

## Article 8.

### Budgeting Capital Improvement Projects.

#### **§ 143C-8-1. Legislative intent; purpose.**

(a) **Legislative Intent.** – The General Assembly recognizes the need to establish a comprehensive process for capital improvement planning and budgeting that is fully integrated with State financial planning and debt management.

(b) **Capital Improvement Planning and Budgeting Process.** – The capital improvement planning and budgeting process shall include the following elements:

- (1) A database of facilities owned by State agencies, maintained pursuant to G.S. 143-341(4).
- (2) Criteria used to evaluate capital improvement needs.
- (3) A six-year capital improvement needs estimate.
- (4) A six-year capital improvements plan.
- (5) Recommendations for capital improvements set forth in the Recommended State Budget as specified in G.S. 143C-3-5.

(c) **Office of State Budget and Management to Manage Planning Process.** – The Office of State Budget and Management has responsibility for management of the capital improvement planning process. The Director of the Budget may assign to any State agency or institution such duties and responsibilities as may, in the Director's judgment, be necessary to the successful administration of the capital improvement planning process. (1997-443, s. 34.9; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2006-203, s. 3; 2016-119, s. 2(c).)

**§ 143C-8-2:** Repealed by Session Laws 2016-119, s. 2(b), effective July 28, 2016.

#### **§ 143C-8-3. Capital improvement needs criteria.**

(a) **Criteria.** – The Office of State Budget and Management shall develop a weighted list of factors that may be used to evaluate the need for capital improvement projects. The list shall include all of the following:

- (1) Preservation, adequacy and use of existing facilities.
- (2) Health and safety considerations.
- (3) Operational efficiencies.
- (4) Projected demand for governmental services.

(b) **Reporting.** – The Office of State Budget and Management shall include the following in each six-year capital improvement plan submitted to the General Assembly pursuant to G.S. 143C-8-5:

- (1) The list of factors developed pursuant to subsection (a) of this section.
- (2) The most recent results of applying the factors developed pursuant to subsection (a) of this section to capital funds requests from State agencies. (1997-443, s. 34.9; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2006-203, s. 3; 2016-94, s. 37.7(j).)

#### **§ 143C-8-4. Agency capital improvement needs estimates.**

(a) **Needs Estimate Required.** – On or before September 1 of each even-numbered year, each State agency shall submit to the Office of State Budget and Management and to the Division

of Fiscal Research a six-year capital improvement needs estimate. This estimate shall describe the agency's anticipated capital needs for each year of the six-year planning period. Capital improvement needs estimates shall be shown in two parts.

(b) Repairs and Renovations Needs Estimate. – The first part of the capital improvement needs estimates shall include only requirements for repairs and renovations necessary to maintain the existing use of existing facilities. Each proposed repair and renovation expenditure shall be justified by reference to the Facilities Condition Assessment Program operated by the Office of State Construction.

(c) Real Property and New Construction or Facility Rehabilitation Needs Estimate. – The second part of the capital improvement needs estimates shall include only proposals for real property acquisition and projects involving construction of new facilities or rehabilitation of existing facilities to accommodate uses for which the existing facilities were not originally designed. Each project included in this part shall be justified by reference to the needs evaluation criteria established by the Office of State Budget and Management pursuant to G.S. 143C-8-3 and shall include the information required by G.S. 143C-3-3(d)(5).

For capital projects of The University of North Carolina and its constituent institutions, the Office of State Budget and Management shall utilize the needs evaluation information approved by the Board of Governors of The University of North Carolina developed pursuant to G.S. 116-11(9) and shall include the information required by G.S. 143C-3-3(d)(5). (1997-443, s. 34.9; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2006-203, s. 3; 2016-94, s. 37.7(f).)

#### **§ 143C-8-5. Six-year capital improvements plan.**

(a) General. – The State capital improvement plan shall address the long-term capital improvement needs of all State government agencies and shall incorporate all capital projects, however financed, proposed to meet those needs, except that transportation infrastructure projects shall be excluded. On or before December 31 of each even-numbered year, the Director of the Budget shall prepare and transmit to the General Assembly a six-year capital improvement plan. When preparing the plan, the Director of the Budget shall consider the capital improvement needs estimates submitted by State agencies as required in G.S. 143C-8-4. The plan shall be prepared in two parts.

