

January 15, 2014

MEMORANDUM

TO: State Board of Regents
FROM: David L. Buhler
SUBJECT: Revision of R710, Capital Facilities

Issue

A revision of Policy R710, *Capital Facilities* is attached. The revisions to this policy deal with requirements and guidelines that apply to the acquisition of real property by USHE institutions.

Background

Section 4-5.4, *Acquisition and Disposal of Real Property*, has been updated to include Regent guidelines for the review and consideration for approval of real properties to be acquired by purchase or exchange, or to be accepted as gifts that are designated for ongoing institutional use. The revised policy retains the requirement of an appraisal in instances of real property acquisition by purchase or exchange, and adds new guidelines for all acquisitions as appropriate.

The "guidelines" are intended to provide due-diligence context for evaluation of properties presented for acquisition approval and recognizes that because of diverse circumstances of some properties, application of all of the guidelines in every case may not be required.

Section 4.5.4.3., *Real Property Donated to Institutions Related to Development and Fund Raising Initiatives*, has been added to clarify that acceptance of gifts of real property expected to be sold by the institution is delegated to the institutional presidents within institutional gift acceptance standards and procedures approved by the Boards of Trustees.

Commissioner's Recommendation

The Commissioner recommends approval of these policy revisions.

David L. Buhler
Commissioner of Higher Education

DLB/GLS/WRH/CRW
Attachment

R710-1 Purpose: To clarify the role of the State Board of Regents, that of the institutional Boards of Trustees and of the institutional Presidents with respect to capital facilities.

R710-2 References

- 2.1. Utah Code §53B-6-101 (Master Plan for Higher Education - Studies and Evaluations)
- 2.2. Utah Code §53B-7-101 (Combined Requests for Appropriations)
- 2.3. Utah Code §53B-20-101 (Property Rights - Title and Control)
- 2.4. Utah Code Title 63A, Chapter 5 (State Building Board - Division of Facilities Construction and Management)
- 2.5. Policy and Procedures R711, State Building Board Delegation of Capital Facilities Projects
- 2.6. Policy and Procedures R720, Capital Facilities Master Planning

R710-3 Definitions

- 3.1. **"Capital Facilities"** – Capital Facilities are defined as fixed capital assets such as buildings and structures, real estate, utilities and distribution infrastructure, landscape features, hardscape (surface parking, plazas, sidewalks, and exterior stairs and ramps), roadways, campus lighting, and other improvements that serve and protect the general purposes of an institution.
- 3.2. **"Capital Development"** -- Utah Code 63A-5-104(1)(a) defines a capital development as any:
 - remodeling, site, or utility projects with a total cost of \$2,500,000 or more;
 - new facility with a construction cost of \$500,000 or more; or,
 - purchase of real property where an appropriation is requested to fund the purchase.
 - 3.2.1. **"New Facility"** means the construction of any new building on state property regardless of funding source, including
 - an addition to an existing building; and
 - the enclosure of space that was not previously fully enclosed.
 - 3.2.2. **"New facility"** does not include:
 - the replacement of state-owned space that is demolished, if the total construction cost of the replacement space is less than \$2,500,000; or
 - the construction of facilities that do not fully enclose a space.
- 3.3. **"Capital Improvement"** – Utah Code 63A-5-104(1)(b) defines a capital improvement as any:

¹ Approved September 16, 1975; amended February 16, 1982, June 24, 1988, December 14, 1990, June 18, 1993, September 24, 1993, December 11, 1998, June 4, 1999, April 18, 2008, April 1, 2010, November 16, 2012, January 25, 2013, September 13, 2013.

- remodeling, alteration, replacement, or repair project with a total cost of less than \$2,500,000;
- site and utility improvement with a total cost of less than \$2,500,000; or
- new facility with a total construction cost of less than \$500,000.

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

- (i) the capital improvement project or multiple projects require more than one year to complete; and
- (ii) the Legislature has affirmatively authorized the capital improvement project or multiple projects to be funded in phases.

