

AGENDA

Negotiated Rulemaking Committee on Capital Projects

March 19, 2014

9:30a – 4:30p

Board Room

Texas Higher Education Coordinating Board

1200 E. Anderson Lane

Austin, TX 78752

- I. Introductions
- II. Consideration of Facilitator
- III. Brief Overview of the Negotiated Rulemaking Process: What it is, What it's not
- IV. Overview of Roles and Responsibilities
 - A. Role of Facilitator
 - B. Role of Sponsor Agency
 - Technical and administrative support
 - C. Role of Committee Members
 - Representative role
 - Commitment to negotiate in good faith
- V. Procedural Issues
 - A. Discussion and Consideration of Ground Rules
 - B. Discussion and Consideration of Definition of Consensus
- VI. Discussion of Draft Rules Language on Statewide Standards for Capital Projects
- VII. Consideration of Proposed Rules Language on Statewide Standards for Capital Projects

GROUND RULES FOR NEGOTIATED RULEMAKING

I. GOAL

To reach consensus on the language of a proposed rule

II. REACHING DECISIONS

- A. Use of Consensus. Negotiations will be conducted with the intent of reaching a consensus decision.
- B. Consensus. Unless the Committee members agree unanimously to another definition at the outset of the process:

Consensus means that all Committee members concur in the decision because their major interests have been taken into consideration and addressed in a satisfactory manner. While committee members may differ in their acceptance of individual terms of the agreement, all committee members can support the final agreement given the trade-offs and current circumstances.

Committee members can reach consensus without embracing each element of the agreement with the same fervor as other members. Some parties may strongly endorse a particular solution while others may accept it as a workable agreement.

III. AGREEMENT

- A. Final Product/Proposed Rule. The Committee intends for its final work product to be the text of a proposed rule. If the Committee reaches consensus on a proposed rule, the agency will accept the proposed rule as its draft with the recommendation that it be published in the Texas Register as drafted.
- B. Failure to Reach Consensus. If the Committee is unable to reach consensus on a proposed rule, then the Committee will draft a report that specifies the issues on which consensus was reached, the issues that remain unsolved, and any other information that the Committee considers important.
- C. Support of Agreement. The Committee members agree not to take any action to inhibit the adoption or implementation of a rule that conforms to the consensus proposal of the Committee. Furthermore, members agree to advocate for the consensus rule to their membership and to other policy makers both during and after the negotiated rulemaking process. If a member fails to keep this agreement, all other members agree to submit comments to the agency, any other relevant state officials, government bodies, or Courts, stating that:
1. All members concurred in the proposed rule; and
 2. All members supported approval of the final rule that conforms to the consensus proposal of the Committee.

IV. COMMITTEE MEETINGS

A. Meeting Attendance

1. The same Committee members listed at the end of this document need be present at each full meeting of the Committee.
2. Scheduled meetings will proceed even if some members are absent.
3. Absent members are responsible for updating themselves in the proceedings of missed meetings.
4. Substitutes may stand in for absent members and express their views and provide information but may not be involved as decision-makers.
5. After the negotiations have begun, additional members may join the Committee only with the concurrence of the Committee.

B. During the Meetings

1. Meetings will be open to the public. However, participation in negotiations will be limited to Committee members and invited experts.
2. Visitors are requested to respect the process and abide by these ground rules. This request will be stated at the beginning of each meeting.
3. Visitors who wish to comment during the negotiations may do so through the following avenues:
 - a. Channel comments through one of the Committee members;
 - b. Submit written comments to the Committee members; or
 - c. Submit comments through the website, if available.Further, a Committee member may invite a member of the audience to speak, as that member sees fit. Initial comments should be limited to three minutes and may be extended at the Committee's request.
4. The proceedings of the Committee will not be electronically recorded, but the facilitator may prepare draft summaries of the meetings for the convenience of the members. Such summaries shall not be approved by the Committee, and they are not to be construed to represent the official position of the Committee or any member on what transpired at a Committee meeting. Summaries will note issues discussed, any outcome to discussions, requests for data, and any other action items.

C. Caucuses

1. The facilitator may at any time request a confidential caucus with specific members or groups of members to attempt resolution of a specific issue.
2. Any member may request a caucus at any time to consult with other members, but such caucuses are to be used sparingly. The caucusing members will be asked to move into the hallway or another meeting area to conduct the caucus. The length of caucuses will be determined at the discretion of the facilitator who may serve as a mediator during such caucuses.

- D. Stakeholder Representatives. Individual members acknowledge that they have been named to the Committee as the representative of all others in their stakeholder class, and not just themselves. To this end, the members pledge to communicate with other members of their organization or stakeholder class to ensure that the deliberations reflect the viewpoints of the stakeholder class as a whole.

V. NEGOTIATING

- A. All members agree to act in good faith in all aspects of these negotiations. Members agree to speak openly and commit to addressing each other's concerns and needs. Members may not use other members' specific offers, positions, or statements made during the negotiations for any purpose outside the negotiation.
- B. All members commit to share relevant information, which if excluded, would damage the credibility or outcome of the consensus. Members will make every effort to provide requested information reasonably in advance of scheduled meetings.
- C. All members will endeavor to tailor their statements during meetings to ensure the opportunity for all members to participate fully on issues in which they have an interest. Members agree to speak one at a time and allow each other a reasonable opportunity for uninterrupted comments. All members will refrain from personal attacks.
- D. Any Committee member may withdraw from the negotiations at any time without prejudice. The remaining Committee members will then decide whether to continue the negotiations.

VI. COMMUNICATIONS

- A. When communicating with the press, Committee members agree to limit their statements to expressions of their own interests. Inquiries from the press may be referred to the facilitators. If the Committee decides to issue a press statement, the Committee will agree on the language of the press statement.
- B. In all communications outside of the Committee, including those to the press, members may give information concerning issues raised and actions taken but agree to refrain from attributing views or positions to a particular group or individual, even if that party withdraws from negotiations

Senate Bill 215

Applicable Provisions Relating to Establishing Statewide Standards for Capital Projects via Negotiated Rulemaking

Texas Education Code, Sec. 61.0572 (d) The board may review purchases of improved real property added to an institution's educational and general buildings and facilities inventory to determine whether the property meets the standards adopted by the board for cost, efficiency, space need, and space use, but the purchase of the improved real property is not contingent on board review. **Standards must be adopted by the board using the negotiated rulemaking procedures under Chapter 2008, Government Code.** If the property does not meet those standards, the board shall notify the governor, the lieutenant governor, the speaker of the house of representatives, the governing board of the applicable institution, and the Legislative Budget Board. This subsection does not impair the board's authority to collect data relating to the improved real property that is added each year to the educational and general buildings and facilities inventory of institutions of higher education.

Texas Education Code, Sec. 61.058 (b) The board may review all construction, repair, or rehabilitation of buildings and facilities at institutions of higher education to determine whether the construction, rehabilitation, or repair meets the standards adopted by board rule for cost, efficiency, space need, and space use, but the construction, rehabilitation, or repair is not contingent on board review. **Standards must be adopted by the board using the negotiated rulemaking procedures under Chapter 2008, Government Code.** If the construction, rehabilitation, or repair does not meet those standards, the board shall notify the governor, the lieutenant governor, the speaker of the house of representatives, the governing boards of the applicable institutions, and the Legislative Budget Board. This subsection does not impair the board's authority to collect data relating to the construction, repair, or rehabilitation of buildings and facilities occurring each year at institutions of higher education.

CHAPTER 1. AGENCY ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

Section

- 1.1. Dates for Regular Quarterly Meetings of the Board
- 1.2. Authority of the Commissioner to Interpret Rules
- 1.3. Educational Data
- 1.4. Rules of Order
- 1.5. Coordinating Board Committees
- 1.6. Advisory Committees
- 1.7. Petition for the Adoption of Rules
- 1.8. Historically Underutilized Business (HUBs) Program
- 1.9. Training for Members of Governing Boards and Board Trustees
- 1.10. Administration of the Open Records Act
- 1.11. Protest Procedures for Resolving Vendor Protests Relating to Purchasing Issues
- 1.12. Foreign Travel
- 1.13. Internal Auditor
- 1.14. Negotiated Rulemaking
- 1.15. Authority of the Commissioner to Propose Board Rules
- 1.16. Contracts for Materials and Services
- 1.17. Authority of the Commissioner to Provide Direct Supervision of the Education Research Centers
- 1.18. Operation of Education Research Centers
- 1.19. Education and Training of Board Administrators and Employees

1.1 – 1.13 (No change.)

1.14. Negotiated Rulemaking

(a) Definitions. The following words and terms, when used in this rule, shall have the following meaning:

(1) Alternative Dispute Resolution coordinator – An agency employee appointed under Chapter 1, Subchapter B, Rule 1.22.

