



Responses to Committee Requests

Prepared for
Select Committee on School Facilities

June 3, 2021



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Wyoming State Construction Department

Governor Mark Gordon

Jerry Vincent, Director

June 3, 2021

Members of the Select Committee on School Facilities:

Per an email from the Legislative Service Office on May 5, 2021, the following has been requested for the June 3, 2021 Select Committee on School Facilities meeting. Enclosed is the response from the State Construction Department, School Facilities Division regarding a review of existing COVID federal fund expenditures by districts specific to K-12 facilities including the following:

- How much has been received and what the money has been spent on?
- Do the expenditures impact the overall condition of the buildings? If so, how?

The Federal Government provided Elementary and Secondary School Emergency Relief Funds (ESSER) was established as part of the Education and Stabilization Fund in the CARES Act. Only state education agencies (Wyoming Department of Education -WDE) can apply directly for these funds. School districts must then apply to WDE for a sub-grant. The WDE must make awards within one year of receiving its allocation. The ESSER funds are available for obligation by districts through September 30, 2022.

According to the enrolled act of H.R. 133 of the 116 Congress Section 313(d) (relevant section attached). Uses of Funds relevant to school facilities include the following:

(13) School facility repairs and improvements to enable operation of schools to reduce risk of virus transmission and exposure to environmental health hazards, and to support student health needs.

(14) Inspection, testing, maintenance, repair, replacement, and upgrade projects to improve the indoor air quality in school facilities, including mechanical and non-mechanical heating, ventilation, and air conditioning systems, filtering, purification and other air cleaning, fans, control systems, and window and door repair and replacement.

The reporting requirements stipulate that WDE, as the State agency receiving the funds, shall submit a report no later than 6 months after receiving funding provided in the Act including a detail accounting of use of funds, including how funds are used to measure and address learning loss among students disproportionately affected by coronavirus and school closures, including low-income students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and children and youth in foster care.

The SCD has reached out to the WDE for an accounting of how much federal funding has been received and what facility needs have been addressed. Their response is attached.

Additionally, in an attempt to provide the Committee with specific information on District receipt of these funds and expenditures, SCD sent an information request to the 48 school districts requesting information. The attached report "COVID-related federally funded



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expenditures specific to K-12 School facilities” provides the responses given by those districts that replied.

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Prepared May 2021 for the

Select Committee on School Facilities

ESSER I and ESSER II Request for Facilities

Data provided the Wyoming Department of Education May 17, 2021.

School District City	Amount Budgeted	Request Pending Review	Project Description	Amount Spent
Albany #1 Laramie	\$0 ESSER I	\$970,000 ESSER I	HVAC	\$0 ESSER I
Big Horn #3 Greybull	\$172,500 ESSER I	\$0 ESSER I	Upgrade the HVAC system of district buildings, starting with the one at the GHS cafeteria-gym	\$0 ESSER I
Campbell #1 Gillette	\$6,550 ESSER I		Installing touchless timekeeping systems into buildings	\$0 ESSER I
Carbon #1 Rawlins	\$0 ESSER I	\$149,978 ESSER I	CS/K12 STEM Lab	\$0 ESSER I
Carbon #2 Saratoga	\$0 ESSER I		N/A	N/A
Converse #1 Douglas	\$0 ESSER I	\$1,275,000 ESSER I	Tech-network install, prof support, software, cell booster for mobile device use	N/A
Fremont #25 Riverton	\$47,250 ESSER I		12 Temperature Kiosks power and Data Drops	\$47,250 ESSER I
Johnson #1 Buffalo	\$0 ESSER I	\$490,100 ESSER I	Update HVAC Meadowlark Elementary	N/A
Lincoln #2 Afton	\$60,000 ESSER I		Install additional bleachers to meet social distancing requirements.	\$47,250 ESSER I
Natrona #1 Casper	\$0 ESSER I	\$68,000 ESSER I	Tech--two sided digital sign (communication)	N/A
Sheridan #1 Ranchester	\$45,000 ESSER II		Ionization Units	\$0 ESSER II
Sweetwater #1 Rock Springs	\$98,989 ESSER I		Improve air quality and functionality of air systems	\$0 ESSER I
Sweetwater #2 Green River	\$0 ESSER I	\$625,916 ESSER I	Tech--interactive classroom displays	\$0 ESSER I
Teton #1 Jackson	\$0 ESSER I		N/A	N/A
Uinta #1 Evanston	\$0 ESSER I		N/A	N/A
Uinta #4 Mountain View	\$0 ESSER I		N/A	N/A

ESSER I and ESSER II Request for Facilities - Continued

School District City	Amount Budgeted	Request Pending Review	Project Description	Amount Spent
Uinta #6 Lyman	\$0 ESSER I		N/A	N/A
Washakie #1 Worland	\$0 ESSER I		N/A	N/A
Washakie #2 Ten Sleep	\$0 ESSER I	\$87,116 ESSER II	Tech-servers, software, installation	N/A
Weston #1 New Castle	\$15,193 ESSER I		Changes to our elementary kitchen to prepare it to be our one and only operating kitchen for providing meals if necessary while operating in a hybrid or closed model	\$15,193 ESSER I



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Prepared May 2021 for the
**Select Committee on
School Facilities**

**COVID-Related Federally Funded
Expenditures Specific to K-12 School Facilities**

Section 1 - Federal COVID Funds Applied For

ESSER: Elementary and Secondary School Emergency Relief Funds

CARES: Coronavirus Aid, Relief, and Economic Security Act

ARP/APRA: American Rescue Plan Act

School District City	Federal COVID Funds Applied For	Intended Use of Funds	Amount Applied for
Big Horn #1 Cowley	ESSER CARES	We are upgrading our audio/video capabilities in our classrooms to better serve our students. We also plan on upgrading our air handling systems in our buildings.	ESSER: \$211,000 CARES: \$921,000
Big Horn #3 Greybull	ESSER CARES GEER (Governor funds)	Technology, HVAC, safety supplies, staffing, summer school	\$1.6 M
Campbell #1 Gillette	ESSER CARES	Technology devices, student meals, summer school(s), student enrichment, Fast Bridge and Performance Matters, (learning loss)	\$6,692,136
Converse #1 Douglas	ESSER CARES ARP/APRA	Technology, including devices, infrastructure and hotspots, PPE and items to assist in modifying classrooms for social distancing, stipends for staff, curriculum instructional materials and professional development to address learning loss, rural, extended day and summer school staff and resources	\$2,273,285
Fremont #1 Lander	ESSER CARES ARP/APRA	COVID pay, learning loss, extra staff	\$10,035,860
Fremont #2 Dubois	ESSER CARES ARP/APRA	We hope to use some of the funds to replace our boiler (if allowed), hire additional custodial staff, tech assistance, replace computers and other technology, increase substitute wage, cleaning/PPE supplies, summer school programming.	\$824,982
Fremont #21 Ft. Washakie	ESSER CARES	Internet connectivity; electronic devices; cleaning supplies;	\$606,642

Section 1 - Federal COVID Funds Applied For - Continued

School District City	Federal COVID Funds Applied For	Intended Use Funds	Amount Applied for
Fremont #24 Shoshoni	ESSER CARES ARP/APRA	Recovery of lost instruction and connectivity for our students	"We have applied for funds available through the state. We have not applied for ESSER II or ESSER III funds yet."
Fremont #25 Riverton	ESSER CARES	In regards to facilities air filtration systems.	"Total allocation allowed by the state."
Johnson #1 Buffalo	ESSER CARES	Replace air exchange handler and programs	\$650,000
Laramie #1 Cheyenne	ESSER CARES	To address learning loss, PPE, Social and Emotional Supports, summer school, extended day, etc.	ESSER I: \$4.4 M ESSER II: \$19 M
Laramie #2 Pine Bluffs	ESSER CARES	Intervention to address academic impacts by COVID, social emotional needs, staff, sanitization, virtual/technology, summer school extended day, online curriculum, nurse equipment, PPE, touchless equipment, sanitizing equipment	"amts allocated by state \$1,923,352"
Park #1 Powell	ESSER CARES ARP/ARPA	PPE, At Risk instructional interventions, summer school, instructional technology, remote learning instruction, staffing at all instructional levels, extra cleaning staff as required due to COVID, JACE replacement at buildings to monitor air quality	ESSER II \$2,199,750 ESSER III \$4,939,226
Park #6 Cody	ESSER CARES	COVID related PPE, sanitizing equipment, replacement of drinking fountains to fill stations, furniture replacement for items that can be disinfected, additional custodial staff, technology for remote/virtual education, update Learning Management System, plexiglass for separation of students and protection of staff, lunchroom trays with lids, support staff to address mental health needs of students due to COVID, after school tutoring and summer programs to address the learning gap for students, hiring additional substitute teachers, support staff continuing due to budget cuts.	"The allocations for each district can be found on the WDE website. These are flow-through funds from the USDE to the State to the Districts. All federal funds are handled this way. These are not competitive grants."