3.3.1. Submission of Capital Improvement Requests – Each year institutions shall submit to the Division of Facilities Construction and Management (DFCM) a prioritized list of projects for funding through the state capital improvement program. Requests for funding of Capital Improvement Projects shall be approved by institutional Boards of Trustees. Institutions may not include acquisition of equipment unless it is an integral component of a capital improvement. Normal maintenance of fixed capital assets (i.e., unplanned or discretionary) shall be considered part of the annual operating budget. Normal maintenance excludes preventive and corrective maintenance of equipment scheduled by the Division of Facilities Construction and Management (DFCM), as well as planned or programmed maintenance of major structural components of a facility (i.e., roofs, parking lots).

3.4. "Capital Investment Plan": Integrated scheduling of capital developments and improvements over a five-year planning period.

R710-4 Policy

4.1. Statutory Authority: Title 53B outlines the broad responsibilities of the State Board of Regents in administering the facilities, grounds, buildings and equipment at institutions under its jurisdiction. These policies and procedures are issued under that authority to clarify the roles to be assigned to the institutional Presidents, the institutional Boards of Trustees and the State Board of Regents.

4.2. Purpose: The purpose of these policies is to develop and maintain a well-planned, harmonious and safe physical environment for student achievement and personal growth on each of the institutional campuses of the State System of Higher Education in accordance with the applicable provisions of Title 53B.

4.3. Effective and Efficient Use of Resources: The Utah System of Higher Education seeks to maximize the effective and efficient use of state resources. Institutions must demonstrate that requests for construction of new capital facilities or remodeling of existing facilities meet the standards of approved academic and facilities master plans. Such justification should consider the availability of state resources and include information relating to student enrollments, space utilization, structural obsolescence, operational inefficiencies, and operating budget constraints.

4.4. Remodeling: Remodeling of existing capital facilities for the purpose of effecting a change in functions will be undertaken only when the need for such a project is justified by and is consistent with the role assignment of the institution involved and in accord with previously approved goals and objectives set by the State Board of Regents. The term "remodeling" as used herein includes any alteration, modification, or improvement project other than routine maintenance or repair work, regardless of the source of funding.

4.5. The State Board of Regents Will:

4.5.1. Programmatic Planning – Require institutions to undertake comprehensive programmatic planning as part of comprehensive programmatic planning for the Utah System of Higher Education. This programmatic planning will inform the evaluation of any proposals for planning and construction of additional capital facilities.

4.5.2. Campus Facilities Master Plans – Require comprehensive campus facilities master plans to be completed and approved for each institution in correlation with programmatic planning. Each institution shall seek formal Regent approval of its campus master plan on a biennial basis.

4.5.3. Requests for Appropriated Funds – Review and approve all institutional requests for funds for capital facilities to be appropriated by the State Legislature through the State Building Board. Recommendations to the State Building Board, Governor, and Legislature shall be based upon the programmatic planning and facilities master plan requirements of the institutions. Each funding request must be accompanied by a detailed planning and budget guide.

4.5.4. Acquisition and Disposal of Real Property

4.5.4.1 Property Acquisitions Requiring Approval – Except as provided by 4.5.4.2 below, The Regents shall review and consider for approval all institutional requests for real property acquisition that commit institutional funds in excess of \$100,000 or where consideration paid for options to acquire property commits institutional funds in excess of \$25,000. ~~In addition, the following provisions and guidelines will be utilized by the Regents in authorizing the acquisition of real properties: shall be complied with in presenting properties for approval to be acquired by purchase or exchange:~~

4.5.4.1.1. Fair Market Value Required Appraisal – For acquisitions of property by purchase or exchange ~~A~~ fair market value of property shall be established that is based on an appraisal completed by a State of Utah licensed MAI appraiser with the purchase price not to exceed the appraised value unless otherwise justified.

4.5.4.1.2. Guidelines - The following guidelines will be utilized to the extent reasonably practicable for review and approval of real properties to be acquired by purchase, exchange or to be accepted as gifts designated for ongoing institutional use, regardless of the location of the property. The Board of Regents recognizes that, based on the diverse circumstances of specific properties, application of all these guidelines in every case may not be achievable or required.

