

HIGHER EDUCATION CAPITAL FACILITIES

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ann Millner

House Sponsor: Gage Froerer

LONG TITLE

General Description:

This bill enacts and amends provisions related to capital developments at institutions of higher education and technical colleges.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates the Technical Colleges Capital Developments Restricted Account;
- ▶ enacts provisions related to the Technical Colleges Capital Developments Restricted Account, including provisions related to:
 - deposits into the account;
 - the use of money in the account; and
 - the administration of the account;
- ▶ enacts procedures for how a technical college receives legislative approval for a capital development project;
- ▶ creates the Higher Education Capital Developments Restricted Account;
- ▶ enacts provisions related to the Higher Education Capital Developments Restricted Account, including provisions related to:
 - deposits into the account;
 - the use of the money in the account; and
 - the administration of the account;



- 28 ▶ enacts procedures for how an institution of higher education that is part of the Utah
- 29 System of Higher Education receives legislative approval for a capital development
- 30 project;
- 31 ▶ provides rulemaking authority;
- 32 ▶ exempts certain capital development projects from State Building Board
- 33 prioritization;
- 34 ▶ amends provisions related to capital development projects; and
- 35 ▶ makes technical and conforming changes.

36 **Money Appropriated in this Bill:**

37 This bill appropriates in fiscal year 2019:

- 38 ▶ to the Capital Budget - Capital Development Fund:
 - 39 • from the Education Fund, (\$20,000,000);
- 40 ▶ to the Education Fund Restricted - Higher Education Capital Developments
- 41 Restricted Account, as an ongoing appropriation:
 - 42 • from the Education Fund, \$20,000,000; and
- 43 ▶ to the Education Fund Restricted - Technical Colleges Capital Developments
- 44 Restricted Account, as an ongoing appropriation:
 - 45 • from the Education Fund, \$9,000,000.

46 **Other Special Clauses:**

47 This bill provides a special effective date.

48 **Utah Code Sections Affected:**

49 AMENDS:

- 50 **53B-2a-101**, as last amended by Laws of Utah 2017, Chapter 382
- 51 **53B-7-101**, as last amended by Laws of Utah 2017, Chapters 365 and 382
- 52 **63A-5-104**, as last amended by Laws of Utah 2017, Chapter 355
- 53 **63J-1-602.3**, as last amended by Laws of Utah 2017, Chapters 396 and 423

54 ENACTS:

- 55 **53B-2a-116**, Utah Code Annotated 1953
- 56 **53B-2a-117**, Utah Code Annotated 1953
- 57 **53B-22-201**, Utah Code Annotated 1953
- 58 **53B-22-202**, Utah Code Annotated 1953

59 [53B-22-203](#), Utah Code Annotated 1953
 60 [53B-22-204](#), Utah Code Annotated 1953
 61 [53B-22-205](#), Utah Code Annotated 1953

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

64 Section 1. Section **53B-2a-101** is amended to read:

65 **53B-2a-101. Definitions.**

66 As used in this chapter:

67 (1) "Account" means the Technical Colleges Capital Developments Restricted Account
 68 created in Section [53B-2a-117](#).

69 ~~[(1)]~~ (2) "Board of trustees" means the Utah System of Technical Colleges Board of
 70 Trustees.

71 (3) "Capital developments" means the same as that term is defined in Section
 72 [63A-5-104](#).

73 ~~[(2)]~~ (4) "Commissioner of technical education" means the Utah System of Technical
 74 Colleges commissioner of technical education.

75 ~~[(3)]~~ (5) "Competency-based" means mastery of subject matter or skill level, as
 76 demonstrated through business and industry approved standards and assessments, achieved
 77 through participation in a hands-on learning environment, and which is tied to observable,
 78 measurable performance objectives.

79 ~~[(4) "Member" means a member of the board of trustees.]~~

80 (6) "Dedicated project" means a capital development project for which state funds from
 81 the account are requested or used.

