at all institutions subject to the
259 jurisdiction of the board.

260 (2) An institution may not submit plans or specifications to the State Building Board
261 for the construction or alteration of buildings, structures, or facilities or for the purchases of
262 equipment or fixtures for the structure without the authorization of the board.

263 (3) ~~[The]~~ In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
264 Act, the board shall make rules establishing the conditions under which facilities may be
265 eligible to request state funds for operations and maintenance.

266 (4) Before approving the purchase of a building, the board shall:

267 (a) determine whether or not the building will be eligible for state funds for operations
268 and maintenance by applying the rules adopted under Subsection (3); and

269 (b) if the annual request for state funding for operations and maintenance will be
270 greater than \$100,000, notify the speaker of the House, the president of the Senate, and the
271 cochairs of the Infrastructure and General Government subcommittee of the Legislature's Joint
272 Appropriation Committee.

273 (5) Before a capital development project may be submitted to the Legislature, the board

274 shall comply with the approval requirements described in Section [53B-7-706](#).

275 Section 9. Section **63A-5-103** is amended to read:

276 **63A-5-103. Board -- Powers.**

277 (1) The State Building Board shall:

278 (a) in cooperation with state institutions, departments, commissions, and agencies,
279 prepare a master plan of structures built or contemplated;

280 (b) submit to the governor and the Legislature a comprehensive five-year building plan
281 for the state containing the information required by Subsection [~~2~~] (3);

282 (c) amend and keep current the five-year building program for submission to the
283 governor and subsequent legislatures;

284 (d) as a part of the long-range plan, recommend to the governor and Legislature any
285 changes in the law that are necessary to insure an effective, well-coordinated building program
286 for all state institutions;

287 (e) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
288 make rules:

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

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

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

295 (iv) to establish standards and requirements for a capital development project request,
296 including a requirement for a feasibility study; and

297 (v) to establish standards and requirements for reporting operations and maintenance
298 expenditures for state-owned facilities, including standards and requirements relating to utility
299 metering;

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

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

- 305 (ii) the effectiveness of its design;
- 306 (iii) the efficiency of energy use; and
- 307 (iv) the usefulness of the building or facility over its lifetime;
- 308 (g) prepare and submit a yearly request to the governor and the Legislature for a
- 309 designated amount of square footage by type of space to be leased by the Division of Facilities
- 310 Construction and Management in that fiscal year;
- 311 (h) assure the efficient use of all building space; and
- 312 (i) conduct ongoing facilities maintenance audits for state-owned facilities.
- 313 (2) In order to provide adequate information upon which the State Building Board may
- 314 make its recommendation under Subsection (1), any state agency requesting new full-time
- 315 employees for the next fiscal year shall report those anticipated requests to the building board
- 316 at least 90 days before the annual general session in which the request is made.
- 317 (3) (a) The State Building Board shall ensure that the five-year building plan required
- 318 by Subsection (1)~~(c)~~(b) includes:
- 319 (i) a list that prioritizes construction of new buildings for all structures built or
- 320 contemplated based upon each agency's, department's, commission's, and institution's present
- 321 and future needs;
- 322 (ii) information, and space use data for all state-owned and leased facilities;
- 323 (iii) substantiating data to support the adequacy of any projected plans;
- 324 (iv) a summary of all statewide contingency reserve and project reserve balances as of
- 325 the end of the most recent fiscal year;
- 326 (v) a list of buildings that have completed a comprehensive facility evaluation by an
- 327 architect/engineer or are scheduled to have an evaluation;
- 328 (vi) for those buildings that have completed the evaluation, the estimated costs of
- 329 needed improvements; and
- 330 (vii) for projects recommended in the first two years of the five-year building plan:
- 331 (A) detailed estimates of the cost of each project;
- 332 (B) the estimated cost to operate and maintain the building or facility on an annual
- 333 basis;
- 334 (C) the cost of capital improvements to the building or facility, estimated at 1.1% of
- 335 the replacement cost of the building or facility, on an annual basis;

336 (D) the estimated number of new agency full-time employees expected to be housed in
337 the building or facility;

338 (E) the estimated cost of new or expanded programs and personnel expected to be
339 housed in the building or facility;

340 (F) the estimated lifespan of the building with associated costs for major component
341 replacement over the life of the building; and

342 (G) the estimated cost of any required support facilities.

