

Board Regulation 14.002 – Reserve for New Construction

Frequently Ask Questions and General Guidance

(Revised 10/10/22)

- 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. 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: S. 1001.706(12)(c) applies to PECO funded projects, whereas Regulation 14.002 applies to new construction of 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 Regulatory-driven 2% reserve requirement does not apply to Auxiliary or C&G facilities.

- 3) **Is the 2% annual reserve requirement 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), governing the 1% reserve, indicates that reserve funds are to be “*specific to the project*” and used for “*future maintenance*”. These parameters are also incorporated into Regulation 14.002 governing the 2% reserve.

- 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) **What happens when the cost of construction and/or building value 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 at inflated levels?**

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?**

Response: Section 1001.706(12)(c), F.S. requires reserve funds to be used for “future maintenance”. This language is reflected in Regulation 14.002 as well.

- 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 2% reserve 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 “specific to the project” and are to be used for “future maintenance”. Critical Needs are eligible, 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) **Regarding the 2% reserve, 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).

- 12) **If a newly constructed building has been issued a certificate of occupancy, but there are still has some minor “punch list” items outstanding, does that count as “construction completed” in the context of the required reserve or is it when the punch list items are all completed?**

Response: If the project/facility has received its certificate of occupancy, consider it “completed” for reserve purposes, even though there are outstanding punch list items.

- 13) **We would like to set-up a reserve or “deferred maintenance account” for an E&G facility even though a reserve is not required. If so, can we fund such a reserve with carryforward?**

Response: Section 1011.45, paragraph (f), authorizes carryforward spending for purposes specified by the university board of trustees.

- 14) **What will be the reporting requirements behind the 2% escrow requirement for new construction projects?**

Response: Neither statute or regulation cite *reporting* requirements. That may change in time, but, for now, the only “reporting” is the university’s intent (to establish reserves) reflected on the Capital Improvement Plan, specifically CIP3-Project Details.

- 15) **When does the escrow start, upon completion of construction or when the full actual cost of the building is known?**

Response: When construction is complete (i.e. certificate of occupancy; see #12 above), the full cost of the building should be available and, at that juncture, you can make the value basis determination per Regulation; i.e. “...*the building value should be based on total construction cost or insurable value upon construction completion, whichever is greater.*”

- 16) **What is the definition of “construction is initiated”? See (6) in the regulation.**

Response: When you break ground.

- 17) **Can you elaborate on the notion of “breaking ground” in terms of when building begins?**

Response: Use common sense. For example, if there are folks working onsite, it is probably safe to say that you have broken ground, per se.

In the Design Phase?

Response: No.

Demolition of old building that the space is replacing?

Response: Maybe. If it is part of the project scope and your contractor/builder is commencing construction shortly after demolition, then yes, the project is underway...i.e. you have broken ground, per se. However, if you’re razing a building in advance, and you still have to complete planning & design for the proposed project P&D, with construction commencing months later (or maybe the

following year), then no, demolition does not constitute breaking ground for regulation purposes.

Shovel in the ground by construction companies?

Response: Yes

When the foundation is laid?

Response: Yes. Most likely before that, when site prep commences.

18) Do we have to create a separate escrow bank account?

Response: Both Statute and Regulation require “*an escrow account, specific to the project*”.

19) What are the allowed uses of the funds held in escrow? E.g. deferred maintenance, regular maintenance, extraordinary or unusual repairs.

Response: Statute indicates “*future maintenance*”, but does not define it. In this regard, the Regulation was established to mirror statute. Consequently, once funding is contributed to the reserve, it can be spent as soon as it is needed on regular maintenance and be compliant with Statute (and, by default, Regulation), as such spending would be on *future maintenance*, technically speaking.

20) We have a K-12 lab school that we run the funding through the university; however, it is still considered a public school. Since the regulation says the “university”, does the reserve requirement apply to lab school projects?

Response: The reserve requirement does not apply to the lab schools, like P.K. Yonge, A.D. Henderson University School and others.

21) Does the reserve requirement apply to all colleges at a university? For example, if the College of Agriculture builds a greenhouse, does the reserve requirement apply?

Response: Generally speaking, it applies to all university educational/E&G projects. There are, however, qualifying parameters that will dictate if the project is governed by Regulation (i.e. new construction only) or Statute. Furthermore, there is not a minimum project size/amount in regulation, but s. 1001.706(12)(c), F.S., which governs the 1% reserve, requires that any such project must also be Recommended in an Educational Plant Survey (EPS). To that extent, s. 1013.74(2)(e) does not require an EPS Recommendation for projects provided the amount of funds does not exceed \$1 million. For the example above, if the greenhouse is less than \$1 million, it does not require a reserve.

22) Does the 2% reserve apply to a university's Health/Medical affiliate facilities?

Response: If the project fits into this parameter (per Regulation) "*new construction of an E&G facility, funded in whole or in part with State appropriations*", then yes, the 2% reserve is required.

23) What if there is an existing building that receives \$200,000 in PECO funding for a remodel, and the value is 20,000,000. Is the 1% reserve based on the entire \$20,000,000?

Response: Technically speaking, yes, it applies to the "*total value of the building*", per Statute. However, from a practical standpoint, small amounts of funding, like that in the example, are not funded via PECO, but rather from other sources.

What if we receive PECO funding for a \$15,000,000 renovation/remodel project, and the building value is \$20,000,000. Is the 1% reserve based on the remodel/renovation budget amount (\$15M) or the building value (\$20M)?

Response: It applies to the "*total value of the building*", per Statute. It is not based on the remodel/renovation budget amount.

24) If we use carry forward funding for a replacement structure that is less than 10,000 square feet as per the regulations, is this considered new space for the 2% escrow?

Response: For the purpose of the Regulation, we do not consider Carryforward a *state appropriation*.

25) Can interest that accumulates on the 2% reserve for new construction be used for anything or is it dedicated to that project?

Response: In keeping with statute and regulation, which require the reserve be *specific to the project*, interest earnings on the reserve are dedicated to that project.

26) Does a new addition to an existing facility require a 2% reserve or is it only on a new free standing constructed building?

Response: The intent of the regulation is that the 2% reserve applies to the new construction of free-standing/stand-alone E&G facilities.

27) Can you define the term 'addition' as you would define it for the 1% or 2% reserve? It is understood that the intent of the regulation for the 2% is requested for free-standing/stand-alone E&G Facilities, but what if that facility is attached to another building?

Response: The intent of the 2% reserve (Reg 14.002) is that it applies to new construction of free-standing/stand-alone E&G facilities, not additions to existing facilities. The 1% reserve (s. 1001.706(12)(c)1) applies to PECO-funded new construction, remodeling or renovation, and the statutory definition of New Construction (s. 1013.01(14), F.S.) includes *an entirely new addition connected to an existing building or which adds additional square footage to the space inventory.*

28) If a new building is developed; for example, a new student disability resource center or a recreation outdoor sports complex, and the funding is 100% CITF (student fees), does it require a 2% reserve, even though this funding type is 100% student fees?

Response: CITF funds are State appropriated annually in the General Appropriations Act (GAA). Typically, CITF funds are used for non-E&G student activity facilities, thus the 2% reserve would not apply. However, if CITF funds are used to construct a new E&G facility, the 2% reserve requirement applies.