



NORTH CAROLINA COMMUNITY COLLEGE SYSTEM

R. Scott Ralls, Ph.D.

President

October 24, 2011

MEMORANDUM

**TO: Presidents
Chief Business Officers
Capital Project Coordinators**

**FROM: Jennifer Haygood, Vice President for Business and Finance and
Chief Financial Officer**

SUBJECT: Special Construction Delegation Authority

On October 21, 2011, the State Board of Community Colleges approved the attached special construction delegation guidelines. A college's decision to request special construction delegation authority is voluntary and should only be pursued after thoroughly considering the duties, responsibilities, and related liabilities associated with this increase in authority. The attached guidelines describe the process a college must follow to request special construction delegation authority. Also attached is the required Form 3-8.

Please note that if the State Board grants special construction delegation authority to a college, the college continues to be subject to all other statutes and rules governing community college capital improvement projects. The State Board may rescind a college's special construction delegation for failure to comply with these laws and regulations.

If you have any questions regarding these guidelines, please contact myself, Sharon Rosado, or Dorrine Fokes.

**CC11-028
E-Mail Copy**

NORTH CAROLINA COMMUNITY COLLEGE SYSTEM

Special Construction Delegation Guidelines

Section 8.19 of S.L. 2011-145 authorizes the State Board of Community Colleges (State Board) to delegate special authority to colleges to manage the following categories of capital improvement projects:

- Projects funded in part or in total with State funds requiring the total estimated expenditure of public funds of \$4,000,000 or less; and
- Projects funded in total with non-State funds regardless of the project's estimated cost.

No college may exercise broadened authority to manage capital improvement projects absent State Board approval. If the State Board confers special delegated authority to a college, **the college continues to be subject to all other statutes and rules governing community college capital improvement projects**, including but not limited to G.S. 115D, G.S. 143-64.31-.34, G.S. 143-128.2, and G.S. 143-129. Delegated authority in no way prohibits a college from using the services of State Construction, if requested.

Duties and Responsibilities of Special Construction Delegation Authority

If a college is approved for special construction delegation and does not voluntarily obtain the assistance of the State Construction Office, the college is responsible for the following the duties and responsibilities:

- 1. Selection of Architect/Engineer:** The college board of trustees continues to select the architect/engineer. The board of trustees may expedite the designer approval process through delegation of limited authority to the college president for designer selections. The Capital Project Coordinator (CPC) must review the process to ensure compliance with State Building Commission recommendations and G.S. 143-64.31-.34.
- 2. Design Fee Negotiation and Preparation of Design Agreements:** The college is responsible for negotiating design fees and preparing design agreements. These duties shall be accomplished in consultation with the CPC, college staff or contracted resources providing technical construction expertise, college business office staff, and the college attorney. System Office staff will provide periodic feedback to the college regarding design fee trends.

The design agreement must be signed by a person authorized to commit the college to a financial obligation.

- 3. Design Review and Coordination of Design Reviews with Regulatory Agencies of State Government:** The college is responsible for examining and approving all plans and specifications for the capital improvement project. The CPC, or other college designee, is responsible for coordinating with the design consultant to ensure that applicable reviews by the regulatory agencies as described in Chapter 200 "Regulatory Review Procedures" of the

State Construction Manual are submitted and that all subsequent comments are satisfactorily resolved.

- 4. Advertisement for Construction Bids, Bid Opening, Bid Evaluation, and Award Recommendation:** The college is responsible for ensuring that these responsibilities are performed consistent with G.S. 143-129.
- 5. Construction Contract Award:** The college board of trustees is the contract award approving authority. The college attorney must review the contract as to form.
- 6. Pre-Construction Conference and Issuance of Notice to Proceed:** The college is responsible for holding the pre-construction conference and issuing the Notice to Proceed in consultation with the design consultant.
- 7. Work in Progress (Construction Management):** The CPC, in consultation with college staff or contracted resources providing technical construction expertise, is responsible for this duty as described in Chapter 500 (Construction Administration) of the State Construction Manual as the designated project monitor.
- 8. Change Order Management:** The CPC, in consultation with college staff and/or contracted resources providing technical construction expertise, shall have the responsibility of managing change orders.
- 9. Dispute Resolution:** The college is fully responsible for managing the resolution of disputes. The college board of trustees must adopt a dispute resolution process consistent with G.S. 143-128 and incorporate this dispute resolution process in the terms of the construction contract.
- 10. Final Acceptance and Close-Out:** The board of trustees is responsible for authorizing final project acceptance, based on the recommendation of the CPC and after issuance of a **Certificate of Occupancy** by the local building and electrical inspector and a **Certificate of Compliance** by the designer as described in Chapter 505.4 (Final Inspection) of the State Construction Manual.

