

TITLE 281, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 9
COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION
RULES AND REGULATIONS CONCERNING CAPITAL CONSTRUCTION

TITLE 281 - COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION
 CHAPTER 9 - RULES & REGULATIONS CONCERNING CAPITAL CONSTRUCTION

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LAST ISSUE DATE: June 16, 1994 [NOTE: *Italicized words are defined in Section 004. DEFINITIONS.*]

001. CONSTITUTIONAL AUTHORITY. Applicable sections of the Constitution of the State of Nebraska, ~~Edited 1992, include~~ article VII -- ~~Education~~, section 14, relating to the establishment and authority of the Coordinating Commission for Postsecondary Education ~~includ~~ing:

001.01 COMPREHENSIVE STATEWIDE PLAN FOR POSTSECONDARY EDUCATION. Authority to adopt and revise as needed, a Comprehensive Statewide Plan for Postsecondary Education, which shall include plans for facilities which utilize *tax funds designated by the Legislature*.

001.02 CAPITAL CONSTRUCTION PROJECTS. Authority to review, monitor, and approve or disapprove each public postsecondary educational institution's *capital construction projects* which utilizes *tax funds designated by the Legislature* in order to provide compliance and consistency with the Comprehensive Statewide Plan and to prevent *unnecessary duplication*.

001.03 BUDGET REQUEST RECOMMENDATIONS. Authority to review and modify, if needed, to promote compliance and consistency with the Comprehensive Statewide Plan and prevent *unnecessary duplication*, the budget requests of each public postsecondary educational institution's *governing board*.

001.04 ADDITIONAL POWERS. Additional powers and duties provided to the *Commission* by the Legislature, related to postsecondary education, as long as such powers and duties do not invade the governance and management authority of the Board of Regents of the University of Nebraska and the Board of Trustees of the Nebraska State Colleges as provided in the Constitution of Nebraska.

001.05 PROPERTY TAX REVENUE. Nothing providing for statewide coordination shall limit or require the use of property tax revenue by and for community colleges.

002. STATUTORY AUTHORITY. Applicable Nebraska Statutes include:

002.01 ~~Nebraska Revised Statutes (Reissue of 1994) sections 85-401, Neb. Rev. Stat. §§ 85-1401, 85-1402 subsections (1), (2), (3), (5), (7), and (8), 85-1403, 85-1404, 85-1410 subsection (4), 85-1411 subsection (4), 85-1412 subsections (1) and (6), 85-1413 subsections (1) to (6), 85-1414 subsections (1), (9), (10) and (11), 85-1416 subsections (1) and (3), 85-1417, and 85-1418, 85-1421 to 85-1423, and 85-1425 to 85-1427~~ relating to a statewide facilities information base, *Commission review of institutional ~~comprehensive facilities plans~~, proposed capital construction projects, and ~~proposed~~ capital construction budget requests and recommendations.*

~~002.02 Nebraska Revised Statutes (Reissue of 1994) sections Neb. Rev. Stat. §§ 85-1511 subsections (4) and (7), 85-1515, 85-1517 subsection (2), and 85-1535 subsection (3), and 85-2233 subsection (3) relating to coordination by the Commission of the construction, lease, purchase, purchase on contract, operation, equipping, and maintenance of facilities for community colleges.~~

~~002.03 Nebraska Revised Statutes (Reissue of 1994) section 85-180.14, relating to Commission approval of the construction and operation of facilities for the veterinary medicine and surgery program at the University of Nebraska.~~

~~002.04 Nebraska Revised Statutes (Reissue of 1994) sections 85-404, 85-408 and 85-1415, relating to Commission review and recommendation of revenue bond and surplus fund projects for the University of Nebraska and Nebraska State Colleges.~~

003. SCOPE AND RELATED PROVISIONS.

003.01 These rules and regulations relate to:

003.01(A) Providing a state-level uniform information system for all public postsecondary education systems and institutions that will insure the Legislature and other state agencies obtain timely and accurate information concerning facilities;