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

346 (4) Capital developments by an institution listed in Section 53B-7-702 are exempt from
347 State Building Board oversight and are governed by the procedures described in Section
348 53B-7-706.

349 [~~4~~] (5) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
350 Act, the State Building Board may make rules establishing circumstances under which bids
351 may be modified when all bids for a construction project exceed available funds as certified by
352 the director.

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

355 [~~5~~] (6) (a) A person who violates a rule adopted by the board under Subsection (1)(e)
356 is subject to a civil penalty not to exceed \$2,500 for each violation plus the amount of any
357 actual damages, expenses, and costs related to the violation of the rule that are incurred by the
358 state.

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

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

363 Section 10. Section 63A-5-104 is amended to read:

364 **63A-5-104. Definitions -- Capital development and capital improvement process**
365 **-- Approval requirements -- Limitations on new projects -- Emergencies.**

366 (1) As used in this section:

- 367 (a) "Capital developments" means a:
- 368 (i) remodeling, site, or utility project with a total cost of \$2,500,000 or more;
- 369 (ii) new facility with a construction cost of \$500,000 or more; or
- 370 (iii) purchase of real property where an appropriation is requested to fund the purchase.
- 371 (b) "Capital improvements" means a:
- 372 (i) remodeling, alteration, replacement, or repair project with a total cost of less than
- 373 \$2,500,000;
- 374 (ii) site and utility improvement with a total cost of less than \$2,500,000; or
- 375 (iii) new facility with a total construction cost of less than \$500,000.
- 376 (c) (i) "New facility" means the construction of a new building on state property
- 377 regardless of funding source.
- 378 (ii) "New facility" includes:
- 379 (A) an addition to an existing building; and
- 380 (B) the enclosure of space that was not previously fully enclosed.
- 381 (iii) "New facility" does not mean:
- 382 (A) the replacement of state-owned space that is demolished or that is otherwise
- 383 removed from state use, if the total construction cost of the replacement space is less than
- 384 \$2,500,000; or
- 385 (B) the construction of facilities that do not fully enclose a space.
- 386 (d) "Replacement cost of existing state facilities and infrastructure" means the
- 387 replacement cost, as determined by the Division of Risk Management, of state facilities,
- 388 excluding auxiliary facilities as defined by the State Building Board and the replacement cost
- 389 of infrastructure as defined by the State Building Board.
- 390 (e) "State funds" means public money appropriated by the Legislature.
- 391 (2) (a) ~~[The]~~ Except as provided in Subsection (2)(c), the State Building Board, on
- 392 behalf of all state agencies, commissions, departments, and institutions shall submit [its] the
- 393 State Building Board's capital development recommendations and priorities to the Legislature
- 394 for approval and prioritization.
- 395 (b) In developing the State Building Board's capital development recommendations and
- 396 priorities, the State Building Board shall:
- 397 (i) require each state agency, commission, department, or institution requesting an

398 appropriation for a capital development project to complete a study that demonstrates the
399 feasibility of the capital development project, including:

- 400 (A) the need for the capital development project;
- 401 (B) the appropriateness of the scope of the capital development project;
- 402 (C) any private funding for the capital development project; and
- 403 (D) the economic and community impacts of the capital development project; and
- 404 (ii) verify the completion and accuracy of the feasibility study described in Subsection
405 (2)(b)(i).

406 (c) The State Building Board shall submit the State Building Board's capital
407 development recommendations for an institution listed in Section [53B-7-702](#) in accordance
408 with Section [53B-7-706](#).

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

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

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

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

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

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

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

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

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

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

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

428 (B) state capital improvement funding.

