

State of Minnesota
Board of Education

Statement of Need and Reasonableness for
Proposed Rule 5 MCAR § 1.0430

Concerning the proposed adoption of a rule governing the criteria upon which the State Board of Education and the Commissioner will base a recommendation for a capital loan.

The capital loan program allows eligible school districts to utilize state funds to assist in financing a school construction project. Minn. Laws 1981 ch. 358, art 9, §§ 1-15 transferred all authority for the administration of the maximum effort school aid to the Department of Education. Minn. Stat. § 124.41 (Supp. 1981) directed the State Board of Education to promulgate rules to assure that capital loans are approved or denied by an established procedure and in an efficient manner. In response to that direction, the State Board proposes to adopt 5 MCAR § 1.0430. The need for and reasonableness of each section of that rule are as follows.

Section A. Minn. Stat. § 124.43, subd. 1 (supp. 1981) states that all applications for capital loans must be submitted for review and comment pursuant to section 122.90. That requirement is restated in this rule for two reasons. First, it allows for a single source of all information needed by a school district desiring a capital loan. Second, it sets forth the foundation for paragraph B of the rule. For purposes of clarity, the rule makes reference to Minn. Stat. § 122.90, subds. 2-4. Subdivision 1 of that section ordinarily limits the review and comment process to projects costing over \$400,000. That limitation, however, does not apply where a capital loan is requested. Minn. Laws 1981 ch. 358, art. 9, § 7.

Section B. Minn. Stat. Sec. 122.90 subd. 2 (1980) states that all construction proposals submitted to the Commissioner for a review and comment statement must include certain specified information. That requirement is restated in this rule for two reasons. First, it sets forth the foundation for paragraph B, sections 1-6. Second, it provides the district with the criteria the Commissioner will use in determining the merit of the proposed construction.

Section B1 is needed in order to assure that the proposed construction is not too large or too small for the number of students expected to use the building. In terms of economic and educational advisability, the relationship of square footage to student enrollment is an indicator of whether the building will perform its intended purpose. Therefore, this criteria is reasonable.

Section B2. This section states that a showing must be made that the building will be needed for at least ten years. Many of the capital loans are for several million dollars. It would be unreasonable to invest capital of such a significant amount unless there would be a need for the building for an extended time period. Indeed, the loans themselves are for up to thirty years, and the buildings should have a useful life of many decades.

Ten years was selected because it is as far into the future as demographers are willing to project population trends. Therefore, based upon the availability of data, a 10 year projection is reasonable.

Section B3. Minn. Stat. Sec. 122.90, subd. 2(d)(3) (1980) requires the school district to estimate the annual energy costs of the proposed construction for energy efficiency and effectiveness. Obviously the close regulation of the State's limited energy resources is an important state interest. This rule will foster that interest by requiring currently recommended energy conservation measures. Not specifically stating these techniques is reasonable because of the continual changes and advances in energy technology.

Section B4. Minn. Stat. Sec. 122.90, subd. 2(d)(2)(1980) requires the school district to estimate the annual operating cost of the proposed construction. The cost estimate is to include changes in salary cost and numbers of new staff. Restating the requirements provides clarity to the criteria. Comparing the expected operating costs of the building constructed using State funds to the operating costs of other similar and recent construction projects is reasonable because the building funded by the State should not cost more to operate than those funded at the local level.

Section B5 is necessary to establish whether the proposed facility could provide additional benefits for the community beyond the educational use of the building. It is reasonable because a flexible design will allow the community to receive maximum use from the building. Multiple use availability may justify both higher operating costs and larger than normal facilities. Therefore, it is reasonable to consider this factor in deciding the overall economic advisability of the proposed structure.

Section B6. Minn. Stat. Sec. 122.90, subd. 2(e)(1980) in part, requires the district to seek information about existing facilities within the area. Restating that portion of the requirement in this rule provides a background for the criteria the Commissioner will need in determining whether the use of existing facilities would be an appropriate alternative to the proposed construction. It is reasonable to examine the condition of the existing facilities in order to assure that the students will be housed in a safe and healthy environment.

Furthermore, before the Commissioner can make a reasoned decision on whether a school district should be allowed to construct a new facility, versus rent or buy existing facilities, the costs associated with converting the existing facilities to meet the needs of the district, must be considered.

Section C is needed to clarify the basis upon which the Commissioner will satisfy the statutory duty to recommend either approval, denial or reduction of the loan request based upon the review and comment process described in Section B. Minn. Stat § 124.43 subd. 1(b)(1).

