

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance

AGENDA ITEM: 7 – L

DATE: August 10, 2017

SUBJECT: BOR Policy 6:6 – Maintenance and Repair (Emergency Approval)

Attached are proposed changes to BOR Policy 6:6 – Maintenance and Repair. The policy has been updated to include the purpose of the policy and definitions and put in the new format. Attachment I shows the proposed changes. Some clarification has been added. The action indicates emergency approval to avoid two readings.

DRAFT MOTION 20170810_7-L: I move emergency approval of the changes made to BOR Policy 6:6 – Maintenance and Repair.

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Maintenance and Repair

NUMBER: 6:6

A. PURPOSE

To provide guidance on what constitutes maintenance and repair and the process used to document and approve projects.

B. DEFINITIONS~~1. Maintenance and Repair Definitions~~

1. **Alteration:** Alterations change the internal arrangement or other physical characteristics of an existing facility so that it may be effectively used for its designated purposes. Examples are partitioning a classroom into offices or converting a room to laboratory use by installing laboratory benches and fume hoods. ~~Any project exceeding \$1,500,000 will be a capital improvement project and will be governed by Policy 6:4.~~

~~The following definitions will be used when classifying maintenance and repair projects.~~

2. **A. —Maintenance:** —Maintenance is the recurrent, day-to-day, periodic or scheduled work required to preserve or to restore a facility to such conditions that it can be effectively used for its designed purpose. It includes work done to prevent damage to a facility that would be more costly to restore once damage took place and includes work performed to ensure immediate and continued safe use of the facility. Maintenance includes normal operating expenses (OE) and planned preventative maintenance but for funding purposes will be ~~defined as any projects~~ over \$10,000. ~~Any project exceeding \$1,500,000 will be a capital improvement project and will be governed by Policy 6:4.~~

3. **Maintenance and Repair** – Will include all alteration, maintenance, renovation or facility repair projects that cost less than \$1.5M.

4. **Operating Expenses:** Operating Expense (OE) funds as they relate to maintenance and repair include the routine, recurrent, periodic or scheduled work required to preserve existing facilities. OE encompasses all activities related to the normal operations of an institution, including purchase of materials, utilities, janitorial services, etc. OE ~~may will~~ include maintenance, repair, renovation, or alteration projects smaller than \$10,000.

5. **Renovation:** Renovation is the total or partial upgrading of the facility to higher standards of quality or efficiency than originally existed. New installation of air conditioning, installation of grid ceilings with recessed fluorescent lighting to replace suspended incandescent lighting, and enclosing stairwells to comply with current fire safety codes are examples. ~~Any project exceeding \$1,500,000 will be a capital improvement project and will be governed by Policy 6:4.~~

- ~~A. 6. B.—~~ **Repair:** – Repair is the restoration of a facility to such condition that it may be effectively utilized for its designated purpose. The repair is done by overhaul or replacement of major constituent parts that have deteriorated by action of the elements or usage. The deterioration has not been corrected through normal operations or maintenance. Replacing roofs, tuck pointing buildings, and replacing air conditioning compressors are examples of repairs. For the purpose of determining funding, repairs are beyond OE capability and normally consist of projects in excess of \$10,000. ~~Any project exceeding \$1,500,000 will be a capital improvement project and will be governed by Policy 6:4.~~

C. POLICY

1. 2.— **Maintenance and Repair Categories**

The following categories will be used to identify the types of maintenance and repair projects.

