

# ***South Carolina Commission on Higher Education***



## **Facilities Policies & Procedures Manual**

Revised October 2013

**Division of Finance, Facilities, & MIS**

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# Forward

The review of permanent improvement projects for South Carolina's 33 public colleges and universities is one of the most important on-going activities of the Commission on Higher Education (CHE or the Commission). The Commission's role and responsibilities in this area were first addressed by the General Assembly in 1967 in the legislation that established CHE.

This manual incorporates the permanent improvement requirements of the Budget and Control Board and the Joint Bond Review Committee to the extent possible. (Institutions should ensure compliance with the manuals of the Capital Budgeting Unit at the Budget & Control Board.) The manual has been developed for use in making the submission and review of facilities projects as simple and straightforward as possible.

Questions, comments, and suggestions related to the manual format or its contents should be directed to CHE Division of Finance, Facilities, & MIS.

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# **SC Commission on Higher Education Membership**

*As of October 2013*

<b><u>Name</u></b>	<b><u>Appointment</u></b>	<b><u>Term Expires</u></b>
Mr. John L. Finan	Chairman	July 1, 2016
Dr. Bettie Rose Horne	Vice Chair	July 1, 2008
Ms. Natasha M. Hanna	Four-Year Comprehensive Colleges & Universities	July 1, 2012
Ms. Elizabeth Jackson	Statewide Appointee	July 1, 2012
Dr. Raghu Korrapati	Second District	July 1, 2010
Ms. Leah B. Moody	Research Universities	July 1, 2012
Charles Munns, Vice Admiral, USN (ret.)	Technical Colleges	July 1, 2012
Mr. Kim H. Phillips	Fifth District	July 1, 2012
Mr. Y.W. "Bill" Scarborough, III	First District	July 1, 2012
Dr. Jennifer B. Settlemyer	Statewide Appointee	July 1, 2012
Mr. Hood Temple	Sixth District	July 1, 2010
The Honorable Lewis R. Vaughn	Fourth District	July 1, 2014
Vacant	Independent College President	
Vacant	Statewide Appointee	
Vacant	Seventh District	

Fourteen members are appointed to the Commission including: for 4-year terms—1 at-large appointee serving as Chair; 3 at-large, statewide appointees; and 1 appointee from each of the six Congressional districts, and for 2-year terms—1 representative each from the Board of Trustees of a research institution, a comprehensive college, and a technical college and 1 president of an independent college. Members are appointed by the Governor upon the advice and consent of the Senate, except for Congressional District Representatives who are recommended by their legislative delegations.

# **Finance & Facilities Committee Membership**

*As of October 2013*

Mr. Y.W. Scarborough, *Chair*

Mr. Lewis R. Vaughn, *Vice Chair*

Ms. Natasha M. Hanna

Mr. Kim F. Phillips

Mr. Hood Temple

# Facilities Advisory Committee Membership

**The Facilities Advisory Committee is comprised of institutional facilities officers. The Committee meets throughout the year to review current policies and procedures and make recommendations as deemed necessary. This process ensures campus facilities across the State can support institutional goals and objectives as related to articulated missions.**

**Mr. Gary S. Glenn**  
Director Finance, Facilities & MIS  
*Committee Chair*  
Commission on Higher Education

**Mr. Bob Wells**  
Chief Facilities Officer  
Clemson University

**Mr. Derek Gruner**  
Director of Facilities Planning &  
Programming  
USC Columbia

**Mr. Greg Weigle**  
Chief Facilities Officer  
Medical University of SC

**Col. Benjamin Wham**  
Associate VP for Facilities & Engineering  
The Citadel

**Ms. Sandy Williams**  
Director of Facilities Planning &  
Management  
Coastal Carolina

**Ms. Monica Scott**  
Vice President for Facilities Planning  
College of Charleston

**Mr. Ralph Davis**  
Director of Facilities Management  
Francis Marion University

**Mr. Jeff Beaver**  
Director of Engineering Services  
Lander University

**Mr. Raul Cedeño**  
Director of Financial Reporting & Capital  
Projects  
S.C. State University

**Mr. Mike Parrott**  
Facilities Director  
USC Beaufort

**Mr. Rick Puncke**  
Director of Facilities  
USC Upstate

**Mr. Walter Hardin**  
Associate VP, Facilities Management  
Winthrop University

**Mr. Bruce Blumberg**  
Dir. of Finance & Admin. Ser.  
USC Sumter

**Ms. Mandy Kibler**  
VP for Finance  
State Technical College System

**Vacant**  
USC Aiken

**Vacant**  
Technical College

**Vacant**  
Technical College

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Technical College

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# Overview

The role and responsibilities of the Commission in reviewing facilities projects was first established in its enabling legislation in 1967. The Commission is charged with examining the State's institutions of higher learning relative to both short- and long-range programs and missions, including capital funding requirements. CHE is also charged with making recommendations to the Governor's Office, the Budget and Control Board (B&CB), and the General Assembly as to policies, programs, curricula, facilities, administration, and financing of all State-supported institutions of higher learning.

Any state agency seeking approval of funding for permanent improvement projects by the General Assembly must submit requests for these projects to the Joint Bond Review Committee (JBRC) and to the B&CB for review and approval. Section 2-47-40 of the SC Code of Laws requires institutions of higher education submit the appropriate documentation for permanent improvements which includes: description, justification, purpose and intended use, estimated total cost, proposed financing plan, etc. to CHE whether through its staff or the established Committee and Commission. Further, CHE is required to forward each permanent improvement project and supporting documentation received to the JBRC and the B&CB. CHE will attach its recommendations to each project.

The Commission is charged with the following responsibilities concerning facilities:  
*(Codes can be found online at [www.scstatehouse.gov](http://www.scstatehouse.gov))*

**SECTION 59-103-60.** Recommendations to Governor's Office and General Assembly.

The commission shall make such recommendations to the Governor's Office and the General Assembly as to policies, programs, curricula, facilities, administration, and financing of all state supported institutions of higher learning as may be considered desirable. The House Ways and Means Committee, the Senate Finance Committee, and the State Budget and Control Board may refer to the commission for investigation, study, and report any requests of institutions of higher learning for new or additional appropriations for operating and for other purposes and for the establishment of new or expanded programs.

**SECTION 59-103-70.** Reports.

The Commission shall make reports to the Governor and the General Assembly at least annually on the status and progress of higher education in the State, with such recommendations as may be appropriate.

**SECTION 59-103-110.** Approval for new construction; exemptions.

No public institution of higher learning shall be authorized to construct or purchase any new permanent facility at any location other than on a currently approved campus or on property immediately contiguous thereto unless such new location or purchase of improved or unimproved real property has been approved by the commission.

**SECTION 2-47-55.** Comprehensive Permanent Improvement Plan.

(A) All state agencies responsible for providing and maintaining physical facilities are to submit a Comprehensive Permanent Improvement Plan (CPIP) to the Joint Bond Review Committee and the Budget and Control Board. The CPIP must include all of the agency's permanent improvement projects anticipated and proposed over the next five years beginning with the fiscal year starting July 1 after submission. The purpose of the CPIP process is to provide the board and the committee with an outline of each agency's permanent improvement activities for the next five years. Agencies must submit a CPIP to the committee and the board



on or before a date to be determined by the committee and the board. The CPIP for each higher education agency, including the technical colleges, must be submitted through the Commission on Higher Education which must review the CPIP and provide its recommendations to the and the committee. The board and the committee must approve the CPIP after submission and may develop policies and procedures to implement and accomplish the purposes of this section.

(B) The State shall define a permanent improvement only in terms of capital improvements, as defined by generally accepted accounting principles, for reporting purposes to the State.

**SECTION 2-47-40.** Information to be furnished by agencies and institutions.

To assist the State Budget and Control Board (the Board) and the Joint Bond Review Committee (the Committee) in carrying out their respective responsibilities, any agency or institution requesting or receiving funds from any source for use in the financing of any permanent improvement project, as a minimum, shall provide to the Board, in such form and at such times as the Board, after review by the Committee, may prescribe: (a) a complete description of the proposed project; (b) a statement of justification for the proposed project; (c) a statement of the purposes and intended uses of the proposed project; (d) the estimated total cost of the proposed project; (e) an estimate of the additional future annual operating costs associated with the proposed project; (f) a statement of the expected impact of the proposed project on the five-year operating plan of the agency or institution proposing the project; (g) a proposed plan of financing the project, specifically identifying funds proposed from sources other than capital improvement bond authorizations; and (h) the specification of the priority of each project among those proposed.

All institutions of higher learning shall submit permanent improvement project proposal and justification statements to the Board through the Commission on Higher Education which shall forward all such statements and all supporting documentation received to the Board together with its comments and recommendations. The recommendations of the Commission on Higher Education, among other things, shall include all of the permanent improvement projects requested by the several institutions listed in the order of priority deemed appropriate by the Commission on Higher Education without regard to the sources of funds proposed for the financing of the projects requested.

The Board shall forward a copy of each project proposal and justification statement and supporting documentation received together with the Board's recommendations on such projects to the Committee for its review and action. The recommendations of the Commission on Higher Education shall be included in the materials forwarded to the Committee by the Board. No provision in this section or elsewhere in this chapter, shall be construed to limit in any manner the prerogatives of the Committee and the General Assembly with regard to recommending or authorizing permanent improvement projects and the funding such projects may require.

**SECTION 59-53-57.** State funds; procedures for appropriations.

State funds for the South Carolina Technical Education System must be appropriated to the board by the General Assembly and funds budgeted for the technical institutions must be allocated in a uniform and equitable manner. Monies appropriated for special schools must be retained at the state level and expended upon recommendation of the board. The board and all institutions under its direction shall use prescribed statewide accounting and budgeting systems which shall account for all revenues and expenditures regardless of sources of funds and purposes for which expended. The systems shall include provisions to identify specific revenues with the specific expenditures to which they relate when the fund source so requires.

The board and institutions are eligible to receive state funds for capital facilities. Prior to the withdrawal of authorized funds from the State Treasurer, the State Board for Technical and Comprehensive Education shall obtain and transmit to the State Treasurer a certificate from the

appropriate official at the technical institution stating that a minimum of twenty percent of each project cost has been provided by the local support area. The provisions of this paragraph do not apply to Denmark and Beaufort Technical Colleges.

**SECTION 59-101-370.** New technical college construction projects; matching state funds.

Technical education colleges receiving funds for new construction projects, not including funds provided for deferred maintenance or renovations, pursuant to authorizations for state capital improvement bonds shall match the state funds provided with at least twenty percent nonstate funds toward the total costs of the project identified in the bond authorization. This match requirement does not apply to any project that received A&E funding prior to July 1, 1995.

Notwithstanding the fundamental purpose of the CPIP program, practice has been such that interim consideration of projects that are critical, or permanent improvement projects which are unanticipated, takes place throughout the year. These requests are also submitted to the JBRC and the B&CB through CHE.

## **General Policy**

In reviewing permanent improvement project requests, CHE places general emphasis on the following: consistency with institutional mission, needs assessment, and the proposal for addressing the needs. While the law does not specifically require the consideration of cost or the source of funds, CHE also considers these factors as integral components of the overall projects.