003.01(B) *Commission review of and comment about public institutional ~~comprehensive~~ facilities plans;*

003.01(BC) *Commission review, monitoring, and approval or disapproval of applicable capital construction projects; and*

~~003.01(C) *Commission review and recommendation of applicable revenue bond projects; and*~~

003.01(D) *Commission review and recommended modification, approval, or disapproval of the University of Nebraska's and Nebraska State Colleges' capital construction budget requests and major deficit appropriation requests, and development of a unified statewide prioritization of these requests.*

003.02 The *Commission* shall coordinate its responsibilities with both the Executive and Legislative branches of State government, and the *governing ~~and/or coordinating~~ board's* of the State's *public institutions*.

003.03 The provision of a statewide facilities information base, review of proposed *institutional ~~comprehensive~~ facilities plans, capital construction projects, ~~revenue bond projects~~* and capital construction budget requests shall be subject to the rules contained herein; the Comprehensive Statewide Plan; for Postsecondary Education, which includes the Statewide Facilities Plan; the *Commission's* budgetary review process; and such other rules, regulations, and procedures as shall be adopted and promulgated by the *Commission*.

003.04 The footnote section contained herein shall not be construed as a part of the Rules of the *Commission* but is used for illustrative purposes only.

004. DEFINITIONS.

004.01 CAPITAL CONSTRUCTION PROJECT. Shall mean a project which utilizes *tax funds designated by the Legislature* and shall be: Any proposed new *capital structure*; any proposed addition to, *renovation of, or remodeling of a capital structure*; any proposed acquisition of a *capital structure* by gift, purchase, lease-purchase, or other means of construction or acquisition; or any combination thereof that 1) will be *directly financed* in whole or in part with *tax funds designated by the Legislature* totaling at least the *minimum capital expenditure* for purpose of the eis definition, or 2) is likely, as determined by the institution, to result in an *incremental increase* in appropriation or expenditure of *tax funds designated by the Legislature* of at least the *minimum capital expenditure* for the facility's operations and maintenance costs¹ in any one fiscal year within a period of ten years from the date of substantial completion or acquisition of the project. For purposes of this definition:

004.01(A) DIRECTLY FINANCED. Shall mean funded by: 1) Appropriation of *tax funds designated by the Legislature* for the specific *capital construction project*; 2) property tax levies authorized pursuant to Neb. Rev. Stat. § 85-1517 used to establish a capital improvement and bond sinking funds pursuant to section Neb. Rev. Stat. § 85-1515 of the Nebraska Revised Statutes (Reissue of 1994); or 3) that portion of *tax funds designated by the Legislature* and appropriated by the Legislature for the general operation of the *public institution* and utilized to fund the *capital construction project*.

004.01(B) INCREMENTAL INCREASE. Shall mean an increase in appropriation or expenditure of *tax funds designated by the Legislature* of at least the *minimum capital expenditure* for a facility's operations and maintenance costs, beyond any increase due to inflation, to pay for a *capital structure's* operations and maintenance costs that are a direct result of a *capital construction project*.

004.01(C) MINIMUM CAPITAL EXPENDITURE. Shall mean: 1) for purposes of construction or acquisition pursuant to this definition of *capital construction project*, a base amount adjusted for inflation as required by statute, and 2) for purposes of the facility's operations and maintenance costs pursuant to this definition of *capital construction project*, a base amount adjusted for inflation as required by statute for any one fiscal year. Both-The base amounts for the facility's operations and maintenance costs shall be subject to any inflationary or market adjustments made by the *Commission* pursuant to this definition. The *Commission* shall adjust the base amounts on a biennial basis beginning January 1, 2010-1996. The adjustments shall be based on percentage changes in a construction cost index and any other published index relevant to operations and maintenance-utilities costs, as selected by the *Commission* in cooperation with the *public*

¹ Examples of facility's operations and maintenance costs include: Utilities, custodial service, building maintenance, landscape and grounds maintenance, physical plant administration, security, mail service, communications service, and property insurance.

institutions. The index or indices shall reflect inflationary or market trends for the applicable operation and maintenance or construction costs. Specific dollar amounts can be found in *Commission* procedures implementing these rules and regulations.