82 (7) "Nondedicated project" means a capital development project for which state funds
 83 from a source other than the account are requested or used.

84 ~~[(5)]~~ (8) "Open-entry, open-exit" means:

85 (a) a method of instructional delivery that allows for flexible scheduling in response to
 86 individual student needs or requirements and demonstrated competency when knowledge and
 87 skills have been mastered;

88 (b) students have the flexibility to begin or end study at any time, progress through
 89 course material at their own pace, and demonstrate competency when knowledge and skills

90 have been mastered; and

91 (c) if competency is demonstrated in a program of study, a credential, certificate, or
92 diploma may be awarded.

93 Section 2. Section **53B-2a-116** is enacted to read:

94 **53B-2a-116. Capital development projects -- Prioritization -- Legislative approval**
95 **-- Rulemaking.**

96 (1) In accordance with this section, a technical college is required to receive legislative
97 approval in an appropriations act for a capital development project.

98 (2) In accordance with Section 53B-2a-112, a technical college shall submit to the
99 board of trustees a proposal for a funding request for each dedicated project or nondedicated
100 project for which the technical college seeks legislative approval.

101 (3) The board of trustees shall:

102 (a) review each proposal submitted under Subsection (2) to ensure that the proposal
103 complies with Section 53B-2a-112;

104 (b) based on the results of the board of trustees' review under Subsection (3)(a), create:

105 (i) a list of approved dedicated projects, prioritized in accordance with Subsection (4);

106 and

107 (ii) a list of approved nondedicated projects, prioritized in accordance with Subsection

108 (4); and

109 (c) submit the lists described in Subsection (3)(b) to the State Building Board for the
110 State Building Board's:

111 (i) recommendation, for the list described in Subsection (3)(b)(i); or

112 (ii) recommendation and prioritization, for the list described in Subsection (3)(b)(ii).

113 (4) (a) The board of trustees shall prioritize funding requests for capital development

114 projects based on:

115 (i) growth and capacity;

116 (ii) effectiveness and support of critical programs;

117 (iii) cost effectiveness;

118 (iv) building deficiencies and life safety concerns; and

119 (v) alternative funding sources.

120 (b) On or before August 1, 2018, in accordance with Title 63G, Chapter 3, Utah

121 Administrative Rulemaking Act, the board of trustees shall make rules that establish:
122 (i) how the board of trustees will measure each factor described in Subsection (4)(a);
123 and
124 (ii) procedures for prioritizing funding requests for capital development projects.
125 (5) A dedicated project:
126 (a) is subject to the State Building Board's recommendation as described in Section
127 63A-5-104; and
128 (b) is not subject to the State Building Board's prioritization as described in Section
129 63A-5-104.
130 (6) A technical college may request operations and maintenance funds for a capital
131 development project approved under this section.

132 Section 3. Section **53B-2a-117** is enacted to read:

133 **53B-2a-117. Technical Colleges Capital Developments Restricted Account -- Use**
134 **of money in account -- Appropriations to account.**

135 (1) There is created within the Education Fund a restricted account known as the
136 Technical Colleges Capital Developments Restricted Account.

137 (2) Subject to appropriations, money in the account shall be used:

138 (a) for dedicated projects approved in accordance with Section [53B-2a-116](#); or

139 (b) to pay debt service in accordance with Subsection (3).

140 (3) Money in the account may be used to pay debt service:

141 (a) on a general obligation bond issued for a capital development project in accordance
142 with Title 63B, Chapter 1a, Master General Obligation Bond Act; and

143 (b) if the Legislature approves the use by a vote of two-thirds of all members elected to
144 each house.

145 (4) (a) The account shall be funded by legislative appropriations.

146 (b) Subject to future budget constraints, the Legislature shall appropriate \$9,000,000 of
147 new ongoing money from the Education Fund, the General Fund, or a combination of the
148 Education Fund and the General Fund to the account annually until the ongoing annual
149 appropriation reaches \$36,000,000.

150 (5) The account shall accrue interest, which shall be deposited into the account.

