

TITLE 281, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 9
COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION
RULES AND REGULATIONS CONCERNING CAPITAL CONSTRUCTION

Adopted September 8, 2016

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TITLE 281 - COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION
 CHAPTER 9 - RULES & REGULATIONS CONCERNING CAPITAL CONSTRUCTION

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[NOTE: *Italicized* words are defined in Section 004. DEFINITIONS.]

001. CONSTITUTIONAL AUTHORITY. Applicable sections of the Constitution of the State of Nebraska, article VII, section 14, relating to the establishment and authority of the Coordinating Commission for Postsecondary Education include:

001.01 COMPREHENSIVE STATEWIDE PLAN FOR POSTSECONDARY EDUCATION. Authority to adopt and revise as needed, a Comprehensive Statewide Plan for Postsecondary Education, which shall include plans for facilities which utilize *tax funds designated by the Legislature.*

001.02 CAPITAL CONSTRUCTION PROJECTS. Authority to review, monitor, and approve or disapprove each public postsecondary educational institution's *capital construction projects* which utilize *tax funds designated by the Legislature* in order to provide compliance and consistency with the Comprehensive Statewide Plan and to prevent *unnecessary duplication.*

001.03 BUDGET REQUEST RECOMMENDATIONS. Authority to review and modify, if needed, to promote compliance and consistency with the Comprehensive Statewide Plan and prevent *unnecessary duplication*, the budget requests of each public postsecondary educational institution's *governing board.*

001.04 ADDITIONAL POWERS. Additional powers and duties provided to the *Commission* by the Legislature related to postsecondary education, as long as such powers and duties do not invade the governance and management authority of the Board of Regents of the University of Nebraska and the Board of Trustees of the Nebraska State Colleges as provided in the Constitution of Nebraska.

001.05 PROPERTY TAX REVENUE. Nothing in Neb. Const. art. VII, § 14 providing for statewide coordination shall limit or require the use of property tax revenue by and for community colleges.

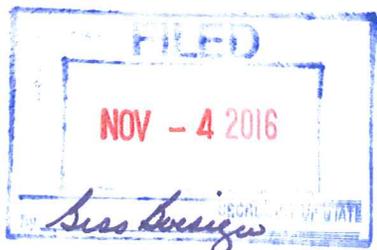
002. STATUTORY AUTHORITY. Applicable Nebraska Statutes include:

002.01 Neb. Rev. Stat. §§ 85-1401, 85-1402 subsections (1), (2), (3), (5), (7), and (8), 85-1403, 85-1404, 85-1410 subsection (4), 85-1411 subsection (4), 85-1412 subsections (1) and (6), 85-1413 subsections (1) to (6), 85-1414 subsections (1), (9), (10), and (11), 85-1416 subsections (1) and (3), 85-1417, 85-1418, 85-1421 to 85-1423, and 85-1425 to 85-1427 relating to a statewide facilities information base, *Commission* review of *institutional facilities plans*, proposed *capital construction projects*, and capital construction budget requests review, recommendations, and prioritization.

APPROVED

NOV 04 2016

Pete Ricketts
PETE RICKETTS
GOVERNOR



APPROVED
DOUGLAS J. PETERSON
ATTORNEY GENERAL

SEP 14 2016

Leslie Ronley
BY
ASSISTANT ATTORNEY GENERAL

002.02 Neb. Rev. Stat. § 85-2233 subsection (3) relating to coordination by the *Commission* of community college aid distribution.

003. SCOPE AND RELATED PROVISIONS.

003.01 These rules and regulations relate to:

003.01(A) Providing a state-level uniform information system for all public postsecondary education systems and institutions that will insure the Legislature and other state agencies obtain timely and accurate information concerning facilities;

003.01(B) *Commission* review of and comment about public *institutional facilities plans*;

003.01(C) *Commission* review, monitoring, and approval or disapproval of applicable *capital construction projects*; and

003.01(D) *Commission* review and recommended modification, approval, or disapproval of the University of Nebraska's and Nebraska State Colleges' capital construction budget requests and major capital construction deficit appropriation requests, and development of a unified statewide prioritization of these requests.

003.02 The *Commission* shall coordinate its responsibilities with both the Executive and Legislative branches of State government, and the *governing boards* of the State's *public institutions*.

003.03 The provision of a statewide facilities information base, review of proposed *institutional facilities plans*, *capital construction projects*, and capital construction budget requests shall be subject to the rules contained herein; the Comprehensive Statewide Plan for Postsecondary Education, which includes the Statewide Facilities Plan; the *Commission's* budgetary review process; and such other rules, regulations, and guidelines as shall be adopted and promulgated by the *Commission*.

