

**SOUTH DAKOTA BOARD OF REGENTS**

**Budget and Finance**

**AGENDA ITEM: 7 – K**

**DATE: May 10, 2022**

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**SUBJECT**

**BOR Policy 6:6 Revisions – Maintenance and Repair (First Reading)**

**CONTROLLING STATUTE, RULE, OR POLICY**

[BOR Policy 6:6](#) – Maintenance and Repair

**BACKGROUND / DISCUSSION**

A workgroup has been reviewing the 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 consists 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 6:6 – Maintenance and Repair include:

- Clarification that HEFF funds may not be used for master planning, but can be used for project planning in Section 2.2
- Throughout the policy the threshold requiring OSE management on projects is raised from \$50,000 to \$100,000 consistent with SDCL § 5-18A-14.
- Section 7.3 clarifies that Maintenance and Repair funds may be used for planning on projects that may exceed the \$5M threshold, making it a capital improvement, but cannot be used for planning new construction.

**IMPACT AND RECOMMENDATIONS**

This is a first reading of the policy. The recommended revisions were approved by the Business Affairs Council and are supported by the Board office staff. The Board staff recommends approval of the first reading of the proposed revisions as outlined in Attachment I.

**ATTACHMENTS**

Attachment I – Proposed Revisions to BOR Policy 6:6 – Maintenance and Repair

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**DRAFT MOTION 20220510\_7-K:**

I move to approve the first reading of the proposed revisions to BOR Policy 6:6 – Maintenance and Repair as outlined in Attachment I.

# SOUTH DAKOTA BOARD OF REGENTS

## Policy Manual

**SUBJECT:** Maintenance and Repair

**NUMBER:** 6:6

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### **A. PURPOSE**

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

### **B. 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.
- 2. 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 projects over \$10,000.
- 3. Maintenance and Repair:** Any project that involves alteration, maintenance, renovation or repair to an existing facility or infrastructure.
- 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 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.
- 6. 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.

## **C. POLICY**

### **1. Maintenance and Repair Categories**

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

- 1.1. **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. **Building Integrity:** Building integrity includes the functional systems of the building, including but not limited to roofs, windows, foundations, primary and secondary structural systems, building envelope, safety systems, networking systems, heating systems, ventilating systems, air conditioning 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. **Programmatic Suitability (school mission):** Facilities should be configured or space adapted to meet the changing school mission and program requirements.
- 1.4. **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. **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, landscaping, 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. Maintenance and Repair Limitations

- 2.1. A maintenance and repair project may exceed \$5.0M in cost, but will then be subject to the additional requirements for Policy 6.4.
- 2.2. HEFF revenue uses are limited according to SDCL § 13-51-2. Uses include the maintenance and repair of existing facilities. Planning specific or multiple M&R projects within one building can be funded with HEFF. However, institutional, campus wide, or master planning should not be funded with HEFF. ~~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 are not considered maintenance and repair and should not be purchased with maintenance and repair funding.

## 3. 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. OSE is not required to be involved in projects totaling less than ~~\$50,000~~100,000 (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. 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. OSE shall manage all projects totaling ~~\$100,000~~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. Maintenance and Repair Funding**

- 4.1. 2% Goal - The Board has determined that investing 2% of the building values into maintenance and repair on an annual basis is the minimum necessary to provide facilities that are functional, safe, and capable of meeting contemporary educational standards. While the 2% is determined based on the replacement values of roofed facilities, the investment must cover the entire supporting infrastructure of the campus including electrical grids, cooling and heating plants, underground tunnels and utility systems, roads, sidewalks, and landscaping.

When determining the 2% need for unique facilities such as outdoor athletic complexes or open-air football stadiums, the replacement value of the roofed portion of the building will be used to determine the 2% funding need.

- 4.2. Sources - 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. Maintenance and Repair Planning**

10-Year M&R Planning – The institutions must submit a prioritized listing of all academic projects 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 upcoming year's projects. The plan shall be updated each year with project costs projected using current year dollars.

#### **6. Maintenance and Repair Allocation**

- 6.1. General Fund Allocation - The Board office shall determine the campus allocation from General funds 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. The Centers are not included in the General funds allocation.

- 6.2. HEFF Allocation - The 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, academic building gross square footage, and HEFF revenues for each campus and Center. Each of the factors is weighted 33 1/3% to arrive at an equitable allocation of appropriated funds to each institution.
- 6.3. M&R Fee – The maintenance and repair fee is retained on campus. The amount invested in maintenance and repair each year is determined using the per credit hour fee, that is a component of tuition, and the on-campus credit hour projection.
- 6.4. Replacement Values – The original replacement values for the buildings will be determined by the Office of Risk Management and will align with the annual insurance values in most cases. Adjustments to the values will be determined using the annual Building Cost Index or other inflation adjustment as determined by the Office of Risk Management. Each year the institutions must update their square footage to reflect all buildings that are occupied and add new buildings. 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.

