**Facility Grants for the 2013-15 Biennium**

Recent Legislation and History

The 2013 Legislature allocated $20 million of the State School Fund to be used for the 2013-14 and 2014-15 Facility Grants. The fund must balance over the two years of the biennium. In order to do that, we cap the rate of distribution in the first year to ensure enough funds are available for the second year. Capping the rate of the first year ensures that funds distributed in the first year are not subsequently reduced by eligible construction projects in the second year. For example, in the 2011-13 biennium, we paid an initial rate of 5.5% and ultimately, the rate for the biennium was 5.23%. If the rate of reimbursement increases from the first year to the second, the eligible construction projects in the first year will see additional funds in the second year.

In 2013, the Legislature decreased the total amount allowed for Facility Grants for the 2013-15 biennium. The new amount is $20 million, a decrease of $5 million from the previous biennium. The initial rate of maximum reimbursement remains at 8% of the total construction costs in accordance with ORS 310.410 and OAR 581-023-0230. However, the rate of reimbursement will be prorated in the event the $20 million cap is exceeded.

The grant is for non-intrinsic costs to equip and furnish a facility and cannot be used for construction costs. This was in response to Measure 47 (1996), in that it limited construction costs that could be bonded to those costs that are intrinsic to the structure.[[1]](#endnote-1)

Clarification of eligible expenditures

ORS 310.140 clarifies that, for capital construction, bond proceeds cannot be used for maintenance and repairs, the need for which could be reasonably anticipated; supplies and equipment that are not intrinsic to the structure; or furnishings. The statute defines a structure as a temporary or permanent building; and defines intrinsic equipment as necessary to permit the building to perform its function or upon installation, constitute fixtures considered to be a part of the real property.

OAR 581-023-0230 further defines a "New School Building" as newly constructed school buildings, additions to existing school buildings, newly remodeled or converted structures and newly acquired pre-manufactured structures if those buildings or structures are to be used for instructing students. Newly remodeled structures may not have been used as classrooms in the prior five school years. “Construction Cost" is defined as the cost of construction or remodeling excluding cost of land acquisition and cost of equipment not intrinsic to the building or, for pre-manufactured structures, the purchase price excluding interest. Costs of site preparation and improvements, project management, and mandated utility and access upgrades may be included. Construction cost does not include structures such as athletic fields, stadiums, pools or any other structure whose primary purpose is not the instruction of students.

For new construction, district administration offices are not included. School administration offices built in conjunction with instructional structures are included.

For additions or remodels, the following expenditures are generally included:

* Demolition of existing structures in order to prepare site for new school structures
* Libraries
* Gymnasiums
* Greenhouse
* Auditoriums

For additions or remodels, these additional expenditures are generally **not** included:

* Bond issuance costs
* Kitchens
* Cafeterias, unless the primary purpose of the cafeteria is for instruction
* School administration offices
* Replacement of an existing roof
* Parking lot, unless local codes mandate increased capacity
* Textbooks
* Library Books
* Desks, tables, or chairs, unless considered a fixture
* Computers
* Other electronic equipment

Application Process and Payment Dates

The application may be found through the “Schedule of Due Dates” on the District web site.

A school district is eligible to receive a facility grant for a new school building in the year the new school building is first used for instruction for more than half of the district's regular school year or the following year. January 15 is a good date to use to determine eligibility. For instance, if the facility were open on or before January 15, it would be eligible. If the new facility opens after January 15, the application would be sent the following year.

Facility grant applications must be received at the Department of Education typically no later than February 15 of the school year in which the new school facility is eligible for the Facility Grant.

The Department of Education will distribute the Facility Grant in addition to the March 15 State School Fund payment.[[2]](#endnote-2)

Required Documentation

The application shall include a summary of the construction cost as well as a copy of the parts of the contract(s) documenting the construction cost or purchase price.

Documents available may vary by district. Listed below are some of the documents that may be used to substantiate the cost.

1. Documenting Items from the architect/engineer:
	* 1. AIA agreement between owner and architect
		2. Project scope and work summary
		3. Picture, diagram or drawing of the new construction and/or remodeled areas
2. Documenting items from the school district:
	* 1. A cover letter stating the scope of the project or what was done.
		2. Summary breakdown of the costs (limited to one page).
3. Print outs from the Project Management Software Program documenting the expenditures.

Examples of these documents may be found in the “Documents” section of the Facility Grant Collection Details web page.

The Application may also be found in the “Documents” section of the Facility Grant Collection Details web page.

[Click here to go to the Collection Details web page](https://district.ode.state.or.us/apps/info/DataCllctnDetail.aspx?id=139).

