

First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

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LLS NO. 09-0875.02 Jerry Barry

COMMITTEE BILL

Capital Development Committee

SHORT TITLE: "Higher Ed Capital Construction Approval"

A BILL FOR AN ACT

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

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.*

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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.

Authorizes an institution to commence a capital construction project upon approval of the institution's governing board if the project was included in the most recent unified, 2-year projection and is to be constructed solely from cash funds.

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 projects constructed from cash funds to be eligible for state moneys for operation and maintenance.

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.

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

11 (3) The commission shall review and approve master planning ~~and~~

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

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

17 (6) (a) The commission shall request annually from each
18 governing board OF EACH STATE INSTITUTION OF HIGHER EDUCATION a
19 five-year projection of capital development projects ~~Such~~ TO BE
20 CONSTRUCTED BUT NOT INCLUDING THOSE PROJECTS CONSTRUCTED
21 PURSUANT TO SUBSECTION (9) OF THIS SECTION. THE projection shall
22 include the estimated cost, the method of funding, a schedule for project
23 completion, and the governing board-approved priority for each project.
24 The commission shall determine whether a proposed project is consistent
25 with THE role and mission and master planning of the institution and
26 conforms to standards recommended by the commission.

27 (b) THE COMMISSION SHALL REQUEST ANNUALLY FROM THE

1 GOVERNING BOARD OF EACH STATE INSTITUTION OF HIGHER EDUCATION
2 A TWO-YEAR PROJECTION OF CAPITAL CONSTRUCTION PROJECTS TO BE
3 CONSTRUCTED PURSUANT TO SUBSECTION (9) OF THIS SECTION AND
4 ESTIMATED TO REQUIRE TOTAL PROJECT EXPENDITURES EXCEEDING TWO
5 MILLION DOLLARS. THE PROJECTION SHALL INCLUDE THE ESTIMATED
6 COST, THE METHOD OF FUNDING, AND A SCHEDULE FOR PROJECT
7 COMPLETION FOR EACH PROJECT. AN INSTITUTION SHALL AMEND THE
8 PROJECTION PRIOR TO COMMENCING A PROJECT THAT IS NOT INCLUDED IN
9 THE INSTITUTION'S MOST RECENT PROJECTION.

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

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

25 (c) THE COMMISSION ANNUALLY SHALL PREPARE A UNIFIED,
26 TWO-YEAR CAPITAL IMPROVEMENTS REPORT FOR PROJECTS TO BE
27 CONSTRUCTED PURSUANT TO SUBSECTION (9) OF THIS SECTION AND

1 ESTIMATED TO REQUIRE TOTAL PROJECT EXPENDITURES EXCEEDING TWO
2 MILLION DOLLARS, COORDINATED WITH EDUCATION PLANS. THE
3 COMMISSION SHALL TRANSMIT THE REPORT TO THE OFFICE OF STATE
4 PLANNING AND BUDGETING, THE GOVERNOR, AND THE GENERAL
5 ASSEMBLY, CONSISTENT WITH THE EXECUTIVE BUDGET TIMETABLE.

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

11 (9) (a) ~~The commission shall review and approve any plan for a~~
12 ~~capital construction project that is estimated to require total expenditures~~
13 ~~exceeding two million dollars and~~ A CAPITAL CONSTRUCTION PROJECT
14 INITIATED BY THE GOVERNING BOARD OF A STATE-SUPPORTED INSTITUTION
15 OF HIGHER EDUCATION that is CONTAINED IN THE MOST RECENT UNIFIED,
16 TWO-YEAR CAPITAL IMPROVEMENTS PROJECT PROJECTION PROVIDED
17 PURSUANT TO PARAGRAPH (b) OF SUBSECTION (6) OF THIS SECTION, AS THE
18 PROJECTION MAY BE AMENDED FROM TIME TO TIME, AND that is to be
19 ~~constructed operated, and maintained solely from student fees, auxiliary~~
20 ~~facility funds, wholly endowed gifts and bequests, research building~~
21 ~~revolving funds, or a combination of such sources, as provided in sections~~
22 ~~23-5-102, 23-5-103, 23-5-112, 23-20-124, 23-31-129, and 23-41-117 and~~
23 ~~section 24-75-303 (3), C.R.S.~~ Any such plan for a capital construction
24 project that is estimated to require total expenditures of two million
25 ~~dollars or less~~ SOLELY FROM CASH FUNDS HELD BY THE INSTITUTION AND
26 OPERATED AND MAINTAINED FROM SUCH CASH FUNDS OR FROM STATE
27 MONEYS APPROPRIATED FOR SUCH PURPOSE, OR BOTH, OR THAT IS TO BE

