

ENROLLED ACT NO. 45, HOUSE OF REPRESENTATIVES

FIFTY-SIXTH LEGISLATURE OF THE STATE OF WYOMING
2002 SPECIAL SESSION

AN ACT relating to school capital construction; establishing a school capital construction system in response to the Supreme Court decision in State of Wyoming, et al., v. Campbell County School District, et al., WY 19, 19 P.3d 518, (Wyo. 2001) (Campbell II), as specified; establishing a state school facilities commission; transferring specified programs; prescribing transitional school building activities; providing appropriations; and providing for effective dates.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 21-15-113 through 21-15-121 and 28-11-301 are created to read:

21-15-113. School facilities commission; membership; conflict of interest; terms; chairman; meetings; compensation.

(a) The school facilities commission is established to consist of seven (7) members comprised of the state superintendent of public instruction and six (6) members who are Wyoming residents appointed as follows:

(i) By the governor:

(A) One (1) member of the state board of education;

(B) Three (3) members who shall have knowledge and experience in the following areas, with each appointment representing one (1) specified area of expertise:

(I) Building and facility engineering, construction and operations;

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(II) Building design and specifications;

(III) Estimating, bidding and building
construction.

(ii) By the state superintendent of public instruction, two (2) members who shall have knowledge and experience in the following areas, with each appointment representing one (1) specified area of expertise:

(A) School facilities planning and
management;

(B) The state educational program for
public schools as required by law.

(b) Commission members appointed under subsection (a) of this section shall not be an employee of any educational association or organization. In addition, not more than one (1) commission member shall be an employee of a school district. Commission members shall be subject to W.S. 16-6-118 and shall not vote or otherwise participate in any matter as prohibited under W.S. 16-6-118.

(c) Gubernatorial and state superintendent appointments shall be subject to senate approval and shall serve a term of four (4) years beginning March 1. Not more than four (4) of the appointed members shall be of the same political party. The governor and the state superintendent shall fill a vacancy on respective appointments to the commission in accordance with W.S. 28-12-101, and may remove respectively appointed commissioners as provided by W.S. 9-1-202. For purposes of this subsection, appointments by the state superintendent shall be subject to this

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subsection in the same manner provided for gubernatorial appointments under W.S. 9-1-202, 28-12-101 and 28-12-102.

(d) The governor shall designate a chairman from commission appointments, who shall hold office for the length of his term or until a successor is designated, whichever first occurs. The commission shall meet not less than quarterly and a majority of the voting membership constitutes a quorum for the transaction of commission business.

(e) Appointed commissioners shall receive one hundred twenty-five dollars (\$125.00) per day as salary for attendance at commission meetings and conducting official commission business, and shall be reimbursed for travel and other expenses incurred in the performance of their official duties in the same manner and amount as state employees.

21-15-114. Powers and duties; school facilities office created; director.

(a) The school facilities commission shall:

(i) Act in consultation with the local school boards who may utilize local advisory committees on school building and facility needs, as appropriate, and shall consult with the district's architect and other professional advisors;

(ii) Adopt policies, guidelines and standards for the comprehensive assessment of school buildings and facilities required under W.S. 21-15-115;

(iii) Adopt policies, guidelines and standards for school district facility plans required of each

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district under W.S. 21-15-116 and review and certify each district's plan as required under this act;

(iv) Establish a consistent, systematic research approach for student enrollment projections used by districts in developing district facility plans and forecasting building and facility needs to comply with statewide building adequacy standards;

(v) Develop cost per square foot guidelines to be used in estimating the cost of constructing, renovating and otherwise remediating buildings and facilities to comply with statewide adequacy standards, which shall account for demonstrated differences among regions and communities within the state;

(vi) Establish a statewide school facilities database comprised of building and facility specific condition, suitability, accessibility, capacity, inventory and site data;

(vii) Develop policies and criteria for use in determining renovation, replacement or discontinuation of inadequate buildings and facilities based upon statewide adequacy standards and other requirements necessary to ensure adequate, efficient and cost effective school buildings and facilities;

(viii) Enter into construction or renovation project agreements, as appropriate, with school districts. The agreement shall:

(A) Require the district make arrangements for appropriate professional supervision and management of the project;

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(B) Provide for the review and approval of project plans and specifications;

(C) Provide for review and approval of project changes and change orders provided that:

(I) The agreement may specify parameters identifying the circumstances under which changes and change orders may be approved by the district with further approval by the commission;

(II) The commission may delegate in whole or in part, the approval of changes and change orders to its staff;

(III) All changes and change orders shall be approved by the district or its representative.

(D) Establish payment schedules involving state funds;

(E) Assure the commission is not responsible or liable for compliance with construction or renovation project schedules or completion dates;

(F) Provide that all general contracts for the construction or renovation project shall be approved by both the district and the commission. The commission may delegate this approval to its staff and may waive the requirement for its approval if it deems the project small enough. The commission shall not unreasonably withhold approval if the contract is within the approved project budget and is consistent with the approved plans and specifications;

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(G) Provide that the agreement shall expire upon completion of the project; and

(J) Contain any other provision mutually agreed upon by the commission and the district.

