

**ADOPTED AMENDMENTS TO RULES:
APPROVAL OF NONINSTRUCTIONAL CAPITAL PROJECTS**

Submitted for: Action.

Summary: This item seeks final adoption of amendments to Approval of Noninstructional Capital Projects. The amendments will provide the Board with advance notice of capital projects that will ultimately require Board approval. Proposed amendments to this Part were approved by the Board at the August meeting.

In accordance with the Illinois Administrative Procedures Act (5 ILCS 100), the proposed amendments were published in the *Illinois Register* on September 4, 2009, which initiated the 45-day public notice period. No comments were received during this time. The proposed amendments were then reviewed by the staff and members of the Joint Committee on Administrative Rules (JCAR). The proposed amendments, in the form attached, were considered and certified by JCAR in November. The rulemaking is now ready for Board adoption

Upon Board action, the adopted amendments will be filed with the Secretary of State and become effective immediately.

Action Requested: That the Illinois Board of Higher Education adopt the amendments for Approval of Noninstructional Capital Projects (23 Ill. Admin. Code 1040) as contained in this item.

STATE OF ILLINOIS
BOARD OF HIGHER EDUCATION

**ADOPTED AMENDMENTS TO RULES:
APPROVAL OF NONINSTRUCTIONAL CAPITAL PROJECTS**

In August 2009 the Board approved the proposed amendments to the rules for Approval of Noninstructional Capital Projects. These amendments will ensure the Board is provided advance notice of noninstructional capital projects that will ultimately require Board approval.

Institutions submit requests for Board approval as a last step in the project approval process, after final institutional governing board approval is given to proceed with a project. With these amendments, institutions will file notices of intent to undertake noninstructional capital projects whenever a governing board takes official action to authorize the planning or financing of a noninstructional capital project. A notice of intent will include basic information including description, purpose, estimated cost, fund sources, and plans to pay for operation and maintenance of the capital project. The notice of intent will precede the normal process by which institutions request Board approval.

In accordance with the Illinois Administrative Procedures Act (5 ILCS 100), the proposed amendments were published in the *Illinois Register* on September 4, 2009, which initiated the 45-day public notice period. No comments were received during this time. The proposed amendments were then reviewed by the staff and members of the Joint Committee on Administrative Rules (JCAR). The proposed amendments, in the form attached, were considered and certified by JCAR in November. The rulemaking is now ready for Board adoption.

This item seeks final adoption of amendments for Approval of Noninstructional Capital Projects. Upon Board action, the adopted amendments will be filed with the Secretary of State and become effective immediately.

Staff Recommendation

Staff recommends the adoption of the following resolution:

The Illinois Board of Higher Education hereby adopts the amendments for Approval of Noninstructional Capital Projects (23 Ill. Adm. Code 1040) as detailed in the attached document.

TITLE 23: EDUCATION AND CULTURAL RESOURCES
SUBTITLE A: EDUCATION
CHAPTER II: BOARD OF HIGHER EDUCATION

PART 1040
APPROVAL OF NONINSTRUCTIONAL CAPITAL PROJECTS

Section	
1040.10	Purpose
1040.20	Definition of Terms
<u>1040.21</u>	<u>Notice of Intent</u>
1040.22	Required Documentation
1040.25	Criteria for Approval
1040.27	Submission Process
1040.30	Noninstructional Capital Improvements and Community College Locally-Funded Capital Projects (Repealed)

AUTHORITY: Implementing Sections 8 and 9.11 and authorized by Section 9.05 of the Board of Higher Education Act [110 ILCS 205/8, 9.05 and 9.11].

SOURCE: Amended and effective April 15, 1976; rules repealed and new rules adopted and codified at 8 Ill. Reg. 16899, effective September 4, 1984; amended at 30 Ill. Reg. 19510, effective December 5, 2006; amended at 33 Ill. Reg. _____, effective _____.

Section 1040.10 Purpose

The agency's process, requirements and criteria for the submission and approval of noninstructional capital projects at State supported institutions are set forth in this Part.

(Source: Amended at 30 Ill. Reg. 19510, effective December 5, 2006)

Section 1040.20 Definition of Terms

"Board" means the Board of Higher Education.

"Buildings, additions and/or structures" means those facilities with roofs and/or walls that have foundations.

"Capital budget categories" means the main categories of proposed capital projects for which approval is requested. The categories include: buildings, additions and/or structures; land; equipment; utilities; remodeling and rehabilitation; site improvements; and planning.

"Equipment" means expenditures for the acquisition, replacement, or increase of visible tangible personal property of a nonconsumable nature, with a unit value of \$51 or more, that is not included in the category of buildings, additions, and/or structures or remodeling and rehabilitation.

"Governing Board" means the Board of Trustees of a State supported institution.