Process for Receiving and Reviewing College Delegation Requests

To request a State Board approval for special construction delegation authority, a college must submit the following documents to the Vice President for Business and Finance:

- Original letter signed by the college president on college letterhead requesting special construction delegation authority and stating that the board of trustees has authorized the college to make this request.
- Request for Special Construction Delegation (NCCCS Form 3-8).

System Office staff will review the request and make a recommendation to the State Board. The following analyses will be used in determining any recommendation of delegation:

- 1. Assessment of College Capacity:** This assessment will be based on the presence of the following capacity:
 - a. Capital Projects Coordinator (CPC):** The CPC is the person at the college who is responsible for the capital construction process and performs the duties as described in Section 107 of the State Construction Manual. The System Office works with this person to coordinate the capital process with the State Board. This includes project initiation, budgeting, and state funds reimbursement requests (Property transactions, Submission of Forms 3-1, 3-2, & 3-9, Requests for Reimbursement Forms 2-16/2-17, and etc.). The CPC must be familiar with the State Construction process as demonstrated by having attended the training course for Capital Projects Coordinators (as provided by the State Construction Office or the System Office) and having completed (project conception to project close out) two or more formal capital improvement projects.
 - b. Technical Construction Expertise:** The college must have access to the technical construction expertise, as demonstrated by licensed credentials and/or experience, necessary to fulfill its responsibilities of design review, construction monitoring, and the close out process for each capital improvement project. This technical expertise may be provided either by college staff or through contracted professional services.
 - c. Attorney:** The board of trustees must have available the services of an attorney versed in construction contract law to provide appropriate legal advice and representation. The attorney may either be an employee of the college or on contract.
 - d. Administrative support personnel:** The college must designate administrative staff to provide support to the CPC.
- 2. Assessment of College Policies and Procedures:** The college must have an official document outlining the college's policies and procedures for managing capital improvement projects.
- 3. Assessment of Past Practices:** The System Office Construction Staff, in conjunction with the State Construction Office, will conduct a review of past practices and actions (if applicable) in regard to issues associated with formal construction projects. This will be accomplished by a review of project files, timely and appropriate submissions for State Board approval, timely and appropriate submissions for State Construction review and approval, college audit reports concerning facility management and financial management of capital facility projects, and a review of projects requiring dispute resolution by the State Construction Office. If the review of project submissions identifies a pattern of failing to follow the procedures as set forth in the NC Community College System Construction Manual and the State Construction Manual, that pattern may serve as a basis for recommending disapproval.

The State Board will determine whether or not to delegate authority to the college to the fullest extent provided under the law; it will not consider authorizing partial or incremental increases in construction delegation. If the State Board approves a college's request to grant special construction delegation authority, the approval will be effective on the first day of the month

following the State Board's approval. A college that is granted special construction delegation authority **must submit an amended Form 3-8** to inform the State Board of any significant change impacting the college's capacity to manage the increased delegation as represented in its original request.

If a college **does not** receive special delegation authority, the college must continue to follow the procedures as addressed in G.S. 143-129 and G.S. 143-341 to include review and oversight by the State Construction Office. A college may submit a request for reconsideration after one year. The application should include information identifying the steps taken to improve their deficiencies and the success of those changes.

Authority to Rescind Special Construction Delegation Authority.

The State Board may rescind a college's special construction delegation authority under any of the following circumstances:

1. Failure to comply with statutes, rules, and procedures governing community college capital improvement projects;
2. Failure to submit **an amended Form 3-8** to inform the State Board of any significant change impacting the college's capacity to manage the increased delegation as represented in its original request.
3. Negative audit findings associated with construction management, depending on the severity of and the college's response to the findings;
4. Demonstrated problems managing its special construction delegation authority.