Section 1 - Federal COVID Funds Applied For - Continued

School District City	Federal COVID Funds Applied For	Intended Use Funds	Amount Applied for
Park #16 Meeteetse	ESSER CARES ARP/ARPA	Sanitation Products, Air filtration units for classrooms, hallways, and common areas, Teacher Professional Development, Added custodial help, Internet Hot Spots, Addressing learning gaps in student success, Addressing Social/Emotional needs of students and staff that came out of the Pandemic.	\$26,114
Platte #1 Wheatland	ESSER CARES	Addressing learning loss and support, facilities to address pandemic, cleaning supplies.	"A lot"
Sheridan #1 Ranchester	ESSER CARES ARP/ARPA	Additional custodial staff, ppe, student and teacher technology, additional instructional support, and one AHU on one school.	"We don't actually "apply" for it, it is allocated to us based on our Title 1 allocations. We then budget for its use based on allowable expenses."
Sheridan #2 Sheridan	ESSER CARES	Addressing learning loss, preparing schools for reopening, and testing, repairing, and upgrading projects to improve air quality in school buildings	"All of it"
Sublette #1 Pinedale	ESSER CARES	School Lunch program payroll, school lunch supplies, tech upgrades, laptops for staff, Chromebooks for students, managed network services, counseling, at-risk services, Pre-K activities, after school activities, ESY activities, summer school, software, PPE, cleaning supplies, cleaning equipment, additional nursing staff, HVAC upgrades	\$2,525,200
Sweetwater #1 Rock Springs	ESSER CARES	COVID equipment and supplies for cleaning; administrative costs for vaccines; temperature kiosks; SWIVL cameras for instruction; air filtration and purification systems (ionizers, UV lights, and high efficiency filters); direct digital controls, indirect evaporative air handler units; negative air pressure machines for school sick rooms and buses; extra personnel and contracts for cleaning; technology equipment and student broadband access; certified intervention teachers to support learning loss and achievement gaps; food serving and storage equipment ready for virtual, hybrid, or in-person learning; and K-12 virtual school teachers and staffing.	\$14,310,852

Section 1 - Federal COVID Funds Applied For - Continued

School District City	Federal COVID Funds Applied For	Intended Use Funds	Amount Applied for
Uinta #1 Evanston	ESSER CARES	Covid supplies and salaries for nurses and custodians	\$1,069,435
Washakie #2 Ten Sleep	ESSER CARES ARP/ARPA GEER Governor's Funds	Technology, PPEs, Cleaning equipment and learning loss	CARES: \$5,861 CARES Governor's extra grant: \$87,000 GEER: \$5,635 Governor's Funds: \$248,150.00 ESSER II: \$19,473 ARP: \$43,734

Section 2 - Federal COVID Funds Received

School District City	Federal COVID Funds Received	Encumbered Project Description	Amount Received
Big Horn #1 Cowley	None	Please refer to previous question.	Please refer to previous question.
Big Horn #3 Greybull	ESSER CARES GEER I and II	Technology, HVAC, staffing, substitute teachers, cleaning equipment and supplies, etc.	\$1,578,000
Campbell #1 Gillette	ESSER CARES	Technology devices, student meals, summer school(s), student enrichment, Fast Bridge and Performance Matters, (learning loss)	\$6,692,136
Converse #1 Douglas	ESSER CARES	Expanded technology and addressing learning loss	\$368,285
Fremont #1 Lander	ESSER CARES	School Lunch program payroll, school lunch supplies, tech upgrades, laptops for staff, Chromebooks for students, managed network services, counseling, at-risk services, Pre-K activities, after school activities, ESY activities, summer school, software, PPE, cleaning supplies, additional nursing staff	\$681,500

Section 2 - Federal COVID Funds Received - Continued

School District City	Federal COVID Funds Applied For	Intended Use Funds	Amount Applied for
Fremont #2 Dubois	ESSER CARES ARP/APRA	Same as last answer	\$824,982
Fremont #21 Ft. Washakie	ESSER CARES	Internet connectivity; electronic devices; cleaning and health related supplies	\$779,610
Fremont #24 Shoshoni	ESSER CARES ARP/APRA	Recovery of learning and student connectivity	About \$100,000
Fremont #25 Riverton	ESSER CARES	In regards to facilities air filtration systems.	\$1,703,762
Johnson #1 Buffalo	ESSER CARES	Staffing support and technology equipment to supply families	\$750,000
Laramie #1 Cheyenne	ESSER CARES	PPE, services to address instructional loss, summer school, extended day, instructional interventionists, behavioral supports, etc.	Funds are received on a reimbursement basis, ESSER I = \$1.9 M
Laramie #2 Pine Bluffs	ESSER CARES GEER	Intervention to address academic impacts by COVID, social emotional needs, staff, sanitization, virtual/ technology, summer school extended day, online curriculum, nurse equipment, PPE, touchless equipment, sanitizing equipment	\$716,984
Park #1 Powell	ESSER CARES	Nutrition program as restricted by the grant, tech purchases as restricted by the grant (swivls, laptops and chromebooks to supplement remote and distance learning, newline boards for classrooms, additional at risk staffing to support regression caused by COVID-19, PPE to comply with health orders, software to support touchless learning and parent involvement, temperature screening devices, teacher training for Canvas LMS system, software and programming for learning remediation programs, retrofit water stations for bottle fillers, touchless light switches and sensors, mental health services, summer school, ESY services and credit recovery staffing costs that were not normally provided and were necessary due to the covid pandemic.	\$1,204,235
Park #6 Cody	ESSER	See previous answer for how funds were and will be used. We have not received the ESSER II funds yet. However, the district will spend \$1.2M of those funds to upgrade our HVAC system along with the items mentioned in the previous expenditure question.	\$625,000 ESSER I; Yet to receive \$2.6M for ESSER II

Section 2 - Federal COVID Funds Received - Continued

School District City	Federal COVID Funds Applied For	Intended Use Funds	Amount Applied for
Park #16 Meeteetse	ESSER CARES	Teacher Professional Development, Sanitizing supplies and help, Air filtration units, Technology.	\$26,000
Platte #1 Wheatland	ESSER CARES	Teaching and Learning, Cleaning, Environment upgrade	You know this answer, why do we need to provide it again?
Sheridan #1 Ranchester	ESSER CARES	Same answer as before	About \$600,000
Sheridan #2 Sheridan	ESSER CARES	Addressing learning loss, preparing schools for reopening, and testing, repairing, and upgrading projects to improve air quality in school buildings	"1"
Sublette #1 Pinedale	ESSER CARES	School Lunch program payroll, school lunch supplies, tech upgrades, laptops for staff, Chromebooks for students, managed network services, counseling, at-risk services, Pre-K activities, after school activities, ESY activities, summer school, software, PPE, cleaning supplies, additional nursing staff	\$681,500
Sweetwater #1 Rock Springs	ARP/APRA	Learning loss and achievement gaps with Intervention Teachers; cleaning and sanitizing; virtual school; ability to transition (continued collaboration, training, and planning for teachers) between tiers I (in person instruction), II (hybrid instruction), or III (virtual instruction) as listed in the Re-Entry Smart Plan; technology equipment and student access; and building environmental controls and systems.	\$14,202,666
Uinta #1 Evanston	ESSER CARES	Covid Supplies, virtual education costs, technology, and additional nurses	\$778,709
Washakie #2 Ten Sleep	ESSER GEER	Technology, PPEs, Infrastructure, Cleaning equipment and cleaning chemical	\$259,646

Section 3 - Future Application for Funds

School District City	Federal COVID Funds Received	Needs Considered for Future Applications	Estimated Amount
Big Horn #1 Cowley	ARP/APRA	Unknown. We may need these additional funds to fully fund our air handler project.	Whatever we're allotted.
Big Horn #3 Greybull	ARP/APRA	Technology, HVAC, additional insurance costs due to COVID, COVID related leave, supplies, staffing, summer school and other learning loss recovery efforts, etc.	\$2.629 M

Section 3 - Future Application for Funds - Continued

School District City	Federal COVID Funds Applied For	Intended Use Funds	Amount Applied for
Campbell #1 Gillette	Will apply as funds become available	Learning loss, PPE, technology and software, social emotional needs and staff to meet needs of students, sanitizing equipment	unknown
Converse #1 Douglas	ARP/APRA	We are unable to strategically budget for the use of these funds until we are certain how the legislature will proceed	We are unsure as to what we can apply for because the legislature has proposed limiting these funds' availability to districts
Fremont #1 Lander	None	n/a	0
Fremont #2 Dubois	None	0	0
Fremont #21 Ft. Washakie	ESSER	Replacement of HVAC equipment for indoor air quality; digital learning and connectivity,	\$2,690,960
Fremont #24 Shoshoni	ESSER CARES ARP/APRA	Recovery of learning and student connectivity	What ever is available.
Fremont #25 Riverton	ESSER ARP/APRA	In regards to facilities air quality.	Total amount allocated by the state.
Johnson #1 Buffalo	ESSER	Air handler replacement for better ventilation.	\$1,000,000
Laramie #1 Cheyenne	ESSER CARES ARP/APRA	Addressing instructional loss, PPE, instructional and behavioral supports, etc.	Will be based on federal allocation methodology est \$40 M
Laramie #2 Pine Bluffs	ARP/APRA	Intervention to address academic impacts by COVID, social emotional needs, staff, sanitization, virtual/ technology, summer school extended day, online curriculum, nurse equipment, PPE, touchless equipment, sanitizing equipment	Amount allocated
Park #1 Powell	None	This isn't applicable because we have provided all the funds that are currently available to us.	0