- 429 (d) Legislative approval is not required for:
- 430 (i) the renovation, remodeling, or retrofitting of an existing facility with nonstate funds
431 that has been approved by the State Building Board;
- 432 (ii) a facility to be built with nonstate funds and owned by nonstate entities within
433 research park areas at the University of Utah and Utah State University;
- 434 (iii) a facility to be built at This is the Place State Park by This is the Place Foundation
435 with funds of the foundation, including grant money from the state, or with donated services or
436 materials;
- 437 (iv) a capital project that:
- 438 (A) is funded by:
- 439 (I) the Uintah Basin Revitalization Fund; or
440 (II) the Navajo Revitalization Fund; and
- 441 (B) does not provide a new facility for a state agency or higher education institution; or
442 (v) a capital project on school and institutional trust lands that is funded by the School
443 and Institutional Trust Lands Administration from the Land Grant Management Fund and that
444 does not fund construction of a new facility for a state agency or higher education institution.
- 445 (e) (i) Legislative approval is not required for capital development projects to be built
446 for the Department of Transportation:
- 447 (A) as a result of an exchange of real property under Section [72-5-111](#); or
448 (B) as a result of a sale or exchange of real property from a maintenance facility if the
449 real property is exchanged for, or the proceeds from the sale of the real property are used for,
450 another maintenance facility, including improvements for a maintenance facility and real
451 property.
- 452 (ii) When the Department of Transportation approves a sale or exchange under
453 Subsection (3)(e), it shall notify the president of the Senate, the speaker of the House, and the
454 cochairs of the Infrastructure and General Government Appropriations Subcommittee of the
455 Legislature's Joint Appropriation Committee about any new facilities to be built or improved
456 under this exemption.
- 457 (4) (a) (i) The State Building Board, on behalf of all state agencies, commissions,
458 departments, and institutions shall by January 15 of each year, submit a list of anticipated
459 capital improvement requirements to the Legislature for review and approval.

- 460 (ii) The list shall identify:
- 461 (A) a single project that costs more than \$1,000,000;
- 462 (B) multiple projects within a single building or facility that collectively cost more than
- 463 \$1,000,000;
- 464 (C) a single project that will be constructed over multiple years with a yearly cost of
- 465 \$1,000,000 or more and an aggregate cost of more than \$2,500,000;
- 466 (D) multiple projects within a single building or facility with a yearly cost of
- 467 \$1,000,000 or more and an aggregate cost of more than \$2,500,000;
- 468 (E) a single project previously reported to the Legislature as a capital improvement
- 469 project under \$1,000,000 that, because of an increase in costs or scope of work, will now cost
- 470 more than \$1,000,000; and
- 471 (F) multiple projects within a single building or facility previously reported to the
- 472 Legislature as a capital improvement project under \$1,000,000 that, because of an increase in
- 473 costs or scope of work, will now cost more than \$1,000,000.
- 474 (b) Unless otherwise directed by the Legislature, the State Building Board shall
- 475 prioritize capital improvements from the list submitted to the Legislature up to the level of
- 476 appropriation made by the Legislature.
- 477 (c) In prioritizing capital improvements, the State Building Board shall consider the
- 478 results of facility evaluations completed by an architect/engineer as stipulated by the building
- 479 board's facilities maintenance standards.
- 480 (d) [~~Beginning on July 1, 2013, in~~] In prioritizing capital improvements, the State
- 481 Building Board shall allocate at least 80% of the funds that the Legislature appropriates for
- 482 capital improvements to:
- 483 (i) projects that address:
- 484 (A) a structural issue;
- 485 (B) fire safety;
- 486 (C) a code violation; or
- 487 (D) any issue that impacts health and safety;
- 488 (ii) projects that upgrade:
- 489 (A) an HVAC system;
- 490 (B) an electrical system;

491 (C) essential equipment;

492 (D) an essential building component; or

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

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

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

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

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

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

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

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

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

512 (h) In prioritizing and allocating capital improvement funding, the State Building
513 Board shall comply with the requirement in Subsection [63B-23-101\(2\)\(f\)](#).

514 (5) The Legislature may authorize:

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

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

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

521 (a) the portion of operations and maintenance, if any, that will require an immediate or

522 future increase in state funding; and

523 (b) the portion of capital improvements, if any, that will require an immediate or future
524 increase in state funding.

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

530 (b) (i) As used in this Subsection (7)(b):

531 (A) "Education Fund budget deficit" [~~is as~~] means the same as that term is defined in
532 Section 63J-1-312; and

533 (B) "General Fund budget deficit" [~~is as~~] means the same as that term is defined in
534 Section 63J-1-312.