In addition to approval of permanent improvement projects, each new lease, at a total annual cost of \$100,000 or more and for a term of three or more months, requires CHE review and approval. Subsequent renewals, which are not included in the initial lease negotiation, are treated as new leases and also require CHE approval. Each request for solicitation of space made to the leasing office of the State Building and Property Services of the B&CB is to be submitted concurrently to CHE. The leasing office will not conduct a solicitation without the approval of CHE. Approval to solicit does not constitute final authorization from CHE to execute a lease.

The acquisition, construction, or leasing of facilities in the SC Research Park System and in out-of-state and off-shore locations (including foreign countries) must follow the normal approval processes of CHE and other State agencies.

CHE is committed to the development of policies and research of data that will further enhance the permanent improvement approval process while also considering the best interests of the State. CHE has adopted policies concerning life-safety issues and architectural and engineering projects and considers other State agency priorities regarding permanent improvement projects.

CHE maintains the CHE Management Information System (CHEMIS) which consists of several components of State institutional data, one of which is the "Facilities" component. The "Facilities" component is comprised of detailed building and room records for each public and university in the State. These records are updated each fall and published in a series of reports for evaluation, assessment, and planning purposes. Additionally, the funding methodology used by CHE to determine each institution's Mission Resource Requirement (MRR) uses the data, in part, for the calculation of maintenance and operations of physical

# Definitions & Policy Detail

## ► Permanent improvement projects

Section 2-47-50 of the SC Code of Laws defines permanent improvements as:

1. acquisition of land, regardless of cost, with staff level review of the committee and the Budget and Control Board, Capital Budget Office, up to two hundred fifty thousand dollars;
2. acquisition, as opposed to the construction, of buildings or other structures, regardless of cost, with staff level review of the committee and the Budget and Control Board, Capital Budget Office, up to two hundred fifty thousand dollars;
3. work on existing facilities for any given project including their renovation, repair, maintenance, alteration, or demolition in those instances in which the total cost of all work involved is one million dollars or more;
4. architectural and engineering and other types of planning and design work, regardless of cost, which is intended to result in a permanent improvement project. Master plans and feasibility studies are not permanent improvement projects and are not to be included;
5. capital lease purchase of a facility acquisition or construction in which the total cost is one million dollars or more;
6. equipment that either becomes a permanent fixture of a facility or does not become permanent but is included in the construction contract shall be included as a part of a project in which the total cost is one million dollars or more; and
7. new construction of a facility that exceeds a total cost of five hundred thousand dollars.

Any permanent improvement project that meets the above definition must become a project, regardless of the source of funds. However, an institution of higher learning that has been authorized or appropriated capital improvement bond funds, capital reserve funds or state appropriated funds, or state infrastructure bond funds by the General Assembly for capital improvements shall process a permanent improvement project, regardless of the amount.

These definitions focus on the significance rather than on the types of improvements being made. Significance is measured primarily in terms of the magnitude of funds being spent. For example, a \$1,000,000 renovation is considered significant as is a \$1,000,000 project to replace a roof.

The State Board for Technical and Comprehensive Education (SBTCE) and the technical are eligible to receive State funds for capital facilities. Section 59-53-57 requires that SBTCE obtain and transfer to the State Treasurer a certificate from the appropriate official at the technical college stating that a minimum of 20 percent of each project cost has been provided by the local support area. (Denmark Technical College and Technical College of the Lowcountry are exempted from this provision.) Amounts above 20 percent are subject to the Commission's approval process. Section 59-101-370 exempts funds for deferred maintenance and renovations.

## ► Permanent Improvement Projects

### **Comprehensive Permanent Improvement Plan (CPIP)**

Section 2-47-55 of the SC Code of Laws requires each institution responsible for providing and maintaining physical facilities to submit a CPIP describing its physical work program for Year One, and its tentative work plan for four years into the future for a total of five years. The CPIP should be submitted to CHE by March 1 of each year (or the submission date determined by the Capital Budgeting Unit of the B&CB).

Year One of the CPIP should cover one fiscal year, from July 1 to June 30, and should include all permanent improvement projects (as previously defined) expected to be implemented with funds already available or funds expected to become available that fiscal year. The purpose of Year One of the CPIP is to focus on each institution's expectations for permanent improvements for the year except for emergencies and other unanticipated critical needs. The first year of CPIP excludes new requests for capital improvement bond funds.

If no projects or increases are included in plan year one, an explanation should be included on why there are no anticipated projects for that year.

Years Two, Three, Four, & Five of the CPIP should focus on projects for which the agency will request funds from the General Assembly, as well as projects that the institution anticipates to have its own or other non-state funding sources for. These years, in part, correspond to the projects for which the agencies will be requesting funds in their capital budget requests.

It is especially important that projects which are proposed to be financed by Capital Improvement Bonds and other appropriated state funds be fully and clearly described for the first two years of the CPIP, even though it is understood that the CPIP process is not the actual vehicle for requesting such funds. Projects in Years One and Two must be described in detail to allow a reviewer to gain a clear idea of what the proposed projects involve and why they are needed. One or two sentence explanations of a project will not be sufficient and will be returned for more detailed information. Projects proposed for plan years 3, 4 and 5 may simply be listed with an estimate of their cost and an indication of the source(s) of funds anticipated to finance them.

### **Interim Permanent Improvement Project Approvals**

During the fiscal year after the CPIP has been approved by the Commission, an institution may need to amend its program to cover emergencies and unanticipated critical needs. Projects submitted for interim approval are subject to the same requirements that are applicable to the CPIP. Projects submitted for interim approval will be considered monthly and in accordance with the meeting schedule of the Commission. At its meeting on December 1, 2011, The Commission on Higher Education (CHE) formally authorized CHE staff to bring to the Finance Facilities Committee **all** interim project Phase 1 requests with full documentation in the form and format used to support Year One CPIP approvals. When Phase 2 is subsequently requested and there is no material deviation of project scope, funding source, and funding has not increased more than \$2,000,000 or 10 percent of the total budget, whichever is less, the Commission has delegated staff the authority to submit the Phase 2 request to the Budget & Control Board and Joint Bond Review Committee. The Commission has also delegated staff the authority to approve project close-outs and changes in funding sources, regardless of the

amount. However, staff retains the right to refer such projects to the full review and approval process of the appropriate committee and Commission. Projects approved by CHE staff will be submitted to the Commission on a monthly basis.

*\*Committee and Commission members will be informed of any project changes that involve a change in the use of student tuition and fees.*

### **Scope Revisions**

If an institution determines during any phase of a permanent improvement project that a change in the use, purpose, or programming of the facility is necessary, the institution must submit a request to revise the project scope to be reviewed and approved by the Commission before submitting to the Joint Bond Review Committee and Budget & Control Board.

For projects with an estimated cost of \$10M or less:

- Changes resulting in an increase in square footage of 30% or more must be submitted for review and approval of the Commission.
- Changes resulting in an increase in square footage of less than 30% must be submitted for review and approval of CHE staff. The Commission will be informed of all staff approvals processed each month.

For projects with an estimated cost of more than \$10M:

- Changes resulting in an increase in square footage of 20% or more must be submitted for review and approval of the Commission.
- Changes resulting in an increase in square footage of less than 20% must be submitted for review and approval of CHE staff. The Commission will be informed of all staff approvals processed each month.

### **Requests for Project Extension**

All Phase II Full Design and Construction permanent improvement project requests should be submitted for approval within two years of approval of the Phase I Pre-design. For projects that are not submitted for Phase II Full Design and Construction Budget approval within two years, a request for extension must be submitted for consideration by the Commission. The request for extension must fully explain the reason(s) Phase II has been delayed. If a request for extension is granted by the Commission and the project is not submitted and approved for Phase II within two years of approval of the extension, the project must be closed or a further request for extension must be submitted for consideration by the Commission.

### **Emergency Requests**

**Section 11-35-1570** of the SC Code of Laws provides guidance for making emergency requests. It states: “Notwithstanding any other provision of this code, the chief procurement officer, the head of a purchasing agency, or a designee of either officer may make or authorize others to make emergency procurements only when there exists an immediate threat to public health, welfare, critical economy and efficiency, or safety under emergency conditions as defined in regulations promulgated by the board; and provided, that such emergency procurements shall be made with as much competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. “

Accordingly, emergency requests will be considered in a timely manner only after written notification as to the nature of the emergency is received by CHE.

### **Submission of Project Close-outs**

All requests for close-outs must be submitted by the institutions to CHE prior to being sent to the staff of the B&CB. All projects must be closed by submitting an A-1 form as well as an updated building condition survey. In order to close-out and remove a project from the SPIRS system, the final project budget must equal the final expenditure amount.

### **Master Land Acquisition Plan (MLAP)**

Any public college or university seeking authorization to acquire land will be permitted to present master plans that outline proposed land acquisitions to the Commission for conceptual approval. The granting of conceptual approval shall be good for an initial five-year period and may be renewed by action of the Commission. If the plan is endorsed by CHE, the Commission has delegated staff the authority to approve future land acquisitions, provided they were included in the master plan presentation and receive State Building and Property Services acceptance of the environmental study and appraisal, and provided no student tuition or fee increase is required. Any acquisition activity is presented monthly, for information, to the Commission.

### **Leases**

A lease, as defined by the South Carolina Treasurer's Office, is a signed agreement by an institution that commits an institution to future payments for the use of property. Each lease, including renewals, with a term of three or more months in a single fiscal year and at a total annual cost of \$100,000 or more must be approved by the Commission. The Commission has delegated staff the authority to approve leases which commit less than \$1,000,000 in a five year period and which do not involve equity accrual. All leases over \$1,000,000 in a five year period are subject to action by the full Commission.

Lease requests must be submitted concurrently to CHE and to the Leasing Office of State Building and Property Services. CHE staff validates the programmatic need for the lease and verifies the source of funds. The Leasing Office assists the institution with meeting the need and by ensuring the rate and terms of the lease are fair. The Leasing Office will not conduct a solicitation without the approval of the Commission. Approval to solicit does not constitute final authorization from the Commission to execute a lease. Once the Leasing Office has agreed on the terms of the lease, the lease is submitted to CHE for approval to be executed by either the staff or the Commission.

### **Gifts-in-Kind of Architectural & Engineering Services**

**SECTION 2-47-56.** Acceptance of gifts-in-kind for architectural and engineering services.

Each state agency and institution may accept gifts-in-kind for architectural and engineering services and construction of a value less than two hundred fifty thousand dollars with the approval of the Commission of Higher Education or its designated staff, the Director of the Division of General Services, and the Joint Bond Review Committee or its designated staff. No other approvals or procedural requirements, including the provisions of Section 11-35-10, may be imposed on the acceptance of such gifts.

### **Acquisition of Facilities by Private Foundations and Other Agents**

The 1987 General Assembly amended Section 11-35-40 of the 1976 Code to make the South Carolina Consolidated Procurement Code applicable to certain actions of foundations and eleemosynary organizations. The Commission's policy concerning the acquisition of facilities is consistent with the intent of the 1976 Code as amended. The policy requires the acquisition of any facility or permanent improvement (as previously defined) by a foundation or eleemosynary organization (including an Area Higher Education Commission or an Area Technical Education Commission) or any other agent (henceforth referred to as foundation) on behalf of or for the use of any public institution of higher education which involves the use of public funds in the acquisition, financing, construction, maintenance, or current or subsequent leasing of the facility must have prior approval of CHE. Regardless of the source of funds, failure to obtain Commission approval prior to taking occupancy of the facility or permanent improvement for institutional purposes will result in the disqualification of that facility or permanent improvement from being considered for funding through the MRR. Failure to establish these requests according to the guidelines for permanent improvement projects is a violation of the Procurement Code.