151 Section 4. Section **53B-7-101** is amended to read:

152 **53B-7-101. Combined requests for appropriations -- Board review of operating**
153 **budgets -- Submission of budgets -- Recommendations -- Hearing request --**
154 **Appropriation formulas -- Allocations -- Dedicated credits -- Financial affairs.**

155 (1) As used in this section:

156 (a) (i) "Higher education institution" or "institution" means an institution of higher
157 education listed in Section [53B-1-102](#).

158 (ii) "Higher education institution" or "institution" does not include:

159 (A) the Utah System of Technical Colleges Board of Trustees; or

160 (B) a technical college.

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

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

164 (b) The board's combined budget recommendation shall include:

165 (i) employee compensation;

166 (ii) mandatory costs, including building operations and maintenance, fuel, and power;

167 (iii) performance funding described in Part 7, Performance Funding;

168 (iv) statewide and institutional priorities, including scholarships, financial aid, and
169 technology infrastructure; and

170 (v) enrollment growth.

171 (c) The board's recommendations shall be available for presentation to the governor
172 and to the Legislature at least 30 days before the convening of the Legislature, and shall include
173 schedules showing the recommended amounts for each institution, including separately funded
174 programs or divisions.

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

178 (3) (a) Institutional operating budgets shall be submitted to the board at least 90 days
179 before the convening of the Legislature in accordance with procedures established by the board.

180 (b) ~~[Funding]~~ Except as provided in Section [53B-22-204](#), funding requests pertaining
181 to capital facilities and land purchases shall be submitted in accordance with procedures
182 prescribed by the State Building Board.

183 (4) (a) The budget recommendations of the board shall be accompanied by full
184 explanations and supporting data.

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

187 (i) justifying for higher [~~educational~~] education institutions appropriations consistent
188 with their needs, and consistent with the financial ability of the state; and

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

191 (5) (a) The board shall request a hearing with the governor on the recommended
192 appropriations.

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

196 (c) If either the total amount of the state appropriations or its allocation among the
197 institutions as proposed by the Legislature or the Legislature's committees is substantially
198 different from the recommendations of the board, the board may request further hearings with
199 the Legislature or the Legislature's appropriate committees to reconsider both the total amount
200 and the allocation.

201 (6) The board may devise, establish, periodically review, and revise formulas for the
202 board's use and for the use of the governor and the committees of the Legislature in making
203 appropriation recommendations.

204 (7) (a) The board shall recommend to each session of the Legislature the minimum
205 tuitions, resident and nonresident, for each institution which it considers necessary to
206 implement the budget recommendations.

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

209 (8) Money allocated to each institution by legislative appropriation may be budgeted in
210 accordance with institutional work programs approved by the board, provided that the
211 expenditures funded by appropriations for each institution are kept within the appropriations
212 for the applicable period.

213 (9) The dedicated credits, including revenues derived from tuitions, fees, federal

214 grants, and proceeds from sales received by the institutions [~~of higher education~~] are
215 appropriated to the respective institutions [~~of higher education and~~] to be used in accordance
216 with institutional work programs.

217 (10) An institution [~~of higher education~~] may do the institution's own purchasing, issue
218 the institution's own payrolls, and handle the institution's own financial affairs under the
219 general supervision of the board.

220 (11) If the Legislature appropriates money in accordance with this section, the money
221 shall be distributed to the board and higher education institutions to fund the items described in
222 Subsection (2)(b).

223 Section 5. Section **53B-22-201** is enacted to read:

224 **Part 2. Capital Developments**

225 **53B-22-201. Definitions.**

226 As used in this part:

227 (1) "Account" means the Higher Education Capital Developments Restricted Account
228 created in Section [53B-22-202](#).

229 (2) "Capital developments" means the same as that term is defined in Section
230 [63A-5-104](#).

231 (3) "Consumer Price Index" means the Consumer Price Index for All Urban
232 Consumers as published by the Bureau of Labor Statistics of the United States Department of
233 Labor.