- 1.1. A.— **Public Health, Safety, and Compliance:** Facilities should be maintained to comply with regulatory requirements required by OSHA, building codes, life safety codes, the Americans with Disabilities Act, and EPA requirements such as asbestos maintenance and abatement criteria.
- 1.2. B.— **Building Integrity:** Building integrity includes the functional systems of the building, including but not limited to roofs, windows, foundations, primary and secondary structural systems, heating systems, ventilating systems, air conditional systems, electrical systems, and plumbing systems. Failure to maintain these subsystems will cause increased maintenance and repair costs and increased deterioration of the facility. Failure to maintain these systems can also affect functional characteristics that limit occupant use and comfort.
- 1.3. C.— **Programmatic Suitability (school mission):** Facilities should be configured or space adapted to meet the changing school mission and program requirements.
- 1.4. D.— **Energy and Utility Savings:** Energy conservation projects are facility alterations intended to reduce either energy consumption or operating costs, or both, including insulation of the building or any structure associated with the building, window or door replacement, weather stripping, or modifications that reduce energy consumption, automated or computerized energy control system, replacement or modification to increase the energy efficiency of the lighting, heating, air conditioning, or ventilating systems, energy recovery or cogeneration systems, energy source conversions which provide either operational or energy cost savings, or both; and other energy or utility-related improvements in facilities, systems, or technology that improve energy or metering efficiency.
- 1.5. E.— **Campus Infrastructure:** Campus infrastructure is the networked systems and structures needed for the overall operation and function of the campus physical plant. Campus infrastructure includes electrical substations and power distribution systems, water and fire protection supply systems, sanitary and storm waste water systems, central heating and cooling plants, steam and chilled water supply and return systems, utility tunnels, roads, parking facilities, pedestrian and bicycle pathways,

security lighting and emergency call systems, and telecommunications systems. Campus infrastructure serves zones and individual buildings; it does not include the systems within buildings.

2. 3.—Maintenance and Repair Limitations

HEFF revenue uses are limited according to SDCL § 13-51-2. Uses include the maintenance and repair of existing facilities. Funds can be spent to plan specific maintenance and repair projects, but institutional campus-wide planning or master planning should not be funded with HEFF. General funds dollars, M&R fee dollars, and Auxiliary System funds dedicated for maintenance and repair shall also be limited to planning projects and maintenance and repair of existing facilities. Furnishings, stand-alone technology and non-fixed equipment isare not considered maintenance and repair and should not be purchaseds with maintenance and repair funding. Furnishings with a minimum useful life of 15 years can be purchased from the repair and replacement reserve (RRR) auxiliary account.

3. 4.—Office of State Engineer

The Bureau of Administration is granted authority over capital improvements, major repairs and remodeling in concert with State Building Committees (SDCL § 5-14-3), and for authorizing the procurement of public improvements for state agencies (SDCL § 5-18A-34). The Board recognizes the expertise that is provided by the Office of the State Engineer (OSE) in preparing, or causing to be prepared, preliminary plans, final plans, specifications, advertisements, notice and instructions to bidders, proposal forms, contract forms and all work incidental to securing bids and contracts, and the oversight and supervision of construction, repair, rebuilding, or alterations. The following guide shall be used in determining project administration:

3.1. A.—OSE is not required to be involved in projects totaling less than \$50,000 (all costs and contracts included) unless requested by the institution. The institution shall ensure that all statutory requirements including applicable bid laws, technical professions law, uniform codes and standards, bonding and insurance, and procurement regulations and procedures are followed in conjunction with all projects. The institutions are responsible for keeping accurate records on all projects handled by the institution.

3.1.1. 4)—Projects can be constructed by institutional personnel or by contracts depending on the most cost-effective method to be determined by the institution. Institutions shall be reimbursed for their effort from the project funds for all direct costs including institutional labor, project coordination, construction materials, and architect/engineering work.

3.2. B.—OSE shall manage all projects totaling \$50,000 or greater, except where a memorandum of agreement exists for special construction or where an institution receives authorization from OSE to manage the project. If authorization to manage the project is provided by OSE, the institution shall ensure that all statutory requirements including bid laws, technical professions laws, uniform codes and standards, bonding and insurance, and procurement regulations and procedures are followed in conjunction with all projects. The institutions are responsible for keeping accurate records on all projects handled by the institution. As the request of OSE, the institution must provide

a complete set of these documents, including but not limited to the plans and specifications, bids received, contracts, and project costs. See SDCL §5-14-9.