(ix) Establish criteria and procedures for the identification of local enhancements to school buildings and facilities which are in excess of state building adequacy standards and develop criteria and procedures to determine whether and how any local enhancements should be incorporated into the statewide adequacy standards;

(x) Review and approval of district plans for the disposition or demolition of buildings and facilities made surplus by an approved construction or renovation project or by changes in school population, including allocation of resulting costs and revenues. Disposition shall include options for use, lease, sale and any other means of disposing of the surplus building or facility. The costs and revenues incurred by the disposition or demolition of the building or facility shall be accounted for in each district's school facility plan and considered in any building or facility remedy for that district. The district shall have final authority over the disposition or demolition of any surplus buildings, facilities or land, but the commission may disapprove any plans submitted pursuant to this paragraph to protect the financial interests of the state if the plans are not otherwise in the public interest. Any revenues considered pursuant to W.S. 21-13-310(a)(xiv) or (xv) shall not be counted under this paragraph;

(xi) Establish a process under which prototypes are developed for remedies addressing building and facility inadequacies identified under this act through building and

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facility replacement. Prototypes shall be assembled based upon:

(A) Capacity requirements of the building or facility and projected student populations to be attending programs in the building or facility;

(B) Educational programs to be provided within the building or facility, provided that this subparagraph shall not be construed to grant the commission any authority to specify the educational programs offered by any district;

(C) Accommodations, in coordination and cooperation with the district, to the proposed site on which the building or facility is to be constructed, including specific site requirements and limitations.

(xii) Develop criteria and procedures for the site analysis of remedies responding to identified building and facility inadequacies by building and facility replacement. Site analysis shall include a comprehensive review and evaluation of site soil conditions, traffic patterns, utilities and site topography;

(xiii) Review and approve any proposed purchase and acquisition of sites for any project within the approved five (5) year district facility plan if state funds are to be expended for the purchase and acquisition. The commission may reimburse the district for the cost of any option to purchase entered into in good faith before obtaining state approval;

(xiv) With prior consultation with the select committee on school facilities, promulgate necessary rules and regulations to administer and implement this act.

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(b) The commission may contract with appropriate expertise and professionals in administering this act and performing duties imposed under this act.

(c) The commission shall select and subject to senate confirmation, employ a director who is a Wyoming resident and who shall have demonstrated competency in facilities planning and construction. The director shall receive an annual salary determined by the commission and may be removed from office by the commission or the governor as provided under W.S. 9-1-202(b). In addition to other powers granted under this act, the director may hire necessary staff as approved by legislative appropriation and shall provide administrative support to the commission and carry out this act under the direction of the commission.

21-15-115. Statewide standards for school building and facility adequacy; adequacy assessment.

(a) The commission shall by rule and regulation establish and maintain uniform statewide standards for the adequacy of school buildings and facilities necessary for providing educational programs prescribed by law for the public schools. If a building owned by a district meets the applicable standards under this subsection for use by the district to educate students and was previously used for the purpose of educating students, no municipal or county zoning requirements shall be construed or applied so as to prevent the district from using the building for the purpose of educating students, or to require the district to make any modification to the building as a condition of using the building for the purpose of educating students. The uniform standards shall at minimum include:

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(i) Requirements for educating students in a safe environment including all applicable building, health, safety and environmental codes and standards required by law for all public buildings;

(ii) Building site requirements;

(iii) Building performance standards and guidelines including energy efficiency criteria;

(iv) Assurances for the special needs of identified student populations including children with disabilities;

(v) Guidelines for adequacy and functionality of educational space for required educational programs;

(vi) Building capacity criteria aligned to the prescribed state educational program, with consideration given to utilization differences between school sizes;

(vii) Technological capacity criteria sufficient to meet required educational program needs and the requirements imposed under the state education technology plan;

(viii) Building and facility accessibility.

(b) In addition to subsection (a) of this section, the commission shall maintain the comprehensive assessment of the adequacy of existing school buildings and facilities and of future space requirements within the state, as established and existing within the department of education on July 1, 2002, and as updated thereafter until the date of transfer to the commission. Maintenance of the assessment shall include district reporting of new

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construction and major building and facility repair and replacement activities for the previous year in accordance with guidelines prescribed by rule and regulation of the commission, the results of commission on-site visitations and inspections of buildings and facilities and needs assessment data and verification of building and facility ratings through periodic review as specified in this act. The assessment shall be designed and maintained to provide timely and uniform statewide data on all of the following:

(i) The condition of school buildings and facilities, seismic ratings and structural integrity;

(ii) School building and facility longevity and space requirements;

(iii) Student educational and safety requirements;

(iv) The ability to accommodate educational technology;

(v) Site requirements of school buildings and facilities;

(vi) Inventory of exterior and interior building and facility space.

(c) The commission shall not less than once every four (4) years, review and evaluate the building and facility adequacy standards established under subsection (a) of this section and the assessment of building and facility adequacy conducted under subsection (b) of this section. Review and evaluation of the standards shall include the identification of local enhancements to buildings and facilities during this review and evaluation

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period, and based upon criteria and procedures developed by the commission, a determination as to whether and how any local enhancements should be incorporated into the statewide standards. Findings and recommendations pursuant to this subsection shall be reported to the select committee on school facilities before the next convening date of the legislative session immediately following completion of the review and evaluation, and shall specifically address any need to expand the needs assessment or to conduct a reassessment of building and facility adequacy.

(d) The commission shall not hinder or curtail the right of a school district to undertake local enhancements to buildings and facilities which are in excess of state building adequacy standards, as permitted by law.

21-15-116. School district facility plans; filing with commission; commission review; judicial review.