## 7. Approval of Maintenance and Repair Projects

- 7.1. Annual M&R Project Approval – All projects funded with General funds, HEFF, M&R Fee funds, auxiliary or institutional funds shall be submitted to the Board for approval. Annual project lists will be requested along with the allocations.
- 7.2. The institutions can realign funds between approved projects as necessary. Projects not on the approved list estimated to cost \$~~10050~~,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 \$~~10050~~,000 (all costs and contracts inclusive) may be approved by the presidents or their designee.
- 7.3. Planning and Design – The institutions can allocate maintenance and repair funds into a Planning and Design Account. Fund expenditures must be related to current or future maintenance and repair projects and not to plan additions or new construction~~capital improvement projects~~. The institutions may expend the funds without Board approval to prepare cost estimates and to pay preliminary planning and design costs. See Section 2.2 for limitations in use.
- 7.4. 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 for other projects. These monies must be available to fund overruns on other projects, additional projects, emergency projects, and to fund change orders on existing projects. If these monies are not available in sufficient amounts to provide funding for 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. 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. ([See Policy 5:25 Auxiliary Revenue System](#))

- 8.1. 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. 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 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.

- 8.2. Furnishings with a minimum useful life of 15 years can be purchased from the repair and replacement reserve (RRR) auxiliary account, [but normally are not utilized for Maintenance and Repair projects](#).

## 9. Special Schools 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. Maintenance and Repair Guidelines

- 10.1. 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. [OSE work requests may be amended to reflect significant changes in scope, cost, procedure from planning to full design & construction, and/or procedure with successive phases of a multi-phase project.](#) Projects that are done in phases through OSE require a work request for each phase. [OSE work requests may be amended to reflect significant changes in scope, cost, procedure from planning to full design & construction, and/or procedure with successive phases of a multi-phase project.](#)

- 10.2. 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 (SDCL 5-18D-17 through 5-18D-22). 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).

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.

- 10.3. Institutional Control of Project of ~~\$50,000~~100,000-or More – A work request must be submitted to OSE requesting institutional control of a project of ~~\$50,000~~100,000 or more. The work request should reflect the institution's intention to request such institutional control.

- 10.~~43~~. 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-5.

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.

- 10.~~54~~. 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 orders may arise from unforeseen conditions discovered during construction, design errors not incorporated into the contract documents, changing program requirements, unanticipated needs, and end user requests.

Change orders may not be used to change the project scope. Changing the scope of a project requires a new bid. ~~See SDCL § 5-18-B-19 as there are costs limits to change orders based on the construction contract. Change orders must comply with the cost limits set forth in SDCL § 5-18B-19.~~

## 11. 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. Approval and Authority**

12.1. The following table shows the proper authorization and approval of all maintenance and repair projects.

| Project Cost                            | Project Approval   | Work Request                                      | Contract Authorization                         |
|---|--|---|--|
| \$10,000 - <del>\$49,999,999</del>      | Annual List Approved by Board Changes - Institution        | Not needed unless campus requests OSE involvement | Institution or OSE                             |
| <del>\$100,000</del> 50,000 - \$250,000 | Annual List Approved by Board Changes - Executive Director | Yes   | OSE unless project is delegated to institution |
| Over \$250,000                          | Annual List Approved by Board Changes - Board              | Yes   | OSE unless project is delegated to institution |

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

**13. 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 ~~\$1000~~50,000 or more (unless OSE has given the institution control or a joint powers agreement is in place) and any project under ~~\$100~~50,000 where the institution desires OSE to handle it.

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

- Work Request: An OSE work request must be signed by the president, executive director or designees.
- Bid Advertisements/Recommendations: The OSE should send their bid advertisements and bid recommendations to the institutional contact person.
- 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.
- Vouchers: The vouchers should be sent to the fiscal contact person identified for each institution.
- Correspondence: The institutional contact should be copied on correspondence.

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

- Work Requests: An OSE work request must be signed by the president of the institution, executive director of the Board, or designees.
- 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.
- 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.
- Vouchers: The vouchers should be routed to the fiscal contact person at the institution for coding and final approval.
- Correspondence: The institutional contact person and the executive director of the Board of Regents should be copied on correspondence.

13.3. South Dakota Building Authority (SDBA) Funded Projects:

- Work Requests: An OSE work request must be signed by the president of the institution, executive director of the Board of Regents, or designees.
- 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.
- 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.
- Vouchers: The vouchers should be routed to the SDBA for coding and approval.

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

#### 13.4. SDBA Bonded Projects:

- 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.
- 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.
- 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.
- Vouchers: The vouchers should be routed to the SDBA for coding and approval.
- Correspondence: The institutional contact person and the executive director of the Board of Regents should be copied on all correspondence.

#### **14. 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:**

BOR December 1993; October 1996; October 1998; March 2003; March 2004; April 2007; December 2010; April 2013; March-April 2016; August 2017; June 2019.