004. DEFINITIONS.

004.01 **CAPITAL CONSTRUCTION PROJECT.** Shall mean a project which utilizes *tax funds designated by the Legislature* and shall be: Any proposed new *capital structure*; any proposed addition to, *renovation* of, or *remodeling* of a *capital structure*; any proposed acquisition of a *capital structure* by gift, purchase, lease-purchase, or other means of construction or acquisition; or any combination thereof that 1) will be *directly financed* in whole or in part with *tax funds designated by the Legislature* totaling at least the *minimum capital expenditure* for purpose of this definition, or 2) is likely, as determined by the institution, to result in an *incremental increase* in appropriation or expenditure of *tax funds designated by the Legislature* of at least the *minimum capital expenditure* for the facility's operations and maintenance costs in any one fiscal year within a period of ten years from the date of substantial completion or acquisition of the project. For purposes of this definition:

004.01(A) DIRECTLY FINANCED. Shall mean funded by: 1) Appropriation of *tax funds designated by the Legislature* for the specific *capital construction project*; 2) property tax levies authorized pursuant to Neb. Rev. Stat. § 85-1517 used to establish a capital improvement and bond sinking fund pursuant to Neb. Rev. Stat. § 85-1515; or 3) that portion of *tax funds designated by the Legislature* and appropriated by the Legislature for the general operation of the *public institution* and utilized to fund the *capital construction project*.

004.01(B) INCREMENTAL INCREASE. Shall mean an increase in appropriation or expenditure of *tax funds designated by the Legislature* of at least the *minimum capital expenditure* for a facility's operations and maintenance costs, beyond any increase due to inflation, to pay for a *capital structure's* operations and maintenance costs that are a direct result of a *capital construction project*.

004.01(C) MINIMUM CAPITAL EXPENDITURE. Shall mean: 1) for purposes of construction or acquisition pursuant to this definition of *capital construction project*, a base amount as required by statute, and 2) for purposes of the facility's operations and maintenance costs pursuant to this definition of *capital construction project*, a base amount adjusted for inflation as required by statute for any one fiscal year. The base amount for the facility's operations and maintenance costs shall be subject to any inflationary or market adjustments made by the *Commission* pursuant to this definition. The *Commission* shall adjust the base amount on a biennial basis beginning January 1, 2010. The adjustments shall be based on percentage changes in a construction cost index and any other published index relevant to operations and utilities costs, as selected by the *Commission* in cooperation with the *public institutions*. The index or indices shall reflect inflationary or market trends for the applicable operation and maintenance or construction costs. Specific dollar amounts can be found in *Commission* guidelines implementing these rules and regulations.

004.02 CAPITAL STRUCTURE. Shall mean anything constructed or erected, for occupancy, use or ornamentation, that requires permanent location on, below or above the ground, or an addition to an existing *capital structure* having a permanent location on or below the ground.

004.03 CHANGE IN SCOPE. Shall mean a significant change in a *capital construction project*, as specifically defined in *Commission* guidelines, to include but not be limited to: 1) A substantial increase in the amount of *tax funds designated by the Legislature* used to construct, acquire or provide facilities operations and maintenance, 2) a significant change in the use of funds, 3) a considerable change in the allocation of square footage for any *major room-use category(s)*, or 4) a programmatic change involving who and/or what purpose a *major room-use category(s)* serves.

004.04 COMMISSION. Shall mean the Coordinating Commission for Postsecondary Education.

004.05 GOVERNING BOARD. Shall mean the Board of Regents of the University of Nebraska, the Board of Trustees of the Nebraska State Colleges, or the board of governors for each community college area.

004.06 INDIVIDUAL CAPITAL CONSTRUCTION BUDGET REQUEST. Shall mean, for the purpose of prioritization of budget requests, any capital construction request included in the Board of Regents of the University of Nebraska's and Board of Trustees of the Nebraska State Colleges' biennial budget request, LB 309 Task Force for Building Renewal request by category and classification, or major capital construction deficit appropriation request, for which the *Commission* has recommended approval, including any *capital construction project* approved by the *Commission* and included in such requests.

004.07 INSTITUTIONAL FACILITIES PLAN. Shall mean a plan that identifies a *public institution's* existing facilities, the condition and utilization of those facilities, outlines the institution's short-term, mid-term, and long-range program needs, and identifies proposed facilities solutions to meet those program needs.

004.08 MAJOR ROOM-USE CATEGORIES. Shall mean the major room uses outlined in the most recently published U.S. Department of Education, National Center for Education Statistics, Postsecondary Education Facilities Inventory and Classification Manual (FICM).