004.02 *INDIVIDUAL CAPITAL CONSTRUCTION BUDGET REQUEST PROJECT*. Shall mean, for the purpose of prioritization of budget requests, ~~ing the *Commission's* Statewide Capital Budget Recommendation; every proposed project any capital construction request included in the Board of Regents of the University of Nebraska's and Board of Trustees of the Nebraska State Colleges' biennial budget request, LB 309 Task Force for Building Renewal request by category and classification, or major deficit appropriation included in a governing board's capital budget requests,~~ for which the *Commission* has recommended approval, including any *capital construction project* approved by the *Commission* and included in such requests.

004.03 *CAPITAL STRUCTURE*. Shall mean anything constructed or erected, for occupancy, use or ornamentation, that requires permanent location on, below or above the ground, or an addition to an existing *capital structure* having a permanent location on or below the ground.

004.04 *CHANGE IN SCOPE*. Shall mean a significant change in a *capital construction project*, as specifically defined in *Commission* procedures, to include but not be limited to: 1) A substantial increase in the amount of *tax funds designated by the Legislature* used to construct, acquire or provide facilities' operations and maintenance, 2) a significant change in the use of funds², 3) a considerable change in the allocation of square footage for any *major room-use category(s)*, or 4) a programmatic change involving who and/or ~~for~~ what purpose a *major room-use category(s)* serves.

004.05 *COMMISSION*. Shall mean the Coordinating Commission for Postsecondary Education.

~~004.06 *COORDINATING BOARD*. Shall mean the Nebraska Community College Association.~~

~~004.067 *GOVERNING BOARD*. Shall mean the Board of Regents of the University of Nebraska, the Board of Trustees of the Nebraska State Colleges, or the board of governors for each community college area, ~~or a representative designated by any of these boards.~~~~

004.078 *INSTITUTIONAL COMPREHENSIVE FACILITIES PLAN*. Shall mean a plan that identifies a *public institution's* existing facilities, the condition and utilization of those facilities, outlines the institution's short-term, mid-term, and long-range program needs, and identifies proposed facilities solutions to meet those program needs.

~~004.09 *MAJOR CAPITAL DEFICIT APPROPRIATION REQUEST*. Shall mean any individual capital project in excess of the minimum capital expenditure and included in a governing board's capital deficit appropriation request.~~

² Example: Reallocating a majority of funds previously allotted for movable equipment to construction.

~~004.0810~~ MAJOR ROOM-USE CATEGORIES. Shall mean the major room uses outlined in Chapter 2 of the most recently published U.S. Department of Education, National Center for Education Statistics, Postsecondary Education Facilities Inventory and Classification Manual (FICM), 1992.³

~~004.11~~ NEED STATEMENT. Shall mean a document that provides a preliminary description of a proposed *capital construction project* or *revenue bond project*. The *need statement* is an optional document that may be submitted to the *Commission*. The *Commission* will provide a preliminary evaluation of a project with the review criteria established in these rules and regulations. The content to be provided in a *need statement* shall be in such format as provided by the *Commission*.⁴

~~004.0912~~ PROGRAM STATEMENT. Shall mean a document that describes and supports the development of a proposed *capital construction project* or *revenue bond project*. ~~A *program statement* provides more detailed information than a *need statement*.~~ The content to be provided in a *program statement* shall be in such format as provided by the *Commission*.⁴

~~004.13~~ PROJECT STATEMENT. Shall mean an abbreviated *program statement* used to support the development of a proposed *capital construction project* or *revenue bond project* of lesser scale or certain type as specifically defined in *Commission* procedures. The content to be provided in a *project statement* shall be in such format as provided by the *Commission*.⁴

004.104 PUBLIC INSTITUTION. Shall mean any of the following: University of Nebraska-Lincoln, University of Nebraska Medical Center, University of Nebraska at Omaha, University of Nebraska at Kearney, Nebraska College of Technical Agriculture, Chadron State College, Peru State College, Wayne State College, Central Community College, Metropolitan Community College, Mid-Plains Community College, Northeast Community College, Southeast Community College, Western Nebraska Community College, including any other campus administered as a separate unit by a *governing board*, or any other public postsecondary educational institution ~~which that~~ may be established by the Legislature ~~after January 1, 1992~~.

