

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance

AGENDA ITEM: 10 – B

DATE: June 22-23, 2022

SUBJECT

BOR Policy 6:4 Revisions – Capital Improvements (Second Reading)

CONTROLLING STATUTE, RULE, OR POLICY

[BOR Policy 6:4](#) – Capital Improvements

BACKGROUND / DISCUSSION

At the May 2022 Board of Regents (BOR) meeting, the Regents reviewed the initial changes for Board Policy 5:21. This is the second and final reading of the policy.

A workgroup reviewed existing Board policies related to the building process and what changes/modifications could be implemented to expedite that process while still maintaining its integrity. The group consisted of Jerilyn Roberts, SDSMT; Les Olive, formerly of SDSU; Holly Farris, BOR staff; Stacy Watters, State Engineer; and other interested parties.

Key changes to Policy 6:4 – Capital Improvements include:

- Clarification that both SDCL § 5-14-1 and § 5-14-3 should be referenced in this policy. Previously only SDCL § 5-14-3 was referenced.
- Clarification that a building committee will be appointed upon approval of the Preliminary Facility Statement.
- Removal of the requirement for Board action at every phase of capital improvement process.
 - The Facility Design Plan will be approved by the building committee and submitted to the Board as an informational item only.
- In Section 3.2 – modify the policy for existing process of Facility Program Plan being approved prior to submission for legislative approval “in most cases.” There are times when projects are submitted for legislation by individuals outside of the BOR process.
- Section 3.3 would allow for a project to continue without reauthorization from the Board so long as cost is within the legislatively authorized amount (i.e., 125% of the proposed project cost).

(Continued)

DRAFT MOTION 20220622_10-B:

I move to approve the second and final reading of the proposed revisions to BOR Policy 6:4 – Capital Improvements as outlined in Attachment I.

- Removal of the building committee approval of final bid documents and specifications in Section 3.4 to eliminate unnecessary delays in bidding.
- Removal of building committee approval of bids for Design-Bid-Build or GMP for construction manager at risk projects in Section 3.4.1.
- Additional clarification allowing the project to continue without reauthorization from the Board so long as cost is within the legislatively authorized amount (i.e., 125% of the proposed project cost) and funds are available.
- Section 6 clarifies the process flow under the proposed changes above.

IMPACT AND RECOMMENDATIONS

Additional clarification on when a facility program plan or design plan may need to go back to the building committee and Board has been provided since the first reading in May 2022. Those additional revisions are noted below and highlighted in yellow in Attachment I.

“3. Review and Approval of Capital Improvements Requests

...The Board will appoint a building committee upon approval of the Preliminary Facility Statement. In any phase of a project in which Board approval is not required but building committee approval is required, a building committee may refer the decision of the committee to the Board for review and approval.

3.4.1. If either the final cost estimates or the bids, including a reasonable contingency, are within one hundred fifteen percent of the previously approved estimated project cost and funds are available, the project can proceed.

3.4.3. The campus can work with OSE and the A/E firm to value engineer to get the project within budget. Any changes proposed by the BOA/OSE, the A/E, or the institution that would significantly alter the facility program plan or the design plan and building functionality or increase the project cost estimate in excess of one hundred fifteen percent of the estimated project cost previously approved must be reviewed and approved by both the building committee and the Board.”

Board staff recommends approval of the second reading of the proposed revisions as outlined in Attachment I.

ATTACHMENTS

Attachment I – Proposed Revisions to BOR Policy 6:4 – Capital Improvements

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Capital Improvements

NUMBER: 6:4

A. PURPOSE

To document the necessary steps for moving a capital project request forward.

B. DEFINITIONS

1. **Capital Improvement:** ~~Any new construction, addition, renovation, remodeling, or maintenance and repair project that has a total project cost of \$5.0M or more, including all related phase, shall be classified as a capital improvement. (SDCL 5-14-3).—All new construction or any addition beyond mechanical space, regardless of building size or total project cost, will be considered a capital improvement. (SDCL 5-14-1 and 5-14-3). Any repair, renovation, or alteration project that has a cost of \$5.0M or more shall be classified as a capital improvement. (SDCL 5-14-3).—All new construction or any addition beyond mechanical space, regardless of the cost, will be considered a capital improvement project.~~

C. POLICY

Building committees are assigned to capital improvements and the universities must garner all the necessary approvals from the Board and building committee before proceeding to the next step.