(2) Board or agency– Texas Higher Education Coordinating Board

(3) Commissioner – The Commissioner of Higher Education

(4) Consensus – The negotiated rulemaking committee has reached consensus on a matter only if the agreement is unanimous, unless the committee has unanimously agreed to define consensus in another manner. The absence or silence of a member at the time the final_consensus vote is taken is equivalent to agreement. If consensus is achieved, negotiated rulemaking committee members may not thereafter withdraw their agreement.

(5) Institutions of higher education – As defined in Texas Education Code Section 61.003

(6) Private or independent institutions of higher education – As defined in Texas Education Code Section 61.003

(b) If the Assistant Commissioner whose Division has jurisdiction over the subject matter of the rule or rules to be adopted concludes that the agency may benefit from negotiated rulemaking, he or she shall request that the agency's Alternative Dispute Resolution (ADR) coordinator assist in determining whether it is advisable to proceed under the procedures established in Chapter 2008 of the Texas Government Code.

(1) Scope and Purpose. This rule also implements Texas Education Code Sections 61.0331, 61.0572, 61.058, and 61.07761 which require the Board to engage in negotiated rulemaking with institutions of higher education in accordance with the procedures established in Texas Government Code Chapter 2008 when adopting a policy, procedure, or rule relating to:

(2) the transfer of credit under Texas Education Code Section 61.827 or admission policies regarding:

(A) the common admission application under Texas Education Code Section 51.762;

(B) uniform admissions under Texas Education Code Section 51.807; or

(C) graduate and professional admissions under Texas Education Code 51.843; or

(3) the reevaluation of data requests under Texas Education Code Section 51.406;

(4) compliance monitoring under Texas Education Code Section 61.035;

(5) the standards for cost, efficiency, space need, and space use under Texas Education Code Sections 61.0572 and 61.058 in regards to:

(A) new construction, rehabilitation, repair of buildings and facilities at institutions of higher education; and

(B) the purchases of improved real property added to institutions of higher education's educational and general buildings and facilities inventory; or

(6) the allocation (including the allocation methodologies and related procedures) or distribution of funds, including financial aid or other trusteed funds under Texas Education Code Section 61.07761, to institutions of higher education and private or independent institutions of higher education. For rulemaking on this issue, the Board shall engage in negotiated rulemaking with both institutions of higher education and private or independent institutions of higher education, as applicable.

(A) With the exception of sections 1.14(a), (b), and (d)(3)-(4), this rule and the procedures set forth herein apply only to those matters, as set forth in (b-1), in which the Board is required to engage in negotiated rulemaking.

(B) In matters other than those addressed in (b-1), the Board retains the right to engage in negotiated rulemaking in accordance with the procedures established in the Texas Government Code, Chapter 2008.

(c) Appointment of Convener. The ADR coordinator will appoint an agency employee to serve as the convener to assist in negotiated rulemaking. The convener may not have a financial or other interest in the outcome of the rulemaking process that would interfere with the person's impartial and unbiased service as the convener.

(d) Duties of Convener. (1) The convener will assist the ADR coordinator in identifying institutions of higher education (and private or independent institutions when rulemaking under 1.14(a)(5) is considered) and other stakeholders (such as students, state agencies, and accreditors) who are likely to be affected by the proposed rule(s), including identifying institutions and other stakeholders who may oppose the issuance of rule(s). The convener will discuss with institution representatives and other stakeholders whether they are willing to participate in negotiated rulemaking, which issues a negotiated rulemaking committee should address, and whether there are other institutions or persons the convener needs to identify who may be affected by the proposed rule(s).

(2) Where the Board is required to engage in negotiated rulemaking, the convener shall report to the ADR coordinator the outcome of the above discussions.

(3) Where the Board is not required to engage in negotiated rulemaking, the convener shall report to the ADR coordinator on the relevant considerations regarding negotiated rulemaking, including, but not limited to:

(i) the number of identifiable interests that would be significantly affected by the proposed rule(s),

(ii) the probable willingness and authority of the representatives of affected interests to negotiate in good faith,

(iii) the probability that a negotiated rulemaking committee would reach a unanimous or a suitable general consensus on the proposed rule(s),

(iv) the adequacy of Board, institution, and citizen resources to participate in negotiated rulemaking, and

(v) the probability that the negotiated rulemaking committee will provide a balanced representation between affected stakeholder interests.

(4) Where the Board is not required to engage in negotiated rulemaking, the convener shall also recommend to the ADR coordinator whether negotiated rulemaking is appropriate.

(5) The report and recommendations of a convener are public information and available on request to any member of the public.

(e) Publishing Notice of Proposed Negotiated Rulemaking. To initiate negotiated rulemaking, the Commissioner will publish a notice of intent to establish a negotiated rulemaking committee to prepare proposed rules. Such notice will be published both in the *Texas Register* and on the Board's website. The ADR coordinator will consider all comments received by the close of the comment period pursuant to the notice of intent. The notice of intent will include:

(1) a statement that the Board intends to engage in negotiated rulemaking;

- (2) a description of the subject and scope of the rule(s) to be developed;
- (3) a description of the known issues to be considered in developing the rule(s);
- (4) a list of the interests likely to be affected by the proposed rule(s);
- (5) a list of the individuals the ADR coordinator proposes to appoint to the negotiated rulemaking committee to represent the Board and affected interests (each committee will include at least one agency staff representative);
- (6) a request for comments on the proposal to engage in negotiated rulemaking, including a description of the issues the commenter believes will need to be addressed in developing the rule(s), as well as on the proposed membership of the negotiated rulemaking committee; and
- (7) a description of the procedure through which an institution or person who will be significantly affected by the proposed rule(s) may, before the ADR coordinator appoints members to the negotiated rulemaking committee, apply for membership on the committee or nominate another to represent the institution's or person's interests on the committee (before nominating an individual to the committee, the nominator should confirm that the potential nominee can and will make the necessary time commitment to the negotiations).

(f) Appointment of Negotiated Rulemaking Committee Members. After considering comments and nominations received in response to the notice of proposed negotiated rulemaking, the ADR coordinator will appoint members to a negotiated rulemaking committee to serve until the proposed rule(s) (if any) is adopted by the Board. The ADR coordinator will appoint members to the committee with a goal of providing adequate and balanced representation for the affected interests while keeping the size of the committee manageable. The ADR coordinator shall select individuals with demonstrated expertise or experience in the relevant matters under negotiations and who reflect the diversity of the identifiable interests which could be significantly affected by the proposed rule(s). An individual selected to serve on the committee will be expected to represent the interests of his or her entity, organization or group, and participate in the negotiations in a manner consistent with the goal of developing proposed rules on which the committee will reach consensus.

(g) Costs of Participating in Negotiated Rulemaking.

(1) The Board will provide appropriate administrative support to the negotiated rulemaking committee. Except as provided below, a member of a negotiated rulemaking committee is responsible for the member's own costs in serving on the committee. However, if:

(A) The member certifies that he or she (or the entity, organization or group which the member represents) lacks sufficient financial resources to participate as a member of the committee and provides any requested proof of same; and

(B) The ADR coordinator determines that the member's service on the committee is necessary for the adequate representation of an affected interest,

(C) then, the Board may pay a member's reasonable travel and per diem costs related to the member's service on the committee at the rate set in the General Appropriations Act for state employees.

(2) The costs of the negotiated rulemaking facilitator described in subsection (h) shall be borne equally, on a pro rata basis, by all entities represented on the negotiated rulemaking committee, unless the negotiated rulemaking committee unanimously agrees to a different cost allocation; or the facilitator is an employee of the Board, in which event the costs of the facilitator shall be borne by the Board.

(h) Appointment of Negotiated Rulemaking Facilitator. The ADR coordinator will appoint a negotiated rulemaking facilitator who will utilize alternative dispute resolution skills to attempt to arrive at a consensus on a proposed rule(s). The ADR coordinator may appoint a Board employee or contract with another state employee or private individual to serve as the facilitator. The ADR coordinator's appointment of the facilitator is subject to the approval of the negotiated rulemaking committee and the facilitator serves at the will of the committee. The ADR coordinator will appoint the facilitator utilizing, among other things, the following criteria:

(1) The facilitator must possess the qualifications required for an impartial third party under Civil Practice and Remedies Code Section 154.052(a) and (b);

(2) The facilitator is subject to the standards and duties prescribed by Civil Practice and Remedies Code Sections 154.053(a) and (b) and has the qualified immunity prescribed by Civil Practice and Remedies Code Section 154.055, if applicable;

(3) The facilitator will not be the person designated to represent the Board on the negotiated rulemaking committee on substantive issues related to the rulemaking; and

(4) The facilitator will not have a financial or other interest in the outcome of the rulemaking process that would interfere with the person's impartial and unbiased service as the facilitator.

(i) Duties of Negotiated Rulemaking Committee and Facilitator. The facilitator will preside over meetings of the negotiated rulemaking committee and assist the members of the committee to establish procedures for conducting negotiations and will utilize alternative dispute resolution skills to encourage a consensus on the proposed rule(s). The facilitator may not, however, compel or coerce the members to reach a consensus.