(b) Repair and Renovations Requirements. – The first part of the capital improvement plan shall set forth repair and renovations requirements that, in the judgment of the Director of the Budget, should be met within each year of the six-year planning period to protect and preserve existing capital improvement facilities. The plan shall identify individual projects in priority order by State agency and shall specify the means of financing.

(c) Real Property Acquisition, New Construction, or Facility Rehabilitations. – The second part of the capital improvement plan shall set forth an integrated schedule for real property acquisition, new construction, or rehabilitation of existing facilities that, in the judgment of the Director of the Budget, should be initiated within each year of the six-year planning period. The plan shall contain for each project (i) estimates of real property acquisition, and construction or rehabilitation costs, (ii) a means of financing the project, (iii) an estimated schedule for the completion of the project, and (iv) an estimate of maintenance and operating costs, including personnel, for the project, covering the first five years of operation. Where the means of financing would involve direct or indirect debt service obligations, a schedule of those obligations shall be presented. (1997-443, s. 34.9; 2006-203, s. 3; 2016-94, s. 37.7(g).)

**§ 143C-8-6. Recommendations for capital improvements set forth in the Recommended State Budget.**

(a) Budget Director's Recommendations. – The Director of the Budget shall recommend expenditures for repairs and renovations of existing facilities, and real property acquisition, new construction, or rehabilitation of existing facilities in the Recommended State Budget in accordance with G.S. 143C-3-5.

(b) Repairs and Renovations in the Recommended State Budget. – The Recommended State Budget shall contain for repairs and renovations of existing facilities: (i) the amount recommended for each State agency, (ii) a summary of the recommendations by project type, and (iii) the means of financing.

(c) Repairs and Renovations in the Recommended Capital Improvements Budget Support Document. – The Recommended Capital Improvements Budget Support Document shall contain for each repair and renovation project recommended in accordance with subsection (b) of this section: (i) a project description and justification, (ii) a detailed cost estimate, (iii) an estimated schedule for the completion of the project, and (iv) an explanation of the means of financing.

(d) Other Capital Projects in the Recommended State Budget. – The Recommended State Budget shall contain for each capital project involving real property acquisition, new construction, building area (sq. ft.) expansions, or the rehabilitation of existing facilities to accommodate new or expanded uses: (i) a project description and statement of need, (ii) an estimate of acquisition and construction or rehabilitation costs, and (iii) a means of financing the project.

(e) Other Capital Projects in the Capital Improvements Budget Support Document. – The Capital Improvements Budget Support Document shall contain for each capital project recommended in accordance with subsection (d) of this section: (i) a detailed project description and justification, (ii) a detailed estimate of acquisition, planning, design, site development, construction, contingency and other related costs, (iii) an estimated schedule of cash flow requirements over the life of the project, (iv) an estimated schedule for the completion of the project, (v) an estimate of revenues, if any, likely to be derived from the project, covering the first five years of operation, and (vi) an explanation of the means of financing.

(f) All Recommended Capital Projects. – The Director of the Budget shall ensure that recommendations in the Recommended State Budget for repairs and renovations of existing facilities, real property acquisition, new construction, or rehabilitation of existing facilities include all of the following information:

- (1) An estimate of maintenance and operating costs, including personnel, for the project, covering the first five years of operation. If no increase in these expenditures is anticipated because the recommended project would replace an existing facility, then the level of expenditures for the previous five years of operation shall be included instead.
- (2) A recommended funding source for the operating costs identified pursuant to subdivision (1) of this subsection. (2006-203, s. 3; 2007-117, s. 5(b); 2010-96, s. 17; 2016-94, s. 37.7(h); 2019-250, s. 5.9(c).)

**§ 143C-8-7. When a State agency may begin a capital improvement project.**

(a) No State agency may expend funds for the construction or renovation of any capital improvement project except as needed to comply with this Article or otherwise authorized by the General Assembly. Funds that become available by gifts, excess patient receipts above those budgeted at the University of North Carolina Hospitals at Chapel Hill, federal or private grants,

receipts becoming a part of special funds by act of the General Assembly, or any other funds available to a State agency or institution may be utilized for advanced planning through the working drawing phase of capital improvement projects, upon approval of the Director of the Budget.