(a) Each school district shall, in accordance with rules and regulations of the commission, and with the assistance of professional facility planning expertise and a representative of the commission, develop long range comprehensive school building and facility plans for the district which address district wide building and facility needs over a five (5) year period. The plan shall be in a form and format specified by rule and regulation of the commission and shall identify building and facility needs in accordance with the statewide adequacy standards, actions to remediate building and facility inadequacies including construction, renovation and major building and facility repair and replacement expenditures, and any local enhancements to buildings and facilities beyond statewide adequacy standards. The plans shall include a response to each building and facility inadequacy identified by the

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needs assessment on a building-by-building, space-by-space basis. The plan shall also review and to the extent practical, identify nonconstruction alternatives to building and facility inadequacies such as building closure, modification of school boundaries, modification of school grade configurations and similar approaches. Demolition or use, lease or other methods of disposition of commission determined surplus buildings and facilities shall be incorporated as part of the district plan, including identified alternative methods of building disposition and proposed allocation of costs incurred or revenues resulting from disposition or demolition. In addition, district facility plans shall include:

(i) Student enrollment projections for the next five (5) years using commission approved measures and techniques, including a description of the methods used in making projections;

(ii) A description of proposed new schools or additions and remediations to existing schools necessary to meet building adequacy standards, including:

(A) The grade levels and the total number of pupils that the proposed school or school addition or remediation is intended to serve;

(B) The year in which it is necessary to commence operations of the proposed new school or school addition;

(C) The timeline for the planning and construction of the new school or school addition or remediation.

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(iii) Projections for new land required for new schools including land purchase, acquisition and site analysis;

(iv) Appropriate cost estimates;

(v) Other information required by the commission to evaluate the district's plan.

(b) In accordance with a schedule established by the commission but not later than July 1, 2003, district facility plans required under this section shall be submitted to the commission. Districts may submit and the commission shall accept and review facility plans at dates earlier than those prescribed in the schedule. Districts shall update facility plans by July 1 of each year thereafter except during any year in which a comprehensive plan review and redevelopment is completed as provided under subsection (c) of this section. Plans and plan updates shall be in a form and subject to guidelines prescribed by commission rule and regulation.

(c) In addition to subsection (b) of this section, the commission shall require each district to provide for a comprehensive review and redevelopment of the district facility plan. The review shall be conducted every five (5) years or on a schedule otherwise established for the district by the commission. The commission shall subject to legislative appropriation, provide payment to districts from the school capital construction account for necessary expenditures incurred by each district in developing and reviewing district facility plans and otherwise complying with this section.

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(d) Upon receipt, the commission shall review each submitted district facility plan. Commission review shall ensure the plan:

(i) Complies with state adequacy standards;

(ii) Reduces building and facility inadequacies in the most efficient and cost effective manner;

(iii) Considers nonconstruction alternatives;

(iv) Provides facilities capable of supporting the provision of the statewide educational program required by law of public schools.

(e) Within sixty (60) but not more than ninety (90) days after receipt of a district facility plan, and based upon its review pursuant to subsection (d) of this section, the commission shall approve, modify or reject the plan and notify the district of its action. The commission may modify proposed remedies or projects to best reflect commission priorities established under W.S. 21-15-117. If a plan is modified, the commission shall provide the district opportunity for hearing before the commission on the plan modification. If a plan is rejected, notice of the plan rejection shall include reasons for rejection and recommendations for making the plan acceptable. Upon plan rejection, a district may resubmit a modified facilities plan within sixty (60) days after receipt of notice under this subsection. The commission shall for any district failing to resubmit a modified facilities plan or if a resubmitted district plan is not acceptable, modify the district plan in accordance with its review under subsection (d) of this section and use this plan in addressing building and facility needs for the district in accordance with this act. A decision by the commission

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under this subsection is a final administrative determination subject to judicial review under the Wyoming Administrative Procedure Act.

21-15-117. Annual evaluation of school buildings and facilities; remediation schedule; needs prioritization; combining facilities.

(a) Through the identification of school building and facility conditions and needs provided by the assessment conducted and maintained under W.S. 21-15-115, and a comparison of the identified conditions and needs with the established statewide building adequacy standards and the district facility plans submitted under W.S. 21-15-116, the commission shall annually in coordination and cooperation with the districts, evaluate the adequacy of school buildings and facilities within local school districts, and based upon this evaluation, establish a schedule for building and facility remediation. Remediation shall bring all buildings and facilities to conditions such that over time, only routine maintenance is required to maintain building adequacy. The schedule shall identify and prioritize building and facility remedies on a statewide basis, based upon the following:

(i) Criteria for building capacity, building condition, educational suitability and technology readiness established by commission rule and regulation, reviewed annually, based upon assessment results and findings, broken down by educational and noneducational building category;

(ii) Measures of building condition, educational suitability and technology readiness, including computed building capacity, as established by the commission, which

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over time, bring statewide school buildings and facilities to targeted adequate levels prescribed by the commission;

(iii) Analysis of student enrollment changes, as based upon commission approved enrollment projection methodology, to determine the need for changes in building capacities over time for compliance with statewide adequacy standards. Analysis under this paragraph shall prioritize remediation for those buildings requiring additional space to comply with statewide adequacy standards within the next two (2) years for elementary schools, and within the next three (3) years for middle and high schools;

(iv) Priority shall be given to educational buildings and to conditions in those buildings which impede the delivery of the prescribed statewide educational program;

(v) A methodology and process for identifying the most critical building and facility needs.

(b) The commission shall for each building and facility remedy scheduled under subsection (a) of this section, determine the most cost effective method of remediation of building and facility inadequacies to ensure compliance with the statewide adequacy standards. For any scheduled remedy for which major building and facility repair and replacement payments under W.S. 21-15-109 are not sufficient to remedy the scheduled need, as determined by the commission, the commission shall determine if the remedy requires minor capital outlay or major capital outlay in accordance with the following:

(i) "Minor capital outlay" involves a total project or remedy expenditure of less than two hundred thousand dollars (\$200,000.00), excluding major building

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and facility repair and replacement expenditures under W.S. 21-15-109;

(ii) "Major capital outlay" involves a total project or remedy expenditure of two hundred thousand dollars (\$200,000.00) or more, excluding major building and facility repair and replacement expenditures under W.S. 21-15-109.