(j) Consensus and the Negotiated Rulemaking Committee's Report. If the negotiated rulemaking committee reaches a consensus, the committee will draft and send a report to the Board that contains the text of the proposed rule(s). If the committee determines that only a partial agreement on a proposed rule(s) has been reached, the committee will draft and send a report to the Board that describes the partial agreement achieved, lists the unresolved substantive issues, and includes any other information or recommendations of the committee. The committee's report is public information. If consensus is not achieved, the Board shall determine whether to proceed with proposed rule(s). If the Board decides to proceed with proposed rule(s), the Board may use language developed during the negotiations or develop new language for all or a portion of the proposed rule(s).

(k) Proposed Rulemaking under the APA. If the Board decides to proceed with rulemaking after receipt of the negotiated rulemaking committee's report, the Board shall initiate rulemaking under the regular Administrative Procedures Act (APA) procedures, as prescribed in Texas Government Code Chapter 2001, Subchapter B. In addition to the APA's requirements regarding the contents of notice of proposed rulemaking, the notice will also state that:

(1) the Board used negotiated rulemaking in developing the proposed rule, and

(2) the negotiated rulemaking committee report is public information and the report's location at which it will be available to the public.

All published proposed rules will conform to the agreements resulting from consensus, if any, achieved through negotiated rulemaking (as reflected in the negotiated rulemaking committee's report).

(l) Confidentiality of Certain Records and Communications. Civil Practice and Remedies Code (CPRC) Sections 154.053 and 154.073 apply to the communications, records, conduct, and demeanor of the facilitator and the members of the negotiated rulemaking committee as if the negotiated rulemaking were a dispute being resolved in accordance with CPRC Chapter 154. In the negotiated rulemaking context, the Texas Office of the Attorney General, subject to review by a Travis County district court, decides in accordance with CPRC Section 154.073(d) whether a communication or material subject to Section 154.073(d) is confidential, excepted from required disclosure, or subject to required disclosure. Notwithstanding CPRC Section 154.073(e):

(1) a private communication and a record of a private communication between a facilitator and a member or members of the committee are confidential and may not be disclosed unless the member or members of the committee, as appropriate, consent to the disclosure; and

(2) the notes of a facilitator are confidential except to the extent that the notes consist of a record of a communication with a member of the committee who has consented to disclosure in accordance with subdivision (1).

(m) The Board hereby delegates to the Commissioner the responsibilities and authority set forth in this section.

Texas Administrative Code

TITLE 19	EDUCATION
PART 1	TEXAS HIGHER EDUCATION COORDINATING BOARD
CHAPTER 17	RESOURCE PLANNING
SUBCHAPTER A	GENERAL PROVISIONS
RULE §17.1	Purpose and Scope

The purpose of this chapter is to provide guidance to the public and to public institutions of higher education regarding **review** of construction projects, property acquisitions, or lease-purchase arrangements; assuring maximum use of facilities; developing standards and policies for management of physical plants designed to streamline operations and improve accountability; and to achieve the goals of the higher education plan approved by the Board.

Texas Administrative Code

TITLE 19	EDUCATION
PART 1	TEXAS HIGHER EDUCATION COORDINATING BOARD
CHAPTER 17	RESOURCE PLANNING
SUBCHAPTER A	GENERAL PROVISIONS
RULE §17.2	Authority

Texas Education Code, §61.0572, requires the Board to assure the efficient use of construction funds and the orderly development of physical plants to accommodate projected college student enrollments. Texas Education Code, §61.058, authorizes the Board to **review** all new construction and repair and rehabilitation of buildings and facilities at institutions. Texas Education Code, §61.0582, requires that each institution submit a campus master plan to the Board, and Texas Education Code, §61.0583, requires the Board to conduct a comprehensive audit of all educational and general facilities. Texas Education Code, §51.927, authorizes the Board to establish guidelines and an approval process for awarding energy savings performance contracts.

Texas Administrative Code

TITLE 19	EDUCATION
PART 1	TEXAS HIGHER EDUCATION COORDINATING BOARD
CHAPTER 17	RESOURCE PLANNING
SUBCHAPTER A	GENERAL PROVISIONS

RULE §17.3 Definitions

The following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Acquisition--To come into possession or control of real property or facilities. This includes the acceptance, purchase, lease-purchase, transfer, or exchange of land or facilities.
- (2) Academic Facilities--Facilities used for primary instruction, research, and public service functions of the institution. Academic facilities typically would include classrooms, libraries, administrative and faculty offices, and student and research laboratories.
- (3) Addition--Expansion or extension of an existing facility that increases its size or capacity.
- (4) Assignable Area of a Building--The sum of all areas within the interior walls of rooms on all floors of a building assigned to, or available for assignment to, an occupant or use, excluding unassigned space. This is also referred to as net assignable square feet (NASF).
- (5) Assistant Commissioner--The executive officer having direct oversight of the campus facilities planning function at the Texas Higher Education Coordinating Board.
- (6) Athletic Facilities--Facilities used for athletic programs, including intercollegiate athletics, intramural athletics, and athletically-oriented academic programs.
- (7) Auditorium or Assembly--A room, hall, or building designed and equipped for the assembly of large groups for such events as dramatic and musical productions, devotional activities, livestock judging, faculty/staff meetings, or commencement. Included are theaters, concert halls, arenas, chapels and livestock judging pavilions. Assembly facilities may also serve instructional purposes to a minor or incidental extent.
- (8) Auxiliary Enterprise Buildings or Space--Income-generating structures and space such as dormitories, cafeterias, student union buildings, stadiums, athletic facilities, housing or boarding facilities used by a fraternity, sorority, or private club, and alumni centers used solely for those purposes. Auxiliary space is not supported by State appropriations.
- (9) Board or Coordinating Board--The Texas Higher Education Coordinating Board members and the agency.
- (10) Building--A structure with at least two walls for permanent or temporary shelter of persons, animals (excluding animal caging equipment), plants, materials, or equipment that is attached to a foundation, roofed, serviced by a utility (exclusive of lighting), is a source of maintenance and repair activities, and is under the control or jurisdiction of the institution's governing board, regardless of its location.
- (11) Campus Condition Index (CCI)--A comparative indicator of the relative condition of facilities calculated by dividing the deferred maintenance backlog by the current Campus Condition Index Value. This may be calculated for an individual building, group of buildings, or an entire campus.
- (12) Campus Condition Index Value (CCIV)--The institution-wide relative value of an institution's facilities, as determined annually by the Board. The method of calculation is based on approved Board project costs. Campus Condition Index Values are calculated for Educational and General (EGCCIV) space and Institution-Wide (IWCCIV) space. A 25 percent add-on is included to account for the cost of necessary infrastructure. These are NOT to be used for insurance purposes.
- (13) Campus Condition Report (MP2)--A detailed report outlining facility maintenance needs in the areas of planned maintenance, facilities adaptation, deferred maintenance and critical

deferred maintenance. Also included are the expenditures in each area for the year preceding the report as well as amounts budgeted and unbudgeted in each area for the current year.

(14) Campus Master Plan--A detailed long-range plan of institutional physical plant needs, including facilities construction and/or development, land acquisitions, and campus facilities infrastructure; the plan provides long-range and strategic analyses and facilities development guidelines.

(15) Capital Renewal--Includes capital improvements and changes to a facility in response to evolving needs. The changes may occur because of new programs or to correct functional obsolescence. Items an institution considers capital renewal should be captured in the either planned maintenance or facility adaptation.

(16) Certification--Institutional attestation of reports or other submissions as being true or as represented.

(17) Classroom--A room used for scheduled classes. These rooms may be called lecture rooms, lecture-demonstration rooms, seminar rooms, or general purpose classrooms. A classroom may contain multimedia or telecommunications equipment, such as those used for distance learning. A classroom may be furnished with special equipment (e.g., globes, maps, pianos) appropriate to a specific area of study. A classroom does not include conference rooms, meeting rooms, auditoriums, or class laboratories.

(18) Class Laboratory--A room used primarily by regularly scheduled classes that require special-purpose equipment for student participation, experimentation, observation, or practice in a field of study. Class laboratories may be referred to as teaching laboratories, instructional shops, computer laboratories, drafting rooms, band rooms, choral rooms, group studios. Laboratories that serve as individual or independent study rooms are not included.

(19) Clinical Facility--A facility often associated with a hospital or medical school that is devoted to the diagnosis and care of patients in the instruction of health professions and allied health professions; medical instruction may be conducted, and patients may be examined and discussed. Clinical facilities include, but are not limited to, patient examination rooms, testing rooms, and consultation rooms.

(20) Committee or Committee on Strategic Planning--The members of the Board appointed to consider facility-related issues. This includes the Committee on Strategic Planning and its successors.

(21) Commissioner--The chief executive officer of the Texas Higher Education Coordinating Board.

(22) Critical Deferred Maintenance--Any deferred maintenance that if not corrected in the current budget cycle places its building occupants at risk of harm or the facility at risk of not fulfilling its functions.

