2002 Session

Budget Bill - HB30 (Chapter 899)

Item 4-4.01

§ 4-4.01 GENERAL

a. Definition:

1. When used in this section, "capital project" or "project" means acquisition of property and new construction and improvements related to state-owned property, plant or equipment (including plans therefor), as the terms "acquisition", "new construction", and "improvements" are defined in the instructions for the preparation of the Executive Budget. "Capital project" or "project" shall also mean any improvements to property leased for use by a state agency, and not owned by the state, when such improvements are financed by public funds, except as hereinafter provided in subdivisions 3 and 4 of this subsection.

2. The provisions of this section are applicable equally to acquisition of property and plant by purchase, gift, or any other means, including the acquisition of property through a lease/purchase contract, regardless of the method of financing or the source of funds. Acquisition of property by lease shall be subject to §§ 4-3.03 and 4-5.09 of this act.

3. The provisions of this section shall not apply to property or equipment acquired by lease or improvements to leased property and equipment when the improvements are provided by the lessor pursuant to the terms of the lease and upon expiration of the lease remain the property of the lessor.

4. The provisions of this section shall not apply to property leased by state agencies for the purposes described in §§ 2.2-1151 C and 33.1-93, Code of Virginia.

b. Notwithstanding any other provisions of law, requests for appropriations for capital projects shall be subject to the following:

1. The agency shall submit a capital project proposal for all requested capital projects. Such proposals shall be submitted to the Director, Department of Planning and Budget, for review and approval in accordance with guidelines prescribed by the Director. Projects shall be developed to meet agency functional and space requirements within a cost range comparable to similar public and private sector projects.

2. Any preplanning studies subsequently prepared shall be submitted to the Director, Department of General Services, for review in accordance with such guidelines. Unless otherwise determined by the Director, Department of Planning and Budget, such preplanning studies are required for all projects for which appropriations have been made and which meet the criteria for preplanning studies specified in the instructions for the preparation of the Executive Budget.

3. Capital project proposals and preplanning studies shall be submitted to the House Appropriations Committee and the Senate Finance Committee at the same time they are submitted as specified above. No action shall be taken on requests for appropriations until required capital project proposals and preplanning studies are received by these committees.

4. All requests for appropriations for capital projects by institutions of higher education shall comply, where applicable, with the Treasury Board Guidelines issued pursuant to § 23-19 (d) (4), Code of Virginia, and any subsequent amendments thereto.

5. As part of any request for appropriations for an armory, the Department of Military Affairs shall obtain a written commitment from the host locality to share in the operating expense of the armory.

c. The agency head or the chief financial officer of institutions of higher education and state agencies shall certify to the Director, Department of Planning and Budget, by June 30 of each year, that necessary roof repairs to buildings under their control have been given first priority for repair or replacement and that to the best of their knowledge all necessary roof repairs have been accomplished, are in the process of being accomplished, or the necessary funds for accomplishing the work have been requested before the institution or state agency requests funds for other improvements or new construction projects. Such roof repairs and replacements shall be in accord with the technical requirements of the Commonwealth's Construction and Professional Manual for Agencies.

d. The Department of Planning and Budget shall maintain a preplanning process as part of the Commonwealth's approach to capital outlay planning and budgeting. The purpose of this process shall be to define each proposed capital project in terms of its scope, size, and cost. For this purpose, the Department may require agencies and institutions to submit either a preplanning study, including preliminary schematics for the project, or other information as necessary to identify the design parameters, including any special features and requirements associated with the project and a realistic project budget. The Department of Planning and Budget shall review its approach to capital outlay planning and budgeting from time to time and report any proposed change to the Chairmen of the House Appropriations and Senate Finance Committees prior to its implementation. Such report shall include an analysis of the impact of the suggested change on affected agencies and institutions.

e. Nothing in §§ 2-0 and 4-4.00 of this act shall be deemed to override the provisions of §§ 2.2-1132 and 62.1-132.6 , Code of Virginia, amended by Chapter 488, 1997 Acts of Assembly, relating to Virginia Port Authority capital projects and procurement activities.

f. Legislative Approval: It is the intent of the General Assembly that, with the exceptions noted in this paragraph, all capital projects to be undertaken by agencies of the Commonwealth, including institutions of higher education, shall be pursuant to approvals by the General Assembly at its regular sessions in even-numbered years. The consideration of capital projects in odd-numbered years shall be limited to:

1. Supplementing projects which have been bid and determined to have insufficient funding to be placed under contract, and

2. Projects declared by the Governor or the General Assembly to be of an emergency nature, which may avoid an increase in cost or otherwise result in a measurable benefit to the state, and/or which are required for the continued use of existing facilities.

