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State Superintendent**

Date: December 10, 2009

To: Senator Jerry Klein, Chairman, Administrative Rules Committee &
Committee Members

From: Bob Marthaller, Assistant Superintendent
ND Department of Public Instruction

Subject: Adoption of New Rules - Chapter 67-09-01 and Chapter 67-10-01

Chapter 67-09-01 adopts legislative changes and increases the thresholds required for applications for construction approval. Chapter 67-10-01 adopts legislative changes and gives priority for construction loans to districts that are eligible for an equity payment. Testimony follows in support of the rule changes.

1. Whether the rules resulted from statutory changes made by the Legislative Assembly.
 - Rule changes to Chapter 67-09-01 are largely the result of changes made by the 61st Legislative Assembly as found in HB 1400. Chapter 67-10-01 adopts legislative changes and gives priority for construction loans to districts that are eligible for an equity payment.
2. Whether the rules are related to any federal statute or regulation.
 - Rule changes are not related to any federal statute or regulation.
3. A description of the rule making procedures followed in adopting the rules, e.g. the type of public notice given and the extent of public hearing held on the rules.
 - Notice was published on August 3, 2009 in each of the county newspapers in the state. Notice was also mailed to the superintendent of each school, or where there is no superintendent to the president of the

school board. The public hearing, held on September 8, 2009, was brief and no testimony, written or oral was presented.

4. Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to the rule. If so, describe the concern, objection, or complaint, and the response of the agency, including any change made to the rules to address the concern, objection, or complaint. Please summarize the comment of any persons who offered comments at the public hearing on this rule.

- The Department received no written or oral concern, objection or complaint for agency consideration with regard to the rule change.

5. The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules.

- The cost for publication of the notice was \$2,637.23. The hearing was brief and the adoption of the final rule did not require much time or materials.

6. An explanation of the subject matter of the rule and the reasons for adopting the rule.

Article 67-09 Approval For School Construction Estimated To Cost More Than Twenty-Five Thousand Dollars

The proposed rule change:

- a. Increases the threshold required for districts to seek construction approval from \$25,000 to \$40,000. HB 1400, Section 42, amended NDCC 15.1-36-01(1) increasing the threshold from \$25,000 to \$40,000. Under the proposed rule, a district must seek construction approval for projects with estimated costs of more than \$40,000. Accordingly, rule changes are proposed for Chapter 67-09-01, 67-09-01-01 (page 55), 67-09-01-02 (page 56), and 67-09-01-10 (page 62).
- b. Removes the requirement for and definition of "stable enrollment" as criteria necessary to approve construction applications. HB 1400, Section 42, amended NDCC 15.1-36-01(2a) and NDCC 15.1-36-01(3a3). Accordingly, rule changes are proposed for Chapter 67-09-01-01(13a,b) (page 56), 67-09-01-02.1(3a) (page 57), 67-09-01-05.1(3) (page 58), and 67-09-01-05.2(6,6c) (page 60 & 61).

- c. Increases the threshold requirement necessary for approval and the requirement to submit a facility plan from \$150,000 to \$250,000. The proposed rule change means that school districts must submit a facility plan when the estimated cost of the project reaches \$250,000 rather than at \$150,000. Accordingly, rule changes are proposed for Chapter 67-09-01 (page 55), 67-09-01-05.1 (page 57 & 58), and 67-09-01-05.2 (page 57 & 58).
- d. Increases the time for which an approved project is effective from two years to three years. Prior to the proposed change an approved project was effective for two years. Under the proposed rule the approved plan would be effective for three years. Accordingly, rule changes are proposed for Chapter 67-09-01, 67-09-01-05.2(2) (page 59) and 67-09-01-10 (page 62).
- e. Includes new language that requires a district to seek additional approval for a previously approved project when the district modifies an approved project and the modification changes the purpose or stated function of the previously approved plan. Accordingly, a rule change is proposed for Chapter 67-09-01-10 (page 62).
- f. Corrects a clerical error by changing the word "date" to "data" as applied to providing trend data on tax levies. Accordingly, a rule change is proposed for Chapter 67-09-01-05.2(8c) (page 61).

Article 67-10 School Construction Loan Application and Loan Approval

The proposed rule change:

- a. Removes citations referencing NDCC 15-35, repealed in 2001.
- b. Requires that the loan eligibility threshold for the estimated project cost of a project be set at \$1,000,000 as provided in NDCC 15.1-36-02(2a) (rather than \$50,000) and also requires that the construction project has a projected utilization of thirty years. Accordingly, a rule change is proposed for Chapter 67-10-01-02(1) (page 63).
- c. Removes obsolete language related to order of approval and provides that loan applications from districts that are eligible for receipt of an equity payment as provided in NDCC 15.1-27-11 receive priority in the order of approval. Accordingly, a rule change is proposed for Chapter 67-10-01-04 (page 63 & 64).
- d. Eliminates all of 67-10-01-06. This rule is no longer necessary as NDCC 15.1-36-02 provides prescriptive guidance related to loan eligibility, loan entitlement, discount rates and term of loan. Accordingly, a rule change is proposed that repeals Chapter 67-10-01-06 (page 64).

- e. Increases the amount by which the fund (monies in the coal development trust fund) outstanding principal balance may not exceed \$50,000,000 from \$25,000,000 as prescribed in NDCC 15.1-36-02(1). Accordingly, a rule change is proposed for Chapter 67-10-01-07 (page 65).
7. Whether a regulatory analysis was required by N.D.C.C. § 28-32-08 and whether that regulatory analysis was issued.
 - No regulatory analysis was required by N.D.C.C. § 28-32-08.
8. Whether a regulatory analysis or economic impact statement of impact on small entities was required by N.D.C.C. § 28-32-08.1 and whether that regulatory analysis or impact statement was issued.
 - The Department prepared a regulatory analysis and economic impact statement for small entities.
9. Whether a constitutional takings assessment was prepared as required by N.D.C.C. § 28-32-09.
 - No constitutional takings assessment was required.
10. If this rule was adopted as an emergency (interim final) rule under N.D.C.C. § 28-32-03, provide the statutory grounds from that section for declaring the rule to be an emergency and the facts that support the declaration and provide a copy of the Governor's approval of the emergency status of the rule.
 - The rules were not adopted as an emergency rule.