Section 3 - Future Application for Funds - Continued

School District City	Federal COVID Funds Applied For	Intended Use Funds	Amount Applied for
Park #6 Cody	ESSER ARP/APRA	These funds will be used for similar equipment and staffing needs with the purpose of educating students and keeping the buildings disinfected and safe for students and staff.	ARP allocation is approximately \$5.9M
Park #16 Meeteetse	ARP/APRA	Social Emotional supports for students and staff related to Covid, Address learning gaps (teacher and program supports), continued employment of additional custodial help.	\$111,971
Platte #1 Wheatland	ESSER CARES ARP/APRA	Teaching and Learning, Cleaning, Environment upgrade	All of it.
Sheridan #1 Ranchester	None	Already asked and answered.	0
Sheridan #2 Sheridan	ESSER CARES ARP/APRA	Addressing learning loss, preparing schools for reopening, and testing, repairing, and upgrading projects to improve air quality in school buildings	"1"
Sublette #1 Pinedale	None	N/A	0
Sweetwater #1 Rock Springs	ARP/APRA	Learning loss and achievement gaps with Intervention Teachers; cleaning and sanitizing; virtual school; ability to transition (continued collaboration, training, and planning for teachers) between tiers I (in person instruction), II (hybrid instruction), or III (virtual instruction) as listed in the Re-Entry Smart Plan; technology equipment and student access; and building environmental controls and systems.	\$14,202,666
Uinta #1 Evanston	ESSER	Custodial and nursing staffing, COVID supplies, technology	\$3,300,000
Washakie #2 Ten Sleep	ESSER CARES ARP/APRA	Learning loss	"We have been allocated \$19,473 in ESSER II funds, We have been allocated \$43,734 (These funds could be cut depending on the July session of the legislature)"



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June 3, 2021

Members of the Select Committee on School Facilities:

Per an email from the Legislative Service Office on May 5, 2021, information has been requested for the June 3, 2021 Select Committee on School Facilities. The request is regarding a review of federal guidelines for American Rescue Plan Act (ARP) fund expenditures. To include what these funds can be spent on for maintenance or upgrades to systems in school facilities and if there is a means to prioritize the expenditures of those funds to ensure the buildings most in need are remedied first. Enclosed is the response from the State Construction Department, School Facilities Division.

On March 11, 2021, the Federal government passed the American Rescue Plan Act (ARP funding). Section 604 Coronavirus Capital Projects fund appropriates \$10,000,000,000:

“to remain available until expended, for making payments to States, territories and Tribal governments to carry out critical capital projects directly enabling work, education and health monitoring, including remote options, in response to the public health emergency with respect to the Coronavirus Disease (COVID-19).”

Pursuant to Section 604(b)(1) of ARP each state will receive \$100,000,000 for capital projects. Once minimum amounts are distributed, the remaining amounts will be allocated based on other factors as defined in the legislation (see attached). The amount received for capital projects would include all qualifying capital projects within the state.

On May 10, 2021, the U.S. Department of the Treasury issued a Statement on the Purpose and Process of Section 604 funds, which reads as follows:

The coronavirus pandemic revealed and continues to reinforce the need for connectivity. While millions of Americans rely on the Internet to participate in critical activities and access basic services, others remain unable to fully access the Internet. Many of those living in rural areas, territories, and Tribal lands lack the necessary infrastructure to connect with others online. Some rural and urban areas with connections may still lack sufficient technology for functional use. Further, access may be out of reach because of the unaffordable costs of Internet service, equipment, devices, or skills training.

The American Rescue Plan Act of 2021 (American Rescue Plan) established the \$10 billion Capital Projects Fund to provide funding to states, territories, and Tribal governments to carry out critical capital projects directly enabling work, education, and health monitoring, including remote options, in response to the public health emergency with respect to the Coronavirus Disease (COVID-19). The focus of the Capital Projects Fund on the continuing need for connectivity in response to the COVID-19 pandemic complements the broader range of uses, including for broadband infrastructure, of the



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American Rescue Plan's separate \$350 billion Coronavirus State and Local Fiscal Recovery Funds.

Capital projects include investments in depreciable assets and the ancillary costs needed to put the capital assets in use. Under the American Rescue Plan, these projects must be critical in nature, providing connectivity for those who lack it. The Capital Projects Fund thus allows for investment in high-quality broadband as well as other connectivity infrastructure, devices, and equipment. In addition to supporting broadband, it also provides flexibility for each state, territory, and Tribal government to make other investments in critical community hubs or other capital assets that provide access jointly to work, education, and health monitoring. All projects must demonstrate that they meet the critical connectivity needs highlighted and amplified by the COVID-19 pandemic.

However, it is undeterminable what the application process will be or what additional guidance will be provided, as the statement provided on the website also advises that:

Eligible applicants will be required to provide a plan describing how they intend to use allocated funds under the Capital Projects Fund consistent with the American Rescue Plan and guidance to be issued by Treasury. Treasury will begin to accept applications for review in the summer of 2021 and will issue guidance before that date. Please check back regularly for updates.

Based on the language above, any capital construction applications under this section will be required to show a direct correlation as a response to COVID-19.

In order to develop a prioritization methodology the guidelines, conditions, restrictions, as well as application requirements will need to be analyzed. Until the guidelines and application process are made available it will be challenging to prioritize any requests made by districts. We are currently analyzing how to best leverage the information available within the AiM database.

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SEC. 604. [42 U.S.C. 804] CORONAVIRUS CAPITAL PROJECTS FUND.

(a) **APPROPRIATION.**—In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, \$10,000,000,000, to remain available until expended, for making payments to States, territories, and Tribal governments to carry out critical capital projects directly enabling work, education, and health monitoring, including remote options, in response to the public health emergency with respect to the Coronavirus Disease (COVID-19).

(b) PAYMENTS.—

(1) **MINIMUM AMOUNTS.**—From the amount appropriated under subsection (a)—

(A) the Secretary shall pay \$100,000,000 to each State;

(B) the Secretary shall pay \$100,000,000 of such amount in equal shares to the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau; and

(C) the Secretary shall pay \$100,000,000 of such amount in equal shares to Tribal governments and the State of Hawaii (in addition to the amount paid to the State of Hawaii under subparagraph (A)), of which—

(i) not less than \$50,000 shall be paid to each Tribal government; and

(ii) not less than \$50,000, and not more than \$200,000, shall be paid to the State of Hawaii for the exclusive use of the Department of Hawaiian Home Lands and the Native Hawaiian Education Programs to assist Native Hawaiians in accordance with this section.

(2) **REMAINING AMOUNTS.**—

(A) **IN GENERAL.**—From the amount of the appropriation under subsection (a) that remains after the application of paragraph (1), the Secretary shall make payments to States based on population such that—

(i) 50 percent of such amount shall be allocated among the States based on the proportion that the population of each State bears to the population of all States;

(ii) 25 percent of such amount shall be allocated among the States based on the proportion that the number of individuals living in rural areas in each State bears to the number of individuals living in rural areas in all States; and

(iii) 25 percent of such amount shall be allocated among the States based on the proportion that the number of individuals with a household income that is below 150 percent of the poverty line applicable to a family of the size involved in each State bears to the number of such individuals in all States.

(B) DATA.—In determining the allocations to be made to each State under subparagraph (A), the Secretary of the Treasury shall use the most recent data available from the Bureau of the Census.

(c) TIMING.—The Secretary shall establish a process of applying for grants to access funding made available under section (b) not later than 60 days after enactment of this section.

(d) DEFINITIONS.—In this section:

(1) SECRETARY.—The term “Secretary” means the Secretary of the Treasury.

(2) STATE.—The term “State” means each of the 50 States, the District of Columbia, and Puerto Rico.

(3) TRIBAL GOVERNMENT.—The term “Tribal government” has the meaning given such term in section 602(g).



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Members of the Select Committee on School Facilities:

Per an email from the Legislative Service Office on May 5, 2021, the following has been requested for the June 3, 2021 Select Committee on School Facilities meeting. Enclosed is the response from the State Construction Department (SCD), School Facilities Division regarding an update on the request in relation to the Riverton Auditorium required by Section 313(j) of the 2021 Budget Bill.

As noted in the review of American Rescue Plan (ARP) federal funds, the relevant legislation in Section 604 Coronavirus Capital Projects fund appropriates \$10,000,000,000:

“to remain available until expended, for making payments to States, territories and Tribal governments to carry out critical capital projects directly enabling work, education and health monitoring, including remote options, in response to the public health emergency with respect to the Coronavirus Disease (COVID-19).”

Pursuant to Section 604(b)(1) of ARP each state will receive \$100,000,000 for capital projects. Once minimum amounts are distributed, the remaining amounts will be allocated based on other factors as defined in the legislation (see attached). The amount received for capital projects would include all qualifying capital projects within the state.