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

539 [~~(c) (i) The requirements under Subsections (6)(a) and (b) do not apply to the 2008-09,
540 2009-10, 2010-11, 2011-12, and 2012-13 fiscal years.]~~

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

543 (8) [~~It is the policy of the Legislature that a new building or facility be approved and
544 funded for construction in a single budget action, therefore]~~ Except as provided in Title 53B,
545 Chapter 7, Part 7, Capital Developments, the Legislature may not fund the programming,
546 design, and construction of a new building or facility in phases over more than one year unless
547 the Legislature has approved each phase of the funding for the construction of the new building
548 or facility by the affirmative vote of two-thirds of all the members elected to each house.

549 (9) (a) If, after approval of capital development and capital improvement priorities by
550 the Legislature under this section, emergencies arise that create unforeseen critical capital
551 improvement projects, the State Building Board may, notwithstanding the requirements of Title
552 63J, Chapter 1, Budgetary Procedures Act, reallocate capital improvement funds to address

553 those projects.

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

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

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

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

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

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

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

566 (11) It is the intent of the Legislature that in funding capital improvement requirements
567 under this section the General Fund be considered as a funding source for at least half of those
568 costs.

569 (12) (a) Subject to Subsection (12)(b), at least 80% of the state funds appropriated for
570 capital improvements shall be used for maintenance or repair of the existing building or
571 facility.

572 (b) The State Building Board may modify the requirement described in Subsection
573 (12)(a) if the State Building Board determines that a different allocation of capital
574 improvements funds is in the best interest of the state.

575 Section 11. Section **63A-5-206** is amended to read:

576 **63A-5-206. Construction, alteration, and repair of state facilities -- Powers of**
577 **director -- Exceptions -- Expenditure of appropriations -- Notification to local**
578 **governments for construction or modification of certain facilities.**

579 (1) As used in this section:

580 (a) "Capital developments" and "capital improvements" have the same meaning as
581 provided in Section [63A-5-104](#).

582 (b) "Compliance agency" has the same meaning as provided in Section [15A-1-202](#).

583 (c) (i) "Facility" means any building, structure, or other improvement that is

584 constructed on property owned by the state, its departments, commissions, institutions, or
585 agencies.

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

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

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

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

599 (2) (a) (i) Except as provided in Subsections (3) and (4), the director shall exercise
600 direct supervision over the design and construction of all new facilities, and all alterations,
601 repairs, and improvements to existing facilities if the total project construction cost, regardless
602 of the funding source, is greater than \$100,000, unless there is memorandum of understanding
603 between the director and an institution of higher education that permits the institution of higher
604 education to exercise direct supervision for a project with a total project construction cost of
605 not greater than \$250,000.

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

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

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

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

614 (c) Before proceeding with construction, the director and the officials charged with the

615 administration of the affairs of the particular department, commission, institution, or agency
616 shall approve the location, design, plans, and specifications.

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

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

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

622 (c) occurs within the boundaries of This is the Place State Park and is administered by
623 This is the Place Foundation except that This is the Place Foundation may request the director
624 to administer the design and construction; [or]

625 (d) is for the creation and installation of art under Title 9, Chapter 6, Part 4, Utah
626 Percent-for-Art Act[-]; or

627 (e) is a capital development project of an institution listed in Section [53B-7-702](#).

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

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

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

639 (iv) State entities that receive a delegated project may not access, for the delegated
640 project, the division's statewide contingency reserve and project reserve authorized in Section
641 [63A-5-209](#).

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

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

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

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

654 (6) (a) The role of compliance agency as provided in Title 15A, State Construction and
655 Fire Codes Act, shall be provided by:

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

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

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

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

663 (v) the institution, for projects exempt from the division's administration under
664 Subsection [~~(5)(a)~~] (3)(e).

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

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

670 (i) only review plans and inspect construction to enforce the State Construction Code
671 or an approved code under Title 15A, State Construction and Fire Codes Act; and

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

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

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

679 (7) [~~Before~~] (a) Except as provided in Subsection (7)(b), before construction may
680 begin, the director shall review the design of projects exempted from the division's
681 administration under Subsection [~~(4)~~] (3) to determine if the design:

682 [~~(a)~~] (i) complies with any restrictions placed on the project by the State Building
683 Board; and

684 [~~(b)~~] (ii) is appropriate for the purpose and setting of the project.