Further, a permanent improvement acquired by a foundation on behalf of an institution and intended solely for resale or investment purposes need not be approved by CHE. However, if after the acquisition, the intended use changes and the institution plans to use the facility, CHE approval is required prior to taking occupancy of the facility for institutional purposes. Failure to obtain CHE approval will result in the disqualification of the facility or permanent improvement from being considered for funding through the MRR.

### **Acquisition of Real Property Building Condition Assessment**

It is the policy of the Budget and Control Board that a decision to acquire an existing building intended to be occupied by State employees or the public shall be supported by an assessment of the current condition of the building and its suitability for its proposed use(s). Any agency proposing to acquire a building shall first obtain or develop a Phase 1 Building Condition Assessment for State Building Acquisitions on the subject building prior to submitting its request for acquisition to the Board.

#### **Guidelines for Obtaining Building Condition Assessments**

- The Office of State Engineer shall recommend one or more firms to provide these services for a period of one to three years, at which time the process of requalification will be repeated.
- The agency head shall give due consideration to the assessment being conducted by a professional architect, professional engineer, and/or other qualified specialist in the field of building condition assessments, as recommended by the Office of State Engineer, or may determine the assessment can be conducted internally.
- The costs of acquiring all assessments shall be the responsibility of the agency proposing to acquire the building.
- The complete assessment report shall be furnished by the agency to the State Engineer, who will provide the results to the Capital Budgeting and the Budget and Control Board for their consideration in the decision-making process.

#### **Criteria for Building Condition Assessments**

- All Building Condition Assessments obtained under this policy shall be done so in



accordance with the current codes adopted by the Office of State Engineer.

- Upon completion of the Phase 1 assessment, a report will be submitted in the form of Table of Contents and Report Format for Phase 1 Building Condition Assessments for State Building Acquisitions (see Appendix F).
- The report submitted at the completion of the Phase 1 assessment may include a professional opinion as to whether the building appears to be code compliant for its existing and propose use(s), or, if not, provide specific recommendations for detailed investigations to be carried out in a Phase 2 assessment. The report shall also include an estimated cost to perform the recommended Phase 2 assessment, if any.
- In the event the Phase 1 assessment indicated that the building is not code compliant, the State Engineer may require the agency to obtain the recommended Phase 2 assessment.
- The Phase 2 assessment shall provide a summary of work and preliminary cost estimate of work required to make the building compliant with the current codes.
- The State Engineer may provide a recommendation along with the assessment(s) to be submitted to Capital Budgeting for inclusion with the acquisition request. The recommendation will be based, in part, on the results of the assessments obtained under this policy.

### **Acquisition of Land Environmental Studies**

Prior to submission to the Budget and Control Board for approval of any land acquisition, the acquiring agency shall obtain a study on the subject property for existing environmental conditions.

### **Guidelines for Obtaining Environmental Studies**

All Environmental Studies shall be obtained under the following guidelines:

- The Office of State Engineer shall approve one or more firms to provide these services for a period of one to three years, at which time the approval process will be repeated.
- Environmental firms performing such studies must maintain or have access to a South Carolina Department of Health and Environmental Control (SCDHEC) certified analytical lab and must have a contaminate/biological sampling plan which meets SCDHEC approval.
- The study shall be conducted by a professional environmental engineer, professional geologist, degreed biologist or ecologist, or other degreed specialist in the environmental field.
- The costs of acquiring all studies shall be the responsibility of the agency proposing to acquire the property.
- The complete report shall be furnished by the agency to the Office of State Budget - Capital Budgeting Unit, who will provide the results of the study to the Budget and Control Board for their consideration in the decision making process.

### **Criteria for Environmental Studies**

All Environmental Studies obtained under this policy shall conform to the guidelines designated in ASTM E1527-05 for the Phase 1 Environmental Site Assessment Process, with the following additions:

- Ownership history for the last 40 years;

- Identification of suspected wetlands areas, including specific location(s); and
- Suspected presence of lead-based paint and/or lead in drinking water.

Upon completion of the Phase 1 study, a report will be submitted in the form of Appendix X4 of ASTM E1527-05. (See attached Required Table of Contents and Report Format.)

The report submitted at the completion of Phase 1 shall either provide reasonable assurance to the acquiring agency that the site appears to be free from significant levels of contamination or provide specific recommendations for detailed field investigations to be carried out in Phase 2. The locations recommended for investigation shall be in areas considered likely to have the highest potential for contamination.

The report shall also include an estimated cost to perform the recommended Phase 2 study.

In the event the Phase 1 study indicates that unfavorable environmental conditions may be present, the Office of State Budget – Capital Budgeting Unit may require the agency to obtain the recommended Phase 2 study. The Office of State Budget - Capital Budgeting Unit's recommendation to the Budget and Control Board to either approve or deny the acquisition request will be based in part on the results of the studies obtained under this policy.

# Procedures

## ► Submission of Requests

All requests must be transmitted by letters signed by the president (or his designee) of the institution or, in the case of the University of South Carolina and the State Board for Technical and Comprehensive Education, by the chief executive officer (or designee) of the system.

### Submission of Permanent Improvement Project Requests

All requests for permanent improvements must be submitted in duplicate by the institution to CHE prior to being sent to the staff of the B&CB. After consideration, the requests, along with the Commission's recommendations, will be forwarded to the appropriate staff of the B&CB who provide the necessary preparation for the meetings of JBRC and B&CB. (See Appendix D for approval flowcharts.)

Each request submitted to CHE for action must include the appropriate B&CB form. The types of requests and the forms required for the requests are listed below:

<u>Type of Request</u>	<u>Required Form</u>
Interim Request – New Project	A-1, A-49, JBRC Questionnaire
Modify Existing Project	A-1, A-49, JBRC Questionnaire
Additional Annual Operating Costs or Savings	A-49
CPIP	C1,C2,C3,C4

Requests for real property must include an A-1 form as well as the "Property Acquisition Information" form and the "Request to Acquire Real Property" form. For electronic forms, refer to the Capital Budget Unit of the Office of State Budget's website: [www.budget.sc.gov/OSB-cbu-forms.phtm](http://www.budget.sc.gov/OSB-cbu-forms.phtm).

Each request must include the following, if applicable:

1. **Project Name Identifier** – A proposed project name should be included. It should tell where the project is, which facility is involved, and what the project involves. It is essential that the facility or facilities affected by the project be identified clearly. If more than one facility is involved in the project, allocate and identify the costs of the project amount to each facility.
2. **Project Priority** – Show the relative importance of the project among all projects proposed. If submitted as part of a project, indicate its priority within the group.
3. **Project Description** – Classify the project into one of these categories:

Architectural and Engineering  
Routine Repair, Replacement, and Maintenance  
Purchase Land/Building  
Construction  
Demolish Existing Facilities  
Repair/Renovate Existing Facilities

A general description of the proposed project should be provided. This should be descriptive enough to give readers a clear understanding of the project. Include specifics such as the total square footage or acreage involved and the estimated cost of major elements of the project. Include square footage of major elements of the proposed project and designate the space as either educational and general (E&G) or non-E&G. In the event the project consists of both E&G and non-E&G space in the same facility, identify the portion that is E&G and the portion that is non-E&G. Attach a map showing the location of the project and include the other requested site location data. You should also describe the relationship of the proposed facility to the campus CPIP, if appropriate.

4. **Mission** – Explain how the project is consistent with the mission of the institution as approved by CHE and how the project is consistent with the objectives of the program or activity.
5. **Justification** – Include a justification for the project. The justification should relate the project to long-term plans, programs, and needs of the institution. Identify the specific academic, research, or public service program that will be served by the project. Include a projection of the number of additional students to be served, services to be provided, or new programs to be initiated. Include a summary of the criteria used, including, but not limited to the details of specialized accreditation requirements, if appropriate, and of recognized standards for this type of facility and program. If such requirements or standards do not apply, explain the criteria used to determine the scope of the project. Relate the proposed project to the appropriate space utilization report.

If the proposed project is part of larger project, or if the proposed project completes or complements another project authorized earlier, explain fully the relationship of the proposed project to the whole.

If appropriate, cite regulatory measures addressed by the proposed project relative to health or safety, energy conservation, or other Federal or State requirements such as building or fire codes.

If the project represents the proposed acquisition of land or buildings, an acceptable appraisal, environmental study, asbestos certification, and Certificate of Acceptance must be included with the submission.

6. **Estimated Project Costs** – Include details of estimated costs and sources of revenue for the project. Indicate the methods used to determine cost estimates. Provide an estimate of additional costs that may occur if the implementation of the programs or construction of facilities is delayed.
7. **Additional Operating Costs** – Estimate the additional cost of building maintenance, utilities, and other operating costs that this project would generate.
8. **Project Schedule** – Identify the project's relation to or dependence upon other current or future capital improvement projects. Estimate the schedule to complete the physical planning, bidding, construction, and equipment phases for occupancy.

9. **Proposed Sources of Funds** – List the proposed sources of funding for the project by category:

- Capital Improvement Bonds
- Tuition Bonds
- Revenue Bonds (housing, stadium)
- Excess Debt Service (tuition, parking, housing, plant improvement)
- Appropriated State Funds
- Federal Funds (describe)
- Athletic Funds
- Other (Identify)\*

*\*If private or other third-party funds are involved, appropriate documentation that such funds are in-hand or guaranteed and will not require an increase in tuition and fees must be provided.*

**Submission of Project Close-outs**

All requests for close-outs must be submitted by the institutions to CHE prior to being sent to the staff of the B&CB. All projects must be closed by submitting an A-1 form as well as an updated building condition survey. In order to close-out and remove a project from the SPIRS system, the final project budget must equal the final expenditure amount.

**Submission of Lease Requests**

All requests for leases must be submitted concurrently by the institutions to both CHE and the Leasing Office of the State Building and Property Services. A description of the lease and a copy of the fully prepared but unsigned lease document must accompany the request.

Include the following documentation along with the lease request:

1. **Justification** – Provide a justification for the lease. Describe the programmatic need the lease is expected to meet. Explain how the lease is consistent with the mission of the institution as approved by the Commission and how it is consistent with the goals and objectives of the program or activity requiring the lease.
2. **Alternatives** – List any alternatives to the lease that were considered. Describe any other means of meeting the programmatic needs that will be met by the lease.
3. **Source of Funds** – Identify the source of funds to be used for the lease. If private or other third-party funds are involved, provide appropriate documentation that such funds are in-hand or guaranteed.
4. **Costs** – Identify the monthly, annual, and term rates as well as the cost per square foot.

**Presentation of MLAPs to the Commission for Conceptual Approval**

All requests to present MLAPs must follow the usual schedule for interim approvals. Upon conceptual approval of the MLAP by the Commission, individual land acquisition projects may be formally established by submitting the appropriate documentation to CHE staff. Once State Building and Property Services acceptance of the environmental study and approval has been received, and CHE staff confirms that no student tuition or fee increase is required, the Commission has delegated staff the authority to forward the request to the B&CB with a positive recommendation.

