

**CAPITAL DEVELOPMENT AND CAPITAL IMPROVEMENT
PROJECTS AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad R. Wilson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah Administrative Services Code by amending provisions relating to capital development and capital improvement projects.

Highlighted Provisions:

This bill:

- ▶ provides that if the construction of a new building or facility will require an immediate or future increase in state funding for operations and maintenance or for capital improvements, the Legislature may not authorize the new building or facility until the Legislature appropriates certain funds;
- ▶ increases the percentage of the replacement cost of existing state facilities and infrastructure to capital improvements that the Legislature has to appropriate before the Legislature may fund the design or construction of any new capital development projects; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 **63A-5-104**, as last amended by Laws of Utah 2015, Chapter 297

30

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

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

33 **63A-5-104. Definitions -- Capital development and capital improvement process**
34 **-- Approval requirements -- Limitations on new projects -- Emergencies.**

35 (1) As used in this section:

36 (a) "Capital developments" means a:

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

40 (b) "Capital improvements" means a:

41 (i) remodeling, alteration, replacement, or repair project with a total cost of less than
42 \$2,500,000;

43 (ii) site and utility improvement with a total cost of less than \$2,500,000; or

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

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

47 (ii) "New facility" includes:

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

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

50 (iii) "New facility" does not mean:

51 (A) the replacement of state-owned space that is demolished or that is otherwise
52 removed from state use, if the total construction cost of the replacement space is less than
53 \$2,500,000; or

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

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

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

60 (2) (a) The State Building Board, on behalf of all state agencies, commissions,
61 departments, and institutions shall submit its capital development recommendations and
62 priorities to the Legislature for approval and prioritization.

63 (b) In developing the State Building Board's capital development recommendations and
64 priorities, the State Building Board shall:

65 (i) require each state agency, commission, department, or institution requesting an
66 appropriation for a capital development project to complete a study that demonstrates the
67 feasibility of the capital development project, including:

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

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

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

71 (D) the economic and community impacts of the capital development project; and

72 (ii) verify the completion and accuracy of the feasibility study described in Subsection
73 (2)(b)(i).

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

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

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

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

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

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

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

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

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

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

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

93 (B) state capital improvement funding.

94 (d) Legislative approval is not required for:

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

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

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

102 (iv) a capital project that:

103 (A) is funded by:

104 (I) the Uintah Basin Revitalization Fund; or

105 (II) the Navajo Revitalization Fund; and

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

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

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

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

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

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

121 under this exemption.

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

125 (ii) The list shall identify:

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

127 (B) multiple projects within a single building or facility that collectively cost more than
128 \$1,000,000;

129 (C) a single project that will be constructed over multiple years with a yearly cost of
130 \$1,000,000 or more and an aggregate cost of more than \$2,500,000;

131 (D) multiple projects within a single building or facility with a yearly cost of
132 \$1,000,000 or more and an aggregate cost of more than \$2,500,000;

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

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

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

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

145 (d) Beginning on July 1, 2013, in prioritizing capital improvements, the State Building
146 Board shall allocate at least 80% of the funds that the Legislature appropriates for capital
147 improvements to:

148 (i) projects that address:

149 (A) a structural issue;

150 (B) fire safety;

151 (C) a code violation; or

- 152 (D) any issue that impacts health and safety;
- 153 (ii) projects that upgrade:
- 154 (A) an HVAC system;
- 155 (B) an electrical system;
- 156 (C) essential equipment;
- 157 (D) an essential building component; or
- 158 (E) infrastructure, including a utility tunnel, water line, gas line, sewer line, roof,
- 159 parking lot, or road; or
- 160 (iii) projects that demolish and replace an existing building that is in extensive
- 161 disrepair and cannot be fixed by repair or maintenance.
- 162 (e) Beginning on July 1, 2013, in prioritizing capital improvements, the State Building
- 163 Board shall allocate no more than 20% of the funds that the Legislature appropriates for capital
- 164 improvements to:
- 165 (i) remodeling and aesthetic upgrades to meet state programmatic needs; or
- 166 (ii) construct an addition to an existing building or facility.
- 167 (f) The State Building Board may require an entity that benefits from a capital
- 168 improvement project to repay the capital improvement funds from savings that result from the
- 169 project.
- 170 (g) The State Building Board may provide capital improvement funding to a single
- 171 project, or to multiple projects within a single building or facility, even if the total cost of the
- 172 project or multiple projects is \$2,500,000 or more, if:
- 173 (i) the capital improvement project or multiple projects require more than one year to
- 174 complete; and
- 175 (ii) the Legislature has affirmatively authorized the capital improvement project or
- 176 multiple projects to be funded in phases.
- 177 (h) In prioritizing and allocating capital improvement funding, the State Building
- 178 Board shall comply with the requirement in Subsection [63B-23-101\(2\)\(f\)](#).
- 179 (5) The Legislature may authorize:
- 180 (a) the total square feet to be occupied by each state agency; and
- 181 (b) the total square feet and total cost of lease space for each agency.
- 182 (6) If construction of a new building or facility [~~will be paid for by nonstate funds, but~~]

183 will require an immediate or future increase in state funding for operations and maintenance or
184 for capital improvements, the Legislature may not authorize the new building or facility until
185 the Legislature appropriates funds for:

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

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

190 (7) (a) Except as provided in Subsection (7)(b) [~~or (c)~~], the Legislature may not fund
191 the design or construction of any new capital development projects, except to complete the
192 funding of projects for which partial funding has been previously provided, until the
193 Legislature has appropriated [~~1.1%~~] 1.5% of the replacement cost of existing state facilities and
194 infrastructure to capital improvements.

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

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

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

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

202 [~~(c) (i) The requirements under Subsections (6)(a) and (b) do not apply to the 2008-09,
203 2009-10, 2010-11, 2011-12, and 2012-13 fiscal years.]~~

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

206 (8) It is the policy of the Legislature that a new building or facility be approved and
207 funded for construction in a single budget action, therefore the Legislature may not fund the
208 programming, design, and construction of a new building or facility in phases over more than
209 one year unless the Legislature has approved each phase of the funding for the construction of
210 the new building or facility by the affirmative vote of two-thirds of all the members elected to
211 each house.

212 (9) (a) If, after approval of capital development and capital improvement priorities by
213 the Legislature under this section, emergencies arise that create unforeseen critical capital

214 improvement projects, the State Building Board may, notwithstanding the requirements of Title
215 63J, Chapter 1, Budgetary Procedures Act, reallocate capital improvement funds to address
216 those projects.

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

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

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

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

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

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

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

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

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

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

Legislative Review Note
Office of Legislative Research and General Counsel