This paragraph does not prohibit the initiation of projects authorized by § 4-4.01 m hereof, or projects included under the central appropriations for capital project expenses in this act.

g. Preliminary Requirements: In regard to each capital project for which appropriation or reappropriation is made pursuant to this act, or which is hereafter considered by the Governor for inclusion in the Executive Budget, or which is offered as a gift or is considered for purchase, the Governor is hereby required: (1) to determine the urgency of its need, as compared with the need for other capital projects as herein authorized, or hereafter considered; (2) to determine whether the proposed plans and specifications for each capital project are suitable and adequate, and whether they involve expenditures which are excessive for the purposes intended; (3) to determine whether labor, materials, and other requirements, if any, needed for the acquisition or construction of such project

can and will be obtained at reasonable cost; and (4) to determine whether or not the project conforms to a site or master plan approved by the agency head or board of visitors of an institution of higher education for a program approved by the General Assembly.

h. Initiation Generally:

1. No architectural or engineering planning for, or construction of, or purchase of any capital project shall be commenced or revised without the prior written approval of the Governor.

2. The requirements of § 10.1-1190, Code of Virginia, shall be met prior to the release of funds for a major state project, provided, however, that the Governor is authorized to release from any appropriation for a major state project made pursuant to this act such sum or sums as may be necessary to pay for the preparation of the environmental impact report required by § 10.1-1188, Code of Virginia.

3. The Governor, at his discretion, may release from any capital project appropriation or reappropriation made pursuant to this act such sum (or sums) as may be necessary to pay for the preparation of plans and specifications by architects and engineers, provided that the estimated cost of the construction covered by such drawings and specifications does not exceed the appropriation therefor; provided, further, however, that the architectural and engineering fees paid on completion of the preliminary design for any such project may be based on such estimated costs as may be approved by the Governor in writing, where it is shown to the satisfaction of the Governor that higher costs of labor or material, or both, or other unforeseen conditions, have made the appropriation inadequate for the completion of the project for which the appropriation was made, and where in the judgment of the Governor such changed conditions justify the payment of architectural or engineering fees based on costs exceeding the appropriation.

4. Architectural or engineering contracts shall not be awarded in perpetuity for capital projects at any state institution, agency or activity.

i. Capital Projects Financed with Bonds: Capital projects proposed to be financed with (i) 9(c) general obligation bonds or (ii) 9(d) obligations where debt service is expected to be paid from project revenues or revenues of the agency or institution, shall be reviewed as follows:

1. Requests for inclusions in the Executive Budget of capital projects to be financed with (i) general obligation bonds or (ii) 9(d) obligations where debt service is expected to be paid from project revenues or revenues of the agency or institution shall be submitted to the State Treasurer for evaluation of financial feasibility. Submission shall be in accordance with the instructions prescribed by the State Treasurer. The State Treasurer shall distribute copies of financial feasibility studies to the Director, Department of Planning and Budget, the Secretary for the submitting agency or institution, and the Chairmen of the House Appropriations and Senate Finance Committees.

2. Copies of financial feasibility studies for capital projects for institutions of higher education shall also be provided to the State Council of Higher Education. The Council shall identify the impact of all projects requested by institutions of higher education, and described in § 4-4.01 i 1 above, on the current and projected cost to students in institutions of higher education and the impact of the project on the institution's need for student financial assistance. The Council shall report such information to the Secretary of Finance and the Chairmen of the House Appropriations and Senate Finance Committees not later than December 1 each year.

3. Prior to the issuance of debt for 9(c) general obligation projects, when more than one year has elapsed since the review of financial feasibility specified in § 4-4.01 i 1 above, the State Treasurer shall again review the financial feasibility of the project prior to requesting the Governor's Opinion of Financial Feasibility required under Article X, Section 9 (c), of the Constitution of Virginia.

j. Transfers to supplement capital projects from nongeneral funds may be made under the conditions set forth in §§

4-1.03 a, 4-1.05 b 3, and 4-4.01 m of this act.