4. 5.—Maintenance and Repair Funding

Maintenance and repair funding comes from several sources. Revenues from the pesticide tax are provided for the Agricultural Experiment Station. Revenues from the special schools endowment are provided for the South Dakota School for the Deaf and the South Dakota School for the blind and Visually Impaired. Revenue facilities must provide sufficient resources to fund maintenance and repair needs. Higher Education Facilities Funds (HEFF), general funds, and the Maintenance and Repair Fee provide support for academic facilities. Other projects are funded by various institutional funds or from funding identified through special legislation.

5. 6.—Maintenance and Repair Planning

10-Year M&R Planning – The institutions must submit a prioritized listing of all academic project covering a ten year period with their annual operating budget request document. The minimum estimated project cost shall be \$10,000, including A/E fees. Project titles should identify the building or facility and depict the nature of the project. The projects should be identified in the year that they are needed and not in the year the funding is anticipated. The listing should identify the projects as maintenance, repair, alteration, or renovation. Each project should also be placed into one of the following categories: Public Health, Safety and Compliance; Building Integrity; Programmatic Suitability; Energy and Utility Savings; or Other. Detailed descriptions and justifications should be available for the two most current years on the list. The plan shall be updated each year with project costs projected using current year dollars.

6. 7.—HEFF Maintenance and Repair

6.1. A.—Maintenance and Repair Allocation – The ~~Board Office~~Board office shall determine the campus allocation from HEFF based on the annual legislative maintenance and repair appropriation. The formula used to make the allocation shall use academic building replacement costs and the academic building gross square footage. The formula applies a 50%-50% averaging factor to the academic building square footage and replacement values to arrive at an equitable allocation of appropriated funds to each institution.

Each year the institutions must update their square footage information and replacement values to determine the factors. The replacement values are recalculated each year based on the R.S. Means Building Cost Estimator or the values will be adjusted each year by the Building Cost Index Change. The replacement value and square footage for new academic buildings or additions will be added to the total replacement values and the total gross square footage of the institution's academic building at a rate of twenty percent each year until the full indexed value and square footage of the new building is included in the allocation model.

6.2. B.—Annual M&R Project Approval – After the HEFF allocation has been determined, the institutions shall have the opportunity to realign their priorities or to identify additional projects as necessary. A final list of projects that reconcile to the HEFF allocation will be submitted to the Board for approval. The institutions can

realign funds between approved projects when necessary. Projects not on the approved list estimated to cost \$50,000 to \$250,000 must be submitted for the executive director's approval and projects more than \$250,000 must be submitted for Board approval. Projects under \$50,000 (all costs and contracts inclusive) may be approved by the presidents or their designee.

~~6.3. C.~~ Planning and Design – Each year ~~up to 5% of the institutions~~ can allocate maintenance and repair funds for the purpose HEFF allocation may be identified a of planning and designing projects. s a Planning and Design Account. The institutions may expend the Planning and Design funds without Board approval to prepare cost estimates and to pay preliminary planning and design costs.

~~6.4. D.~~ Project Fund Balances – When a bid is accepted for an amount less than the estimated project cost, the remaining unobligated funds shall become available to the institution. These monies must be available to fund bid overruns on other projects, emergency projects, and change orders on existing projects. If these monies are not available in sufficient amounts to provide funding for occasional bids that exceed the estimates, or for an authorized emergency project, one or more existing project(s) shall be deleted from the institution's maintenance and repair list.

~~7. 8.~~ **General Funded, M&R Fee Funded, and Institutionally Funded, Projects**

~~7.1. A.~~ Annual M&R Project Approval – All projects funded with general funds, M&R Fee funds, or institutional funds shall be submitted to the Board for approval.