4.5.4.1.2.1. Proof of Clear Title – Established by a title report or an owner's policy of title insurance if such title is deemed to be necessary.

4.5.4.1.2.2. Phase I Environmental Assessment or Greater – A Phase I or greater Environmental Assessment may be required by the Regents prior to purchase, exchange, or acceptance of a gifted property when there are questions about the possibility of environmental issues that would materially affect the use of the property.

4.5.4.1.2.3. Code and Requirements Review – Utilized to determine the suitability of a property under all applicable codes and requirements, including any applicable provisions of State law.

4.5.4.1.2.4. Engineering Assessment – For all improved real property valued at \$250,000 or above the institution should obtain an engineering assessment of mechanical systems and structural integrity of improvements located on the property. This need may be waived if an engineering assessment has been performed within the past 12 months or if the land is unimproved. The institution may perform an engineering assessment for real property valued at less than \$250,000.

4.5.4.1.2.5. Past Maintenance and Operational Expenses – Where possible, past maintenance and operational expense histories should be obtained.

4.5.4.1.2.6. Situs, Zoning, and Planning Information – This information should be obtained where applicable or when it is determined to be needed.

4.5.4.1.2.7. Land Survey – An Alta/ACSM Land Title Survey should be obtained unless such a survey has been performed in the prior 12 months.

4.5.4.2. Property Acquisitions Adjacent to Campuses - The State Board of Regents delegates the authority to the institutional Boards of Trustees to engage in property purchase transactions if a property purchase meets the above conditions with the following limitations:

4.5.4.2.1. Property needs to be identified on the approved campus master plan and must be contiguous to the current campus boundary.

4.5.4.2.2. Property purchased cannot exceed \$500,000 for properties purchased by the UU, WSU, SLCC, UVU, USU and DSCU, \$400,000 for SUU and \$250,000 for Snow and USU-CEU Eastern.

4.5.4.2.3. All purchases must have a supporting appraisal; made by a licensed appraiser, where the purchase price cannot exceed the MAI appraised value

4.5.4.2.4. Property purchased with endowment funds or independent foundations does not need approval from the Board of Regents, regardless of cost.

4.5.4.2.5. This delegation of purchasing authority is only available in instances where no O & M funds will be requested. If there is a need for operations and maintenance funds, the purchase needs to be approved through the normal Regent process.

4.5.4.2.6. Reporting of Property Acquisitions – Institutions engaging in a purchase of property utilizing the above authority are required to report the purchase at the next regularly scheduled State Board of Regents' meeting.

4.5.4.3. Real Property Donated to Institutions Related to Development and Fund Raising Initiatives – Acceptance of gifts of real property expected to be sold by the institution with proceeds to be assigned to designated purposes, or to be used for institutional needs not specified by the donor is delegated to the institutional presidents within institutional gift acceptance standards and procedures approved by the Boards of Trustees.

4.5.4.34. Disposal of Property – Except as provided by 4.5.4.4 below, all disposal of real property by USHE institutions is subject to approval by the Regents.

4.5.4.34.1. Determination of Surplus Property – If the real property is determined to not serve the institution's mission and is, therefore, surplus real property it is eligible for sale or exchange on the open market.

4.5.4.34.2. Fair Market Value – Unless otherwise justified, surplus real property shall be sold at or above fair market value as determined by an appraisal completed by a State of Utah licensed MAI appraiser.

4.5.4.45. Disposition of Donated or Gifted Property that is not Contiguous to Campuses - The State Board of Regents delegates to the institutional Boards of Trustees the authority to dispose of donated or gifted real property that is not contiguous to campus boundaries subject to the following conditions:

4.5.4.45.1. The disposal price cannot exceed \$500,000 for properties disposed of by the UU, USU, WSU, SLCC, UVU and DSGU, \$400,000 for SUU; and \$250,000 for Snow and USU-CEU Eastern.