k. Increase In Size And Scope: No capital project may be increased in scope or size beyond the plans and justification which supported the request and which were the basis for the appropriation or reappropriation in this act or for the Governor's authorization pursuant to § 4-4.01 m of this act; however, this prohibition is not applicable to increases in size and scope required because of circumstances determined by the Governor to be an emergency, or requirements imposed by the federal government when such capital project is for armories or other defense-related installations and is funded in whole or in part by federal funds, or minor increases in square footage determined by the Director, Department of General Services, to be reasonable based on a written justification submitted by the agency stating the necessity for the increase, with the provision that such increase will not increase the cost of the project beyond the amount appropriated.

l. Conformance With Space Planning Guides: If space planning guides for any type of construction have been approved by the Governor or by the General Assembly, the Governor shall require capital projects to conform to such planning guides.

m. Projects Not Included In This Act:

1. Authorization by Governor:

a) The Governor may authorize initiation of, planning for, construction of or acquisition of a capital project not specifically included in this act or provided for a program approved by the General Assembly through appropriations, under one or more of the following conditions:

1) The project is required to meet an emergency situation.

2) The project is to be operated as an auxiliary enterprise or sponsored program in an institution of higher education and will be fully funded by revenues of auxiliary enterprises or sponsored programs.

3) The project is to be operated as an educational and general program in an institution of higher education and will be fully funded by nongeneral fund revenues of educational and general programs or from private gifts and indirect cost recoveries.

4) The project consists of plant or property which has become available or has been received as a gift.

5) The project has been recommended for funding by the Tobacco Indemnification and Community Revitalization Commission or the Virginia Tobacco Settlement Foundation.

b) The foregoing conditions are subject to the following criteria:

1) Funds are available within the appropriations made by this act (including those subject to §§ 4-1.03 a, 4-1.05 b 3, and 4-2.03) without adverse effect on other projects or programs, or from unappropriated nongeneral fund revenues or balances.

2) In the Governor's opinion such action may avoid an increase in cost or otherwise result in a measurable benefit to the state.

3) The authorization includes a detailed description of the project, the project need, the total project cost, the estimated operating costs, and the fund sources for the project and its operating costs.

4) The Chairmen of the House Appropriations and Senate Finance Committees shall be notified by the Governor prior to the authorization of any capital project under the provisions of this subsection.

2. Authorization by Director, Department of Planning and Budget:

The Director, Department of Planning and Budget, may authorize initiation of a capital project not included in this act, if the General Assembly has enacted legislation to fund the project from bonds of the Virginia Public Building Authority or from reserves created by refunding of bonds issued by the Authority.

n. Acquisition, maintenance, and operation of buildings and nonbuilding facilities in colleges and universities shall be subject to the following policies:

1. The anticipated program use of the building or nonbuilding facility should determine the funding source for expenditures for acquisition, construction, maintenance, operation, and repairs.

2. Expenditures for land acquisition, site preparation beyond five feet from a building, and the construction of additional outdoor lighting, sidewalks, outdoor athletic and recreational facilities, and parking lots in the Virginia Community College System shall be made only from appropriated Trust and Agency funds, including local government allocations or appropriations, or the proceeds of indebtedness authorized by the General Assembly.

3. The general policy of the Commonwealth shall be that parking is to be operated as an auxiliary enterprise by all colleges and universities. Institutions should develop sufficient reserves for ongoing maintenance and replacement of parking facilities.

4. Expenditures for maintenance, replacement, and repair of outdoor lighting, sidewalks, and other infrastructure facilities may be made from any appropriated funds.

5. Expenditures for operations, maintenance, and repair of athletic, recreational, and public service facilities, both indoor and outdoor, should be from nongeneral funds. However, this condition shall not apply to any indoor recreational facility existing on a community college campus as of July 1, 1988.

6. Any nongeneral fund project developed by the University of Virginia, Virginia Polytechnic Institute and State University, or The College of William and Mary, with an estimated cost of $500,000 or less, shall be exempt from the capital outlay review and approval process.

7. It is the policy of the Commonwealth that the institutions of higher education shall treat the maintenance of their facilities as a priority for the allocation of resources. No appropriations shall be transferred from the "Operation and Maintenance of Plant" subprogram except for closely and definitely related purposes, as approved by the Director, Department of Planning and Budget, or his designee. A report providing the rationale for each approved transfer shall be made to the Chairmen of the House Appropriations and Senate Finance Committees.

o. Legislative Intent and Reporting: Appropriations for capital projects shall be deemed to have been made for purposes which require their expenditure, or being placed under contract for expenditure, during the current biennium. Agencies to which such appropriations are made in this act or any other act are required to report progress as specified by the Governor. If, in the opinion of the Governor, these reports do not indicate satisfactory progress, he is authorized to take such actions as in his judgment may be necessary to meet legislative intent as herein defined. Reporting on the progress of capital projects shall be in accordance with § 4-8.00, Reporting Requirements.