004.09 PROGRAM STATEMENT. Shall mean a document that describes and supports the development of a proposed *capital construction project*. The content to be provided in a *program statement* shall be in such format as provided by the *Commission*.

004.10 PUBLIC INSTITUTION. Shall mean any of the following: University of Nebraska-Lincoln, University of Nebraska Medical Center, University of Nebraska at Omaha, University of Nebraska at Kearney, Nebraska College of Technical Agriculture, Chadron State College, Peru State College, Wayne State College, Central Community College, Metropolitan Community College, Mid-Plains Community College, Northeast Community College, Southeast Community College, Western Nebraska Community College, including any other campus administered as a separate unit by a *governing board*, or any other public postsecondary educational institution that may be established by the Legislature.

004.11 REMODELING OR RENOVATION. Shall mean work associated with an existing *capital structure*, which may include, but shall not be limited to, modifying or upgrading a *capital structure's* building systems. Such work may include upgrading mechanical or electrical systems, or modifying interiors through changes in room layouts or relocation of openings. This work shall not increase the size of the building footprint or building envelope. Replacement of existing wall, floor or ceiling treatments due to age or damage, or other similar work, shall not be considered *remodeling* or *renovation*. Separate deferred maintenance projects, fire and life safety projects, Americans with Disabilities Act projects, or energy conservation projects, as defined by the LB 309 Task Force for Building Renewal, shall not constitute *remodeling* or *renovation*.

004.12 TAX FUNDS DESIGNATED BY THE LEGISLATURE. Shall mean all State tax revenue and all property tax revenue.

004.13 UNNECESSARY DUPLICATION. Shall mean any *capital structure*, or portion of a *capital structure*, that does not substantially increase access and/or serve valid needs considering the existence of other available and suitable facilities.

005. STATEWIDE FACILITIES INFORMATION BASE.

005.01 APPLICABILITY. All *public institutional* facilities that involve coordination by the *Commission*, Legislature, or other state agency, shall provide state-level uniform facilities information.

005.02 The *Commission* shall maintain uniform data elements and definitions for development of a statewide facilities information base in consultation with *governing boards*, or their designated representative.

005.03 The *Commission* shall identify statewide facilities information to be collected on an annual or periodic basis, regarding each *public institution's* facilities inventory and utilization information.

005.04 *Public Institutions* may comply with requests for facilities information pursuant to Neb. Rev. Stat. § 85-1417, as applicable.

006. INSTITUTIONAL FACILITIES PLANS.

006.01 APPLICABILITY. All *institutional facilities plans*, or amendments to such plans, approved or accepted by a *governing board*, shall require *Commission* review and comment in accordance with these rules and regulations.

006.02 REVIEW CRITERIA. The *Commission* shall use the following criteria in the review of *institutional facilities plans*:

006.02(A) CONSISTENCY WITH THE COMPREHENSIVE STATEWIDE PLAN. *Institutional facilities plans* shall be reviewed for consistency with the Comprehensive Statewide Plan, to include, but not be limited to, consistency with institutional role and mission assignments.

006.02(B) CONSISTENCY WITH THE STATEWIDE FACILITIES PLAN. *Institutional facilities plans* shall be reviewed for consistency with the Statewide Facilities Plan as applicable.

006.02(C) ASSESS DUPLICATION OF FACILITIES. *Institutional facilities plans* shall be reviewed for possible *unnecessary duplication* of facilities.

006.03 COMMISSION REVIEW.

006.03(A) *Governing boards*, or a representative designated by the board, shall inform the *Commission*, in writing, of all *institutional facilities plans*, or amendments to such plans, to be submitted to the *governing board* for action.

006.03(B) Prior to submitting an *institutional facilities plan*, or amendments to such plan, for *Commission* review and comment, the plan or amendment shall first receive written approval or acceptance by the *governing board*. Evidence of *governing board* approval or acceptance shall accompany the plan to the *Commission* and shall include all material submitted to the *governing board*.

006.03(C) The *Commission* shall establish guidelines for the format and content of an *institutional facilities plan*.

006.03(D) The *Commission* shall provide a written report of its review to the *governing board* within ninety days after receipt of an approved or accepted *institutional facilities plan*. The *Commission's* report shall comment on the *institutional facilities plan's* consistency in accordance with the review criteria set out in section 006.02 of these rules and regulations. The *Commission* may recommend modification to an *institutional facilities plan* based on its review.

006.03(E) The *Commission* may require periodic updates of *institutional facilities plans* as necessary.

