

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

**Submitted for:** Action.

**Summary:** This item requests approval of the proposed amendments to the rules for Approval of Noninstructional Capital Projects. Pursuant to Public Act 97-610, a new dollar threshold for approval is established. Effective January 1, 2012, a public university is required to submit a plan for capital improvements of noninstructional facilities to the Illinois Board of Higher Education (“Board”) for approval before final commitments are made only if the total cost of the project as approved by the institution's board of control is in excess of \$2.0 million. This change in the law requires amending the existing administrative rules.

The Illinois Administrative Procedures Act specifies a three-step process for the proposal and adoption of administrative rules: (1) initial Board approval; (2) a publication and public notice period including a period for review by the staff and members of the legislative Joint Committee on Administrative Rules; and (3) final adoption by the Board.

**Action Requested:** That the Illinois Board of Higher Education approve the proposed rule amendments to Approval of Noninstructional Capital Projects (23 Ill. Admin. Code 1040) for publication in the *Illinois Register*.



STATE OF ILLINOIS  
BOARD OF HIGHER EDUCATION

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

This item requests approval of the proposed amendments to the Illinois Board of Higher Education (“IBHE or Board”) rules for Approval of Noninstructional Capital Projects. The 97<sup>th</sup> General Assembly implemented a Blue Ribbon Committee recommendation to establish a dollar threshold at which capital projects are subject to Board approval. Amendments to the existing administrative rules are necessary to implement this new legislation, Public Act 97-610.

A Blue Ribbon Committee on Higher Education Mandates submitted their recommendations to the General Assembly in their November 2010 report. This committee was created pursuant to House Resolution 918 to identify the unnecessary and costly statutory and regulatory mandates placed on public universities and to recommend the elimination or modification of mandates. The report was the culmination of work conducted by the committee members during the summer of 2010. Members of the committee included 13 representatives from the university administrations, board members, faculty and staff, the business community, teacher organizations, and others.

This Blue Ribbon Committee reported that the statutory requirement to obtain IBHE approval for noninstructional capital projects was one of six mandates that were identified as high-impact and worthy of the General Assembly’s immediate attention during the 2011 Session. The committee explained the issue as follows:

This statutory requirement places an undue administrative burden on public universities and can delay capital projects. Each board of trustees has the authority to consider, approve, or reject contracts, financing, and purchases related to these types of projects. This additional step is a barrier that slows down work being done on campus. On many occasions, the university completes preliminary steps and spends a significant amount of time and money only to be held up by this “double” approval process. The trustees have immediate access to campus administrators and can get detailed information on student support or concerns, as well as detailed financial analysis of the project. In recent years, external auditors on some campuses are issuing audit finds related to this requirement despite the repair and maintenance nature of the work being completed.

To lessen this administrative burden, this Blue Ribbon Committee identified three options: 1) repeal the legislation requiring IBHE approval; 2) specify projects requiring approval; or 3) implement a dollar threshold at which projects are subject to approval. The third option was selected and approved by the General Assembly.

Pursuant to Public Act 97-610, a new \$2.0 million threshold at which projects are subject to Board approval will become effective January 1, 2012. These proposed amendments to the existing rules will enable the implementation of the threshold at the first Board meeting in 2012.

Once approved by the Illinois Board of Higher Education, the proposed amendments to the rules will be submitted to the Secretary of State for publication in the *Illinois Register*. The Illinois Administrative Procedures Act specifies a three-step process for the proposal and adoption of administrative rules: (1) initial Board approval; (2) a publication and public notice period including a period for review by the staff and members of the legislative Joint Committee on Administrative Rules; and (3) final adoption by the Board. Final presentation is scheduled for the February 2012 Board meeting.

### **Staff Recommendation**

Staff recommends the adoption of the following resolution:

*The Illinois Board of Higher Education hereby approves the proposed amendments to the rules for the Approval of Noninstructional Capital Projects (23 Ill. Adm. Code 1040) as detailed in the attached document for publication in the Illinois Register.*

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
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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. 17322, effective December 8, 2009; amended at 35 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" or "board of control" 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 *if the total cost of the project as approved by the institution's board of control is in excess of \$2 million (110 ILCS 205/8)*. 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 35 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## **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. 17322, effective December 8, 2009)

### **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 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 Process**
- 1) Provide a brief description of the institution's decision-making 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. 17322, effective December 8, 2009)

### **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](http://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)