

WSR 21-12-093
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed June 1, 2021, 5:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-08-086.

Title of Rule and Other Identifying Information: Chapter 392-342 WAC, State assistance in providing school plant facilities—Educational specifications and site selection and chapter 392-344 WAC, State funding assistance in providing school plant facilities—Procedural regulations.

Hearing Location(s): On July 7, 2021, at 10:00 a.m., webinar via Zoom (call-in option will be available). Due to the public health emergency related to the COVID-19 virus pandemic, this public hearing will take place by webinar via Zoom (with a call-in option). There will be no physical location for the hearing. For information on registering and participating, please visit office of superintendent of public instruction's (OSPI) website at <https://www.k12.wa.us/policyfunding/ospi-rulemaking-activity>. For questions, please email kristin.murphy@k12.wa.us.

Date of Intended Adoption: July 9, 2021.

Submit Written Comments to: Scott Black, OSPI, School Facilities, P.O. Box 47200, Olympia, WA 98504, email schoolfacilitiesrules@k12.wa.us, by July 7, 2021.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-754-4201, TTY 360-664-3631, email Kristin.murphy@k12.wa.us, by June 30, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule changes is to apply lean management principles, as required by section 5015, chapter 413, Laws of 2019, to the process related to applying for state assistance for school plant facilities, also known as the "D-Forms" process.

Reasons Supporting Proposal: Amending the rules by applying lean management principles and other performance management strategies is intended to reduce undue administrative burdens on school districts participating in this school facilities process.

Statutory Authority for Adoption: RCW 28A.525.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting and Implementation: Scott Black, OSPI, 600 South Washington Street, Olympia, 360-742-4028; Enforcement: Randy Newman, OSPI, 600 South Washington Street, Olympia, 360-725-6268.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

June 1, 2021
Chris P. S. Reykdal
State Superintendent
of Public Instruction

OTS-3009.1

AMENDATORY SECTION (Amending WSR 10-09-008, filed 4/8/10, effective 5/9/10)

WAC 392-342-200 Applications and forms. Applications and forms applicable to the provisions of this chapter for school facilities shall be as follows:

(1) Applications for preliminary funding status pursuant to WAC 392-342-050 shall be designated as ((~~SPI Form D-5~~)) OSPI D-5 Application.

(2) Grants of preliminary funding status pursuant to WAC 392-342-050 shall be given to districts through ((~~SPI Form D-6~~)) OSPI D-6 Form.

[Statutory Authority: RCW 28A.525.020. WSR 10-09-008, § 392-342-200, filed 4/8/10, effective 5/9/10; WSR 06-16-032, amended and recodified as § 392-342-200, filed 7/25/06, effective 8/25/06. Statutory Authority: RCW 28A.47.830. WSR 85-24-047 (Order 24-85), § 180-26-200, filed 11/27/85.]

OTS-3010.1

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

WAC 392-344-045 Notice to proceed with design. After completion of the educational specifications review process as set forth in WAC 392-344-040 and after ((~~approval~~)) review of the site, the superintendent of public instruction shall transmit to the school district a notice to proceed with the design of the school facility.

[Statutory Authority: RCW 28A.525.020. WSR 06-16-032, amended and recodified as § 392-344-045, filed 7/25/06, effective 8/25/06. Statutory Authority: RCW 28A.47.830. WSR 83-21-067 (Order 12-83), § 180-29-045, filed 10/17/83.]

AMENDATORY SECTION (Amending WSR 17-17-165, filed 8/23/17, effective 9/23/17)

WAC 392-344-085 Construction and other documents—Submittal.

School district projects with secured funding assistance as of July

2018. (1) For the purpose of determining that the provisions set forth in chapters 392-341 through 392-344 and 392-347 WAC have been complied with prior to the opening of bids of any project to be financed with state funding assistance, the school district shall have on file with the superintendent of public instruction the following:

(a) One digital copy of (~~the construction documents forwarded by others~~) selected bid documents to include general conditions and bid forms, site plans, floor plans with room names and numbers, and other bid documents when requested by OSPI for specific projects;

(b) Cost estimate of construction on a form approved by the superintendent of public instruction, completed and signed by the architect-engineer;

(c) Signed copy or photocopy of letters of approval by other governmental agencies in accordance with WAC 392-344-090;

(d) Area analysis on a form approved by the superintendent of public instruction in accordance with chapter 392-343 WAC;

(e) Complete listing of construction special inspections and/or testing to be performed by independent sources that are included in the project pursuant to WAC 392-343-100;

(f) School district board acceptance of a value engineering report and its implementation.

The report shall include the following:

(i) A brief description of the original design;

(ii) A brief description of the value engineering methodology used;

(iii) The areas analyzed;

(iv) The design alternatives proposed;

(v) The cost changes proposed;

(vi) The alternates accepted; and

(vii) A brief statement explaining why each alternate not accepted was rejected;

(g) Certification by the school district that a constructability review report was completed.

The report shall include:

(i) A brief description of the constructability review methodology used;

(ii) The area analyzed;

(iii) The recommendations accepted; and

(iv) A brief statement explaining why each recommendation not accepted was rejected;

(h) Completed building condition assessment (BCA) as required by WAC 392-343-535 for every school facility in the district.

(i) Completed health and safety assessment as required by WAC 392-343-535, (~~on~~) of existing buildings for which state funding assistance is being requested.