(b) Notwithstanding any other provision of law to the contrary, the Department of Agriculture and Consumer Services is authorized to utilize the types of funds described in subsection (a) of this section to build equipment structures that meet the description contained in G.S. 143-138(b4)(1)c. on an as-needed basis, provided that the total project cost does not exceed one hundred twenty-five thousand dollars (\$125,000). (2006-203, s. 3; 2020-81, s. 4(b).)

#### **§ 143C-8-7.1. Procedures for disbursement of capital funds.**

(a) Appropriations made by an act of the General Assembly for capital improvements are for constructing, repairing, or renovating State buildings, utilities, and other capital facilities; for acquiring sites for them where necessary; for acquiring buildings and land for State government purposes and other purposes as set forth in G.S. 143C-4-3.1; and shall be disbursed for the purposes provided by that act. Expenditure of funds shall not be made by any State department, institution, or agency until an allotment has been issued by the Governor as Director of the Budget, which shall not be unreasonably withheld. The allotment shall be issued upon compliance with the provisions of this Chapter. Prior to the award of construction contracts for projects to be financed in whole or in part with self-liquidating appropriations, the Director of the Budget shall approve the elements of the method of financing of those projects, including the source of funds, interest rate, and liquidation period. Provided, however, that if the Director of the Budget approves the method of financing a project, the Director shall report that action to the Joint Legislative Commission on Governmental Operations at its next meeting.

(b) Where direct capital improvement appropriations include the purpose of furnishing fixed and movable equipment for any project, those funds for equipment shall not be subject to transfer into construction accounts except as authorized by the Director of the Budget. The expenditure of funds for fixed and movable equipment and furnishings shall be reviewed and approved by the Director of the Budget prior to commitment of funds.

(c) Capital improvement projects authorized by an act of the General Assembly shall be completed, including fixed and movable equipment and furnishings, within the limits of the amounts of the direct or self-liquidating appropriations provided, except as otherwise provided in that act. Capital improvement projects authorized by an act of the General Assembly for the design phase only shall be designed within the scope of the project as defined by the approved cost estimate filed with the Director of the Budget, including costs associated with site preparation, demolition, and movable and fixed equipment. Amounts contracted for projects authorized by the General Assembly cannot exceed the total project cost authorization.

(d) Disbursement of funds from the State Capital and Infrastructure Fund for projects authorized by an act of the General Assembly shall be made as needed to initiate or advance a capital project. Funds authorized for any particular project shall remain in the State Capital and Infrastructure Fund until such time as disbursement is necessary to satisfy a financial obligation for that project. (2020-81, s. 4(c).)

#### **§ 143C-8-8. When a State agency may increase the cost of a capital improvement project.**

Upon the request of the administration of a State agency, the Director of the Budget may, when in the Director's opinion it is in the best interest of the State to do so, increase the cost of a capital improvement project. Provided, however, that if the Director of the Budget increases the cost of a project, the Director shall report that action to the Joint Legislative Commission on Governmental Operations at its next meeting. The increase may be funded from gifts, federal or private grants, special fund receipts, excess patient receipts above those budgeted at the University of North Carolina Hospitals at Chapel Hill, or direct capital improvement appropriations to that department or institution. (2006-203, s. 3.)

**§ 143C-8-9. When a State agency may change the scope of a capital improvement project.**

A State agency may increase the scope of a capital improvement project only if the General Assembly authorizes the increase. A State agency may decrease the scope of a capital improvement project if the Director authorizes the decrease. To obtain the Director's authorization for a decrease in the scope of a capital improvement project, a State agency shall submit its request to the Director in writing and shall state the reason for the request. (2006-203, s. 3.)