234 (4) "Dedicated project" means a capital development project for which state funds from
235 an institution's allocation are requested or used.

236 (5) "Institution" means an institution of higher education that is part of the Utah
237 System of Higher Education described in Section [53B-1-102](#).

238 (6) "Institution's allocation" means the total amount of money in the account that an
239 institution has been allocated in accordance with Section [53B-22-203](#).

240 (7) "Nondedicated project" means a capital development project for which state funds
241 from a source other than an institution's allocation are requested or used.

242 (8) "State funds" means the same as that term is defined in Section [63A-5-104](#).

243 Section 6. Section **53B-22-202** is enacted to read:

244 **53B-22-202. Higher Education Capital Developments Restricted Account -- Use of**

245 **money in account -- Appropriations to account.**

246 (1) There is created within the Education Fund a restricted account known as the
247 Higher Education Capital Developments Restricted Account.

248 (2) Subject to appropriation, money in the account shall be used:

249 (a) for dedicated projects approved in accordance with Section [53B-22-204](#); or

250 (b) to pay debt service in accordance with Subsection (3).

251 (3) Money in the account may be used to pay debt service:

252 (a) on a general obligation bond issued for a capital development project in accordance
253 with Title 63B, Chapter 1a, Master General Obligation Bond Act; and

254 (b) if the Legislature approves the use by a vote of two-thirds of all members elected to
255 each house.

256 (4) (a) The account shall be funded by legislative appropriations.

257 (b) Subject to future budget constraints, the Legislature shall appropriate \$20,000,000
258 of new ongoing money from the Education Fund, the General Fund, or a combination of the
259 Education Fund and the General Fund to the account annually until the ongoing annual
260 appropriation reaches \$100,000,000.

261 (5) The account shall accrue interest, which shall be deposited into the account.

262 Section 7. Section **53B-22-203** is enacted to read:

263 **53B-22-203. Account money -- Institution allocations.**

264 (1) (a) Based on legislative appropriations to the account, the board shall annually
265 determine how to allocate among all institutions money that has not been previously allocated
266 to an institution.

267 (b) The board shall, in accordance with the rules described in Section [53B-22-205](#),
268 make the determination described in Subsection (1)(a) based on each institution's:

269 (i) enrollment;

270 (ii) total performance across the metrics described in Section [53B-7-706](#);

271 (iii) regional growth in student population;

272 (iv) facility age and condition; and

273 (v) adequacy of academic space, including off-campus facilities.

274 (2) On or before May 31 each year, the board shall notify the Division of Finance of
275 the board's determination described in Subsection (1).

276 (3) The Division of Finance shall:
277 (a) maintain within the account separate accounting for each institution's allocation;
278 and
279 (b) based on the notification described in Subsection (2), add to each institution's
280 allocation the amount of money determined by the board.

281 Section 8. Section **53B-22-204** is enacted to read:

282 **53B-22-204. Funding request for capital development project -- Legislative**
283 **approval -- Board approval.**

284 (1) In accordance with this section, an institution is required to receive legislative
285 approval in an appropriations act for a capital development project.

286 (2) An institution shall submit to the board a proposal for a funding request for each
287 dedicated project or nondedicated project for which the institution seeks legislative approval.

288 (3) The board shall:

289 (a) review each proposal submitted under Subsection (2) to ensure the proposal:

290 (i) is cost effective and an efficient use of resources;

291 (ii) is consistent with the institution's mission and master plan; and

292 (iii) fulfills a critical institutional facility need;

293 (b) based on the results of the board's review under Subsection (3)(a), create:

294 (i) a list of approved dedicated projects; and

295 (ii) a list of approved nondedicated projects, prioritized in accordance with Subsection

296 (5); and

297 (c) submit the lists described in Subsection (3)(b) to:

298 (i) the governor;

299 (ii) the Infrastructure and General Government Appropriations Subcommittee;

300 (iii) the Higher Education Appropriations Subcommittee; and

301 (iv) the State Building Board for the State Building Board's:

302 (A) recommendation, for the list described in Subsection (3)(b)(i); or

303 (B) recommendation and prioritization, for the list described in Subsection (3)(b)(ii).

