

STATEMENT OF NEED AND REASONABLENESS
FOR PROPOSED MINNESOTA RULE PARTS 3445.3000 TO 3445.3024
COOPERATIVE SECONDARY FACILITIES GRANTS

BACKGROUND

Minnesota Statutes, section 124.493, subdivision 1 authorizes the commissioner of education to make two pilot project grants for construction or remodeling of cooperative secondary facilities to the extent money is available for this purpose. Within the State Department of Education, grant programs are administered by the Division of Management Effectiveness.

AUTHORITY

The State Board of Education's authority to promulgate the proposed rule is contained in Minn. Laws 1987, Ch. 400, Section 35, to be codified as Minnesota Statutes Section 124.493, subdivision 2 (1987).

GRANT APPLICATION PROCEDURES

Part 3445.3000 defines three terms used in part 3445.3000 to 3445.3024. "CSFGA" is the Cooperative Secondary Facilities Grant Act of 1987. Section 124.495 of the CSFGA authorizes the issuance and sale of bonds of the state to provide money for the cooperative secondary facilities grant program. "Pilot Project" is defined to include all eligible uses of funds established in CSFGA including acquiring, constructing, remodeling, or improving the building or site of cooperative secondary facilities. The pilot project also may include the cost of acquiring the initial equipment for the building. "Recipient" is the applicant joint powers district that receives a grant for cooperative secondary facilities construction.

Part 3445.3002 subpart 1, establishes that a group of three or more school districts with kindergarten to grade 12 enrollments in each district of no more than 1,000 pupils and at least 240 pupils in grades 10 to 12, or 320 pupils in grades 9 to 12, or 480 pupils in grades 7 to 12 may apply for a grant, provided they have entered into a joint powers agreement under Minnesota Statutes, section 471.59 to govern the cooperative secondary facilities. This criterion is needed to ensure that the cooperative secondary facilities grant program complements the state's efforts to encourage interdistrict cooperation among and between school districts. Minnesota Statutes, section 122.41 establishes the state policy encouraging organization of districts into units that provide better educational opportunities and are more economical and efficient. These criterion are also mandated by the enabling legislation (CSFGA).

Part 3445.3002, subpart 2, requires applications to be on forms supplied by the State Department of Education. This is necessary to ensure that consistent and comparable information is provided for each pilot project.

Part 3445.3004 establishes the contents of applications. Part 3445.3004 subpart 1, requires each applicant to provide the information specified in each subpart.

Part 3445.3004, subpart 2, requires a resolution passed by the applicant's joint powers board stating the proposed costs of the project, the purpose for which the debt is to be incurred, and an estimate of the dates when the facilities for which the grant is requested will be contracted for and completed. These criterion are required by CSFGA.

Part 3445.3004, subpart 3 requires that the applicant must provide a copy of the certificate by the clerk and treasurer of the joint powers board showing the current outstanding indebtedness of each member district. Subpart 4 requires that the applicant must provide a copy of a certificate by the county auditor of each county in which a portion of the joint powers district is located showing the information in the auditor's official records. For each member district's outstanding bonds, the certificate shall show the amount originally issued, the purpose for which issued, the date of issue, the amount remaining unpaid as of the date of the resolution required in subpart 2, and the interest rates and due dates and amount of principal remaining. These provisions ensure that the applicant provides the information that is required to be used in computing the debt limit of the districts under Minnesota Statutes, section 475.53, subdivision 4. They are also required by CSFGA.

Part 3445.3004, subpart 5 requires that the applicant must submit a copy of the review and comment by the commissioner of education for the proposed facilities as provided by Minnesota Statutes, section 121.15 regardless of the amount of capital expenditure required. This provision ensures that the applicant has received a favorable review and comment, which is required by CSFGA. ..

Part 3445.3004, subpart 6 requires that the applicant must provide for each member district a copy of current school year, October 1 enrollment data reported on the Fall Enrollment Report submitted to and audited by the Statistics Section, State Department of Education. The applicant must prepare and submit a report based on the pupil enrollment data, broken down by grades kindergarten through grade 12 for all member districts combined. The information required in this provision is reasonable and necessary to ensure that the applicant is eligible to apply under part 3445.3002, subpart 1.