(23) Deferred Maintenance--The accumulation of facility components in need of repair or replacement brought about by age, use, or damage, for which remedies are postponed or considered backlogged, that is necessary to maintain and extend the life of a facility. This includes repairs postponed due to funding limitations. Deferred maintenance excludes on-going maintenance, planned maintenance performed according to schedule, and facility adaptation items.

(24) Deputy Assistant Commissioner for Planning and Accountability--Having indirect oversight of the campus facilities planning function at the Texas Higher Education Coordinating Board.

- (25) Deputy Commissioner for Academic Planning and Policy--An executive officer having indirect oversight of the campus facilities planning function at the Texas Higher Education Coordinating Board.
- (26) Diagnostic Support Laboratory--The central diagnostic service area for a health care facility. Included are pathology laboratories, pharmacy laboratories, autopsy rooms, isotope rooms, etc., providing such services as hematology, tissue chemistry, bacteriology, serology, blood banks, and basal metabolism. In veterinary facilities, this includes necropsy rooms.
- (27) Education and General (E&G)--Space used for teaching, research, or the preservation of knowledge, including the proportional share used for those activities in any building or facility used jointly with auxiliary enterprise, or space that is permanently unassigned. E&G space is supported by state appropriations.
- (28) Emergency--An unforeseen combination of circumstances that calls for immediate action and requires an urgent need for assistance or relief that, if not taken, would result in an unacceptable cost to the state; or, an urgent need for assistance or relief due to a natural disaster; or an unavoidable circumstance whereby the delay of the project approval would critically impair the institution's function.
- (29) Eminent Domain--A legal process wherein the institution takes private property for public use.
- (30) Energy Systems--Infrastructure in a building that includes facility electric, gas, heating, ventilation, air conditioning, and water systems.
- (31) Energy Savings Performance Contract--A contract for energy or water conservation measures to reduce energy or water consumption or operating costs of institutional facilities in which the estimated savings in utility costs resulting from the conservation measures is guaranteed to offset the cost of the measures over a specified period.
- (32) Facility Adaptation--Includes facility improvements and changes to a facility in response to evolving needs. The changes may occur because of new programs or to correct functional obsolescence. This category is sometimes referred to as Capital Renewal.
- (33) Facilities Audit--Comprehensive review of institutional facility development, planning activities, and reports.
- (34) Facilities Inventory--A collection of building and room records that reflects institutional space and how it is being used. The records contain codes that are uniformly defined by the Board and the United States Department of Education and reported by the institutions on an ongoing basis to reflect a current facilities inventory. The facilities inventory includes a record of property owned by or under the control of the institution.
- (35) Facilities Development Plan (MP1)--A detailed formulation of institutional programs to address facilities adaptation, deferred maintenance, critical deferred maintenance, facilities construction, demolition, property acquisitions, or physical plant development.
- (36) Financing Directly Derived from Students--Funds resulting from the collection of fees or other charges to students, such as designated tuition, student activities fees, housing revenue, bookstore or student union revenue, etc. Bond proceeds for which one or more of these sources provides debt service shall also be considered financing directly derived from students.
- (37) Financing Indirectly Derived from Students--Funds generated from funds accumulated from students, primarily interest on funds accumulated directly from students.
- (38) Gift--A donation or bequest of money or another tangible item, a pledge of a contribution, or the acquisition of real property or facilities at no cost to the state or to the institution. It may also represent a method of finance for a project.

- (39) Gross Square Feet (GSF)--The sum of all square feet of floor areas within the outside faces of a building's exterior walls. This includes the areas, finished and unfinished, on all floors of an enclosed structure, i.e., within the environmentally controlled envelope, for all stories or areas which have floor surfaces.
- (40) Housing Facility--A single- or multi-family residence used exclusively for housing or boarding students, faculty, or staff members.
- (41) Information Resource Project--Projects related to the purchase or lease-purchase of computer equipment, purchase of computer software, purchase or lease-purchase of telephones, telephone systems, and other telecommunications and video-teleconferencing equipment.
- (42) Intercollegiate Athletic Facility--Any facility used primarily to support intercollegiate athletics, including stadiums, arenas, multi-purpose centers, playing fields, locker rooms, coaches' offices, and similar facilities.
- (43) Infrastructure--The basic physical structures needed for the operation of a campus to include roads, water supply, sewers, power grids, telecommunications, and so forth. Systems within five feet of a building are considered building systems and are not infrastructure.
- (44) Institution or institution of higher education--A Texas public institution of higher education as defined in Texas Education Code, §61.003(8), except a community/junior college.
- (45) Legislative Authority--Specific statutory authorization.
- (46) Lease--A contract by which real estate, equipment, or facilities are conveyed for a specified term and for a specified rent. Includes the transfer of the right to possession and use of goods for a term in return for consideration. Unless the context clearly indicates otherwise, the term includes a sublease.
- (47) Lease-Purchase--A lease project that includes the acquisition of real property by sale, mortgage, security interest, pledge, gift, or any other voluntary transaction at some future time.
- (48) Net Assignable Square Feet (NASF)--The sum of all areas within the interior walls of rooms on all floors of a building assigned to, or available for assignment to, an occupant or use, excluding unassigned areas. NASF includes auxiliary space and E&G space.
- (49) New Construction--The creation of a new building or facility, the addition to an existing building or facility, or new infrastructure that does not currently exist on campus. New construction would add gross square footage to an institution's existing space.
- (50) Non-student Sources--Funds generated from athletic department operations, gifts and grants, facility usage fees, related revenue, and appropriated funds.
- (51) NCAA Football Bowl Championship Series--A program of the NCAA under which certain NCAA Division I-A football universities share proceeds of college bowl games.
- (52) On-going Maintenance--Routine upkeep to include, but not limited to, the lubrication of moving parts, checking electrical systems, and patching of roofs. Failure to attend to these tasks may result in accelerated deterioration of facilities and increases the likelihood of extensive emergency repairs. On-going maintenance is normally funded by an institution's operating budget.
- (53) Parking Structure--A facility or garage used for housing or storing vehicles. Included are garages, boathouses, airport hangars, and similar buildings. Barns or similar field buildings that house farm implements and surface parking lots are not included.
- (54) Phased Project--A project that has more than one part, each one having fixed beginning and ending dates, specified cost estimates, and scope. Phased projects consider future phase needs in the project plan; each phase is able to stand alone as an individual project.

(55) Planned Maintenance--A systematic approach to repairing or replacing major building subsystems including, but not limited to roofs, HVAC, electrical and plumbing systems, which have predictable life-cycles, to maintain and extend the life of the facility. This category is sometimes referred to as Facility Renewal or Capital Repair. Planned maintenance is normally funded by an institution's capital budget.

(56) Private Funding--Gifts, grants, or other funds to be used for facilities development projects that are provided by persons or entities other than the university or institution requesting consideration of the project.

(57) Planned Project--A project submitted to the Board for review and approval if the project is reported on the most recently submitted MP1 report and prioritized in the top ten projects submitted by the institution, approved by the Board as supporting the state's higher education needs, the scope of the project is within 10% of the scope as identified in the capital expenditure plan, the cost of the project is within 10% of the project costs identified in the capital expenditure plan, and funding sources are appropriate with the type of project presented.

(58) Project--The process that includes the construction, repair, renovation, addition, alteration of a campus, building, or facility, or its infrastructure, or the acquisition of real property.

(59) Project Review—The process used by the Board and Board staff to determine compliance with established rules. The review begins with the project submission and ends when the project is completed to the point of occupancy or use. The staff reviews the project at the initial submission, during annual updates (if the project is on-going) and at completion. At any point the project may be consider not in compliance with rules and a report submitted per Texas Education Code §61.0572 (pertaining to real property acquisitions, new construction, and repairs/renovations).

(60) Real Property--Land with or without improvements such as buildings.

(61) Repair and Renovation (R&R)--Construction upgrades to an existing building, facility, or infrastructure that currently exists on campus; this includes the finish-out of shell space. R&R may add E&G NASF space.

(62) Research Facility--A facility used primarily for experimentation, investigation, or training in research methods, professional research and observation, or a structured creative activity within a specific program. Included are laboratories used for experiments or testing in support of instructional, research, or public service activities.

(63) Shell Space--An area within a building with an unfinished interior designed to be converted into usable space at a later date.

(64) Space Need--The result of the comparison of an institution's actual space to the predicted need as calculated by the Board's Space Projection Model.

(65) Standard--Basis, criteria, or benchmark used for evaluating the merits of a project request or an institutional comparison to a benchmark.

(66) Technical Research Building--Space used for research, testing, and training in a mechanical or scientific field. Special equipment is required for staff and/or student experimentation or observation. Included are specialized laboratories for new technologies that have stringent environmental controls on air quality, temperature, vibration, and humidity. Facilities generally include space for specialized technologies, semiconductors, biotechnology, advanced materials, quantum computing and advanced manufacturing quantum computing technology, nanoscale measurement tools, integrated microchip-level technologies for measuring individual biological molecules, and experiments in nanoscale disciplines.