304 (4) A dedicated project:

305 (a) is subject to the State Building Board's recommendation as described in Section

306 [63A-5-104](#); and

307 (b) is not subject to the State Building Board's prioritization as described in Section
308 63A-5-104.

309 (5) Subject to Subsection (6), and in accordance with the rules described in Section
310 53B-22-205, the board shall prioritize institution requests for funding for nondedicated projects
311 based on:

312 (a) capital facility need;

313 (b) utilization of facilities;

314 (c) maintenance and condition of facilities;

315 (d) donations and nonappropriated funding; and

316 (e) any other factor determined by the board under the rules described in Section
317 53B-22-205.

318 (6) (a) Subject to Subsection (6)(b), and in accordance with Subsection (5), the board
319 may annually prioritize:

320 (i) up to three nondedicated projects if the ongoing appropriation to the account is less
321 than \$50,000,000;

322 (ii) up to two nondedicated projects if the ongoing appropriation to the account is at
323 least \$50,000,000 but less than \$100,000,000; or

324 (iii) one nondedicated project if the ongoing appropriation to the account is at least
325 \$100,000,000.

326 (b) The dollar amounts described in Subsection (6)(a) shall be annually adjusted by an
327 amount equal to the percentage difference between:

328 (i) the Consumer Price Index for the 2018 calendar year; and

329 (ii) the Consumer Price Index for the previous calendar year.

330 (7) (a) An institution may request operations and maintenance funds for a capital
331 development project approved under this section.

332 (b) In considering a funding request for a capital development project, the Legislature
333 shall consider an institution's request described in Subsection (7)(a).

334 (8) After an institution completes a capital development project, the board shall review
335 the capital development project, including the costs and design of the capital development
336 project.

337 Section 9. Section **53B-22-205** is enacted to read:

338 **53B-22-205. Rulemaking.**

339 On or before August 1, 2018, in accordance with Title 63G, Chapter 3, Utah
340 Administrative Rulemaking Act, the board shall make rules that establish:

341 (1) how the board will determine the amount of money to allocate to an institution as
342 described in Section [53B-22-203](#), including, for each factor described in Subsection
343 [53B-22-203](#)(1)(b):

344 (a) how the board will measure an institution's fulfillment of the factor; and

345 (b) the relative weight assigned to the factor; and

346 (2) how the board will prioritize institution requests for funding for nondedicated
347 projects as described in Subsection [53B-22-204](#)(5), including:

348 (a) how the board will measure each factor described in Subsection [53B-22-204](#)(5);

349 and

350 (b) procedures for prioritizing the requests.

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

352 **63A-5-104. Definitions -- Capital development and capital improvement process**
353 **-- Approval requirements -- Limitations on new projects -- Emergencies.**

354 (1) As used in this section:

355 (a) (i) "Capital developments" means a:

356 (A) remodeling, site, or utility project with a total cost of \$3,500,000 or more;

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

358 (C) purchase of real property where an appropriation is requested to fund the purchase.

359 (ii) "Capital developments" does not include a project described in Subsection

360 (1)(b)(iii).

361 (b) "Capital improvements" means:

362 (i) a remodeling, alteration, replacement, or repair project with a total cost of less than
363 \$3,500,000;

364 (ii) a site or utility improvement with a total cost of less than \$3,500,000;

365 (iii) a utility infrastructure improvement project that:

366 (A) has a total cost of less than \$7,000,000;

367 (B) consists of two or more projects that, if done separately, would each cost less than
368 \$3,500,000; and

369 (C) the State Building Board determines is more cost effective or feasible to be
370 completed as a single project; or

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

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

374 (ii) "New facility" includes:

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

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

377 (iii) "New facility" does not include:

378 (A) the replacement of state-owned space that is demolished or that is otherwise
379 removed from state use, if the total construction cost of the replacement space is less than
380 \$3,500,000; or

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

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

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

387 (2) (a) ~~[The]~~ Except as provided in Subsection (2)(f), the board shall, on behalf of all
388 state agencies and in accordance with Subsection (4), submit capital development
389 recommendations and priorities to the Legislature for approval and prioritization.

