



# Office of Budget and Management

John R. Kasich  
Governor

Timothy S. Keen  
Director

## MEMORANDUM

TO: Interested Parties – Capital Bill Community Projects

FROM: Timothy S. Keen, Director 

DATE: October 15, 2013

RE: Fiscal Years 2015-16 Capital Bill Community Projects Planning Process

On September 26, I issued guidance to state agencies regarding the preparation of their six-year capital plans and two-year capital budget requests for the FY 2015-16 capital biennium. In that document I stated that we have made a judgment that the state's financial condition is such that a small portion of the capital budget can support targeted economic development projects of local or regional importance, and I noted that OBM would be coordinating a process to receive and review such recommendations for possible inclusion in the capital bill. The purpose of this correspondence is to provide further information about that process. The Kasich Administration intends to work closely with the General Assembly throughout the community project planning process, and I expect members of the General Assembly to take an active interest in processes outlined below.

### **Process Overview**

As you know, there was not a capital bill for the FY 2011-12 capital biennium, and economic conditions did not allow for the inclusion of community projects in the FY 2013-14 capital bill. Therefore, although community projects have consistently been included in capital bills for decades, there has not been a community projects process since the FY 2009-10 capital budget. Given this gap, we believe that it is necessary to both refresh and re-evaluate the process utilized to gather community project recommendations. Building off the successful, collaborative process conducted by the higher education community in the development of the FY 2013-14 capital budget, the community project process for the FY 2015-16 capital budget will utilize three separate processes in order to generate project recommendations. This information will assist the Administration in coordinating with the General Assembly in making decisions as to which projects will be included in the bill.

### *Economic Development Projects Processes in the Major Metropolitan Areas*

We propose to reinvigorate and clarify a process that had been used informally for a number of past capital bills. We have asked the following eight economic development organizations, one from each of the state's eight metropolitan areas, to develop and implement respective processes that work with area organizations and officials to recommend a prioritized list of the community projects that they believe have the most significant, regional economic importance:

- Cleveland – Greater Cleveland Partnership
- Columbus – Columbus Partnership
- Cincinnati – Cincinnati Business Committee
- Akron – Greater Akron Chamber of Commerce
- Dayton – Dayton Development Coalition
- Toledo – Toledo Regional Chamber of Commerce
- Canton – Canton Regional Chamber of Commerce
- Youngstown – Youngstown Warren Regional Chamber of Commerce

To be clear, the role of these groups will be to work with local stakeholders to comprehensively and collaboratively identify and prioritize allowable projects that will have the greatest economic impact in their respective regions. They have been asked to seek broad input as well as seek broad support as they develop a unified list of prioritized projects on behalf of their regions to be considered by the Governor and General Assembly. We have asked that they submit their unified lists to OBM and legislative leaders by mid-December. Andy Shifflette, OBM Legislative Liaison, and Merle Madrid, Governor's Office Director of Public Liaison, will serve as Administration contacts.

#### *Statewide Arts Process*

While the Economic Development process will take a regional approach, a separate group of arts leaders has been tasked to determine those projects that they believe will have the greatest statewide and/or regional benefit on the arts facilities of the state. In order to determine the individuals that will serve on the Arts group, we solicited recommendations from a number of organizations. Those serving on the group, as well as the respective groups that appointed them, are as follows:

- Dennison W. Griffith - President, Columbus College of Art and Design (Columbus Chamber)
- Tom Johnson - Mayor of Somerset (Appalachian Partnership for Economic Growth)
- Rob Connelly - President, Henny Penny Corporation (Dayton Area Chamber of Commerce)
- George H. Vincent - Managing Partner and Chairman, Dinsmore & Shohl LLP (Cincinnati USA Regional Chamber)
- Karen Gahl-Mills - Executive Director, Cuyahoga Arts & Culture (Greater Cleveland Partnership)
- Marianne Ballas - Owner, Ballas Buick-GMC (Toledo Regional Chamber of Commerce)
- Dr. Mary Ellen Mazey - President, Bowling Green State University (Inter-University Council of Ohio)
- Dr. Jo Alice Blondin - President, Clark State Community College (Ohio Association of Community Colleges)
- Ginger Warner - Vice-Chair, Ohio Arts Council (Governor)
- George Forbes - Attorney, Former President of Cleveland Branch NAACP (House)
- Charlotte Kessler - Member, National Council for the Arts (Senate)

This group will coordinate a process for identifying, reviewing, and prioritizing arts-related project requests from across the state to be considered by the Governor and General Assembly. I would note that this separate process is not intended to preclude the eight regional groups from identifying or

recommending funding for arts-related projects in their geographic areas if they believe they are a priority for economic development in their respective regions.

