

1                   **NEW STATE CONSTRUCTION SET-ASIDE FOR ART**  
2                                   **AMENDMENTS**

3                                   2020 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Chief Sponsor: Don L. Ipson**

6                                   House Sponsor: Francis D. Gibson

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8 **LONG TITLE**

9 **General Description:**

10           This bill modifies a provision relating to a new state construction set aside for art.

11 **Highlighted Provisions:**

12           This bill:

- 13           ▶ limits the amount that may be set aside from the amount appropriated for the  
14 construction of any new state building or facility; and  
15           ▶ modifies a provision relating to artists the Division of Arts and Museums considers  
16 and gives preference to in the percent-for-art program.

17 **Money Appropriated in this Bill:**

18           None

19 **Other Special Clauses:**

20           This bill provides a special effective date.

21 **Utah Code Sections Affected:**

22 AMENDS:

23           **9-6-405**, as last amended by Laws of Utah 2010, Chapter 378

24           **63A-5-209**, as last amended by Laws of Utah 2019, Chapter 468

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

27           Section 1. Section **9-6-405** is amended to read:

28           **9-6-405. Procedures, guidelines, and rules.**

- 29 (1) The division shall follow these guidelines in administering the program:
- 30 (a) Works of art shall be acquired under the program for use only with respect to those
- 31 buildings or facilities that the division determines have significant public use or access,
- 32 especially where the design and technical construction of the building or facility lend
- 33 themselves to works of art. All funds set aside and administered by the program from
- 34 appropriations for any state building or facility of which any part is obtained from the issuance
- 35 of bonds shall be used only to acquire works of art that will be placed in or at, and remain a
- 36 part of, that building or facility, to the extent necessary to preserve the federal income tax
- 37 exemption otherwise allowed for interest paid on the bonds.
- 38 (b) The goal of the division in administering the program is to fairly distribute works of
- 39 art throughout the various social, economic, and geographic communities of the state.
- 40 (c) The division:
- 41 (i) shall give first preference to Utah artists~~;~~; and
- 42 (ii) may consider artists from other states and give preference to artists from other
- 43 states ~~[which]~~ that have similar percent-for-art programs and demonstrate a reciprocal
- 44 preference for Utah artists.
- 45 (d) The division shall involve the director of the Division of Facilities Construction
- 46 and Management, or the director's designee, and the project architect in the process of
- 47 screening or selecting works of art or artists to create works of art for each project and shall
- 48 involve in that process representatives from the project's principal user or contracting agency,
- 49 the community in which the project is located, and the art profession. The project's principal
- 50 user or contracting agency shall have representation at least equal to any other entity on the
- 51 selection committee, as designated by the project's president or director. Any selection and
- 52 placement of art shall be by a majority decision of the user agency representatives on the
- 53 committee and a majority decision of the entire committee. The selection and placement shall
- 54 be approved by the president or director of the principal user.
- 55 (e) Any relocation of art placed under this program shall be done with the participation

56 from the division and the Division of Facilities Construction and Management and with  
57 approval from the president or director of the principal user.

58 (f) The costs of administering the program and conserving and maintaining all works  
59 of art placed under the program are limited to 15% of the funds deposited in the Utah  
60 Percent-for-Art Account.

61 (2) The division shall adopt procedures, guidelines, and rules as necessary to  
62 implement this chapter and administer the program.

63 Section 2. Section **63A-5-209** is amended to read:

64 **63A-5-209. Building appropriations supervised by director -- Contingencies --**  
65 **Disposition of project reserve funds -- Set aside for Utah Percent-for-Art Program.**

66 (1) The director shall:

67 (a) (i) supervise the expenditure of funds in providing plans, engineering  
68 specifications, sites, and construction of the buildings for which legislative appropriations are  
69 made; and

70 (ii) specifically allocate money appropriated when more than one project is included in  
71 any single appropriation without legislative directive;

72 (b) (i) expend the amount necessary from appropriations for planning, engineering, and  
73 architectural work; and

74 (ii) (A) allocate amounts from appropriations necessary to cover expenditures  
75 previously made from the planning fund under Section [63A-5-211](#) in the preparation of plans,  
76 engineering, and specifications; and

77 (B) return the amounts described in Subsection (1)(b)(ii)(A) to the planning fund; and

78 (c) hold in a statewide contingency reserve the amount budgeted for contingencies:

79 (i) in appropriations for the construction or remodeling of facilities; and

80 (ii) which may be over and above all amounts obligated by contract for planning,  
81 engineering, architectural work, sites, and construction contracts.

