

STATE BOARD OF COMMUNITY COLLEGES
Authorize Oversight of Certain Capital Projects

Request: The following request contains two actions that taken together will clarify oversight of construction projects for the period of July 1, 2021, to July 1, 2022, for the 54 community colleges that do not have State Board delegation of construction authority under G.S. 115D-9(c).

First, the State Board of Community Colleges is asked to approve a request, on behalf of community colleges, that the NC Department of Administration, State Construction Office, continue to provide oversight on community college construction projects that have received State Board approval and submitted a project to State Construction between July 1, 2021, and November 18, 2021 (Period between the effective date and the ratification date of Session Law 2021-180) This action applies to projects with a total project budget of between \$500,000 and less than \$2,000,000. (Pending action by the Governor, House Bill 243 will amend Session Law 2021-180 which will change the effective date of the legislative change to July 1, 2022.)

Second, in compliance with G.S. 115D-9(a) the State Board is requested to approve a temporary increased delegation of projects between \$500,000 and less than \$2,000,000 for the 54 colleges to manage without State Construction oversight. The increased temporary delegation applies to projects that receive or have received State Board approval between November 18, 2021, and July 1, 2022, or that received State Board approval prior to November 18 but have not started the project under the oversight of the State Construction Office as of November 18, 2021. This approval is needed to ensure that colleges who are operating in good faith after the enactment of the 2021 Appropriations Act, may continue to execute these projects. The temporary delegation will expire on July 1, 2022.

Any college that continues to desire State Construction oversight after November 18, 2021, must submit a written request to the System Office for submission to the State Board.

Background: Session Law 2021-180, revises G.S. 143-341(3)(a)(2) regarding State Construction Office supervision of community college projects between \$500,000 and less than \$2,000,000. Prior to Session Law 2021-180, the monetary threshold requiring State Construction Office oversight was projects of \$500,000 and above. Session Law 2021-180 raised this threshold to \$2,000,000.

This change removes from the State Construction Office the responsibilities for constructability, plan reviews, construction contract award, and project monitoring during construction for community college projects that are less than \$2,000,000. The 2021 Appropriations Act became law on November 18, 2021; however, the Act has an effective date of July 1, 2021. (Pending action by the Governor, House Bill 243 will amend Session Law 2021-180 which will change the effective date of the legislative change to July 1, 2022.)

The definition of an informal project under 1H SBCCC 400.1 remains unchanged.

The requirements of G.S. 143-129 regarding public bidding continue to be in effect. Therefore, public bidding remains required for all construction or repair work of \$500,000 or above (formal project level). The \$500,000 threshold established by G.S. 143-64.34 exempting certain projects from Article 3D of Chapter 143 governing procurement of architectural, engineering, and surveying services does not change. In addition, the reporting requirements under G.S. 143-133.1 remain in effect regardless of who executes the construction contracts. A project may not be subdivided or phased in a manner that evades the formal contract requirements under G.S. 143-133. The requirements pursuant to G.S. 143-128(f1), that community colleges must use the dispute resolution process adopted by the State Construction Office or “shall adopt another dispute resolution process, which shall include mediation” remain unchanged by the recent legislation.

Rationale: The change to the monetary threshold in G.S. 143-341(3)(a)(2) must be read in conjunction with G.S. 115D-9. When these two statutes are read together, the State Board of Community Colleges is responsible for the design, construction, repair, or renovation of buildings, utilities, and other State-funded property developments of the NC community colleges requiring the estimated expenditure of under \$2,000,000.

Although Session Law 2021-180 has an effective date of July 1, 2021, the Act was not signed until November 18, 2021. During this time, community colleges sent capital projects to the State Construction Office prior to November 18, 2021, while operating under current State law. The State Construction Office staff provided guidance in a memorandum dated February 23, 2022.

Upon receipt of the memorandum, a review was initiated by NCCCS General Counsel, VP of Finance and CFO, Chief of Staff and President. Upon completion of the review, to ensure compliance with G.S. 115D-9 (a) and the 2021 Appropriations Act (Pending action by the Governor, Session Law 2021-180 will amend the implementation date of the legislative change to July 1, 2022.), it was determined that by July 1, 2022, the State Board of community colleges must approve and adopt guidelines governing an increased delegation under \$2,000,000 for construction and renovation projects. These guidelines must also be approved by the State Building Commission and Director of the Budget. A recommendation regarding these guidelines will be brought to the State Building Commission and Director of the Budget prior to consideration for State Board approval.

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