p. No expenditure from a general fund appropriation in this act shall be made to expand or enhance a capital outlay project beyond that anticipated when the project was initially approved by the General Assembly except to comply with requirements imposed by the federal government when such capital project is for armories or other defense-related installations and is funded in whole or in part by federal funds. General fund appropriations in excess of those necessary to complete the project shall not be reallocated to expand or enhance the project, or be reallocated

to a different project. The prohibitions in this subsection shall not apply to transfers from projects for which reappropriations have been authorized.

q. Local or private funds to be used for the acquisition, construction or improvement of capital projects for state agency use as owner or lessee shall be deposited into the state treasury for appropriation prior to their expenditure for such projects.

r. The first priority of any agency or institution in requesting capital outlay appropriations shall be maintenance reserve funds.

s. State-owned Registered Historic Landmarks: To guarantee that the historical and/or architectural integrity of any state-owned properties listed on the Virginia Landmarks Register and the knowledge to be gained from archaeological sites will not be adversely affected because of inappropriate changes, the heads of those agencies in charge of such properties are directed to submit all plans for significant alterations, remodeling, redecoration, restoration or repairs that may basically alter the appearance of the structure, landscaping, or demolition to the Department of Historic Resources. Such plans shall be reviewed within thirty days and the comments of that Department shall be submitted to the Governor through the Department of General Services for use in making a final determination.

t. The Governor may authorize the conveyance of any interest in property or improvements thereon held by the Commonwealth to the educational or real estate foundation of any institution of higher education where he finds that such property was acquired with local or private funds or by gift or grant to or for the use of the institution, and not with funds appropriated to the institution by the General Assembly. Any approved conveyance shall be exempt from § 2.2-1156, Code of Virginia, and any other statute concerning conveyance, transfer or sale of state property. If the foundation conveys any interest in the property or any improvements thereon, such conveyance shall likewise be exempt from compliance with any statute concerning disposition of state property. Any income or proceeds from the conveyance of any interest in the property shall be deemed to be local or private funds and may be used by the foundation for any foundation purpose.

u. Facility Lease Agreements Involving Institutions of Higher Education: In the case of any lease agreement involving state-owned property controlled by an institution of higher education, where the lease has been entered into consistent with the provisions of § 2.2-1155, Code of Virginia, the Governor may amend, adjust or waive any project review and reporting procedures of Executive agencies as may reasonably be required to promote the property improvement goals for which the lease agreement was developed.

v. Energy-efficiency Projects: Improvements to state-owned properties for the purpose of energy-efficiency shall be considered an operating expense, provided that:

1. The scope of the project meets or exceeds the applicable energy-efficiency standards set forth in the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) and the Illuminating Engineering Society (IES) standard 90.1-1989 and is limited to measures listed in guidelines issued by the Department of General Services.

2. The project is financed consistent with the provisions of § 2.2-2417, Code of Virginia, and is executed through a nonprofessional services contract with a vendor approved by the Division of Purchases and Supply of the Department of General Services.

3. The scope of work is consistent with an energy management plan which has been approved by the Department of Mines, Minerals and Energy.

4. However, if the project scope entails: (a) constructing, enlarging, altering, repairing or demolishing a building or structure, (b) changing the use of a building either within the same use group or to a different use group when the

new use requires greater degrees of structural strength, fire protection, exit facilities or sanitary provisions, or (c) removing or disturbing any asbestos-containing materials during demolition, alteration, renovation of or additions to building or structures, the project shall be subject to the state capital outlay process.

5. If the total project exceeds $250,000, the agency director will submit written notification to the Director, Department of Planning and Budget, verifying that the project meets all of the above conditions. The Director shall notify, in turn, the Chairmen of the House Appropriations and Senate Finance Committees that such projects have been initiated.

w. No expenditures shall be authorized for the purchase of fee simple title to any real property to be used for a correctional facility or for the actual construction of a correctional facility provided for in this act, or by reference hereto, that involves acquisition or new construction of youth or adult correctional facilities on real property which was not owned by the Commonwealth on January 1, 1995, until the governing body of the county, city or town wherein the project is to be located has adopted a resolution supporting the location of such project within the boundaries of the affected jurisdiction. The foregoing does not prohibit expenditures for site studies, real estate options, correctional facility design and related expenditures.