**§ 143C-8-10. Project Reserve Account.**

(a) Project Reserve Account. – There is established a Project Reserve Account. When a construction contract is entered for a capital improvement project for which the General Assembly has enacted an appropriation, the appropriation is encumbered for the project's costs of real property acquisition, planning, design, site development, construction, contingencies, and other related costs. If the amount appropriated for the project exceeds the amount encumbered, the excess shall be credited to the Project Reserve Account, unless otherwise required by law. The Director may authorize funds in the Account to be used for any of the following:

- (1) An emergency repair and renovation project at a State facility.
- (2) The award of a project contract when bids for the contract exceed the amount appropriated for it if the project was designed within the scope intended by the appropriation and if the Director finds that all means to award the contract within the appropriation were reasonably attempted.
- (3) A reversion to the principal fund from which revenue was appropriated for a project when the amount encumbered for the project is less than the amount appropriated.

(b) Reporting Requirement. – Whenever the Director authorizes the use of funds from the Project Reserve Account, the Director shall report the action to the Joint Legislative Commission on Governmental Operations at its next meeting. (2006-203, s. 3; 2007-117, s. 6.)

**§ 143C-8-11. Reversion of appropriation; lapse of project authorization; transfer of funds remaining after project completion.**

(a) Reversion of Appropriation. – A State agency shall begin the planning of or the construction of an authorized capital improvement project during the fiscal year in which the funds are appropriated. If it does not, the Director may credit the appropriation to the Project Reserve Account, unless otherwise required by law. If the Director does not credit the appropriation to the Project Reserve Account, the appropriation shall revert to the principal fund from which it was appropriated. The Director may, for good cause, allow a State agency to take up to an additional 12 months to take the actions required by this subsection.

(b) Lapse of Project Authorization. – Authorizations for capital improvement projects shall lapse if any of the following occur: (i) the appropriation for a capital improvement project reverts, (ii) the construction of a project does not begin during the first two fiscal years in which funds are appropriated, or (iii) the Director redirects funds appropriated for a capital improvement project in accordance with G.S. 143C-6-2. The Director may, for good cause, allow a State agency to take up to an additional 12 months to begin construction of a project; however, if the Director approves an extension of time under this subsection and construction of the project has not begun by the end of the extension, the authorization for the project shall lapse.

(c) Funds Remaining After Project Completion. – The State Controller shall transfer any balance of State funds appropriated for a capital project that remains unspent and unencumbered two years after completion of the project in accordance with this section. If applicable law requires a particular disposition of the funds, then the transfer shall be made in accordance with that requirement. Otherwise, the transfer shall be made in accordance with the following requirements:

- (1) If the funds were initially allocated from the Reserve for Repairs and Renovations, then the funds shall be transferred to that Reserve.
- (2) All other funds shall be transferred to the Project Reserve Account created by G.S. 143C-8-10. (2006-203, s. 3; 2014-100, s. 36.14.)

**§ 143C-8-12. Capital improvement projects from sources other than the General Fund.**

(a) University Projects. – Notwithstanding any other provision of this Chapter, the Board of Governors of The University of North Carolina may approve any of the following:

- (1) Expenditures to plan a capital improvement project of The University of North Carolina, the planning for which is to be funded entirely with non-General Fund money.
- (2) Expenditures for a capital improvement project of The University of North Carolina that is to be funded and operated entirely with non-General Fund money.
- (3) A change in the scope of any previously approved capital improvement project of The University of North Carolina provided that both the project and change in scope are funded entirely with non-General Fund money.

Nothing in this subsection shall be construed to prohibit expenditures for planning for a project that has been authorized by an act of the General Assembly and funded with an allocation from the State Capital and Infrastructure Fund.

(b) Carryforward Funds. – For purposes of this section, the term "non-General Fund money" includes funds carried forward from one fiscal year to another pursuant to G.S. 116-30.3 and G.S. 116-30.3B. These funds shall only be used for projects listed in G.S. 143C-8-13(a).

(c) National Guard Projects. – Notwithstanding any other provision of this Chapter, the North Carolina National Guard may approve expenditures for a capital project of the North Carolina National Guard if (i) the project will be funded entirely with federal funds and (ii) any operating costs associated with the project will be paid entirely with federal funds.