Relevant ORS and OAR

**OAR 581-023-0230**

**Facility Grant**

(1) For purposes of this rule:

(a) "New School Building" means newly constructed school buildings, additions to existing school buildings, newly remodeled or converted structures and newly acquired premanufactured structures if those buildings or structures are to be used for instructing students. Newly remodeled structures may not have been used as classrooms in the prior five school years.

(b) "Construction Cost" means the cost of construction or remodeling excluding cost of land acquisition and cost of equipment not intrinsic to the structure or, for premanufactured structures, the purchase price excluding interest. Costs of site preparation and improvements, project management, and mandated utility and access upgrades may be included.

(A) Construction cost does not include structures such as athletic fields, stadiums, pools or any other structure whose primary purpose is not the instruction of students.

(2) A school district is eligible to receive a facility grant for a new school building in the year the new school building is first used for instruction for more than half of the district's regular school year or the following year.

(3) Facility grant shall equal a percentage of new school building construction cost as determined by statute. If the total amount to be distributed as facility grants exceed the limitation set in statute, the Department of Education shall prorate the amount of funds available for facility grants among those school districts that qualified for a facility grant. The proration percentage shall be adjusted to be the same for each year of the biennium.

(4) A school district may not use the portion of the State School Fund grant that is attributable to the facility grant for capital construction costs.

(5) Facility grant applications must be received at the Department of Education no later than February 15 of the school year following the school year in which the new school building is first eligible for the facility grant. The application shall include a summary of the construction cost as well as a copy of the parts of the contract(s) documenting the construction cost or purchase price.

(6) The Department of Education will distribute the facility grant with the March 15 State School Fund payment. Any necessary adjustments will be made on May 15, with final adjustment to be made in the second year.

(7) The State Superintendent of Public Instruction shall resolve any issues arising from the administration of the facility grant not specifically addressed by this rule and the Superintendent's determination shall be final.

Stat. Auth: ORS 327.125
Stat. Implemented: ORS 327.013 & ORS 327.008
Hist: ODE 6-2000, f. & cert. ef. 2-1-00; ODE 10-2003, f. & cert. ef. 6-13-03

**ORS 327.008 State School Fund; State School Fund grants.**

(6) A school district may not use the portion of the State School Fund grant that is attributable to the facility grant for capital construction costs.

(7) The total amount of the State School Fund that is distributed as facility grants may not exceed $25 million (2007 edition) in any biennium. If the total amount to be distributed as facility grants exceeds this limitation, the Department of Education shall prorate the amount of funds available for facility grants among those school districts that qualified for a facility grant.

TAX LIMITATIONS

(1990 Measure 5 Limits on Amount of Tax)

**ORS 310.140 Legislative findings; definitions.** The Legislative Assembly finds that section 11b, Article XI of the Oregon Constitution, was drafted by citizens and placed before the voters of the State of Oregon by initiative petition. Section 11b, Article XI of the Oregon Constitution, uses terms that do not have established legal meanings and require definition by the Legislative Assembly. Section 11b, Article XI of the Oregon Constitution, was amended by section 11 (11), Article XI of the Oregon Constitution. This section is intended to interpret the terms of section 11b, Article XI of the Oregon Constitution, as originally adopted and as amended by section 11 (11), Article XI of the Oregon Constitution, consistent with the intent of the people in adopting these provisions, so that the provisions of section 11b, Article XI of the Oregon Constitution, may be given effect uniformly throughout the State of Oregon, with minimal confusion and misunderstanding by citizens and affected units of government. As used in the revenue and tax laws of this state, and for purposes of section 11b, Article XI of the Oregon Constitution:

 (1) “Actual cost” means all direct or indirect costs incurred by a government unit in order to deliver goods or services or to undertake a capital construction project. The “actual cost” of providing goods or services to a property or property owner includes the average cost or an allocated portion of the total amount of the actual cost of making a good or service available to the property or property owner, whether stated as a minimum, fixed or variable amount. “Actual cost” includes, but is not limited to, the costs of labor, materials, supplies, equipment rental, property acquisition, permits, engineering, financing, reasonable program delinquencies, return on investment, required fees, insurance, administration, accounting, depreciation, amortization, operation, maintenance, repair or replacement and debt service, including debt service payments or payments into reserve accounts for debt service and payment of amounts necessary to meet debt service coverage requirements.

 (2) “Assessment for local improvement” means any tax, fee, charge or assessment that does not exceed the actual cost incurred by a unit of government for design, construction and financing of a local improvement.