~~7.2. B.~~ The institutions can realign funds between approved projects as necessary. Projects not on the approved list estimated to cost \$50,000 to \$250,000 must be submitted for the executive director's approval and projects more than \$250,000 must be submitted for Board approval. Project under \$50,000 (all costs and contracts inclusive) may be approved by the presidents or their designee.

~~7.3. C.~~ Planning and Design – Each year up to 5% of the maintenance and repair funds shall be identified as a Planning and Design Account. The institutions may expend the funds without Board approval to prepare cost estimates and to pay preliminary planning and design costs.

~~7.4. D.~~ Project Fund Balances – When a bid is accepted for an amount less than the estimated project cost, the remaining unobligated funds shall become available to the institution. These monies must be available to fund overruns on other projects, emergency projects, and to fund change orders on existing projects. If these monies are not available in sufficient amounts to provide funding for occasional bids that exceed the estimates or for an authorized emergency project, one or more existing project(s) shall be deleted from the institution's maintenance and repair list.

~~8. 9.~~ **Auxiliary System Building Maintenance and Repair**

The auxiliary system encompasses all the facilities that are pledged under BOR bond covenants. The facilities include most resident halls, student unions, and wellness centers. Parking facilities and bookstores may also be included.

~~8.1. A.~~ Residence Hall 2% Requirement – In order to provide a planned and adequate maintenance and repair program for all campus residence halls,

expenditures equal to at least 2% of the replacement value for all residence halls must be expended on maintenance and repair projects each fiscal year. ~~Contributions to fully fund the RRR requirement for bonded projects may be applied to the 2% annual M&R expenditure requirement. Dollars spend that bring the RRR fund below the minimum requirement will not be counted as part of the 2% annual M&R expenditure requirement. These E~~ expenditures may be averaged over a five year period to obtain the minimum 2% expenditure level. When determining the base for the 2% calculation, new buildings and major renovations will be included in the calculation at a rate of twenty percent each year until the full value of the new building or major renovation is included in the model. For purposes of a major renovation, it will be any project that is more than 20% of the current building value.

Maintenance and repair consists of expenditures for maintenance, repair, alteration and renovation projects. Bond ~~proceeds principal payments~~ may be included in the 2% maintenance and repair calculation for a period not to exceed fifteen years to the extent the funds were used for maintenance and repair and not new space. On-going expenses for operations and maintenance and routine replacement of capital assets are not to be included in the 2% calculation.

9. 10.—SDSD and Agricultural Experiment Station Maintenance and Repair

Funds for maintenance of the facilities at the South Dakota School for the Deaf and the South Dakota School for the Blind and Visually Impaired are provided from the special schools endowment. Funds for maintenance of the facilities at the Agricultural Experiment Station are provided from the revenues from the pesticide tax. All projects funded with other funds shall have Board approval.

These funds shall be allocated on an “urgency of need” basis. The executive director shall forward a recommended project list to the Board each fiscal year.

10. 11.—Maintenance and Repair Guidelines

10.1. A.—Work Requests – All projects involving the OSE require an OSE work request signed by the president, executive director, or designees. OSE work requests are required for all planning and design projects, studies, and testing that is done outside the scope of an approved project. Projects that are done in phases through OSE require a work request for each phase.

10.2. B.—A/E Selection and Fee – If authorization to manage the project is provided by OSE, the institutions may engage an Architect/Engineer or Consulting Engineering firm following state procurement regulations for engaging professional services. The Office of the State Engineer shall informally advise upon any projects delegated to the institutions or formally carry out project planning and design at the request of the institution. The Office of the State Engineer shall formally carry out project planning for new construction or capital improvements (see Capital Improvements 6:4).

In order to achieve greater efficiencies, similar maintenance and repair project may be grouped into packages for design and bidding purposes. The A/E selection process used by OSE is based on the A/E expertise, past performance, geographic location,

and the number of previous state contracts and shall be carried out in the manner described in SDCL § 5-14-3.