Part 3445.3004, subpart 7 and its subdivisions establish requirements for the cooperative secondary facilities educational plan. The cooperative secondary facilities educational plan is a written document which describes how the facilities will provide better educational opportunities. Item A requires a description of how the planned secondary facilities will result in the joint powers district meeting the State Board of Education curriculum requirements in parts 3500.2010 and 3500.2110; item B requires a description of how the education program to be developed will provide for more learning opportunities and course offerings for pupils than are currently available in any single member districts; item C requires evidence that a plan to assess increased levels of student performance is provided; item D requires provisions for instruction of any resident students in other districts when distance to the secondary education facilities make attendance at the facilities unreasonably difficult or impractical; item E requires development of a combined staff seniority list for all member districts as developed by the joint powers board; and item F requires evidence that the development of the educational plan has included input from both community, professional staff, parents, and students. This provision is reasonable and necessary to ensure that grant funds will be used for pilot projects which have an educational plan to meet the needs described above, and virtually every item is required by CSFGA.

Part 3445.3004, subpart 8 and its subdivisions requires submission of information which is part of the cooperative secondary facilities building program. The building program must contain the information required for review and comment under Minnesota Statutes, section 121.15, subdivision 7; and a statement of need including reasons why the current secondary facilities are inadequate, unsafe, or inaccessible to the handicapped. This provision ensures that the need for a cooperative secondary facility exists as required under part 3445.3012, subpart 3.

Part 3445.3004, subpart 9, requires that the applicant provide preliminary plans for the pilot project, prepared by a Minnesota registered architect, and including a site plan and vicinity maps, subsurface soil analysis, schematic design studies and outlined specifications. This is necessary and reasonable because it ensures that the project can be evaluated under the review and comment requirements of Minnesota Statutes Section 121.15.

Part 3445.3004, subpart 10 requires that a report of an engineer licensed in Minnesota be included for a pilot project to remodel an existing building or construct an addition to an existing building. The report is to evaluate structural soundness and fire and safety hazards. This provision is necessary and reasonable to ensure that grant funds will be used for pilot projects resulting in buildings that are structurally sound and that are free of fire and safety hazards.

Part 3445.3004, subpart 11, requires certification by a Minnesota registered architect that the pilot project meets state requirements for accessibility and usability by physically disabled persons. This is necessary and reasonable to ensure that a professional, licensed architect has determined that the building meets state code requirements for handicapped accessibility.

Part 3445.3004, subpart 12 requires that the application include a pilot project budget. The pilot project budget is necessary and reasonable so that total estimated cost of the pilot project is known, and the dollar amount for which the pilot project is eligible to apply under part 3445.3010 can be calculated. Categories of budget expenditure are the major expenses in a construction project and are the categories for which a recipient would generally have separate contracts.

Part 3445.3004, subpart 13, requires evidence to be submitted of title to the pilot project site or evidence that title can be acquired within 30 days of approval of the application. This is a prerequisite for receiving state construction funds because a pilot project cannot proceed unless the recipient holds title to the pilot project site.

Part 3445.3004, subpart 14 and its subdivisions states the assurances which an applicant must provide to comply with all provisions of the CSFGA and applicable state laws and rules.

Item A requires that no more than one superintendent shall be employed by the joint powers board as a result of the cooperative secondary facilities agreement. This is required by CSFGA. Item B encourages the joint powers board to provide for severance pay for early retirement incentives under Minnesota Statutes, section 125.611, for any teacher or administrator who is placed on unrequested leave as a result of the cooperative secondary facilities agreement. These provisions in part ensure economical and efficient school district operations and the use of staff, and are encouraged by CSFGA.

Part 3445.3004, subpart 14 item C requires compliance with Minnesota Statutes sections 177.41 to 177.43 relating to prevailing wage rates. This statute applies to construction of public buildings, and item C is therefore necessary to ensure such compliance.

Part 3445.3004, subpart 14, item D establishes eligible categories of pilot project expenditures. These categories are based on Section 124.493 Subd. 1 of CSFGA, but are more specifically detailed in subitems (1) through (8) so that applicants will know specifically the pilot project costs for which they may use the state funds. Item E assures that funds will not be used to purchase books, supplies, and materials. These are operating expenses rather than capital outlay.

Part 3445.3004, subpart 15 establishes a process for the State Department of Education to request additional information from the applicants. This is a necessary and reasonable provision because information may be needed for clarification so that the application can be evaluated. The applicant has ten working days to provide the information, and if the information is not provided, the application will be evaluated on the basis of the information it contains. To allow more than ten working days for the additional information to be provided would subject other applicants to an undue delay in a handling all applications.