"Land" means expenditures for real property and expenditures for the acquisition of real

property, including easements of record and expenses directly and necessarily related to the purchase or acquisition. "Land" shall include existing buildings and/or structures.

"Noninstructional capital project" means the construction, remodeling, renovation, purchase, or modification of facilities or properties used in whole or part for purposes other than classroom education. Repair and maintenance projects, defined by the Illinois State Comptroller as ordinary and necessary projects needed to keep an asset serviceable through its expected life, are excluded.

"Planning" means the architectural and engineering design required for the planning of buildings, additions and/or structures or specific major remodeling projects.

"Program statement" means a statement setting forth the broad parameters within which architects and planners must work and describing in detail the space requirements, activities, functions, relationships and space needs to be incorporated into a new or remodeled facility.

"State supported institutions" means the public universities of the State of Illinois: University of Illinois; Southern Illinois University; Chicago State University; Eastern Illinois University; Governors State University; Illinois State University; Northeastern Illinois University; Northern Illinois University; and Western Illinois University.

"Remodeling and rehabilitation" means capital improvements that have the primary objective of restoring or upgrading a structure or facility to its original operating condition or improving the existing functional capability or capacity of the structure or facility.

"Scope" means the parameters of the project, including square footage, quantification of work and programmatic use.

"Scope statement" means a narrative statement containing background and justification for a project; quantification of work items and cost breakdowns; identification of dependent relationships between the proposed project and any other; and desired completion date of the project.

"Site improvements" means modification to real estate for earth movement and clearance, drainage, streets and walkways, parking, finish grading, seeding and landscaping, and all other improvements to real estate not included in other categories.

"Total projects costs" means all costs related to the capital budget categories and the designation of source of funds for those costs.

"Utilities" means systems for distributing or disbursing utility services outside the five-foot boundary line of existing or proposed buildings, additions and/or structures.

(Source: Amended at 30 Ill. Reg. 19510, effective December 5, 2006)

Section 1040.21 Notice of Intent

Immediately after the Governing Board of any State-supported institution takes official action to authorize the planning or financing of a noninstructional capital project, the institution shall make

this action known to the Board by completing a notice of intent on a form provided by the Board. The notice of intent shall, to the extent possible, include a description of the project, its purpose, the anticipated cost, the anticipated source of funds for purchase and construction, and the anticipated source of funds for operation and maintenance. The notice of intent is distinct from and precedes a request for approval of the noninstructional capital project.

(Source: Added at 33 Ill. Reg. _____, effective _____)

Section 1040.22 Required Documentation

All requests for approval of new or revised noninstructional capital projects shall contain the following in a format prescribed by the Board:

- a) Project Scope
 - 1) Provide a narrative description of the requested project using the following descriptors: buildings, additions, structures, land, equipment, utilities, remodeling, renovation, site improvements, and planning. Include the name and location of all facilities and properties.
 - 2) Provide quantified information. For acquisitions, include the size of parcels of property and the size of facilities (gross square feet). For remodeling, include the assignable square feet to be remodeled by room use classifications. Comply with guidelines for measuring gross and assignable areas identified in the "Postsecondary Education Facilities Inventory and Classification Manual (FICM): 2006 Edition" published by the U.S. Department of Education (NCES 2006-160), no further editions or amendments are included. Other information could include seating capacity, parking capacity, age of facilities, number of rooms, length of utility tunnels (linear feet), and roof size (square feet).
 - 3) For remodeling and renovation projects, distinguish between upgrades to and replacement of existing components and systems.
 - 4) Describe activities, functions, or entities the completed project will house or accommodate.
 - 5) Describe the allocation of completed space, by type, using classifications identified in the FICM.
 - 6) Provide the appraised value of any property or existing structures proposed for acquisition. Include the date and source of the appraisal.
 - 7) Explain how existing space will be reused after it is vacated. Briefly describe any projects, including a cost estimate and project timeline; that must be completed before the space can be reused for a new purpose.
 - 8) Identify any dependent relationship between the requested project and other on-going or anticipated capital projects.
 - 9) Provide a project schedule, including dates for design start, beginning construction, project bids and final completion.

b) Project Rationale

- 1) State how the project will meet the noninstructional objectives of the institution. What is its relationship to the institution's mission and master plan? How does the project advance statewide goals?
- 2) If a project upgrades or otherwise alters the use of existing space, describe the current condition of the existing space.
- 3) Describe the capacity and utilization of space currently available to the institution to meet the noninstructional objectives of the proposed project. Describe by space type (room use code) and function.
- 4) If a project adds assignable space to the institution (via new construction or adaptation of existing space for a new purpose), describe the factors or conditions (e.g., enrollment growth, change in enrollment mix, insufficient or inadequate space of a certain type, etc.) that justify the request. Explain why the proposed project must be undertaken.

