



January 14, 2021

Capital and Property Policy Revisions

In its December 2020 meeting, the Finance and Facilities Committee reviewed policy thresholds requiring Board review for institutional capital and property requests. The committee recommends the adjustment of some thresholds to reduce the number of items coming to the committee for review that could reasonably be delegated to institutional boards of trustees for final action. The following table outlines the Board policies that have been revised to expand the delegated authority to boards of trustees. The attached policy amendments, submitted for Board approval, reflect these changes.

Policy	Type of Request	Current Threshold for Board Review	Policy Change to Delegate to Trustees
R702	Non-State Funded Building (no bond or state-funded O&M)	Over \$500,000; Report after Approval	Over \$5,000,000; Report after Approval
R703	Property Acquisition (at or below appraisal w/in Service Area)	Over \$500,000; Report after Approval	Over \$1,500,000; Report after Approval
R704	Property Disposal (at or above appraisal)	Over \$500,000; Report after Approval	Over \$1,000,000; Report after Approval
R705	Leasing	Over 10 years or \$250,000 for UU/\$100,000 others; Report in Annual Report	Not Required – Delegated within Service Area; Report in Annual Report
R712	Non-Traditional Arrangements (including lease purchase)	Required for any Amount	Over \$2,500,000; Report after Approval

Commissioner’s Recommendation

The Commissioner recommends that the Board adopt changes to Policies R701, R702, R703, R704, R705, and R712 as outlined above, effective immediately.

R702, Non-State Funded Projects¹

R702-1. Purpose: To provide guidelines and requirements for institutional requests to program, plan, design, or construct a facility using non-state funds.

R702-2. Definitions

2.1. Architectural Programming: A formal decision-making process used to identify and define the goals and uses of a capital project and to define the scope of work and cost prior to design or construction.

2.2. Capital Development: Has the same definition as Utah Code 63A-5-104(1)(a).

2.3. Non-State Funded Project: Any capital development project whose source of funding comes from anything other than state funds appropriated by the Utah State Legislature.

R702-3. Requests for Non-State Funded Projects: Except as provided in section 702-4, the Board of Higher Education shall review and authorize institutional requests for non-state funded projects that require Building Board or Legislative approval before the requests are submitted to those bodies. Such requests shall be based upon master planning requirements of Regent Policy R706, *Capital Facilities Master Planning*. Types of projects requiring Board approval include:

3.1. Projects Funded from Student Fees, Contractual Debt, or Disposal or Exchange or Capital Assets: Proposals for non-state funded 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 Higher Education.

3.2. Projects Funded from Private Sources: Projects funded through private sources or a combination of private sources and other non-state funds, not meeting the requirements of section 702-4, shall be approved by the institutional Board of Trustees and the Board of Higher Education.

3.2. Projects for which Legislative Revenue Bonding Authorization is Required: Institutions shall submit non-state funded projects requiring revenue bonding to the

¹ Approved January 20, 2017; amended July 21, 2017 and January 15, 2021.

Board of Higher Education for approval as required by Board Policy R590, *Issuance of Revenue Bonds for Higher Education*.

R702-4. Delegation of Authority to Approve Certain Projects: The Board of Higher Education delegates the authority to approve non-state funded projects to institutional Boards of Trustees in the following limited circumstances:

4.1. Projects Funded from Private or Institutional Sources: Institutional Board of Trustees may approve a project funded through private sources or a combination of private sources and other non-state institutional funds if the project meets the following conditions:

4.1.1 The total cost of the project including design and construction does not exceed \$5,000,000;

4.1.2. New or additional operation and maintenance costs for the facility are identified by the institution, a plan is provided for the ongoing payment of those costs, and the plan will not require any additional state funding;

4.1.3. No student fees will be used in any part of the design or construction of the facility;

4.1.4. No revenue bonds are required to be issued to design or construct the facility; and

4.1.5. The project will not require incurring contractual debt or the disposal or exchange of land or other capital assets.

4.2. Requests to use Donated or Institutional Funds for Planning and Design:

Institutional Board of Trustees may approve requests to use donated or institutional funds for planning and design of proposed non-state funded project.

4.3. Reporting: Institutions shall report all projects approved under this section at the next regularly scheduled Finance and Facilities Committee meeting.

R702-5. Operating and Maintenance (O & M) Costs on Non-State Funded Projects: A non-state funded project 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 institution's facilities master plan requirements.

