

May 8, 2019

MEMORANDUM

TO: State Board of Regents

FROM: David L. Buhler

SUBJECT: USHE – Revision and Renaming of Policy R741, *Capital Development Prioritization – CDP*

Issue

Senate Bill 102, *Higher Education Capital Facilities* (2019) modifies the Regents' capital development prioritization process and requires a revision and a renaming of Policy R741 from *Capital Development Prioritization – CDP* to *Nondedicated Capital Project Prioritization Process*.

Background

Senate Bill 102 provides an ongoing funding source for USHE capital facilities and limits the number of additional state-funded projects (defined as “nondedicated” projects) the Regents may submit for legislative funding. The bill allows the Regents to prioritize nondedicated projects according to their own policy, but requires three criteria in addition to any others defined by the Regents: need, utilization, and age and condition. These statutory requirements require the revision of Policy R741.

The Regent prioritization process currently defined in R741 requires the Regents to evaluate institutional facility requests on the basis of need, non-appropriated funding, institutional priority, and facility condition. Senate Bill 102, requires the addition of utilization as a factor for Regent prioritization and removes the reference to the factor for non-appropriated funding.

The Regents' Capital Facilities Subcommittee met in April to review the changes from Senate Bill 102 and recommends the following changes to Policy R741 to align the Regent policy with the statute:

- Limit the number of projects an institution may submit to the Regents for prioritization to one per institution
- Clarify that institutions may not submit projects to the State Building Board or the State Legislature
- Remove “institutional priority” as a factor for prioritization
- Remove “non-appropriated funding” as a factor for prioritization and instead add it as a factor for the Regent discretionary points defined in the Capital Development Priority Guidelines for FY 2020-21
- Add “utilization” as a factor for prioritization with 15 points possible
- Clarify that the Board of Regents submits USHE capital project priorities to the State Building

Board and the State Legislature

- Limit the number of institutional projects the Regents may prioritize and submit to the State Building Board and the State Legislature according to statute

Additional technical changes to the current policy include new references to the statute and Regent policy, a new definitions section, and changes to reflect established practices and current Regent policy. In addition to the proposed policy changes, the Commissioner's Office also recommends changing the policy title to *Nondedicated Capital Project Prioritization Process*. The new title reflects the naming convention in Senate Bill 102 that defines state-funded capital development projects prioritized by the Regents as "nondedicated" projects.

Commissioner's Recommendation

The Commissioner recommends the Regents rename Policy R741 to *Nondedicated Capital Project Prioritization Process* and incorporate the proposed changes effective immediately.

David L. Buhler
Commissioner of Higher Education

DLB/CJM/JAC
Attachments

R741, Nondedicated Capital Development Project Prioritization Process – CDP¹

R741-1. Purpose: To provide the methodology and process for prioritization of system-wide, state-funded, nondedicated capital development project needs for presentation to the Governor and State Legislature for funding. ~~The framework for deriving the integrated and prioritized list of capital development projects recognizes that many considerations affect the relative priority of the projects. These considerations include: the physical condition of existing facilities, determination of space needs, roles and mission of the institutions, long term strategic planning, and areas of current program emphasis and priority. Consequently, the ranking methodology, while quantitative in nature, is designed to provide the opportunity to exercise discretion and judgment in the ranking of projects.~~

R741-2. References

- 2.1. Utah Code §53B-1-103 (Establishment of State Board of Regents -- Powers, duties, and authority) ~~Utah Code §53B-6-101 (Master Planning – Board Establishes Criteria to Meet Capital Budgetary Needs)~~
- 2.2. Utah Code §53B-22-201 (Capital Developments) ~~Utah Code §53B-7-101 (Combined Requests for Appropriations)~~
- 2.3. Utah Code §53B-20-101 (Property of Institutions to Vest in State Board)
- 2.4. Utah Code § 63A, Chapter 5 (State Building Board ~~– Division of Facilities Construction and Management~~)
- 2.5. Policy and Procedures R740~~1~~, Capital Facilities
- 2.6. Policy and Procedures R702, Non-State Funded Property
- 2.7. Policy and Procedures R703, Acquisition of Real Property
- 2.8~~6~~. Policy and Procedures ~~- R706~~R720, Capital Facilities Master Planning
- 2.9. Policy and Procedures R751, Institutional Facilities Space Utilization

R741-3 Definitions

- 3.1. Capital Development: This policy adopts the definition established in Utah Code 63A-5-104(1)(a).
- 3.2. Non-Appropriated Funds: Contributions such as donations to capital projects from sources other than appropriations of the State Legislature. Student fees are not considered non-appropriated funds for purposes of this policy.

