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Sixty-seventh General Assembly  
STATE OF COLORADO

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Double underlining  
denotes changes from  
prior draft

DRAFT

LLS NO. 09-0875.03 Jerry Barry

COMMITTEE BILL

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Capital Development Committee

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SHORT TITLE: "Higher Ed Capital Construction Approval"

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A BILL FOR AN ACT

101 CONCERNING FLEXIBILITY FOR CAPITAL CONSTRUCTION PROJECTS AT  
102 STATE INSTITUTIONS OF HIGHER EDUCATION.

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)*

**Capital Development Committee.** Requires the Colorado commission on higher education (CCHE) to approve master plans for all capital construction projects at all state institutions of higher education (institutions). Requires the CCHE to approve, prior to commencement of construction, any capital construction project requiring expenditure of moneys held by the institution other than cash funds.

Directs all institutions to submit to the CCHE 2-year projections

*Capital letters indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

for all capital construction projects to be constructed using cash funds. Directs the CCHE to submit to the office of state planning and budgeting, the governor, and the general assembly a unified, 2-year projection on all capital construction projects at institutions to be constructed using cash funds. Directs the CCHE annually to submit to the CDC the 2-year projections from the institutions. Authorizes CDC to approve the projections every other year. Authorizes institutions to submit amendments to an approved projection. Provides that an amendment is deemed approved if the CDC does not object within 30 days if the general assembly is in regular session or within 45 days if the general assembly is not in regular session.

Authorizes an institution to commence a capital construction project upon approval of the institution's governing board if the project is to be constructed, operated, and maintained solely from cash funds and was included in the most recent approved unified, 2-year projection. Authorizes an institution to commence a capital construction project for an academic building upon approval of the institution's governing board if the project is to be constructed using tuition or student fees and operated and maintained using tuition, student fees, or state moneys if the project was included in the most recent approved unified, 2-year projection.

Repeals requirements that projects constructed using cash funds in excess of \$2 million must be approved by the capital development and joint budget committees. \_\_\_\_\_

Authorizes the executive director of the department of personnel to exempt cash-funded projects from certain statutory requirements if the executive director determines that there are adequate safeguards for the project.

Increases the exemption from the public notice requirement for professional services contracts to total project costs of \$1 million or professional services in the amount of \$100,000.

Authorizes institutions to use the internet to invite bids for construction projects.

Authorizes the use of an electronic medium for publishing notice of final settlements.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 23-1-106 (1), (3), (5) (a), (6), (7), (8), (9), (10), and  
3 (11), Colorado Revised Statutes, are amended to read:

4 **23-1-106. Duties and powers of the commission with respect**  
5 **to capital construction and long-range planning. (1) EXCEPT AS**

1 PERMITTED BY SUBSECTION (9) OF THIS SECTION, it is declared to be the  
2 policy of the general assembly not to authorize or to acquire sites or  
3 initiate any program or activity requiring capital construction for  
4 state-supported institutions of higher education unless approved by the  
5 commission.

6 (3) The commission shall review and approve master planning and  
7 ~~program planning~~ for all capital construction projects of STATE  
8 institutions of higher education on ~~state-owned or state-controlled land,~~  
9 ~~regardless of the source of funds,~~ LAND OWNED OR CONTROLLED BY THE  
10 STATE OR AN INSTITUTION and PROGRAM PLANS FOR PROJECTS OTHER  
11 THAN THOSE PROJECTS CONSTRUCTED PURSUANT TO SUBSECTION (9) OF  
12 THIS SECTION. EXCEPT FOR THOSE PROJECTS CONSTRUCTED PURSUANT TO  
13 SUBSECTION (9) OF THIS SECTION, no capital construction shall commence  
14 except in accordance with an approved master plan, program plan, and  
15 physical plan.

16 (5) (a) The commission shall approve plans for any capital  
17 construction project at any STATE institution OF HIGHER EDUCATION,  
18 including a community college, regardless of the source of funds; except  
19 that the commission need not approve plans for any capital construction  
20 project at a local district college or area vocational school or for any  
21 capital construction project described in subsection (9) ~~or (10)~~ of this  
22 section.