(c) In determining the most cost effective method in meeting capital construction needs, the commission in consultation with the select committee on school facilities, may recommend consolidating educational facilities within, between or among school districts. The legislature shall approve any consolidation of educational facilities between two (2) or more school districts.

21-15-118. Building and facility construction and renovation projects.

(a) Upon determination by the commission following review under W.S. 21-15-117, and appropriation by the legislature in accordance with W.S. 21-15-119, the commission shall proceed with projects authorized and approved by the legislature as follows:

(i) If a minor capital outlay remedy, initiate directly and in cooperation with a school district, necessary action to complete the remedy; or

(ii) If a major capital outlay remedy:

(A) With the assistance of the involved school district, develop the necessary schematic design documents;

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(B) Conduct a value engineering analysis of the project;

(C) Perform an energy efficiency assessment of the project;

(D) Conduct a safety and security assessment of the project;

(E) Waive any of the requirements under subparagraphs (a)(ii)(B) through (D) of this section if determined not necessary or if provided within any one (1) of the other requirements specified under this paragraph.

(b) If required, the commission shall assist the local school district to provide temporary space for any scheduled building remedy by means of portable buildings creating capacity or by other means available to the commission.

(c) The projects shall be managed and all necessary contracts related to the projects shall proceed in accordance with commission rules and regulations promulgated and adopted pursuant to W.S. 21-15-114(a)(xiv).

21-15-119. Commission budget and funding recommendations.

(a) Notwithstanding W.S. 9-2-1012, the commission shall annually, not later than November 1, and after review by and in conjunction with the select committee on school facilities, prepare and submit a recommended budget for projects and school capital construction financing to the governor, through the budget division of the department of administration and information. The recommended budget submitted by the commission shall include:

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(i) The amount of funding for all projects determined under W.S. 21-15-118 and proposed for that budget period, together with estimated expenditures for major building and facility repair and replacement program payments under W.S. 21-15-109 for the same budget period;

(ii) Financing alternatives for funding the recommended budget, which uses any combination of the following financing alternatives:

(A) Direct payment from the school capital construction account;

(B) Proceeds from state revenue bonds issued under W.S. 21-15-108;

(C) Capital leasing under W.S. 21-15-112. Any payments for capital leasing shall be made from the school capital construction account subject to W.S. 21-15-112. For the purpose of this section, capital leasing includes payments sufficient for the exercise of a purchase option under the lease.

(iii) In odd-numbered years, the commission's recommendation on November 1 shall be for expenditures during the two (2) succeeding fiscal years. The recommendation for the second year shall be based on estimates of expenditures and payments. In even-numbered years, the commission's recommendation on November 1 shall be for expenditures during the succeeding fiscal year. As it determines to be necessary in any year, the commission's recommendation on November 1 may contain a recommendation for revised expenditures during the current fiscal year.

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(b) The commission may enter into agreements under which the commission may make payments on behalf of a school district with respect to the district's lease of school facilities under W.S. 21-15-112. The commission may also enter into any agreement with a nonprofit corporation or other entity necessary to ensure that a district can lease facilities under W.S. 21-15-112.

**21-15-120. Emergency contingency account;
expenditures restricted.**

(a) The commission shall promulgate rules under which an emergency shall be determined to exist with respect to the adequacy of the school buildings and facilities of any school district such that the ability of the district to provide educational programs required by law is immediately and substantially impacted and no reasonable alternative exists to address it other than emergency funding under this section.

(b) Upon a finding that an emergency exists under subsection (a) of this section, the commission shall in accordance with rules and regulations promulgated by the commission under this subsection, make expenditures from the emergency contingency account within the school capital construction account for emergency funding. Expenditures from the contingency account pursuant to this subsection shall be limited to the acquisition or use of facilities, the acquisition of equipment, facility repairs, additional operating expenses incurred in providing temporary measures and other responses to the emergency situation including necessary investigative and qualified contract assistance expenses incurred by the commission, to enable the district to provide educational programs required by law on a temporary basis until permanent action can be taken to address building adequacy.

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21-15-121. Annual school building status report to select committee on school facilities.

(a) Not later than December 31 of each year, the commission shall submit a report to the select committee on school facilities on progress being made under the school capital facilities system established under law. The report shall list:

(i) Buildings and facilities identified as inadequate under this act for the preceding year;

(ii) Building and facility needs addressed under this act or otherwise by districts during that same year including any building or facility which is closed or otherwise removed from operation during that year;

(iii) Any use of major building and facility repair and replacement funds which have addressed buildings and facilities identified as inadequate for that year, including the impact of expenditures of these funds, as quantified pursuant to the statewide needs assessment rating scores undertaken in accordance with W.S. 21-15-115, on the capacity, condition, educational suitability and technology readiness of inadequate buildings and facilities;

(iv) Amounts of funds expended to address these building and facility needs;

(v) The impact of expenditures on the building and facility scores for condition, educational suitability and technology readiness, including computed building capacity;

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(vi) Additional buildings and facilities identified as inadequate under this section for the current year and a comparison of these current year identified needs with the needs addressed during the preceding year;

(vii) A cross referencing of additional building and facilities identified as inadequate under paragraph (a)(vi) of this section and district responses to the inadequacies as provided with the district facility plans submitted under W.S. 21-15-116;

(viii) Any expenditures for emergency funding under W.S. 21-15-120.