(67) Tracking Report--Institutional reports indicating the status of approved projects.

(68) Tuition Revenue Bonds Project--A project for which an institution has legislative authority to finance a construction or land acquisition project as provided for in Texas Education Code, §§55.01 - 55.25.

(69) Unimproved Real Property--Real property on which there are no buildings or facilities.

(70) University System--The association of one or more public senior colleges or universities, medical or dental units, or other agencies of higher education under the policy direction of a single governing board.

Texas Administrative Code

TITLE 19 **EDUCATION**

PART 1 **TEXAS HIGHER EDUCATION COORDINATING BOARD**

CHAPTER 17 **RESOURCE PLANNING**

SUBCHAPTER B **BOARD REVIEW**

RULE §17.10 **Board Review**

(a) The Board shall review the following projects or phase of a project at institutions of higher education, regardless of funding source:

(1) New construction of building and facilities and/or additions to buildings and facilities having a project cost of \$4 million or greater;

(2) Repair and renovation projects for buildings and facilities having a project cost of \$4 million or greater;

(3) Improved real property acquisitions that the institution intends to include in the E&G buildings and facilities inventory and the value of the acquisition is more than \$300,000;

(4) Energy Savings Performance Contract projects.

(7) Energy Savings Performance Contract projects.

(b) If an institution does not submit these projects for Board review, a notification of noncompliance shall be sent to the president of the institution by the Commissioner, requesting that a project application be submitted for consideration, and an explanation of the reason for not seeking Board review for the project shall be included. A copy of the notification shall be provided to the Board members, chairman of the institution's governing board, Governor, Lieutenant Governor, Speaker of the House of Representatives, the State Auditor, and the Legislative Budget Board.

TITLE 19 **EDUCATION**

PART 1 **TEXAS HIGHER EDUCATION COORDINATING BOARD**

CHAPTER 17 **RESOURCE PLANNING**

SUBCHAPTER B **BOARD APPROVAL**

RULE §17.12 **Delegation of Review Authority**

(a) Commissioner. The Board authorizes the Commissioner, and the Deputy Commissioner for Academic Planning and Policy when acting on behalf of the Commissioner, to review the following types of projects upon certification of authority by the proposing institution's governing board that the project meets all of the specified Board standards for that project type.

- (1) New construction with a total project cost of \$15 million but less than \$25 million;
- (2) Repair and renovation of existing buildings or facilities with a total project cost of \$15 million but less than \$25 million;
- (3) Gifts or acquisition of improved real property with E&G space having a value of \$5 million but less than \$10 million;
- (4) Purchase of improved real property having a value of \$5 million but less than \$10 million;
- (5) Evaluation of projects funded more than 50 percent with tuition revenue bond proceeds that meet Board standards having a total projected cost of \$25 million or more;
- (6) Projects previously reviewed by the Commissioner but requiring first or second reconsideration under the provisions of §17.14 of this title (relating to Re-approval of Projects), providing they continue to be eligible for Commissioner approval;
- (7) New construction, major repair and renovation, or property acquisition that affects only the University System and not a member institution, and has a total projected cost of \$15 million but less than \$25 million;
- (8) Projects not meeting the criteria of §17.3(57) of this title (relating to Definitions, planned project), that are otherwise eligible for Commissioner level review; and
- (9) Any project referred to the Commissioner by the Assistant Commissioner.

(b) Assistant Commissioner. The Board authorizes the Assistant Commissioner and the Deputy Assistant Commissioner for Planning and Accountability when acting on behalf of the Assistant Commissioner, to review the following types of projects, upon certification of authority by the proposing institution's governing board that the project meets all of the specified Board standards for that project type:

- (1) New construction with a total project cost less than \$15 million;
- (2) Repair and renovation of existing buildings or facilities with a total project cost less than \$15 million;
- (3) Gifts or acquisition of improved real property with E&G space having a value less than \$5 million;
- (4) Purchase of improved real property having a value less than \$5 million;
- (5) Evaluation of projects funded more than 50 percent with tuition revenue bond proceeds that meet Board standards with a total projected cost less than \$25 million;
- (6) Projects previously reviewed by the Board, Committee, Commissioner, Deputy Commissioner for Academic Planning and Policy, or Assistant Commissioner that require reconsideration under the provisions of §17.14 of this title (relating to Re-approval of Projects) relating to any change in the funding source of an approved project with a total projected cost less than \$25 million;
- (7) New construction, major repair and renovation, or property acquisition that affects only the University System, and not a member institution, and has a total projected cost less than \$15 million; and
- (8) Projects not meeting the criteria of §17.3(57) of this title, that are otherwise eligible for Assistant Commissioner level review.

- (c) Committee on Affordability, Accountability and Planning. The Board authorizes the Committee to review the following types of projects, upon certification of authority by the proposing institution's governing board:
- (1) New construction projects having a total project cost of \$25 million but less than \$50 million;
 - (2) Repair and renovation of existing buildings or facilities having a total project cost of more than \$25 million;
 - (3) Purchase of real property having a value of \$10 million but less than \$25 million;
 - (4) Gifts or acquisition of improved real property with E&G space having a value of \$10 million but less than \$25 million;
 - (5) Evaluation of projects funded more than 50 percent with tuition revenue bond proceeds and not qualifying for Commissioner review;
 - (6) Any project referred to the Committee by the Commissioner or the Assistant Commissioner;
- (d) Board. The following types of projects shall be reviewed by the Board:
- (1) New construction with a total project cost of \$50 million or more;
 - (2) Purchase of real property having a value of \$25 million or more;
 - (3) Acquisition of improved real property with E&G space having a value of \$25 million or more; and
 - (4) Any project referred to the Board by the Committee or the Commissioner.
- (e) The Commissioner may refer projects to the Committee or the Board. The Committee may refer projects to the Board. The Assistant Commissioner may refer projects to the Deputy Commissioner for Academic Planning and Policy, or the Commissioner.
- (f) Decisions of the Committee are final. Decisions of the Commissioner may be appealed to the Board.
- (g) Decisions of the Assistant Commissioner may be appealed to the Deputy Commissioner for Academic Planning and Policy, or the Commissioner.

TITLE 19 EDUCATION
PART 1 TEXAS HIGHER EDUCATION COORDINATING BOARD
CHAPTER 17 RESOURCE PLANNING
SUBCHAPTER B BOARD REVIEW
RULE §17.13 Review Considerations

- (a) The Board's consideration and determination shall be limited to the purpose for which the new or remodeled buildings are to be used to assure conformity with approved space utilization standards and the institution's approved programs, role, and mission.
- (b) The Board shall consider cost factors, efficiency, space need, and space use.
- (c) The Board shall consider the extent to which each of the standards outlined in §§17.30 - 17.51 of this title (relating to Rules Applying to New Construction and Addition Projects, Repair and Renovation Projects, and Real Property Acquisition Projects) have been met.
- (d) The Governing Board shall ascertain and certify that standards and specifications for new construction or repair and rehabilitation of all buildings and facilities are in accordance with Texas Government code, §§469.001 - 469.105, concerning the elimination of architectural barriers.

TITLE 19 **EDUCATION**
PART 1 **TEXAS HIGHER EDUCATION COORDINATING BOARD**
CHAPTER 17 **RESOURCE PLANNING**
SUBCHAPTER C **RULES APPLYING TO ALL PROJECTS**
RULE §17.20 **Criteria for Review of Projects**

Institutions shall certify that projects being reviewed by the Board meet the following criteria:

- (1) The project shall meet all applicable Board standards as described in §§17.30 - 17.51 of this title (relating to Rules Applying to New Construction and Addition Projects, Repair and Renovation Projects, and Real Property Acquisition Projects).
- (2) If the project causes an increase in student fees, such increases are executed in accordance with the applicable laws concerning approval by the student body.
- (3) If the project involves construction of a dormitory, bookstore, food service facility, or other facility for which privatization may be a viable alternative, the governing board shall have considered the feasibility of privatization of both construction and operation of the facility.
- (4) If applicable, the project complies with the minimum flood plain management standards established by the Texas Commission on Environmental Quality (TCEQ) and the Federal Emergency Management Agency (FEMA).
- (5) If the project includes the acquisition of real property, the governing board shall have given appropriate consideration to the effect of the acquisition on residential neighborhoods.
- (6) If the project includes the acquisition of real property, the acquisition shall be included in the institution's long-range campus master plan.
- (7) All projects, with the exception of real property acquisitions, shall be planned projects as defined in §17.3 of this title (relating to Definitions) included in the institution's most recently submitted Facilities Development Plan (MP1 report) or the institution shall certify that the project represents an opportunity or emergency that could not be foreseen.
- (8) If applicable, the project complies with Texas Government Code, §§469.001 - 469.105, concerning the elimination of restrictive barriers.
- (9) The project shall comply with Life Safety Standards adopted by the State Fire Marshal.
- (10) The institution verifies that the project complies with Texas Government Code, §447.004, regarding energy efficiency and shall provide a Certificate of Compliance to the State Energy Conservation Office prior to occupancy. If the project involves energy savings or conservation, the governing board shall have considered the feasibility of an Energy Savings Performance Contract as a viable alternative.
- (11) The institution shall verify that it will comply with Texas Government Code, §§2161.252 - 2161.253, concerning Historically Underutilized Business Subcontracting Plans.

