

<b>System-wide Policy:</b> <b>FI0620 - Capital Projects; Real Estate Transactions (including Leases of Real Property);</b> <b>TSSBA Debt</b>	
<b>Version: 6</b>	<b>Effective Date: 01/09/2024</b>

## SECTION 1. Policy Statement

### I. Guiding Principles

- A. The University's capital projects and real estate strategy is grounded in supporting the University's mission of education, discovery, and outreach that recognizes its long-term vision and fiscal responsibility to the people of the State of Tennessee.
- B. A comprehensive program of facilities planning, capital budgeting and project development, and facilities operation and maintenance is essential for the University to effectively serve students, faculty, staff, and other University constituencies.
- C. Capital Projects for the creation, renovation, renewal, remodeling, and adaptation of buildings, outdoor spaces, other support spaces, or supporting infrastructure will be developed and justified through a planning process that considers total cost of ownership and program delivery. Projects will be professionally designed and managed; optimal utilization of existing space emphasized; and existing facilities maintained in a manner that is cost effective, extending their useful lives
- D. The administration shall develop and present to the Board for adoption, a master plan for each campus to provide an integrated framework for investment decisions that will ensure adequate facilities to support implementation of the strategic plans for the University system and its campuses. The use and stewardship of University property and facilities shall be consistent with the master plan for each campus. The University System Administration Department of Capital Projects facilitates the development of these master plans in close collaboration with the Campuses.
- E. The University will prioritize properties for acquisition if a specific, mission-supporting use has been identified for the property long-term. The University will also consider the financial impacts of holding property, including minimizing the University's long-term financial liability in order to minimize capital and operating costs of the property until it is developed for the University's mission-supporting use.
- F. Dispositions of property may occur when it is determined that the property is no longer required to fulfill the University's mission, the disposition better meets the University's needs, or is otherwise appropriate in light of the particular circumstances.
- G. The mission of the University System Administration Department of Capital Projects is to collaborate with the Campuses and Institutes to efficiently and effectively facilitate capital projects and real estate transactions.
- H. The University System Administration Department of Capital Projects serves as the main point of contact for the University, and manages state of Tennessee review and approval processes related to Capital Projects and real-estate, including State Building Commission and the Tennessee State School Bond Authority.
- I. All requests for state funding for capital expenditures must comply with Board Policy BT0019 - Process for Submitting Legislative Proposals and Funding Requests to the General Assembly.

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- J. This policy governs the following related to the University's real property:
- 1.Acquisition and disposal (which includes the following transactions related to University real property: sale; easement; or leases)
  - 2.Construction
  - 3.Demolition
  - 4.Design
  - 5.Major maintenance
  - 6.Master planning
  - 7.Renovation

II. Account Management and Funding

- A. The University will use plant funds to account for money that the University will use to pay for Capital Projects. The University will move federal-grant funds for projects included in a Capital Project into the applicable plant fund.
- B. If the project includes institutional funds, the project must be funded at the beginning of the project by depositing funds into a plant fund; or, alternatively, a campus, institute, or unit may produce evidence of unrestricted, uncommitted funds that will be used for the Capital Project via a financial plan that the campus or institute submits to the UT System Administration Chief Financial Officer.
- C. Each campus, institute, or unit will provide the funding account to the Office of Capital Projects and the Controller's Office at the beginning of each Capital Project.

III. Capital Projects

A. Authority:

1.The UT System Administration Department of Capital Projects is responsible for supporting the University, in close collaboration with the Campuses and Institutes, by providing the planning and administration of capital improvement programs including the following services:

- a) Development of facilities programs and Capital Project budgets;
- b) Development of capital funding requests;
- c) Administration of the design and construction of Capital Projects; and
- d) Leadership of special facilities planning and Capital Projects.

2.The UT System Administration Department of Capital Projects will manage all contracts and all change orders (amendments) to contracts related to Capital Projects.