Part 3445.3005 establishes application due dates. The date for January 1, 1988 grant award consideration is established for November 16, 1987. This is necessary and reasonable because it is projected that this rule will not be final until November, 1987. The date cannot be later because the commissioner must make a determination by January 1, 1988, on all applications which have been on file for more than thirty days, and because of the requirements for review by the State Department staff under parts 3445.3014 and 3445.3018. For subsequent grant award consideration applications must be filed on or before April 15 and November 1 for July 1 and January 1 grant award consideration respectively, unless a different date is established by the commissioner of education and published in Education Update, official publication of the State Department of Education, not less than 60 days before the application due date. Education Update is published monthly during the school year and is mailed to all Minnesota school districts. Flexibility in establishing an alternative application due date is necessary and reasonable because of the different times in which state funds may be provided through the appropriations process and the dates of the sale of state bonds under Minnesota Statutes, section 124.495.

Part 3445.3008 provides that when an application is received, the State Department of Education shall obtain information from the commissioner of revenue, public utilities commission, or other official records that are required to be used in computing the debt limit of the joint powers district under Minnesota Statutes, section 457.53, subdivision 4. If any joint powers district is found not qualified according to the requirements of CSFGA, it shall be notified promptly by the commissioner of education. This part ensures timely notification of joint powers districts not qualified according to the requirements of CSFGA.

MAXIMUM GRANT

Part 3445.3010 establishes that grant funds provided under this program may constitute up to 75 percent of the approved construction costs of the cooperative secondary education facilities. To the extent money is available, the commissioner of education may approve not more than two pilot projects from the applications submitted under this chapter. This provision is required by CSFGA.

APPLICATION RATING

A mechanism is needed to rate all applications meeting the application requirements in order to determine which pilot projects will receive grants. Part 3445.3014 establishes five rating scales on which pilot projects will be measured, and which are reasonably related to an objective comparison of applications submitted.

Subpart A establishes a numerical rating for each pilot project based on the number of school districts in the joint powers district and their combined secondary grade enrollment. The most recent school district Fall Enrollment Report data, the basis for many state and federal reports where pupil enrollment data is required, is used to determine current pupils enrollments. The rating scale awards eight points where the joint powers district contains three member school districts and three points for each additional member school district, up to six districts. Additional points are awarded for the participation of more school districts because state policy encourages expanded educational opportunities for students and more economical and efficient school operations through reorganization whenever possible. Where the most recent October 1 pupil enrollment of the joint powers district in the secondary grades to be contained in the cooperative facilities averages between 80 or more pupils per grade, eight points are awarded.

Subpart B establishes a rating based on the age of the existing secondary facilities in each of the member districts. A predominately older secondary facility is likely to be inadequate in size, inaccessible to the physically disabled, inefficient in use of energy due to antiquated mechanical systems, and greatly in need of replacement. Therefore, a rating scale is established beginning with five points where 50 percent or more of the total secondary square footage was occupied for school use during or before 1920, descending to one point where 50 percent or more of the total secondary square footage was occupied for school use during or before 1970. An additional three points are awarded where a member district does not currently provide its own secondary facilities for 50 percent or more of its students on a full-time basis. This would include sending students to other school districts or leasing school space. These points are awarded because such districts lack adequate secondary spaces of their own at present and leasing space, or sending students to another district most often is a temporary, inadequate solution.

Subpart C establishes a rating based on the adequacy of the educational plan submitted by the joint powers district. Where more learning outcomes are provided through more learning opportunities and course offerings for students than currently available in any member district, and a plan to assess such learning outcomes and increased levels of student performance is also provided, up to eighteen points may be awarded in subitem 1. A plan to assess learning outcomes and increased levels of student performance will

greatly assist the joint powers district in determining the educational results of their cooperative venture. Where there is evidence of input in the development of the educational plan by professional staff, subitem 2 provides that up to eight points may be awarded. Where there is evidence of input in the development of the educational plan by community members, parents, and students, subitem 3 provides that up to eight points may be awarded. Where there is evidence that the State Board of Education curriculum requirements will be met, subitem 4 provides that up to eight points may be awarded. Lastly, where there is evidence of more efficient utilization of staff than currently available in any member district, subitem 5 provides that up to eight points may be awarded. Subitems 2 through 5 are required by CSFGA; awards of additional points will be made when an applicant exceeds the minimal requirements of any subitem.

Subpart D establishes a rating based on the adequacy of the provisions for instruction of any resident students in other districts when distance to the secondary education facilities makes attendance at the facilities unreasonably difficult or impractical. This is a threshold requirement of CSFGA. Plans that exceed the minimal requirement may be awarded up to ten points.

