

## HIGHER EDUCATION CAPITAL PROJECTS - BUDGET SECTION ROLE

This memorandum provides information regarding the role of the Budget Section in approving new North Dakota University System capital projects or changes to capital projects.

Three sections of the North Dakota Century Code provide authority for the Budget Section to approve higher education capital projects or changes to existing projects. A summary of the sections is as follows:

Section 15-10-12.1 ([Appendix A](#)) - Authorizes the State Board of Higher Education to approve campus improvements and building maintenance financed by **donations, gifts, grants, and bequests** for projects costing not more than \$385,000. Approval by either the Legislative Assembly or the Budget Section is required for projects costing more than \$385,000. The Budget Section may not approve these projects during the legislative session or during the six months preceding a session.

Section 15-10-12.3 ([Appendix B](#)) - Provides that all local funds used for a higher education capital project must be from sources presented to and approved by the Legislative Assembly. Any changes in the sources of local funds must be approved by either the Legislative Assembly or the Budget Section.

Section 48-01.2-25 ([Appendix C](#)) - Precludes state agencies, including higher education institutions, from significantly changing or expanding capital projects beyond what was approved by the Legislative Assembly unless the Legislative Assembly or Budget Section approves the change or expansion or any additional expenditures for the project.

### HISTORY AND MAJOR PROVISIONS

The history of legislative changes to these sections and major provisions included in the sections are:

Section 15-10-12.1 - Created by the 1971 Legislative Assembly and initially provided that the State Board of Higher Education, with Budget Section approval, could authorize campus improvements and building maintenance financed by donations, gifts, grants, and bequests. The section also required Budget Section approval of the sale of any real property acquired by gift or bequest. Since then, the section has been amended a number of times, including:

- House Bill No. 1179 (1997) added provisions that Budget Section approval must include a specific dollar limit for each project.
- House Bill No. 1398 (1999) limited the Budget Section's authority to approve these projects to the period of time from adjournment of one legislative session until six months prior to the next legislative session. The bill also added provisions that the Legislative Council notify all legislators of the date of the Budget Section meeting at which the request will be considered

and the Budget Section chairman must allow time during the meeting for any legislator to testify regarding the request.

- Senate Bill No. 2039 (2001), recommended by the interim Higher Education Committee, allowed the State Board of Higher Education to approve projects up to \$385,000 without Budget Section approval and removed the requirement for the board to obtain Budget Section approval prior to selling any real property acquired by gift or bequest.

Major provisions of Section 15-10-12.1 include:

- The State Board of Higher Education may authorize campus improvements and building maintenance financed by donations, gifts, grants, and bequests for projects costing not more than \$385,000.
- The State Board of Higher Education may authorize the sale of any real property or buildings that an institution has received by gift or bequest.
- Approval by the Legislative Assembly or the Budget Section is required for campus improvements and building maintenance financed by donations, gifts, grants, and bequests for projects costing more than \$385,000, except that the Budget Section may not approve projects during the legislative session or during the six months prior to the legislative session.
- If the State Board of Higher Education submits a request for Budget Section approval under this section, the Legislative Council must notify all legislators of the date of the Budget Section meeting at which the request will be considered and the Budget Section chairman must allow time during the meeting for any legislator to testify regarding the request

Section 15-10-12.3 - Created by Section 24 of 2001 House Bill No. 1015 and has not been changed.

Major provisions of Section 15-10-12.3 include:

- All local funds used for a higher education capital project approved by the Legislative Assembly must be from sources presented to and approved by the Legislative Assembly.
- The source of any local matching funds for a project, unless approved by the Legislative Assembly or Budget Section, may not be from:
  - The state general fund.
  - State and federal grant and contract funds.
  - Tuition or fees.
  - Endowment or investment income.
  - Institutional sales and services income, including indirect and administrative costs.
  - Transfers or loans from other institutions' funds or agency funds.

- Each institution involved in a capital project approved by the Legislative Assembly for which local funds are to be used must provide a biennial report to the Budget Section detailing the source of all funds used in the project, including local funds.

Section 48-01.2-25 - Originally created by the 1999 Legislative Assembly in House Bill No. 1398. The section was codified as Section 48-02-20. The 2007 Legislative Assembly repealed Chapter 48-02 and replaced it with Chapter 48-01.2 as recommended by the interim Industry, Business, and Labor Committee as a result of its study of public improvement contracts and issues. As approved, Section 48-01.2-25 includes the same provisions as the previous Section 48-02-20.

Major provisions of Section 48-01.2-25 include:

- A state agency or institution may not significantly change or expand a capital improvement project beyond what was approved by the Legislative Assembly unless the Legislative Assembly or the Budget Section, if the Legislative Assembly is not in session, approves the change or expansion or any additional expenditures for the project.

- A significant change or expansion is defined as including construction of an addition to a building, including skywalks or other type of enclosed walkway, or any other substantial increase in the area of the building, but does not include the construction of building entrances and stairwells.

### BUDGET SECTION APPROVALS

The schedule below summarizes the number and amount of approvals granted by the Budget Section under each of these sections since 1999.

Interim	Section 15-10-12.1 (Projects From Donations, Gifts, Grants, and Bequests)	Section 15-10-12.3 (Change in Source of Local Funds)	Section 48-02-20/48-01.2-25 (Significant Change or Expansion of Capital Projects)
1999-2000	2 for \$728,000	N/A	4 for \$1,618,803
2001-02	4 for \$7,605,082	None	7 for \$3,164,000
2003-04	2 for \$1,734,159	None	3 for \$1,250,000
2005-06	1 for \$8,000,000	None	1 for a reduction of \$43,000
2007-08	4 for \$4,600,000	None	8 for \$9,410,000
2009-10 to date	7 for \$24,557,058	3 changes in funding	15 for \$3,901,402

ATTACH:3