

Supplemental Materials

AGENDA ITEM V-G (3)

Consideration of adopting the Commissioner's recommendation to the Committee relating to proposed amendments to Chapter 17, Resource Planning, Subchapter C, section 17.20, concerning project approval criteria for capital projects

Recommendation: Approval

Background Information:

Specifically, this creates a standard that mandates all projects be planned to a reasonable level of detail well in advance of application for approval. To be considered a planned project, the project must be prioritized in the top ten projects as submitted in the annual Capital Expenditure Plan and the scope and cost of the submitted must be within ten percent of the amounts specified in the Capital Expenditure Plan. In the event a project does not meet the planned project criteria, the institution will be required to submit additional information to the appropriate approval level for consideration.

Notice of the proposed amendments to the Board rules was filed on January 28, 2013, and appeared in the February 8, 2013, issue of the Texas Register.

The 30-day comment period with the *Texas Register* does not end until March 10, 2013. Staff recommend that these rules be discussed and voted on at the April 25, 2013, Coordinating Board meeting.

Date approved by the Commissioner for publication in the *Texas Register*: November 20, 2012.

Date published in the *Texas Register*: February 8, 2013.

Summary of comments received:

Comment 1: The University of Texas at Austin and the University of North Texas System both assert the change will have an adverse impact on real property acquisitions. Real estate may come on to the market and opportunities arise that require the institution to act quickly.

Staff response: Staff understands the requirement for a real property acquisition to be planned may seem to be troublesome to the purchase process. Staff does not believe ambiguity exists within the proposed rule, however the dynamic nature of the real estate market requires greater agility and the rule has been changed to exclude real property acquisition from the planned project provision.

Comment 2: The University of Texas at Austin raised the concern that the requirement to have the project listed in the top ten projects greatly decreases their agility in performing "fast track" projects. Another concern along the same lines is the removal of the language that allows for the institution to present the project as an opportunity or emergency that could not be foreseen.

Staff Response: Staff agrees there are those types of projects that require great agility in response and current delegation of authority rules address these circumstances. The rule has been modified to ensure unforeseen opportunities exist and it is the THECB responsibility to review the institutional certification prior to administering the provisions of TEC 61.0573. Therefore, these projects (considering all other standards were met) could be approved at a delegated level. In the last study we conducted, the average time to process a project subject to Commissioner or Assistant Commissioner level approval was three days. Staff believes this provides ample institutional agility to meet the acute conditions that would necessitate fast tracking.

CHAPTER 17. Resource Planning

SUBCHAPTER C. Rules Applying to All Projects

Section

- 17.20. Criteria for Approval of Projects
- 17.21 Application Procedures
- 17.22 Emergency Approval of Projects

17.20 Criteria for Approval of Projects

Projects considered for approval shall 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 financing involves private gift or grant funds, these funds are either in-hand or the governing board shall commit an alternative source of funds, or if the private gift or grant funds are not received, the governing board agrees to forego the project.

(3) 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.

(4) 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.

(5) 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).

(6) 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.

(7) If the project includes the acquisition of real property, the acquisition shall be included in the institution's long-range campus master plan or the institution shall certify that the project represents an opportunity or emergency that could not be foreseen.

(8) All projects, with the exception of real property acquisitions, [The project] shall be planned projects (as defined in §17.3 of this title) 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].~~

(9) If applicable, the project complies with Texas Government Code, §§469.001 - 469.105, concerning the elimination of restrictive barriers.

(10) The project shall comply with Life Safety Standards adopted by the State Fire Marshal.

(11) 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.

(12) The institution shall verify that it will comply with Texas Government Code, §§2161.252 - 2161.253, concerning Historically Underutilized Business Subcontracting Plans.

17.21 – 17.22

(No change.)