ARTICLE 3
SELECT COMMITTEE ON SCHOOL FACILITIES

28-11-301. Appointment of members; powers and duties; related duties of school facilities commission.

(a) Not later than March 15 following each general session, the president of the senate shall appoint five (5) members of the senate and the speaker of the house shall appoint five (5) members of the house to a select committee on school facilities. Not more than three (3) members from each house shall be from the same political party.

(b) The select committee shall:

(i) Select from among its members a chairman and vice-chairman;

(ii) Monitor the assessment of statewide school facility needs, prioritization of these needs and remediation of identified needs, as undertaken by the school facilities commission pursuant to law;

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(iii) Develop knowledge and expertise among its members regarding issues pertaining to school facilities and commission programs and procedures to maintain statewide facility adequacy;

(iv) Review commission proposals addressing statewide building and facility needs and provide recommendations to the joint appropriations committee and the legislature including any necessary implementing legislation;

(v) Review commission proposals for rules and regulations and provide recommendations to the commission concerning the proposed regulations.

(c) The school facilities commission shall:

(i) Provide the select committee with notice of all commission meetings;

(ii) Provide the committee with commission reports and studies pertaining to school building and facility remediation projects;

(iii) Provide information to the select committee upon request to assist the select committee in monitoring progress under paragraph (b)(ii) of this section.

Section 2. W.S. 9-2-1013(d)(i), 9-2-1704(d) by creating a new paragraph (xv), 21-3-110(a)(x) and by creating a new paragraph (xxiv), 21-3-111(a) by creating a new paragraph (xx), 21-15-108(b), (c), (d)(iii), (vii), (e), (f)(intro) and (g), 21-15-109(a)(intro), (b), (c)(intro), (i), (iii), (v), (d)(intro), (i), (iv)(B) and

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(e), 21-15-111(a) and 21-15-112(a)(intro) are amended to read:

9-2-1013. State budget; distribution of copies to legislators; copies and reports of authorizations.

(d) In addition to the items contained in subsection (a) of this section and notwithstanding any other recommendations made by the governor, the state budget shall also include the governor's recommendations for appropriations for the ensuing two (2) years, or if a supplemental budget request, the remainder of the budget period, subject to the following:

(i) The state budget shall include the governor's recommendations for a total appropriation from the school foundation program account and based upon recommendations of the school facilities commission under W.S. 21-15-119, a total appropriation for school capital construction purposes for both fiscal years;

9-2-1704. Reorganization plan; structure; time frame.

(d) The entities of state government specified in this subsection are designated as separate operating agencies, which are separate and distinct from the departments and offices specified in subsection (a) of this section because of their quasi-judicial responsibility or because of their unique, specialized function which precludes their inclusion in another department. This act does not otherwise apply to separate operating agencies. Separate operating agencies are as follows:

(xv) School facilities commission established under W.S. 21-15-113.

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21-3-110. Duties of boards of trustees.

(a) The board of trustees in each school district shall:

(x) Subject to review by the school facilities commission under W.S. 21-15-115 for any project involving state capital construction assistance, fix the site of each schoolhouse—school building and facility considering the needs of the people of each portion of the district;

(xxiv) Develop and annually update long range comprehensive school building and facility plans for the district addressing district-wide building and facility needs over a five (5) year period in accordance with W.S. 21-15-116, and submit the plan to the school facilities commission as required under W.S. 21-15-116 and by rule and regulation of the commission.

21-3-111. Powers of boards of trustees.

(a) The board of trustees in each school district within the state may:

(xx) Enter into school building construction and renovation project agreements with the school facilities commission as authorized under W.S. 21-15-114(a)(viii).

21-15-108. Revenue bonds for grants and loans; refunding revenue bonds.

(b) The ~~state loan and investment board~~ school facilities commission may borrow money in a principal amount not to exceed one hundred million dollars (\$100,000,000.00) by the issuance from time to time of one (1) or more series of revenue bonds. The ~~board~~ commission

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may encumber revenues under subsection (a) of this section for bonds in total amounts not to exceed one hundred million dollars (\$100,000,000.00) issued for ~~state~~ school capital construction projects and assistance as determined by the commission and approved by the legislature under W.S. ~~21-15-111~~ 21-15-119. ~~The state loan and investment board may issue these bonds only to provide funding for school capital construction projects in accordance with a budget recommendation submitted by the state superintendent under W.S. 21-15-111.~~ Any bonds issued under this section, together with any interest accruing thereon and any prior redemption premiums due in connection therewith, are payable and collectible solely out of revenues authorized under this section. The bondholders may not look to any general or other fund for payment of the bonds except the revenues pledged therefore. The bonds shall not constitute an indebtedness or a debt within the meaning of any constitutional or statutory provision or limitation. The bonds shall not be considered or held to be general obligations of the state but shall constitute its special obligations and the ~~board~~ commission shall not pledge the state's full faith and credit for payment of the bonds.

(c) Bonds issued under this section shall be in a form, issued in a manner, at, above or below par at a discount not exceeding ten percent (10%) of the principal amount of the bonds, at public or private sale, and issued with recitals, terms, covenants, conditions and other provisions not contrary to other applicable statutes, as may be provided by the ~~board~~ commission in a resolution authorizing their issuance and in an indenture or other appropriate proceedings.

(d) Any bonds issued under this section shall:

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(iii) Mature at a time or serially at times in regular numerical order at annual or other designated intervals in amounts designated and fixed by the ~~board~~ commission, but not exceeding thirty (30) years from their date;

(vii) Be additionally secured by a reserve fund created from revenues deposited within the capital construction account under W.S. 9-4-305(b) or from the proceeds of the bonds, or both, in an amount determined by the ~~state loan and investment board~~ commission but not to exceed an amount equal to ten percent (10%) of the revenue bonds outstanding.