B. Delegating Capital Projects:

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1. The Department of Capital Projects may request that the State Building Commission grant the Department of Capital Projects the authority to delegate project administration to a campus or institute.
  2. The Department of Capital Projects will provide guidance to a campus regarding the delegated project's work.
  3. If a campus or institute fails to comply with this policy, the Department of Capital Projects may decline delegation to a campus or institute.
- C. The Department of Capital Projects is responsible for:
1. Annual Capital Budget and Disclosures.
  2. Designer selection.
  3. Initiation and execution of all agreements related to Capital Projects.
  4. Managing the University's interactions with the Tennessee State School Bond Authority (TSSBA) and the State Building Commission (SBC).
  5. Procurement of Capital Projects.
  6. Oversight of design process.
  7. Oversight of the construction process.
  8. Oversight of project close-out.
  9. Required approvals as outlined in this policy.
- D. Facilitate all campus Master Planning with Campuses and Institutes
1. Initiation and execution of Master Planning agreements.
  2. Development and initiation of Master Planning procurement process.
  3. Oversight of Master Planning process and amendments.
  4. Obtain required approvals as outlined in this policy.
- E. Oversight of Real Property Transactions
1. The Department of Capital Projects will manage all aspects of the following transactions related to real property:
    - a) Acquisitions (see Chart 4)
    - b) Disposals (including transfers of jurisdiction)
    - c) Leases (acquisitions or disposals; where the University is lessor or lessee)
    - d) Easements
    - e) Deed restrictions
    - f) Gift property (when gifted to the University and not the UT Foundation)
    - g) Mineral rights
    - h) Space analytics and reporting
- IV. Controller's Office
- A. The University's Office of the Controller will:
1. Create and manage all accounts related to Capital Projects.

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2. Request and record the drawdown of state appropriations and Tennessee State School Bond Authority funds for each Capital Project.
3. Manage closing out accounts at the conclusion of each Capital Project.

V. Treasurer's Office

- A. The University's Office of the Treasurer is the custodian of deeds related to real property.
- B. The Treasurer's Office also processes all disbursements and deposits related to the University's Capital Projects and real-property transactions.

VI. Required Approvals for Capital Projects

- A. The University cannot begin work on a Capital Project until the Department of Capital Projects obtains all required approvals.
- B. The Department of Capital Projects will submit projects through all required review steps, including the annual capital budget cycle for funding requests.
- C. Chart 1 (Capital Projects Thresholds Organized by Thresholds) and Chart 2 (Capital Projects Approvals Organized by Approvers) set forth specific information related to required approvals.
- D. University Board of Trustees
  1. In accordance with T.C.A. §49-9-201, et. seq., the University's Board of Trustees has authority over the following items:
    - a) Real property sale or other disposal, including easements
    - b) Approval of Capital Projects.
    - c) Expand and align with updated board policy
- E. State Building Commission (SBC)
  1. The Tennessee General Assembly created the State Building Commission (SBC) by legislative enactment (T.C.A. § 4-15-101, et. seq.).
  2. The Department of Capital Projects will maintain processes designed to comply with SBC Policy and Procedures. The SBC has designated the Department of Capital Projects as the State Procurement Agency responsible for the University's Capital Projects and Real Estate matters.
- F. Office of the State Architect
  1. The Department of Capital Projects will follow the Office of the State Architect's policies and procedures, when applicable.
- G. Tennessee Higher Education Commission (THEC)
  1. The Department of Capital Projects will follow the policies and procedures of THEC, per T.C.A. § 49-7-202.
- H. Tennessee State School Bond Authority (TSSBA)

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1. The Department of Capital Projects will follow applicable TSSBA policies and procedures related to capital projects, per T.C.A. § 49-3-1201 et. seq.
- I. Tennessee Historical Commission
  1. The Tennessee Historical Commission reviews projects that affect buildings that are 50 years old or older. The age of the building is assessed at the point when the University submits the project for approval.
- VII. Licensed Professional Requirements
  - A. Registered Architect, Registered Engineer, or Registered Landscape Architect:
    1. Per T.C.A. § 62-2-107, the University is required to engage the services of a registered architect, registered engineer, or a registered landscape architect if the project:
      - a) is \$50,000.00 or more; or
      - b) will alter the structural, mechanical, or electrical system of the project (regardless of the amount)
  - B. Licensed Contractor:
    1. Per T.C.A. § 62-6-103, the University is required to utilize contractors with an active Tennessee contractor's license for work valued at \$25,000 or more.
    2. The contractor must have an active Tennessee contractor's license with appropriate license classifications and sufficient monetary limits. The University must verify the contractor's license before the University signs a contract with the contractor.
  - C. Others: When required by law or regulations, the University will engage contractors with appropriate licenses and qualifications.
- VIII. Bonds
  - A. Per T.C.A. § 12-4-201, the University will require the contractor to obtain a contractor's bond covering labor and materials, when required by law.
  - B. The University may exercise its discretion and require either a payment bond, a performance bond, or both, when the University believes that doing so would be in the University's best interest.
- IX. Changes in the value of a contract
  - A. The Department of Capital Projects will create a process to manage change orders.
  - B. The Department of Capital Projects is responsible for managing each project's budget, including the approval of all expenses.
- X. Questions regarding state laws related to Capital Projects