23 (6) (a) The commission shall request annually from each  
24 governing board OF EACH STATE INSTITUTION OF HIGHER EDUCATION a  
25 five-year projection of capital development projects ~~Such~~ TO BE  
26 CONSTRUCTED BUT NOT INCLUDING THOSE PROJECTS CONSTRUCTED  
27 PURSUANT TO SUBSECTION (9) OF THIS SECTION. THE projection shall

1 include the estimated cost, the method of funding, a schedule for project  
2 completion, and the governing board-approved priority for each project.

3 The commission shall determine whether a proposed project is consistent  
4 with THE role and mission and master planning of the institution and  
5 conforms to standards recommended by the commission.

6 (b) THE COMMISSION SHALL REQUEST ANNUALLY FROM THE  
7 GOVERNING BOARD OF EACH STATE INSTITUTION OF HIGHER EDUCATION  
8 A TWO-YEAR PROJECTION OF CAPITAL CONSTRUCTION PROJECTS TO BE  
9 CONSTRUCTED PURSUANT TO SUBSECTION (9) OF THIS SECTION AND  
10 ESTIMATED TO REQUIRE TOTAL PROJECT EXPENDITURES EXCEEDING TWO  
11 MILLION DOLLARS. THE PROJECTION SHALL INCLUDE THE ESTIMATED  
12 COST, THE METHOD OF FUNDING, AND A SCHEDULE FOR PROJECT  
13 COMPLETION FOR EACH PROJECT. AN INSTITUTION SHALL AMEND THE  
14 PROJECTION PRIOR TO COMMENCING A PROJECT THAT IS NOT INCLUDED IN  
15 THE INSTITUTION'S MOST RECENT PROJECTION.

16 (7) (a) The commission annually shall ~~establish~~ PREPARE a  
17 unified, five-year capital improvements ~~program~~ REPORT OF PROJECTS TO  
18 BE CONSTRUCTED, BUT NOT INCLUDING THOSE PROJECTS CONSTRUCTED  
19 PURSUANT TO SUBSECTION (9) OF THIS SECTION, coordinated with  
20 education plans. ~~and~~ THE COMMISSION shall transmit THE REPORT to the  
21 office of state planning and budgeting, the governor, and the general  
22 assembly, consistent with the executive budget timetable, TOGETHER WITH  
23 a recommended priority of funding of capital construction projects for the  
24 system of public higher education. The commission shall annually  
25 transmit the recommended priority of funding of capital construction  
26 projects to the capital development committee no later than November 1  
27 of each year.

1 (b) Except as provided in subsection (5) of this section, it is the  
2 policy of the general assembly to appropriate funds only for projects  
3 approved by the commission.

4 (c) (I) THE COMMISSION ANNUALLY SHALL PREPARE A UNIFIED,  
5 TWO-YEAR CAPITAL IMPROVEMENTS REPORT FOR PROJECTS TO BE  
6 CONSTRUCTED PURSUANT TO SUBSECTION (9) OF THIS SECTION AND  
7 ESTIMATED TO REQUIRE TOTAL PROJECT EXPENDITURES EXCEEDING TWO  
8 MILLION DOLLARS, COORDINATED WITH EDUCATION PLANS. THE  
9 COMMISSION SHALL TRANSMIT THE REPORT TO THE OFFICE OF STATE  
10 PLANNING AND BUDGETING, THE GOVERNOR, AND THE GENERAL  
11 ASSEMBLY, CONSISTENT WITH THE EXECUTIVE BUDGET TIMETABLE.

12 (II) (A) THE COMMISSION ANNUALLY SHALL SUBMIT THE  
13 TWO-YEAR PROJECTIONS PREPARED BY EACH STATE INSTITUTION OF  
14 HIGHER EDUCATION TO THE CAPITAL DEVELOPMENT COMMITTEE.  
15 BEGINNING WITH THE 2010 LEGISLATIVE SESSION AND ALTERNATING  
16 YEARS THEREAFTER, THE CAPITAL DEVELOPMENT COMMITTEE SHALL  
17 CONDUCT A HEARING ON THE PROJECTIONS AND EITHER APPROVE THE  
18 PROJECTIONS OR RETURN THE PROJECTIONS TO THE INSTITUTION FOR  
19 MODIFICATION.