1. **Scope of Chapter**

As provided in SDCL § 5-14-1, capital improvements include expenditures for new construction or for the purchase of land and improvements affixed to it. Policy Numbers 6:1 and 6:2 govern the purchase of land and improvements.

1.1. Capital improvements include:

- The erection of a new facility;
- The addition, expansion or extension of an existing facility that adds to the facility's overall external dimensions or adds to the total gross square footage of the facility;
- Any major maintenance, repair, renovation or alteration project, as defined in Policy Number 6:6, whose cost exceeds \$5,000,000 whether done in phases or not.

1.2. Cost objects recognizable as capital improvement expenditures include:

Architectural and engineering services, site preparation, construction, furnishing, equipping such buildings and facilities or subsystems for use, including heating, plumbing, ventilation, water, sewer, and electrical facilities with necessary connections to existing systems, asbestos abatement where necessary, the construction of sidewalks, and the landscaping of grounds.

1.2.1. No costs associated with the acquisition of land may be charged against appropriations provided for new construction.

2. Justification for a New Facility

Requests for capital improvements may be justified in one or more of the following circumstances:

- Where the new construction shall replace a facility or subsystem that has become inadequate through deterioration or obsolescence and that cannot be renovated at a cost below fifty percent of the facility replacement value;
- Where new construction shall provide the most effective and economical means to meet current operational requirements;
- Where new construction shall provide the most effective and economical means to meet new operational requirements, such as may arise from increased enrollments; and
- Where the new construction shall upgrade existing facilities or subsystems to reasonable standards of safety set forth in [the applicable buildingsafety](#) codes or other suitably documented safety standards.

3. Review and Approval of Capital Improvements Requests

~~The review and approval of capital improvement projects involves four distinct phases. Board approval is required before a project may advance from one stage to another.~~ All projects meeting the definition of a capital improvement project should be submitted for approval as governed by Board Policy 6:6. A flow chart detailing the Board's internal procedure can be found at the end of this policy. All non-revenue projects require legislative approval, which usually happens after the facility program plan although it may happen at different stages. [The Board will appoint a building committee upon approval of the Preliminary Facility Statement.](#) [In any phase of a project in which Board approval is not required but building committee approval is required, a building committee may refer the decision of the committee to the Board for review and approval.](#)

3.1. Preliminary Facility Statement - Requests [to the Board of Regents](#) to initiate the formal review of proposed capital improvement projects must be accompanied by a preliminary facility statement prepared by the institution [to the Board of Regents](#) that addresses the following:

- General programmatic needs to be addressed;
- Analysis of the student body or constituents to be served;
- Additional services to be offered;
- Compliance with master plan;

- Analysis of needs assessment based on the facilities utilization report;
- Location;
- Reallocation or demolition of old space, if any;
- Proposed funding source/sources; and
- Budget for development of a Facility Program Plan.

3.2. Facility Program Plan - If the Board authorizes the preliminary facility statement for a proposed capital improvement project, the institution shall prepare a facility program plan. The building committee must approve the program plan before sending to the BOR for approval. If an A/E firm will be involved in the development of the program plan, a building committee will need to be appointed to interview A/E firms for the purpose of developing the facility program plan and for the final design stage (see BOR Policy 6:5). In most cases, the facility program plan must be approved before a capital improvement project is authorized for submission to the Legislature unless the project received legislative authorization through a previous capital improvement planning process. The program plan shall address the following:

- Initial cost estimates and Fund Sources – The funding plan for the project must identify the specific sources of the revenue and the financing structure that will be used to cover all of the costs associated with the project including but not limited to: planning costs, design costs, testing, infrastructure, construction, equipping the facility, land purchase, and landscaping.
- Programmatic justification for discrete spaces (classrooms, offices, etc.);
- Gross square footage;
- Site analysis;
- Description of key building features;
- Illustrative floor plans;
- ~~Initial cost estimates and funding sources;~~
- Maintenance and Repair – The campus must provide the Board with a funding plan on how they will meet the 2% M&R requirement on any capital improvement project. The funding plan must be specific as to the funding sources that will be used for maintenance and repair. The plan cannot reduce or negatively impact the funds already dedicated to maintenance and repair.
- On-going operational costs – The campus must include the budget and funding sources for ongoing operational costs including janitorial, utilities, and other costs. The operational cost projections should identify the estimates of utilities, custodial and maintenance services, supplies, materials, equipment, etc.;