(e) Before any contract is entered into by the ~~state loan and investment board~~ commission to retain the services of a financial advisor or to sell the bonds to an underwriter, whether by competitive or negotiated bid, a full disclosure of the terms of the contract including fees to be paid shall be submitted to the management council through the legislative service office.

(f) The ~~board~~ commission may issue refunding revenue bonds:

(g) Any refunding permitted by this subsection shall be accomplished in the manner prescribed by W.S. 16-5-101 through 16-5-119, except any refunding revenue bonds authorized by the ~~board~~ commission under this subsection shall not constitute an indebtedness or a debt within the meaning of any constitutional or statutory provision or limitation or be considered general obligations of the state. The ~~board~~ commission shall not pledge the state's full faith and credit to the payment of the refunding revenue bonds. The refunding revenue bonds shall constitute special obligations of the state and may be payable only

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from the sources authorized in this section for the payment of the bonds refunded. The principal amount of any bonds which have been refunded need not be taken into account in computing compliance with the maximum amounts of bonds authorized to be issued under this section.

21-15-109. Major building and facility repair and replacement payments; computation; square footage allowance; use of payment funds; accounting and reporting requirements.

(a) As used in this ~~section~~act:

(b) On or before September 30 and March 31 of each school year, the ~~department of education~~school facilities commission shall distribute major building and facility repair and replacement payments to each school district from the capital construction account. Major building and facility repair and replacement payments shall be computed in accordance with subsection (c) of this section.

(c) To compute the major building and facility repair and replacement payment for each district, the ~~department~~commission shall:

(i) Annually on or before September 1, and subject to subsection (d) of this section, determine the total number of gross square feet of school buildings and facilities within the district according to guidelines prescribed by rule and regulation of the ~~state superintendent~~commission. The gross square footage of any school building or facility within the district which is not used for district purposes shall not be included within the district's total gross square footage computed under this section. In addition, no gross square footage created by any district enhancement shall be included within the

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district's gross square footage computed under this section unless the enhancement or any portion thereof is determined to be included within the state adequacy standards pursuant to this act;

(iii) The total amount of gross square footage determined for educational buildings under subparagraph (c)(ii)(C) of this section shall be adjusted by excluding from computations under this section the square footage for those educational buildings closed and not operational as provided for under paragraph (c)(iv) of this section and any amount including the gross square footage of portable buildings, which exceeds two hundred percent (200%) of the statewide minimum gross square footage criteria as prescribed by the statewide building and facility adequacy standards promulgated under W.S. ~~21-15-107(a)~~ 21-15-115(a). For purposes of this section, per student gross square footage criteria prescribed by the statewide building adequacy standards shall be based upon an average daily membership (ADM) computed as defined under W.S. 21-13-101(a)(i) for the prior school year, with the district's kindergarten ADM divided by two (2);

(v) Multiply the adjusted square footage amount for each district's educational buildings determined under paragraph (c)(iii) of this section, the allowable square footage of the district's closed educational buildings determined under paragraph (c)(iv) of this section and the amount determined under paragraph (c)(ii) of this section for all remaining building categories of that district, times a replacement value cost factor established for each building category by the ~~state superintendent~~ commission. For school facilities constructed on or before June 30, 1996, the replacement value cost factor shall be based upon the median estimate in the most current edition of the R. S. Means construction cost index, as modified to reflect

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current Wyoming construction costs determined by the department of administration and information, division of economic analysis. For school facilities constructed on or after July 1, 1996, the replacement value cost factor shall be determined by the ~~state superintendent~~ commission on a square footage basis using the school district's total actual expenditures for materials and labor to construct the facility. For the purposes of this section, school facilities are deemed to be constructed on the date that work on the project is substantially complete and the facilities are suitable to be used for the purpose intended;

(d) ~~In computing payments under subsection (c) of this section for school year 1998-1999 only, the total gross square feet for school buildings and facilities within the district excluding administration and support buildings, shall not exceed the minimum gross square footage criteria prescribed by the statewide building and facility adequacy standards, except as provided in this subsection.~~ In annually computing the amount of gross square footage under paragraph (c)(iii) of this section, the amount of gross square footage in excess of two hundred percent (200%) of the statewide minimum gross square footage criteria as prescribed under W.S. ~~21-15-107(a)~~ 21-15-115(a) shall be subject to the following:

(i) If the excess square footage remains open and operational, the full amount of any such excess square footage shall be included annually for three (3) consecutive years. Thereafter, such excess shall not be included under this subsection even if closed and not operational, unless the district shows and the ~~state superintendent~~ commission finds that closing the excess square footage and using other facilities costs more than continuing to operate the excess;

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(iv) No square footage of closed buildings eliminated from computations in accordance with paragraph (c)(iv) of this section shall be included as excess under this section unless:

(B) The district demonstrates and the ~~state superintendent~~ commission finds that opening the building, and thereby creating excess square footage, costs no more than using other facilities.

