

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 804

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 4-16-82
DATE FOR REVIEW 4-26-82
DATE DUE 4-30-82

Adopted w/a hearing ____
Adopted w/o hearing ✓
Temporary rule ____

Approved 4-29-82 Disapproved ____ Returned to Agency 4-29-82

Resubmitted ____ Due ____
Approved ____ Disapproved ____ Returned to Agency ____

Date filed w/Secretary of State 4-29-82 Revisor approved 4/21/82 disapproved ____

✓ Rule as Adopted

✓ Rule as Proposed see SR

✓ Order Adopting 4.13.82 Date

✓ Notice of Intent to Solicit Outside Opinion 9.7.81

✓ Order for rulemaking
N/A date of Hearing

✓ Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
? Sufficiency see my comment.

✓ Affidavit of Mailing Notice or rulemaking
1.19.82 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register see my comment
✓ 1.25.82 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

Chief Hearing Examiner's Report(s)
____ Approving H.E.'s Report
____ Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

N/A Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : JOHN J. FEDA
Secretary, St. Board of Education

DATE: 4/29/82

ATTN: MICHAEL J. BRADLEY, Assistant Atty. Gen.

FROM : TED A. MARTINEZ
Special Assistant
Attorney General

PHONE: 296-0315

SUBJECT: In the Matter of the Proposed Adoption of Rules of the State Board of Education Governing the Capital Loan Program 5 MCAR § 1.0430

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register. This must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

TAM:drw
Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

SF-00006-02

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT Education
747 Capitol Square Bldg.

TO : Special Ass't. Attorney General
204 Administration Building

DATE: April 14, 1982

FROM : Lois E. Steinhaus
Education Statistics Section

PHONE: 6-4428

SUBJECT: Approval of Chapter Twenty-Two A: Capital Loan Program 5 MCAR S 1.0430

Rules Without a Public Hearing

Enclosed is a copy or more than one if indicated, of the following materials:

1. Rules as Adopted (original plus three; includes one with changes)
2. Order Adopting Rules (original plus one)
3. Certificate of Board's Resolution Adopting Rules
4. Order for Notice of Intent to Adopt Rules Without Public Hearing
5. Certificate of Board's Authorizing Resolution
6. Notice of Intent to Adopt Rules Without Public Hearing
7. Affidavit of Mailing
   Affidavit of the Additional Notice....Rulemaking Mailing List Certificate
8. Rules as Proposed - State Register (copy of appropriate pages) and as mailed
9. Findings of Fact and Conclusions
10. Statement of Need and Reasonableness
11. Correspondence - none
12. Notice of Intent to Solicit Outside Opinion
13. Affidavit of Mailing Notice of Submission to the Attorney General - n/a

When the record is ready to be returned, please call me and I will have some one come and pick it up. Thank you.

Rule as Adopted

Chapter Twenty-Two A: Capital Loan Program

5 MCAR S 1.0430 Capital loan program.

A. Preapplication requirement. A school board which intends to submit an application for a capital loan, regardless of the capital expenditure amount, shall submit the construction proposal to the Commissioner of Education for a review and comment statement pursuant to Minn. Stat. S 122.90, subds. 2-4.

B. Review and comment by commissioner. The commissioner shall base the review and comment statement on information required to be provided pursuant to Minn. Stat. S 122.90, subd. 2. In determining the educational and economic advisability of the proposed facility, the commissioner shall:

1. determine if the size of the proposed facility is appropriate for the projected number of pupils;

2. determine whether the pupil enrollment will continue to be sufficient to support the need for the proposed facility for at least ten years;

3. determine if currently recommended energy conservation methods will be used;

4. determine whether the projected annual operating costs will be consistent with current construction projects of a similar size and nature;

5. determine whether the proposed facility can also be used for community education programs, as a meeting facility, or in ways other than direct delivery of educational services; and

6. determine the availability and cost-effectiveness of purchasing or leasing existing facilities from adjacent school districts or from other institutions. The commissioner shall take into consideration: the size, nature and age of existing facilities; whether existing facilities meet current fire safety and other applicable codes and requirements established in state and federal law; and the cost of any remodeling required to make the facilities satisfy district needs.

C. Recommendation by commissioner. Based upon the determinations in B., the commissioner shall recommend to the State Board of Education whether the amount of the capital loan should be approved in the requested amount, denied or reduced.

D. Approval recommendation by state board. The State Board of Education shall recommend approval of a loan if all of the criteria in 1.-3. are met, unless the loan is denied pursuant to the provisions of F.