82 (2) (a) The director shall base the amount budgeted for contingencies on a sliding scale

83 percentage of the construction cost ranging from:

84 (i) 4-1/2% to 6-1/2% for new construction; and

85 (ii) 6% to 9-1/2% for remodeling projects.

86 (b) The director shall hold the statewide contingency funds to cover:

87 (i) costs of change orders; and

88 (ii) unforeseen, necessary costs beyond those specifically budgeted for the project.

89 (c) (i) The Legislature shall annually review the percentage and the amount held in the  
90 statewide contingency reserve.

91 (ii) The Legislature may reappropriate to other building needs, including the cost of  
92 administering building projects, any amount from the statewide contingency reserve that is in  
93 excess of the reserve required to meet future contingency needs.

94 (3) (a) The director shall hold in a separate reserve those state appropriated funds  
95 accrued through bid savings and project residual as a project reserve.

96 (b) The director shall account for the funds accrued under Subsection (3)(a) in separate  
97 accounts as follows:

98 (i) bid savings and project residual from a capital improvement project, as defined in  
99 Section 63A-5-104; and

100 (ii) bid savings and project residual from a capital development project, as defined in  
101 Section 63A-5-104.

102 (c) The State Building Board may authorize the use of project reserve funds in the  
103 account described in Subsection (3)(b)(i) for a capital improvement project:

104 (i) approved under Section 63A-5-104; and

105 (ii) for which funds are not allocated.

106 (d) The director may:

107 (i) authorize the use of project reserve funds in the accounts described in Subsection  
108 (3)(b) for the award of contracts in excess of a project's construction budget if the use is  
109 required to meet the intent of the project;

110           (ii) transfer money from the account described in Subsection (3)(b)(i) to the account  
111 described in Subsection (3)(b)(ii) if a capital development project has exceeded its construction  
112 budget; and

113           (iii) use project reserve funds for any emergency capital improvement project, whether  
114 or not the emergency capital improvement project is related to a project that has exceeded its  
115 construction budget.

116           (e) The director shall report to the Office of the Legislative Fiscal Analyst within 30  
117 days:

118           (i) an authorization under Subsection (3)(c); or

119           (ii) a transfer under Subsection (3)(d).

120           (f) The Legislature shall annually review the amount held in the project reserve for  
121 possible reallocation by the Legislature to other building needs, including the cost of  
122 administering building projects.

123           (4) If any part of the appropriation for a building project, other than the part set aside  
124 for the Utah Percent-for-Art Program under Title 9, Chapter 6, Part 4, Utah Percent-for-Art  
125 Act, remains unencumbered after the award of construction and professional service contracts  
126 and establishing a reserve for fixed and moveable equipment, the balance of the appropriation  
127 is dedicated to the project reserve and does not revert to the General Fund.

128           (5) (a) (i) One percent of the amount appropriated for the construction of any new state  
129 building or facility may be appropriated and set aside for the Utah Percent-for-Art Program  
130 administered by the Division of Fine Arts under Title 9, Chapter 6, Part 4, Utah Percent-for-Art  
131 Act.

132           (ii) The total amount appropriated under Subsection (5)(a)(i) may not exceed \$200,000.

133           (b) The director shall release to the Division of Fine Arts any funds included in an  
134 appropriation to the division that are designated by the Legislature for the Utah Percent-for-Art  
135 Program.

136           (c) Funds from appropriations for any state building or facility of which any part is

137 derived from the issuance of bonds, to the extent it would jeopardize the federal income tax  
138 exemption otherwise allowed for interest paid on bonds, may not be set aside.

139           Section 3. **Effective date.**

140           If approved by two-thirds of all the members elected to each house, this bill takes effect  
141 upon approval by the governor, or the day following the constitutional time limit of Utah  
142 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,  
143 the date of veto override.