(12) The institution has less zero critical deferred maintenance as reported to the Governing Board per Texas Education Code §61.05821 (concerning Condition of Buildings and Facilities Annual Reporting) and as defined in §17.3 of this title (relating to definitions).

(13) Total deferred maintenance is less than five percent of the index value of the buildings as calculated in the annual report to the Governing Board per Texas Education Code §61.05821 (concerning Condition of Buildings and Facilities Annual Reporting) and as defined in §17.3 of this title (relating to definitions).

TITLE 19 **EDUCATION**
PART 1 **TEXAS HIGHER EDUCATION COORDINATING BOARD**
CHAPTER 17 **RESOURCE PLANNING**
SUBCHAPTER C **RULES APPLYING TO ALL PROJECTS**
RULE §17.21 **Application Procedures**

(a) Institutions shall request Board review of projects on forms specified by the Board. The project application shall be submitted electronically.

(b) Institutions shall submit the following materials for the consideration of projects by the Assistant Commissioner, Deputy Commissioner for Academic Planning and Policy, Commissioner, Committee on Strategic Planning, or Board:

(1) a completed project review application submitted electronically through the Board's website;

(2) a signed Board of Regents Certification form certifying that the institution's Board of Regents has approved the project dated no more than two years prior to the date the project application is submitted to the Coordinating Board for approval and that the project meets the criteria specified in §17.20 of this title (relating to Criteria for Approval of Projects);

(3) For real property purchases only, if the Board of Regents certification is dated more than two years prior to the date of the project application, the institution shall submit a certification from an appropriate executive officer that the Board of Regent's approval remains in effect.

(4) a signed verification of compliance with applicable state and or federal requirements, and

(5) any other documentation or information the institution believes will assist in the evaluation of the project.

(c) Project review schedule:

(1) Projects may be submitted at any time following Governing Board approval for initial review.

(2) In the event a project is ongoing at the time of annual project update, the institution shall update the initial application and submit within 30 days of request.

(3) At the time the project is completed to the point of occupancy, the institution shall amend the project application with updated data and update the facilities inventory.

TITLE 19 **EDUCATION**
PART 1 **TEXAS HIGHER EDUCATION COORDINATING BOARD**
CHAPTER 17 **RESOURCE PLANNING**
SUBCHAPTER D **RULES APPLYING TO NEW CONSTRUCTION AND ADDITION PROJECTS**
RULE §17.30 **Standards for New Construction and/or Addition Projects**

To obtain Board review for a new construction and/or addition project, an institution shall demonstrate that the project complies with the following standards:

(1) Project Standards. The institution shall demonstrate that a new construction or addition project complies with the following project standards:

(A) Space Need--The project shall not create a campus space surplus, or add to an existing surplus, as determined by the Board's space projection model report, required by §17.100 of this title (relating to Board Reports).

(ii) If more than one project is submitted for an agenda, all projects submitted for the current agenda will be considered in the determination of a campus surplus or deficit.

(B) Cost--The construction building cost per gross square foot shall not exceed one standard deviation above the mean of similar projects considered by the Board within the last seven years, adjusted for inflation as described in the Board's Construction Cost report, §17.100 of this title (relating to Board Reports). The estimated construction cost of the project will be adjusted by the future inflation factor based on the projected timeline of the construction midpoint.

(C) Efficiency--The ratio of NASF to GSF for the space in projects for classrooms and general purpose facilities shall be 0.60 or greater. Where the following specialized space is predominant in the project, the ratios of NASF to GSF shall be as follows:

(i) Office space: 0.65 or greater;

(ii) Clinical facility; 0.50 or greater;

(iii) Diagnostic support laboratories: 0.50 or greater; and

(iv) Technical research buildings: 0.50 or greater; and

(v) Parking structure:

(I) 400 Square Feet per parking space for automobile facilities;

(II) 500 Square Feet per parking space for boathouses; and

(III) 3,000 Square Feet per parking space for airplanes.

(IV) For mixed-use facilities, the ratio of NASF to GSF shall be calculated for each space type and considered separately.

(D) Usage Efficiency--The use of existing classroom and class laboratory facilities will be considered when the project includes Education & General (E&G) square footage.

(i) Classroom usage efficiency--

(I) A score of 75 points or higher is considered as meeting the standard.

(II) The classroom score will determine compliance for projects involving the following facility types: classroom, general; auditorium/theater; other facility types that appear, as determined by the Texas Higher Education Coordinating Board (THECB) staff, to contain classrooms or similar space.

(III) The review authority as specified in THECB Board rules has the discretion to consider classroom score in considering compliance for projects related to any facility type.

(ii) Class laboratory usage efficiency--

(I) A score of 75 points or higher is considered as meeting the standard.

(II) The class laboratory score will determine compliance for projects involving facility type laboratory, general and other facility types that appear, as determined by the THECB staff, to contain class laboratories or similar space

(III) The review authority as specified in THECB Board rules has the discretion to consider class laboratory score in considering approval for projects related to any facility type.

(iii) Overall usage efficiency--

(I) Overall score is a function of the classroom and class laboratory scores. A combined score of 150 or higher, as determined by summing the classroom and class laboratory scores, is considered as meeting the overall standard.

(II) The overall score will determine compliance for projects involving the following facility types: athletic; library/study facilities; office, general; office, high rise; office, technology; physical plant; student center; other; and projects that, at the discretion of the THECB staff, cannot clearly be classified in a single category of facility type.

(III) The review authority as specified in THECB Board rules has the discretion to consider the overall score in considering approval for projects related to all facility types.

(iv) Non-compliance--If an institution is not in compliance with any standard outlined in clauses (i) - (iii) of this subparagraph, the Board may approve the project if the institution has submitted a written plan of action, on a form specified by the Board, for substantial progress toward meeting the standard. The plan must include:

(I) An explanation of the factors influencing the current utilization score and the expected growth and how the plan of action will improve institutional performance.

(II) The plan shall be signed by the president of the institution. The president of the institution may not delegate this authority within the requesting institution.

TITLE 19 **EDUCATION**
PART 1 **TEXAS HIGHER EDUCATION COORDINATING BOARD**
CHAPTER 17 **RESOURCE PLANNING**
SUBCHAPTER E **RULES APPLYING TO REPAIR AND RENOVATION PROJECTS**
RULE §17.40 **Standards for Repair and Renovation Projects**

To obtain Board approval for a repair or renovation project, an institution shall demonstrate that the project complies with the following standards:

(1) Institutional Standards. The institution shall demonstrate that a repair or renovation project complies with the standards required in §17.30(1) of this title (relating to Institutional Standards) and the additional requirements for space utilization described in §17.31 of this title (relating to Additional Requirement).

(2) Project Standards.

(A) Space Need and Cost--The institution shall demonstrate that the repair or renovation project complies with the standards required in §17.30(2)(A) and (B) of this title (relating to Space Need and Cost).

(B) Efficiency--The institution shall demonstrate that the project does not reduce the existing ratio of NASF to GSF for the building. If the project renovation is required to comply with federal or state requirements, the institution shall explain any reduction in the ratio of NASF to GSF for the building.

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PART 1 **TEXAS HIGHER EDUCATION COORDINATING BOARD**
CHAPTER 17 **RESOURCE PLANNING**
SUBCHAPTER E **RULES APPLYING TO REPAIR AND RENOVATION PROJECTS**
RULE §17.41 **Additional Requirements**

For projects whose primary purpose is to repair or to renovate energy or water systems an institution shall be required, in addition to the requirements of §17.21 of this title (relating to Application Procedures), to:

- (1) award an Energy Savings Performance Contract; or
- (2) demonstrate that an alternative to the use of an Energy Savings Performance Contract is in the best interest of the State.

TITLE 19 **EDUCATION**

PART 1 TEXAS HIGHER EDUCATION COORDINATING BOARD
CHAPTER 17 RESOURCE PLANNING
SUBCHAPTER F RULES APPLYING TO REAL PROPERTY ACQUISITION PROJECTS
RULE §17.50 **Standards for Real Property Acquisition Projects**

To obtain Board approval for a real property acquisition project, an institution shall demonstrate that the project complies with the following standards:

- (1) Space Need--The institution shall demonstrate that the real property project complies with the standards required in §17.30(2)(A) of this title (relating to Space Need).
- (2) Cost--The proposed purchase price should not exceed the higher of two appraisal values. If the purchase price is greater than the highest appraised value, the institution shall demonstrate the need for purchasing the property at the greater value.
- (3) Repair and Renovation--If the project includes repair and renovation of any improvements on the property, the standards in §17.40(2) (relating to Project Standards) shall apply.