5.1. Excess Space: 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.

5.2. Non-Academic Space: In most cases, a non-state funded project that is not primarily for approved for academic and training purposes or associated support will not be eligible for state appropriated O & M funding. If the institution requests to the Board of Higher Education to allow state-funded O & M, it shall include a detailed statement showing how space types included in the facility will relate to important institutional activities.

5.3. 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 institution's proposal must explain how it will pay the ongoing O & M as defined by the State Building Board. When making arrangements for ongoing O & M funding, institutions shall give first priority to separate non-state funding assured through private contracts or an O & M endowment established by a private donor; second, an institutional O & M funding plan with additional revenue to support the new space to be credited to its O & M accounts.

R702-6. Architectural Programming of Non-State Funded Projects: A non-state funded project does not require approval by the Board of Higher Education for the architectural programming of the facility.

R703, Acquisition of Real Property¹

R703-1. Purpose: To provide guidelines and requirements for the acquisition of real property by institutions of higher education and to specify the approval process for various types of real property acquisitions.

R703-2. References

- 2.1. Utah Code [§53B-20-101](#) (Property Rights - Title and Control)
- 2.2. Utah Code [Title 63A, Chapter 5](#) (State Building Board - Division of Facilities Construction and Management)
- 2.3. [Board Policy R220](#), Delegation of Responsibilities to the President and Board of Trustees
- 2.4. [Board Policy R315](#), Service Area Designations and Coordination of Off-Campus Courses and Programs

R703-3 Board of Higher Education Review of Property Acquisitions: Except as provided by subsection 702-6, The Board of Higher Education shall review and consider for approval all institutional requests for real property acquisition that commit institutional funds in excess of \$1,500,000.

3.1. Board of Higher Education Approval Required for Property Purchased Outside of an Institution's Service Area: The Board of Higher Education shall review and consider for approval, regardless of term or purchase price, all institutional requests for real property acquisition that will include instructional space located outside of the service area designated by Board Policy R315, *Service Area Designations and Coordination of Off-Campus Courses and Programs*.

R703-4. Required Appraisal: For acquisitions of property by purchase or exchange, institutions shall establish the fair market value based on an appraisal completed by a State of Utah licensed appraiser with the purchase price not to exceed the appraised value unless otherwise justified.

R703-5. Property Acquisition Guidelines: When practicable, institutions shall use the following guidelines acquiring property, whether by purchase, exchange or to be accepted as gifts designated for ongoing institutional use, regardless of the location of the property. The Board of Higher Education recognizes that, based on the circumstances of specific properties, some or all of these guidelines may not apply.

¹ Adopted January 20, 2017, amended January 15, 2021.

5.1. 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.

5.2. Phase I Environmental Assessment or Greater: A Phase I or greater Environmental Assessment may be required by the Board 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.

5.3. 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.

5.4. 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.

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

5.6. Sites, Zoning, and Planning Information: This information should be obtained where applicable or when it is determined to be needed.

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

R703-6. Delegation of Authority to Approve the Acquisition of Real Property: The Board of Higher Education delegates the authority to acquire real property in the following limited circumstances:

6.1. Institutional Boards of Trustees may approve the acquisition of real property with institutional funds if the property is consistent with the approved campus master plan, the purchase price does not exceed \$1,500,000, and the space does not contain instructional space located outside of the service area designated by Regent Policy R315, *Service Area Designations and Coordination of Off-Campus Courses and Programs*.

6.2. Acquisitions with Endowment or Foundational Funds: Institutional Boards of Trustees may approve the acquisition of real property purchased with endowment funds or funds from independent foundations regardless of cost or location.

6.3. Gifts of Real Property: Institutional presidents may accept gifts of real property from donors, development initiatives, and fund raising in accordance with standards and procedures approved by the Boards of Trustees. The institution may sell the gifted property, hold it for future development or investment, or use it for any other institutional purpose.

6.4. University of Utah Health Care System: In accordance with Board Policy R220, *Delegation of Responsibilities to the President and Board of Trustees*, the University of Utah Board of Trustees may review and approve all property acquisitions for the University of Utah Health Care System.

6.5. Purchase Price Below Appraised Value: All property acquisitions approved under this section must have a supporting appraisal and the purchase price may not exceed the appraised value.

6.6. No Request for Operation and Maintenance: Institutions may not request operations and maintenance funding for property acquired under this section. If there is a need for operations and maintenance funds, the purchase must be approved through the Board of Higher Education.

6.7. Reporting of Property Acquisitions: Institutions shall report all property acquisitions or options approved under this section at the next regularly scheduled Finance and Facilities Committee meeting.

