

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

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

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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 including:

001.01 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 Authority to review, monitor and approve or disapprove each public postsecondary educational institution's *capital construction project* 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 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 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.

002 STATUTORY AUTHORITY

Applicable Nebraska Statutes include:

002.01 Nebraska Revised Statutes (Reissue of 1994) sections 85-401, 85-1401, 85-1402 (1), (2), (3), (5), (7), and (8), 85-1414 (1), (9), (10) and (11), 85-1416 (3), and 85-1418, relating to *Commission* review of *institutional comprehensive facilities plans*, proposed *capital construction projects* and proposed capital budget requests.

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002.02 Nebraska Revised Statutes (Reissue of 1994) sections 85-1511 (4) and 85-1536 (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:

003.01A *Commission* review of and comment about *public institutional comprehensive facilities plans*;

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

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

003.01D *Commission* review and recommended modification, approval or disapproval of the University of Nebraska's and Nebraska State Colleges' capital budget 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*.

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003.03 The review of proposed *institutional comprehensive facilities plans, capital construction projects, revenue bond projects* and capital budget requests shall be subject to the rules contained herein, the Comprehensive Statewide Plan, the Statewide Facilities Plan, the *Commission's* budgetary review process, and such other rules, regulations and procedures as shall be 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 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 costs<sup>1</sup> in any one fiscal year within a period of ten years from the date of substantial completion of the project. For purposes of this definition:

004.01A *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 used to establish capital improvement and bond sinking funds pursuant to section 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*.

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<sup>1</sup> 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.

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004.01B 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*.

004.01C 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 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 base amounts 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, 1996. The adjustments shall be based on percentage changes in a construction cost index and any other published index relevant to operations and maintenance costs, as selected by the *Commission* in cooperation with the *public institutions*. The index or indices shall reflect inflationary or market trends for the applicable operation and maintenance or construction costs.

004.02 Capital project shall mean, for the purpose of prioritizing the *Commission's* Statewide Capital Budget Recommendation, every proposed project included in a *governing board's* capital budget 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

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maintenance, 2) a significant change in the use of funds<sup>2</sup>, 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 serves.

004.05 *Commission* shall mean the Coordinating Commission for Postsecondary Education.

004.06 *Coordinating board* shall mean the Nebraska Community College Association.

004.07 *Governing board* shall mean the Board of Regents of the University of Nebraska, the Board of Trustees of the Nebraska State Colleges, the board of governors for each community college area, or a representative designated by any of these boards.

004.08 *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.

004.10 *Major room-use categories* shall mean the major room uses outlined in Chapter 2 of the Postsecondary Education Facilities Inventory and Classification Manual, 1992.<sup>3</sup>

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

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

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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*.<sup>4</sup>

004.12 *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*.<sup>4</sup>

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*.<sup>4</sup>

004.14 *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 may be established by the Legislature after January 1, 1992.

004.15 *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

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<sup>4</sup> *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.

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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 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.

004.17 *Tax funds designated by the Legislature* shall mean all State tax revenue and all property tax revenue.

004.18 *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.<sup>5</sup>

005 INSTITUTIONAL COMPREHENSIVE FACILITIES PLANNING

005.01 *Applicability*

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

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

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005.02 Review Criteria used by the *Commission* in the review of a *public institution's comprehensive facilities plan* shall include the following:

005.02A 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 include, but not be limited to, compatibility of the *institutional comprehensive facilities plan* with an institution's role and mission assignment.

005.02B 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. Areas addressed shall include, but not be limited to, consistency of the *institutional comprehensive facilities plan* with institutional programmatic planning efforts.

005.02C Assess duplication of facilities. *Institutional comprehensive facilities plans* shall be reviewed for possible *unnecessary duplication* of facilities.

005.03 Commission Review

005.03A Governing boards 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.

005.03B 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 by the *governing board*. Evidence of *governing board* approval shall accompany the plan to the *Commission* and shall include all material submitted to the *governing board* for approval.

005.03C The *Commission* shall establish guidelines for the format and content of each *public institution's comprehensive facilities plan*.

005.03D The *Commission* shall provide a written report of its review to the *governing board* within ninety days after receipt of the *institutional*

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*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 the *public institution's comprehensive facilities plan* based on its review.

005.03E The *Commission* may require periodic updates of *public institution's comprehensive facilities plans* as necessary.

005.03F In fulfilling its review of and comments 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.

006 CAPITAL CONSTRUCTION PROJECTS

006.01 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:

006.01A 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*.

006.01B 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

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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 of the project.

006.02 Review Criteria used by the *Commission* in the review of proposed *capital construction projects* shall include the following:

006.02A 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.

006.02B 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*.

006.02C 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.

006.03 Commission Review

006.03A Governing boards shall inform the *Commission*, in writing, of all *capital construction projects* to be submitted to the *governing board* for action.

006.03B 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*.

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006.03C Action by the *Commission* regarding approval or disapproval of a capital construction project shall consist of one of the following:

006.03C1 Approval of the project as the basis for further development; or

006.03C2 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.

006.03D *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.

006.03E 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.

006.03F 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.

006.03G 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's* operations and utilities costs, of more than the *minimum capital expenditure*.

006.03H 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.

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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:

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:

007.02A 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.

007.02B 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*.

007.02C 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.

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007.02D 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

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

007.03B 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*.

007.03C 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:

007.03C1 Recommendation for approval of the project as the basis for further development; or

007.03C2 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.

007.03D 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.

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008 CAPITAL BUDGET REQUESTS AND RECOMMENDATIONS

008.01 Applicability

008.01A 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 Board of Trustees of the Nebraska State Colleges' Biennial Capital Construction Budget Requests or *major capital deficit appropriation requests*.

008.01B 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 *capital projects* included in the Board of Regents of the University of Nebraska's and Board of Trustees of the Nebraska State Colleges' Biennial Capital Construction Budget Requests, LB 309 Task Force for Building Renewal Requests and any capital deficit appropriation requests.

008.02 Review Criteria used by the *Commission* in the review of proposed Capital Construction Budget Requests and *major capital deficit appropriation requests* shall include the following:

008.02A Compliance and consistency with the Statewide Facilities Plan. *Governing board's* Capital Construction Budget 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*.

008.02B Consistency with previous capital construction project approvals or disapprovals. The *Commission* shall only recommend to the Governor and

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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 it has previously disapproved unless such projects are resubmitted and approved by the *Commission*.

008.03 *Commission Review and Prioritization*

008.03A The Board of Regents of the University of Nebraska and Board of Trustees of the Nebraska State Colleges shall each submit to the *Commission* information the *Commission* deems necessary to review the *governing board's* capital budget requests.

008.03B The *Commission* shall review each *governing board's* Capital Construction Budget Request and *major capital deficit appropriation request*, and shall recommend modification, approval or disapproval of such Requests to the Governor and Legislature.

008.03C The *Commission* shall develop a Statewide Capital Budget Recommendation for submittal to the Governor and Legislature. The Statewide Capital Budget Recommendation shall include a unified statewide prioritization of the following *capital project* proposals:

008.03C1 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*;

008.03C2 All other *capital projects* included in a *governing board's* Capital Construction Budget Request including any other capital deficit appropriation request; and

008.03C3 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).

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008.03D *Governing boards shall not submit a request for tax funds designated by the Legislature to provide an incremental increase in a capital construction project's operations and maintenance costs, of more than the minimum capital expenditure, for any 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.