

July 12, 2017

MEMORANDUM

TO: State Board of Regents

FROM: David L. Buhler

SUBJECT: USHE – Architectural Programming for USHE State Funded Capital Developments and revisions to Policies R701 and R702

Issue

During the 2017 General Session the State Legislature modified provisions of statute to allow state agencies and institutions to architecturally program state funded capital development projects without legislative approval. These changes require the modification of two Regent Policies: R701, *Capital Facilities* and R702, *Non-State Funded Projects* as well as the adoption of a new process for Regent approval of architectural programming.

Background

Architectural programming is a decision-making process used to identify and define the goals and uses of a capital project. Programming typically costs several hundred thousand dollars (depending on the size of the project) and helps define the scope of work and the cost of a capital project prior to design and construction. Prior to 2017, state statute prohibited the funding of programming, design, and construction separately or in phases. Senate Bill 9, *Revenue Bond and Capital Facilities* modified the statute to give the State Building Board authority to allow institutions to fund the architectural program of a new facility before the legislature affirmatively authorizes funding of a project.

In order to reflect the statutory change and to provide guidance to USHE institutions, the Commissioner's Office recommends the modification of two Regent policies. The revision to policy R701, *Capital Facilities* defines architectural programming and requires USHE institutions to receive approval first by their Boards of Trustees and secondly by the Board of Regents prior to requesting authorization of the State Building Board for architectural programming. The revision also clarifies that facilities that are funded by the legislature do not need Regent authorization to begin architectural programming and provides that institutions may request reimbursement for institutional funds expended on architectural programming. Policy R702, *Non-State Funded Projects* is also revised to clarify that non-state funded capital development projects do not need State Building Board or Board of Regents approval to begin architectural programming.

While the policy changes provide flexibility to the Regents to approve architectural programming whenever institutions first receive approval of their Boards of Trustees, as a matter of procedure, the Commissioner's

Office recommends that the approval occur annually during the prioritization of state funded capital developments (typically in September). Programming can help an institution refine a project and better define scope and costs; however, the premature programming of a facility may result in additional costs if a project is not funded for several years or if an institution modifies its priorities. In order to best safe-guard institutional resources the Commissioner's Office recommends that the Board of Regents consider approval of architectural programming at the time the Board prioritizes state funded capital developments and that the Board's approval be based on the prioritized ranking of the facilities.

Commissioner's Recommendation

The Commissioner recommends the Regents approve the changes to Policies R701 and R702, effective immediately.

David L. Buhler
Commissioner of Higher Education

DLB/KLH/RPA
Attachments

R701-1 Purpose: To establish the respective roles of the State Board of Regents, the Boards of Trustees and the Presidents regarding capital facilities and institutional requests for new capital facility projects.

R701-2 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. Regent Policy R711, State Building Board Delegation of Capital Facilities Projects
- 2.6. Regent Policy R706, Capital Facilities Master Planning
- 2.7. Regent Policy R741, Capital Development Prioritization

R701-3 Definitions

[3.1 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.](#)

3.12. "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.

3.23. "Capital Development:" This policy adopts the definition established in Utah Code 63A-5-104(1)(a).

3.34. "Capital Improvement:" This policy adopts the definition established in Utah Code 63A-5-104(1)(b).

3.45. Remodeling: includes any alteration, modification, or improvement project other than routine maintenance or repair work, regardless of the source of funding.

R701-4 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

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, January 24, 2014 and May 15, 2015.

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.

4.1. Remodeling: Institutions should remodel existing capital facilities for the purpose of changing the building's function only when the project is justified by and consistent with the the institution's mission and in accord with the Board of Regents' previously approved goals and objectives.

R701-5. State Funded Capital Projects Approvals

5.1. Boards of Trustee Review of Requests: Institutions shall obtain approval from their respective Boards of Trustees before they may submit a request funding for capital development and capital improvement projects to the Board of Regents. Boards of Trustees shall ensure that proposed project requests are consistent with the institution's Master Plan, the role assignment of the institution, and institutional goals and objectives.

5.2 Commissioner's Office Recommendations: The Commissioner and his staff shall provide annual recommendations for capital facilities development and improvement projects based on approved prioritization procedures for consideration by the Board in the preparation of its recommendations to the State Building Board, Governor and Legislature.

5.3 Regent Prioritization of State Funded Projects: The Board shall annually prioritize capital development projects for the System of Higher Education in accordance with Regent Policy R741, *Capital Development Prioritization*, and submit final recommendations to the State Building Board, the Governor, and the State Legislature.

R701-6. Submission of Capital Improvement Requests – Each year institutions shall submit to the Utah State Building Board and the Board of Regents a prioritized list of projects for funding through the state capital improvement program.

6.1. Non-inclusion of Equipment: Institutions may not include acquisition of equipment unless it is an integral component of a capital improvement.

6.2. Non-inclusion of Normal Maintenance: Normal maintenance of fixed capital assets (i.e., unplanned or discretionary) shall be considered part of the annual operating budget and may not be included as a component of a capital improvement project. 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).

R701-7 Responsibilities of Institutional Presidents. Presidents or their designees may:

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

7.2. 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.

7.3. 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.

7.4. **Accept Completed Facilities:** Accept completed capital facilities from the DFCM.