390 (b) In developing the board's capital development recommendations and priorities, the
391 board shall require each state agency that requests an appropriation for a capital development
392 project to:

393 (i) submit to the board a capital development project request; and

394 (ii) complete and submit to the board a study that demonstrates the feasibility of the
395 capital development project, including:

396 (A) the need for the capital development project;

397 (B) the appropriateness of the scope of the capital development project;

398 (C) any private funding for the capital development project; and

399 (D) the economic and community impacts of the capital development project.

400 (c) The board shall verify the completion and accuracy of a feasibility study that a state
401 agency submits to the board under Subsection (2)(b).

402 (d) The board shall require that an institution of higher education described in Section
403 [53B-1-102](#) that submits a request for a capital development project address whether and how,
404 as a result of the project, the institution will:

405 (i) offer courses or other resources that will help meet demand for jobs, training, and
406 employment in the current market and the projected market for the next five years;

407 (ii) respond to individual skilled and technical job demand over the next 3, 5, and 10
408 years;

409 (iii) respond to industry demands for trained workers;

410 (iv) help meet commitments made by the Governor's Office of Economic
411 Development, including relating to training and incentives;

412 (v) respond to changing needs in the economy; and

413 (vi) based on demographics, respond to demands for on-line or in-class instruction.

414 (e) The board shall give more weight in the board's scoring process to a request that is
415 designated as a higher priority by the State Board of Regents than a request that is designated
416 as a lower priority by the State Board of Regents only when determining the order of
417 prioritization among requests submitted by the State Board of Regents.

418 (f) (i) For a dedicated project as defined in Section [53B-2a-101](#) or [53B-22-201](#), the
419 board shall submit recommendations to the Legislature in accordance with this section.

420 (ii) A dedicated project as defined in Section [53B-2a-101](#) or [53B-22-201](#) is not subject
421 to prioritization by the State Building Board.

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

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

426 (i) the board determines that the requesting state agency has provided adequate
427 assurance that state funds will not be used for the design or construction of the facility;

428 (ii) the state agency provides to the board a written document, signed by the head of the
429 state agency:

430 (A) stating that funding or a revenue stream is in place, or will be in place before the

431 project is completed, to ensure that increased state funding will not be required to cover the
432 cost of operations and maintenance to the resulting facility for immediate or future capital
433 improvements; and

434 (B) detailing the source of the funding that will be used for the cost of operations and
435 maintenance for immediate and future capital improvements to the resulting facility; and

436 (iii) the board determines that the use of the state property is:

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

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

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

441 (ii) For facilities constructed under the exemption provided in Subsection (3)(b), a state
442 agency may not request:

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

444 (B) state capital improvement funding.

445 (d) Legislative approval is not required for:

446 (i) the renovation, remodeling, or retrofitting of an existing facility with nonstate funds
447 that has been approved by the board;

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

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

453 (iv) a capital project that:

454 (A) is funded by the Uintah Basin Revitalization Fund or the Navajo Revitalization
455 Fund; and

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

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

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

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

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

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

472 (4) (a) (i) On or before January 15 of each year, the board shall, on behalf of all state
473 agencies, submit a list of anticipated capital improvement requirements to the Legislature for
474 review and approval.

475 (ii) The board shall ensure that the list identifies:

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

477 (B) multiple projects within a single building or facility that collectively cost more than
478 \$1,000,000;

479 (C) a single project that will be constructed over multiple years with a yearly cost of
480 \$1,000,000 or more and an aggregate cost of more than \$3,500,000;

481 (D) multiple projects within a single building or facility with a yearly cost of
482 \$1,000,000 or more and an aggregate cost of more than \$3,500,000;

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

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

489 (G) projects approved under Subsection (1)(b)(iii).