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- A. The responsible official listed at the end of this policy is available to address any questions that a University employee has regarding the application of Tennessee laws related to this policy.
  - B. Other Potential Required Reviews and Approvals
    - 1. State of Tennessee Real Estate Asset Management (STREAM)
    - 2. State Fire Marshal
    - 3. Army Corp of Engineers
    - 4. Tennessee Valley Authority
    - 5. Tennessee Department of Transportation
    - 6. Local municipalities
    - 7. National Historic Preservation Act
    - 8. Tennessee Historical Commission
    - 9. Tennessee Department of Environment and Conservation
- XI. Reporting:
- A. Office of the State Architect
    - 1. Quarterly, the Department of Capital Projects will submit a report of all Capital Projects to the Office of the State Architect.
- XII. Capital Projects Manual:
- A. The Department of Capital Projects will maintain a capital projects manual that contains the Department of Capital Project's procedures and other related information. [The procedures manual will be available online when available.]
- XIII. Leases
- A. The policy does not apply to licenses for use of real property. A license is when the owner of property gives another individual or entity the owner's permission to utilize the owner's property. A lease is when the owner (landlord) gives an individual or entity (the tenant) exclusive rights to utilize the owner's property.
    - 1. Departments must contact the Director of Real Property to determine whether a proposed agreement is a license or a lease.
    - 2. Licenses are governed by FI0405 – Procurement and FI0420 – Contracts. Departments must contact their contract office for assistance with licenses of property.
  - B. Procurement and Contracts Policies
    - 1. If a lease does not fall within the authority of the Department of Capital Projects, departments must comply with FI0405~Procurement policy and FI0420 Contracts policy.

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2. Departments must comply with all other applicable policies and procedures, including campus or institute procedures.
- C. Department of Capital Projects Authority
1. Chart 3 (Leases—UT as Tenant) and Chart 5 (Lease—UT as Landlord). These charts set forth specific information related to required approvals.
  2. The Department of Capital Projects will review, prepare, negotiate, and process all leases that fall within either or both of the following criteria:
    - a) The proposed rent exceeds \$50,000 per year;
      - i. When determining whether a lease will cost more than \$50,000, the University will calculate the rent utilizing an all-inclusive approach: rent is calculated by adding payments that the university will make directly to the landlord, including all rent, real estate taxes, insurance, janitorial service, building and ground maintenance and repair, utilities, and any other costs related to the lease.
    - b) The proposed term is longer than 5 years (including all renewal options), regardless of dollar amount.
- D. Advertisement
1. Generally, the Department of Capital Projects will publicly advertise/solicit responses for all leases when the annual rent will be equal to or more than \$50,000.
  2. The following leases do not require advertisement:
    - a) The annual rent is less than \$50,000.
    - b) A government agency owns the property.
    - c) The term of the lease is less than 1 year, provided that the State Building Commission approves the Department of Capital Projects' request to forgo advertisement.
- E. Waiver of Advertisement
1. The Department of Capital Projects may seek to obtain a waiver of advertisement from the State Building Commission.
- F. Tennessee State School Bond Authority
1. The Department of Capital Projects will submit proposed leases that meet one or both of the following criteria to the Tennessee State School Bond Authority for review before executing (signing):
    - a) Annual rent is more than \$250,000 per year; or
    - b) The term is more than 5 years.
- G. State Building Commission

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  - a) Annual rent is more than \$250,000 per year; or
  - b) The term is more than 5 years.
- H. Reporting
  1. Office of the State Architect
    - a) Quarterly, the Department of Capital Projects will submit a report of all real-property leases to the Office of the State Architect.
  2. Tennessee Higher Education Commission (THEC)
    - a) Quarterly, the Department of Capital Projects will report to the Tennessee Higher Education Commission all leases not required to be submitted to the State Building Commission.
  3. Tennessee State School Bond Authority
    - a) Quarterly, the University will report lease transactions to the Tennessee State School Bond Authority consistent with TSSBA's policies.
- I. Tax Considerations for Receivable Leases
  1. Unrelated Business Taxable Income
    - a) Rental income from real property is normally excludable from unrelated business income (§1.512(b)-1(c)(ii)(a)).
    - b) Rental income from mixed leases including real and personal property may create unrelated business income if the rents attributable to personal property exceeds 10% (§1.512(b)-1(c)(ii)(b)).
    - c) Amounts paid for the occupancy of space do not qualify as excludable rents if the owner of the property renders services for the convenience of the occupant (§1.512(b)-1(c)(5)).
    - d) Rental income based on a percentage of the lessee's sales or profits will not qualify for the rental income exclusion (§1.512(b)-1(c)(iii)(b)).
    - e) Rental income from property acquired with acquisition indebtedness (§1.512(b)-1(c)(2)) does not meet the rental income exclusion unless substantially all of the use of the property is substantially related to the exempt purpose of the university.
  2. Sales Tax
    - a) Income from the rental of real property is generally excluded from Tennessee sales tax, but the inclusion of personal property (i.e., tables, chairs, podiums, etc.) may have Tennessee sales tax implications (Tenn. Code Ann. § 67-6-204).