1. The commissioner's review and comment statement must recommend approval.

2. The facilities must be comparable in size and quality to facilities constructed within the last decade and financed by a local bond issue in no less than three districts with similar pupil enrollment.

3. The facilities are needed either:

a. to replace facilities that no longer comply with current fire safety codes and other applicable codes and requirements established in state and federal law; or

b. to provide adequate and sufficient instructional areas to carry out the educational requirements for pupils for whom adequate facilities do not exist. To satisfy requirement 3.b. the district shall provide documentation that one or more of the following situations exist: the programs are not provided due to lack of space or the programs are provided in inappropriate spaces, such as temporary buildings or rented buildings not intended for educational purposes.

E. Information required by state board. In making its application to the State Board of Education, the applying school district shall supply the following information about adjacent school districts:

1. projected enrollment for each district;

2. size, nature and age of their present educational facilities; and

3. whether the buildings meet current fire safety and other applicable codes and requirements established in state and federal law.

F. Denial recommendation by state board. Based upon the information submitted pursuant to B. and E., the State Board of Education shall recommend denial of a loan if the facility could be made available in at least one of the following ways:

1. through the purchase or lease of a facility from an existing institution within the district or adjacent districts;

2. through an interdistrict cooperation agreement with another district;

3. by dissolving the applicant district and attaching it to another district; or

4. through consolidation with another district.

G. Reduction recommendation by state board. Based upon the information submitted in B., C. and E., the State Board of Education shall recommend loan approval in a reduced amount when the problems may be resolved through a less costly manner.

APPROVED AS TO LEGALITY
April 29 1982
WARREN SPANNAUS, ATTORNEY GENERAL
BY
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
APR 29 1982
Joan Anderson Growe
Secretary of State

10:30 A.M.

State of Minnesota
State Board of Education

In the Matter of the Proposed Adoption of Rules of the State Board of Education Governing the Capital Loan Program 5 MCAR § 1.0430

ORDER ADOPTING RULES

Notice of the Board's intent to adopt the above-entitled rule without a public hearing was published in the State Register on January 25, 1982, and was sent by United States mail to all persons on the list maintained by agency pursuant to Minn. Stat. § 15.0412, subd. 4 on January 19, 1982. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving no written requests for a public hearing within the 30-day comment period, and determining the need for and reasonableness of the above-captioned rules.

NOW, THEREFORE, IT IS ORDERED that this rule identified as 5 MCAR § 1.0430 is adopted this 13th day of April, 1982, pursuant to authority vested in the Board by Minn. Stat. § 124.41, subd. 2.

STATE OF MINNESOTA

John J. Feda

Secretary, State Board of Education

State Board of Education
Department of Education
School Management Services Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed New Rules Governing Maximum Effort School Aid

Notice is hereby given that the State Board of Education is seeking information or opinions from sources outside the agency in preparing to promulgate new rules governing criteria upon which the State Board of Education will base its recommendation for a state capital loan in compliance with Minn. Stat. § 124.43, subd. 1(b). The promulgation of these rules is authorized by Minn. Stat. § 124.41, subd. 2.

The State Board of Education requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit standards of information or comment in writing. Written statements should be addressed to:

Janet Kielb, Director
School District Organization
911 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101

All statements of information and comment shall be accepted until October 1, 1981. Any written material received by the State Board of Education shall become part of the record in the event that the rules are promulgated.

August 27, 1981

Ronald J. Laliberte
Assistant Commissioner

Metropolitan Council

Public Hearing on the Proposed Amendment to the Capital Improvement Program for Regional Parks and Recreation Open Space

The Metropolitan Council will hold a public hearing on Thursday, October 1, 1981 at 7:30 p.m. in the Metropolitan Council Chambers, 300 Metro Square Building, St. Paul Minnesota 55101 on the proposed amendments to the Regional Parks and Open Space Capital Improvement Program. All interested persons are encouraged to attend the hearing and offer comments. Persons wishing to speak may register in advance by contacting the council's public hearing coordinator at 291-6421. Those requesting first will be scheduled first. Written comments may also be submitted until October 8, 1981 to Robert E. Nethercut, Director, Parks and Open Space Division, Metropolitan Council. Copies of the proposed changes and of the council's Recreation Open Space Development Guide and Policy Plan may be obtained from the council's Public Information Office at 291-6464.