490 (b) Unless otherwise directed by the Legislature, the board shall prioritize capital
491 improvements from the list submitted to the Legislature up to the level of appropriation made
492 by the Legislature.

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

496 (d) In prioritizing capital improvements, the board shall allocate at least 80% of the
497 funds that the Legislature appropriates for capital improvements to:

498 (i) projects that address:

499 (A) a structural issue;

500 (B) fire safety;

501 (C) a code violation; or

502 (D) any issue that impacts health and safety;

503 (ii) projects that upgrade:

504 (A) an HVAC system;

505 (B) an electrical system;

506 (C) essential equipment;

507 (D) an essential building component; or

508 (E) infrastructure, including a utility tunnel, water line, gas line, sewer line, roof,

509 parking lot, or road; or

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

512 (e) In prioritizing capital improvements, the board shall allocate no more than 20% of
513 the funds that the Legislature appropriates for capital improvements to:

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

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

516 (f) The board may require an entity that benefits from a capital improvement project to
517 repay the capital improvement funds from savings that result from the project.

518 (g) The board may provide capital improvement funding to a single project, or to
519 multiple projects within a single building or facility, even if the total cost of the project or
520 multiple projects is \$3,500,000 or more, if:

521 (i) the capital improvement project is a project described in Subsection (1)(b)(iii); and

522 (ii) the Legislature has not refused to fund the project with capital improvement funds.

523 (h) In prioritizing and allocating capital improvement funding, the State Building

524 Board shall comply with the requirement in Subsection [63B-23-101\(2\)\(f\)](#).

525 (5) The Legislature may authorize:

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

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

528 (6) If construction of a new building or facility will require an immediate or future
529 increase in state funding for operations and maintenance or for capital improvements, the
530 Legislature may not authorize the new building or facility until the Legislature appropriates
531 funds for:

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

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

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

541 (b) If the Legislature determines that there exists an Education Fund budget deficit or a
542 General Fund budget deficit as those terms are defined in Section [63J-1-312](#), the Legislature
543 may, in eliminating the deficit, reduce the amount appropriated to capital improvements to
544 0.9% of the replacement cost of state buildings and infrastructure.

545 (c) This Subsection (7) does not apply to a dedicated project as defined in Section
546 [53B-2a-101](#) or [53B-22-201](#).

547 (8) (a) [~~The~~] (i) Except as provided in Subsection (8)(a)(ii), the Legislature may not
548 fund the design and construction of a new facility in phases over more than one year unless the
549 Legislature approves the funding for both the design and construction by a vote of two-thirds of
550 all the members elected to each house.

551 (ii) This Subsection (8)(a) does not apply to a dedicated project as defined in Section
552 [53B-2a-101](#) or [53B-22-201](#).

553 (b) An agency is required to receive approval from the board before the agency begins
554 programming for a new facility that requires legislative approval under Subsection (3).

555 (c) The board or an agency may fund the programming of a new facility before the
556 Legislature makes an appropriation for the new facility under Subsection (8)(a).

557 (9) (a) Notwithstanding the requirements of Title 63J, Chapter 1, Budgetary Procedures
558 Act, after the Legislature approves capital development and capital improvement priorities
559 under this section, if an emergency arises that creates an unforeseen and critical need for a
560 capital improvement project, the board may reallocate capital improvement funds to address
561 the project.

562 (b) The board shall report any changes the board makes in capital improvement
563 allocations approved by the Legislature to:

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

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

566 (10) (a) The board may adopt a rule allocating to institutions and agencies their
567 proportionate share of capital improvement funding.

568 (b) The board shall ensure that the rule:

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

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

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

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

580 (b) The board may modify the requirement described in Subsection (12)(a) if the board
581 determines that a different allocation of capital improvements funds is in the best interest of the
582 state.