¹ Amended May 20, 2011, September 13, 2013, ~~and~~ November 14, 2014, and May 17, 2019.

3.3. State Funded Project: A capital development project submitted by an institution of Higher Education requiring appropriations of the State Legislature to fund the design, construction, and/or operations and maintenance.

3.4. Dedicated Project: a capital development project for which state funds from an institution's formulaic allocation under Utah Code 53B-22-201 are requested or used.

3.5. Nondedicated Project: a capital development project for which state funds from a source other than an institution's allocation under Utah Code 53B-22-201 are requested or used.

R741-43. Nondedicated Project Prioritization Process ~~Capital Development Project Evaluation Cycle~~ - The Board of Regents shall annually review and prioritize nondedicated projects submitted by USHE institutions. The annual ~~nondedicated project~~ ~~Capital Development Project Evaluation Cycle for analysis and~~ prioritization of needed facilities ~~process~~ consists of ~~four~~ five (54) fundamental steps:

43.1. Step 1 – Establishment of Priority Guidelines: At the beginning of each year's capital development project prioritization process, the Board shall adopt priority guidelines pertaining to the most pressing and critical capital needs for the Utah System of Higher Education not funded through dedicated projects. These priorities, though not binding, are designed to guide the subsequent use of Regents' Priority Points (~~section 3.4.1~~ Step 4).

43.2. Step 2 – Submission of Requests: Institutions submit their highest priority capital development needs to the Office of the Commissioner of Higher Education for evaluation. Each institution may submit ~~more than~~ up to one project, ~~but for scoring purposes, except for research institutions, only the top project will be scored.~~ Each research university may have up to two projects scored each year. ~~The capital development project categories are:~~ per year and shall review the institution's allocation for dedicated projects prior to deciding to submit a nondedicated project. Institutions may not submit project requests directly to the State Building Board or the State Legislature.

~~1. Mission and Role—These are projects that provide the space in which to house the primary programs and activities of the institutions and facilitate accomplishment of their approved missions and roles. This category includes projects to accommodate growth in instructional and research demand; to address program deficiencies; to strengthen academic programs within the approved missions of the institutions; and to address role and mission changes. Mission and role projects are broken down into two subcategories:~~

~~a. Renovation and Replacement Projects—This category includes projects to improve the condition of existing facilities, to restore building life, to update space to meet current program requirements, and to replace failing permanent buildings. Decisions pertaining to whether an aging facility should be renovated or replaced should be made taking into consideration the historic nature and value of the facility, as well as the cost of renovation versus the cost of replacement.~~

~~b. New Construction Projects—This category includes projects needed to support and enhance institutional missions for which existing levels and/or types of space are inadequate. It includes funding to accommodate: undergraduate student enrollment growth, graduate student enrollment growth, research that supports graduate degree programs and promotes economic growth and innovation, changes and enhancements in institutional missions and roles, changes in the technological infrastructure needed for evolving instruction and research programs, etc.~~

~~Before any project can be evaluated it must be included in the approved master plan of an institution and the programs to be housed therein must have been approved by the Board of Regents. If those approvals have not been received, the project will not be considered.~~

~~2. Major Infrastructure Projects—Requests for funding in this category should be limited to pressing needs that cannot be met with funding appropriated annually by the Legislature in the Capital Improvement Funding process and allocated to the institutions by the State Building Board. This category has a major focus on projects that address: critical life safety, fire and seismic deficiencies; problems that pose a real and ongoing threat to the daily operations of the institutions; and the need to preserve and repair critical infrastructure items such as utilities.~~

~~**4.3. Step 3 – Quantitative Analysis and Scoring of Needs:** The Office of the Commissioner reviews institutional state funded projects and assigns up to 80 points for each project in three areas: Needs Analysis, Facility Condition, and Utilization. “Scoring” of the needs is addressed by a process structured to give appropriate consideration to the various “Mission and Role” and “Major Infrastructure” projects. It includes the important issue of access to institutions in the Utah System of Higher Education (USHE) where growth is occurring, while also providing the mechanism to give appropriate consideration to mission-based needs, remodeling and renovation of current facilities, functional obsolescence, critical infrastructure needs, etc. The components and procedures of the scoring system are as follows:~~

4.4. Step 4 – Regent Points and Prioritization of Projects: The Capital Facilities Committee of the Board of Regents meets annually to review state funded projects and the quantitative scoring by the Office of the Commissioner. The Committee allocates up to 25 Regents’ Priority Points to the projects and submits a recommendation for the prioritization of state funded projects to the full Board of Regents, which adopts or amends the recommendation and takes final action.

4.5. Step 5 – Regent Submission of Prioritized of Projects: The Board of Regents submits finalized priorities to the State Building Board, the Governor, and the State Legislature for further consideration and funding. State statute limits the number of building requests the Regents may submit as follows:

4.5.1 3 Projects if legislative funding for dedicated projects equals \$100 million or more

4.5.2 2 Projects if legislative funding for dedicated projects is between \$50 million and \$100 million

4.5.3 1 Project if legislative funding for dedicated projects equals less than \$50 million

R741-5. Needs Analysis Points:

3.3.1.1. For each institutional mission and role project, a value of need will be calculated that reflects the gap between the calculated need (based on the “Space Standards”) and the currently available space for a specific category of space. For those institutional mission and role projects that include more than one category of space, the need gap will be calculated for each category of space in the project (again based on the “Space Standards”), and then a value for the entire project will be calculated based on the relative weight given for each of the categories of space included in the total assignable square feet of the project. The detail of the “Space Standards,” definitions and instructions pertaining to this analysis are attached to this policy as **Appendix A**.

3.3.1.2. The total values for each of the projects resulting from the calculations described in section 3.3.1.1 above will then be listed sequentially in point-value order from the highest to the lowest.

“Scoring Points” will be assigned as follows:

a- 5.1. 50 points will be assigned to the project with the highest calculated value.

5.2. Descending points will be assigned to the remaining projects based on the difference in calculated value between a project and the immediately preceding project as follows:

- ~~b.~~
 - ~~i.~~ **5.2.1** Projects with a calculated value difference of less than one will be assigned the same number of points.
 - ~~ii.~~ **5.2.2** A two point differential between projects with a calculated value difference up to 20.
 - ~~iii.~~ **5.2.3** A three point differential between projects with a calculated value difference greater than 20.

~~**3.3.2. Non-appropriated Funding:** Points may be awarded based on the documented portion of the project's anticipated costs to be derived from non-appropriated sources of funds. One point will be awarded when the non-appropriated contribution reaches 5 percent. Thereafter, additional points will be awarded as follows:~~

- ~~a. Research Institutions: one point for each 5 percent increase in donated funds up to a maximum total of 15 points.~~
- ~~b. Baccalaureate and Masters Degree Granting Institutions: one point for each 4 percent increase in donated funds up to a maximum total of 15 points.~~
- ~~c. Community Colleges: one point for each 3 percent increase in donated funds up to a maximum total of 15 points.~~

~~**3.3.2.1.** Non-appropriated funding may not create a future liability for the state: Non-appropriated funds must be given to the institution with no expectation of future payback. Any contribution from a partnering private entity or state/local government agency that creates a property right for the partner will not be considered in the calculation of points for non-appropriated funds. Student fees may not be counted as non-appropriated funds.~~

~~**3.3.2.2.** Office of the Commissioner to determine viability of non-appropriated funds: Each institution seeking points for non-appropriated funds shall provide evidence of the pending donation to the Office of the Commissioner. The Associate Commissioner for Finance and Facilities will review the gift and make a determination as to whether it is viable and should be accepted for points in the process. Institutions may appeal the Associate Commissioner's finding to the Commissioner.~~

~~**3.3.3 Institutional Priorities:** Additional points are added to each project total based on the priority given to each project by the institution. The awarding of points for institutional priority is based on the following:~~

~~**3.3.3.1.** The total number of points available to a given institution to distribute to its Capital Facilities Development projects is based on the number of projects authorized for scoring. Available points are as follows:~~

- ~~_____ Research Universities — 47 Points~~
- ~~_____ All Other Institutions — 25 Points~~

~~**3.3.3.2.** No project can receive more than 25 institutional priority points. This assures that the top priority project at a smaller institution is of equal value to the top priority project of a larger institution. The interval between the points assigned to an institution's top priority and each priority thereafter must be at least 3 points. For example: if an institution assigns 25 institutional priority points to its top project, it may assign no more than 22 points to its second priority.~~

R741-6. 3.3.4. Facility Condition Assessment Points – Facility condition assessment points apply to projects designed to resolve issues that pose a disruption in daily operations or that pose serious life safety threats. —These points can be awarded to projects designed to resolve issues where there is substantiated legal and/or life threatening liability; where facilities are threatened with immediate loss of function due to natural disaster; where

closure is imminent because of violations of legal/safety/other requirements; or similar circumstances. These Facility Condition Assessment points can be applied only under the following circumstances:

~~3.3.4.1—Only if the project has been given the highest possible priority by the institution requesting support (or if all projects above it on the institution's priority list are of the same urgency due to liability or imminent closure and have met all the conditions listed).~~

6.1. ~~3.3.4.2~~—Associated liability and imminent loss of function - Points may be awarded where the institution has substantiated by documentation from a qualified engineer, fire marshal, attorney, or other qualified professional that a very significant legal and/or health/life safety risk is being solved by completion of the proposed project. "Very significant" is defined as, "the realistic estimate of the liability exceeds the cost of the project," as determined by the Commissioner's Office with assistance from an external consultant or the Utah Division of Facilities Construction and Management, and funded by the submitting institution. Also, these points may be awarded if there is a substantiation of the threatened, imminent loss of the function should the project not be authorized, as is the case when natural disasters have destroyed a particular academic building or code violations cause the structure to be closed. Points awarded range from zero to 15 per project based upon the severity of liability or loss of function as determined above.

6.2. ~~3.3.4.3~~—Buildings that can no longer function for the purpose designed may be considered for "Facility Condition Points" as recommended by the Office of the Commissioner. Points may be awarded in instances where aging facilities do not pose a safety hazard but lack appropriate size, mechanical/electrical capacity or technology upgrades to accommodate modern instructional resources. The Commissioner's Office should award points in this category only in exceptional circumstances and should strongly consider the impact of institutional actions that led to the existing condition. Points awarded range from zero to 15 per project based on the severity of liability or loss of function as determined above.

6.3. An institution may receive a maximum of 15 Points awarded under both 6.1 and 6.2, and those points are then adjusted proportionate to size of the deficient buildings relative to the total square footage of the requested facility.

R741-7. Utilization Points: Institutions receive up to 15 points for the utilization of classroom facilities on main campuses during the Fall semester as reported in the annual USHE Utilization Report required by R751, *Institutional Facilities Space Utilization*. Points are assigned as follows:

7.1. Weekly Room Utilization Rate (RUR) – An institution receives 10 points if it meets or exceeds the RUR standard set by the Board in R751 for Fall semester main campus classrooms. Institutions not meeting the adopted Regent standard receive a proportionate share of the 10 points based on the reported RUR score.

7.2. Seat Occupancy Rate (SOR) – An institution receives 5 points if it meets or exceeds the SOR standard set by the Board in R751 for Fall semester main campus classrooms. Institutions not meeting the adopted Regent standard receive a proportionate share of the 5 points based on the reported SOR score.

R741-8. 3.3.5.—Major Infrastructure Projects Points: The Office of the Commissioner, in consultation with the Division of Facilities Construction and Management, may award points for major infrastructure projects that address critical life safety, fire and seismic deficiencies and the need to preserve and repair critical infrastructure such as utilities. Such projects do not receive Needs Analysis, Utilization, or Facility Condition points. Up to 60 points can be applied based on the degree of severity of need as follows:

8.1. a. — Imminent Nonfunctionality – Where circumstances exist that pose imminent nonfunctionality threats to the facility or the campus, points in the range of 41-60 can be assigned. To be considered for this level of support the project must be the institution’s top priority.

8.2. b. — Operational but Seriously Deficient – Facilities in this condition can qualify for points in the range of 21-40.

8.3. c. — Operational but Deficient – Facilities in this condition can qualify for points in the range of 1-20.

3.4. Step 4 – Prioritization of Projects for Funding Consideration: ~~The final step in the annual Capital Facilities Evaluation process is to prioritize the projects for funding consideration. The projects have been ordered from highest to lowest through the scoring process resulting in the institutional infrastructure and mission and role projects being combined into one list.~~

R741.9. 3.4.1. Regents’ Priority Points — ~~In addition to the “Scoring Points” of the projects, the The Capital Facilities Committee of the Board of -Regents may award up to 25 additional points per nondedicated project based on priority guidelines adopted by the Board of Regents for the current prioritization cycle. institution. These points are designed to position institutions to further develop and enhance their assigned missions and roles, and including projects to: improve existing facilities and restore building life, update existing space to meet current and emerging program requirements, changes in role and mission, emerging needs in branch and satellite campuses, projects for which a prior year commitment has been made, projects to resolve major infrastructure problems, etc. These points, ranging from 0-25, are to be assigned discretionarily by the Regents in the context of the approved capital facilities priority guidelines, and after careful consideration of the relative importance and/or seriousness of the need for the affected projects as determined by the Regents. ~~These points should be used in a consistent manner that enables USHE institutions to pursue strategic and long-term capital development planning while also providing the means to respond to external time-sensitive factors such as: the existing funding climate; environmental, political, demographic, and economic development considerations; technological needs; et al.~~~~

R741.10 3.4.2. Final Priority Ranking – After the Regents Priority Points are added to the “Scoring Points,” the projects are recommended by the Regents for funding in the resulting rank order, with the project having the highest point total being the highest-ranked project.

R741.11 4. Operation and Maintenance Costs (O & M): The estimated O & M costs for each facility and the source of funding those costs will be listed for each facility on the priority list and will be approved by the Regents as part of the approval process for construction or acquisition of each facility. In prioritizing nondedicated projects,

4.1. — ~~In determining the number of facilities to be recommended for construction or acquisition,~~ the Regents will consider the magnitude of future O & M obligations and the potential impact of approval on other components of the operating budget. The goal of the Regents is that future annual state funded O & M costs on approved new facilities should not represent a disproportionate share of new ongoing appropriated state tax funds.

4.2. — ~~The intent of the Regents is to encourage proper consideration of the O & M impact on future operating budgets at the time new capital facility projects are approved, since O & M costs cease to be optional after facilities are in place and will be recommended for funding under the Regents’ O & M policy.~~

R741.125. Projects Funded from Non-State Appropriated Funds – Proposals from institutions for approval of capital development projects to be financed by non-state appropriated funds are subject to the approval process outlined in Policy R702, Non-State Funded Projects. ~~R710, Capital Facilities. This includes determination of whether the projects qualify for state appropriated funding for ongoing O&M needs. Consistent with provisions of this~~

~~policy, before any project can be considered for approval it must be included in the approved master plan of an institution, and the programs to be housed therein must have been approved by the Board of Regents. If those approvals have not been received, the project will not be considered.~~

R741.13.6 ~~—————~~ **Land Bank Acquisition Requests** – Requests for purchase of land from funds to be appropriated by the state Legislature for future use of an institution must be reviewed and approved by the Board of Regents. In reviewing such requests, the Board shall use the guidelines in Policy R703, *Acquisition of Real Property* and shall ensure that the request is consistent with the institutional master plan (see Policy R706, *Capital Facilities Master Planning*).

~~Recommendations to the State Building Board, Governor and Legislature for such purchases shall be based upon approved programmatic planning and facilities master plan requirements of the institutions (Policy R710.4.5.3). The following considerations will be taken into account in evaluation of these requests for inclusion in the annual request for land bank funding:~~

~~————— 6.1. ——— Location and description of the property including any existing permanent structures.~~

~~————— 6.2. ——— Current availability of the land and “time sensitivity” of the window of opportunity for its purchase.~~

~~6.3. ——— Intended use of the land and its relative importance in the context of the institutions role and mission assignment, campus master plan, and strategic plan for the future.~~

~~6.4. ——— Suitability of the property for the intended use (ingress/egress, proximity of utilities, percentage of buildable area, ground tests, etc. where applicable).~~

~~6.5. ——— Reasonableness of cost as determined by an appraisal or other reasonable estimate of the value of the land.~~

~~6.6. ——— Condition of the land, including the potential liability of the institution pertaining to clearing the property, potential existence of hazardous waste, greenhouse gas emissions, etc.~~

~~6.7. ——— Condition and potential use of existing structures, if any.~~