20 (B) A STATE INSTITUTION OF HIGHER EDUCATION MAY SUBMIT TO  
21 THE STAFF OF THE CAPITAL DEVELOPMENT COMMITTEE AN AMENDMENT TO  
22 ITS APPROVED TWO-YEAR PROJECTION. THE AMENDMENT SHALL BE  
23 DEEMED APPROVED UNLESS THE CAPITAL DEVELOPMENT COMMITTEE  
24 REJECTS THE AMENDMENT WITHIN THIRTY DAYS AFTER SUBMISSION  
25 DURING A REGULAR SESSION OF THE GENERAL ASSEMBLY OR WITHIN  
26 FORTY-FIVE DAYS AFTER SUBMISSION DURING ANY PERIOD THAT THE  
27 GENERAL ASSEMBLY IS NOT IN REGULAR SESSION.

1           (8) Any acquisition ~~or utilization~~ of real property by a  
2 state-supported institution of higher education that is conditional upon or  
3 requires expenditures of state-controlled funds or federal funds shall be  
4 subject to the approval of the commission, whether acquisition is by  
5 lease-purchase, purchase, gift, or otherwise.

6           (9) (a) ~~The commission shall review and approve any plan for a~~  
7 ~~capital construction project that is estimated to require total expenditures~~  
8 ~~exceeding two million dollars and~~ EXCEPT AS PROVIDED IN PARAGRAPH  
9 (d) OF THIS SUBSECTION (9), A CAPITAL CONSTRUCTION PROJECT INITIATED  
10 BY THE GOVERNING BOARD OF A STATE-SUPPORTED INSTITUTION OF  
11 HIGHER EDUCATION that is CONTAINED IN THE MOST RECENT UNIFIED,  
12 TWO-YEAR CAPITAL IMPROVEMENTS PROJECT PROJECTION APPROVED  
13 PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (c) OF SUBSECTION (7)  
14 OF THIS SECTION, AS THE PROJECTION MAY BE AMENDED FROM TIME TO  
15 TIME, AND that is to be constructed, operated, and maintained solely from  
16 student fees, auxiliary facility funds, wholly endowed gifts and bequests,  
17 research building revolving funds, or a combination of such sources, as  
18 provided in sections 23-5-102, 23-5-103, 23-5-112, 23-20-124,  
19 23-31-129, and 23-41-117 and section 24-75-303 (3), C.R.S. Any such  
20 ~~plan for a capital construction project that is estimated to require total~~  
21 ~~expenditures of two million dollars or less~~ CASH FUNDS HELD BY THE  
22 INSTITUTION \_\_\_\_\_ shall not be subject to review or approval by the  
23 commission, THE CAPITAL DEVELOPMENT COMMITTEE, OR THE JOINT  
24 BUDGET COMMITTEE.

25           (b) ~~Upon approval of a plan for a capital construction project~~  
26 ~~pursuant to paragraph (a) of this subsection (9), the commission shall~~  
27 ~~submit such plan to the capital development committee. The capital~~

