Amend Section 600.1.1, *Policy on Design, Construction, and Financing of Capital Improvement Projects*

**ISSUE OVERVIEW**
G.S. 143-133.1(b) previously required the Secretary of Administration to adopt rules on reporting specific information associated with contracts awarded utilizing alternative project delivery methods and for the information to be reported no later than 12 months from the date the governmental entity takes beneficial occupancy of the project. The statute includes penalties for governmental entities that do not comply with the reporting requiring including the ability to obtain an injunction against the governmental entity until the reporting requirements are completed. The information required by statute directly pertains to the selection of the firm and delivery method and was difficult to obtain after completion of the project due to the time lapse and change in personnel.

S.L. 2021-80 exempts the University of North Carolina System from reporting the information to the Secretary of Administration and requires the Board of Governors to adopt rules to implement the provisions of this section, including the format and frequency of reporting and requires the information to be reported to the Board of Governors on an annual basis.

G.S. 143-133.1(a) requires the following information to be reported for each construction contract awarded utilizing a construction manager at risk, design-builder, or private developer under a public-private partnership:

- A detailed explanation of the reason why the particular construction manager at risk, design-builder, or private developer was selected.
- The terms of the contract with the construction manager at risk, design builder, or private developer
- A list of all other firms considered but not selected.
- A report on the form of bidding utilized by the construction manager at risk, design-builder, or private developer on the project.
- A detailed explanation of why the particular delivery method was used in lieu of the delivery methods identified in G.S. 143-128(a1) subdivision (1) through (3) and the anticipated benefits to the public entity from using the particular deliver method.

By statute, construction contracts utilizing alternative project delivery methods are awarded through a qualifications-based selection process and are not awarded to the lowest responsible and responsive bidder.

**RECOMMENDATION**
It is recommended that the Board of Governors amend Section 600.1.1. of the UNC Policy Manual to require the information on the construction delivery method as specified by G.S. 143-133.1 be reported by the constituent institution within 60 days of contract award. It is further recommended that the information be collectively reported to the Board for all projects awarded during the fiscal year and submitted with the annual report of the Committee of Budget and Finance. The information required to comply with G.S. 143-133.1(a) will be collected in a manner prescribed by the president or president’s designee.
Policy on Design, Construction, and Financing of Capital Improvement Projects

I. Authority. G.S. 143C-8-12 provides the Board of Governors with authority to approve certain expenditures for capital improvement projects that will be funded and operated entirely from non-General Fund money, including expenditures to plan, construct, and change the scope of such projects.

Additionally, G.S. 116-31.11 delegates to the Board of Governors the authority for the administration of design, construction, or renovation of buildings, utilities, and other property developments requiring the estimated expenditure of public money of $2,000,000 or less. The Board is also authorized to delegate that authority to constituent institutions and affiliated entities of the University of North Carolina if an institution or affiliated entity is qualified under guidelines developed in consultation with the director of the budget and the State Building Commission. Pursuant to this authority, guidelines entitled “The University of North Carolina Design and Construction Guidelines” were implemented to provide assistance to the constituent institutions in the administration of the design and construction of capital improvement projects. Copies of the guidelines may be obtained at the UNC System Office.

Pursuant to and consistent with its authority under the North Carolina General Statutes, including G.S. 116-11(13), the Board of Governors adopts the following policy regarding authority of the president and boards of trustees to approve and administer certain capital improvement projects.

II. Approval of Certain Capital Improvement Projects

A. General Delegations of Authority to the President and Boards of Trustees for Approval of Certain Capital Improvement Projects.

1. The Board of Governors delegates to the president and the boards of trustees the power to approve capital improvement projects that are funded entirely with non-General Fund money that are projected to cost less than $750,000. The president’s authority may be exercised on behalf of the UNC System Office, affiliated entities, or the constituent institutions in the president’s discretion.

2. The Board of Governors delegates to the president and the boards of trustees authority to approve advance planning of capital improvement projects, where the advance planning effort is to be funded entirely with non-General Fund money.

3. The Board of Governors delegates to the president the authority to approve an increase of up to 10 percent of the cumulative value of an originally-awarded construction contract for a System Office, affiliated entity, or constituent institution capital improvement project previously authorized by the Board of Governors.
4. After the long-term financing of a capital improvement project has been approved in accordance with statutory requirements, the president may approve interim financing or bank loans as a means of short-term financing. The president shall report any such actions to the Committee on Budget and Finance at its next meeting.

B. Additional Delegations of Authority to the President and Boards of Trustees for Approval of Capital Improvement Projects.