(e) Amounts distributed under subsection (b) of this section shall be deposited by the recipient district into a separate account, the balance of which may accumulate from year-to-year. Expenditures from the separate account, including any interest earnings on the account, shall be restricted to expenses incurred for major building and facility repair and replacement as defined in subsection (a) of this section and as prescribed by rule and regulation of the ~~state superintendent~~ commission, and shall be in accordance with the district's facility plan approved by the commission under W.S. 21-15-116. Any interest earned on the account is exempt from and shall not be reported as a local district revenue under W.S. 21-13-310(a)(xi). Each district shall annually report to the ~~state superintendent~~ commission on the expenditures made from the separate account during the applicable reporting period, separating account expenditures on a building-by-building basis. In addition, the annual report shall include the district's five (5) year plan for addressing district major building and facility repair and replacement needs, updated for the applicable reporting period. The report shall be in a manner and form required by rule and regulation of the ~~state superintendent~~ commission. The ~~state superintendent~~ commission shall annually review account expenditures and shall report

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expenditures to the ~~state loan and investment board~~ select committee on school facilities established under W.S. 28-11-301. The ~~state superintendent~~ commission shall compile reported building-by-building expenditure information for each district and the district five (5) year plan and include this information in his annual report to the ~~legislature~~ select committee pursuant to W.S. ~~21-15-107(j)~~ 21-15-121.

21-15-111. Definitions.

(a) As used in this act:

(i) "Capital construction account" or "~~public~~ school capital construction account" means the account within the earmarked revenue fund into which revenues are deposited pursuant to W.S. 9-4-305(b) and 9-4-601(a)(vii), (b)(i) and (iv), into which the proceeds from any revenue bonds are credited under W.S. 21-15-108, and into which and in addition to any other funds appropriated to the account for purposes of this act. Funds within the account shall be expended only for purposes of and in the manner prescribed by this act;

(ii) "Commission" means the school facilities commission created by this act;

(iii) "Local enhancements to school buildings and facilities" or "local enhancements" means any renovation, construction, replacement, repair or other improvement of or to any school building or facility initiated by a school district which is designed to bring the building or facility to a condition exceeding the statewide building adequacy standards;

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~~(ii)(iv)~~ "Capital construction" and "capital construction" ~~"Project"~~ means replacement, renovation or new construction projects which increase the value of the school building or facility by improving the functioning of the building or facility or the capacity of the building or facility, or both, excluding major building and facility repair and replacement defined under W.S. 21-15-109(a)(iii) and routine maintenance and repair defined under W.S. 21-15-109(a)(vi);

(v) "Remedy" or "remediation" means a course of action addressing identified building and facility inadequacies pursuant to this act consisting of building or facility construction, replacement, renovation, repair or any combination thereof;

~~(iii)(vi)~~ "School buildings and facilities" mean the physical structures and the land upon which the structures are situated, which are primarily used in connection with or for the purpose of providing the educational programs offered by a school district in compliance with law, including both student-related and nonstudent-related buildings and facilities;

~~(iv)(vii)~~ "School district building advisory committee" means the committee organized by the school district board of trustees as required by the statewide adequacy standards established under W.S. 21-15-107(a), for purposes of developing and planning district school building and facility needs;

~~(v)(viii)~~ "This act" means W.S. 21-15-105 through 21-15-112 through 21-15-108, 21-15-109 and 21-15-111 through 21-15-121.

21-15-112. Leasing of capital assets.

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(a) ~~The state superintendent of public instruction, solely for the purpose of ensuring adequate facilities are available to school districts, and~~ At the request of the school facilities commission, any school district, ~~may~~ shall lease any land, building, equipment or other capital asset from the nonprofit corporation approved by the state building commission pursuant to 1997 Wyoming session laws, chapter 94, section 3, as amended by 1998 Wyoming session laws, chapter 35, subject to the following conditions:

Section 3. W.S. 21-2-202(a)(xvii)(C), 21-15-107, 21-15-108(d)(vi), 21-15-110 and 21-15-111(b) through (q) are repealed.

Section 4. (Transition.)

(a) The purpose of this section is to the extent practicable, provide a transition process from the capital construction system in effect prior to the effective date of this act, to the capital construction system established under this act.

(b) 2002 budget recommendations of the state superintendent of public instruction for school capital construction financing submitted under W.S. 21-15-111(m) on or before November 1, 2001, and the buildings and facilities identified under section 7 of this act, shall be subject to independent analysis and review required by the joint appropriations committee and subsequent recommendation to the 2003 legislature. To the extent determined necessary by the committee and funded under this act, independent analysis and review shall consist of recommendations for the remediation of identified building and facility inadequacies, project value engineering analysis, energy efficiency analysis and security review

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for each project identified in the state superintendent's budget. Recommendations of the joint appropriations committee shall to the extent practicable, be made in consultation with the school facilities commission established under this act.

(c) Statewide school construction needs established by the state superintendent of public instruction under W.S. 21-15-107(e) and reported under W.S. 21-15-107(g) on October 17, 2001, shall be subject to review and analysis by the school facilities commission in consultation with the state superintendent. Review and analysis under this subsection shall be based upon available information on the identified building and facility inadequacies and to the extent possible, upon information developed by the state superintendent on behalf of the commission and in cooperation with the school district in which the inadequate building or facility is located. The state superintendent on behalf of the commission and in consultation with the affected school districts, shall develop a cost effective method of remediating identified building and facility inadequacies. Any method of remediation proposed under this subsection shall reduce the inadequacy in the most efficient and cost effective manner by first exploring nonconstruction alternatives. In addition, remediation shall determine if major building and facility repair and replacement payments are sufficient to remedy the identified inadequacy and if not, shall then consider minor capital outlay or major capital outlay remedies as defined under W.S. 21-15-117(b) as created under section 1 of this act. The state superintendent shall transfer the review and analysis of statewide construction needs undertaken in accordance with this subsection to the commission as soon as reasonably possible, and shall continue to assist the commission with the development of remediation proposals as necessary. In addition, the state

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superintendent shall periodically report progress on the review and analysis conducted pursuant to this subsection to the select committee on school facilities established under W.S. 28-11-301, as created by section 1 of this act. On or before December 31, 2002, the commission shall report remediation recommendations, together with necessary funding, to the governor and the joint appropriations committee. The governor on behalf of the commission may contract with appropriate experts and professionals as necessary to implement this subsection.