1 ~~development committee shall make a recommendation regarding the~~  
2 ~~project to the joint budget committee. Following receipt of the~~  
3 ~~recommendation, the joint budget committee shall refer its~~  
4 ~~recommendations regarding the project, with written comments, to the~~  
5 ~~commission.~~ A CAPITAL CONSTRUCTION PROJECT FOR AN ACADEMIC  
6 BUILDING INITIATED BY THE GOVERNING BOARD OF A STATE-SUPPORTED  
7 INSTITUTION OF HIGHER EDUCATION THAT IS CONTAINED IN THE MOST  
8 RECENT UNIFIED, TWO-YEAR CAPITAL IMPROVEMENTS PROJECT  
9 PROJECTION APPROVED PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH  
10 (c) OF SUBSECTION (7) OF THIS SECTION, AS THE PROJECTION MAY BE  
11 AMENDED FROM TIME TO TIME, AND THAT IS TO BE CONSTRUCTED SOLELY  
12 FROM STUDENT TUITION REVENUES AND FEES HELD BY THE INSTITUTION  
13 AND OPERATED AND MAINTAINED FROM SUCH FUNDS OR FROM STATE  
14 MONEYS APPROPRIATED FOR SUCH PURPOSE, OR BOTH, SHALL NOT BE  
15 SUBJECT TO REVIEW OR APPROVAL BY THE COMMISSION, THE CAPITAL  
16 DEVELOPMENT COMMITTEE, OR THE JOINT BUDGET COMMITTEE.

17 (c) ~~The commission, the capital development committee, and the~~  
18 ~~joint budget committee shall by agreement adopt procedures governing~~  
19 ~~the capital development committee and joint budget committee review of~~  
20 ~~projects subject to this subsection (9) and subsection (10) of this section,~~  
21 ~~which agreement shall provide that, whenever possible, the capital~~  
22 ~~development committee shall submit recommendations to the joint budget~~  
23 ~~committee and the joint budget committee shall submit recommendations~~  
24 ~~to the commission within thirty days after each committee receives the~~  
25 ~~information prescribed in the agreement as necessary for its review. EACH~~  
26 ~~GOVERNING BOARD SHALL ENSURE, CONSISTENT WITH ITS~~  
27 ~~RESPONSIBILITIES AS SET FORTH IN SECTION 5 (2) OF ARTICLE VIII OF THE~~

1 STATE CONSTITUTION, THAT A CAPITAL CONSTRUCTION PROJECT INITIATED  
2 PURSUANT TO THIS SUBSECTION (9) SHALL BE IN ACCORDANCE WITH ITS  
3 INSTITUTION'S MISSION, BE OF A SIZE AND SCOPE TO PROVIDE FOR THE  
4 DEFINED PROGRAM NEEDS, AND BE DESIGNED IN ACCORDANCE WITH ALL  
5 APPLICABLE BUILDING CODES AND ACCESSIBILITY STANDARDS.

6 (d) THE PROVISIONS OF THIS SUBSECTION (9) SHALL NOT APPLY TO  
7 A PROJECT THAT IS TO BE CONSTRUCTED IN WHOLE OR IN PART USING  
8 MONEYS SUBJECT TO THE HIGHER EDUCATION REVENUE BOND INTERCEPT  
9 PROGRAM ESTABLISHED PURSUANT TO SECTION 23-5-139.

10 ~~(10) (a) The commission shall review and approve any plan for a~~  
11 ~~capital construction project that is estimated to require total expenditures~~  
12 ~~exceeding two million dollars and that is to be constructed solely from~~  
13 ~~cash funds held by the institution other than those funds specified in~~  
14 ~~paragraph (a) of subsection (9) of this section and operated and~~  
15 ~~maintained from such cash funds or from state moneys appropriated for~~  
16 ~~such purpose, or both. Any plan for any such capital construction project~~  
17 ~~that is estimated to require total expenditures of two million dollars or~~  
18 ~~less shall not be subject to review or approval by the commission.~~

19 ~~(b) Upon approval of a plan for a capital construction project~~  
20 ~~pursuant to paragraph (a) of this subsection (10), the commission shall~~  
21 ~~submit the plan to the capital development committee. The capital~~  
22 ~~development committee shall make a recommendation regarding the~~  
23 ~~project to the joint budget committee. Following the receipt of the~~  
24 ~~recommendation, the joint budget committee shall refer its~~  
25 ~~recommendations regarding the project, with written comments, to the~~  
26 ~~commission.~~

27 (11) Each STATE institution OF HIGHER EDUCATION shall submit



1 to the commission on or before September 1 of each year a list and  
2 description of each project for which an expenditure was made during the  
3 immediately preceding fiscal year that was not subject to review by the  
4 commission pursuant to ~~subsections (9) and (10)~~ SUBSECTION (9) of this  
5 section. The commission shall submit a compilation of such THE projects  
6 to the capital development committee on or before December 1 of each  
7 year.