Pollution Control Agency

Notice of Intent to Solicit Outside Opinion Concerning Proposed Amendments to Rules Affecting the Management of Solid Waste in the State of Minnesota

Notice is hereby given that the Minnesota Pollution Control Agency (MPCA) has made a preliminary determination that an in-depth evaluation of rules SW 1-12 is necessary. These rules outline permit application and facility location requirements for solid waste handling, processing and disposal facilities and also establish operating standards for solid waste disposal facilities such as frequency of cover material, control of litter and prohibition of open burning.

The MPCA is seeking information and comments on its existing solid waste management rules for all interested persons or groups.

Written statements and comments concerning these matters will be accepted for consideration until October 31, 1981 and should be addressed to:

State of Minnesota
Department of Education

State Board of Education
School Management Services Division

In the Matter of the Proposed
Adoption of Rules of the State
Board of Education Governing
the Capital Loan Program

ORDER FOR NOTICE OF INTENT
TO ADOPT RULES WITHOUT
PUBLIC HEARING

IT IS ORDERED this 8th day of December, 1981, that a Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the State Board of Education for that purpose and be published in the State Register.

State of Minnesota
Board of Education

John J. Feda
Secretary

CERTIFICATE OF BOARD'S

AUTHORIZING RESOLUTION

I, John J. Feda, do hereby certify that I am a member and the secretary of the Board of Education, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board of Education duly and properly called and held on the 8th day of December, 1981, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that John J. Feda, secretary of the Board of Education, be and he hereby is granted the authority and directed to sign an Order of the Board directing that Notice be given of the Board's intent to adopt without a public hearing rules governing the capital loan program, to sign the Notice thereof, and to perform any and all acts incidental thereof. In the event a public hearing becomes necessary, he or his deputy hereby is granted the authority and directed to call a hearing for the purpose of promulgating said rules as well as perform any and all acts incidental thereto, including but without being limited to signing an Order for Hearing and Notice of Hearing as well as acting as the Board's representative at all hearings."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 8th day of December, 1981.

John J. Feda

John J. Feda, Secretary
State Board of Education

Patricia A. Hebert

Member, State Board of Education

State Board of Education
Department of Education
School Management Services Division

In the Matter of the Proposed
Adoption of Rules of the State Board
of Education Governing the Capital
Loan Program
5 MCAR § 1.0430

Notice of Intent to Adopt Rules
Without a Public Hearing

Notice is hereby given that the State Board of Education proposes to adopt the above-entitled rule without a public hearing. The Board has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 15.0412, subd. 4h.

The proposed rule is authorized by Minn. Stat. § 121.41, subd. 2. This rule, 5 MCAR § 1.0430, establishes the application procedure for school districts that require state funds to assist in financing a school construction project. The rule establishes the criteria the State Board of Education and commissioner will use in determining whether the capital loan should be recommended for approval, denial, or reduced in the requested amount.

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30 day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 15.0412, subd. 4-4f.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or requests to:

Janet Kielb
School District Organization
911 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
Telephone: (612) 296-1382

Authority for the adoption of these rules is contained in Minn. Stat. § 121.41, subd. 2. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules has been prepared and is available from Janet Kielb upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, and the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of

substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Janet Kielb.

A copy of the proposed rules is attached to this Notice.

Copies of this Notice and the proposed rules are available and may be obtained by contacting Janet Kielb.

State of Minnesota

December 8, 1981

John J. Feda
Secretary

State of Minnesota
Department of Education

State Board of Education
School Management Services Division

IN THE MATTER OF: The Proposed
Adoption of Rules of the State
Board of Education Governing the
Capital Loan Program 5 MCAR § 1.0430
Without Public Hearing

STATE OF MINNESOTA)
) ss.
County of Ramsey)

AFFIDAVIT OF MAILING

Harold E. Klecker, being first duly sworn, deposes and says:

That on the 19th day of January, 1982, at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Intent to Adopt Rules without Public Hearing, by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations named on the certified list (see attached Certificate) who have requested that their names be placed on file with the Minnesota Department of Education for the purpose of receiving notice of the proposed adoption of rules by the State Board of Education.

Harold E Klecker

Subscribed and sworn to before me
this 19th day of January
1982.

Betty L. King

BETTY L. KING
Notary Public, Dakota Co. MN
My Commission Expires
June 13, 1983

State of Minnesota
Department of Education

State Board of Education
School Management Services Division

IN THE MATTER OF: The Proposed Adoption of Rules of the State Board of Education Governing the Capital Loan Program 5 MCAR § 1.0430 Without Public Hearing

Affidavit of Additional Notice of the State Board of Education Mailing List

I hereby certify that in addition to the Notice required for persons on the State Board of Education rulemaking mailing list, of persons who have specifically requested notice of rulemaking proceedings, a Notice was mailed to all persons on the Education Statistics memo series mailing list, as of 2 o'clock P .M., this 19th day of January, 1982, which includes school superintendents, Directors of ECSUs, AVTIs, Vocational Centers and Joint Powers Districts.