(d) The state superintendent, on behalf of the commission, shall initiate the establishment of guidelines and criteria to be used by school districts for the development of long range comprehensive school building and facility plans pursuant to W.S. 21-15-116. In addition, the state superintendent shall establish a mechanism and criteria for the distribution of state assistance to districts for use in the development of district facility plans in accordance with W.S. 21-15-116. As soon as reasonably possible, the state superintendent shall transfer guidelines and criteria developed under this subsection to the commission and shall continue to assist the commission with district facility planning efforts as necessary. Distribution of state assistance under this subsection shall be made by the state superintendent on behalf of the commission until such time as the commission is capable of carrying out this responsibility.

(e) The state superintendent of public instruction and the department of education shall cooperate with and assist the commission in carrying out this section. The state superintendent shall also continue to address emergencies as defined under W.S. 21-15-120, as created under section 1 of this act, and authorize expenditures from the emergency contingency account, until such time as

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transfer to the commission is feasible. In addition, the state superintendent shall ensure the affected school districts cooperate with and assist the commission as necessary to implement this section.

(f) The comprehensive assessment of statewide school buildings and facilities maintained by the state superintendent under W.S. 21-15-107(b) before the effective date of this act, together with all official records and other information related thereto and powers and duties exercised thereunder, shall be transferred from the state superintendent of public instruction to the school facilities commission created by this act.

(g) In addition to subsection (f) of this section, all records and other information pertaining to the major building and facility repair and replacement program established under W.S. 21-15-109 and 21-15-110 prior to the effective date of this act, together with all powers and duties related to the administration and operation of this program, shall be transferred from the state superintendent to the commission.

(h) All rules and regulations promulgated by the state superintendent pertaining to the needs assessment specified under subsection (f) of this section, the major buildings and facilities repair and replacement program specified under subsection (g) of this section and the school capital construction system in effect prior to the effective date of this act including statewide building adequacy standards, shall remain in effect unaltered as rules and regulations of the commission until amended or repealed by the commission.

(j) Any unencumbered and unexpended amount within the emergency contingency account established under W.S.

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21-15-111(q) as of July 1, 2002, shall be transferred to the school capital construction account.

Section 5. (Appropriations.)

(a) For purposes of the transition process specified under section 4 of this act, the following amounts are appropriated from the school capital construction account:

(i) Two hundred thousand dollars (\$200,000.00) to the legislative service office to obtain the services of independent professional expertise to undertake the review and analysis of those projects contained within the 2002 budget recommendations of the state superintendent and to develop project documents to the extent required under section 4(b) of this act. In addition, the amounts appropriated under this paragraph shall be used to cover additional expenses incurred for committee meetings and interim activity created under section 4(b) of this act;

(ii) Six hundred fifty thousand dollars (\$650,000.00) to the governor to fund necessary expenses incurred by the school facilities commission in conducting the required review and analysis of those projects resulting from the school construction needs identified under section 4(c) of this act and in acquiring necessary consulting expertise required to implement section 4(c) of this act. Amounts appropriated under this paragraph may also be expended for expenses incurred by the state superintendent of public instruction in conducting project review and analysis required under section 4(c) of this act.

(b) In addition to subsection (a) of this section, one million nine hundred thousand dollars (\$1,900,000.00) is appropriated from the school capital construction

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account to the governor to fund initial expenses of the establishment and operation of the commission through the fiscal period ending June 30, 2003, including necessary consulting expertise, staff expenses and assistance to school districts for the development of district facility plans in accordance with section 4(d) of this act. The commission shall on or before December 31, 2002, report expenditures of amounts appropriated under this subsection to the joint appropriations committee.

(c) Five hundred thousand dollars (\$500,000.00) is appropriated from the school capital construction account to the emergency contingency account established under W.S. 21-15-121 as created under section 1 of this act.

(d) Forty thousand dollars (\$40,000.00) is appropriated from the general fund to the legislative service office to fund interim work and meetings of the select committee on school facilities established under W.S. 28-11-301, as created by section 1 of this act. Funds appropriated under this subsection shall be subject to approval of the management council.

(e) No amounts appropriated under this section shall lapse on July 1, 2003, pursuant to W.S. 9-4-207.

Section 6. (Initial Appointments.)

(a) Notwithstanding W.S. 21-15-113 as created under section 1 of this act, the terms of initial appointments to the school facilities commission shall commence upon appointment, with three (3) of the six (6) initial appointments appointed to a term of two (2) years and the remaining initial appointments appointed to a term of four (4) years.

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(b) Notwithstanding W.S. 28-11-103, as created under section 1 of this act, the terms of initial appointments to the select committee on school facilities shall commence upon appointment.

Section 7. The state superintendent shall distribute up to two hundred eighty thousand dollars (\$280,000.00) from the school capital construction account to Sheridan county school district no. 2 to develop documentation, plans and other information required to assemble recommendations for the remediation of identified building and facility inadequacies within the district. Amounts shall not be released under this section until directed by the joint appropriations committee to facilitate development of a building and facility remedy proposed by independent expertise acquired by the committee pursuant to section 4(b) of this act, and to undertake necessary analysis and review required for development of committee recommendations.

Section 8. (Effective Dates.)

(a) Sections 4, 5, 6 and 7 of this act are effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

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(b) Except as provided by subsection (a) of this section, this act is effective July 1, 2002.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk