

**Representative Gage Froerer** proposes the following substitute bill:

**HIGHER EDUCATION CAPITAL FACILITIES**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephen H. Urquhart**

House Sponsor: Gage Froerer

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**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;
- ▶ amends provisions related to the capital development and capital improvement process;
- ▶ amends provisions related to the statewide contingency reserve; and



26           ▶ makes technical and conforming changes.

27 **Money Appropriated in this Bill:**

28           None

29 **Other Special Clauses:**

30           This bill provides a special effective date.

31           This bill provides a coordination clause.

32 **Utah Code Sections Affected:**

33 AMENDS:

34           **53B-7-101**, as last amended by Laws of Utah 2015, Chapter 361

35           **53B-20-104**, as last amended by Laws of Utah 2012, Chapter 242

36           **63A-5-104**, as last amended by Laws of Utah 2015, Chapter 297

37           **63A-5-209**, as last amended by Laws of Utah 2010, Chapter 163

38 ENACTS:

39           **53B-7-701**, Utah Code Annotated 1953

40           **53B-7-702**, Utah Code Annotated 1953

41           **53B-7-703**, Utah Code Annotated 1953

42           **53B-7-704**, Utah Code Annotated 1953

43           **53B-7-705**, Utah Code Annotated 1953

44           **53B-7-706**, Utah Code Annotated 1953

45           **63J-1-316**, Utah Code Annotated 1953

46 **Utah Code Sections Affected by Coordination Clause:**

47           **63A-5-104**, as last amended by Laws of Utah 2015, Chapter 297



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

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

51           **53B-7-101. Combined requests for appropriations -- Board review of operating**  
52 **budgets -- Submission of budgets -- Recommendations -- Hearing request --**  
53 **Appropriation formulas -- Allocations -- Dedicated credits -- Financial affairs.**

54           (1) As used in this section:

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

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

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

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

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

63 (i) employee compensation;

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

65 (iii) mission based funding described in Subsection (3);

66 (iv) performance funding described in Subsection (4);

67 (v) statewide and institutional priorities, including scholarships, financial aid, and  
68 technology infrastructure; and

69 (vi) unfunded historic growth.

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

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

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

78 (b) Mission based funding shall include:

79 (i) enrollment growth; and

80 (ii) up to three strategic priorities.

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

82 (i) approved by the board; and

83 (ii) designed to improve the availability, effectiveness, or quality of higher education in  
84 the state.

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

- 88 (4) (a) The board shall establish performance funding.
- 89 (b) Performance funding shall include metrics approved by the board, including:
- 90 (i) degrees and certificates granted;
- 91 (ii) services provided to traditionally underserved populations;
- 92 (iii) responsiveness to workforce needs;
- 93 (iv) institutional efficiency; and
- 94 (v) for a research university, graduate research metrics.
- 95 (c) The board shall:
- 96 (i) award performance funding appropriated by the Legislature to institutions based on
- 97 the institution's success in meeting the metrics described in Subsection (4)(b); and
- 98 (ii) reallocate funding that is not awarded to an institution under Subsection (4)(c)(i)
- 99 for distribution to other institutions that meet the metrics described in Subsection (4)(b).
- 100 (5) (a) Institutional operating budgets shall be submitted to the board at least 90 days
- 101 prior to the convening of the Legislature in accordance with procedures established by the
- 102 board.
- 103 (b) ~~[Funding]~~ Except as provided in Subsection (5)(c), funding requests pertaining to
- 104 capital facilities and land purchases shall be submitted in accordance with procedures
- 105 prescribed by the State Building Board.
- 106 (c) Funding requests pertaining to capital developments shall be submitted in
- 107 accordance with procedures described in Part 7, Capital Developments.
- 108 (6) (a) The budget recommendations of the board shall be accompanied by full
- 109 explanations and supporting data.
- 110 (b) The appropriations recommended by the board shall be made with the dual
- 111 objective of:
- 112 (i) justifying for higher educational institutions appropriations consistent with their
- 113 needs, and consistent with the financial ability of the state; and
- 114 (ii) determining an equitable distribution of funds among the respective institutions in
- 115 accordance with the aims and objectives of the statewide master plan for higher education.
- 116 (7) (a) The board shall request a hearing with the governor on the recommended
- 117 appropriations.
- 118 (b) After the governor delivers his budget message to the Legislature, the board shall

119 request hearings on the recommended appropriations with the appropriate committees of the  
120 Legislature.