Pursuant to Section 313(j) of the 2021 Budget Bill, the SCD is required to submit an application on behalf of Fremont County School District #25 for the Riverton Auditorium. However, based on the language above, we do not believe this project will qualify for funding.

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Members of the Select Committee on School Facilities:

Per an email from the Legislative Service Office on May 5, 2021, the following has been requested for the June 3, 2021 Select Committee on School Facilities meeting. Enclosed is the response from the State Construction Department, School Facilities Division regarding: Updates from the Division: Status of projects.

Pursuant to 2018 Wyo. Sess. Laws Ch. 134 § 313(f) and 2020 Wyo. Sess. Laws Ch. 80 § 313(f), the Department respectfully submits this report on the deployment of funds and project progression

The Deployment Schedule:

Two complementary illustrations are provided to characterize the deployment of legislative funds made available to school districts for capital development and improvements in the upcoming years:

1. Deployment Schedule Actively Managed Projects and Remaining Funds; a project by project schedule of anticipated deployment of funds over future quarters by funding phase (Land, Planning, Design and Construction including components).
2. Actively Managed Projects; remaining funds bar graph as of April 2021 through 2024 by quarters.

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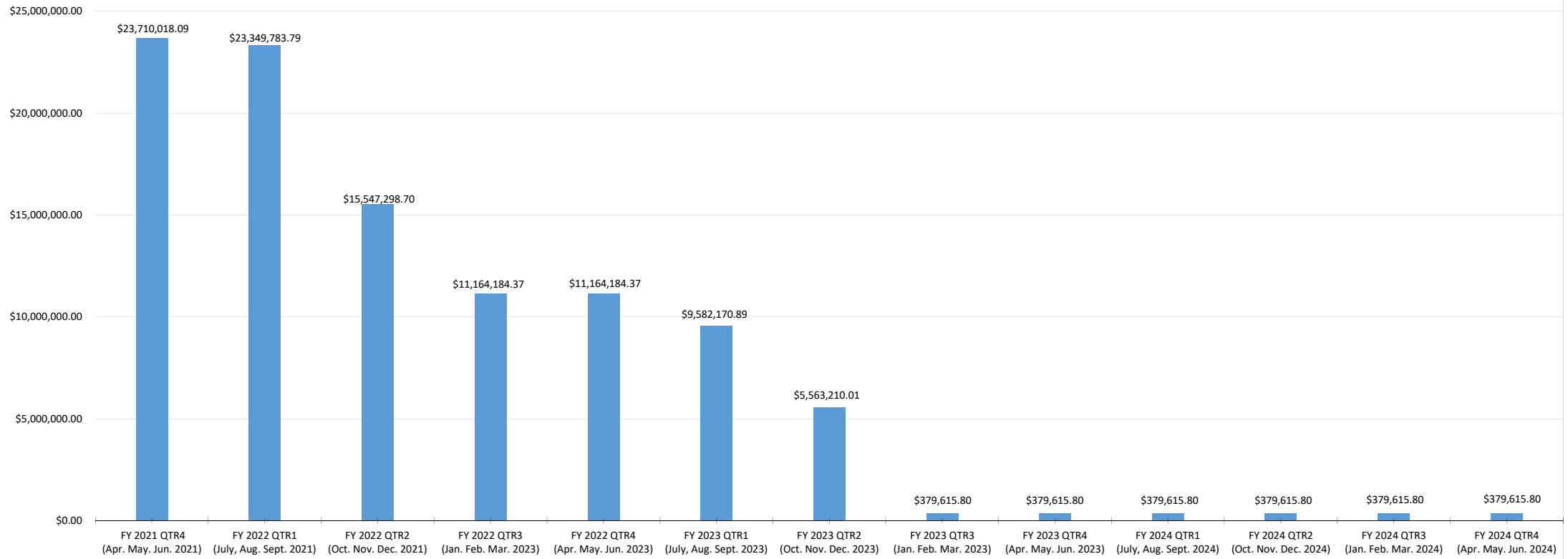
**School Facilities Department
Deployment Schedule
Actively Managed Projects and Remaining Funds**