c) Project Financing

- 1) Provide the total project cost allocated by major component, including land acquisition, building, remodeling, renovation, planning and design, utilities, equipment purchases, and financing. What is the estimated cost per square foot? If the cost per square foot is greater than the current industry average, what factors are contributing to the increased cost? How much will each factor contribute? Indicate the source and date of cost estimates.
- 2) Describe how the institution plans to finance the project (by dollar amount for each fund source). A description should be provided for how the institution plans to finance capital costs, as well as any related operating and maintenance costs.
- 3) If a project is supported by an increase in student fees, provide the total annual increase required and the date the new or increased fees will become effective. Indicate if the institution's Board of Trustees has approved fee increases supporting the project. If not, when is approval anticipated? Does the institution foresee ~~eliminating sunset~~ the relevant fee increase when it has served its original purpose?
- 4) If the proposed project will generate the need for additional operations and maintenance funding, provide an estimate of the annual costs. Describe how these costs will be financed.
- 5) Provide a summary of projected annual revenues and expenses for the programs that will be housed in the space completed by the project. Annual revenues should include reallocations, lease payments, fee revenue, and any other revenue received by the institution that is relevant to the application. Expenses should include annual debt service requirements, operations and maintenance, reserve funds, and any other relevant obligations of the institution. Identify interest rate assumptions for proposed revenue bond sales.

- 6) If a project is funded in whole or part by private donations, indicate if funding has been secured or pledged. What revenues are currently available? Outline the proposed time schedule for the capital campaign.
 - 7) If a project is funded in whole or part by incurring debt, provide a projection of the amount of borrowing and a schedule of interest and principal payments to retire the debt. Indicate the source of funds for paying debt service.
- d) Constituency Input in the Decision-making ~~Decisionmaking~~ Process
- 1) Provide a brief description of the institution's decision-making ~~decisionmaking~~ process. If advisory or review committees were created, briefly describe their membership, objectives and activities.
 - 2) Provide a copy of the governing board's resolutions and minutes reflecting approval of the project scope, project financing, including total project cost, and source of funds. Documentation should reflect approval dates.
 - 3) If the requested project requires new fees or significant restructuring of an existing fee program, describe the process used to inform and consult students. Has the student fee increase plan for the project been submitted to a student referendum? If so, provide a copy of the resolution presented to the students. Indicate the total number of students eligible to vote, the number voting, the numbers supporting and opposing the plan, and the date the referendum was held. If a student referendum was not held, what plans exist to consult students regarding this proposal?
 - 4) Identify any other governmental approvals still required for the proposed project and the status of those approvals. Include environmental, historical preservation, and special permits of any kind. Do not include routine building permits.

(Source: Amended at 33 Ill. Reg. _____, effective _____)

Section 1040.25 Criteria for Approval

To be approved, noninstructional capital projects must be *consistent with the master plan for higher education and with instructional buildings that are provided for therein* [110 ILCS 205/8]. In making the determination, the Board shall consider the following criteria :

- a) Projects must be consistent with the mission and scope of the institution.
- b) Projects must provide for needed additional or replacement space, provide for more efficient utilization of existing space, or maintain or improve existing space. In determining whether these criteria are met, the following information shall be reviewed:
 - 1) Current and projected programmatic needs.
 - 2) Current and projected space utilization rates.
- c) Projects must be economically feasible. A project will be determined to be economically

feasible if all legal requirements are met and if it is demonstrated that funds are available to finance the construction and operation of the project. In determining whether a project is economically feasible, the following information shall be reviewed:

- 1) Proposed source of funds for construction of the project (e.g., existing revenues in site and construction funds, gifts, revenue bonds, private loans, student fees, parking fees, etc.) and the availability of funds from that source. If it is necessary to repay the original source of funds, the source and projections of funds to repay that original source will be reviewed.
 - 2) Proposed source and availability of funds to cover increased operations and maintenance costs associated with construction of the project.
- d) All required documentation in accordance with Section 1040.22 must be submitted.

(Source: Added at 30 Ill. Reg. 19510, effective December 5, 2006)

Section 1040.27 Submission Process

- a) All requests for approval of noninstructional capital projects shall be submitted in writing to the Executive Director of the Board no later than 45 days prior to the desired Board approval date to provide sufficient time for staff review and agenda item preparation. A schedule of Board meeting dates is available at www.ibhe.org.
- b) An electronic submission of the request should be directed to appropriate fiscal staff.
- c) Additional data shall be requested if all submission requirements have not been met.
- d) Background data substantiating the changes in annual operations and maintenance cost may be needed if the estimates do not appear reasonable in light of current campus expenditures.

(Source: Added at 30 Ill. Reg. 19510, effective December 5, 2006)

Section 1040.30 Noninstructional Capital Improvements and Community College Locally-Funded Capital Projects (Repealed)

(Source: Repealed at 30 Ill. Reg. 19510, effective December 5, 2006)