TITLE 19 EDUCATION
PART 1 TEXAS HIGHER EDUCATION COORDINATING BOARD
CHAPTER 17 RESOURCE PLANNING
SUBCHAPTER F RULES APPLYING TO REAL PROPERTY ACQUISITION PROJECTS
RULE §17.51 **Additional Requirements**

(a) Appraisals.

- (1) If the cost of the real property is \$300,000 or more, an institution shall provide two current appraisal reports providing a current value of the property. The most recent appraisal of the local property tax appraisal district may be used for one of these reports.
- (2) Appraisals shall be considered current if the appraisal was completed no more than one year prior to the date the project application is submitted to the Coordinating Board for approval.
- (3) If the cost of the real property is less than \$300,000, an institution shall submit a brief description of the information that it has relied upon to determine the current market value or provide an appraisal report estimating the current market value of the property.

(b) Appraiser Credentials. Any appraisal report provided to the Board under this section shall certify that the appraiser(s) meets one of the following requirements:

- (1) Is designated an Accredited Senior Appraiser by the American Society of Appraisers (A.S.A.) with the professional designation in real estate;
- (2) Is a member of the Appraisal Institute designated M.A.I. by the Appraisal Institute and is experienced in the valuation and evaluation of commercial, industrial, residential, and other types of properties, and who advise clients on real estate investment decisions;

- (3) Is a member of the Appraisal Institute designated S.R.P.A. and is experienced in the valuation of commercial, industrial, residential, and other types of property;
 - (4) Is a member of the Appraisal Institute designated S.R.A. and is a real estate solutions provider who is experienced in the analysis and valuation of residential real property;
 - (5) Is a senior member of the National Association of Independent Fee Appraisers designated IFAS;
 - (6) Is an appraiser-counselor member of the National Association of Independent Fee Appraisers designated IFAC; or
 - (7) Is a licensee of the Texas Appraiser Licensing and Certification Board in good standing and certified or licensed at the appropriate level for the project and must comply with the Uniform Standards of Professional Appraisal Practice (USPAP). The appraiser must also state that they have the knowledge and experience to complete the assignment competently.
 - (8) Is a member of the American Society of Farm Managers and Rural Appraisers (ASFMRA) designated as an Appraisal Rural Appraiser, or ARA, who is experienced to value rural property matters as they relate to rural property acquisitions, dispositions or condemnation needs.
- (c) The requirement for appraisals in no way obligates the institution to release the figures to property owners during the acquisition process, nor does the requirement of appraisals deny the institution the right to settle a purchase at a price below the appraisals.
- (1) An institution may place the word "Confidential" on each appraisal submitted to the Board under this section.
 - (2) The Board shall refer any public request for an appraisal that is marked "Confidential" or related project application materials to the Office of the Attorney General and provide notice to the institution that a request for the appraisal has been made under the Public Information Act found in Texas Government Code, Chapter 552.
- (d) Special requirements for the Texas State Technical College System. Proposed real property acquisitions by the Texas State Technical College System in Cameron, Potter, Harrison, and Nolan Counties must be approved by the Office of the Governor after Board **review** and prior to acquisition in compliance with Texas Education Code §135.02(c). The Board shall provide the Office of the Governor a copy of the approval letter and analysis. The System shall provide any additional documentation to the Office of the Governor. The System shall provide a copy of the Governor's approval to the Board for inclusion in the project application file within 30 days of the approval.

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**SUBCHAPTER I RULES APPLYING TO ENERGY SAVINGS
PERFORMANCE CONTRACT PROJECTS**

RULE §17.80 **Projects Requiring Board Approval**

Board approval is required before an institution enters into an energy savings performance contract as defined in Texas Education Code, §51.927. Energy Savings Performance Contract projects shall be evaluated under the provisions of §17.40 of this title (relating to Rules Applying to Repair and Renovation Projects). Additionally a review will be completed based on a set of guidelines to be developed in collaboration with the State Energy Conservation Office.

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CHAPTER 17 RESOURCE PLANNING

**SUBCHAPTER I RULES APPLYING TO ENERGY SAVINGS
PERFORMANCE CONTRACT PROJECTS**

**RULE §17.81 **Standards for Energy Savings Performance Contract
Projects****

(a) Institutional Standards. The institution shall demonstrate that an Energy Savings Performance Contract project complies with the standards required in §17.30(1)(A) and (B) of this title (relating to Standards for New Construction and/or Addition Projects).

(b) Project Standards. Energy Savings Performance Contract Projects shall be considered under the provisions of §17.40(2) of this title (relating to Standards for Repair and Renovation Projects) and §17.41 of this title (relating to Additional Requirements).

TITLE 19 EDUCATION

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**SUBCHAPTER I RULES APPLYING TO ENERGY SAVINGS
PERFORMANCE CONTRACT PROJECTS**

RULE §17.82 **Additional Requirements**

(a) In addition to those outlined in §17.21 of this title (relating to Application Procedures), a statement shall be included with the application, certified by a Professional Engineer licensed in the State of Texas who shall not be an officer or employee of the offeror for the contract, the institution seeking approval, or otherwise associated with the contract, that the contract meets the following guidelines:

- (1) The contract complies with any and all applicable federal, state and local statutes;
- (2) The contract contains an energy audit report, a Measurement and Verification plan that conforms to the International Performance Measurement and Verification Protocol (IPMPV) or a case-specific methodology conforming to IPMVP principles, and a detailed calculation of energy savings as a direct result of the project;

- (3) The savings achieved over the specified term is equal to or greater than the cost of the project; and
 - (4) The contract meets the guidelines specified in Texas Education Code, §51.927, (relating to Energy Savings Performance Contracts).
- (b) In addition to those outlined in §17.21 of this title (relating to Application procedures), a statement shall be included with the application signed by the institutions chief financial officer and general counsel that certifies that they have reviewed the energy contract and that the costs do not exceed the guaranteed savings and that other legal provisions are in compliance with applicable laws and statutes.
- (c) The institution shall provide to the Board a copy of the signed contract within 30 days of the effective date of the contract.

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CHAPTER 17 RESOURCE PLANNING
SUBCHAPTER J RULES APPLYING TO TUITION REVENUE BOND PROJECTS
RULE §17.90 Standards for Tuition Revenue Bond Projects

Unless specifically exempted by legislative authority, each Tuition Revenue Bond Project shall be submitted to the Board for an evaluation to determine if the project meets the following standards:

- (1) Institutional Standards. The institution shall demonstrate that the Tuition Revenue Bond project complies with the standards required in §17.30(1)(A) and (B) of this title (relating to Standards for New Construction and/or Addition Projects).
- (2) Project Standards. The following basic standards shall apply to all Tuition Revenue Bond projects considered by the Board, Committee on Strategic Planning, or the Commissioner:
 - (A) Tuition Revenue Bond Projects for a new construction and/or addition shall be considered under the provisions of §17.30(2) of this title.
 - (B) Tuition Revenue Bond Projects for repair and renovation shall be considered under the provisions of §17.40(2) of this title (relating to Standards for Repair and Renovation Projects) and §17.41 of this title (relating to Additional Requirements).
- (3) Real Property. Tuition Revenue Bond Projects for the acquisition of real property shall be considered under the provisions of §§17.50 - 17.51 of this title (relating to Rules Applying to Real Property Acquisition Projects).
- (4) Energy Savings Performance Contract Projects. Tuition Revenue Bond Projects that include an energy savings performance contract shall be considered under the provisions of §§17.80 - 17.82 of this title (relating to Rules Applying to Energy Savings Performance Contract Projects).

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CHAPTER 17 **RESOURCE PLANNING**
SUBCHAPTER J **RULES APPLYING TO TUITION REVENUE BOND**
 PROJECTS

RULE §17.91 **Projects Not Meeting Board Standards**

The Board shall notify the Governor, Lieutenant Governor, the Speaker of the House of Representatives, and the Legislative Budget Board the results of the evaluation.

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PART 1 **TEXAS HIGHER EDUCATION COORDINATING**
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CHAPTER 17 **RESOURCE PLANNING**

SUBCHAPTER K **REPORTS**

RULE §17.100 **Board Reports**

The Board shall annually prepare the following reports:

(1) Space Projection Model. The Board, in consultation with the institutions, shall develop space planning models to estimate the NASF of E&G space needed at institutions of higher education.

(A) Periodic Review. Each biennium, the Commissioner may convene an advisory committee of institutional representatives to review the model and recommend changes.

(B) Use. The Board shall use the models developed under this section to determine the need for space on campuses, as a component of funding formulas for public institutions other than community colleges, and in the evaluation of facilities development projects.

(2) Space Utilization. The Board shall collect data and publish reports designed to inform the public and other state agencies of the intensity of use of E&G facilities at institutions of higher education. Classroom and class lab utilization data are not calculated for health-related institutions.

(A) Periodic Review. The Board shall annually calculate the utilization of classrooms and class laboratories for the institutions.