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1 CONSTRUCTED, OPERATED, AND MAINTAINED SOLELY FROM AUXILIARY
2 FACILITY FUNDS, WHOLLY ENDOWED GIFTS AND BEQUESTS, RESEARCH
3 BUILDING REVOLVING FUNDS, OR A COMBINATION OF SUCH SOURCES, AS
4 PROVIDED IN SECTIONS 23-5-102, 23-5-103, 23-5-112, 23-20-124,
5 23-31-112, AND 23-41-117 AND SECTION 24-75-303 (3), C.R.S., shall not
6 be subject to review or approval by the commission, THE CAPITAL
7 DEVELOPMENT COMMITTEE, OR THE JOINT BUDGET COMMITTEE. EACH
8 GOVERNING BOARD SHALL ENSURE, CONSISTENT WITH ITS
9 RESPONSIBILITIES AS SET FORTH IN SECTION 5 (2) OF ARTICLE VIII OF THE
10 STATE CONSTITUTION, THAT A CAPITAL CONSTRUCTION PROJECT INITIATED
11 PURSUANT TO THIS SUBSECTION (9) SHALL BE IN ACCORDANCE WITH ITS
12 INSTITUTION'S MISSION, BE OF A SIZE AND SCOPE TO PROVIDE FOR THE
13 DEFINED PROGRAM NEEDS, AND BE DESIGNED IN ACCORDANCE WITH ALL
14 APPLICABLE BUILDING CODES AND ACCESSIBILITY STANDARDS.

15 ~~(b) Upon approval of a plan for a capital construction project~~
16 ~~pursuant to paragraph (a) of this subsection (9), the commission shall~~
17 ~~submit such plan to the capital development committee. The capital~~
18 ~~development committee shall make a recommendation regarding the~~
19 ~~project to the joint budget committee. Following receipt of the~~
20 ~~recommendation, the joint budget committee shall refer its~~
21 ~~recommendations regarding the project, with written comments, to the~~
22 ~~commission.~~

23 ~~(c) The commission, the capital development committee, and the~~
24 ~~joint budget committee shall by agreement adopt procedures governing~~
25 ~~the capital development committee and joint budget committee review of~~
26 ~~projects subject to this subsection (9) and subsection (10) of this section,~~
27 ~~which agreement shall provide that, whenever possible, the capital~~

1 ~~development committee shall submit recommendations to the joint budget~~
2 ~~committee and the joint budget committee shall submit recommendations~~
3 ~~to the commission within thirty days after each committee receives the~~
4 ~~information prescribed in the agreement as necessary for its review.~~

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

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

22 (11) Each STATE institution OF HIGHER EDUCATION shall submit
23 to the commission on or before September 1 of each year a list and
24 description of each project for which an expenditure was made during the
25 immediately preceding fiscal year that was not subject to review by the
26 commission pursuant to subsections (9) and (10) SUBSECTION (9) of this
27 section. The commission shall submit a compilation of such THE projects

1 to the capital development committee on or before December 1 of each
2 year.

3 **SECTION 2.** 24-30-1303 (5), Colorado Revised Statutes, is
4 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

5 **24-30-1303. Department of personnel - responsibilities.**

6 (5) (c) IF THE EXECUTIVE DIRECTOR DETERMINES THAT THE GOVERNING
7 BOARD OF A STATE INSTITUTION OF HIGHER EDUCATION HAS ADOPTED
8 PROCEDURES THAT ADEQUATELY MEET THE SAFEGUARDS SET FORTH IN
9 THE REQUIREMENTS OF PART 14 OF THIS ARTICLE AND ARTICLE 92 OF THIS
10 TITLE, THE EXECUTIVE DIRECTOR MAY EXEMPT THE INSTITUTION FROM
11 ANY OF THE PROCEDURAL REQUIREMENTS OF PART 14 OF THIS ARTICLE
12 AND ARTICLE 92 OF THIS TITLE IN REGARD TO A CAPITAL CONSTRUCTION
13 PROJECT TO BE CONSTRUCTED PURSUANT TO THE PROVISIONS OF SECTION
14 23-1-106 (9), C.R.S.; EXCEPT THAT THE SELECTION OF ANY CONTRACTOR
15 TO PERFORM PROFESSIONAL SERVICES AS DEFINED IN SECTION 24-30-1402
16 (6) SHALL BE MADE IN ACCORDANCE WITH THE CRITERIA SET FORTH IN
17 SECTION 24-30-1403 (2).