 (3) “Bonded indebtedness” means any formally executed written agreement representing a promise by a unit of government to pay to another a specified sum of money, at a specified date or dates at least one year in the future.

 (4) “Capital construction”:

 (a) For bonded indebtedness issued prior to December 5, 1996, and for the proceeds of any bonded indebtedness approved by electors prior to December 5, 1996, that were spent or contractually obligated to be spent prior to June 20, 1997, means the construction, modification, replacement, repair, remodeling or renovation of a structure, or addition to a structure, that is expected to have a useful life of more than one year, and includes, but is not limited to:

 (A) Acquisition of land, or a legal interest in land, in conjunction with the capital construction of a structure.

 (B) Acquisition, installation of machinery or equipment, furnishings or materials that will become an integral part of a structure.

 (C) Activities related to the capital construction, including planning, design, authorizing, issuing, carrying or repaying interim or permanent financing, research, land use and environmental impact studies, acquisition of permits or licenses or other services connected with the construction.

 (D) Acquisition of existing structures, or legal interests in structures, in conjunction with the capital construction.

 (b) For bonded indebtedness issued on or after December 5, 1996, except for the proceeds of any bonded indebtedness approved by electors prior to December 5, 1996, that were spent or contractually obligated to be spent before June 20, 1997, has the meaning given that term in paragraph (a) of this subsection, except that “capital construction”:

 (A) Includes public safety and law enforcement vehicles with a projected useful life of five years or more; and

 (B) Does not include:

 (i) Maintenance and repairs, the need for which could be reasonably anticipated;

 (ii) Supplies and equipment that are not intrinsic to the structure; or

 (iii) Furnishings, unless the furnishings are acquired in connection with the acquisition, construction, remodeling or renovation of a structure, or the repair of a structure that is required because of damage or destruction of the structure.

 (5) “Capital improvements”:

 (a) For bonded indebtedness issued prior to December 5, 1996, and for the proceeds of any bonded indebtedness approved by electors before December 5, 1996, that were spent or contractually obligated to be spent before June 20, 1997, means land, structures, facilities, as that term is defined in ORS 288.805, machinery, equipment or furnishings having a useful life longer than one year.

 (b) For bonded indebtedness issued on or after December 5, 1996, except for the proceeds of any bonded indebtedness approved by electors prior to December 5, 1996, that were spent or contractually obligated to be spent before June 20, 1997, has the meaning given that term in paragraph (a) of this subsection, except that “capital improvements”:

 (A) Includes public safety and law enforcement vehicles with a projected useful life of five years or more; and

 (B) Does not include:

 (i) Maintenance and repairs, the need for which could be reasonably anticipated;

 (ii) Supplies and equipment that are not intrinsic to the structure; or

 (iii) Furnishings, unless the furnishings are acquired in connection with the acquisition, construction, remodeling or renovation of a structure, or the repair of a structure that is required because of damage or destruction of the structure.

 (6) “Direct consequence of ownership” means that the obligation of the owner of property to pay a tax arises solely because that person is the owner of the property, and the obligation to pay the tax arises as an immediate and necessary result of that ownership without respect to any other intervening transaction, condition or event.

 (7)(a) “Exempt bonded indebtedness” means:

 (A) Bonded indebtedness authorized by a specific provision of the Oregon Constitution;

 (B) Bonded indebtedness incurred or to be incurred for capital construction or capital improvements that was issued as a general obligation of the issuing governmental unit on or before November 6, 1990;

 (C) Bonded indebtedness incurred or to be incurred for capital construction or capital improvements that was issued as a general obligation of the issuing governmental unit after November 6, 1990, with the approval of the electors of the issuing governmental unit; or

 (D) Bonded indebtedness incurred or to be incurred for capital construction or capital improvements, if the issuance of the bonds is approved by voters on or after December 5, 1996, in an election that is in compliance with the voter participation requirements of section 11 (8), Article XI of the Oregon Constitution.

 (b) “Exempt bonded indebtedness” includes bonded indebtedness issued to refund or refinance any bonded indebtedness described in paragraph (a) of this subsection.

 (8)(a) “Incurred charge” means a charge imposed by a unit of government on property or upon a property owner that does not exceed the actual cost of providing goods or services and that can be controlled or avoided by the property owner because:

 (A) The charge is based on the quantity of the goods or services used, and the owner has direct control over the quantity;

 (B) The goods or services are provided only on the specific request of the property owner; or

 (C) The goods or services are provided by the government unit only after the individual property owner has failed to meet routine obligations of ownership of the affected property, and such action is deemed necessary by an appropriate government unit to enforce regulations pertaining to health or safety.

