



Ohio Administrative Code

Rule 3333-1-03 Release of funds from appropriations for capital improvements.

Effective: May 25, 2020

(A) Authority

This rule is established by authority conferred upon the chancellor of higher education in the appropriation and reappropriation acts for capital improvements adopted by the general assembly as well as sections 3345.50 and 3345.51 of the Revised Code.

(B) Policy

The chancellor will recommend to the office of budget and management and controlling board the release of capital appropriations if it finds that:

(1) The use of funds requested for release corresponds substantially to the use of funds described in a program plan which has been submitted to and approved by the chancellor of the department of higher education; and

(2) The institution stipulates that its request for release of funds meets the pertinent provisions of law, rules, regulations, and procedures which govern the implementation of capital improvements projects.

(3) Where the improvement is locally administered, the institution is executing the authority for local administration of the project in accordance with either rule 3333-1-24 or 3333-1-28 of the Administrative Code.

(C) Program plan

As a condition precedent to recommending the release of capital appropriations, a program plan for the project must be submitted to and approved by the chancellor, except when a bona fide emergency condition arises which makes the submission of a program plan impractical.



- (1) The form and content of a program plan shall be established by the chancellor; the form and content may vary, depending upon the relative complexity of a particular project.
- (2) Once a program plan has been approved, any significant modifications proposed must be submitted to and approved by the chancellor.
- (3) The following criteria, when applicable to a project, shall be used to evaluate a program plan:
 - (a) Expenditures must be for capital improvements.
 - (b) The project scope must meet the intent and purpose of the appropriation.
 - (c) The location and positioning of the project should be in accord with a campus master plan or, in the absence of a master plan, should harmonize with the existing campus environment.
 - (d) The size, capacity and arrangement of the project should meet projected enrollment and programmatic needs.
 - (e) Project design should provide maximum flexibility to meet future facility requirements.
 - (f) Project design should give priority to development or renovation which yields the maximum amount of usable or net assignable space and a minimum amount of unusable or nonassignable space.
 - (g) Project design must be such that the project can and will be completed, including necessary equipment and furnishings, and ready for full occupancy without exceeding appropriated funds; should the project budget exceed appropriated funds, the institution must either supplement funding from its own resources or revise the scale or scope of the project to bring the budget into balance with appropriated funding. Project design should take into account the potential need to eliminate or defer project elements by establishing alternate construction packages which may be accepted or rejected, based on budgetary constraints. If a program plan is approved containing elements which could lead to costs exceeding appropriated funds, such approval shall not imply that any additional state funding, either through transfers from other appropriations or from future appropriations, is or will be



supported by the chancellor of higher education.

- (h) Design must give priority to meeting applicable building and safety codes.
 - (i) Design should seek ways to minimize increases in operating costs or, if possible, reduce operating costs.
 - (j) Design should maximize energy efficiency to provide for energy resource conservation.
 - (k) If not already accessible, renovated and new facilities should meet the requirements of the Americans with Disabilities Act.
- (D) Compliance with law, rules, regulations, procedures

The chancellor of higher education, as a condition precedent to recommending the release of capital appropriations, will monitor institutional requests for funding releases to determine whether it appears that the institution has substantially met requirements of laws, rules and regulations related to the administration of a capital facilities project. Such monitoring will be performed primarily to see that necessary steps have been taken which can facilitate and expedite action by the director of budget and management and the controlling board in releasing the requested funds. Should it appear that provisions of a law or rule may not have been met, the chancellor will advise the institution. In addition, the chancellor shall monitor the applicable projects in accordance with the provisions of rule 3333-1-30 of the Administrative Code pursuant to division (D) of section 3345.51 of the Revised Code.

Monitoring will include, but not be limited to, applicable provisions of the capital appropriations or reappropriations acts and the Ohio Revised Code, and rules or procedures pertaining to capital improvements projects established by the Ohio public financing commission, controlling board, office of budget and management, and the department of administrative services, general services division.

- (E) Capital projects - facilities not owned by state or institution



Prior to recommending release of capital funds to institutions for facilities which, because of their unique nature or location, will be owned or will be part of facilities owned by a separate nonprofit organization or public body, the institution shall submit and the chancellor shall approve a joint use agreement which shall include provisions that:

(1) Specify the extent and nature of the space to which the institution is to be granted rights for use in its educational programs and the terms and conditions governing such use.

(2) Specify that the term of the agreement shall be for at least twenty years.

(3) Provide for reimbursement to the state should the institution's right to use the facility be terminated by the nonprofit organization or public body prior to the expiration of the twenty-year term, which reimbursement shall be calculated by dividing the funds contributed by the state of Ohio by twenty and multiplying that sum by twenty less the number of full years the facility is utilized by the institution.

(4) Provide that the nonprofit organization or public body comply with all pertinent federal, state and local laws as well as state administrative regulations.

(5) Specify that funds shall be used only for capital improvements as defined in the bill appropriating such funds.

(6) Identify the facility to be constructed, renovated or improved.

(7) Identify the ownership of the facility or the basic terms of the leasehold by the nonprofit corporation or public body.

(8) Specify that the nonprofit corporation or public body shall hold the institution harmless from all liability for the construction, operation and maintenance costs of the facility.

(9) Require the nonprofit corporation or public body to follow competitive bidding procedures which include, as a minimum, publishing advertisements to seek bids, receiving sealed bids, and awarding contracts to the lowest responsive and responsible bidders.



(10) Provide for reimbursement to the institution for administrative costs incurred as a result of the project, which sum shall equal one and one-half per cent of the appropriated amount.

(11) Provide that amendments to the agreement shall require approval by the chancellor of higher education.