Board Regulation 14.002 – Reserve for New Construction

Frequently Ask Questions and General Guidance
(3/2/22)

1) Are existing projects grandfathered in; i.e. they do not require an escrow reserve, or is this only for new projects and/or projects receiving an initial appropriation as of the effective date of the new regulation?

Response: The 2% reserve requirement is applicable to any new construction project of an E&G facility where construction is initiated on or after July 1, 2022. It is important to know that the statutory 1%, effective 2019, is currently in effect.

2) FL Statute 1001.706(12)(C ) indicates the following:
   “A new construction, remodeling, or renovation project that has not received an appropriation in a previous year shall not be considered on the prioritized list required by S.1013.64(4), unless:
   A plan provided to reserve funds in an escrow account, specific to the project, into which shall be deposited each year an amount of funds equal to 1 percent of the total value of the building for future maintenance…”

This statute is about PECO funding and receiving future funding on the list. The Board draft Regulation 14.002 also references “funded in whole or in part with Public Education Capital Outlay (PECO) resources.” Does that mean if the project is funded with Auxiliary and Capital Improvement Trust Funds (CITF), this statute and Board regulation does not apply?

Response: Paragraph (1) of the Regulation applies to E&G facilities funded in whole or in part with State appropriations, excluding “Sum of Digits” (per s. 1013.64(1)(a) FS). CITF is legislatively appropriated and, if used for construction of an E&G facility, the reserve requirement applies. The reserve requirement does not apply to Auxiliary or C&G facilities.

3) Is the 2% annual reserve requirement to be in addition to the 1% annual reserve required for “future maintenance” under the FL Statute?

Response: No. The 2% requirement represents the aggregate annual contribution amount, inclusive of the Statutorily-required 1%.

If yes, does this also mean there will be a different calculation methodology required for the annual 2% reserve requirement per Regulation 14.002, compared to the
building value currently used to calculate the 1% annual reserve required by the FL Statute?

Response: Section 1001.706(12)(c) FS, states the contribution is based on the “value of the building”, which is undefined therein. For the purpose of Regulation 14.002, the building value should be based on total construction cost or insurable value upon construction completion, whichever is greater.

If no, is the Board draft Regulation 14.002 calculation method to be used for all annual reserve contributions? If so, when is this to be effective, and does this only apply to new projects and/or projects receiving an initial appropriation as of the effective date of the new regulation?

Response: The methodology described in 14.002(2) is to be used for all annual contributions, once effective. The reserve requirement is applicable to any new construction project of an E&G facility where construction is initiated on or after July 1, 2022.

4) Can reserve funds be used for "Renovation," specifically “upgrades and replacement of campus infrastructure, including, but not limited to roads, water, sewer, gas, steam, chilled water loops, and electrical systems.”

Response: Section 1001.706(12)(c) indicates that reserve funds are to be “specific to the project” and used for “future maintenance”.

5) If approved by the university board of trustees, can all or a portion of the reserve funds established for and/or dedicated to a specific project/facility be used for other projects/facilities? And does the amount of the 2% reserve that was reallocated have to be replenished for the original project/facility?

Response: There is no statutory provision that would allow a university to transfer the reserve to another project, thus no such provision has been incorporated into Regulation 14.002. Pursuant to Statute, the reserves are specific to a project. The reserve does not have to be replenished if drawn down; however, the university would continue to make an annual reserve deposit based on 14.002(2).

6) The Board draft Regulation 14.002 requires the reserve escrow to use updated values each year. What happens when the cost of construction goes up dramatically, such as the current year we are in, and the department or institution doesn’t have the resources to cover this escrow in year 10?

Response: Currently, the intent is that, once established, the annual contribution does not readjust each year.

7) Why does Regulation 14.002 not incorporate flexibility, providing universities with the ability to use the funds immediately for current needs? For example, suggested language could provide as follows: In order to reduce the potential for future significant deferred maintenance needs as exist today, the University will utilize the two percent for existing deferred maintenance needs, subject to approval by the university’s board of trustees. If there are no immediate needs, or if future needs are
greater than the annual two percent amount, the University may maintain the funds in an established reserve until used for approved projects/facilities.

Response: Section 1001.706(12)(c) requires reserve funds to be used for ‘future maintenance’.

8) We are concerned that we will be investing these funds at an earnings rate significantly below the inflation in construction costs, further eroding our ability to tackle this issue. Also, if we need to reserve these funds, we may have less funds available for current deferred maintenance needs, which would increase the challenges we have today.

Response: The statutorily required 1% was effective in 2019 and not retroactively applied. And the additional 1% reserve; i.e. 2% total, required in Regulation 14.002 applies only to new construction of E&G facilities. At this early juncture, most E&G facilities are not required to have a reserve, so the current budgetary impact is limited in that respect.

9) Does the regulation limit the use of these funds to a situation where the reserve funds could not be used for a “Critical Need” as defined in 14.001?

Response: Reserve funds are to be used for “future maintenance”. This includes Critical Needs provided such needs are specific to the project/facility for which the reserve is dedicated.

10) Assuming a university has over 400 structures across the various campuses, could there conceivably, ultimately be over 400 different escrow accounts? This seems onerous on the part of the universities.

Response: The statutory requirement applies to new construction, remodeling and renovation, whereas Regulation 14.002 applies only to new construction of E&G facilities. Conceivably, all E&G facilities in inventory could eventually have escrow/reserve accounts, but it would take many years to get to that juncture.

11) Assuming a scenario involving a mixed-use facility of 50% E&G space and 50% C&G space, is the annual reserve contribution calculated on the entire building space or just the E&G component?

Response: The intent is to provide reserves for E&G space, so the contribution would be calculated based on the E&G portion of the value derived per 14.002(2).