006.03(F) In fulfilling its review of and comment on *institutional facilities plans*, the *Commission* shall recognize educational activities among all segments of postsecondary education and take into account the educational programs, facilities, and other resources of public and private postsecondary educational institutions.

007. CAPITAL CONSTRUCTION PROJECTS.

007.01 APPLICABILITY. The following *capital construction projects* proposed by *public institutions* shall require *Commission* review, approval or disapproval, and monitoring for compliance with the approved project, in accordance with these rules and regulations:

007.01(A) Any proposed new *capital structure*; any proposed addition to, *renovation* of, or *remodeling* of a *capital structure*; any proposed acquisition of a *capital structure* by gift, purchase, lease-purchase, or other means of construction or acquisition; or any combination thereof that will be *directly financed* in whole or part with *tax funds designated by the Legislature* totaling at least the *minimum capital expenditure*.

007.01(B) Any proposed new *capital structure*; any proposed addition to, *renovation* of, or *remodeling* of a *capital structure*; any proposed acquisition of a *capital structure* by gift, purchase, lease-purchase, or other means of construction or acquisition; or any combination thereof that is likely, as determined by the institution, to result in an

incremental increase in appropriation or expenditure of *tax funds designated by the Legislature* of at least the *minimum capital expenditure* for the facility's operations and maintenance costs in any one fiscal year within a period of ten years from the date of substantial completion or acquisition of the project.

007.02 REVIEW CRITERIA. The *Commission* shall use the following criteria in the review of proposed *capital construction projects*:

007.02(A) COMPLIANCE AND CONSISTENCY WITH THE COMPREHENSIVE STATEWIDE PLAN. Proposed projects shall show compliance and consistency with the Comprehensive Statewide Plan as applicable to a specific project.

007.02(B) COMPLIANCE AND CONSISTENCY WITH THE STATEWIDE FACILITIES PLAN. Proposed projects shall demonstrate compliance and consistency with the Statewide Facilities Plan.

007.02(C) ASSESS DUPLICATION OF FACILITIES. An institution submitting a proposed project for *Commission* review shall illustrate that the project will not result in an *unnecessary duplication* of capital facilities.

007.03 COMMISSION REVIEW.

007.03(A) Governing boards, or a representative designated by the board, shall inform the *Commission*, in writing, of all *capital construction projects* to be submitted to the *governing board* for action.

007.03(B) A public institution shall make a determination whether a project is likely to result in an *incremental increase* in appropriation or expenditure of *tax funds designated by the Legislature* of at least the *minimum capital expenditure* for the facility's operations and maintenance costs in any one fiscal year within a period of ten years from the date of substantial completion or acquisition of the project, and include such determination in a *program statement* submitted to the *governing board* for action. The determination for a facility's operations and maintenance costs is final upon approval of the *program statement* by the *governing board*.

007.03(C) Prior to submitting a *capital construction project* for *Commission* action, that project shall first receive written approval of a *program statement* by the *governing board*. Evidence of *governing board* approval shall accompany the project to the *Commission* and shall include all material submitted to the *governing board* for approval of the *capital construction project*.

007.03(D) Action by the *Commission* regarding approval or disapproval of a *capital construction project* shall be determined in accordance with the review criteria set out in section 007.02 of these rules and regulations and shall consist of one of the following:

007.03(D)(i) Approval of the project as the basis for further development; or

007.03(D)(ii) Disapproval of the project if one or more review criteria are not met, with the reason(s) for disapproval explicitly stated in the Capital Construction Project Evaluation Form.

007.03(E) *Capital construction projects* previously disapproved by the *Commission* may be resubmitted by a *governing board* with changes that address the *Commission's* reasons for the original disapproval. The *Commission* shall then review and approve or disapprove the resubmitted project proposal.

007.03(F) A *change in scope* to any *capital construction project* previously approved by the *Commission* shall require resubmittal of the project to the *Commission* for review, approval or disapproval, and monitoring for compliance with the approved project. This rule applies for all subsequent phases of a project through construction.

007.03(G) The *Commission* may establish documentation necessary to monitor *capital construction projects*. When complying with requests for information during the review, monitoring, and approval process, *public institutions* may comply pursuant to Neb. Rev. Stat. § 85-1417.

007.03(H) Unless a *capital construction project* has been reviewed and approved by the *Commission*, no *tax funds designated by the Legislature* shall be expended for an *incremental increase* in a facility's operations and utilities costs, of more than the *minimum capital expenditure*.

007.03(I) No state warrant shall be used by any *public institution* for the purpose of funding any *capital construction project* which has not been approved or which has been disapproved by the *Commission*.