121 (c) If either the total amount of the state appropriations or its allocation among the  
122 institutions as proposed by the Legislature or its committees is substantially different from the  
123 recommendations of the board, the board may request further hearings with the Legislature or  
124 its appropriate committees to reconsider both the total amount and the allocation.

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

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

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

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

137 (b) A president of an institution shall:

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

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

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

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

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

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

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

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

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

157 **Part 7. Capital Developments**

158 **53B-7-701. Title.**

159 This part is known as "Capital Developments."

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

161 **53B-7-702. Definitions.**

162 As used in this part:

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

165 (2) "Capital developments" means the same as that term is defined in Section  
166 [63A-5-104](#).

167 (3) "Institution" means:

168 (a) the University of Utah;

169 (b) Utah State University;

170 (c) Southern Utah University;

171 (d) Weber State University;

172 (e) Snow College;

173 (f) Dixie State University;

174 (g) Utah Valley University; or

175 (h) Salt Lake Community College.

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

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

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

181 **53B-7-703. Board administration of account -- Improvement plans -- Requests for**  
182 **additional funds.**

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

184 (2) The board may only distribute the increase described in Subsection [63J-1-316\(3\)\(a\)](#)  
185 to an institution to use for operations and maintenance costs for a capital development project  
186 that has been fully constructed at the time of the distribution.

187 (3) In accordance with the rules described in Subsection [53B-7-704\(1\)](#), the board shall  
188 assign an allocation to each institution.

189 (4) The board shall award an institution all or a portion of the institution's allocation  
190 based on the institution's success in meeting the performance funding metrics described in  
191 Section [53B-7-101](#).

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

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

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

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

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

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

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

210 **53B-7-704. Board rulemaking.**

211 On or before July 1, 2017, in accordance with Title 63G, Chapter 3, Utah

212 Administrative Rulemaking Act, the board shall make rules that:

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

215 (2) establish required components for an improvement plan described in Section  
216 53B-7-703 that provide measurable outcomes of progress.

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

218 **53B-7-705. Institution use of award -- Accrual of awards.**

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

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

221 (b) for ongoing operations and maintenance costs for any capital development projects  
222 approved by the Legislature;

223 (c) to pay debt service on a bond approved by the Legislature; or

224 (d) to fund a contingency reserve or project reserve, created by the institution, for  
225 capital development projects of the institution.

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

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

229 **53B-7-706. Legislative approval of a capital development project -- Oversight.**

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

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

234 (3) The board shall:

235 (a) review each submission for approval received in accordance with Subsection (2);

236 (b) based on the submissions described in Subsection (2), create a list of approved  
237 capital development projects;

238 (c) submit the list described in Subsection (3)(b) to:

239 (i) the Infrastructure and General Government Appropriations Subcommittee; and

240 (ii) the State Building Board;

241 (d) submit a report to the Higher Education Appropriations Subcommittee regarding  
242 the procedures under this section; and



243 (e) obtain approval for each capital development project, on behalf of an institution,  
244 from the Legislature in an appropriations act.

245 (4) (a) After receiving the list described in Subsection (3)(b), the State Building Board  
246 shall, based on the capital development projects on the list, review and recommend capital  
247 development projects to the Infrastructure and General Government Appropriations  
248 Subcommittee.

249 (b) The State Building Board, in reviewing and recommending capital development  
250 projects as described in Subsection (4)(a), shall require an institution, for each of the  
251 institution's capital development projects on the list, to address whether and how, as a result of  
252 the project, the institution will:

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

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

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

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

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

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

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

263 **53B-20-104. Capital facilities projects recommendations -- Rules.**

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

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

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

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

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

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

280 (5) Before a capital development project may be submitted to the Legislature, the board  
281 shall comply with the approval requirements described in Section [53B-7-706](#).

282 Section 9. Section **63A-5-104** is amended to read:

283 **63A-5-104. Definitions -- Capital development and capital improvement process**  
284 **-- Approval requirements -- Limitations on new projects -- Emergencies.**

285 (1) As used in this section:

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

287 [(i)] (A) remodeling, site, or utility project with a total cost of [~~\$2,500,000~~] \$3,500,000  
288 or more;

289 [(ii)] (B) new facility with a construction cost of \$500,000 or more; or

290 [(iii)] (C) purchase of real property where an appropriation is requested to fund the  
291 purchase.