As with the Economic Development process, we have asked this group to provide their recommendations to OBM and legislative leaders by mid-December. Andy Shifflette, OBM Legislative Liaison, and Steve George, the Ohio Historical Society's Senior Advisor, will serve as their Administration contacts.

#### *Project Requests from Across the State*

Although we have established structured processes for both economic development projects in the eight largest metropolitan areas and for arts projects statewide, project requests from all areas of the state are anticipated and encouraged. Communities and organizations outside the eight major metropolitan areas that are aware of projects that meet the criteria are welcome to submit recommendations for consideration to OBM and their respective legislators.

#### **Recommended Information for Project Requests**

The capital budget generally is funded through the issuance of tax-exempt state bonds, which means that projects must align with the purposes for bond funding prescribed in the Ohio Constitution and related state and federal statutes. While the capital budget process requires state agencies to submit detailed information that enables OBM to properly evaluate the permissibility of funding their project requests, OBM has found that such necessary information has not always accompanied community project requests. This has led to a number of challenges in not only evaluating some community project requests but also in releasing the funds for some projects that were included in enacted capital bills; at times, non-conformity of the projects to funding requirements has resulted in some approved projects being unable to receive capital funds.

My staff has raised this issue with me via the attached memo. As part of the process for community projects in the forthcoming capital bill, we are strongly recommending that all community project requests contain the information specified in the attachment.

This information is intended to serve as a useful reference during this process. Should additional information be needed, please contact Andy Shifflette in my office.

Attachment



# Office of Budget and Management

John R. Kasich  
Governor

Timothy S. Keen  
Director

## MEMORANDUM

TO: Timothy S. Keen, Director

FROM: Jeff Newman, Chief of Budget Planning 

DATE: September 27, 2013

RE: Community Project Administration

As you are aware, capital appropriations bills historically have contained appropriations targeted at supporting cultural, historical, economic development, natural resources and other capital projects in local communities. As proposals for such projects are not submitted by the agencies as part of their six-year capital planning process, OBM has not always received necessary information to assist in identifying potential conflicts some projects might have with state law, the Internal Revenue Code or both. As a result, following the enactment of capital appropriation bills in the past, problems have arisen with some community projects that have made it difficult or impossible to release the appropriated funds.

At the center of this issue is the fact that for more than the past decade, capital appropriations for community projects have been funded exclusively through state-issued debt in the form of bonds, for which the state constitution and the Ohio Revised Code strictly prescribe the purposes for which proceeds may be used. Generally, these uses are restricted to the acquisition or construction of capital facilities that will be owned by the state (or covered by an appropriate joint-use agreement with the state) and used for the specified purposes for which the issuance of the debt is authorized in law. In light of these restrictions, it is important that we exercise due diligence – from the beginning of the budget planning process – to ensure it will be possible to release funding for all appropriated projects.

To provide additional background on this issue, I have attached a copy of Appendix E from OBM's Capital Planning Guidance document that details the permitted use of capital funds. While this guidance is tailored to agency capital projects, it provides those considering community project proposals with an outline of what can and cannot be funded. Note that the section on Information Technology System Projects is not applicable to community projects, as IT projects for non-state entities will likely not meet the terms of an allowable project.

It is also important to note that in addition to restrictions placed on the use of state-issued bonds by Ohio law, there also are federal provisions that apply. Since debt for capital projects is being issued to fund a public purpose, the interest paid to bondholders is tax exempt. Should any proceeds from tax-exempt bonds be expended on projects that are inconsistent with their specified public purpose,

the federal government could impose significant fines and interest costs on the state. In extreme circumstances, the tax-exempt status of those bonds could be revoked.

In addition to state and federal limitations tied to the use of bond proceeds, as described above, applicants should be aware of the need to comply with state reporting and administrative requirements that accompany the use of public moneys. These can include not only the requirement to properly account for and report all expenditures, but also to ensure compliance with prescribed contracting and administrative requirements spelled out in the Ohio Revised Code.