3.3. Facility Design Plan

The Facility Design Plan must be approved by the building committee ~~prior to being~~ submitted to the Board at the Board's next regularly scheduled meeting

for informational purposes for approval. Once this step is complete the project can continue through construction as long as the project cost is within the legislative authority. This phase of the project planning process shall address the following:

- Architectural, mechanical, and electrical schematic design;
- Changes from facility program plan;
- Impact to existing building or campus-wide heating/cooling/ electrical systems;
- Total construction cost estimates (see 1.2.); and
- Changes from cost estimates for operational or M&R expenses.

3.3.1. The facility design costs should be part of the project costs and funded out of the approved revenue sources for the project.

3.3.2. If the facility is a non-revenue capital improvement project, the Board may approve the submission of legislation to authorize the construction and secure funding for the project.

3.3.3. ~~Final Board approval of the project is granted with approval of the Facility Design Plan.~~

3.4. Facility Bid Documents

~~The campus must submit a report to the Building Committee and BOR notifying them of the bid date or guaranteed maximum price (“GMP”) and project budget. Once the bid or GMP for construction manager projects is received, the campus must provide a notification to the building committee of actions taken as a result of the bid process the bid results and award of the bid (i.e. alternates chosen, project budget based on bid results, and value of an awarded project if the bids are not within budget). After the Board’s approval of the facility design plan in 3.3.3. above, the building committee will proceed with final bid documents.~~

~~3.4.1. The final bid documents, including plans and specifications, must be reviewed and approved by the building committee prior to issuing the bid documents to contractors for bids. This review and approval may be concurrent with BOA/OSE and institutional final review and approval.~~

3.4.1.2. If either the final cost estimates or the bids, including a reasonable contingency, are within one hundred fifteen percent of the legislative spending authority previously approved estimated project cost and funds are available, the project can proceed. ~~exceed the approved level of funding, the project must come back to the Board for approval of a revised budget.~~

3.4.3. The campus building committee can work with OSE and the A/E firm to value engineer to get the project within budget. Any changes proposed by the BOA/OSE, the A/E, or the institution that would significantly alter the facility program plan or the design plan and building functionality or increase the project cost estimate in excess of one hundred fifteen percent

of the previously approved estimated project cost must be reviewed and approved by both the building committee and the Board.

3.5. Construction

~~The project proceeds to construction as long as~~ Once the bids are approved by the building committee and the financing plan is in place, the project proceeds to construction.

4. Capital Improvement List

As part of the annual budget requests, the institutions will be asked for prioritized capital project lists for academic and for revenue projects. The lists will provide estimated costs as well as the proposed fund sources. Projects placed on the capital improvement list should not be placed on maintenance and repair lists.

4.1. A capital improvement status report will be provided to the Board at each meeting identifying the status and stage of each active capital improvement project.

5. Bureau of Administration Responsibility

The Bureau of Administration shall be responsible for all capital improvements pursuant to SDCL § 5-14-2 and the funds appropriated shall be paid on warrants drawn by the state auditor on vouchers duly approved by the Bureau of Administration, the authorized representative of the institution and the board.

6. Construction Methodologies

The following flowchart identifies the approvals necessary using the common building methods used by the state and the Board.

Design-Bid-Build	Construction Management @ Risk	Design-Build
Campus selects design firm to conduct space planning and architectural programming (optional)	Campus selects design firm to conduct space planning and architectural programming (optional)	Campus selects design firm to conduct space planning and architectural programming (optional)
Campus Prepares Preliminary Facility Statement for a Capital Project	Campus Prepares Preliminary Facility Statement for a Capital Project	Campus Prepares Preliminary Facility Statement for a Capital Project
Board Approves Preliminary Facility Statement	Board Approves Preliminary Facility Statement	Board Approves Preliminary Facility Statement