292 (ii) "Capital developments" does not include a project described in Subsection  
293 (1)(b)(iii).

294 (b) "Capital improvements" means [a]:

295 (i) a remodeling, alteration, replacement, or repair project with a total cost of less than  
296 [~~\$2,500,000~~] \$3,500,000;

297 (ii) a site [~~and~~] or utility improvement with a total cost of less than [~~\$2,500,000; or~~]  
298 \$3,500,000;

299 (iii) a utility infrastructure improvement project that:

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

301 (B) consists of two or more projects that, if done separately, would each cost less than  
302 \$3,500,000; and

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

305            [(iii)] (iv) a new facility with a total construction cost of less than \$500,000.

306            (c) (i) "New facility" means the construction of a new building on state property

307 regardless of funding source.

308            (ii) "New facility" includes:

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

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

311            (iii) "New facility" does not [~~mean~~] include:

312            (A) the replacement of state-owned space that is demolished or that is otherwise

313 removed from state use, if the total construction cost of the replacement space is less than

314 [~~\$2,500,000~~] \$3,500,000; or

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

316            (d) "Replacement cost of existing state facilities and infrastructure" means the

317 replacement cost, as determined by the Division of Risk Management, of state facilities,

318 excluding auxiliary facilities as defined by the State Building Board and the replacement cost

319 of infrastructure as defined by the State Building Board.

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

321            (2) (a) [~~The~~] Except as provided in Subsection (2)(d), the State Building Board, on

322 behalf of all state agencies, commissions, departments, and institutions shall submit [~~its~~] the

323 State Building Board's capital development recommendations and priorities to the Legislature

324 for approval and prioritization.

325            (b) In developing the State Building Board's capital development recommendations and

326 priorities, the State Building Board shall:

327            (i) require each state agency, commission, department, or institution requesting an

328 appropriation for a capital development project to complete a study that demonstrates the

329 feasibility of the capital development project, including:

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

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

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

333            (D) the economic and community impacts of the capital development project; [~~and~~]

334            (ii) verify the completion and accuracy of the feasibility study described in Subsection

335 (2)(b)(i)[~~-~~]; and

336 (iii) require that an institution described in Section 53B-1-102, except an institution  
337 listed in Section 53B-7-702, that submits a request for a capital development project address  
338 whether and how, as a result of the project, the institution will:

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

341 (B) respond to individual skilled and technical job demand over the next 3, 5, and 10  
342 years;

343 (C) respond to industry demands for trained workers;

344 (D) help meet commitments made by the Governor's Office of Economic  
345 Development, including relating to training and incentives;

346 (E) respond to changing needs in the economy; and

347 (F) based on demographics, respond to demands for online or in-class instruction.

348 (c) An agency may not modify a capital development project request after the deadline  
349 for submitting the request, except to the extent that a modification of the scope of the project,  
350 or the amount of funds requested, is necessary due to increased construction costs or other  
351 factors outside of the agency's control.

352 (d) The State Building Board shall submit the State Building Board's capital  
353 development recommendations for an institution listed in Section 53B-7-702, in accordance  
354 with Section 53B-7-706.

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

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

359 (i) the State Building Board determines that~~[-(i)]~~ the requesting state agency,  
360 commission, department, or institution has provided adequate assurance that~~[-(A)]~~ state funds  
361 will not be used for the design or construction of the facility; ~~[and]~~

362 ~~[(B)]~~ (ii) the state agency, commission, department, or institution ~~[has a plan for~~  
363 ~~funding in place that will not require increased state funding]~~ provides to the State Building  
364 Board a written document, signed by the head of the state agency:

365 (A) stating that funding or a revenue stream is in place, or will be in place before the  
366 project is completed, to ensure that increased state funding will not be required to cover the