007.03(J) Beginning July 1, 2013, the *Commission* shall reduce the amount of distribution of community college aid funds used by a community college area to construct or acquire a *capital construction project* which has not been approved or has been disapproved by the *Commission*.

007.03(K) In fulfilling its review authority for *capital construction projects*, the *Commission* shall recognize educational activities among all segments of postsecondary education and take into account the educational programs, facilities, and other resources of public and private postsecondary educational institutions.

008 CAPITAL CONSTRUCTION BUDGET REQUESTS REVIEW, RECOMMENDATIONS, AND PRIORITIZATION.

008.01 APPLICABILITY. The following budget requests shall be reviewed by the *Commission*:

008.01(A) Any biennial capital construction budget request submitted by the Board of Regents of the University of Nebraska or Board of Trustees of the Nebraska State Colleges to the Governor pursuant to Neb. Rev. Stat. § 81-1113 subsection (1); and

008.01(B) Any major capital construction deficit appropriation request submitted by the Board of Regents of the University of Nebraska or Board of Trustees of the Nebraska State Colleges pursuant to instructions by the Department of Administrative Services.

008.02 REVIEW CRITERIA. The *Commission* shall use the following criteria in the review of biennial capital construction budget requests and major capital construction deficit appropriation requests:

008.02(A) CONSISTENCY WITH THE STATEWIDE FACILITIES PLAN. Biennial capital construction budget requests and major capital construction deficit appropriation requests shall demonstrate consistency with the Statewide Facilities Plan.

008.02(B) CONSISTENCY WITH PREVIOUS CAPITAL CONSTRUCTION PROJECT APPROVALS. The *Commission* shall consider recommending to the Governor and Legislature those *capital construction projects* approved by the *Commission* pursuant to Neb. Rev. Stat. § 85-1414 subsection (10). The *Commission* shall not recommend *capital construction projects* that it has previously disapproved pursuant to Neb. Rev. Stat. § 85-1414 subsection (10) unless such projects are resubmitted and approved by the *Commission*.

008.03 COMMISSION REVIEW, RECOMMENDATION, AND PRIORITIZATION.

008.03(A) The Board of Regents of the University of Nebraska and Board of Trustees of the Nebraska State Colleges, or a representative designated by the board, shall each submit to the *Commission* information the *Commission* deems necessary to review the *governing board's* capital construction budget request or major capital construction deficit appropriation request.

008.03(B) The *Commission* shall review the Board of Regents of the University of Nebraska's and Board of Trustees of the Nebraska State Colleges' capital construction budget request and major capital construction deficit appropriation request as approved by the board, and may recommend modification, approval, or disapproval of such requests to the Governor and Legislature.

008.03(C) The *Commission* shall develop from a statewide perspective a unified prioritization of *individual capital construction budget requests* for which it has

recommended approval pursuant to section 008.03(B) of these rules and regulations. The *Commission* shall submit such prioritization to the Governor and Legislature for their consideration.

008.03(D) The *Commission* may consider and respond to the priority order established by the Board of Regents or Board of Trustees in their respective capital construction budget requests.

008.03(E) *Governing boards* shall not submit a request for *tax funds designated by the Legislature* to provide an *incremental increase* in a facility's operations and maintenance costs, of more than the *minimum capital expenditure*, for any *capital construction project* that has been excluded from *Commission* review.

009. GENERAL CONSIDERATIONS.

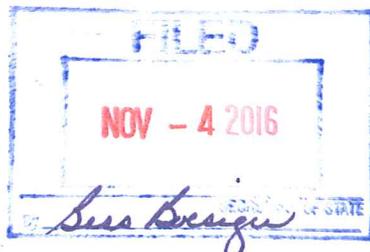
009.01 The *Commission* shall provide guidelines to implement these rules and regulations.

009.02 The *Commission* shall be the determining body to approve or disapprove *capital construction project* proposals. Parties wishing to appeal decisions of the *Commission* shall proceed as provided by law.

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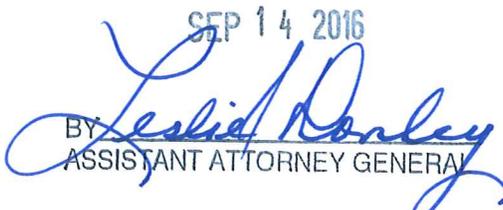

PETE RICKETTS
GOVERNOR



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APPROVED
DOUGLAS J. PETERSON
ATTORNEY GENERAL

SEP 14 2016


BY
ASSISTANT ATTORNEY GENERAL