583 Section 11. Section **63J-1-602.3** is amended to read:

584 **63J-1-602.3. List of nonlapsing funds and accounts -- Title 46 through Title 60.**

585 (1) The Utah Law Enforcement Memorial Support Restricted Account created in

586 Section [53-1-120](#).

587 (2) Funding for the Search and Rescue Financial Assistance Program, as provided in
588 Section [53-2a-1102](#).

589 (3) Appropriations made to the Division of Emergency Management from the State
590 Disaster Recovery Restricted Account, as provided in Section [53-2a-603](#).

591 (4) Appropriations made to the Department of Public Safety from the Department of
592 Public Safety Restricted Account, as provided in Section [53-3-106](#).

593 (5) Appropriations to the Motorcycle Rider Education Program, as provided in Section
594 [53-3-905](#).

595 (6) Appropriations from the Utah Highway Patrol Aero Bureau Restricted Account
596 created in Section [53-8-303](#).

597 (7) Appropriations from the DNA Specimen Restricted Account created in Section
598 [53-10-407](#).

599 (8) The Canine Body Armor Restricted Account created in Section [53-16-201](#).

600 (9) The Technical Colleges Capital Developments Restricted Account created in
601 Section [53B-2a-117](#).

602 (10) The Higher Education Capital Developments Restricted Account created in
603 Section [53B-22-202](#).

604 [~~9~~] ~~The School Readiness Restricted Account created in Section [53A-1b-104](#).~~]

605 [~~10~~] (11) Appropriations to the State Board of Education, as provided in Section
606 [~~53A-17a-105~~] [53F-2-205](#).

607 (12) The School Readiness Restricted Account created in Section [53F-9-402](#).

608 [~~11~~] (13) Money received by the Utah State Office of Rehabilitation for the sale of
609 certain products or services, as provided in Section [35A-13-202](#).

610 [~~12~~] (14) Certain funds appropriated from the General Fund to the State Board of
611 Regents for teacher preparation programs, as provided in Section [53B-6-104](#).

612 [~~13~~] (15) Funding for the Medical Education Program administered by the Medical
613 Education Council, as provided in Section [53B-24-202](#).

614 [~~14~~] (16) A certain portion of money collected for administrative costs under the
615 School Institutional Trust Lands Management Act, as provided under Section [53C-3-202](#).

616 [~~15~~] (17) Subject to Subsection [54-5-1.5\(4\)\(d\)](#), appropriations from the Public Utility

617 Regulatory Restricted Account created in Section 54-5-1.5.

618 [~~(16)~~] (18) Certain fines collected by the Division of Occupational and Professional
619 Licensing for violation of unlawful or unprofessional conduct that are used for education and
620 enforcement purposes, as provided in Section 58-17b-505.

621 [~~(17)~~] (19) Certain fines collected by the Division of Occupational and Professional
622 Licensing for use in education and enforcement of the Security Personnel Licensing Act, as
623 provided in Section 58-63-103.

624 [~~(18)~~] (20) Appropriations from the Relative Value Study Restricted Account created
625 in Section 59-9-105.

626 [~~(19)~~] (21) The Cigarette Tax Restricted Account created in Section 59-14-204.
627 Section 12. **Appropriation.**

628 The following sums of money are appropriated for the fiscal year beginning July 1,
629 2018, and ending June 30, 2019. These are additions to amounts previously appropriated for
630 fiscal year 2019. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures
631 Act, the Legislature appropriates the following sums of money from the funds or accounts
632 indicated for the use and support of the government of the state of Utah.

633 ITEM 1

634 To Capital Budget - Capital Development Fund

635 From Education Fund (\$20,000,000)

636 ITEM 2

637 To Education Fund Restricted - Higher Education Capital Developments Restricted
638 Account

639 From Education Fund \$20,000,000

640 ITEM 3

641 To Education Fund Restricted - Technical Colleges Capital Developments Restricted
642 Account

643 From Education Fund \$9,000,000

644 Section 13. **Effective date.**

645 This bill takes effect on July 1, 2018.

**Legislative Review Note
Office of Legislative Research and General Counsel**