## ***Guidelines for Submitting MLAP Requests***

The proposed MLAP should include a narrative with the following components:

- Include justification as it is related to current and long-term plans, programs (including academic), and institutional needs. Support this justification with available relevant and appropriate data.
- Indicate the physical impact the acquisition(s) will have on current master plan boundaries.
- State alternatives to purchasing the land that have been considered and any other means of meeting the needs identified which were considered and discarded. Indicate the effect on the services or activities of the institution if the MLAP is not approved.
- Provide a summary of land characteristics such as estimated total acreage, identified improvements including type of structure and estimated gross square footage (if applicable), location of land in relationship to the campus, and a clear map of the subject site that indicates this relationship and that may easily duplicated for distribution.

### **Permanent Improvement Project Schedule**

1. Schedule for institutional submission of CPIP to CHE:

Each institution is required to submit its annual CPIP no later than March 1 (or the submission date determined by the Capital Budgeting Unit of the B&CB).

2. Schedule for Interim Approvals:

The schedule for interim approvals is posted in the “Meetings & Events—Finance & Facilities” section of CHE website. It is important to continually monitor the website for revisions to the schedule. Generally, the appropriate standing committee meets every first Thursday of the month to consider interim capital projects for recommendation to the Commission. The by-laws of the Commission allow consideration of interim capital projects on the same day to reduce the delay in the approval process. However, the Commission reserves the right to alter this at any time. The posted schedule includes submission deadlines for permanent improvement project requests for each meeting. These deadlines will be strictly enforced to allow sufficient time to prepare staff recommendations.

3. Schedule for Approval of MLAP:

MLAPs may be considered along the same schedule as interim capital project approvals. However, if the appropriate standing committee considers the MLAP the same day as the Commission, the plan will not be considered by the Commission until its next meeting.

**\*General Note:** Any project requiring only staff action will be considered within 15 business days of receipt, assuming all required information has been provided. Projects that require interim approval by the appropriate standing committee and the Commission will be considered as indicated on the online schedule.

A proposal that is incomplete according to the requirements included herein will not be acted upon until the project request is complete.

# Other Related Policies

## **South Carolina Research Park System**

The SC Research Authority has set up the Research Park System in order to meet its legislative mandate to enhance the research capabilities of the State's public and private universities, to establish a continuing forum to foster greater dialogue throughout the research community within the State, and to promote the development of high technology industries and research facilities in South Carolina; to enhance the potential for private support for South Carolina colleges and universities, to promote cooperative research efforts between the private sector and South Carolina universities and colleges, and to strengthen the partnership among state government, higher education, and business and industry; to foster the perception of South Carolina as an international leader in idea generation and the development, testing and implementation of new advances in science and technology; and its legislative direction that the authority shall operate research parks in cooperation with institutions of higher learning in South Carolina. CHE has responsibility for the approval of facilities of the institutions of higher learning in the State, prior to review by JBRC and B&CB.

The Commission's policy with respect to facilities in the research parks of the State shall be as follows:

1. In the event that the facility is intended solely for use by the institution of higher learning for instructional/research purposes, the facility will qualify for capital funds and/or lease funds and operation and maintenance funds generated through the MRR in the amount of 100 percent of the MRR-generated sum.
2. In the event the facility is intended partially for use by the institution of higher learning and partially for use by outside parties, the facility should qualify for capital and/or leasing funding in a proportion to the use by the institution of higher learning for instructional and research purposes and shall qualify for operation and maintenance funds generated through the MRR in proportion to the use by the institution of higher learning for instructional/research purposes.
3. In the event that the facility is intended for use totally by outside parties, the facility shall not qualify in any way for capital and/or lease funding and shall not qualify for operation and maintenance funding under the MRR.
4. The institutions of higher learning shall annually furnish to CHE appropriate data to support the request for capital and/or lease funding and for funds for operation and maintenance.

## **Acquisition, Operation and Maintenance, and Lease of Out-of-State and Off-Shore Facilities**

Acquisition of facilities in out-of-state and offshore locations must follow the normal approval processes of CHE and other State agencies. Acquisition, operation and maintenance, and lease funds will not be recommended through the physical plant step of the MRR unless the facility has been leased or operated by the institution for at least three years immediately prior to inclusion in the MRR.

### **Permanent Improvement and Lease Requests of Technical Colleges**

Notwithstanding any review that may be required by the State Board for Technical and Comprehensive Education (SBTCE), CHE review and approval is mandatory for the following unless otherwise exempted elsewhere in this document:

1. Any leases of land, buildings, or other structures including subsequent amendments and/or renewals;
2. Any acquisition of land, buildings, or other structures;
3. The construction of additional facilities or additional square footage to an existing facility including any subsequent project changes;
4. Any renovation project designed to accomplish space reconfiguration and/or space use change; and
5. Any separate architectural and engineering or design work that could eventually require Commission review as a permanent improvement.

The SBTCE and the technical colleges are eligible to receive state funds for capital facilities. Section 59-53-57 of the South Carolina Code of Laws requires the SBTCE to obtain and transmit to the State Treasurer a certificate from the appropriate official at the technical colleges stating that a minimum of 20 percent of each project cost has been provided by the local support area. Amounts above the required 20 percent are subject to CHE's approval process. The provisions of this paragraph do not apply to Denmark Technical College and Technical College of the Lowcountry. Section 59-101-370 exempts deferred maintenance and renovation projects from the 20 percent requirement at these institutions.

CHE staff will not review nor submit to the appropriate standing committee or the Commission for review any permanent improvement project or lease request that has not been reviewed and approved by the SBTCE.

### **Institutional Maintenance Needs for Educational & General Facilities & Infrastructure**

Maintenance needs include renewal, life cycle replacement, and deferred maintenance (repairs that are necessary but have been postponed due primarily to inadequate funding.)

By using this definition, building and infrastructure data collected from the institutions is used to calculate the funding that should be provided to adequately maintain the physical plant at each institution. The differences that result are not necessarily a reflection of deferment but rather the gap between what is an acceptable condition and the actual condition of the building's systems.

Building maintenance needs calculations were formulated and approved by the Facilities Advisory Committee in February 2007. In May 2007, the Commission approved the method to calculate maintenance needs in buildings across the state's campuses. At that time, a one-year grace period was approved to allow CHE staff to work with institutional facilities officers to determine the best method by which to calculate infrastructure needs. The Facilities Advisory Committee approved the proposed method at its meeting in February 2008 followed by approval of the Commission in April 2008.



CHE staff, in consultation with institution facilities officers, developed parameters for addressing Educational and General (E&G) maintenance needs. Building maintenance needs are updated each fall with the most recent building condition survey (updated every three years) and the most recent building data summary (updated every fall with data submitted to CHEMIS from the institutions). Infrastructure maintenance needs are updated every three years. Outlined below are the definitions, calculation methods, and elements included in the reports.

### **Building Definitions**

- “Maintenance Needs” is defined as the cost of repairing or replacing equipment or systems that are not performing at an acceptable level even if that condition has occurred prior to the normally-accepted projected service life.
- “Acceptable level” is defined as a building condition code of 90-100 on the CHE Management Information System (CHEMIS) Building Data Summary.

### **E&G Building Annual Maintenance Expenditure Calculation Method**

Use building replacement cost (RCB) and building condition code (BCC)<sup>1</sup>

- Amount to Bring to Like-New Condition =  $(RCB \times \%E\&G) \times ((100 - BCC) \times .01)$
- Acceptable Maintenance Level =  $(RCB \times \%E\&G) \times 10\%$
- Amount Needed to Address E&G Maintenance Needs =  
If  $BCC < 90$ , Amount to Bring to Like-New – Acceptable Maintenance Level
- Funding per Year to Eliminate E&G Maintenance Needs Over 20 Years =  
Amount Needed to Address E&G Maintenance Needs / 20
- Annual Investment Required to Maintain E&G Space (APPA Average) =  
 $(RCB \times \%E\&G) \times 3\%$
- Total Need per Year to Address E&G Maintenance Needs =  
Funding per Year to Eliminate E&G Maintenance Needs Over 20 Years + Annual Investment Required to Maintain E&G Space (APPA Average)

<sup>1</sup>Institutions are responsible for updating these data elements annually.

### **Infrastructure Definitions**

- *Infrastructure Item*: As each campus varies in mission and size, items to include would be at the discretion of the institutional facilities officer. The proposed reporting template includes several items that could apply to all institutions such as paved roads, sidewalks, irrigation, sewer lines, storm water lines, and signage.
- *Quantity*: The portion of educational and general (E&G) area for which the institution is responsible as determined by the percent of E&G space or the actual count as determined by the unit of measurement.
- *Unit Cost*: The unit purchase or replacement cost as determined by Means, A&E estimates, bids, local knowledge, etc.
- *Infrastructure Condition Code*: A value between 1 and 100 assigned to each item with 1 being completely unusable and 100 being like new.

### **Infrastructure Calculation Method**

Use quantity (Q), unit cost (UC), and infrastructure condition code (ICC)

- Replacement Value (RV) =  $Q \times UC$
- Amount To Bring to Like-New Condition =  $RV \times ((100-ICC) \times .01)$
- Acceptable Maintenance Level =  $RV \times 10\%$
- Amount Needed to Address E&G Maintenance Needs =  
If  $BCC < 90$ , Amount to Bring to Like-New – Acceptable Maintenance Level

- Funding per Year to Eliminate E&G Maintenance Needs Over 20 Years =  
Amount Needed to Address E&G Maintenance Needs/20
- Annual Investment Required to Maintain E&G Space (APPA Average) = RV x 3%
- Total Need per Year to Address E&G Maintenance Needs =  
Funding per Year to Eliminate E&G Maintenance Needs Over 20 Years + Annual  
Investment Required to Maintain E&G Space (APPA Average)

# Appendices

## ► Appendix A – Master Land Acquisition Plan (MLAP) Policy

Institutions may present master plans that outline proposed land acquisitions to the Finance & Facilities Committee and the Commission for conceptual approval. The granting of conceptual approval shall be good for an initial five-year period and may be renewed by action of the Commission. If the plan is endorsed by CHE, the Commission has delegated staff the authority to approve future land acquisitions, provided they were included in the master plan presentation and receive Property Management acceptance for the environmental study and appraisal, and provided that no student fee increase is required. CHE staff will report any acquisition activity to the Commission monthly.

### MLAP Schedules

All requests to present MLAPs may be considered along the same schedule as interim capital project approvals. However, if the appropriate standing committee considers the MLAP the same day as the Commission, the plan will not be considered by the Commission until its next meeting. Upon conceptual approval of the plan by the Commission, components of the plan may be established as projects any time during the following five-year period according to the guidelines.

### Guidelines for Submitting MLAP Requests

#### A. Plan Requirements:

The proposed MLAP should consist of a narrative report describing the MLAP including the following components:

- Include justification as it relates to current and long-term plans, programs, and institutional needs. Support this justification with available relevant and appropriate data.
- Indicate the physical impact the acquisition(s) will have on current master plan boundaries.
- State alternatives to purchasing the land that have been considered and any other means of meeting the needs identified which were considered and discarded. Indicate the effect on the services or activities of the institution if the plan is not approved.
- Provide a summary of land characteristics such as estimated total acreage, identified improvements including type of structure and estimated gross square footage (if applicable), location of land in relationship to the campus, and a clear map of the subject site that indicates this relationship and that can be easily duplicated for distribution to Commission members.