Planning	blue
Land	brown
Design	yellow
Construction	green

PROJECT DETAILS						FY 2021				FY 2022				FY 2023				FY 2024				
Organization	Capital Project	Project Building	Type	Appropriations	Unspent April 26, 2021	QTR1-2020 (July, Aug. Sept.)	QTR2-2020 (Oct. Nov. Dec.)	QTR3-2021 (Jan. Feb. Mar.)	FY 2021 QTR4 (Apr. May. Jun. 2021)	FY 2022 QTR1 (July, Aug. Sept. 2021)	FY 2022 QTR2 (Oct. Nov. Dec. 2021)	FY 2022 QTR3 (Jan. Feb. Mar. 2023)	FY 2022 QTR4 (Apr. May. Jun. 2023)	FY 2023 QTR1 (July, Aug. Sept. 2023)	FY 2023 QTR2 (Oct. Nov. Dec. 2023)	FY 2023 QTR3 (Jan. Feb. Mar. 2023)	FY 2023 QTR4 (Apr. May. Jun. 2023)	FY 2024 QTR1 (July, Aug. Sept. 2024)	FY 2024 QTR2 (Oct. Nov. Dec. 2024)	FY 2024 QTR3 (Jan. Feb. Mar. 2024)	FY 2024 QTR4 (Apr. May. Jun. 2024)	
ALBANY 1	1003	SLADE ES REPLACEMENT	DESIGN	21,483,430.00	18,240,617.30				3,040,103	3,040,103	3,040,103	3,040,103	3,040,103	3,040,103								
ALBANY 1	1194	PURCHASE LAND FOR FUTURE SCHOOL	LAND ACQUISITION	750,000.00	750,000.00										750,000							
ALBANY 1	3065	MONTESSORI CHARTER SCHOOL (K-6)	CHARTER LEASES	\$ 725,359.92	\$ 185,876.00	CONSTRUCTION COMPLETE PENDING AUDIT RESULT																
ALBANY 1	3077	UW LAB SCHOOL	DESIGN	\$ 100,000.00	\$ 20,827.00	COMPLETE PENDING FINAL ACTION																
BIG HORN 4	1011	NEW LAURA IRWIN ES (Manderson Disposition)	NEW CONSTRUCTION	11,316,822.25	184,631.89	CONSTRUCTION COMPLETE PENDING AUDIT RESULT																
BIG HORN 4	1012	NEW RIVERSIDE MS/HS	NEW CONSTRUCTION	19,667,595.67	271,121.75	CONSTRUCTION COMPLETE PENDING AUDIT RESULT																
BIG HORN 4	3089	NEW RIVERSIDE MS/HS (LOCKER ROOM)	CONSTRUCTION	\$ 1,540,294.66	\$ 1,448,000.34				482,667	482,667	482,667											
BIG HORN 4	3140	DEMOLITION OF MANDERSON (CLOUD PEAK ES/MS)	DEMOLITION	\$ 2,220,475.75	\$ 2,220,475.75				740,159	740,159	740,159											
CAMPBELL 1	1176	LITTLE POWDER K-8 (NEW)	PLANNING	105,115.00	809.79	COMPLETE PENDING FINAL ACTION																
CAMPBELL 1	1182	NEW TRANSPORTATION BUILDING	DESIGN	451,400.00	393,990.82				131,330	131,330	131,330											
CAMPBELL 1	3099	WAGONWHEEL ES PARKING LOTS (APPROVED AT JUNE 24, 2020 BY SFC)	COMPONENT	\$ 1,013,349.98	\$ 1,013,349.98				202,670	202,670	202,670	202,670	202,670									
CONVERSE 1	2695	DRY CREEK ES MODULAR REPLACEMENT	MODULAR	248,466.00	82,252.41	CONSTRUCTION COMPLETE PENDING AUDIT RESULT																
CONVERSE 1	2873	SHAWNEE MODULAR	NEW CONSTRUCTION	275,669.00	5,000.00				2,500	2,500												
CONVERSE 1	3084	DOUGLAS HS - HVAC	COMPONENT	\$ 3,377,819.00	\$ 3,178,694.00				1,059,565	1,059,565	1,059,565											
CROOK 1	1049	NEW MOORCROFT ES	NEW CONST/RENO	22,838,746.40	629,347.20	CONSTRUCTION COMPLETE PENDING AUDIT RESULT																
FREMONT 1	1177	JEFFREY CITY ES K-6 PLANNING STUDY	DEMOLITION	2,222,871.25	1,425.00	CONSTRUCTION COMPLETE PENDING AUDIT RESULT																
FREMONT 25	2764	JACKSON ES WASTE & DOMESTIC WATER REPLACE	COMPONENT	1,730,594.00	1,730,594.00							576,865	576,865	576,865								
FREMONT 25	2789	RIVERTON HS REPLACE SKYLIGHTS	COMPONENT	416,724.00	23,692.74	CONSTRUCTION COMPLETE PENDING AUDIT RESULT																
FREMONT 25	2823	RIVERTON MS ROOF REPLACEMENT	COMPONENT	2,772,992.00	2,178,689.24				726,230	726,230	726,230											
FREMONT 25	2826	RIVERTON HS CAREER CENTER SANITARY LINES REPLACEMENT	COMPONENT	699,566.00	242,600.00	CONSTRUCTION COMPLETE PENDING AUDIT RESULT																
FREMONT 25	2829	RIVERTON HS AIR HANDLING UNIT REPLACEMENT	COMPONENT	602,500.00	100,077.70	CONSTRUCTION COMPLETE PENDING AUDIT RESULT																
FREMONT 25	3072	AUDITORIUM *	DESIGN & CONSTRUCTION	\$ 8,200,000.00	\$ 8,200,000.00	PENDING*																
FREMONT 25	3085	RIVERTON HS WRESTLING ROOM ADDITION TAC REMEDY	DESIGN/CONSTRUCTION	\$ 822,554.00	\$ 811,981.97				162,396	162,396	162,396	162,396	162,396									
FREMONT 25	3086	CAREER CENTER RENOVATION TAC REMEDY	DESIGN/CONSTRUCTION	\$ 469,059.00	\$ 469,059.00				93,812	93,812	93,812	93,812	93,812									
FREMONT 25	3087	ALT/SPECIAL SERVICES RENOVATION TAC REMEDY	DESIGN/CONSTRUCTION	\$ 539,996.00	\$ 539,996.00				107,999	107,999	107,999	107,999	107,999									
HOT SPRINGS 1	2824	THERMOPOLIS MS ROOF REPLACEMENT	COMPONENT	\$ 607,265.75	\$ 13,165.91	CONSTRUCTION COMPLETE PENDING AUDIT RESULT																
LARAMIE 1	1075	ARP ES MODULAR #601	MODULAR	166,405.13	18,505.22	CONSTRUCTION COMPLETE PENDING AUDIT RESULT																
LARAMIE 1	1076	ARP ES MODULAR #701	MODULAR	121,406.39	27,208.38	CONSTRUCTION COMPLETE PENDING AUDIT RESULT																
LARAMIE 1	1080	NEW CAREY JR/HS	NEW CONSTRUCTION	48,833,127.00	4,084,517.73	CONSTRUCTION COMPLETE PENDING AUDIT RESULT																
LARAMIE 1	1090	SADDLERIDGE ES MODULAR #103 (MOVED FROM JESSUP ES)	MODULAR	299,917.18	81,474.73	CONSTRUCTION COMPLETE PENDING AUDIT RESULT																
LARAMIE 1	1093	SADDLERIDGE ES MODULAR #101	MODULAR	201,204.87	45,162.71	CONSTRUCTION COMPLETE PENDING AUDIT RESULT																
LARAMIE 1	1094	SUNRISE ES MODULAR #101	MODULAR	199,969.74	45,126.13	CONSTRUCTION COMPLETE PENDING AUDIT RESULT																
LARAMIE 1	2675	LAND PURCHASE FOR FUTURE ES (SADDLE RIDGE II ES)	LAND ACQUISITION	1,936,065.38	200,000.00	CONSTRUCTION COMPLETE PENDING AUDIT RESULT																
LARAMIE 1	2876	DILDINE ES RENOVATION	COMPONENT	7,146,435.00	2,207,448.31				1,103,724	1,103,724												
LARAMIE 1	2927	FUTURE COLE ES (NEW)	NEW CONSTRUCTION	598,351.25	6,955.00	COMPLETE PENDING FINAL ACTION																
LARAMIE 1	3066	PODER ACADEMY (K-5)	CHARTER LEASES	\$ 1,813,491.95	\$ 471,766.64	CONSTRUCTION COMPLETE PENDING AUDIT RESULT																
LARAMIE 1	3067	PASS	CHARTER LEASES	\$ 654,263.24	\$ 480,871.27	CONSTRUCTION COMPLETE PENDING AUDIT RESULT																
LARAMIE 1	3073	BAIN MODULAR	DEMOLITION	\$ 76,061.00	\$ 55,766.00				27,883	27,883												
LARAMIE 1	3097	NEW ELEMENTARY	DESIGN/CONSTRUCTION	\$ 27,387,307.00	\$ 26,945,735.79				3,849,391	3,849,391	3,849,391	3,849,391	3,849,391	3,849,391	3,849,391							
LARAMIE 2	2833	ALBIN ES 60'S ADDITION HVAC CONTROLS UPGRADE	COMPONENT	68,152.00	2,433.00	CONSTRUCTION COMPLETE PENDING AUDIT RESULT																
LINCOLN 1	1098	KEMMERER MS KITCHEN/CAFETERIA RENOVATION	NEW CONST/RENO	1,163,000.00	136,817.18				136,817													
LINCOLN 1	3074	KEMMERER ES / ALT SCHOOL	DESIGN/CONSTRUCTION	\$ 4,089,794.00	\$ 4,089,423.66				584,203	584,203	584,203	584,203	584,203	584,203	584,203	584,203						
LINCOLN 2	3075	AFTON	DESIGN/CONSTRUCTION	\$ 4,385,150.00	\$ 4,274,333.86				712,389	712,389	712,389	712,389	712,389	712,389	712,389							
LINCOLN 2	3076	OSMOND	DESIGN/CONSTRUCTION	\$ 2,745,737.00	\$ 2,680,894.66				536,179	536,179	536,179	536,179	536,179	536,179								
NATRONA 1	3026	MACC NATATORIUM BRIDGE	NEW CONSTRUCTION	1,545,431.00	1,367,158.76				455,720	455,720	455,720											
NIORRARA 1	2846	LANCE CREEK ES MODULAR	MODULAR	315,742.00	1,205.46	CONSTRUCTION COMPLETE PENDING AUDIT RESULT																
NIORRARA 1	3081	NIORRARA HS - FIRE ALARM SYSTEM	COMPONENT	\$ 576,578.00	\$ 576,578.00				288,289	288,289												
PLATTE 1	2835	LIBBEY ES FITTINGS, SANITARY WASTE, BATHROOM FIXTURES	COMPONENT	116,408.00	111,254.00				55,627	55,627												
PLATTE 1	3080	WEST ES - SEWER LINE	COMPONENT	\$ 1,374,402.00	\$ 1,332,063.00				666,032	666,032												
PLATTE 1	3083	WHEATLAND HS - AUDITORIUM RIGGING & HVAC	COMPONENT	\$ 1,896,225.00	\$ 1,852,902.50				926,451	926,451												
SHERIDAN 2	2787	COLLEGE CAMPUS	LAND ACQUISITION	35,000.00	3,600.25	COMPLETE PENDING FINAL ACTION																
SHERIDAN 2	2828	SHERIDAN HS SCIENCE ROOM PLUMBING	COMPONENT	575,925.00	0.01	CONSTRUCTION COMPLETE PENDING AUDIT RESULT																
SHERIDAN 2	2844	JOHN SCHIFFER ALTERNATIVE SCHOOL	NEW CONSTRUCTION	10,170,923.00	2,677,441.60				892,481	892,481	892,481											
SHERIDAN 2	3000	MAINTENANCE FACILITY SAFETY UPGRADES & REPAIRS	COMPONENT	945,459.00	933,584.00				466,792	466,792												
SHERIDAN 3	2712	CLEARMONT ARVADA JR/SR HS BOILER CONVERSION	COMPONENT	727,670.00	10,955.50				10,956													
SHERIDAN 3	2845	ARVADA-CLEARMONT BUILDING #3 FIRE SPRINKLER SYSTEM	COMPONENT	90,000.00	13,735.00				13,735													
SHERIDAN 3	2847	ARVADA-CLEARMONT JHS/HS ATHLETIC FIELD	NEW CONSTRUCTION	556,337.00	11,630.50				11,631													
SUBLETTE 9	1142	BIG PINEY MS RENOVATION ADDITION	NEW CONST/RENO	1,898,574.55	187,096.12				187,096													
SWEETWATER 1	1145	NEW FARSON-EDEN K-12	NEW CONSTRUCTION	22,718,688.13	194.09	CONSTRUCTION COMPLETE PENDING AUDIT RESULT																
SWEETWATER 1	1193	NEW SATELLITE HS	NEW CONSTRUCTION	22,436,531.00	8,530,374.37				4,265,187	4,265,187												
SWEETWATER 1	3078	LINCOLN ES	DESIGN/DEMOLITION	\$ 1,415,676.00	\$ 1,415,486.48				471,829	471,829	471,829											
TETON 1	1155	MUNGER MOUNTAIN ES	NEW CONSTRUCTION	\$ 31,873,306.36	\$ 405,448.48	CONSTRUCTION COMPLETE PENDING AUDIT RESULT																
TETON 1	3079	JACKSON HOLE MIDDLE SCHOOL	DESIGN/CONSTRUCTION	\$ 2,463,461.00	\$ 2,394,785.81				478,957	478,957	478,957	478,957	478,957									
UINTA 1	3082	EVANSTON HS - DOMESTIC WATER SYSTEM	COMPONENT	\$ 2,774,976.00	\$ 2,637,626.09				439,604	439,604	439,604	439,604	439,604	439,604								
WASHAKIE 2	1164	TEN SLEEP K-12	DESIGN	\$ 2,601,100.00	\$ 2,500,000.00	PENDING**																
SECURITY			Security	13,950,000.00	4,935,005.44				379,616	379,616	379,616	379,616	379,616	379,616	379,616	379,616	379,616	379,616	379,616	379,616	379,616	379,616

* During the 2021 Supplemental Budget (House Enrolled Act 45), the Legislature deleted \$8,200,000 appropriated from the School Capital Construction account for this project in Section 313 (g)(x). Section 313 (j) was added appropriating \$8,200,000 from qualifying capital construction grant funds allocated to the state under section 604, coronavirus capital projects fund, of the American Rescue Plan Act, P.L. 117-2, to the state construction department for this project.
 ** Pursuant to the Governor's letter dated 08/28/2020, this project has been paused.