R704, Disposal of Real Property¹

R704-1. Purpose: To provide guidelines and requirements for institutions to dispose of real property and to establish the approval process.

R704-2. References

- 2.1. Utah Code [§53B-20-101](#) (Property Rights - Title and Control)
- 2.2. Utah Code [Title 63A, Chapter 5](#) (State Building Board - Division of Facilities Construction and Management)
- 2.3. Policy R220, Delegation of Responsibilities to the President and Board of Trustees

R704-3. Disposal of Property: Except as provided by subsections 704-6 and 704-7, institutions shall request and obtain the Board's approval prior to disposing of real property.

R704-4. Determination of Surplus Property: If the institution determines the real property does not serve its mission and is, therefore, surplus property, the property is eligible for sale or exchange on the open market.

R704-5. 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 appraiser.

R704-6. Delegation of Authority to Approve the Disposal of Donated or Gifted Real

Property: The Board of Higher Education delegates to the Boards of Trustees the authority to dispose of real property subject to the following conditions:

6.1. Price: The disposal price cannot exceed \$1,000,000.

6.2. Sell at Appraised Value: The property shall be sold at or above fair market value as determined by an appraisal unless the value of the property does not warrant the cost of the appraisal, the gifted property has preexisting conditions that affect the future sales price, or the Board of Trustees determines that circumstances justify a sale below appraised value.

¹ Adopted January 20, 2017, amended January 15, 2021.

6.3. Reporting of Property Disposals: When an institution disposes of property under this policy, it shall report the transaction at the next regularly scheduled Finance and Facilities Committee meeting.

R704-7 Delegation of Authority to the University of Utah Board of Trustees for University Health Care System Property Transactions: In accordance with Board Policy R220, *Delegation of Responsibilities to the President and Board of Trustees*, the University of Utah Board of Trustees may review and approve all property disposals and transactions for the University of Utah Health Care System.

R705, Leased Space¹

R705-1. Purpose: To comply with statute requiring the Board of Higher Education to establish written policies governing leasing for higher education institutions and to provide procedures for the approval of new leased space and for the annual reporting of leased space to the Board of Higher Education.

R705-2. References

- 2.1. Utah Code [§53B-20-101](#) (Property Rights - Title and Control)
- 2.2. Utah Code [63A-5-305](#) (Leasing by Higher Education Institutions)
- 2.3. [Policy and Procedures R220](#), Delegation of Responsibilities to the President and Board of Trustees
- 2.4. [Policy and Procedures R315](#), Service Area Designations and Coordination of Off-Campus Courses and Programs
- 2.5. [Policy and Procedures R587](#), Contract or Lease-Purchase Financing
- 2.6. [Policy and Procedures R712](#), Nontraditional Arrangements for Development of Facilities on Campuses

R705-3 Board Approval of Leases Outside of Service Area: The Board of Higher Education shall review lease terms and institutional requests to enter into new leases of capital facilities space for instructional space located outside of the service area designated by Board Policy R315, *Service Area Designations and Coordination of Off-Campus Courses and Programs*.

R705-4. Leasing State-Owned Property to Outside Entities: The Board of Higher Education shall review and approve institutional requests to lease state-owned institutional property to non-institutional entities if the annual lease cost will exceed \$250,000.

- 4.1. Approval of nontraditional arrangements for the use of institutional-owned facilities is subject to the provisions of Board Policy R712, *Nontraditional Arrangements for Development of Facilities on Campuses*.

R705-5. Delegation of Authority to Boards of Trustees: The Board of Higher Education delegates authority to the institutional Board of Trustees to approve all institutional property leases within the service area designated by Board Policy R315, *Service Area Designations and Coordination of Off-Campus Courses and Programs*.

¹ Adopted January 20, 2017, amended January 15, 2021.

R705-6. Delegation of Authority to the University of Utah Board of Trustees for University Health Care System Leases: In accordance with Board Policy R220, *Delegation of Responsibilities to the President and Board of Trustees*, the University of Utah Board of Trustees may review and approve all property leases for the University of Utah Health Care System.

R705-7. Annual Report to the Board of Higher Education: The Commissioner shall report annually to the Board of Higher Education all space leased by the institutions in the System of Higher Education, including space leased for off-campus continuing education programs and space leased in research parks.

7.1. Institution Lease Information: In accordance with procedures and forms developed by the Commissioner's Office, institutions shall annually submit information for all space leased by the institution.