004.115 REMODELING OR RENOVATION. Shall mean work associated with an existing *capital structure*, which may include, but shall not be limited to, modifying or upgrading a *capital structure's* building systems. Such work may include upgrading mechanical or electrical systems, or modifying interiors through changes in room layouts or relocation of openings. This work shall not increase the size of the building footprint or building envelope. Replacement of existing wall, floor or ceiling treatments due to age or damage, or other similar

³ These categories include: Classrooms, laboratories, offices, study facilities, special-use facilities, general-use facilities, support facilities, health-care facilities, residential facilities, and unclassified facilities.

⁴ ~~The *Need, Program and Project Statement* Outlines~~ provided by the *Commission* shall coordinate with existing State formats and *public institutional* requirements for use of such documents by design professionals.

work, shall not be considered *remodeling* or *renovation*. Separate deferred maintenance projects, fire and life safety projects, Americans with Disabilities Act projects, or energy conservation projects, as defined by the LB 309 Task Force for Building Renewal, shall not constitute *remodeling* or *renovation*.

~~004.16 REVENUE BOND PROJECT. Shall mean all proposed projects, to be financed by revenue bond issues or surplus or replacement funds, approved by the Board of Regents of the University of Nebraska or the Board of Trustees of the Nebraska State Colleges, pursuant to sections 85-404 and 85-408, Nebraska Revised Statutes (Reissue of 1994). This includes any single expenditure of surplus or replacement funds in excess of two hundred fifty thousand dollars (\$250,000) per purchase order or contract.~~

004.127 TAX FUNDS DESIGNATED BY THE LEGISLATURE. Shall mean all State tax revenue and all property tax revenue.

004.138 UNNECESSARY DUPLICATION. Shall mean any *capital structure*, or portion of a *capital structure*, that does not substantially increase access and/or serve valid needs considering the existence of other available and suitable facilities.⁵

005. STATEWIDE FACILITIES INFORMATION BASE.

005.01 APPLICABILITY. All *public institutional* facilities that involve coordination by the *Commission*, Legislature, or other state agency, shall provide state-level uniform facilities information.

005.02 The *Commission* shall maintain uniform data elements and definitions for development of a statewide facilities information base in consultation with *governing boards*, or their designated representative.

005.03 The *Commission* shall identify statewide facilities information to be collected on an annual or periodic basis, regarding each *public institution's* facilities inventory and utilization information.

005.04 *Public Institutions* may comply with requests for facilities information pursuant to Neb. Rev. Stat. § 85-1417, as applicable.

0056. INSTITUTIONAL ~~COMPREHENSIVE~~ FACILITIES PLANNINGS.

0056.01 APPLICABILITY. All *institutional ~~comprehensive~~ facilities plans*, or amendments to such plans, approved or accepted by a *governing board* ~~after January 1, 1992~~, shall require *Commission* review and comment in accordance with these rules and regulations.

⁵ Examples of *unnecessary duplication* include, but shall not be limited to, unnecessarily duplicative facilities within an institution, sector, state, or region.

0056.02 REVIEW CRITERIA. ~~Used by T~~ the Commission shall use the following criteria in the review of ~~a public institution's comprehensive institutional~~ facilities plans ~~shall include the following:~~

0056.02(A) COMPLIANCE AND CONSISTENCY WITH THE COMPREHENSIVE STATEWIDE PLAN. ~~Proposed institutional comprehensive facilities plans~~ shall be reviewed for ~~compliance and~~ consistency with the Comprehensive Statewide Plan ~~as applicable.~~ Areas of compliance and consistency shall, to include, but not be limited to, consistency compatibility of the institutional comprehensive facilities plan with an institution's role and mission assignments.