BOR President Assigns Building Committee	BOR President Assigns Building Committee	BOR President Assigns Building Committee
Submit Work Request to BOR/OSE (for planning purposes or the full project)	Submit Work Request to BOR/OSE (for planning purposes or the full project)	Submit Work Request to BOR/OSE (for planning purposes or the full project)
Building Committee Interviews & Selects Architect/Engineer	Building Committee Interviews & Selects Architect/Engineer	Campus & OSE Interviews, Selects/Procures Criteria Developer
Programming & Schematic Design Completed by Campus/OSE/AE	Programming & Schematic Design Completed by Campus/OSE	Programming & Criteria Development & Concept Preparation
Design Development Completed by Campus/OSE/AE (optional)	Design Development Completed by Campus/OSE (optional)	Design Criteria & RFP for Design-Builder Completed by Campus, OSE, & Criteria Developer
Campus Develops Facility Program Plan	Campus Develops Facility Program Plan	Campus develops Facility Program Plan
Building Committee and BOR Approves the Facility Program Plan	Building Committee and BOR Approves the Facility Program Plan	Building Committee and BOR Approves the Facility Program Plan (optional)
Gain Legislative Approval (Note: Legislative approval may be obtained at PFS, FPP, or FDP)	Gain Legislative Approval (Note: Legislative approval may be obtained at PFS, FPP, or FDP)	Gain Legislative Approval (Note: Legislative approval may be obtained at PFS, FPP)
Submit Work Request to BOR/OSE (for the full project if not submitted before)	Submit Work Request to BOR/OSE (for the full project if not submitted before)	OSE Solicits for Design Build Firms for Pre-Qualification
Project proceeds through design development	Building Committee Interviews & Selects Construction Manager	Building Committee Approves Design Criteria, Budget, and List of Pre-qualified Firms
Campus Prepares Facility Design Plan	Project proceeds through design development	Pre-Qualified Firms Distributed RFP and Design Criteria to Provide Competitive Design-Build Proposals
Campus submits Facility Design Plan to Building Committee for approval.	Campus Prepares Facility Design Plan	Proposals Reviewed and Scored by OSE/Campus