If hired by OSE, the design fee to be paid the Architect/Engineer shall be determined using accepted industry percentages applied to the total construction cost of the project; the design fee shall be based upon anticipated project scope. Total construction cost includes: planning, contracts, direct purchase of labor and material, and add alternates designed but not taken and accepted by the State. Deduct control orders shall not be considered in computing the total construction cost of the project.

10.3. C. — Institutional Control of Project of \$50,000 or More – A work request must be submitted to OSE requesting institutional control of a project of \$50,000 or more. The work request should reflect the institution’s intention to request such institutional control.

10.4. D. — Award of Construction Projects – Projects to be constructed all or in part by contract shall be awarded through the competitive bid process according to SDCL Chapters 5-18A, 5-18B, and 5-18D.

After a project has been bid, the OSE or institution shall review the bids and identify the lowest responsible bidder meeting the specifications of the project pursuant with SDCL § 5-18A-3. On projects handled by OSE, the OSE shall make a recommendation to the institution, indicating which bidder should receive the contract. The institution shall respond with a “funding letter” identifying the amount of funding available for the project. In most cases this shall be the contract amount plus a 5%-15% contingency pool, and including all other costs, such as A/E cost, OSE billings, testing, and related institutional costs, fees and assessments.

The designer of record shall compare the bids received and prepare a written tabulation and analysis of the bids and a recommendation on awarding contracts. The bids shall be accepted or rejected after evaluating the bids and the available funding. Projects shall ordinarily be rejected when the lowest construction bid (plus A/E fees) is determined to be out of line with estimated costs. On projects handled by OSE, the OSE shall notify the Board of Regents or the institution as appropriate if the determination is made to reject all bids. The institution should follow up with a letter responding to the recommendation. Batched or grouped projects may be accepted or rejected in the same manner.

10.5. E. — Change Orders – Change orders are modifications or changes to the original plans, specifications or contract documents. Add-on change orders to construction contracts should not be approved for payment purposes until they are signed by the appropriate persons according to the Board of Regents operating procedures. Change order should only be requested for unforeseen conditions found during construction or design errors not identified in the design phase. Change orders may arise from a variety of legitimate causes, such as changing program requirements or unanticipated needs.

Change orders may not be used to change the project scope. Changing the scope of a project requires a new bid. SDCL § 5-18-B-19.

11. 12. — Emergency Projects

An emergency project is a project that is necessary in order to protect public health and safety or to save a building’s integrity. The executive director may give approval to any emergency project in consultation with the Board President or his or her authorized representative so that it may proceed until formal Board approval is granted. Emergency approval may also be given by the executive director for projects where substantial cost savings can be realized if advertised and awarded before approval can be obtained at the next regularly scheduled Board meeting. The requesting institution must demonstrate why this substantial cost savings could not be realized if approval were delayed until the next Board meeting. Emergency approval granted by the executive director is not the equivalent of an emergency per SDCL § 5-18A-9. Emergency award of a contract without advertising is only warranted when awaiting regular advertising for bids would seriously impair public services to be provided. Specific approval to proceed according to SDCL § 5-18A-9 must be requested from the Board General Counsel and approved by the executive director.

Funding for emergency projects will come from appropriate maintenance and repair pools at the institution requesting the emergency or from other institutional funds.

12.13.—Approval and Authority

The following summary tables shall be followed to assure proper authorization and approval of projects:

12.1. A.—Institutional, HEFF, Maintenance and Repair Fee, Auxiliary System and General funded maintenance and repair approvals:

Project Funding	Project Approval	Work Request	Contract Authorization
\$10,000-\$49,999	Initial List Approved by Board	No - Unless Campus Requests OSE Involvement	Institution or OSE
	Changes - Institution		
\$50,000-\$250,000	Initial List Approved by Board	Yes	OSE
	Changes - Executive Director		
Over \$250,000	Initial List Approved by Board	Yes	OSE
	Changes - Board		

12.2. B.—Special Legislation, SDBA Funded and Bonded Projects shall be handled according to the authorizing legislation.

13.14.—OSE Operating Procedures

The following operating procedures shall be followed to ensure that the necessary approvals and signatures have been obtained on projects administered by OSE. This should include all projects of \$50,000 or more (unless OSE has given the institution control or a joint powers agreement is in place) and any project under \$50,000 where the institution desires OSE to handle it.