0056.02(B) COMPLIANCE AND CONSISTENCY WITH THE STATEWIDE FACILITIES PLAN. ~~Proposed institutional comprehensive facilities plans~~ shall be reviewed for ~~compliance and~~ consistency with the Statewide Facilities Plan as applicable. ~~Areas addressed shall include, but not be limited to, consistency of the institutional comprehensive facilities plan with institutional programmatic planning efforts.~~

0056.02(C) ASSESS DUPLICATION OF FACILITIES. ~~Institutional comprehensive facilities plans~~ shall be reviewed for possible *unnecessary duplication* of facilities.

0056.03 COMMISSION REVIEW.

0056.03(A) Governing boards, or a representative designated by the board, shall inform the Commission, in writing, of all ~~institutional comprehensive facilities plans~~, or amendments to such plans, to be submitted to the *governing board* for action.

0056.03(B) Prior to submitting an ~~institutional comprehensive facilities plan~~, or amendments to such plan, for Commission review and comment, the plan or amendment shall first receive written approval or acceptance by the *governing board*. Evidence of *governing board* approval or acceptance shall accompany the plan to the Commission and shall include all material submitted to the *governing board* ~~for approval.~~

0056.03(C) The Commission ~~shall~~ may establish guidelines for the format and content of an each public institutional's comprehensive facilities plan.

0056.03(D) The Commission shall provide a written report of its review to the *governing board* within ninety days after receipt of ~~the an approved or accepted institutional comprehensive facilities plan.~~ The Commission's report shall comment on the ~~institutional comprehensive facilities plan's compliance and~~ consistency with the review criteria in these rules and regulations. The Commission may recommend modification to an the public institutional's comprehensive facilities plan based on its review.

0056.03(E) The Commission may require periodic updates of ~~public institutional's comprehensive facilities plans~~ as necessary.

0056.03(F) In fulfilling its review of and comments on about public institutional comprehensive facilities plans, the Commission shall recognize educational activities

among all segments of postsecondary education and take into account the educational programs, facilities, and other resources of public and private postsecondary educational institutions.

0067. CAPITAL CONSTRUCTION PROJECTS.

0067.01 APPLICABILITY. The following *capital construction projects* proposed by *public institutions* shall require *Commission* review, approval or disapproval, and monitoring for compliance with the approved project, in accordance with these rules and regulations:

0067.01(A) Any proposed new *capital structure*; any proposed addition to, *renovation* of, or *remodeling* of a *capital structure*; any proposed acquisition of a *capital structure* by gift, purchase, lease-purchase, or other means of construction or acquisition; or any combination thereof that will be *directly financed* in whole or part with *tax funds designated by the Legislature* totaling at least the *minimum capital expenditure*.

0067.01(B) Any proposed new *capital structure*; any proposed addition to, *renovation* of, or *remodeling* of a *capital structure*; any proposed acquisition of a *capital structure* by gift, purchase, lease-purchase, or other means of construction or acquisition; or any combination thereof that is likely, as determined by the institution, to result in an *incremental increase* in appropriation or expenditure of *tax funds designated by the Legislature* of at least the *minimum capital expenditure* for the facility's operations and maintenance costs in any one fiscal year within a period of ten years from the date of substantial completion or acquisition of the project.

0067.02 REVIEW CRITERIA. ~~Used by T~~ the Commission shall use the following criteria in the review of proposed *capital construction projects* ~~shall include the following:~~

0067.02(A) COMPLIANCE AND CONSISTENCY WITH THE COMPREHENSIVE STATEWIDE PLAN. Proposed projects shall show compliance and consistency with the Comprehensive Statewide Plan as applicable to a specific project. ~~Areas of compliance and consistency shall include, but not be limited to, the compatibility of a project with an institution's role and mission assignment.~~

0067.02(B) COMPLIANCE AND CONSISTENCY WITH THE STATEWIDE FACILITIES PLAN. Proposed projects shall demonstrate compliance and consistency with the Statewide Facilities Plan. ~~Areas addressed shall include, but not be limited to, compliance and consistency with the institutional comprehensive facilities plan as reviewed by the Commission.~~

0067.02(C) ASSESS DUPLICATION OF FACILITIES. ~~An i~~ nstitutions presents ~~submitting~~ a proposed project for *Commission* review shall illustrate that the project is will not result in an *unnecessary duplication* of capital facilities.