(2) If the above documents reflect an increase in square foot size from the application approved by the superintendent of public instruction as per WAC 392-344-025 which will result in an increase in state funding assistance, a new application must be submitted to the superintendent of public instruction.

[Statutory Authority: RCW 28A.525.020. WSR 17-17-165, § 392-344-085, filed 8/23/17, effective 9/23/17; WSR 10-09-008, § 392-344-085, filed 4/8/10, effective 5/9/10; WSR 08-20-008, § 392-344-085, filed 9/18/08, effective 10/19/08; WSR 06-16-032, amended and recodified as § 392-344-085, filed 7/25/06, effective 8/25/06; WSR 00-18-060, § 180-29-085, filed 9/1/00, effective 10/2/00; WSR 99-24-126, § 180-29-085, filed 12/1/99, effective 1/1/00; WSR 98-19-141, § 180-29-085, filed 9/23/98, effective 10/24/98. Statutory Authority: RCW 28A.525.020 and 1992 c 233 § 24(8). WSR 92-16-058, § 180-29-085, filed 8/3/92, effective 9/3/92. Statutory Authority: RCW 28A.47.830. WSR 83-21-067 (Order 12-83), § 180-29-085, filed 10/17/83.]

AMENDATORY SECTION (Amending WSR 10-19-025, filed 9/9/10, effective 10/10/10)

WAC 392-344-165 Documents required for release of retainage by school district. Release of retainage on contracts shall be subject to receipt by the superintendent of public instruction of the following documents:

(1) These documents shall be required no later than thirty days after official acceptance:

(a) ~~((Properly executed state invoice voucher as per the requirements of WAC 392-344-145;~~

~~(b))~~ Architect/engineer certificate(s) of completion;

~~((e))~~ (b) School district board of directors' resolution of final acceptance signed by the authorized agent of the school district;

~~((d))~~ (c) School district board of directors' resolution accepting the building commissioning report;

~~((e))~~ (d) Certification by the authorized agent of the school district that the requirements of RCW 39.04.320 apprenticeship utilization have been met;

(e) Final project costs as defined by the superintendent of public instruction.

(2) These documents shall be required no later than sixty days after official acceptance:

(a) Certification by the authorized agent of the school district that the district has on file all affidavits of wages paid in compliance with RCW 39.12.040;

(b) After expiration of forty-five days following acceptance of the project by the school district, a signed statement by the authorized agent of the school district that no lien(s) is on file with the school district or a certified list of each lien is on file with the school district. A copy of each lien shall be forwarded to the superintendent of public instruction;

(c) Either a permanent or temporary occupancy permit by building official of the jurisdiction. Also required are release documents as defined in chapter 60.28 RCW, RCW 50.24.130, and 51.12.050.

[Statutory Authority: RCW 28A.525.020. WSR 10-19-025, § 392-344-165, filed 9/9/10, effective 10/10/10; WSR 08-20-008, § 392-344-165, filed 9/18/08, effective 10/19/08; WSR 06-16-032, amended and recodified as § 392-344-165, filed 7/25/06, effective 8/25/06. Statutory Authority: RCW 28A.525.020 and chapters 39.35 and 60.28 RCW. WSR 92-24-027, § 180-29-165, filed 11/24/92, effective 12/25/92. Statutory Authority:

RCW 28A.47.830. WSR 83-21-067 (Order 12-83), § 180-29-165, filed 10/17/83.]

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

WAC 392-344-200 Applications and forms. In addition to applications and forms prescribed in WAC 392-341-200 and 392-342-200, commencing January 1, 1986, applications and forms applicable to the provisions of this chapter for school facility projects shall be as follows:

- (1) Applications for secured funding status pursuant to WAC 392-344-107 shall be designated as (~~(SPI Form)~~) OSPI Application D-7.
- (2) Grants of secured funding status pursuant to WAC 392-344-107 shall be given to districts through (~~(SPI Form D-8)~~) OSPI D-8 Form.
- (3) Grants of authority for school districts to proceed without secured funding status pursuant to WAC 392-344-107 shall be given to districts through (~~(SPI Form D-8-1)~~) OSPI D-8-1 Form.
- (4) Applications for authority to enter into contracts pursuant to WAC 392-344-110 shall be designated as (~~(SPI Form D-9)~~) OSPI D-9 Application.
- (5) Grants of authority to enter into contracts pursuant to WAC 392-344-115 shall be given to districts through (~~(SPI Form D-10)~~) OSPI D-10 Form.
- (6) Grants of authority for school districts to enter into contracts without secured funding status pursuant to WAC 392-344-115 shall be given to districts through (~~(SPI Form D-10-1)~~) OSPI D-10-1 Form.
- (7) Applications for SPI to release retainage pursuant to WAC 392-344-165 shall be designated as (~~(SPI Form D-11)~~) OSPI D-11 Application.
- (8) Grants of release of final retainage pursuant to WAC 392-344-165 shall be given through (~~(SPI Form D-12)~~) OSPI D-12 Form.

[Statutory Authority: RCW 28A.525.020. WSR 06-16-032, amended and recodified as § 392-344-200, filed 7/25/06, effective 8/25/06; WSR 98-19-141, § 180-29-200, filed 9/23/98, effective 10/24/98. Statutory Authority: RCW 28A.47.830. WSR 85-24-047 (Order 24-85), § 180-29-200, filed 11/27/85.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 392-344-105 Bids—Advertisement.