(B) Use. The Board shall use the models developed under this section to determine the utilization of classrooms and class laboratories for the institutions.

(3) Campus Condition Index. The Board shall collect data as reported annually to institutional Governing boards and publish reports on institutional planned maintenance, facilities adaptation, deferred maintenance, and critical deferred maintenance designed to inform the public and other state agencies of the condition of facilities at institutions of higher education.

(A) Periodic Review. This report shall annually calculate and report a Campus Condition Index Value of E&G facilities and the overall campus facilities that is used to assess the relative effectiveness of the institutional maintenance effort, based on data gathered from recently approved projects.

(4) Construction Costs.

(A) Periodic Review. The Board shall annually (not later than October 1 of each year) calculate and report mean and one standard deviation above the mean construction building costs per square foot. The costs shall be based on similar projects approved by the Board, within the immediate prior seven years, annually adjusted for inflation for the

region of the state where the project is located. As a minimum, the calculations shall be developed for both new construction/addition and repair and renovation for all facility types available and shall be published on the agency website.

(B) Use. The Board shall use the data on construction costs to evaluate project applications and any other required or requested analyses.

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SUBCHAPTER K **REPORTS**
RULE §17.101 **Institutional Reports**

Institutions of higher education shall submit current data to the Board for the following reports:

(1) Facilities Inventory.

(A) Periodic Review. Institutions shall report a record of all property, buildings, and rooms occupied or in the control of an institution in a format specified by the Board.

(i) The inventory of facilities shall be updated on an ongoing basis.

(ii) The inventory is subject to periodic audits.

(iii) The inventory shall be certified by the institution annually on or before November 1, or as specified by the Board.

(B) Use. The Board shall use the data reported in the facilities inventory to evaluate project applications, perform facilities audits, to determine compliance with Board Standards, and other required or requested analyses. The facilities inventory shall be used to complete the following reports as required by this section:

(i) the Space Projection Model;

(ii) calculation of Campus Condition Index Value; and

(iii) calculation of classroom and class lab utilization.

(2) Facilities Development Reports. The Board shall consider projects that are included in the facilities development plans (MP1 and MP2). A project that is not included in the plan may be considered if the Board determines that the institution, even with careful planning, could not reasonably have foreseen the project need.

(A) Facilities Development Plan (MP1). On or before July 1 of every year, beginning in 2004, an institution shall submit an update to its Facilities Development Plan (MP1) on file with the Board, as required by Texas Education Code, §61.0582. In every even-numbered year, the Board shall provide Facilities Development Plan data to the Bond Review Board for inclusion in the Capital Expenditure Report. This report may include planned maintenance, facilities adaptation, and deferred maintenance projects. The data may be used by the Board to respond to legislative requests, predictions of future space need, and similar analyses. The report shall include projects that are planned or may be submitted to the Board within the next five years, regardless of funding source:

(i) new construction projects \$1,000,000 or more;

(ii) repair and rehabilitation projects \$1,000,000 or more;

- (iii) information resource projects that cumulatively would total \$1,000,000 or more in one year;
- (iv) property purchases that cumulatively would total \$1,000,000 or more in one year. (The actual property address or location for individual property acquisitions may be, but are not required to be, identified in a single proposed project entitled "property acquisitions" with a total cost of all purchases or acquisitions projected over the reporting period.)
- (v) the funding source for any planned project identified in clauses (i), (ii), (iii), and (iv) of this subparagraph; and
- (vi) a description of the proposals the institution plans to submit to the Board during the reporting period.

(B) Campus Condition Report (MP2). Institutions shall submit an update annually to their Campus Condition Report (MP2) on file with their Governing Board. The report shall include:

- (i) An institution's planned maintenance, deferred maintenance, critical deferred maintenance, and facility adaptation itemized by building and infrastructure for the previous year, current year, and the following four years;
- (ii) previous year's expenditures for planned maintenance, deferred maintenance, critical deferred maintenance, and facility adaptation itemized by building;
- (iii) Current year's budgeted amount for planned maintenance, deferred maintenance, critical deferred maintenance, and facility adaptation itemized by building;
- (iv) Current year's unbudgeted amount for planned maintenance, deferred maintenance, critical deferred maintenance, and facility adaptation itemized by building;
- (v) Total amounts reported in clauses (i) - (iv) of this subparagraph for the entire campus classified in the following categories: architectural; HVAC; plumbing and electrical; safety; legal and mandatory; and other; and
- (vi) The five priority projects the institution plans to accomplish in the current year.

(3) Project Status and Tracking Reports

(A) Annually, on or before November 1, institutions shall report the status of all reviewed projects to the Board. Reporting to the Board on an annual basis shall cease after the construction project is placed into service and included in the Facilities Inventory Report, or the property acquisition is completed, or the renovation shall be reported to be complete. The report shall include, but is not limited to:

- (i) submitted and actual project cost;
- (ii) submitted and actual building cost;
- (iii) submitted and actual GSF;
- (iv) submitted and actual NASF;
- (v) submitted and actual E&G NASF;
- (vi) submitted and actual source(s) of funding; and

(B) If the actual costs, square footage, or source(s) of funding changed to the point where the project is no longer compliant with the applicable rules for that project type, the Board shall submit notifications in accordance with Texas Education Code §61.0572 (pertaining to real property acquisitions, new construction, and repairs/renovations).

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PART 1 **TEXAS HIGHER EDUCATION COORDINATING BOARD**
CHAPTER 17 **RESOURCE PLANNING**
SUBCHAPTER L **FACILITIES AUDIT**
RULE §17.110 **General Provisions**

- (a) The Board shall periodically conduct a comprehensive audit of all education and general facilities on the campuses of institutions to verify the accuracy of the institutional facilities inventory and approved facilities development projects for each of those institutions.
- (b) The Board may contract with a recognized firm with substantial experience in auditing facilities to conduct the audit of the institution. The firm selected to conduct the audits shall report the results of those audits directly to the Board through its Committee on Strategic Planning.
- (c) Institutions may request assistance from the Board to conduct audits of facilities. Costs for such requests shall be the responsibility of the requesting institution.
- (d) Institutions that conduct regularly scheduled self-audits may be exempted from the on-site review providing that:
- (1) The institution presents to the Office of Resource Planning a copy of the formal report of the audit and its documented processes that demonstrate the accuracy of the data; and
 - (2) confirmation that the review includes consideration of the facilities audit objectives stated in §17.111 of this title (relating to Facilities Audit Objectives).

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CHAPTER 17 **RESOURCE PLANNING**
SUBCHAPTER L **FACILITIES AUDIT**
RULE §17.111 **Facilities Audit Objectives**

The objectives of the audit are to determine whether selected institutions of higher education:

- (1) are accurately reporting their facilities data to the Board;
- (2) have control systems in place over their facilities development and management programs;
- (3) have followed the Board rules and received approval by the Board and the institutional governing board for facilities projects; and
- (4) facilities projects have been completed as submitted.

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RULE §17.112 **Data Sources**

As a minimum, the following Board data sources shall be used in the course of the audit:

- (1) Institutional Facilities Development Plans (MP1);
- (2) Campus Condition Report (MP2);
- (3) Campus Master Plans;
- (4) Space Model Projection Reports;
- (5) Reports required by the Educational Data Center;
- (6) Facilities Inventory Reports;
- (7) Facilities Development and Improvement Applications and Approvals;
- (8) Classroom and Class Laboratory Utilization Reports;
- (9) Campus Condition Index and Campus Condition Index Value Calculations;
- (10) Institutional Facilities Condition Audit Reports;
- (11) Institutional Energy Contracts;
- (12) Governing Board facilities approvals; and
- (13) Any other institutional data deemed appropriate by the Coordinating Board staff.

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SUBCHAPTER L **FACILITIES AUDIT**
RULE §17.113 **Institutional Audit Cycle**

- (a) The Board shall determine the frequency and the scope of the audits authorized by this section; audits shall be limited to facilities planning, development, operation, and maintenance.
- (b) Beginning in September 2005, each institution of higher education shall be audited a minimum of once each five years. Audits of institutions may be conducted more often than every five years upon the request of the institution, the Board, the Legislature, or another agency within revenue appropriated for this purpose.
- (c) Not later than March 15 of each year, beginning in 2005, the Office of Resource Planning shall publish a schedule of audits for the succeeding fiscal year.
- (d) The Board shall conduct a comprehensive audit of institutional facilities as provided for in this subsection, within revenue appropriated for this purpose, to determine if circumstances warrant a substantial audit by an independent auditing firm.

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RULE §17.114 **On-Site Audit**

- (a) The Board shall pay the costs of each audit under this section only from money appropriated to the Board and approved for that purpose by the Board.
- (b) The institution shall reimburse the Board for the costs incurred in performing on site audits not later than the 30th day after the date the institution receives a statement of audit costs paid by the Board under this subsection.
- (c) No later than 30 days after the Board receives an audit report, a copy of the report shall be filed with the institution, the applicable university system, the State Auditor, and the Legislative Budget Board.