State Board of Education

John J. Ford
Commissioner of Education

Subscribed and sworn to before me
this 19th day of Jan, 1982.

Betty L. King
Notary Public
Dakota County, Minnesota
My commission expires 6-13-83.

BETTY L. KING
Notary Public, Dakota Co. MN
My Commission Expires
June 13, 1983

State of Minnesota
Department of Education

State Board of Education
School Management Services Division

STATE OF MINNESOTA

COUNTY OF RAMSEY

IN THE MATTER OF: The Proposed
Adoption of Rules of the State
Board of Education Governing the
Capital Loan Program 5 MCAR § 1.0430
Without Public Hearing

CERTIFICATE

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 15.0412, subd. 4, that their names be placed on file with and maintained by the Minnesota Department of Education for the purpose of receiving notice of the proposed adoption of rules by the State Board of Education is accurate and complete as of 2 o'clock P .M. this 18th day of January, 1982.

STATE BOARD OF EDUCATION

By Linda Alberg

B. Conformity letter. For these insurers, the letter required in 4 MCAR § 1.9125 [Temporary] shall state that the accountant is aware of the requirements relating to the annual audited statement filed with the commissioner under 4 MCAR § 1.9123 [Temporary] and shall affirm that the opinion expressed is in conformity with those requirements.

State Board of Education
Department of Education
School Management Services Division

Proposed Rule Governing the Capital Loan Program (5 MCAR § 1.0430)

Notice of Intent to Adopt Rule without a Public Hearing

Notice is hereby given that the State Board of Education proposes to adopt the above-entitled rule without a public hearing. The board has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 15.0412, subd. 4h.

The proposed rule is authorized by Minn. Stat. § 121.41, subd. 2. This rule, 5 MCAR § 1.0430, establishes the application procedure for school districts that require state funds to assist in financing a school construction project. The rule establishes the criteria the State Board of Education and commissoiner will use in determining whether the capital loan should be recommended for approval, denial, or reduced in the requested amount.

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30 day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 15.0412, subd. 4-4f.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or requests to:

Janet Kielb
School District Organization
911 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
Telephone: (612) 296-1382

Authority for the adoption of these rules is contained in Minn. Stat. § 121.41, subd. 2. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules has been prepared and is available from Janet Kielb upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, and the statement of need and reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Janet Kielb.

A copy of the proposed rules is attached to this notice.

Copies of this notice and the proposed rules are available and may be obtained by contacting Janet Kielb.

December 8, 1981

John J. Feda
Secretary

Rule as Proposed (all new material)

Chapter Twenty-Two A: Capital Loan Program

5 MCAR § 1.0430 Capital loan program.

A. Preapplication requirement. A school board which intends to submit an application for a capital loan, regardless of the capital expenditure amount, shall submit the construction proposal to the Commissioner of Education for a review and comment statement pursuant to Minn. Stat. § 122.90, subds. 2-4.

B. Review and comment by commissioner. The commissioner shall base the review and comment statement on information required to be provided pursuant to Minn. Stat. § 122.90, subd. 2. In determining the educational and economic advisability of the proposed facility, the commissioner shall:

1. determine if the size of the proposed facility is appropriate for the projected number of pupils;

2. determine whether the pupil enrollment will continue to be sufficient to support the need for the proposed facility for at least ten years;

3. determine if currently recommended energy conservation methods will be used;

4. determine whether the projected annual operating costs will be consistent with current construction projects of a similar size and nature;

5. determine whether the proposed facility can also be used for community education programs, as a meeting facility, or in ways other than direct delivery of educational services; and

6. determine the availability and cost-effectiveness of purchasing or leasing existing facilities from adjacent school districts or from other institutions. The commissioner shall take into consideration: the size, nature and age of existing facilities; whether existing facilities meet current fire safety and other applicable codes and requirements established in state and federal law; and the cost of any remodeling required to make the facilities satisfy district needs.

C. Recommendation by commissioner. Based upon the determinations in B., the commissioner shall recommend to the State Board of Education whether the amount of the capital loan should be approved in the requested amount, denied or reduced.

D. Approval recommendation by state board. The State Board of Education shall recommend approval of a loan if all of the criteria in 1.-3. are met, unless the loan is denied pursuant to the provisions of F.