685 (b) Capital developments by an institution listed in Section 53B-7-702 are exempt from
686 oversight of the State Building Board or the division and are governed by the procedures
687 described in Section 53B-7-706.

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

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

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

696 (b) The director shall:

697 (i) within 30 days after the completion of each capital development project, submit cost
698 summary data for the project on the standard form to the Office of the Legislative Fiscal
699 Analyst; and

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

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

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

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

707 (c) reimburse those account balances from the amount funded for those projects when

708 the appropriation act funding the project becomes effective.

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

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

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

716 (iii) the project is new construction.

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

720 (13) (a) (i) Before beginning the construction of student housing on property owned by
721 the state, or on property owned by a public institution of higher education in accordance with
722 Section 53B-7-706, the director shall provide written notice of the proposed construction, as
723 provided in Subsection (13)(a)(ii), if any of the proposed student housing buildings is within
724 300 feet of privately owned residential property.

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

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

729 (B) the municipality in whose boundaries the privately owned residential property is
730 located.

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

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

738 Section 12. Section **63J-1-316** is enacted to read:

- 739 **63J-1-316. Establishing a Higher Education Capital Developments Account --**
740 **Providing for deposits into the account -- Providing for interest generated by the account.**
- 741 (1) As used in this section:
- 742 (a) "Account" means the Higher Education Capital Developments Account, created in
743 Subsection (2)(a).
- 744 (b) "Capital developments" means the same as that term is defined in Section
745 63A-5-104.
- 746 (c) "Education Fund revenue surplus" means the same as that term is defined in Section
747 63J-1-313.
- 748 (d) "Operating deficit" means the same as that term is defined in Section 63J-1-313.
- 749 (2) (a) There is created within the Education Fund a restricted account known as the
750 Higher Education Capital Developments Account.
- 751 (b) The account shall be funded by legislative appropriations, the surplus revenue
752 required to be deposited into the account by this section, and other funds required to be
753 deposited into the account under Section 53B-7-703.
- 754 (c) The account may accrue interest, which shall be deposited into the account.
- 755 (3) (a) Subject to future budget constraints, each year the Legislature shall increase the
756 amount appropriated to the account by 3% of the capital developments amounts provided by
757 legislative appropriations described in Subsection (2)(b).
- 758 (b) The State Board of Regents shall ensure that the increase described in Subsection
759 (3)(a) is used exclusively to fund operations and maintenance costs for capital development
760 projects approved by the Legislature.
- 761 (4) (a) At the end of any fiscal year in which the Division of Finance, in consultation
762 with the legislative fiscal analyst and in conjunction with the completion of the annual audit by
763 the state auditor, determines that there is an Education Fund revenue surplus, the Division of
764 Finance shall transfer 12.5% of the Education Fund revenue surplus into the account.
- 765 (b) The Division of Finance shall calculate the amount to be transferred under this
766 Subsection (4) excluding any direct legislative appropriation made to the account.
- 767 (c) The Division of Finance shall transfer the amount required under this Subsection
768 (4):
- 769 (i) after transferring the Education Fund revenue surplus required to be transferred in

770 accordance with Section 63J-1-313; and

771 (ii) before transferring from the Education Fund revenue surplus any other year-end
772 contingency appropriations, year-end set-asides, or other year-end transfers required by law.

773 (d) Notwithstanding Subsection (4)(a), if, at the end of a fiscal year, the Division of
774 Finance determines that an operating deficit exists, the Division of Finance may reduce the
775 transfer to the account by the amount necessary to eliminate the operating deficit.

776 (5) Expenditures from the account shall be made in accordance with Section
777 53B-7-703.

778 Section 13. **Effective date.**

779 (1) Except as provided in Subsection (2), this bill takes effect on May 10, 2016.

780 (2) The following sections take effect on January 1, 2020:

781 (a) Section 53B-7-101;

782 (b) Section 53B-7-703;

783 (c) Section 53B-7-705;

784 (d) Section 53B-7-706;

785 (e) Section 53B-20-104;

786 (f) Section 63A-5-103;

787 (g) Section 63A-5-104; and

788 (h) Section 63A-5-206.