 (b) For purposes of this subsection, an owner of property may control or avoid an incurred charge if the owner is capable of taking action to affect the amount of a charge that is or will be imposed or to avoid imposition of a charge even if the owner must incur expense in so doing.

 (c) For purposes of paragraph (a)(A) of this subsection, an owner of property has direct control over the quantity of goods or services if the owner of property has the ability, whether or not that ability is exercised, to determine the quantity of goods or services provided or to be provided.

 (9)(a) “Local improvement” means a capital construction project, or part thereof, undertaken by a local government, pursuant to ORS 223.387 to 223.399, or pursuant to a local ordinance or resolution prescribing the procedure to be followed in making local assessments for benefits from a local improvement upon the lots that have been benefited by all or a part of the improvement:

 (A) That provides a special benefit only to specific properties or rectifies a problem caused by specific properties;

 (B) The costs of which are assessed against those properties in a single assessment upon the completion of the project; and

 (C) For which the property owner may elect to make payment of the assessment plus appropriate interest over a period of at least 10 years.

 (b) For purposes of paragraph (a) of this subsection, the status of a capital construction project as a local improvement is not affected by the accrual of a general benefit to property other than the property receiving the special benefit.

 (10) “Maintenance and repairs, the need for which could be reasonably anticipated”:

 (a) Means activities, the type of which may be deducted as an expense under the provisions of the federal Internal Revenue Code, as amended and in effect on December 31, 2004, that keep the property in ordinarily efficient operating condition and that do not add materially to the value of the property nor appreciably prolong the life of the property;

 (b) Does not include maintenance and repair of property that is required by damage, destruction or defect in design, or that was otherwise not reasonably expected at the time the property was constructed or acquired, or the addition of material that is in the nature of the replacement of property and that arrests the deterioration or appreciably prolongs the useful life of the property; and

 (c) Does not include street and highway construction, overlay and reconstruction.

 (11) “Projected useful life” means the useful life, as reasonably estimated by the unit of government undertaking the capital construction or capital improvement project, beginning with the date the property was acquired, constructed or reconstructed and based on the property’s condition at the time the property was acquired, constructed or reconstructed.

 (12) “Routine obligations of ownership” means a standard of operation, maintenance, use or care of property established by law, or if established by custom or common law, a standard that is reasonable for the type of property affected.

 (13) “Single assessment” means the complete assessment process, including preassessment, assessment or reassessment, for any local improvement authorized by ORS 223.387 to 223.399, or a local ordinance or resolution that provides the procedure to be followed in making local assessments for benefits from a local improvement upon lots that have been benefited by all or part of the improvement.

 (14) “Special benefit only to specific properties” shall have the same meaning as “special and peculiar benefit” as that term is used in ORS 223.389.

 (15) “Specific request” means:

 (a) An affirmative act by a property owner to seek or obtain delivery of goods or services;

 (b) An affirmative act by a property owner, the legal consequence of which is to cause the delivery of goods or services to the property owner; or

 (c) Failure of an owner of property to change a request for goods or services made by a prior owner of the property.

 (16) “Structure” means any temporary or permanent building or improvement to real property of any kind that is constructed on or attached to real property, whether above, on or beneath the surface.

 (17) “Supplies and equipment intrinsic to a structure” means the supplies and equipment that are necessary to permit a structure to perform the functions for which the structure was constructed, or that will, upon installation, constitute fixtures considered to be part of the real property that is comprised, in whole or part, of the structure and land supporting the structure.

 (18) “Tax on property” means any tax, fee, charge or assessment imposed by any government unit upon property or upon a property owner as a direct consequence of ownership of that property, but does not include incurred charges or assessments for local improvements. As used in this subsection, “property” means real or tangible personal property, and intangible property that is part of a unit of real or tangible personal property to the extent that such intangible property is subject to a tax on property. [1991 c.459 §210; 1997 c.541 §258; 1999 c.21 §25; 1999 c.90 §33; 2001 c.660 §28; 2003 c.46 §24; 2003 c.77 §6; 2003 c.195 §23; 2003 c.802 §63; 2005 c.832 §18]

Full text of Oregon Revised Statues is available at: <http://www.leg.state.or.us/ors/home.htm>

1. References and Related Reports:

 “2005 School Finance Legislation; Funding and Distribution,” Legislative Revenue Office, Research Report #3-05, October, 2005. [↑](#endnote-ref-1)
2. “Oregon Administrative Rules,” 581-023-0230, Oregon State School Board, ef. 6-13-03 [↑](#endnote-ref-2)