Section D. Minn. Laws Stat. § 124.43, subd. 1(b) (Supp. 1981) states that the State Board shall not make a favorable recommendation for capital loan approval unless certain criteria are met. Restating that requirement in this rule serves two purposes. First, it sets the foundation for paragraph D, sections 1-3. Second, it provides the district with the criteria the State Board will use in determining whether the loan application should be approved.

Section D1. Minn. Stat. § 124.43, subd. 1(b)(1) (Supp, 1981) states that the facility proposal must receive a favorable review and comment statement from the Commissioner. Restating the requirement in this rule provides a single source for all criteria that will be used by the State Board when recommending loan approval.

Section D2 receives its genesis from Minn. Stat. § 124.43, subd. 1(b)(2)(c)(Supp. 1981). However it was necessary to define the meaning of the phrase "facilities are comparable in size and quality to facilities recently constructed in other districts of similar enrollment". It is reasonable to base the comparison on a sample of construction projects rather than a single project in that it lessens the possibility of unfair results occurring because a particular comparison project was too small or too large, or unusually expensive or inexpensive. Based upon the limited amount of construction occurring in this state during the last decade, three comparison projects is believed to be the largest available pool for that purpose. Likewise, a decade was selected in order to ensure a large enough pool of districts. A shorter period of time might make any comparisons difficult. Finally, it is not perceived that quality or size standards have varied significantly during the last decade.

Section D3. Minn. Stat § 124.43, subd. 1(b)(2)(A) states the State Board is to determine whether the proposed facilities are needed to replace facilities dangerous to health and safety or provide for pupils when adequate facilities do not exist. Section D3a is necessary to establish that what is meant by dangerous is those buildings that do not meet previously established standards. Minn. Stat. § 124.43, subd. 1(b)(2)(A)(Supp. 1981). It is reasonable to refer to the most recent codes and requirements, because they do change from time to time and have the force and effect of law. It is important to note that this rule does not incorporate such codes into this rule. Rather, this rule merely recognizes that such codes, by themselves, determine whether a particular building is dangerous to the health and safety of students.

Section D3b receives its genesis from Minn. Stat. § 124.43, subd. 1(2)(A)(Supp. 1981). However it was necessary to define the meaning of the phrase "provide for pupils for whom no adequate facilities exist". This rule meets that need by looking to evidence of either programs which were not offered because of the facilities, or the use of facilities which are not appropriate for educational purposes.

Section E is necessary in order to provide the information the State Board will use to determine whether the facilities could be made available through some other reorganizational alternative. Minn. Stat. § 124.43, subd. 1(b)(2)(A)(Supp. 1981). It is reasonable to expect the school district desiring a loan to provide the data on adjacent school districts.

Section E1 is necessary and reasonable in order to determine the combined student load should the districts reorganize.

Section E2 is necessary and reasonable to determine whether the type of existing facilities is appropriate to meet the educational needs of the districts should they reorganize.

Section E3 is necessary and reasonable to assure that existing facilities would provide the students with a safe and healthy environment.

Section F. Minn. Stat. § 124.43, subd. 1(b)(2)(B) requires the State Board to deny a request for a capital loan when the facility could be available in some other way. Restating the requirements in this rule serves two purposes. One, it sets the foundation for paragraph B, sections 1-4. Two, it provides the districts desiring a loan with the set of criteria the State Board is required to use when it recommends denial of a loan. Each of the criteria in F1-F4 has its genesis in Minn. Stat. § 124.43, subd. 1(b)(2)(B)(Supp. 1981).

Section F1. It is reasonable to deny the use of state funds to construct a new facility when it has been determined that a safe building is available through lease or purchase from an existing institution.

Section F2. It is reasonable to deny the use of state funds to construct a new facility when it has been determined that a safe building is available should the district enter into an interdistrict cooperation agreement with another district.

Section F3. It is reasonable to deny the use of state funds to construct a new facility when it has been determined that a safe building could be made available should the district dissolve and attach its property to an adjacent district.

Section F4. It is reasonable to deny the use of state funds to construct a new facility when it has been determined that a safe building could be made available should the district consolidate with another district.

Section G. Minn. Stat. § 124.43, subd. 1 (Supp. 1981) permits the State Board to reduce the amount of a loan. It is reasonable to reduce the amount of the loan when it has been determined that the facility can be made available in another manner, but those facilities available may need remodeling or renovation to accommodate the district's enrollment. It also permits the scaling down of a request which is supported by need but exceeded the type of buildings being funded by local bond issues. See Minn. Stat. § 124.43, subd. 1(b)(2)(C)(Supp. 1981).