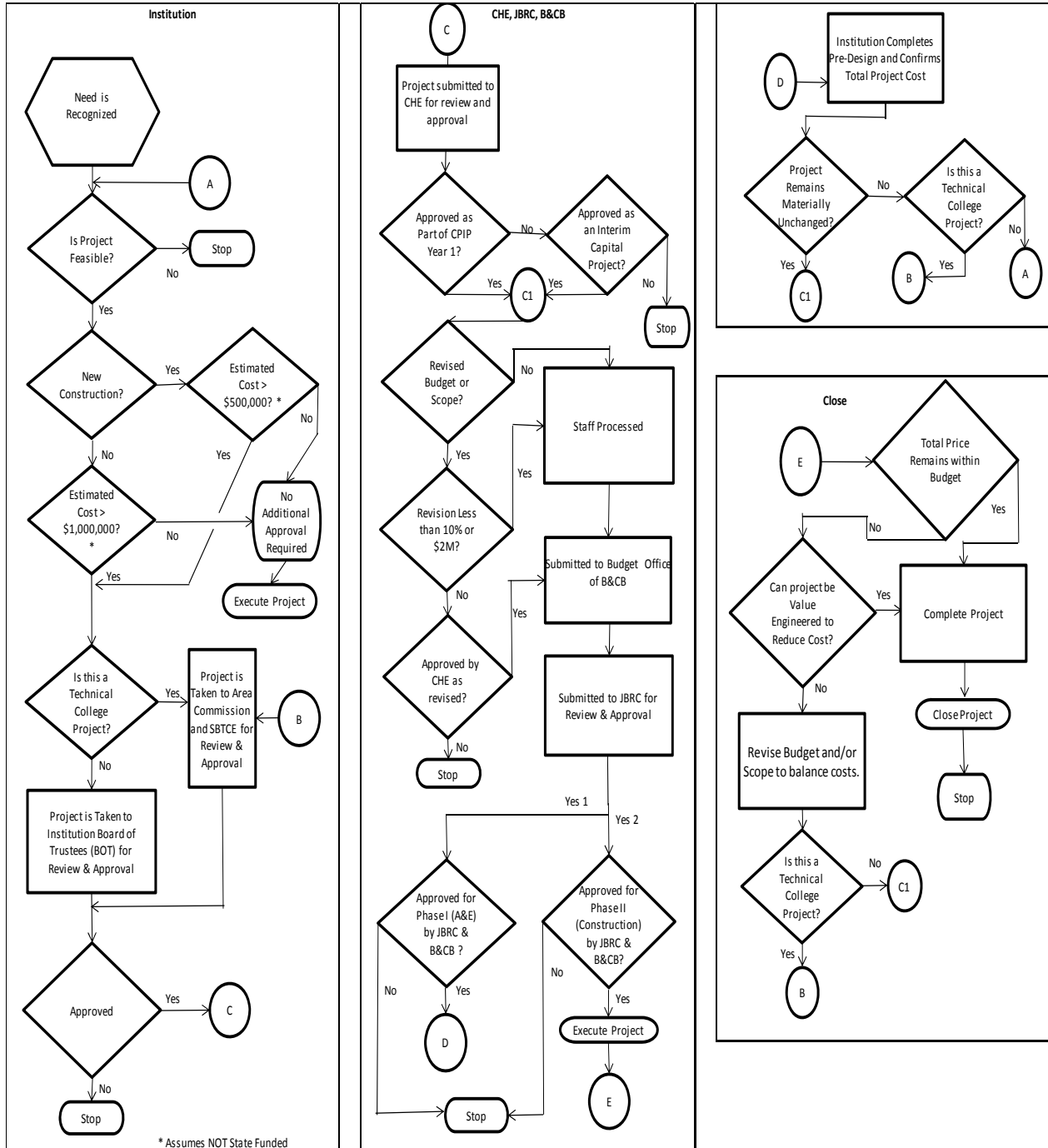
#### B. Submission of Project Requests:

In order to establish each component of an institution's approved MLAP as a project, each request must be transmitted with a letter signed by the president (or designee) of the institution or, in the case of the University of South Carolina and the SBTCE, by the chief executive officer (or designee) of the system. Each request must be submitted in triplicate to CHE staff prior to being sent to the property management staff of the B&CB. CHE staff will review the request to determine that:

- (1) no substantive changes or student tuition or fee increases are involved; and
- (2) property management staff has confirmed that the environmental study and appraisal are acceptable and support the purchase price.

Once these criteria have been confirmed, the Commission has delegated staff authority forward a positive recommendation to the appropriate staff of the B&CB.

► **Appendix B – Approval Process for Permanent Improvement Projects**



*South Carolina Code of Laws Section 2-47-40 requires that “all institutions of higher learning shall submit permanent improvement project proposal and justification statements to the Board through the CHE which shall forward all such statements...together with its comments and recommendations.*

## ► Appendix C – Application of Trustee-Held Funds in Connection with Approved Campus-wide Permanent Improvement Projects

The following information is submitted by the State Treasurer's Office as Trustee for bond issues of the State and its colleges and universities.

There are two basic types of bonds/notes that may be issued for borrowings by public colleges and universities. These are State Institution Bonds and Revenue Bonds. State Institution Bonds are general obligations of the State and are additionally secured by a pledge of certain tuition fees collected by the borrowing institution. Chapter 107 (entitled State Institution Bonds) of Title 59, SC Code of Laws, is the primary governing statute concerning the issuance of State Institution Bonds. Revenue Bonds are the obligations of the Issuer/Institution and are secured by a pledge of the revenue generated by a facility or a group of facilities. The revenue-backed borrowings are generally associated with the auxiliary enterprise functions of the institutions. An example of this type of borrowing would be a Student Faculty Housing (SFH) Revenue Bond issued to construct a new dormitory with revenues from the new dormitory as well as revenues from the existing dormitories being pledged to the payment of all bond issues currently outstanding or subsequently issued.

In the State Treasurer's role as Trustee, it shares with the Issuer/Borrower the responsibility of maintaining compliance with the accounting and security requirements of the various governing statutes and bond resolutions. One aspect of this responsibility concerns the funding of approved permanent improvement projects. Essentially, all governing statutes and/or bond resolutions require that the facilities be maintained in good repair. This is generally required so that the facilities remain in a productive, income-earning status and produce the necessary revenues to enable the Borrower (the Issuer, i.e. the college or university) to repay the Lender (Investor/Bondholder).

Governing statutes and bond resolutions connect the specific facilities groups and their related revenues. To this end, the Treasurer's Office looks to fund auxiliary-related facilities projects with auxiliary-related revenues from those facilities. To accomplish this at each institution, the Other-09 fund source (maintenance reserve fund, capital reserve fund, improvement fund, etc.) for newer governing resolutions or the Excess Debt Service-04 fund source for some of the older governing resolutions are used. Similarly, any portion of tuition fees that are recognized as the portion collected for debt service on State Institution Bonds and deposited with the State Treasurer's Office that are not needed for debt service on State Institution Bonds may be utilized to fund Education and General projects in lieu of issuing State Institution Bonds. To accomplish this at each institution, the Other-09 fund source identified as Institution Capital Project Fund is used.

The forgoing assists the Treasurer's Office and the Issuer in ensuring that appropriate fund sources (revenues) pay for their appropriate facilities related projects. Similarly, it is expected that the fund sources utilized to pay for any broad campus-wide project(s) would be allocated on some fair and reasonable basis to ensure that revenues from the various types of facilities benefiting from the improvement would share proportionately in the total project costs. For example, if a new Replace Steam Line project would benefit two classroom buildings and one dormitory (all of equal size and utilization), then two-thirds of the estimated project cost should be absorbed by the Institution Capital Project Fund and one-third should be absorbed by the SFH Maintenance Reserve Fund. This allocation should be established at the initial stage of project planning and design and ultimately should be refined throughout the construction/completion phase as more accurate bases are developed.

## ► **Appendix D – Table of Contents & Report Format for Phase I Building Condition Assessments for State Building Acquisitions**

**A.** Cover Sheet (to include agency name, building name, report date, and contact person)

**B.** Table of Contents

**C.** Introduction

1. Purpose
2. Special Terms and Conditions
3. Limitations and Exceptions of Assessment

**D.** Site Description

1. Location and Legal Description (including, but not limited to, zoning, historic designation, and utilities)
2. Site and Vicinity Characteristics (including, but not limited to, any standing or flowing water, known soil conditions, earthquake zone)
3. Building Description (including, but not limited to, area, height, year constructed, year any conditions were built)
4. Current Uses and Occupancy of the Building/Property
5. Assessed Value of the Building

**E.** Suspected Presence of Hazardous Material

1. Type of Hazardous Material
2. Justification of suspected presence

**F.** Investigations and Evaluations of Systems for Functionally and Compliance with Applicable Codes:

1. Plumbing
2. Fire Protection
3. HVAC
4. Electrical/Communications
5. Structural/Seismic
6. Building Accessibility

**G.** Evaluations in Accordance with the International Existing Building Code (including Building Code Summary Sheet)

**H.** Any Other Conditions of Concern

**I.** Findings and Conclusions (including recommendations for Phase II Assessment, if any, and associated costs)

**J.** Signatures of those performing the Building Condition Assessment

**K.** Qualifications of those performing the Building Conditions Assessment

**L.** Optional Appendices (for example):

1. Other Plans, Figures, and Photographs
2. Contract between User and those performing the Building Condition Assessment

**Each item in the above Table of Contents should be addressed on each report. If the item is not applicable, or no information is available for the report, include the section title and then write “Not Applicable” or “No Information Available” below the title.**

## ► Appendix E – Legal References Pertaining to Postsecondary Education Facilities

### Role of the Commission – Title 59, Chapter 103

#### **Section 59-103-20: Studies of institutions of higher learning**

*The commission shall meet regularly and shall have the authority and responsibility for a coordinated, efficient, and responsive higher education system in this State consistent with the missions of each type of institution as stipulated in Section 59-103-15. In meeting this responsibility and in performing its duties and functions, the commission shall coordinate and collaborate at a minimum with the Council of Presidents of State Institutions, the council of board chairs of the various public institutions of higher learning, and the business community. The commission also is charged with examining the state's institutions of higher learning relative to both short- and long-range programs and missions which include:*

*(a) the role of state-supported higher education in serving the needs of the State and the roles and participation of the individual institutions in the statewide program;*

*(b) enrollment trends, student costs, business management practices, accounting methods, operating results and needs, and capital fund requirements;*

*(c) the administrative setup and curriculum offerings of the several institutions and of the various departments, schools, institutes, and services within each institution and the respective relationships to the services and offerings of other institutions;*

*(d) areas of state-level coordination and cooperation with the objective of reducing duplication, increasing effectiveness, and achieving economies and eliminating sources of friction and misunderstanding;*

*(e) efforts to promote a clearer understanding and greater unity and good will among all institutions of higher learning, both public and private, in the interest of serving the educational needs of the people of South Carolina on a statewide level.*

#### **Section 59-103-25: Publication of legislation; standing committees**

*The commission shall compile and publish legislation applicable to it so that the relationships among the commission, the governing bodies of public institutions of higher education, the General Assembly and the executive branches of government may be more clearly established and understood. The commission shall create from among its membership such standing committees as it may deem necessary. The creation of the committees and their duties shall be prescribed by a two-thirds vote of the membership of the commission. Special committees may be created and their duties prescribed by a majority vote of the membership of the commission.*