0067.03 COMMISSION REVIEW.

0067.03(A) *Governing boards, or a representative designated by the board,* shall inform the *Commission*, in writing, of all *capital construction projects* to be submitted to the *governing board* for action.

007.03(B) *A public institution shall make a determination whether a project will result in an incremental increase in appropriation or expenditure of tax funds designated by the Legislature of at least the minimum capital expenditure for the facility's operations and maintenance costs in any one fiscal year within a period of ten years from the date of substantial completion or acquisition of the project, and include such determination in a program statement submitted to the governing board for action. The determination for a facility's operations and maintenance costs is final upon approval of the program statement by the governing board.*

0067.03(BC) Prior to submitting a *capital construction project* for *Commission* action, that project shall first receive written approval of a *program statement* by the *governing board*. ~~For capital construction projects of certain scale and/or type, the Commission may accept submittal of a project statement in lieu of a program statement.~~ Evidence of *governing board* approval shall accompany the project to the *Commission* and shall include all material submitted to the *governing board* for approval of the *capital construction project*. ~~Governing boards may choose, at their discretion, to submit a need statement to the Commission for comment prior to submittal of a program statement.~~

0067.03(GD) Action by the *Commission* regarding approval or disapproval of a *capital construction project* shall consist of one of the following:

0067.03(GD)(i) Approval of the project as the basis for further development; or

0067.03(GD)(ii) Disapproval of the project based on lack of compliance or inconsistency of the project with one or more review criteria in these rules and regulations, with reasons explicitly stated.

0067.03(DE) *Capital construction projects* previously disapproved by the *Commission* may be resubmitted by a *governing board* with changes that address the *Commission's* reasons for the original disapproval. The *Commission* shall then review and approve or disapprove the resubmitted project proposal.

0067.03(EF) A *change in scope* to any *capital construction project* previously approved by the *Commission* shall require resubmittal of the project to the *Commission* for review, approval or disapproval, and monitoring for compliance with the approved project. This rule applies for all subsequent phases of a project through construction.

0067.03(FG) ~~Any capital construction project authorized prior to January 1, 1992, by action of the Legislature (including receipt of appropriations) or action of a governing board (previously approved need or program statements), shall be deemed approved by the Commission unless there is a change in scope to the project. The Commission may~~

establish documentation necessary to monitor capital construction projects. When complying with requests for information during the review, monitoring, and approval process, public institutions may comply pursuant to Neb. Rev. Stat. § 85-1417.

0067.03(GH) Unless a *capital construction project* has been reviewed and approved by the *Commission*, no *tax funds designated by the Legislature* shall be expended for an *incremental increase* in a ~~*capital construction project*~~*facility's* operations and utilities costs, of more than the *minimum capital expenditure*.

0067.03(HI) No state warrant shall be used by any public institution for the purpose of funding any capital construction project which has not been approved or which has been disapproved by the Commission.

007.03(J) Beginning July 1, 2013, the Commission shall reduce the amount of distribution of community college aid funds used by a community college area to construct or acquire a capital construction project which has not been approved or has been disapproved by the Commission.

007.03(K) In fulfilling its review authority for *capital construction projects*, the *Commission* shall recognize educational activities among all segments of postsecondary education and take into account the educational programs, facilities, and other resources of public and private postsecondary educational institutions.

007. REVENUE BOND PROJECTS:

~~007.01 APPLICABILITY. The following *revenue bond projects* proposed by *public institutions* shall require *Commission* review and recommendation, in accordance with these rules and regulations:~~

~~007.01(A) All proposed *revenue bond projects*, to be financed by revenue bond issues or surplus or replacement funds, approved by the Board of Regents of the University of Nebraska or the Board of Trustees of the Nebraska State Colleges, pursuant to sections 85-404 and 85-408, Nebraska Revised Statutes (Reissue of 1994). This includes any single expenditure of surplus or replacement funds in excess of two hundred fifty thousand dollars (\$250,000) per purchase order or contract.~~

~~007.02 REVIEW CRITERIA. Used by the *Commission* in the review of proposed *revenue bond projects* shall include the following:~~

~~007.02(A) COMPLIANCE AND CONSISTENCY WITH THE COMPREHENSIVE STATEWIDE PLAN. Proposed projects shall show compliance and consistency with the Comprehensive Statewide Plan as applicable to a specific project. Areas of compliance and consistency shall include, but not be limited to, the compatibility of a project with an institution's role and mission assignment.~~

~~007.02(B) COMPLIANCE AND CONSISTENCY WITH THE STATEWIDE FACILITIES PLAN. Proposed projects shall demonstrate compliance and consistency with the~~

~~Statewide Facilities Plan. Areas addressed shall include, but not be limited to, compliance and consistency with the *institutional comprehensive facilities plan* as reviewed by the *Commission*.~~

~~007.02(C) ASSESS DUPLICATION OF FACILITIES. Institutions presenting a proposed project for *Commission* review shall illustrate that the project is not an *unnecessary duplication* of capital facilities.~~

~~007.02(D) SUFFICIENT INFORMATION TO REVIEW THE PROPOSAL. Institutions presenting a proposed project for *Commission* review shall provide sufficient information for the *Commission* to review and make a recommendation.~~

~~007.03 COMMISSION REVIEW:~~

~~007.03(A) *Governing boards* shall inform the *Commission*, in writing, of all *revenue bond projects* to be submitted to the *governing board* for action.~~

~~007.03(B) Prior to submitting a *revenue bond project* for *Commission* action, that project shall first receive written approval of a *program statement* by the *governing board*. For *revenue bond projects* of certain scale and/or type, the *Commission* may accept submittal of a *project statement* in lieu of a *program statement*. Evidence of *governing board* approval shall accompany the project to the *Commission* and shall include all material submitted to the *governing board* for approval of the *revenue bond project*, including a finance plan as applicable per statute. *Governing boards* may choose, at their discretion, to submit a *need statement* to the *Commission* for comment prior to submittal of a *program statement*.~~

~~007.03(C) Action by the *Commission* regarding a recommendation to the Legislature or the Executive Board of the Legislative Council for a *revenue bond project* shall consist of one of the following:~~

~~007.03(C)(i) Recommendation for approval of the project as the basis for further development; or~~

~~007.03(C)(ii) Recommendation for disapproval of the project based on inconsistency of the project with one or more review criteria in these rules and regulations, with reasons explicitly stated.~~

~~007.03(D) In fulfilling its review authority for *revenue bond projects*, the *Commission* shall recognize educational activities among all segments of postsecondary education and take into account the educational programs, facilities, and other resources of public and private postsecondary educational institutions.~~

008 CAPITAL CONSTRUCTION BUDGET REQUESTS AND RECOMMENDATIONS.

008.01 APPLICABILITY. ~~The Commission will review; recommend modification, approval, or disapproval; and prioritize the following individual capital construction budget requests:~~

~~008.01(A) The following capital projects shall be included in the Commission's review, and recommendation for modification, approval or disapproval, of capital budget requests. Such projects shall be included in the Commission's Statewide Capital Budget Recommendation in accordance with these rules and regulations:~~ All proposed *capital construction projects* approved by the *Commission* and included in the Board of Regents of the University of Nebraska's ~~and or~~ Board of Trustees of the Nebraska State Colleges' ~~Biennial Capital Construction Budget Requests~~ or major ~~capital~~ deficit appropriation requests; and

~~008.01(B) The following capital projects shall be prioritized by the Commission for inclusion in the Commission's Statewide Capital Budget Recommendation in accordance with these rules and regulations:~~ All other individual capital construction budget requests projects included in the Board of Regents of the University of Nebraska's ~~and or~~ Board of Trustees of the Nebraska State Colleges' ~~Biennial Capital Construction Budget Request_s~~, LB-309 Task Force for Building Renewal Requests and or any capital deficit appropriation requests.