8 SECTION 2. 24-37-304 (1) (c.3) (I), Colorado Revised Statutes,  
9 is amended to read:

10 24-37-304. Additional budgeting responsibilities. (1) In  
11 addition to the responsibilities enumerated in section 24-37-302, the  
12 office of state planning and budgeting shall:

13 (c.3) (I) EXCEPT FOR PROJECTS AUTHORIZED PURSUANT TO  
14 SECTION 23-1-106 (9), C.R.S., ensure submission of all capital  
15 construction and controlled maintenance requests and proposals for the  
16 acquisition of capital assets by each state department, institution, and  
17 agency to the capital development committee no later than September 1  
18 of each year;

19 SECTION 3. 24-30-1303 (5), Colorado Revised Statutes, is  
20 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

21 **24-30-1303. Department of personnel - responsibilities.**

22 (5) (c) IF THE EXECUTIVE DIRECTOR DETERMINES THAT THE GOVERNING  
23 BOARD OF A STATE INSTITUTION OF HIGHER EDUCATION HAS ADOPTED  
24 PROCEDURES THAT ADEQUATELY MEET THE SAFEGUARDS SET FORTH IN  
25 THE REQUIREMENTS OF PART 14 OF THIS ARTICLE AND ARTICLE 92 OF THIS  
26 TITLE, THE EXECUTIVE DIRECTOR MAY EXEMPT THE INSTITUTION FROM  
27 ANY OF THE PROCEDURAL REQUIREMENTS OF PART 14 OF THIS ARTICLE

1 AND ARTICLE 92 OF THIS TITLE IN REGARD TO A CAPITAL CONSTRUCTION  
2 PROJECT TO BE CONSTRUCTED PURSUANT TO THE PROVISIONS OF SECTION  
3 23-1-106 (9), C.R.S.; EXCEPT THAT THE SELECTION OF ANY CONTRACTOR  
4 TO PERFORM PROFESSIONAL SERVICES AS DEFINED IN SECTION 24-30-1402  
5 (6) SHALL BE MADE IN ACCORDANCE WITH THE CRITERIA SET FORTH IN  
6 SECTION 24-30-1403 (2).

7 **SECTION 4.** 24-30-1405, Colorado Revised Statutes, is amended  
8 to read:

9 **24-30-1405. Public notice.** When professional services are  
10 required to be contracted for, public notice shall be given by the state  
11 agency if the basic construction cost of the project is estimated by the  
12 state agency to be more than ~~five hundred thousand dollars~~ or if the fee  
13 ~~for the professional services is estimated to exceed fifty thousand dollars;~~  
14 ~~except that, for projects under the supervision of the department of~~  
15 ~~transportation, public notice shall be given by the department if the basic~~  
16 ~~transportation-related construction cost of the project is estimated by the~~  
17 ~~department to be more than~~ one million dollars or if the fee for  
18 professional engineering or surveying services is estimated to exceed one  
19 hundred thousand dollars. ~~Such~~ THE public notice shall be given at least  
20 fifteen days prior to the selection of the three or more most highly  
21 qualified persons by the principal representative pursuant to section  
22 24-30-1403 (2), and, except for projects under the supervision of the  
23 department of transportation, ~~such~~ THE public notice shall be given no  
24 later than eight weeks after the date on which the appropriation for the  
25 project becomes law. ~~Such~~ THE public notice shall be given by  
26 publication at least two times in one or more daily newspapers of general  
27 circulation in this state ~~and~~ OR BY PUBLICATION IN AN ELECTRONIC

1 MEDIUM APPROVED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT.

2 THE PUBLIC NOTICE shall contain a general description of the proposed  
3 project and shall indicate the procedure by which interested persons may  
4 apply for consideration for the contract.