#### **Section 59-103-35: Submission of budget; new and existing programs**

*All public institutions of higher learning shall submit annual budget requests to the in the manner set forth in this section. The State Board for Technical and Comprehensive Education shall submit an annual budget request to the commission representing the total requests of all area-wide technical and comprehensive educational institutions. The budget submitted by each institution and the State Board for Technical and Comprehensive Education must include all state funds, federal grants, tuition, and fees other than funds derived wholly from athletic or other student contests, from the activities of student organizations, from approved private practice plans, and from the operation of canteens and bookstores which may be retained by the institutions and be used as determined by the respective governing boards, subject to annual audit by the State. Fees established by the respective governing boards for programs, activities, and projects not covered by appropriations or other revenues may be retained and used by each institution as previously determined by the respective governing boards, subject to annual audit by the State. The budget request for the public education system shall be submitted by the commission to the Governor and appropriate*



*standing committees of the General Assembly in conjunction with the preparation of the annual general appropriations act for the applicable year.*

*Supplemental appropriations requests from any public institution of higher education must be submitted first to the commission. If the commission does not concur in the requests, the affected institution may request a hearing on the requests before the appropriate committee of the General Assembly. The commission may appear at the hearing and present its own recommendations and findings to the same committee. The provisions of this paragraph do not apply to any capital improvement projects funded in whole or in part prior to July 30, 1996.*

*No new program may be undertaken by any public institution of higher education without the approval of the commission. The provisions of this chapter apply to all college parallel, transferable, and associate degree programs of technical and comprehensive education institutions. All other programs and offerings of technical and comprehensive education institutions are excluded from this.*

**Section 59-103-60: Recommendations to Governor's Office and General Assembly**

*The commission shall make such recommendations to the Governor's Office and the General Assembly as to policies, programs, curricula, facilities, administration, and financing of all state-supported institutions of higher learning as may be considered desirable. The House Ways and Means Committee, the Senate Finance Committee, and the State Budget and Control Board may refer to the commission for investigation, study, and report any requests of institutions of higher learning for new or additional appropriations for operating and for other purposes and for the establishment of new or expanded programs.*

**Section 59-103-70: Reports**

*The Commission shall make reports to the Governor and the General Assembly at least annually on the status and progress of higher education in the State, with such recommendations as may be appropriate.*

**Section 59-103-110: Approval for new construction; exemptions**

*No public institution of higher learning shall be authorized to construct or purchase any new permanent facility at any location other than on a currently approved campus or on property immediately contiguous thereto unless such new location or purchase of improved or unimproved real property has been approved by the commission.*

**State Institution Bonds – Title 59, Chapter 107**

**Section 59-107-20: Tuition fees required at State institutions; "State Board" defined**

*Tuition fees (as such term is defined in Section 59-107-30) shall be required to be paid in such amount or amounts and under such conditions as the respective Board of Trustees, Area Commissions or, for any Technical Education College or Center not governed or supervised by an Area Commission, the State Board for Technical and Comprehensive Education, of such state institutions shall prescribe, with the approval of the State Budget and Control Board, hereafter in this chapter referred to as the "State Board". The provisions of this section shall not be construed as requiring uniformity of tuition fees at such state institutions nor shall they preclude a higher scale for non-residents of South Carolina.*

**Section 59-107-30: Remittance and application of tuition fees**

*All tuition fees received by any State institution shall be remitted from time to time to the State Treasurer under such regulations as he shall prescribe. The State Treasurer shall apply the same as directed by this chapter. For all purposes of this chapter the term "tuition fees" shall include those fees charged by any State institution for tuition, matriculation and registration. The term "tuition fees" shall not include sums charged for enrolling in courses or classes offered at any summer school term or in any special seminar, nor shall the term relate to or include fees levied or charged for purposes other than for the purposes of this chapter.*

**Section 59-107-40: Application for funds or permanent improvements and other expenses; content of application**

*The respective Boards of Trustees, Area Commissions, through the State Board for Technical and Comprehensive Education, or the State Board for Technical and Comprehensive Education for any Technical Education College or Center not governed and supervised by an Area Commission of such state institutions may make application to the State Board for funds to be used for any one or more of the following purposes: (a) to construct, reconstruct, maintain, improve, furnish and refurnish the buildings and other permanent improvements for such state institutions, (b) to defray the costs of acquiring or improving land needed as sites for such improvements or for the campus of any such state institution, (c) to reimburse such institution for expenses incurred in anticipation of the issuance of such bonds, or (d) to refund state institution bonds heretofore issued for such institutions and which shall on such occasion be outstanding. Such application shall contain:*

- (1) A description of the improvement sought, or the amount of outstanding bonds it wishes to have refunded;*
- (2) An estimate of cost, or an estimate of the money required to effect the refunding;*
- (3) A statement establishing the aggregate sum received from tuition fees for the fiscal year immediately preceding the fiscal year in which such application is dated;*
- (4) The schedule of tuition fees in effect;*
- (5) A suggested maturity schedule for bonds issued pursuant to this chapter; and*
- (6) A statement showing the unmatured state institution bonds theretofore issued for such state institution.*

*The application shall contain an agreement upon the part of the Board of Trustees, Area Commission, or State Board for Technical and Comprehensive Education that such schedule of tuition fees shall be revised from time to time and whenever necessary to provide the annual principal and interest requirements on the proposed bonds and on all outstanding state institution bonds issued for such state institution.*

**Section 59-107-50: Authority of State Board as to applications**

*The State Board may approve, in whole or in part, or modify in any way that it sees fit any application made by any Board of Trustees, Area Commission, or by the State Board for Technical and Comprehensive Education of any of the state institutions and may direct the application of the principal proceeds of any bonds, issued pursuant to this chapter for such purpose if it shall have found:*

- (1) That a definite and immediate need therefore exists, or, in the event that the issuance of refunding bonds is sought, that it is to the advantage of the institution to effect the refunding of its outstanding bonds;*
- (2) That a satisfactory and proper schedule of tuition fees is in effect at such State institution;*

(3) That the annual debt service on all state institution bonds issued for such state institution, including the bonds then proposed to be issued, shall not exceed ninety percent of the sums received by such state institution of higher learning from tuition fees for the preceding fiscal year;

(4) That the Board of Trustees, Area Commission, or State Board for Technical or Comprehensive Education of the state institution has agreed that such schedule of tuition fees may be revised from time to time and whenever necessary to provide not less than the sum needed to pay the annual principal and interest requirements on the proposed bonds and on all outstanding state institution bonds issued for such state institution.

**Section 59-107-180: Tuition fees placed in special fund to pay bonds; application of surplus**

*Immediately following the issuance of state institution bonds, the State Treasurer shall segregate into a special fund all tuition fees of the state institution for which state institution bonds have been issued and shall apply such special fund to the payment of the principal, interest, and redemption premium, if any, on all bonds issued pursuant to this chapter for such institution; provided, however, that in the event the monies on deposit in such special fund at any time shall exceed all payments of principal and interest due in the then current fiscal year, plus the maximum annual debt service requirements in any succeeding fiscal year of all state institution bonds outstanding for such institution that were issued prior to March 1, 1991, plus any additional amount described in the last sentence of this section, the State Treasurer shall thereupon establish within the special fund created by this section separate funds for each issuance of state institution bonds for such state institution to be designated "special debt service and reserve funds", and (1) shall deposit in the special debt service and reserve fund for each issuance of state institution bonds that was issued prior to March 1, 1991, an amount equal to all payments of principal and interest due in the then current fiscal year on such issuance, plus the maximum annual debt service requirements in any succeeding fiscal year of such issuance, and (2) shall deposit in the special debt service and reserve fund for each issuance of such state institution bonds that was issued on or after March 1, 1991, an amount equal to all payments of principal and interest due on such issuance of state institution bonds in the then current fiscal year. Upon the establishment and funding of such special debt service and reserve funds for the state institution bonds for any state institution in accordance with the foregoing sentence, the State Treasurer shall apply tuition fees later received to maintain the levels of the special debt service and reserve funds at the level required by the foregoing sentence as such level may be adjusted as current annual and maximum annual requirements vary, and may apply any remaining tuition fees and any monies still remaining in the general special fund after the complete funding of the special debt service and reserve funds: to the defeasance of state institution bonds for such institution as provided in Section 59-107-200; or to any purpose set forth in subitems (a), (b), and (c) of the first paragraph of Section 59-107-40. In the event the surplus is to be applied to the defeasance of bonds, the computation of annual debt service requirements for purposes of this section shall be made as though the bonds to be defeased had already been defeased. Notwithstanding the foregoing, it is expressly provided that the State Treasurer may increase the required level for a special debt service and reserve fund for an issuance of state institution bonds issued on or after March 1, 1991, to an amount equal to all payments of principal and interest due on such issuance of state institution bonds in the then current fiscal year plus an amount equal to all payments of principal and interest due on such issuance of state institution bonds to become due between the end of the then current fiscal year and the date at which the State Treasurer anticipates receiving sufficient deposits of tuition fees from such state institution in the ensuing fiscal year to provide an adequate cash flow to meet debt service requirements for such ensuing fiscal year.*

**Section 59-107-190: Declaration of sufficiency of tuition fees to pay bonds**

*The General Assembly finds that the tuition fees charged at the several State institutions, if maintained and applied in the manner prescribed by this chapter, will be sufficient to provide for the payment of the principal and interest on State institution bonds issued pursuant to this chapter, without resorting to a property tax.*

**Facilities and Improvements for Technical Colleges—Title 59, Chapter 53**

**Section 59-53-57: State funds; procedures for appropriations**

*State funds for the South Carolina Technical Education System must be appropriated to the board by the General Assembly and funds budgeted for the technical institutions must be allocated in a uniform and equitable manner. Monies appropriated for special schools must be retained at the state level and expended upon recommendation of the board. The board and all institutions under its direction shall use prescribed statewide accounting and budgeting systems which shall account for all revenues and expenditures regardless of sources of funds and purposes for which expended. The systems shall include provisions to identify specific revenues with the specific expenditures to which they relate when the fund source so requires. The board and institutions are eligible to receive state funds for capital facilities. Prior to the withdrawal of authorized funds from the State Treasurer, the State Board for Technical and Comprehensive Education shall obtain and transmit to the State Treasurer a certificate from the appropriate official at the technical institution stating that a minimum of twenty percent of each project cost has been provided by the local support area. The provisions of this paragraph do not apply to Denmark and Beaufort [now called Technical College of the Lowcountry) Technical Colleges.*

**Section 59-53-152: Board may construct or acquire plant improvements**

*The board [refers the SBTCE] may construct or acquire plant improvements at any college, and thereafter utilize, operate and maintain them, if such undertakings have received the prior approval of the state board [refers to the Budget and Control Board].*

**Section 59-53-153: Bond issues**

*The board may issue bonds of any college payable from the special student fee imposed at such college in such amounts as may from time to time be determined by the board to be necessary to meet the cost of plant improvements at such college but only under the following conditions:*

*(1) The approval of the state board, expressed by resolution duly adopted, shall be obtained. Such approval is hereby declared a condition precedent to the issuance of bonds pursuant to this article, and no bonds shall be issued without such approval.*

*(2) Notwithstanding any other provisions of this article, there must not be outstanding at any time bonds issued pursuant to this section for any college in excess of four million dollars.*