008.02 REVIEW CRITERIA. ~~used by t~~The *Commission* shall use the following criteria in the review of ~~proposed Capital Construction biennial B~~udget ~~R~~requests and major ~~capital~~ deficit appropriation requests ~~shall include the following:~~

008.02(A) COMPLIANCE AND CONSISTENCY WITH THE STATEWIDE FACILITIES PLAN. ~~Governing board's Biennial c~~Capital ~~C~~onstruction ~~B~~udget ~~R~~requests and major ~~capital~~ deficit appropriation requests shall demonstrate ~~compliance and~~ consistency with the Statewide Facilities Plan. ~~Areas of review shall include, but not be limited to, compliance with the institutional comprehensive facilities plan as reviewed by the Commission.~~

008.02(B) CONSISTENCY WITH PREVIOUS CAPITAL CONSTRUCTION PROJECT APPROVALS OR DISAPPROVALS. The *Commission* shall only recommend to the Governor and Legislature those *capital construction projects* approved by the *Commission* ~~prior to the statutory deadline for submittal of the governing board's Capital Construction Budget Requests or major capital deficit appropriation requests.~~ The *Commission* shall not recommend *capital construction projects* ~~which~~ that it has previously disapproved unless such projects are resubmitted and approved by the *Commission*.

008.03 COMMISSION REVIEW, RECOMMENDATION AND PRIORITIZATION.

008.03(A) The Board of Regents of the University of Nebraska and Board of Trustees of the Nebraska State Colleges, or a representative designated by the board, shall each submit to the *Commission* information the *Commission* deems necessary to review the

governing board's capital construction budget requests or major deficit appropriation request. Governing boards may comply with requests for information pursuant to Neb. Rev. Stat. § 85-1417, as applicable.

008.03(B) The *Commission* shall review the Board of Regents of the University of Nebraska's and Board of Trustees of the Nebraska State Colleges' each governing board's Ccapital Cconstruction Bbudget Rrequest and major ~~capital~~ deficit appropriation request as approved by the board, and ~~shall~~ may recommend modification, approval, or disapproval of such ~~R~~requests to the Governor and Legislature.

008.03(C) The *Commission* shall develop from a statewide perspective a Statewide Capital Budget Recommendation for submittal to the Governor and Legislature. The Statewide Capital Budget Recommendation shall include a unified statewide prioritization of individual capital construction budget requests for which it has recommended approval and submit such prioritization to the Governor and Legislature for their consideration. ~~the following capital project proposals:~~

~~008.03(C)(i) Each capital construction project previously reviewed and approved by the Commission and included in a governing board's Capital Construction Budget Request and each major capital deficit appropriation request reviewed by the Commission;~~

~~008.03(C)(ii) All other capital projects included in a governing board's Capital Construction Budget Request including any other capital deficit appropriation request; and~~

~~008.03(C)(iii) The LB 309 Task Force for Building Renewal Request by category (fire & life safety, deferred maintenance, energy conservation, and Americans with Disability Act projects) and Classification (I, II and III).~~

008.03(D) The Commission may consider and respond to the priority order established by the Board of Regents or Board of Trustees in their respective capital construction budget requests.

008.03(E) Governing boards shall not submit a request for tax funds designated by the Legislature to provide an incremental increase in a facility's a capital construction project's operations and maintenance costs, of more than the minimum capital expenditure, for any capital construction project that has been excluded from Commission review.

009. GENERAL CONSIDERATIONS.

009.01 The *Commission* shall provide procedures to implement these rules and regulations.

009.02 The *Commission* shall be the determining body to approve or disapprove *capital construction project proposals*. Parties wishing to appeal decisions of the *Commission* shall proceed as provided by law.