4.5.4.45.2. The property shall be sold at or above fair market value as determined by an appraisal completed by a State of Utah licensed MAI appraiser unless:

- a) the value of the property does not warrant the cost of the appraisal (e.g., low valued recreational property or seriously deteriorated properties, where sale proceeds would be seriously reduced or eliminated due to the cost of obtaining an appraisal);
- b) the gifted property has preexisting conditions that affect the future sales price (e.g., an undivided property interest with the sale controlled by the majority holders, or the property comes from a donor with a sale or price already negotiated or in process with a buyer)

4.5.4.45.3. Reporting of Property Disposals – Institutions engaging in disposal of property utilizing the above authority are required to report the disposal at the next regularly scheduled State Board of Regents' meeting.

4.5.56. Approval of Projects that are inconsistent with Approved Institutional Roles, Goals and Objectives – The Regents will review and approve, as they deem appropriate, all other

institutional requests for planning and construction of facilities, or major remodeling of existing facilities, regardless of the source of funds to be used for such activity, where the proposed construction or remodeling is inconsistent with the role assignment of the institution involved, is not in accord with institutional goals and objectives previously approved by the State Board of Regents, which will require a substantial change in the approved programmatic planning or facilities master plan, or where the construction or remodeling is subject to legislative project approval. Further, all requests for operations and maintenance (O & M) funding require approval by the State Board of Regents. Delegation can occur in the following circumstances:

4.5.67. Projects Funded from Non-State Appropriated Funds – Review and approve institutional project requests for planning and construction of facilities, or remodeling of existing facilities, for which no appropriation of state funds or authority to incur bonded indebtedness is requested, as follows:

4.5.67.1. Funded from Student Fees, Contractual Debt, or Disposal or Exchange or Capital Assets: Proposals for projects funded in whole or in part from an adjustment in student fees, incurring of contractual debt, or the disposal or exchange of land or other capital assets shall be approved by the institutional Board of Trustees prior to submission to the Board of Regents.

4.5.67.2. Funded from Private Sources: Major construction or remodeling projects (defined as projects costing more than \$1,000,000) funded through private sources or a combination of private sources and other non-state funds shall be approved by the institutional Board of Trustees. Upon trustee approval, the institutional President shall submit the project to the Commissioner for inclusion as an action item on an upcoming Board of Regents agenda.

4.5.78. Operating and Maintenance (O & M) Costs on Non-State Funded Projects: (a) An acquisition, construction or remodeling project funded from private sources, or from a combination of private sources and other non-state appropriated funds will be eligible for state appropriated O & M when the use of the building is primarily for approved academic and training purposes and associated support and is consistent with the programmatic planning and facilities master plan requirements of the institutions. Examples of such space include classrooms, class/labs, faculty and education and general administrative offices and related space, library and study space, open labs, education and general conference rooms, physical education space, and academic and approved training support space, i.e., admissions, records, counseling, student aid administration, campus security, computer center and telecommunication space, etc.. If an academic facility, funded in whole or in part by non-state funds, is built to a scale larger than Board approved programmatic or facilities planning requirements, the excess space may not qualify for state appropriated O & M funding. The Board will consider the eligibility of the institution to receive state O & M funding for such excess space on a case-by-case basis.

(b) In most cases, if the acquisition, construction or remodeling project is not primarily for approved academic and training purposes or associated support, it will not be eligible for state appropriated O & M funding. Examples of such space might include research space not generating student credits or the equivalent thereto, football stadia, softball, baseball, soccer fields, basketball arenas, self support auxiliary space, i.e., college bookstores, food service, student housing, recreational services, student organizations, private vendors and student health services spaces, etc.

(c) The Board, on a case by case basis, may determine that an acquisition, construction or remodeling project to be used primarily for purposes other than approved academic and training purposes and associated support should be eligible for state appropriated O & M funds in whole or in part. Each request for such Board consideration must be accompanied by a detailed statement showing how space types included in the facility will relate to important institutional activities such as instruction, research generating student credits, and service within the institution's role statement. Examples of such space might include museums, theaters, community outreach and research spaces administered by academic units that generate academic student credits or the equivalent thereto, etc.