18 **SECTION 3.** 24-30-1405, Colorado Revised Statutes, is amended
19 to read:

20 **24-30-1405. Public notice.** When professional services are
21 required to be contracted for, public notice shall be given by the state
22 agency if the basic construction cost of the project is estimated by the
23 state agency to be more than ~~five hundred thousand dollars~~ or if the fee
24 ~~for the professional services is estimated to exceed fifty thousand dollars,~~
25 ~~except that, for projects under the supervision of the department of~~
26 ~~transportation, public notice shall be given by the department if the basic~~
27 ~~transportation-related construction cost of the project is estimated by the~~

1 ~~department to be more than~~ one million dollars or if the fee for
2 professional engineering or surveying services is estimated to exceed one
3 hundred thousand dollars. ~~Such~~ THE public notice shall be given at least
4 fifteen days prior to the selection of the three or more most highly
5 qualified persons by the principal representative pursuant to section
6 24-30-1403 (2), and, except for projects under the supervision of the
7 department of transportation, ~~such~~ THE public notice shall be given no
8 later than eight weeks after the date on which the appropriation for the
9 project becomes law. ~~Such~~ THE public notice shall be given by
10 publication at least two times in one or more daily newspapers of general
11 circulation in this state ~~and~~ OR BY PUBLICATION IN AN ELECTRONIC
12 MEDIUM APPROVED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT.
13 THE PUBLIC NOTICE shall contain a general description of the proposed
14 project and shall indicate the procedure by which interested persons may
15 apply for consideration for the contract.

16 **SECTION 4.** 24-75-303 (3) (a), Colorado Revised Statutes, is
17 amended to read:

18 **24-75-303. Appropriation for capital construction.** (3) (a) ~~No~~
19 A capital construction project for a state-supported institution of higher
20 education that is estimated to require total expenditures exceeding two
21 million dollars may NOT be commenced unless:

22 (I) ~~The PLAN FOR THE project is to be constructed solely from cash~~
23 ~~funds held by the institution other than those funds specified in~~
24 ~~subparagraph (II) of this paragraph (a) and is to be operated and~~
25 ~~maintained from such cash funds or from state moneys appropriated for~~
26 ~~such purpose, or both, and the plan for the project has been approved by~~
27 ~~the Colorado commission on higher education pursuant to section~~

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1 ~~23-1-106 (10), C.R.S.,~~ or WAS CONTAINED IN THE MOST RECENT UNIFIED,
2 TWO-YEAR CAPITAL IMPROVEMENTS PROJECTION PROVIDED PURSUANT TO
3 SECTION 23-1-106 (6) (b), C.R.S., AS THE PROJECTION MAY BE AMENDED
4 FROM TIME TO TIME;

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

11 (III) THE PROJECT IS TO BE CONSTRUCTED SOLELY FROM CASH
12 FUNDS HELD BY THE INSTITUTION.

13 **SECTION 5.** 24-92-103 (3), Colorado Revised Statutes, is
14 amended to read:

15 **24-92-103. Construction of public projects - competitive sealed**
16 **bidding.** (3) Adequate public notice of the invitation for bids shall be
17 given at least fourteen days prior to the date set forth therein for the
18 opening of bids, pursuant to rules. Such notice may include publication
19 by electronic on-line access pursuant to section 24-92-104.5 or in a
20 newspaper of general circulation at least fourteen days prior to bid
21 opening OR IN AN ELECTRONIC MEDIUM APPROVED BY THE EXECUTIVE
22 DIRECTOR OF THE DEPARTMENT OF PERSONNEL.

23 **SECTION 6.** 38-26-107 (1), Colorado Revised Statutes, is
24 amended to read:

25 **38-26-107. Supplier may file statement - notice - withholding**
26 **funds.** (1) Any person, as defined in section 2-4-401 (8), C.R.S., that has
27 furnished labor, materials, sustenance, or other supplies used or consumed

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1 by a contractor or his or her subcontractor in or about the performance of
2 the work contracted to be done or that supplies laborers, rental machinery,
3 tools, or equipment to the extent used in the prosecution of the work
4 whose claim therefor has not been paid by the contractor or the
5 subcontractor may, at any time up to and including the time of final
6 settlement for the work contracted to be done, file with the board, officer,
7 person, or other contracting body by whom the contract was awarded a
8 verified statement of the amount due and unpaid on account of the claim.
9 If the amount of the contract awarded to the contractor exceeds fifty
10 thousand dollars, the board, officer, person, or other contracting body by
11 whom the contract was awarded shall, no later than ten days before the
12 final settlement is made, publish a notice of the final settlement at least
13 twice in a newspaper of general circulation in any county where the work
14 was contracted for or performed OR IN AN ELECTRONIC MEDIUM APPROVED
15 BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL. It is
16 unlawful for any person to divide a public works contract into two or
17 more separate contracts for the sole purpose of evading or attempting to
18 evade the requirements of this subsection (1).

19 **SECTION 7. Safety clause.** The general assembly hereby finds,
20 determines, and declares that this act is necessary for the immediate
21 preservation of the public peace, health, and safety. <{Does the
22 committee want a safety clause?}>