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- b) Tennessee specifically enumerates certain services as taxable which includes lodging services and rooms, cleaning of tangible personal property, and parking of motor vehicles (Tenn. Code Ann. § 67-6-205).
3. The University's Controller's Office is the University's tax office. The Department of Capital Projects or the applicable campus or institute must consult with the University's Controller's Office about any questions or concerns related to UBTI or Sales Tax.

#### XIV. TSSBA Debt

##### A. General Information

1. Certain capital projects at The University of Tennessee are financed by the issuance of tax-exempt bonds.
2. The tax-exempt status of bonds is maintained by complying with applicable federal laws and regulations. The tax-exempt status of a bond continues through the duration of the life of the bond, but the status can be lost due to non-compliance.
3. Private business use of facilities financed with tax-exempt bonds must not exceed the limits imposed by federal tax law. Private business use may occur when a private party enters a business arrangement with the University which can result in that party making money or benefitting from the use of the bond-financed facility.
4. The University will comply with Board policy [BT0026—Debt Management](#).

##### B. Types of contracts subject to additional review for Private Business Use

1. The following types of contracts might trigger private-business use issues:
  - a) Contracts where the University is leasing space to a third-party for the third-party to conduct business;
  - b) Contracts with third parties to manage operations or provide services in a University-owned property;
  - c) Contracts with a sponsor for the conduct of applied research in a University-owned facility. Contracts for basic research do not require additional review. "Basic research" means original investigation for the advancement of scientific knowledge not having a specific commercial object. For example, product testing supporting trade or business of a specific nongovernmental sponsor is not basic research.

##### C. Review process

1. If an individual or company seeks to occupy or fund applied research in space financed by tax-exempt bonds, the Chief Business Officer of the campus, institute, or unit will notify the Controller's Office to ensure that the contract

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does not result in a violation of federal rules and regulations regarding private business use of tax- exempt financed facilities. The Controller's Office will review the contract for private use and consult the Office of the General Counsel and the Office of the Treasurer.

2. The Office of General Counsel will, if appropriate or necessary, refer the question to outside bond counsel. If the System Procurement Office, the Campus Contract Office, the Chief Business Officer of the campus, institute, or unit, the Office of General Counsel, the Office of the Treasurer, and the Controller's Office all approve of the use agreement, the agreement will not be referred for review to outside bond counsel.

D. Change of use

1. The Chief Business Officer of each campus, institute, or unit will report to the Controller's Office and to the Office of the Treasurer any change in a project or use of a facility that may implicate private business use.
2. Upon receiving notice of such a change, the Controller's Office and the Office of the Treasurer will consult with the Office of General Counsel and will review the change to determine if such change creates private business use.

E. Tennessee State School Bond Authority

1. The University will comply with all rules and regulations issued by the Tennessee State School Bond Authority.

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## SECTION 2. Reason for the Policy

This policy outlines the various state and federal approvals and processes that are necessary for the University to follow when conducting Capital Projects, or when engaging in leases as outlined in this policy.

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## SECTION 3. Scope and Application

This policy applies to all departments.

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## SECTION 4. Procedures

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The University of Tennessee System Administration Department of Capital Projects will maintain a procedures manual. The procedures manual will govern all procedures related to the University's capital projects.

## SECTION 5. Definitions

The University will utilize the State Building Commission's [definitions](#) for this policy.

## SECTION 6. Penalties/Disciplinary Action for Non-Compliance

Failure to comply with this policy might result in the University imposing disciplinary actions. State or federal agencies might impose additional penalties on the University due to a failure to comply with this policy or applicable laws or regulations.

## SECTION 7. Responsible Official & Additional Contacts

Subject Matter	Office Name	Telephone Number	Email/Web Address
Policy Clarification and Interpretation	Austin Oakes	865-974-2231	aoakes1@tennessee.edu

## SECTION 8. Policy History

Revision 3: 01/09/2024

Revision 2: 12/20/2017

Revision 1: 10/13/2017

## SECTION 9. Related Policies/Guidance Documents

FI0120 – Records Management

FI0405 – Procurement

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FI0420 - Contracts

FI0615 - Disposition of Gift Personal Property

BT0019 - Process for Submitting Legislative Proposals and Funding Requests to the General Assembly

BT0021 - Process for the Campus Advisory Board to Submit a Recommendation to the President on the Annual Operating Budget