To better assist OBM and the General Assembly in reviewing and making decisions as to which proposed projects are eligible for funding through the use of tax-exempt bonds, it would be helpful to have more detailed information earlier in the process. At a minimum, in order to review both the viability/advisability of funding a project as well as its eligibility to receive bond funds, we would need the following information from those requesting community project funding through the capital appropriations bill:

- 1) Project name and a brief description of the scope of the project;
- 2) Entity or organization sponsoring the project;
- 3) Who will own the facility or asset during construction and once work is completed;
- 4) Physical location of the project (city and county);
- 5) Estimated total project cost;
- 6) Amount of state funding being requested;
- 7) Amount of non-state funding, including private or non-state public funds supporting the project;
- 8) Whether the project will result in a useful asset or will require future funding, what state funding the project or asset has received in the past, and whether the project will be requesting additional state funding in the future;
- 9) Explanation of a plan for support of ongoing operational costs;
- 10) Any additional relevant information that the organization requesting funding believes would be of assistance in evaluating the project's value and eligibility to receive state funding.

With early submission of the information identified above, it is our goal to be able to review funding proposals accurately and expeditiously, and to assure that projects included in the capital appropriations bill will be eligible for funding. Please feel free to let me know should you have any questions.

Attachment

cc: Chris Whistler, Assistant Director OBM

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## **APPENDIX E**

### ***ALLOWABLE CAPITAL EXPENDITURE GUIDELINES***

#### **Overview**

The Ohio Revised Code and each capital bill and capital re-appropriation bill (the most recent being H.B. 482 and S.B. 312, respectively) set forth the allowable uses of capital funds. Capital appropriations for buildings or structures, including remodeling and renovations, are limited to:

- Acquisition of real property or interests in real property (i.e., the purchase of land or easements).
- Buildings and structures, which includes construction, demolition, complete heating, lighting and lighting fixtures, and all necessary utilities, ventilating, plumbing, sprinkling, and sewer systems.
- Architectural, engineering, and professional services expenses directly related to the project (including feasibility studies).
- Machinery related to the operation or functioning of the building or structure at the time of its initial acquisition or construction.

The State must own the property on which the capital facility will be located. In certain situations such as projects involving higher education institutions and county boards of developmental disability, the ownership requirement may be waived if:

- (1) The State or higher education institution owns the property or has a long-term lease (at least 15 years for state agencies and 20 years for higher education institutions), or other interest (such as an easement) in the property;
- (2) The Board of Regents on behalf of a higher education institution certifies to the Controlling Board that undue delay will occur if planning does not proceed while the property or property interest acquisition process continues. In this case, capital funds may be released upon approval by the Controlling Board to pay for planning through the development of schematic drawings only; or
- (3) If the capital facilities will be owned or be part of facilities owned by a separate nonprofit organization or public body and made available to a higher education institution or state agency for its use, the nonprofit organization or public body either owns or has a long-term lease (at least 15 years in the case of state agencies and 20 years for higher education institutions) of the real property or other capital facility to be improved, renovated, constructed or acquired and has entered into a joint/cooperative use agreement with the state agency or higher education institution that meets applicable statutory requirements.

**Joint/Cooperative Use Agreements** -- the Board of Regents has adopted rules (see OAC 3333-1-03(E)) regarding the release of capital moneys for joint or cooperative use projects. The related agreements, among other matters, must:

- Specify the extent and nature of the institution's use over a term of at least 20 years for higher education institutions and at least 15 years for state agencies, with the value of that use or right to use to be reasonably related to the amount of the State capital appropriation.
- Provide for pro rata reimbursement to the State should the arrangement for joint or cooperative use be terminated early.

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- Provide that procedures to be followed during the capital improvement process will comply with applicable state laws and rules, including capital bill provisions.
  - Provide for payment or reimbursement to the higher education institution (not to exceed 1.5% of the appropriation) of its administrative costs incurred as a direct result of the project. The institution should document those reimbursed amounts by component.

### **Allowable Equipment and Furnishings**

To be financed with capital funds, expenditures for equipment or furnishings that are part of a broader project or facility must meet **all** of the following criteria:

- Essential in bringing the facility up to its intended use and necessary for the facility to function. The equipment or furnishing must be an integral part of or directly related to the basic purpose or function of the facility.
- Have a unit cost of at least \$100.
- Have a useful life of at least five years.
- Used primarily in the rooms or areas covered by the financed project.