367 cost of operations and maintenance to ~~[, or state funding for,]~~ the resulting facility for  
368 immediate or future capital improvements [to the resulting facility]; and  
369 (B) detailing the source of the funding that will be used for the cost of operations and  
370 maintenance for immediate and future capital improvements to the resulting facility; and  
371 ~~[(ii)]~~ (iii) the State Building Board determines that the use of the state property is:  
372 (A) appropriate and consistent with the master plan for the property; and  
373 (B) will not create an adverse impact on the state.  
374 (c) (i) The Division of Facilities Construction and Management shall maintain a record  
375 of facilities constructed under the exemption provided in Subsection (3)(b).  
376 (ii) For facilities constructed under the exemption provided in Subsection (3)(b), a state  
377 agency, commission, department, or institution may not request:  
378 (A) increased state funds for operations and maintenance; or  
379 (B) state capital improvement funding.  
380 (d) Legislative approval is not required for:  
381 (i) the renovation, remodeling, or retrofitting of an existing facility with nonstate funds  
382 that has been approved by the State Building Board;  
383 (ii) a facility to be built with nonstate funds and owned by nonstate entities within  
384 research park areas at the University of Utah and Utah State University;  
385 (iii) a facility to be built at This is the Place State Park by This is the Place Foundation  
386 with funds of the foundation, including grant money from the state, or with donated services or  
387 materials;  
388 (iv) a capital project that:  
389 (A) is funded by:  
390 (I) the Uintah Basin Revitalization Fund; or  
391 (II) the Navajo Revitalization Fund; and  
392 (B) does not provide a new facility for a state agency or higher education institution; or  
393 (v) a capital project on school and institutional trust lands that is funded by the School  
394 and Institutional Trust Lands Administration from the Land Grant Management Fund and that  
395 does not fund construction of a new facility for a state agency or higher education institution.  
396 (e) (i) Legislative approval is not required for capital development projects to be built  
397 for the Department of Transportation:

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

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

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

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

411 (ii) The list shall identify:

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

413 (B) multiple projects within a single building or facility that collectively cost more than  
414 \$1,000,000;

415 (C) a single project that will be constructed over multiple years with a yearly cost of  
416 \$1,000,000 or more and an aggregate cost of more than [~~\$2,500,000~~] \$3,500,000;

417 (D) multiple projects within a single building or facility with a yearly cost of  
418 \$1,000,000 or more and an aggregate cost of more than [~~\$2,500,000~~] \$3,500,000;

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

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

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

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

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

432 (d) [~~Beginning on July 1, 2013, in~~] In prioritizing capital improvements, the State  
433 Building Board shall allocate at least 80% of the funds that the Legislature appropriates for  
434 capital improvements to:

435 (i) projects that address:

436 (A) a structural issue;

437 (B) fire safety;

438 (C) a code violation; or

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

440 (ii) projects that upgrade:

441 (A) an HVAC system;

442 (B) an electrical system;

443 (C) essential equipment;

444 (D) an essential building component; or

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

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

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

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

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

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

457 (g) The State Building Board may provide capital improvement funding to a single  
458 project, or to multiple projects within a single building or facility, even if the total cost of the  
459 project or multiple projects is [~~\$2,500,000~~] \$3,500,000 or more, if:

460 (i) the capital improvement project [~~or multiple projects require more than one year to~~  
461 ~~complete~~] is a project described in Subsection (1)(b)(iii); and

462 (ii) the Legislature has [~~affirmatively authorized the capital improvement project or~~  
463 ~~multiple projects to be funded in phases~~] not refused to fund the project with capital  
464 improvement funds.

465 (h) In prioritizing and allocating capital improvement funding, the State Building  
466 Board shall comply with the requirement in Subsection 63B-23-101(2)(f).

467 (5) The Legislature may authorize:

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

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

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

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

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

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

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

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

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

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



491 infrastructure.

492 ~~[(c) (i) The requirements under Subsections (6)(a) and (b) do not apply to the 2008-09,~~  
493 ~~2009-10, 2010-11, 2011-12, and 2012-13 fiscal years.]~~

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

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

502 (9) (a) If, after approval of capital development and capital improvement priorities by  
503 the Legislature under this section, emergencies arise that create unforeseen critical capital  
504 improvement projects, the State Building Board may, notwithstanding the requirements of Title  
505 63J, Chapter 1, Budgetary Procedures Act, reallocate capital improvement funds to address  
506 those projects.

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

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

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

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

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

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

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

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

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

528 Section 10. Section **63A-5-209** is amended to read:

529 **63A-5-209. Building appropriations supervised by director -- Contingencies --**  
530 **Disposition of project reserve funds -- Set aside for Utah Percent-for-Art Program.**

531 (1) The director shall:

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

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

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

539 (ii) (A) allocate amounts from appropriations necessary to cover expenditures  
540 previously made from the planning fund under Section **63A-5-211** in the preparation of plans,  
541 engineering, and specifications; and

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

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

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

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

547 (2) (a) The director shall base the amount budgeted for contingencies on a sliding scale  
548 percentage of the construction cost ranging from:

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

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

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

552 (i) costs of change orders; and

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

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

556 (d) An institution listed in Section 53B-7-702 is not eligible to receive statewide  
557 contingency reserve funds.