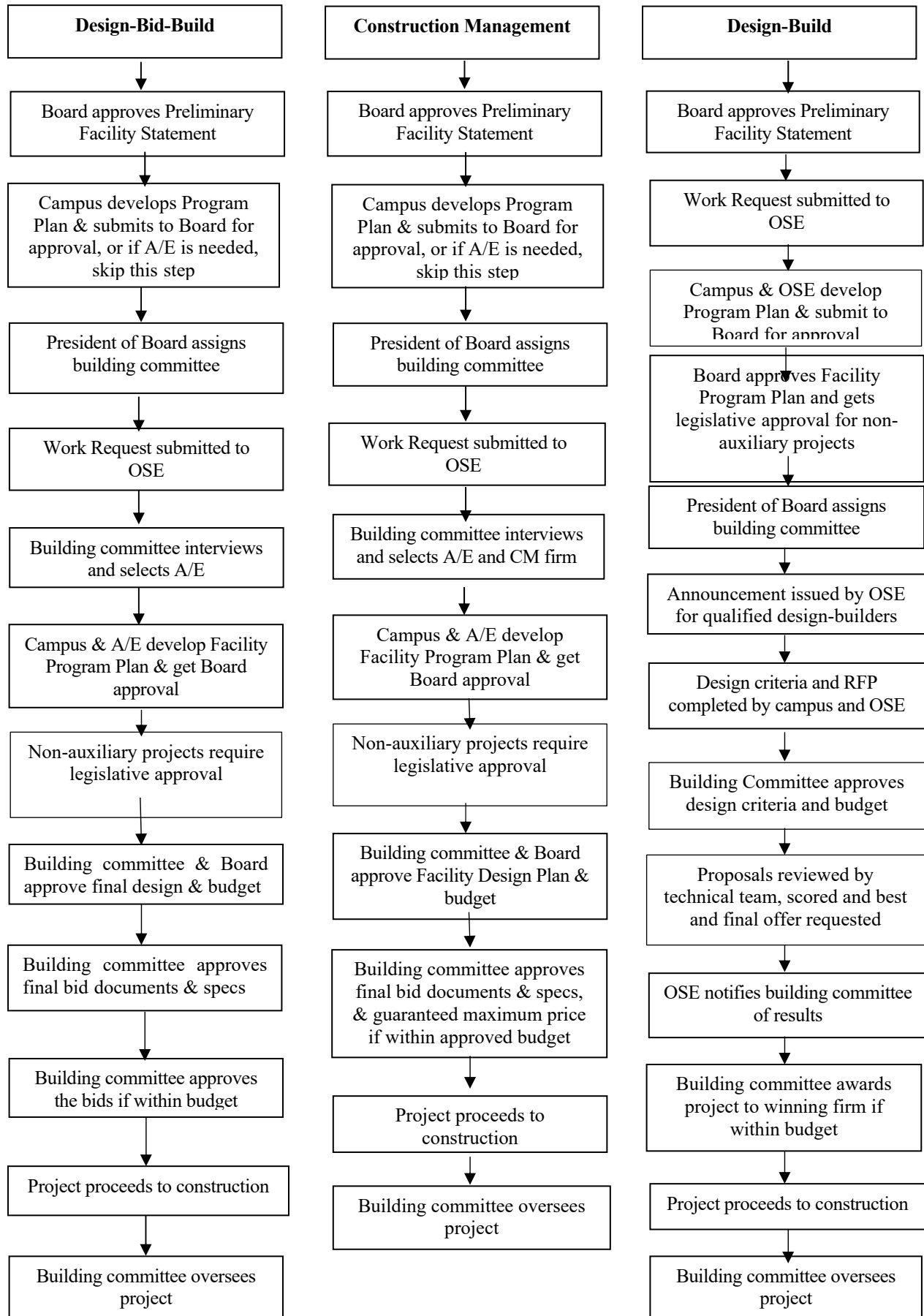
<p>Campus submits Facility Design Plan to BOR as information item for a regularly scheduled BOR meeting if within 115% of originally approved project cost. Obtain Board approval if exceeds 115%.</p>	<p>Campus submits Facility Design Plan to Building Committee for approval.</p>	<p>Proposals Reviewed and Scored by OSE/Campus</p>
<p>Project Proceeds through Construction Documents</p>	<p>Campus submits Facility Design Plan to BOR as information item for a regularly scheduled BOR meeting if within 115% of originally approved project cost. Obtain Board approval if exceeds 115%.</p>	<p>Design-Build Firm Selected to Provide Best & Final Offer</p>
<p>Campus Notifies Building Committee and Board of Regents that Plan & specifications are complete, and project will proceed to bidding (notification becomes information item for regularly scheduled BOR meeting)</p>	<p>Design Continues and Campus/OSE/AE/Contractor develop project design to secure Guaranteed Maximum Price</p>	<p>Campus provides report to BOR of pre-qualification process and selection of design-build firm (report is shared as information item to BOR at regularly scheduled meeting if within 115% of originally approved project cost. Obtain Board approval if exceeds 115%.)</p>
<p>Project is Bid</p>	<p>Guaranteed Maximum Price Established</p>	<p>Project Proceeds through Design, Bidding, & Construction</p>
<p>Campus Notifies Building Committee and Board of Regents of bid results, negotiations made (if applicable), and project budget (notification becomes information item for regularly scheduled BOR meeting if within 115% of originally approved project cost. Obtain Board approval if exceeds 115%.)</p>	<p>Campus Notifies Building Committee and Board of Regents that plans & specifications have been developed to sufficient detail and Guaranteed Maximum Price has been established with Construction Manager (notification becomes information item for regularly scheduled BOR meeting if within 115% of originally approved project cost. Obtain Board approval if exceeds 115%.)</p>	<p>OSE Oversees Project</p>
<p>*If not within Legislatively Approved Spending Authority or project must be redesigned significantly then the revised project must be reviewed and approved by the Building Committee</p>	<p>Project proceeds through final design, bidding, and award of bid packages (may be completed in stages)</p>	

Project proceeds to Construction
and Occupancy

Project proceeds to Construction
and Occupancy

OSE Oversees Project

OSE Oversees Project



FORMS/APPENDICES:

None.

SOURCE:

BOR June 1991; September 1991; April 1992; September 1992; December 1993; March 1995; October 1996; October 1998; December 2000; October 2002; March 2004; August 2006; April 2007; June 2010; August 2017; December 2018; August 2019.