Actively Managed Projects (by remaining funds as of April 2021)





Wyoming State Construction Department

Governor Mark Gordon

Jerry Vincent, Director

June 3, 2021

Members of the Select Committee on School Facilities:

Per an email from the Legislative Service Office on May 5, 2021, the following has been requested for the June 3, 2021 Select Committee on School Facilities meeting. Enclosed is the response from the State Construction Department, School Facilities Division regarding expectations for the forthcoming budget recommendations.

Per statute W.S. §9-15-119, the School Facilities Commission (SFC) is required to annually submit a recommended budget for projects and school capital construction financing not later than September 1st. At the June 2021 meeting, the SFC will be presented a preview of potential requests. During the July 2021 meeting, the SFC will develop and approve a budget recommendation to be submitted to the governor and the Select Committee on School Facilities. Additionally, the standard budget is still in development by the State Budget Office and has not been released to the department. We are providing the department's best estimate of potential requests with the understanding that it has not yet been approved by the SFC and the final request may be different from what is attached here.

Prepared by: Laura Anderson laura.anderson1@wyo.gov 307-777-2901



Wyoming State Construction Department

Governor Mark Gordon

Jerry Vincent, Director



Prepared May 2021 for the

Select Committee on School Facilities

Potential Budget Requests

Pursuant to state statute, the School Facilities Commission (SFC) will submit a budget through the State Budget Department prior to September 1st.

The Department is working to develop a preliminary list of potential requests for SFC approval. Potential requests will be presented at the June meeting and the SFC will vote on the budget recommendations at the July meeting.

All potential considerations listed are drafts and may change upon SFC approval.

Category	Potential Exception Request Amount	Description
Major Maintenance	\$158,665,715	Preliminary number based on current RS Means data: Per W.S. 21-15-109. Funds for the repair or replacement of complete or major portions of school building and facility systems at its original capacity for its original intended use and is typically accomplished by contractors. Current Standard Budget is \$153,000,000 - request of \$5,665,715 is additional to the standard
Charter School Leases	\$1,866,764	Charter School Lease: 21-3-110(a)(x)(A) Montessori Charter School - 374,070 PODER Academy - 703,940 PASS - 788,754
Modular Leases	\$109,625	Modular lease due to district capacity W.S 21-15-118(b) if required, the department shall provide for temporary space for any scheduled building remedy by means of portable buildings creating capacity or by other means available to the department Modular Leases in Laramie 1: <ul style="list-style-type: none"> • Arp Modular 601 \$28,750 • Arp Modular 701 \$28,750 • Saddle Ridge # 1 \$17,375 • Saddle Ridge # 2 \$17,375 • Sunrise \$17,375
Component Funding	\$13,347,649	Recommending through priority 7 on the Component Project list for a total of \$13,347,649 (see following list)

Potential Budget Requests - Continued

Category	Potential Exception Request Amount	Description
Planning Funds	\$300,000	<p>W.S. 21-15-117 - Planning studies to determine the most cost effective remedy. Based on historical expenditures - allows SFC sufficient funds to conduct business.</p> <p>State statute requires consolidated list - in near future list will be prepared with combination of condition & capacity, this would allow the SFC an amount to conduct Most Cost Effective Remedy (MCER) studies for the highest prioritized needs that emerge.</p>
Demolition	\$238,852	<p>Demolition of Tech Building at Torrington HS:</p> <ul style="list-style-type: none"> • Will reduce square footage by 3,154 sq ft per W.S 21-15-116(d)(ii) • HS is at 71% capacity and has necessary space to deliver required educational program • Built in 1964, 2016 FCI score is .2992 • Saddle Ridge # 2 \$17,375 • Asbestos present in floor tiles, ceiling interior walls and exterior stucco
Demolition	\$854,959	<p>Demolition of Frontier Learning Center in Laramie 1:</p> <ul style="list-style-type: none"> • Will reduce square footage by 11,608 sq ft per W.S 21-15-116(d)(ii) • Purchased May 21, 2020 • Built in 1973 • District planned to use facility with a limited remodel. However code requirements may prevent space renovation due to major scope of work involved with completing code updates as required by the City of Cheyenne and limited funds to remodel. District believes it would be more feasible to demolish the building.
Demolition	\$238,852	<p>Demolition of Tonkin Activity Center (TAC) :</p> <ul style="list-style-type: none"> • Will reduce square footage by 65,124 sq ft per W.S 21-15-116(d)(ii) • MCER study initiated in 2017, started moving programs out of building • District currently has 205,699 excess sq ft
Land Opportunity	\$618,351	<p>Request to replenish the amount expended this biennium.</p> <p>Remaining balance is currently \$131,648.</p> <p>This fund is mainly used to help districts right size existing school sites when adjacent properties become available.</p> <p>Without replenishment the SFC will not have a means to capitalize on opportunities as they become available.</p>

Potential Budget Requests - Continued

Category	Potential Exception Request Amount	Description
Unanticipated	\$1,501,245	<p>Unanticipated funds allow the SFC to account for unforeseen expenses or cost overruns on projects</p> <ul style="list-style-type: none"> • Unanticipated funds calculated using a 6% factor of (Planning, Design, Construction, Component, Demo, and Track) projects. • Dependent on the projects approved to go forward by the SFC - yet to be determined.
Design	\$604,159	<p>Campbell 1 - Little Powder ES</p> <ul style="list-style-type: none"> • School is on leased land with a lease ending June 30, 2026 that landowner is not intending to renew • 2016 initiated MCER study to explore options. District chose to purchase new land for a replacement school • In 2020 the commission approved purchase of land with appropriated funds • Allowable square foot calculator projects 10,260 square feet with design & construction at a total of \$4,446,805
Construction	\$3,842,646	
Demolition	\$624,373	

Component Project Prioritized Requests

2023-2024 Biennial Budget

Rank	District	Project Name	Requested Amount	Cumulative Amount
1	Weston 7	Upton ES, MS - Boiler Heating Hot Water System Replacement	\$1,692,372	\$1,692,372
2	Fremont 25	Riverton Rendezvous ES - Sanitary Waste	\$2,334,138	\$4,026,510
3	Converse 1	Douglas HS - HVAC Replacement	\$2,149,928	\$6,176,438
4	Big Horn 2	Lovell MS - HVAC Replacement	\$1,548,455	\$7,724,893
5	Converse 1	Douglas Primary ES - HVAC Replacement	\$2,639,498	\$10,364,391
6	Fremont 2	Dubois ES, MS, HS - K-12 Boiler Replacement	\$771,344	\$11,135,735
7	Natrona 1	Midwest ES, MS, HS, Egerton Bus Garage - Roof Replacement	\$2,211,914	\$13,347,649
8	Campbell 1	Gillette Wagonwheel ES - Roof Replacement	\$963,247	\$14,310,896
9	Platte 1	Wheatland MS - Roof Replacement	\$1,772,760	\$16,083,656
10	Converse 1	Douglas MS - HVAC Replacement	\$3,942,009	\$20,025,665
11	Fremont 1	Lander Valley HS - Roof Replacement	\$800,786	\$20,826,451
12	Converse 1	Douglas Intermediate ES - HVAC Replacement	\$1,880,540	\$22,706,991
13	Uinta 1	Evanston HS - VAV Retrofit	\$544,120	\$23,251,111
14	Laramie 1	Cheyenne Hobbs ES - Exterior Doors Frame Replacement	\$29,932	\$23,281,043
15	Platte 2	Guernsey Sunrise ES, MS, HS - Bus Drop Off Drainage & Overlay	\$352,271	\$23,633,314
16	Fremont 25	Riverton Rendezvous ES - Air Handler HVAC	\$454,775	\$24,088,089
17	Laramie 2	Carpenter ES - Roof Replacement	\$381,036	\$24,469,125
18	Park 16	Meeteetse ES, MS, HS Track - Retaining Wall Replacement*	\$2,003,321	\$26,472,446
19	Laramie 1	Cheyenne East HS - Direct Digital Controls Upgrades	\$124,587	\$26,597,033
20	Laramie 1	Cheyenne Fairview ES - Exterior Doors Frame Replacement	\$68,628	\$26,665,661
21	Park 6	Cody MS - HVAC Pneumatic System Replacement	\$1,027,778	\$27,693,439
22	Laramie 1	Cheyenne Administration Building - Plumbing Fixtures	\$434,612	\$28,128,051
23	Sheridan 2	Sheridan Highland Park ES - Wall & Roof Repairs	\$1,209,389	\$29,337,440
24	Fremont 25	Riverton MS - Boiler	\$636,545	\$29,973,985
25	Teton 1	Wilson ES - Heat Pumps Retrofit	\$874,300	\$30,848,285
26	Park 6	Cody ES - HVAC Pneumatic System Replacement	\$471,383	\$31,319,668