*(3) No bonds may be issued unless there is on deposit in the bond reserve fund for such college a sum equal to the lesser of (a) ten percent of the principal of all bonds then outstanding, or (b) the maximum reserve prescribed by the applicable regulations of the United States Treasury Department relating to arbitrage bonds.*

**Section 59-53-154: Bond issues; full faith and credit of State shall not be pledged**

*The faith and credit of the State shall not be pledged for the payment of the principal and interest of any bonds issued pursuant to this article and there shall be on the face of each bond a statement plainly worded to that effect. Neither the members of the board nor any other person executing the bonds shall be personally liable thereon.*

**Section 59-53-155: Bond issues; resolutions by board; limitations**

*In order to utilize the authorizations of this article, the board on behalf of any college may adopt resolutions providing for the issuance of bonds for the college within the limitations herein mentioned, and by such resolution shall prescribe the tenor, terms and conditions of the bonds and the obligations of the college incurred in connection with their issuance. The bonds for any college may be issued either as a single issue or from time to time as several separate issues. In the event that the bonds for any college shall be issued as two or more issues, then notwithstanding, all bonds for such college shall be on a parity in all respects inter sese and shall be equally and ratably entitled to payment from the special student fee imposed at the college; provided, that in instances where an area commission is in charge of the operations of any college, the approval of the area commission to the action of the board authorized by this section shall be first obtained.*

**Educational Facilities Authority Act for Private Nonprofit Institutions of Higher Learning – Title 59, Chapter 109**

**Section 59-109-20: Legislative declaration of policy and purpose**

*It is hereby declared that for the benefit of the people of the State, the increase of their commerce, welfare and prosperity and the improvement of their health and living conditions it is essential that this and future generations of youth be given the fullest opportunity to learn and to develop their intellectual and mental capacities; that it is essential that institutions for higher education within the State be provided with appropriate additional means to assist such youth in achieving the required levels of learning and development of their intellectual and mental capacities; and that it is the purpose of this chapter to provide a measure of assistance and an alternative method to enable institutions for higher education in the State to provide the facilities and structures which are sorely needed to accomplish the purposes of this chapter, all to the public benefit and good, to the extent and manner provided herein.*

*\*Case Notes: The State plays a passive and very limited role in the implementation of this chapter, serving principally as a mere conduit through which institutions may borrow funds for the purposes of the act on a tax-free basis...*

*The true purpose of this chapter is to provide a measure of assistance and an alternative method to enable institutions for higher learning in the State to provide the facilities and structures which are sorely needed to accomplish this aim to the public benefit and good of all the people of this State.*

**Joint Bond Review Committee - Title 2, Chapter 47**

**Section 2-47-30: Powers and Duties**

*The committee is specifically charged with, but not limited to, the following responsibilities:*

*(1) To review, prior to approval by the Budget and Control Board, the establishment of any permanent improvement project and the source of funds for any such project not previously authorized specifically by the General Assembly.*

*(2) To study the amount and nature of existing general obligation and institutional bond obligations and the capability of the State to fulfill such obligations based on current and projected revenues.*

*(3) To recommend priorities of future bond issuance based on the social and economic needs of the State.*

*(4) To recommend prudent limitations of bond obligations related to present and future revenue estimates.*

(5) *To consult with independent bond counsel and other non-legislative authorities on such matters and with fiscal officials of other states to gain in-depth knowledge of capital management and assist in the formulation of short- and long-term recommendations for the General Assembly.*

(6) *To carry out all of the above assigned responsibilities in consultation and cooperation with the executive branch of government and the Budget and Control Board.*

(7) *To report its findings and recommendations to the General Assembly annually or more frequently if deemed advisable by the committee.*

**Section 2-47-35: Establishment of funding priorities**

*No project authorized in whole or in part for capital improvement bond funding under the provisions of Act 1377 of 1968, as amended, may be implemented until funds can be made available and until the Joint Bond Review Committee, in consultation with the Budget and Control Board, establishes priorities for the funding of the projects. The Joint Bond Review Committee shall report its priorities to the members of the General Assembly within thirty days of the establishment of the funding priorities.*

**Section 2-47-40: Information to be furnished by agencies and institutions**

*To assist the State Budget and Control Board (the Board) and the Joint Bond Review Committee (the Committee) in carrying out their respective responsibilities, any agency or institution requesting or receiving funds from any source for use in the financing of any permanent improvement project, as a minimum, shall provide to the Board, in such form and at such times as the Board, after review by the Committee, may prescribe: (a) a complete description of the proposed project; (b) a statement of justification for the proposed project; (c) a statement of the purposes and intended uses of the proposed project; (d) the estimated total cost of the proposed project; (e) an estimate of the additional future annual operating costs associated with the proposed project; (f) a statement of the expected impact of the proposed project on the five-year operating plan of the agency or institution proposing the project; (g) a proposed plan of financing the project, specifically identifying funds proposed from sources other than capital improvement bond authorizations; and (h) the specification of the priority of each project among those proposed.*

*All institutions of higher learning shall submit permanent improvement project proposal and justification statements to the Board through the Commission on Higher Education which shall forward all such statements and all supporting documentation received to the Board together with its comments and recommendations. The recommendations of the Commission on Higher Education, among other things, shall include all of the permanent improvement projects requested by the several institutions listed in the order of priority deemed appropriate by the Commission on Higher Education without regard to the sources of funds proposed for the financing of the projects requested.*

*The Board shall forward a copy of each project proposal and justification statement and supporting documentation received together with the Board's recommendations on such projects to the Committee for its review and action. The recommendations of the Commission on Higher Education shall be included in the materials forwarded to the Committee by the Board.*

*No provision in this section or elsewhere in this chapter, shall be construed to limit in any manner the prerogatives of the Committee and the General Assembly with regard to recommending or authorizing permanent improvement projects and the funding such projects may require.*

**Section 2-47-50: Establishment of permanent projects by Board; review of proposed revisions; “permanent improvement project” defined**

*The board shall establish formally each permanent improvement project before actions of any sort which implement the project in any way may be undertaken and no expenditure of any funds for any services or for any other project purpose contracted for, delivered, or otherwise provided prior to the date of the formal action of the board to establish the project shall be approved. State agencies and institutions may advertise and interview for project architectural and engineering services for a pending project so long as the architectural and engineering contract is not awarded until after a state project number is assigned. After the committee has reviewed the form to be used to request the establishment of permanent improvement projects and has reviewed the time schedule for considering such requests as proposed by the board, requests to establish permanent improvement projects shall be made in such form and at such times as the board may require.*

*Any proposal to finance all or any part of any project using any funds not previously authorized specifically for the project by the General Assembly or using any funds not previously approved for the project by the board and reviewed by the committee shall be referred to the committee for review prior to approval by the board.*

*Any proposed revision of the scope or of the budget of an established permanent improvement project deemed by the board to be substantial shall be referred to the committee for its review prior to any final action by the board. In making their determinations regarding changes in project scope, the board and the committee shall utilize the permanent improvement project proposal and justification statements, together with any supporting documentation, considered at the time the project was authorized or established originally. Any proposal to increase the budget of a previously approved project using any funds not previously approved for the project by the board and reviewed by the committee shall in all cases be deemed to be a substantial revision of a project budget which shall be referred to the committee for review. The committee shall be advised promptly of all actions taken by the board which approve revisions in the scope of or the budget of any previously established permanent improvement project not deemed substantial by the board.*

*For purposes of this chapter, with regard to all institutions of higher learning, permanent improvement project is defined as:*

- (1) acquisition of land, regardless of cost;*
- (2) acquisition, as opposed to the construction, of buildings or other structures, regardless of cost;*
- (3) work on existing facilities for any given project including their renovation, repair, maintenance, alteration, or demolition in those instances in which the total cost of all work involved is one million dollars or more;*
- (4) architectural and engineering and other types of planning and design work, regardless of cost, which is intended to result in a permanent improvement project. Master plans and feasibility studies are not permanent improvement projects and are not to be included;*
- (5) capital lease purchase of a facility acquisition or construction in which the total cost is one million dollars or more;*
- (6) equipment that either becomes a permanent fixture of a facility or does not become permanent but is included in the construction contract shall be included as a part of a project in which the total cost is one million dollars or more; and*
- (7) new construction of a facility that exceeds a total cost of five hundred thousand dollars.*

*Any permanent improvement project that meets the above definition must become a project, regardless of the source of funds. However, an institution of higher learning that has been*

*authorized or appropriated capital improvement bond funds, capital reserve fund or state appropriated funds, or state infrastructure bond funds by the General Assembly for capital improvements shall process a permanent improvement project, regardless of the amount.*

**Section 2-47-55: Comprehensive Permanent Improvement Plan**

*(A) All state agencies responsible for providing and maintaining physical facilities are required to submit a Comprehensive Permanent Improvement Plan (CPIP) to the Joint Bond Review Committee and the Budget and Control Board. The CPIP must include all of the agency's permanent improvement projects anticipated and proposed over the next five years beginning with the fiscal year starting July 1 after submission. The purpose of the CPIP process is to provide the board and the committee with an outline of each agency's permanent improvement activities for the next five years. Agencies must submit a CPIP to the committee and the board on or before a date to be determined by the committee and the board. The CPIP for each higher education agency, including the technical colleges, must be submitted through the Commission on Higher Education which must review the CPIP and provide its recommendations to the board and the committee. The board and the committee must approve the CPIP after submission and may develop policies and procedures to implement and accomplish the purposes of this section.*

*(B) The State shall define a permanent improvement only in terms of capital improvements, as defined by generally accepted accounting principles, for reporting purposes to the State.*

**Section 2-47-56: Acceptance of gifts-in-kind for architectural and engineering services**

*Each state agency and institution may accept gifts-in-kind for architectural and engineering services and construction of a value less than two hundred fifty thousand dollars with the approval of the Commission of Higher Education or its designated staff, the Director of the Division of General Services, and the Joint Bond Review Committee or its designated staff. No other approvals or procedural requirements, including the provisions of Section 11-35-10, may be imposed on the acceptance of such gifts.*

**State Finances Generally, Title 11, Chapter 9**

**Section 11-9-130: Funds for capital improvement projects not on state-owned property**

*Funds authorized by the General Assembly for capital improvement projects not located on state- owned property may be expended only if the projects are owned or operated by a governmental entity including, but not limited to, municipalities or counties or a combination of governmental entities or by a separate authority whose membership is controlled by a governmental entity.*

**South Carolina Consolidated Procurement Code, Title 11, Chapter 35**

**Section 11-35-40: Application of this Code**

*...(4) The acquisition of a facility or capital improvement by a foundation or eleemosynary organization on behalf of or for the use of any state agency or institution of higher learning which involves the use of public funds in the acquisition, financing, construction, or current or subsequent leasing of the facility or capital improvement is subject to the provisions of this code in the same manner as a governmental body. The definition and application of the terms "acquisition," "financing,," "construction," and "leasing" are governed by generally accepted accounting principles.*



**Section 11-27-110: Lease purchase or financing agreement subject to constitutional debt limit**

*(A) As used in this section:*

*(1) "asset" means any real property and permanent improvements thereon including structures, buildings, and fixtures;*