13.1. A.—Routine HEFF (Higher Education Facilities Fund), Maintenance and Repair Fee, and Institutional Funded Projects:

- ~~1)~~—Work Request: An OSE work request must be signed by the president, executive director or designees.
- ~~2)~~—Bid Advertisements/Recommendations: The OSE should send their bid advertisements and bid recommendations to the institutional contact person.
- ~~3)~~—Contracts/Change Orders: The contracts and any change order should be sent to the institutional contact person. The President or his/her designee shall sign all contracts and change orders.
- ~~4)~~—Vouchers: The vouchers should be sent to the fiscal contact person identified for each institution.
- ~~5)~~—Correspondence: The institutional contact should be copied on correspondence.

13.2. B.—Special Legislation Projects and Bonded Projects (Not South Dakota Building Authority):

- ~~1)~~—Work Requests: An OSE work request must be signed by the president of the institution, executive director of the Board, or designees.
- ~~2)~~—Bid Advertisements/Recommendations: The OSE should send their bid advertisements and bid recommendations to the institutional contact person and the executive director of the Board of Regents.
- ~~3)~~—Contracts/Change Orders: The contracts and control orders should be routed to the institutional contact person for the president's signature, and the Board office for the executive director's signature, or designees.
- ~~4)~~—Vouchers: The vouchers should be routed to the fiscal contact person at the institution for coding and final approval.
- ~~5)~~—Correspondence: The institutional contact person and the executive director of the Board of Regents should be copied on correspondence.

13.3. C.—SDBA Funded Projects:

- ~~1)~~—Work Requests: An OSE work request must be signed by the president of the institution, executive director of the Board of Regents, or designees.
- ~~2)~~—Bid Advertisements/Recommendations: The OSE should send their bid advertisements and bid recommendations to the institutional contact person and the executive director of the Board of Regents.
- ~~3)~~—Contracts/Change Orders: The contracts and change orders should be routed to the institutional contact person for the president's signature, the Board office for the executive director's signature, or designees.
- ~~4)~~—Vouchers: The vouchers should be routed to the SDBA for coding and approval.

- ~~5)~~—Correspondence: The institutional contact person and the executive director of the Board of Regents should be copied on correspondence.

13.4. D.—SDBA Bonded Projects:

- ~~1)~~—Work Requests: An OSE work request must be signed by the president of the institution and the executive director of the Board of Regents, or designees.
- ~~2)~~—Bid Advertisements/Recommendations: The OSE should send their bid advertisements and bid recommendations to the institutional contact person and the executive director of the Board of Regents and the SDBA.
- ~~3)~~—Contracts/Change Orders: The contracts and change orders should be routed to the institutional contact persons for the president’s signature, the Board office for the executive director’s signature, and the SDBA for the executive secretary’s signature and the president of the SDBA’s signature, or designees.
- ~~4)~~—Vouchers: The vouchers should be routed to the SDBA for coding and approval.
- ~~5)~~—Correspondence: The institutional contact person and the executive director of the Board of Regents should be copied on all correspondence.

14. 15.—Office of the State Engineer

The Office of the State Engineer shall assess a service charge on all projects. The charges shall be based upon all expenses incurred for plans, specifications and supervision of construction, including the actual and necessary expenses of the Bureau of Administration. (SDCL §§ 5-14-6).

FORMS/APPENDICES:

None.

SOURCE:

~~Revised~~, BOR; December 1993; October 1996; October 1998; March 2003; March 2004; April 2007; December 2010; April 2013; March-April 2016;_____.