5 **SECTION 5.** 24-75-303 (3) (a), Colorado Revised Statutes, is  
6 amended to read:

7 **24-75-303. Appropriation for capital construction.** (3) (a) No  
8 A capital construction project for a state-supported institution of higher  
9 education that is estimated to require total expenditures exceeding two  
10 million dollars may NOT be commenced unless:

11 (I) ~~The PLAN FOR THE project is to be constructed solely from cash~~  
12 ~~funds held by the institution other than those funds specified in~~  
13 ~~subparagraph (II) of this paragraph (a) and is to be operated and~~  
14 ~~maintained from such cash funds or from state moneys appropriated for~~  
15 ~~such purpose, or both, and the plan for the project has been approved by~~  
16 ~~the Colorado commission on higher education pursuant to section~~  
17 ~~23-1-106 (10), C.R.S.; or WAS CONTAINED IN THE MOST RECENT UNIFIED,~~  
18 TWO-YEAR CAPITAL IMPROVEMENTS PROJECTION PROVIDED PURSUANT TO  
19 SECTION 23-1-106 (6) (b), C.R.S., AS THE PROJECTION MAY BE AMENDED  
20 FROM TIME TO TIME;

21 (II) ~~The project is to be constructed, operated, and maintained~~  
22 ~~solely from student fees, auxiliary enterprise funds, wholly endowed gifts~~  
23 ~~and bequests, research building revolving funds, or a combination of such~~  
24 ~~sources, and the plan has been approved by the Colorado commission on~~  
25 ~~higher education in accordance with section 23-1-106 (9), C.R.S. HAS~~  
26 BEEN APPROVED BY THE GOVERNING BOARD OF THE INSTITUTION; AND

27 (III) THE PROJECT IS TO BE CONSTRUCTED SOLELY FROM CASH

1 FUNDS HELD BY THE INSTITUTION.

2 SECTION 6. 24-92-103 (3), Colorado Revised Statutes, is  
3 amended to read:

4 **24-92-103. Construction of public projects - competitive sealed**  
5 **bidding.** (3) Adequate public notice of the invitation for bids shall be  
6 given at least fourteen days prior to the date set forth therein for the  
7 opening of bids, pursuant to rules. Such notice may include publication  
8 by electronic on-line access pursuant to section 24-92-104.5 or in a  
9 newspaper of general circulation at least fourteen days prior to bid  
10 opening OR IN AN ELECTRONIC MEDIUM APPROVED BY THE EXECUTIVE  
11 DIRECTOR OF THE DEPARTMENT OF PERSONNEL.

12 SECTION 7. 38-26-107 (1), Colorado Revised Statutes, is  
13 amended to read:

14 **38-26-107. Supplier may file statement - notice - withholding**  
15 **funds.** (1) Any person, as defined in section 2-4-401 (8), C.R.S., that has  
16 furnished labor, materials, sustenance, or other supplies used or consumed  
17 by a contractor or his or her subcontractor in or about the performance of  
18 the work contracted to be done or that supplies laborers, rental machinery,  
19 tools, or equipment to the extent used in the prosecution of the work  
20 whose claim therefor has not been paid by the contractor or the  
21 subcontractor may, at any time up to and including the time of final  
22 settlement for the work contracted to be done, file with the board, officer,  
23 person, or other contracting body by whom the contract was awarded a  
24 verified statement of the amount due and unpaid on account of the claim.  
25 If the amount of the contract awarded to the contractor exceeds fifty  
26 thousand dollars, the board, officer, person, or other contracting body by  
27 whom the contract was awarded shall, no later than ten days before the

1 final settlement is made, publish a notice of the final settlement at least  
2 twice in a newspaper of general circulation in any county where the work  
3 was contracted for or performed OR IN AN ELECTRONIC MEDIUM APPROVED  
4 BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL. It is  
5 unlawful for any person to divide a public works contract into two or  
6 more separate contracts for the sole purpose of evading or attempting to  
7 evade the requirements of this subsection (1).

8 **SECTION 8. Safety clause.** The general assembly hereby finds,  
9 determines, and declares that this act is necessary for the immediate  
10 preservation of the public peace, health, and safety. <{Does the  
11 committee want a safety clause?}>