* Meeteetse - the light poles in the scope of work require 10% enhancement MM fund expenditure, therefore \$140,000 was removed from the request

Component Project Prioritized Requests (2023-2024 Biennial Budget) - Continued

Rank	District	Project Name	Requested Amount	Cumulative Amount
27	Teton 1	Jackson HS - Roof Coverings Replacement	\$1,393,663	\$32,713,331
28	Laramie 2	Burns MS, HS - Direct Digital Controls Upgrade	\$476,295	\$33,189,626
29	Uinta 1	Evanston HS - Boiler Replacement	\$988,789	\$34,178,415
30	Laramie 2	Pine Bluffs MS, HS VOCED Gym - Direct Digital Controls Upgrade	\$91,576	\$34,269,991
31	Laramie 1	Cheyenne Johnson MS - Exterior Doors Frame Replacement	\$57,276	\$34,327,267
32	Fremont 25	Riverton HS - Gym Bleachers & Floor	\$2,665,892	\$36,993,159
33	Park 1	Powell HS - HVAC Repair & Replacement	\$1,002,694	\$37,995,853
34	Park 6	Cody HS - HVAC Pneumatic System Replacement	\$188,467	\$38,184,320
35	Laramie 1	Cheyenne McCormick MS - Unit Ventilators Replacement	\$590,663	\$38,774,983
36	Laramie 2	Burns MS, HS VOCED - Direct Digital Controls Upgrade	\$38,866	\$38,813,849
37	Laramie 1	Cheyenne Cole ES - Partial Roof Replacement	\$743,970	\$39,557,819
38	Laramie 2	Pine Bluffs MS, HS - Direct Digital Controls Upgrade	\$191,788	\$39,749,607
39	Platte 1	Wheatland Bus Garage - Transportation Parking Lot Replacement	\$2,175,500	\$41,925,107
40	Laramie 1	Cheyenne Administration Building - Freight Elevator	\$756,184	\$42,681,291
41	Fremont 25	Riverton MS - Domestic Hot Water	\$169,198	\$42,850,489
42	Albany 1	Laramie Snowy Range Academy (Charter) - Parking Lot Resurfacing	\$1,143,753	\$43,994,242
43	Campbell 1	Gillette Rawhide ES - Site & Playground	\$1,250,187	\$45,244,429
44	Sweetwater 2	Green River Wilson Administration - Roof Replacement	\$125,726	\$45,370,155



Wyoming State Construction Department

Governor Mark Gordon

Jerry Vincent, Director

June 3, 2021

Members of the Select Committee on School Facilities:

Per an email from the Legislative Service Office on May 5, 2021, the following has been requested for the June 3, 2021 Select Committee on School Facilities meeting. Enclosed is the response from the State Construction Department (SCD), School Facilities Division (SFD) regarding review of the School Facilities Commission's (SFC) governing documents, specifically, rules and regulations.

The SCD formed a governing documents committee during a Commission meeting on May 28, 2020. The committee included four regional school district representatives (who were to report back to the districts from their geographical areas to ensure statewide input), three commissioners, SCD staff, and legal counsel. The purpose of the committee was first, to revise the SFC's Uniform Adequacy Standards, which are located in Chapter 3 of the Commission's rules and promulgated pursuant to W.S. § 21-15-115 and second, to identify other possible ways to improve the Commission's rules. The committee met 23 times from May 2020 to January 2021. Over that period, the committee completely revised Chapter 3, suggested changes for Chapters 1, 2, 8, 9, and proposed a new Chapter 10.

Chapter 3

When the governing documents subcommittee began meeting in May 2020, its first step was to revise the Department's draft of a new Chapter 3. By the following month, the Department was ready to update the Select Committee on the progress made on Chapter 3, and on June 25 it provided a copy of the revised Chapter 3 rules to superintendents, business managers, and facility directors of all 48 school districts to receive further input. The SCD did not receive any comments. The Commission promulgated Chapter 3 as emergency rules on September 16, 2020 to allow the new Adequacy Standards to govern ongoing projects. The SFC began the regular rulemaking process on February 11, 2021 and approved the Chapter on May 13, 2021.

Chapters 1, 2, 8, 9, and 10

After the governing documents committee concluded in January 2021, the SCD posted the drafts of Chapters 1, 2, 8, 9, and 10 on its website along with a Google Form allowing districts and other stakeholders to comment to the rules. The Department received several comments on these drafts. In preparation for the Commission's May 11, 2021 planning meeting, the Department reviewed all comments received, made changes to the drafts, and prepared a detailed response to each comment. The Department's responses to the comments were included in the Commission's planning session packet along with all comments received to date, and are attached to this document. The comment form remains available on the SCD's website at <https://stateconstruction.wyo.gov/#h.cqr1ee7qz5lj> and the Department and Commission remain committed to considering all changes proposed by districts.



Wyoming State Construction Department

Governor Mark Gordon

Jerry Vincent, Director

During the planning session on May 11, 2021, the Commission reviewed the committee's recommendations to Chapters 1, 2, 9, and 10, as well as additional minor changes to Chapter 3. Because of statutory changes enacted in SEA0058/SF0002 and effective on July 1, 2021, Chapter 8 was not complete in time for the Commission to review at its planning session in May. The changes required by the new legislation include: clarifying how the condition and capacity schedules are calculated, removing educational suitability (including technology readiness, appropriate and up-to-date standards for air quality, illumination and appropriateness of the student environment) from the condition assessment, and establishing a consolidated remediation schedule to address both condition and capacity needs. The SCD can present the draft Chapter 8 to the Select Committee in the future after the Commission has reviewed it. In the meantime, the current Chapter 8 is included within this packet.

Drafts of the proposed rule revisions (except for a copy of the Commission's current Chapter 8 rule, which is provided for context) are attached. The SCD anticipates that the Commission will begin formal rulemaking for these rules in the coming months in order to bring the SCD and SFC into compliance with the new statutory changes.

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Attachments:

- Proposed changes to SFC Rules (both clean and strike-underscore copies):
 - Chapter 1 - General Provisions
 - Chapter 2 - Rules of Practice and Procedure for Contested Case Proceedings; Exception Requests
 - Chapter 3 - Uniform Adequacy Standards
 - Chapter 9 - Implementation of Remedies and Project Management
 - Chapter 10 - District-Initiated Elements, District-Initiated Projects, and Local Enhancements
- Current SFC Rule
 - Chapter 8 - Criteria for Identifying and Prioritizing Remedies, and Establishing Project Budgets - Appendix C "Educational Suitability" Has Been Omitted for Length
- District Comments on Proposed Rule Changes
- Department Responses to District Comments

Chapter 1 General Provisions

Section 1. Authority. This Chapter is promulgated pursuant to Wyoming Statute 21-15-114(a)(xv).

Section 2. Definitions. As used in these rules and all project agreements entered into by the Department:

(a) “Adequate” means a building, room, or other educational space is both sufficient and appropriate, as those terms are defined in this section.

(b) “Anticipated Hard Bid” means the funding limit of the total amount of proposals or bids to achieve capital construction work or the Work, on and off-site, unless identified otherwise in the budget worksheet including prime bids, multiple prime bids, allowances, alternates and other costs of the Work.

(c) “Appropriate” means a building, room, or other educational space that has the necessary infrastructure, storage, fixtures, and critical adjacencies to be compatible with the delivery of the required educational program.

(d) “Bidding Contingency” means the funding amount identified by the Owner and design professionals within the Anticipated Hard Bid to accommodate market variances or estimating errors.

(e) “Budget Worksheet” means the total funding structure of State Funds for a School Facilities Division capital construction project. The worksheet represents all project funds available through the State Construction Department for a project.

(f) “Closed” means any educational building or facility that is not currently being used and is capable of being reopened.

(g) “Cohort Survival Calculation” means the rate of progression for each grade (K through 11) to the next grade (1 through 12) using the ten-year average for each grade progression.

(h) “Component Level Recommendations” means recommendations by the Commission to implement remedies to address educational building and facility condition by repairing or replacing components when it is determined by the Commission that it is not feasible for districts to do so solely with major maintenance funds.

(i) “Construction Contingency” means funding identified to address unanticipated or unknown costs identified subsequent to the proposal or bidding process to achieve the Work. Construction Contingency is not a bidding contingency.

(j) “Contractor” means any person who is a party to a contract with the Commission or a district to accomplish the Work of any Commission approved remedy.

(k) “Critical adjacency” refers to an educational, administrative, educational support, or facility support space within an educational building that must be located near another space in order to be functional as intended.

(l) “Department” means the State Construction Department.