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

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

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

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

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

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

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

572 (ii) for which funds are not allocated.

573 (d) The director may:

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

577 (ii) transfer money from the account described in Subsection (3)(b)(i) to the account  
578 described in Subsection (3)(b)(ii) if a capital development project has exceeded its construction  
579 budget.

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

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

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

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

587 (g) An institution listed in Section 53B-7-702 is not eligible to receive statewide  
588 project reserve funds.

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

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

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

601 (c) Funds from appropriations for any state building or facility of which any part is  
602 derived from the issuance of bonds, to the extent it would jeopardize the federal income tax  
603 exemption otherwise allowed for interest paid on bonds, may not be set aside.

604 Section 11. Section 63J-1-316 is enacted to read:

605 **63J-1-316. Establishing a Higher Education Capital Developments Account --**  
606 **Providing for deposits into the account -- Providing for interest generated by the account.**

607 (1) As used in this section:

608 (a) "Account" means the Higher Education Capital Developments Account, created in  
609 Subsection (2)(a).

610 (b) "Capital developments" means the same as that term is defined in Section  
611 63A-5-104.

612 (c) "Education Fund revenue surplus" means the same as that term is defined in Section  
613 63J-1-313.

614 (d) "Operating deficit" means the same as that term is defined in Section 63J-1-313.

615 (2) (a) There is created within the Education Fund a restricted account known as the  
616 Higher Education Capital Developments Account.

617 (b) The account shall be funded by legislative appropriations, the surplus revenue  
618 required to be deposited into the account by this section, and other funds required to be  
619 deposited into the account under Section [53B-7-703](#).

620 (c) The account may accrue interest, which shall be deposited into the account.

621 (3) (a) Subject to future budget constraints, each year the Legislature shall increase the  
622 amount appropriated to the account by 3% of the capital developments amounts provided by  
623 legislative appropriations described in Subsection (2)(b).

624 (b) The State Board of Regents shall ensure that the increase described in Subsection  
625 (3)(a) is used exclusively to fund operations and maintenance costs for capital development  
626 projects approved by the Legislature.

627 (4) (a) At the end of any fiscal year in which the Division of Finance, in consultation  
628 with the legislative fiscal analyst and in conjunction with the completion of the annual audit by  
629 the state auditor, determines that there is an Education Fund revenue surplus, the Division of  
630 Finance shall transfer 12.5% of the Education Fund revenue surplus into the account.

631 (b) The Division of Finance shall calculate the amount to be transferred under this  
632 Subsection (4) excluding any direct legislative appropriation made to the account.

633 (c) The Division of Finance shall transfer the amount required under this Subsection  
634 (4):

635 (i) after transferring the Education Fund revenue surplus required to be transferred in  
636 accordance with Section [63J-1-313](#); and

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

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

642 (5) Expenditures from the account shall be made in accordance with Section  
643 [53B-7-703](#).

644 Section 12. **Effective date.**

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

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

647 (a) Section [53B-7-101](#);

648 (b) Section [53B-7-703](#);

649 (c) Section [53B-7-705](#);

650 (d) Section [53B-7-706](#);

651 (e) Section [53B-20-104](#);

652 (f) Section [63A-5-103](#);

653 (g) Section [63A-5-104](#);

654 (h) Section [63A-5-206](#); and

655 (i) Section [63A-5-209](#).

656 Section 13. **Coordinating S.B. 188 with S.B. 156 -- Substantive and technical**  
657 **amendments.**

658 If this S.B. 188 and S.B. 156, State Facilities Amendments, both pass and become law,  
659 it is the intent of the Legislature that the Office of Legislative Research and General Counsel,  
660 in preparing the Utah Code database for publication, make the following changes:

661 (1) Subsection [63A-5-104\(2\)\(b\)\(iii\)](#) in S.B. 188 supersedes Subsection  
662 [63A-5-104\(2\)\(b\)\(iii\)](#) in S.B. 156; and

663 (2) not enact Subsection [63A-5-104\(2\)\(b\)\(iv\)](#) in S.B. 156.