(d) Reporting. – The Board of Governors and the National Guard shall report any expenditure made pursuant to this section to the Office of State Budget and Management and to the Joint Legislative Commission on Governmental Operations. (2006-203, s. 3; 2011-145, s. 30.10(a); 2014-100, ss. 36.5, 36.8(a); 2017-57, s. 36.12(j); 2020-81, s. 4(d).)

**§ 143C-8-13. Repairs and Renovations.**

(a) Use of Funds. – Except as otherwise provided for in this section, funds for repairs and renovations shall be available for expenditure only upon an act of appropriation by the General Assembly. Funds appropriated for repairs and renovations shall be used only for State facilities and related infrastructure that are supported from the General Fund or the State Capital and Infrastructure Fund and for Department of Information Technology facilities and related infrastructure. Funds appropriated for repairs and renovations projects shall not be used for new construction or the expansion of the building area (sq. ft.) of an existing facility unless required in order to comply with federal or State codes or standards. Allowable projects include any of the following:

- (1) Roof repairs and replacements.
- (2) Structural repairs.
- (3) Repairs and renovations to meet federal and State standards.
- (4) Repairs to or installation of new electrical, plumbing, and heating, ventilating, and air-conditioning systems.
- (5) Improvements to meet the requirements of the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq., as amended.
- (6) Improvements to meet fire safety needs.
- (7) Improvements to existing facilities for energy efficiency.
- (8) Improvements to remove asbestos, lead paint, and other contaminants, including the removal and replacement of underground storage tanks.
- (9) Improvements and renovations to improve use of existing space.
- (10) Historical restoration.
- (11) Improvements to roads, walks, drives, and utilities infrastructure.
- (12) Drainage and landscape improvements.
- (13) Building demolition.

(b) Allocation and Reallocation of Funds for Particular Projects. –Any funds that are allocated to the Board of Governors of The University of North Carolina or to the Office of State Budget and Management may be allocated or reallocated by those agencies for repairs and renovations projects so long as all of the following conditions are satisfied:

- (1) Any project that receives an allocation or reallocation satisfies the requirements of subsection (a) of this section.
- (2) If the allocation or reallocation of funds from one project to another under this section is two million five hundred thousand dollars (\$2,500,000) or more for a particular project, the Office of State Budget and Management or the Board of Governors, as appropriate, consults with the Joint Legislative Commission on Governmental Operations prior to the expenditure or reallocation.
- (3) If the allocation or reallocation of funds from one project to another under this section is less than two million five hundred thousand dollars (\$2,500,000) for a particular project, the allocation or reallocation of funds is reported to the Joint Legislative Commission on Governmental Operations within 60 days of the expenditure or reallocation.

(c) In making campus allocations of funds allocated to the Board of Governors of The University of North Carolina for the purposes described in subsection (a) of this section, the Board of Governors shall negatively weight the availability of non-State resources and carryforward

funds available for repairs and renovations and shall include information about the manner in which this subsection was complied with in any report submitted pursuant to this section.

(d) Notwithstanding any provision of G.S. 143C-8-7 to the contrary, the chancellor of a constituent institution of The University of North Carolina may pay for projects for repairs and renovations with funds available to the constituent institution according to the following:

- (1) The project meets all of the following requirements:
  - a. The total project costs do not exceed six hundred thousand dollars (\$600,000).
  - b. The project is one of the types set forth in subdivisions (1) through (13) of subsection (a) of this section, regardless of whether the relevant facilities and related infrastructure are supported from the General Fund or the State Capital and Infrastructure Fund.
- (2) The constituent institution reports on projects undertaken pursuant to this subsection to the Board of Governors of The University of North Carolina and the Fiscal Research Division on a quarterly basis. The report shall include all of the following information for each project:
  - a. The facility at which the project is being undertaken.
  - b. The nature and scope of the project.
  - c. The source of funds for the project.
  - d. The category of projects set forth in subsection (a) of this section that the project falls within.
- (3) Any funds from a General Fund appropriation that are contractually obligated for a project pursuant to this subsection shall not revert at the end of the fiscal year but shall remain available to fund the completion of the project. (2017-57, s. 36.12(c); 2020-81, s. 4(a).)