1. The commissioner's review and comment statement must recommend approval.

2. The facilities must be comparable in size and quality to facilities constructed within the last decade and financed by a local bond issue in no less than three districts with similar pupil enrollment.

3. The facilities are needed either:

a. to replace facilities that no longer comply with current fire safety codes and other applicable codes and requirements established in state and federal law; or

b. to provide adequate and sufficient instructional areas to carry out the educational requirements for pupils for whom adequate facilities do not exist. To satisfy requirement 3.b. the district shall provide documentation that one or more of the following situations exist: the programs are not provided due to lack of space or the programs are provided in inappropriate spaces, such as temporary buildings or rented buildings not intended for educational purposes.

E. Information required by state board. In making its application to the State Board of Education, the applying school district shall supply the following information about adjacent school districts:

1. projected enrollment for each district;

2. size, nature and age of their present educational facilities; and

3. whether the buildings meet current fire safety and other applicable codes and requirements established in state and federal law.

F. Denial recommendation by state board. Based upon the information submitted pursuant to B. and E., the State Board of Education shall recommend denial of a loan if the facility could be made available in at least one of the following ways:

1. through the purchase or lease of a facility from an existing institution within the district or adjacent districts;

2. through an interdistrict cooperation agreement with another district;

3. by dissolving the applicant district and attaching it to another district; or

4. through consolidation with another district.

G. Reduction recommendation by state board. Based upon the information submitted in B., C. and E., the State Board of Education shall recommend loan approval in a reduced amount when the problems may be resolved through a less costly manner.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

State of Minnesota
State Board of Education

In the Matter of the Proposed Adoption of Rules of the State Board of Education Governing the Capital Loan Program 5 MCAR § 1.0430

FINDINGS OF FACT AND CONCLUSIONS

FINDINGS OF FACT

1. At its regular meeting of December 8, 1981, the State Board of Education (hereinafter the "Board") proposed that the above-entitled rule be adopted after compliance with the procedure which authorizes an agency to propose and adopt rules without a public hearing.

2. Pursuant thereto, the Notice of Intent to Adopt Rules Without a Public Hearing was published in the State Register on January 25, 1982, together with a copy of the proposed rules.

3. The Board's authority to promulgate the proposed rule is contained in Minn. Stat. § 124.41, subd. 2.

4. The Statement of Need and Reasonableness for proposed rule 5 MCAR § 1.0430 sets forth the need for and reasonableness of the rule to be adopted herein.

5. The Statement of Need and Reasonableness is incorporated into these findings and becomes a part hereof as though fully set forth herein.

6. Copies of the Notice of Intent to Adopt 5 MCAR § 1.0430 Without Public Hearing and of the proposed rules were mailed on January 19, 1982, to names appearing on the Department of Education rule-making mailing list.

7. No one requested a public hearing within the 30 day comment period.

8. No correspondence was received pertaining to this topic.

CONCLUSIONS

1. The Board gave due, timely, and adequate legal notice of its intent to adopt the rule without a public hearing.

2. No one requested a public hearing during the 30 day comment period.

3. The Board has the statutory authority to promulgate the proposed rule.

4. The Board has fulfilled all relevant, substantive, and procedural requirements of law or rule.

5. The Board has demonstrated the need for and the reasonableness of the proposed rules by an affirmative presentation of facts.

April 13, 1982

John J. Fischer

Secretary, State Board of Education

CERTIFICATE OF BOARD'S
RESOLUTION ADOPTING RULES

I, John J. Feda, do hereby certify that I am Secretary of the Board of Education, a Board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board of Education, duly and properly called and held on the 13th day of April, 1982, that a quorum was present at said meeting, that a majority of those present voted for the resolution, and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that the rules governing the capital loan program be and they hereby are approved and adopted pursuant to the authority vested in us by Minn. Stat. § 124.41, subd. 2, and that John J. Feda, the secretary of the Board of Education, be and hereby is authorized to sign an order adopting these rules and further is authorized to perform the necessary acts to provide that these rules have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 13th day of April, 1982.

John J. Feda

John H. Feda, Secretary
State Board of Education

Patricia A. Weber

Member, State Board of Education

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).

In the Matter of the Proposed Adoption of Rules of the State Board of Education Governing the Capital Loan Program 5 M.C.A.R. § 1.0430.

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Assistant Attorney General Michael J. Bradley, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Dated: April 15, 1982

Michael J. Bradley
Assistant Attorney General