R701-8 Architectural Programming of State-Funded Capital Development Projects: Prior to entering into a contract for architectural programming services for a future state-funded capital development project that has not been approved by the State Legislature, an institution shall first receive approvals of the institution's Board of Trustees, the Board of Regents, and the State Building Board in that order.

8.1. Institutions do not need Board of Regent approval to architecturally program a facility that has been affirmatively authorized and funded by the State Legislature.

8.2. Institutions that fund an architectural program for a facility using donations, institutional funds, or other funds not appropriated by the State Legislature may request reimbursement for those funds in the state funded capital development request.

R701-1 Purpose: To establish the respective roles of the State Board of Regents, the Boards of Trustees and the Presidents regarding capital facilities and institutional requests for new capital facility projects.

R701-2 References

- 2.1. Utah Code §53B-6-101 (Master Plan for Higher Education - Studies and Evaluations)
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- 2.4. Utah Code Title 63A, Chapter 5 (State Building Board - Division of Facilities Construction and Management)
- 2.5. Regent Policy R711, State Building Board Delegation of Capital Facilities Projects
- 2.6. Regent Policy R706, Capital Facilities Master Planning
- 2.7. Regent Policy R741, Capital Development Prioritization

R701-3 Definitions

- 3.1 **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.
- 3.2 **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.
- 3.3 **Capital Development:** This policy adopts the definition established in Utah Code 63A-5-104(1)(a).
- 3.4 **Capital Improvement:** This policy adopts the definition established in Utah Code 63A-5-104(1)(b).
- 3.5 **Remodeling:** includes any alteration, modification, or improvement project other than routine maintenance or repair work, regardless of the source of funding.

R701-4 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.

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5.1. **Boards of Trustee Review of Requests:** Institutions shall obtain approval from their respective Boards of Trustees before they may submit a request funding for capital development and capital improvement projects to the Board of Regents. Boards of Trustees shall ensure that proposed project requests are consistent with the institution's Master Plan, the role assignment of the institution, and institutional goals and objectives.

5.2. **Commissioner's Office Recommendations:** The Commissioner and his staff shall provide annual recommendations for capital facilities development and improvement projects based on approved prioritization procedures for consideration by the Board in the preparation of its recommendations to the State Building Board, Governor and Legislature.

5.3. **Regent Prioritization of State Funded Projects:** The Board shall annually prioritize capital development projects for the System of Higher Education in accordance with Regent Policy R741, *Capital Development Prioritization*, and submit final recommendations to the State Building Board, the Governor, and the State Legislature.

R701-6. **Submission of Capital Improvement Requests** – Each year institutions shall submit to the Utah State Building Board and the Board of Regents a prioritized list of projects for funding through the state capital improvement program.

6.1. **Non-inclusion of Equipment:** Institutions may not include acquisition of equipment unless it is an integral component of a capital improvement.

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

7.2. **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.

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8.1. Institutions do not need Board of Regent approval to architecturally program a facility that has been affirmatively authorized and funded by the State Legislature.

8.2. Institutions that fund an architectural program for a facility using donations, institutional funds, or other funds not appropriated by the State Legislature may request reimbursement for those funds in the state funded capital development request.

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).

2.43. 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: Regardless of the funding source, the Board of Regents 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 the **programmatic planning and facilities** master planning requirements of Regent Policy R7076, *Capital Facilities Master Planning*. Types of funding sources include:

3.1. Projects Funded from Student Fees, Contractual Debt, or Disposal or Exchange or Capital Assets: Proposals for capital development 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.

3.2. Projects Funded from Private Sources: The institutional Board of Trustees must approve capital development projects funded through private sources or a combination of private sources and other non-state funds before the president may submit the request to the Board of Regents for consideration.

3.3. Projects for which Legislative Revenue Bonding Authorization is Required: Institutions shall submit capital development projects requiring revenue bonding to the Board of Regents for approval as required by Regent Policy R590, *Issuance of Revenue Bonds for Higher Education*.

3.4. Requests to use Donated or Institutional Funds for Planning and Design: Requests to the Building Board for approval to use donated or institutional funds for planning and design of proposed capital development projects require prior Regents' authorization.

R702-4. Operating and Maintenance (O & M) Costs on Non-State Funded Projects: A capital development 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 institution's **programmatic planning and facilities** master plan requirements.

¹ Approved [January 20, 2017](#); 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](#), [January 24, 2014](#) and [May 15, 2015](#) [July 21, 2017](#).

4.1 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.

4.2 Non-Academic Space: In most cases, a capital development project that is not primarily for approved for academic and training purposes or associated support, it will not be eligible for state appropriated O & M funding. If the institution requests to the Board of Regents 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.

4.3 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.

[R702-5. Architectural Programming of Non-State Funded Projects: A capital development project funded from private sources or other non-state appropriated funds does not require approval by the State Building Board or the Board of Regents for the architectural programming of the facility.](#)

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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: Regardless of the funding source, the Board of Regents 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 funding sources include:

- 3.1. **Projects Funded from Student Fees, Contractual Debt, or Disposal or Exchange or Capital Assets:** Proposals for capital development 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.
- 3.2. **Projects Funded from Private Sources:** The institutional Board of Trustees must approve capital development projects funded through private sources or a combination of private sources and other non-state funds before the president may submit the request to the Board of Regents for consideration.
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R702-5. Architectural Programming of Non-State Funded Projects: A capital development project funded from private sources or other non-state appropriated funds does not require approval by the State Building Board or the Board of Regents for the architectural programming of the facility.