1. The Board of Governors may delegate to the president additional authority to approve capital improvement projects funded entirely with non-General Fund money that are projected to cost less than $1,000,000.3

2. Upon request by the board of trustees of a constituent institution or affiliated entity and with the recommendation of the president, the Board of Governors may delegate to the board of trustees of a constituent institution or affiliated entity additional authority to approve capital improvement projects funded entirely with non-General Fund money that are projected to cost less than $1,000,000.4

3. Should the Board of Governors delegate additional authority to one or more boards of trustees or affiliated entities consistent with paragraph 2., above, the president shall automatically receive authority to approve capital improvement projects at a level equal to the highest level of authority delegated to a board of trustees or affiliated entity. The president’s authority may be exercised on behalf of the UNC System Office, affiliated entities, or the constituent institutions in the president’s discretion.

4. The senior vice president for finance and administration, in consultation with the senior vice president and general counsel, shall establish the process by which a constituent institution may request and maintain delegated authority consistent with G.S. 143C-8-12 and other relevant state law. The minimum criteria a constituent institution must meet to receive and maintain authorization from the Board of Governors shall include, but not be limited to, performance of a written, comprehensive self-assessment that demonstrates:

a. The constituent institution has performed a written, comprehensive self-assessment that demonstrates it has the administrative, technical, and support resources necessary to properly carry out the delegated authority.

b. The chancellor has certified in writing that the constituent institution has the administrative, technical, and support resources necessary to properly carry out the delegated authority.

c. The constituent institution has a properly constituted and active campus capital project review committee comprised of individuals with sufficient technical expertise, strategic perspective and executive authority to perform the duties required herein.

d. The constituent institution has an individual on staff with substantial experience in managing capital improvement projects and the chancellor has designated that individual as the campus capital project coordinator.
e. The constituent institution has appropriate and sufficient technical and professional staff with demonstrated capability in the planning, financing, and oversight of capital improvement projects.

f. An assessment team, assembled and led by the senior vice president for finance, has reviewed the constituent institution’s self-assessment, has performed an on-site capabilities appraisal that confirms the institution’s self-assessment, and has recommended delegation to the president.

Constituent institutions will be reviewed for re-authorization under this section on a periodic basis, to be established by the senior vice president for finance and administration.

5. Upon review in response to a request for re-authorization or in response to a report of noncompliance with this policy or its associated regulations, for good cause, and consistent with G.S. 143C-8-12 and other relevant state law, the president may revoke or suspend the authority of a constituent institution or take other remedial action as the president deems necessary and appropriate. Once authority has been revoked or suspended pursuant to this policy, all future capital improvement projects for the institution involved shall be completed in accordance with the General Statutes of North Carolina and the general delegations of authority provided for in section II of this policy.

III. Administration of Design and Construction of Certain Capital Improvement Projects. Delegations of the Board of Governors authority for the administration of design and construction of capital improvement projects requiring the estimated expenditure of public money of $2,000,000 or less shall be in accordance with G.S. 116-31.11 and “The University of North Carolina Design and Construction Guidelines.”

IV. Construction Delivery Method Reporting Requirement. In accordance with G.S. 143-133.1, constituent institutions that contract with a construction manager at risk, designer-builder, or private developer under a public-private partnership shall report to the System Office (in a manner prescribed by the president or the president’s designee) the following information within 60 days of award for contracts utilizing such alternative delivery methods:

A. A detailed explanation of the reason why the particular construction manager at risk, design-builder, or private developer was selected;

B. The terms of the contract with the construction manager at risk, design-builder, or private developer;

C. A list of all other firms considered but not selected as the construction manager at risk, design-builder, or private developer;

D. A report on the form of bidding utilized by the construction manager at risk, design-builder, or private developer on the project; and

E. A detailed explanation of why the particular delivery method was used in lieu of the delivery methods identified in G.S. 143-128(a1) subdivisions (1) through (3) and the anticipated benefits to the public entity from using the particular delivery method.
The information shall be collectively reported annually to the Board for all projects awarded during the fiscal year and submitted with the annual report of the Committee on Budget and Finance.

IV. Procedures and Reporting Requirements. The senior vice president for finance and administration shall have general authority to establish such procedures and reporting requirements for constituent institutions and affiliated entities as may be prudent to enable implementation of this policy and associated regulations.

VI. Other Matters

A. Effective Date. The requirements of this policy shall be effective on July 1, 2019. The requirements of this policy shall be effective on the date of adoption by the Board of Governors.

B. Relation to Other Laws. This policy is designed to supplement, and does not purport in any way to supplant or modify, those statutory enactments and rights which may govern capital improvement projects in the State of North Carolina.

C. Regulations and Guidelines. This policy shall be implemented and applied in accordance with such regulations and guidelines as may be adopted by the president.

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1This delegation of authority shall be interpreted consistent with G.S. 143C-8-12. See also Appendix 1 to The Code and Section 200.6 of the UNC Policy Manual.
2Unless otherwise indicated by the Board of Governors, this delegation of authority to boards of trustees to approve advance planning efforts shall not be further delegated.
3See endnote 1, above.
4See endnote, 1, above.