4.5.78.1. O & M Funding Sources for Projects Not Eligible for State Appropriated O & M: In those cases where property acquisitions, construction, or remodeling projects are not eligible for state appropriated O & M funding, the institutional proposal must include arrangements as to how O & M as defined by the State Building Board will be covered. Institutions are to pursue O & M funding in the following sequence for such ineligible non-state funded facilities: first, separate non-state funding assured through private contracts or an O & M endowment established by a private donor; and second , an institutional O & M funding plan with additional revenue to support the new space to be credited to its O & M accounts.

4.5.78.2. Board Approval of O & M Funding Plan: The institutional O & M funding plan must be consistent with the provisions of 4.5.6 and 4.5.6.1 to receive Regents' acquisition, construction or remodeling project approval. Increased consideration for state appropriated O & M will be given to projects previously listed in the Utah State Building Board Five Year Building Program. Board approval of the acquisition of the facility shall include approval of a plan to fund the O & M costs, including the source of the funds and the projected amount needed. Further approval of such proposals, when legally required by the State Building Board and the Legislature, will follow their respective established procedures.

4.5.89. Leased Space: Review and approve institutional requests for plans to lease capital facilities space with state-appropriated funds for programs of instruction, research, or service when contracts for leasing such facilities: (1) exceed \$100,000 per year; (2) commit the institution to space rentals for 10-year duration or beyond; or (3) lead to the establishment of regular state-supported daytime programs of instruction in leased space. An annual report of all space leased by the institutions, including space leased for off-campus continuing education programs and space leased in research parks, shall be compiled by the Commissioner's Office for review by the Board of Regents and forwarded to the State Building Board for possible inclusion its comprehensive 5-year building plan.

4.6. The Commissioner Is Authorized to:

4.6.1. Recommendations: Propose annual recommendations for capital facilities development and improvement projects based on approved capital facilities qualification and prioritization procedures for consideration by the Board in the preparation of its recommendations to the State Building Board, Governor and Legislature.

4.7. Institutional Boards of Trustees Are Authorized to:

4.7.1. Facilities Master Plans: Review and approve institutional campus facilities master plans before they are forwarded to the State Board of Regents.

4.7.2. Requests for Appropriated Funds: Review and approve for submission to the State Board of Regents all institutional requests for funds for capital developments and capital improvements to be appropriated by the State Legislature through the State Building Board.

4.7.3. Inconsistent Projects: Review and approve all other institutional proposals relating to planning or construction of capital facilities, or major remodeling of existing capital facilities that require State Building Board approval and/or legislative project approval, regardless of the source of funds to be used for such activity, except to the extent that responsibility has been delegated to the institutional President as specified below in section 4.8. These actions will be reported to the State Board of Regents monthly as a part of the institutional Board of Trustees minutes, and will include planning and budget reports in the form prescribed by the Commissioner or other appropriate description and justification.

Proposals for inconsistent projects must be forwarded to the State Board of Regents by the institutional President, together with the institutional Board of Trustees' recommendations, for review and action by the Regents if:

- construction or remodeling is contrary to or will require substantial change in the approved programmatic planning or facility master plans;
- is inconsistent with the role assignment of the institution involved; or,
- is not in accord with previously approved institutional goals or objectives.

4.7.4. Public Hearings: Conduct all required public hearings on any project, provided that adequate notice be given the State Board of Regents of any such required public hearings.

4.8. Institutional Presidents Are Authorized to:

4.8.1. Other Necessary Actions: Take all necessary actions relating to construction and remodeling activities that do not require State Building Board approval.

4.8.2. Routine Repair and Maintenance: Assume the responsibility for routine repair and maintenance of existing structures or facilities (i.e., painting, roof repair, plumbing and electrical repairs, etc.). Institutions must adhere to the State Building Board facility maintenance standards.

4.8.3. Change Orders: Assume the responsibility to approve and recommend to the DFCM any change orders on projects under construction, as long as funds are available and the change order is within the approved purpose of the project.

4.8.4. Accept Completed Facilities: Accept completed capital facilities from the DFCM.