Allowable equipment and furnishings would include computers and computer peripherals, workstations, lab and research equipment, desks, chairs, tables, bookshelves, file cabinets, carpeting/flooring, blinds, and curtains provided that they satisfy all of the above criteria. An appropriation item specifically for equipment is allowable provided the equipment meets the above unit cost and useful life provisions.

### **Non-Allowable Equipment and Furnishings**

- Not integral to the broader project or the facility's intended use.
- Motor vehicles of any kind (e.g., cars, trucks, modified vehicles).
- General supplies and low-cost equipment (unit cost of less than \$100).

In most cases, equipment or furnishings being purchased as part of a regular maintenance, upgrade or replacement effort is not appropriate for capital funding. Consumable supplies and low-cost equipment such as fuel, oil, adding machines, calculators, trash cans, common tools, paper stock, staplers, tape dispensers, etc. are not eligible uses of capital funds.

### **Maintenance/Repairs versus Renovations**

- Maintenance and repairs, including maintenance contracts, are not eligible to be paid from capital funds and, thus, must be covered by operating funds.
- Maintenance includes the routine recurring activity undertaken to maintain the operation, functionality, appearance or safety of a piece of equipment, building or structure. Repairs are short-term maintenance projects that fix a known problem. Examples of repairs include: replacing a part or component of the heating or cooling system, fixing a leaky pipe, patching a wall, mold remediation, replacing sections of flooring or ceiling tiles, and glass replacement.
- Renovations are more extensive enhancements, upgrades, or replacements of buildings or structures or systems and are an appropriate use of capital funds. Examples include renovations of classrooms or other space into computer or research laboratories.

### **Leases, Lease-Purchase, and Installment Purchases**

- Leases and lease-purchases of vehicles or equipment are not allowable capital expenditures.

- **Installment purchases while not strictly prohibited are generally not approved as allowable capital expenditures.**

## **INFORMATION TECHNOLOGY (IT) SYSTEM PROJECTS**

Capital funds may be used to support the acquisition, development, deployment or integration (including project management) of information technology systems that constitute or are an integral part of approved capital projects. Capital funds may not be used to support the ongoing operation and maintenance of such projects.

### **ALLOWABLE**

#### **Hardware**

Capital funds may be used to purchase computers (including personal computers) and related peripherals such as servers, mainframes, printers, scanners, fax machines, etc.

#### **Software**

- Software development and design (akin to facility design and engineering).
- Purchases of packaged “off-the-shelf” software are allowable if they have an expected useful life of at least five years and meet one of the following criteria:
  - ✓ Related to the initial deployment of an agency or university-wide system or other major project deployment (periodic upgrades must be purchased with operating funds); or
  - ✓ When necessary to bring a newly constructed facility or an allowable piece of equipment up to its intended use (e.g. a computer lab).
- Software licenses with a term of at least five years.
- Purchase of perpetual licenses enabling the acquisition of shared electronic resources and databases.

#### **Personnel Expenses**

Capital funds may be used to support personnel costs related to the initial development and deployment of an information technology project. Employees splitting time between the new information technology project and other work or only temporarily assigned to the IT project should continue to be funded out of operating funds.

### **NON-ALLOWABLE**

#### **Training and Maintenance**

Expenses related to training of personnel on the new IT system or any of its components is generally not an allowable capital expenditure. Additionally, operating, not capital, funds must be used to support the ongoing maintenance and operation of IT systems or other regular, recurring expenses.

#### **Software**

Capital funds generally may not be used to purchase standard off-the-shelf software (such as MS Office software, Adobe, and web browsers) or any software package with individual license costs under \$500. Additionally, capital funds may not be used to purchase software upgrades.

### ~~Personnel Expenses~~

~~Capital funds may be used to cover only those labor expenses directly related to the initial development and deployment of a capital project. They may not be used to fund ongoing maintenance and operational expenses of a project once it is developed. In the case of colleges and universities, capital funds may not be used to cover tuition reimbursement or graduate assistantships.~~

### **Follow-Up Questions Regarding Proposed Expenditures**

- Questions regarding the capital funding eligibility of proposed expenditures should be directed to the agency's operating and capital analysts at the Office of Budget and Management.
- Institutions of higher education should consult with the capital planning Director of the Ohio Board of Regents.