*(2) "bond act" means:*

*(a) the county bond act, as contained in Chapter 15 of Title 4;*

*(b) the municipal bond act, as contained in Article 5, Chapter 21 of Title 5;*

*(c) the school bond act as contained in Article 1, Chapter 71 of Title 59;*

*(d) the provisions contained in Articles 3 and 5 of Chapter 11 of Title 6 pertaining to special purpose districts;*

*(e) any provision of law by which the State may issue obligations secured in whole or in part by the full faith, credit, and taxing power of the State; and*

*(f) any other law, general or special, providing for the issuance of general obligation bonds by the State or any of its political subdivisions;*

*(3) "constitutional debt limit" for the State or any political subdivision of the State which has the power to incur general obligation bonded indebtedness, means the limitation of the principal amount of general obligation bonded indebtedness specified in Article X of the Constitution;*

*(4) "enterprise charge" means a local accommodations tax or a local hospitality tax, or both of them, imposed by one or more governmental entities, the proceeds from which may be used only for limited purposes which either (i) has been imposed within the two fiscal years prior to the date of an enterprise financing agreement, or (ii) to the extent a governmental entity pledges such a charge in connection with an enterprise financing agreement, the governmental entity covenants and agrees not to increase disbursements from its general fund to pay for costs which could have been paid from the charge for a period of two fiscal years after the date of the acquisition or completion of the asset provided by the enterprise financing agreement;*

*(5) "enterprise financing agreement" means a financing agreement entered into to provide an asset for a governmental enterprise (i) the revenues from which are expected to be sufficient to pay the amounts due under the financing agreement, or (ii) for which an enterprise charge has been imposed in an amount expected to be sufficient to pay the amounts due under the financing agreement, or (iii) a combination of revenues described under (i) and (ii) are expected to produce an amount sufficient to pay the amounts due under the financing agreement;*

*(6) "financing agreement" means any contract entered into after December 31, 1995, under the terms of which a governmental entity acquires the use of an asset which provides:*

*(a) for payments to be made in more than one fiscal year, whether by the stated term of the contract or under any renewal provisions, optional or otherwise;*

*(b) that the payments thereunder are divided into principal and interest components or which contain any reference to any portion of any payment under the agreement being treated as interest; and*

*(c) that title to the asset will be in the name of or be transferred to the governmental entity if all payments scheduled or provided for in the financing agreement are made, but the term excludes any refinancing agreement and contracts entered into in connection with issues of general obligation bonds or revenue bonds issued pursuant to authorization provided in Article X of the Constitution;*

*(7) "governmental enterprise" means any activity undertaken by a governmental entity which either (i) derives revenues from or because of an activity on a basis other than the exercise of the power of taxation by that governmental entity, or (ii) is entitled to be paid or supported from an enterprise charge;*

*(8) "governmental entity" means:*

*(a) the State, whose general obligation debt service payments are limited pursuant to Section 13, Article X of the Constitution; or*

*(b) any political subdivision of the State including a municipality, county, school district, special purpose district, or similar entity, whose general obligation debt is limited as provided in Sections 14 and 15, in Article X of the Constitution;*

*(9) "limited bonded indebtedness" means the amount of bonded indebtedness that may be incurred by a governmental entity without a referendum or, where the context requires, the amount of such indebtedness then outstanding;*

*(10) "principal balance" means the total amount, excluding any amount characterized as interest, payable as of any time of consideration under any financing agreement, including any renewals or extensions of the agreement; and*

*(11) "refinancing agreement" means an agreement or agreements that would be a financing agreement except that (i) it refinances an asset acquired under the terms of a contract or contracts that is not a financing agreement solely by virtue of being dated prior to January 1, 1996, and (ii) the sum of all payments to be made under such agreement is less than the sum of the payments under the contract or contracts it refinances.*

*(B) A governmental entity described in subsection (A) (8)(b) of this section may not enter into a financing agreement, other than an enterprise financing agreement, a loan agreement for energy conservation measures as provided for in Section 48-52-650, a lease purchase agreement for energy efficiency products as provided for in Section 48-52-660, or a guaranteed energy savings contract as provided for in Section 48-52-670, where no such lease agreement or contract shall constitute in any manner an agreement, consent, authority, or otherwise, to provide retail sales of energy by an energy or power provider or creates the authority to sell or provide retail energy or power, if the principal balance of the financing agreement, when added to the principal amount of limited bonded indebtedness outstanding on the date of execution of the financing agreement exceeds eight percent of the assessed value of taxable property in the jurisdiction of the governmental entity unless the financing agreement is approved by a majority of the electors voting on the agreement in a referendum duly called for this purpose by the governmental entity.*

*(C) If a governmental entity described in subsection (A) (8)(b) of this section has outstanding any financing agreement, other than an enterprise financing agreement, a loan agreement for energy conservation measures as provided for in Section 48-52-650, or a lease purchase agreement for energy efficiency products as provided in Section 48-52-660, or a guaranteed energy savings contract as provided in Section 48-52-670, where no such lease agreement or contract shall constitute in any manner an agreement, consent, authority, or otherwise, to provide retail sales of energy by an energy or power provider or creates the authority to sell or provide retail energy or power, on the date of issuance of any limited bonded indebtedness pursuant to any bond act, the amount of this limited bonded indebtedness plus the amount of all other limited bonded indebtedness of the governmental entity, when added to the principal balance under any financing agreement or agreements of the governmental entity must not exceed the amount of the governmental entity's constitutional debt limit unless this bonded indebtedness is approved by a majority of the electors voting on the bonded indebtedness in a referendum duly called for this purpose by the governmental entity. This requirement applies notwithstanding any other provision of any bond act and is in addition to the terms and conditions specified in any bond act.*

*(D) A payment made by the State pursuant to a financing agreement is deemed general obligation debt service subject to the debt service limitation provided in Section 13, Article X of the Constitution.*

**Effect of Amendment:** The 1997 amendment, in subsection (A), inserted paragraph (4) and redesignated former paragraphs (4) to (9) as paragraphs (5) to (10); in subsection (A)(5), inserted the clause (I) designation and added clauses (ii) and (iii); in subsection (A)(5)(c), inserted “refinancing agreement and”; in subsection (AP)(7), inserted “either (I)” and added clause (ii); added subsection (A)(11); and made other non-substantive changes.

**Section 11-35-710: Exemptions**

*The board, upon the recommendation of the Office of General Services, may exempt governmental bodies from purchasing certain items through the respective chief procurement officer's area of responsibility. The board may exempt specific supplies or services from the purchasing procedures required in this section and for just cause by unanimous written decision limit or may withdraw exemptions provided for in this section. The following exemptions are granted in this chapter:*

*... (6) expenditure of funds at state institutions of higher learning derived wholly from athletic or other student contests, from the activities of student organizations and from the operation of canteens and bookstores, except as the funds are used for the procurement of construction, architect-engineer, construction-management and land surveying services;*

*... (11) published books, periodicals, and technical pamphlets;*

*... (12) South Carolina Research Authority; ...*

**Section 11-35-1570: Emergency procurements**

*Notwithstanding any other provision of this code, the chief procurement officer, the head of a purchasing agency, or a designee of either officer may make or authorize others to make emergency procurements only when there exists an immediate threat to public health, welfare, critical economy and efficiency, or safety under emergency conditions as defined in regulations promulgated by the board; and provided, that such emergency procurements shall be made with as much competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.*

**Energy Efficiency, Title 48, Chapter 52**

**Section 48-52-660: Lease purchase agreements with energy efficiency products vendors and utility companies; procurements for energy-using goods and facilities**

*(A) A state agency or political subdivision of the State may enter into lease purchase agreements for a duration of more than one year with vendors of energy efficiency products and utility companies. No funds disclaimer clause as provided for in Section 11-35-2030 is required in these contracts. Repayment is allowed from savings on the entity's budget.*

*(B) Procurements under the South Carolina Consolidated Procurement Code for energy-using goods and facilities must be procured through competitive sealed proposals pursuant to Section 11-35-1530 with life cycle cost criteria stated as an evaluation factor that must be addressed in a proposal.*

**Section 48-52-670: Guaranteed energy, water, or wastewater savings contracts**

*(A) A governmental unit may enter into a guaranteed energy, water, or wastewater savings contract for a duration of more than one year with vendors of guaranteed energy, water, or wastewater savings programs. The financing for the guaranteed energy, water, or savings contracts may be provided by the vendor of the guaranteed energy, water, or wastewater savings program or by a third-party financial institution or company. No funds disclaimer clause as provided for in Section 11-35-2030 is required in these contracts.*

*Repayment may be made from savings on the agency utility budget.*

*(B) A governmental unit may award a guaranteed energy, water, or wastewater savings contract pursuant to Section 11-35-1530 or in the case of a governmental unit not subject to the South Carolina Consolidated Procurement Code, pursuant to other applicable procurement law if it includes a written guarantee that savings will meet or exceed the cost of energy, water, or wastewater conservation measures. A governmental unit may request that the State Energy Office review the methodology used by the guaranteed energy, water, or wastewater savings vendor to project and measure savings and future billable revenues. The State Energy Office shall deliver the written approval or shall deliver a written notice that it has determined not to deliver the approval within thirty days of the receipt of a guaranteed energy, water, or wastewater performance contract. The State Energy Office is authorized to charge a reasonable hourly rate for its review of guaranteed energy, water, or wastewater savings programs or guaranteed energy, water, or wastewater savings contracts, and the payment of the charges may be included in the financing for the guaranteed energy, water, or wastewater savings contract.*

*(C) For purposes of this section, “governmental unit” means a state government agency, department, institution, college, university, technical school, legislative body, or other establishment or official of the executive, judicial, or legislative branches of this State authorized by law to enter into contracts including all local political subdivisions including, but not limited to, counties, municipalities, public school districts, or public service or special purpose districts.*

*(D) For purposes of this section, “guaranteed energy, water, or wastewater savings contract” means a contract for the evaluation and recommendation of energy, water, or wastewater conservation measures and for implementation of one or more of these measures. The contract must provide that all payments, except obligations on termination of the contract before its expiration, must be made over time and the energy, water, or wastewater cost savings or billable revenue increases resulting from implementation of the energy, water, or wastewater conservation measures may be used to make payments for the energy, water, or wastewater conservation systems installed pursuant to guaranteed energy, water, or wastewater savings contracts. Annual revenues or savings from the guaranteed contract may be less than annual payments, if during the length of the contract aggregate savings occur as provided for by the terms of the contract.*

*(E) For purposes of this section “energy, water, or wastewater conservation measure” means a training program, facility alteration, or technology upgrade designed to produce measurable, long-term reductions in energy, water, wastewater, or other consumption, personnel costs, operational costs including, but not limited to:*

- (1) insulation of the building structure or systems within the building;*
- (2) storm windows or doors, caulking or weather-stripping, multi-glazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing, reductions in glass area, or other window and door system modifications that reduce energy consumption;*
- (3) automated or computerized energy control systems;*
- (4) heating, ventilating, or air conditioning system modifications or replacements;*
- (5) replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code for the lighting system after the proposed modifications are made;*

- (6) energy recovery systems;*
- (7) cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;*
- (8) water and sewer conservation measures including, without limitation, plumbing fixtures and infrastructure;*
- (9) equipment upgrades that improve accuracy of billable revenue generating systems;*
- (10) automated, electronic, or remotely controlled systems or measures that reduce direct personnel costs; and*
- (11) such other energy, water, or wastewater measures as may provide measurable, long-term operating costs reductions or billable revenue increases.*