Subpart E establishes a rating for each pilot project based upon the school tax burden of the joint powers district. The measure of the school tax burden is the weighted average auditor mill rate for each joint powers district. The auditor mill rate is a common measure of the tax burden of a school district. Additional points are awarded because a higher tax rate indicates more willingness to support education and/or a lack of ability to fund school operations locally because of low property valuations. Where the weighted average auditor mill rate is in the 75th percentile or above among Minnesota school districts, ten points are awarded. Where the weighted average auditor mill rate is at or above the 50th percentile but below the 75th percentile among Minnesota school districts, five points are awarded, and where the weighted average auditor mill rate is below the 50th percentile among Minnesota school districts, zero points are awarded.

APPROVAL OF PILOT PROJECTS

Part 3445.3018 establishes the method to be used by the commissioner of education to award grants. Grants may be awarded to pilot projects which meet all application requirements and receive a minimum of 75 application rating points. This part ensures that the two grant awards will go to applicants who develop a quality pilot project proposal, as 75 points requires a proposal to receive a substantial number of application rating points. The commissioner shall consider total points assigned in the application rating, total grant funds available, and if application ratings are within ten points, the location of each project. Diverse geographic locations of pilot projects which are of nearly equal quality is desirable so that, if possible, several parts of the state may benefit from the grant awards. The commissioner shall promptly certify to each qualified joint powers district the amount, if any, of the grant award. In this way, the joint powers district will quickly be able to determine the additional amount of dollars needed through a bond issue to finance the cooperative secondary facilities pilot project. This provision is needed so that grant applications are measured objectively. Two total pilot projects shall be funded up to the total dollar amounts available.

REFERENDUM; BOND ISSUE

Part 3445.3020 establishes the requirement of local voter approval for the borrowing of funds and issuance of bonds to help finance the cooperative secondary facilities pilot project. Within 90 days after being awarded a grant the joint powers board must then submit the question of authorizing the borrowing of funds for the cooperative secondary facilities to the voters of the member districts at the special election. The question submitted shall state the total amount of funding needed from all sources. A majority of those voting in the affirmative on the question is sufficient to authorize the joint powers board to issue the bonds on public sale in accordance with Minnesota Statutes, chapter 475. The clerk of the joint powers board must certify the vote of the bond election to the State Department of Education. If the bonds are authorized by the voters, the State Department of Education shall notify the county auditors of each county in which a member district is located that the grant amount certified in part 3445.3018 is available and appropriated for payment of principal and interest on the bonds issued under this part, and the auditor shall reduce the joint power district's debt service levies accordingly. If a majority of those voting on the question do not vote in the affirmative, the grant must be canceled. This part ensures that pilot project funds will be promptly made available to school districts pending voter approval, or if not approved by voters in a joint powers district, to another qualified applicant. It is also required by CSFGA.

GRANT CONTRACT

Part 3445.3022 establishes that each grant must be evidenced by a contract between the joint powers board and the state acting through the commissioner of education. The contracts must be entered into within 15 months after the date on which each grant is awarded. It obligates the joint powers board and the state acting through the commissioner of education. It obligates the state to pay to the joint powers board an amount computed under part 3445.3018, upon receipt by the State Department of Education of a certified resolution of the joint powers board estimating the costs, and verifying that contracts have been entered into for construction or remodeling of the facilities for which the grant is awarded and that bonds of the joint powers district have been issued and sold in the amount necessary to pay all pilot project costs in excess of the amount of the grant. The contract is needed to ensure adequate reporting and monitoring of the pilot project as required in state regulations. It is also required by CSFGA.

RETURN OF GRANT FUNDS

Part 3445.3024 establishes a procedure for return of grant funds when a pilot project is completed for a cost lower than the pilot project budget which was the basis for the grant award, or if the recipient is unable to complete the pilot project. The grant amount is reduced by the same percentage as the pilot project budget is reduced. This is needed because experience in administering facilities projects demonstrates that projects are at times completed at less than the amounts budgeted for the project, or at times not completed. The percentage reduction is needed and reasonable in order to maintain the maximum grant share of 75 percent of total pilot project cost established in part 3445.3010. Returned funds are offered to the other grant recipients under part 3445.3018 if that grant recipient's pilot project was funded at less than the requested amount. Recipients of the returned funds have 60 days to modify pilot projects and to increase the pilot project budget.

IMPACT ON SMALL BUSINESS

It is not anticipated that this rule will have any impact on small business.

FISCAL NOTICE

These rules do not automatically require the expenditure of public moneys by local school districts. Only in the event that school districts through a joint powers board apply for a grant under these rules, and because local voters must further approve any borrowing and expenditure of additional funds, the provisions of Minnesota Statutes section 14.11, subdivision 1 do not apply.