7.2. Submission to the State Building Board: After review by the Board of Higher Education, the Commissioner shall forward the report to the State Building Board for possible inclusion its comprehensive 5-year building plan.

R712, Nontraditional Arrangement for Development of Facilities on Campuses¹

R712-1. Purpose: To provide for consideration of nontraditional arrangements for development of facilities on campuses of institutions in the Utah System of Higher Education.

R702-2. Reference

- 2.1. [Utah Code 53B-6-101](#) (Master Planning for Higher Education)
- 2.2. [Utah Code 53B-20-103](#) (Powers of State Board – Capital Facilities Projects)
- 2.3. [Utah Code 53B-21-108](#) (Financing Projects by Contract or Lease Agreement)
- 2.4. [Utah Code Title 63A, Chapter 5](#) (State Building Board – Division of Facilities Construction and Management)
- 2.5. Policy and Procedures R710, Capital Facilities
- 2.6. [Policy and Procedures R491](#), University Research Parks
- 2.7. [Policy and Procedures R587](#), Contract and Lease-purchase Financing

R712-3. General Policy: It is the general policy and expectation of the Board of Higher Education that nontraditional arrangements for development of facilities on campuses of institutions in the Utah System of Higher Education will be used sparingly and only where specific and unusual circumstances clearly so warrant.

R712-4. Policy on Lease-Purchase Acquisitions of Facilities for Institutional Use: Pursuant to authority contained in Utah Code [§53B-21-108](#) the Board of Higher Education will consider institutional proposals for lease-purchase acquisition of facilities to be financed totally from institutional revenues not a part of the appropriated budget. Such a proposal will be finalized only after receipt of advice from the Attorney General's Office that the specific proposal is within the Board's authority to approve under current statute. Approval of such proposals is subject to the provisions of Policy and Procedures R587, Contract and Lease-purchase Financing.

R712-5. Policy on Facilities Developed and Owned by an Outside Party on Leased Institutional Land: The Board of Higher Education recognizes that in specific instances, institutional and/or public interests may be well served by arrangements for construction and operation of facilities by outside organizations or parties on leased institutional property. The Board will, therefore, from time to time consider proposals for such arrangements on institutional property other than property in

¹ Approved December 20, 1985, amended November 14, 2014 and January 15, 2021.

designated research parks for which, under State statute and Policy and Procedures R491, University Research Parks, research universities have delegated responsibility. Such a proposal will be finalized only after receipt of advice from the Attorney General's Office that the specific proposal is within the Board authority to approve under current statute, and final approval will be granted only where the following conditions are met:

5.1. Program Benefits or Broad Public Purpose: The proposed arrangement provides significant benefits to the program, students, faculty, or staff of the institution, or serves a broad public interest that could not be served as well any other way;

5.2. Proper Developer and Use: The proposed outside developer/owner and the proposed use of the facility are proper and appropriate for the image and environment of the institution;

5.3. Adequate Compensation: Compensation to the institution, either in cash or in kind (or a combination thereof), is adequate to justify any financial considerations provided by the institution to the outside developer/user of the facility;

5.4. Contractual Provisions: Arrangements set forth in contract documents shall demonstrate that the provisions:

5.4.1. Are financially feasible for the institution;

5.4.2. Adequately protect the interests of the institution regarding:

5.4.2.1. Initial relationships with the outside organization or party,

5.4.2.2. Resolution of eventualities that can reasonably be foreseen,

5.4.2.3. Institutional right to control appearance of the facility, external remodeling/additions, level of building and landscape maintenance, parking rights, exterior graphics, access to institutional utility systems and access roads,

5.4.2.4. Termination, extension, or renewal of the land-lease, and ultimate ownership of the facility;

5.5. Construction Requirements: Contractual considerations shall ensure that the following conditions are met:

5.5.1. Quality Control: Adequate provisions for quality control in the design and construction of the project

5.5.2. Construction Codes: Provision to ensure compliance with appropriate state or local construction codes;

5.5.3. Life-Cycle Costing: Assurance that provisions dealing with the costs of design, construction, operation and maintenance, and disposing of the building have been met.

5.6. Attorney General Approval: Attorney General's Office approves all contract documents as to form and legal authority.

R712-6. Delegation of Authority to Approve Certain Projects: The Board of Higher Education delegates the authority to institutional Boards of Trustees to approve nontraditional arrangements for facilities that met all of the conditions of this policy and have a project cost of less than \$2,500,000.

6.1. Reporting: Institutions shall report all projects approved under this section at the next regularly scheduled Finance and Facilities Committee meeting.