(m) “Design Contingency” means funding identified to address unanticipated costs associated with services provided by design professionals.

(n) “Design Professional” means the architect or other professional contracted with the district to design a remedy.

(o) “District” means any school district established pursuant to the laws of Wyoming excluding community colleges and community college districts.

(p) “District-initiated” refers to any renovation, construction, replacement, repair or other improvement of or to any school building or facility that is not a State-initiated remedy or major maintenance included in the district’s facility plan. This includes, but is not limited to, a district’s decision to include in a State-initiated remedy any design features or components contrary to the recommendations of value engineering performed in accordance with the Commission’s Facility Design Standards and Guidelines unless waived by the Department or excepted by the Commission in accordance with Chapter 1 Section 10 of these Rules, in excess of the Commission’s Facility Design Standards and Guidelines unless excepted by the Commission in accordance with Chapter 1 Section 10 of these Rules, or that add square footage in excess of Square Footage Calculator whether through construction, renovation, or acquisition of additional square footage.

(q) “District-initiated element” means any component, design feature, or square footage that is district-initiated and occurs in conjunction with a State-initiated remedy.

(r) “District-initiated project” means any project that is district-initiated and occurs independent of a legislative appropriation or Commission funding.

(s) “Educational specifications or “Ed-specs” means those specifications used to define the programmatic, educational and functional goals of the educational facility.

(t) “Elementary school” means any school with a grade configuration of kindergarten through sixth grade, or any combination thereof.

(u) “Facility Condition Assessment” (FCA) means the systematic process of collecting measured data, or making observations relative to the physical condition of a building or facility or one or more of its components or group(s) of components and recording the results.

(v) “Facility Condition Index” (FCI) means a numerical rating or building condition

score based on measured data or assessment of physical components or systems. The condition of a building is expressed as a ratio of the Cost to Repair Deficiencies, or “Deferred Maintenance” (DM) divided by the Current Replacement Value (CRV) of the building. The formula is:

$$FCI = \frac{\sum DM}{\sum CRV}$$

- (w) “High school” means any school with a grade configuration of ninth or tenth grade through twelfth grade.
- (x) “Informal Review” means the opportunity afforded a school district under W.S. 21-15-116(f) to consult with the Department regarding an action of the Department prior to filing a request for a contested case proceeding before the Commission.
- (y) “Kick-off Meeting” means a meeting(s) between personnel of the Department and personnel of the district, in addition to such other persons as may be necessary to accomplish project planning.
- (z) “Leased Facilities” means any land, building or equipment or other capital asset that has been leased by or to a district.
- (aa) “Major Maintenance” is a common reference term that means “Major building and facility repair and replacement” as that term is defined in W.S. § 21-15-109(a)(iii).
- (bb) “Middle school” means any stand-alone school or campus with any grade configuration that includes both seventh and eighth grade, but does not include the full range of grades down to kindergarten or up to twelfth grade. Districts may use an alternative descriptor such as “junior high school.”
- (cc) “Most Cost Effective Remedy” means the most cost effective method of remediation as that phrase is used in W.S. 21-15-117(b).
- (dd) “Mothballed building or facility” is any district building or facility which is closed and not operational, has the potential to be re-opened, is not being replaced under a district’s facility plan approved by the Commission, is not determined surplus within the district’s facility plan, and is maintained in good condition, for a maximum of three (3) years without additional approval from the Commission. Mothball status can be renewed by Commission approval after the initial three (3) years.
- (ee) “Nonstudent-related buildings and facilities” means any building or facility that is either an “office building” or a “warehouse building,” as those terms are defined in W.S. 21-15-109(a)(iv) and (a)(viii).
- (ff) “Payable-Leased Facilities” are those facilities which are used by the district to provide the approved educational programs as prescribed by W.S. 21-15-109(c)(i)(B). These facilities shall be included in the district’s gross square footage totals.

(gg) “Permanent Modular Building” means a pre-built, factory constructed and assembled educational building or facility that is transported in an assembled condition to the location on which the building or facility is to be situated that is placed on a permanent foundation, and that is expected to be used by the district for its designed lifetime.

(hh) “Primarily used” means more than fifty percent (50%) of a school building or facility is used in connection with educational programs, district administrative functions, or storage of equipment, materials, and other district property.

(ii) “Project Audit” means a contract compliance audit by an independent auditing expertise of project budgets and expenditures undertaken in accordance with W.S. 21-15-123(f)(v)(J).

(jj) “Project budget” means the amount of legislative funding allocated to a specific remedy. The project budget for any specific remedy shall be an amount determined by the Commission to be sufficient to fund the total project cost of the remedy. Funds allocated to a specific remedy remain State funds and are not an entitlement of any district.

(kk) “Rural school” means a school located outside the main metropolitan area in which the district is located and from which the district does not bus students into the metropolitan area.

(ll) “Separate Account” means an individual account held by the district for depositing and expending major building and facility repair funds. These funds shall not be co-mingled with any other funds or accounts.

(mm) “State-initiated remedy” means any renovation, construction, replacement, repair, or other improvement of or to any school building or facility initiated by the legislature through an appropriation or the Commission through a funding decision, including major building and facility repair and replacement undertaken pursuant to a district’s facility plan. The elements and features of a state-initiated remedy are limited to those provided in the Commission’s Facility Design Standards and Guidelines, and the addition of any element or feature not included in those guidelines is not considered state-initiated.

(nn) “Sufficient” means that a building, room, or other educational space is of such a size that it has enough space to enable delivery of the required educational program.

(oo) “Surplus building” means a building that is not within the commission’s adequacy standards due to a renovation, construction, replacement, repair, or other improvement of or to any school building or facility initiated by a school district, an approved construction or renovation project, or by changes in school population.

(pp) “Temporary building” and “modular building” are defined interchangeably with “portable building” as that term is defined in W.S. 21-15-109(a)(v).

(qq) “Total project cost” means all project costs, including but not limited to: land

acquisition, site preparation, design, construction, contingencies, FF&E, special studies (e.g. traffic, lighting), surveys, environmental assessments, geotechnical investigations, demolition, commissioning, owner's representative fees, testing and inspections, plan review, and building permit/occupancy fees.

(rr) "Work" means the achievement of the work of a project including equipment, material and labor specified in a construction agreement.

Section 3. Chair.

(a) The Chair shall preside at all meetings of the Commission. The Chair shall appoint all committees and perform such duties as the statute, rule or the Commission specifies.

(b) In the absence of the Chair at any meeting of the Commission, the Vice-Chair shall serve as Acting Chair of the meeting. If both the Chair and Vice-Chair are absent or otherwise unable to preside over the meeting or perform a specified duty, the Chair shall designate a commissioner to serve as Acting Chair for the meeting or task.

Section 4. Secretary; Minutes; Books and Records.

(a) The Administrator of the School Facilities Division shall function as Secretary to the Commission, and the Department shall administratively implement the Commission's rules. The Secretary for the Commission shall conduct and care for all the correspondence of the Commission and keep and maintain the minutes of all the meetings of the Commission and the books and records of the Commission. The Secretary shall provide notice of the time and place of all meetings of the Commission, including an agenda of items to be discussed, to each Commissioner.

(b) All orders and final decisions of the Commission, the minutes of all its sessions, meetings and proceedings, and the Commission's rules shall be kept by the Secretary for permanent public record and shall be open for public inspection at the office of the Department, listed on the Department's website. The Secretary may certify to the correctness of any copies of such documents.

Section 5. Meetings; Attendance by Telecommunication; Quorum.

(a) The Commission shall meet at least quarterly and at other times as necessary to transact its business.

(b) Meetings and hearings shall be separate functions.

Section 6. Order of Business; Agendas.

(a) An agenda shall be prepared by the Secretary and approved by the Chair. The agenda shall set forth all matters to come before the Commission at the meeting and indicate for each matter whether it requires action to be taken by the Commission at the meeting. Before each meeting of the Commission, the Secretary shall circulate to all Commissioners the agenda so

prepared by the Secretary and approved by the Chair.

(b) Other than for purposes of public comment, persons desiring to have a matter brought before the Commission shall make their requests through the Department. Department staff shall work with the Secretary and the persons making the request to determine how and when it is appropriate that the matter be presented to the Commission. The Secretary shall consult with the chairman of the Commission when making this determination.

Section 7 Recusal.

(a) A Commissioner shall recuse himself from all proceedings relating to a matter if he or she has a personal or private interest in the matter. The Commissioner shall recuse him or herself by serving a written or verbal notice of recusal upon the Chair, who shall notify all other Commissioners and any parties involved in the matter. On and after the date of recusal, the recused Commissioner shall not participate in any deliberations, decisions or other actions of the Commission relating to the matter.

(b) A recused Commissioner may attend hearings and other proceedings related to a recused matter as a member of the public. The Commissioner may also attend any Commission meeting at which topics relating to the matter arise and participate in the deliberations, decisions and other actions of the Commission on topics unrelated to the matter upon which recusal has occurred.

Section 8. Signing of Contracts. Contracts, agreements, memoranda of understandings and other documents of the Commission may be signed by the Chair, or by a designee of the chair. The Secretary shall sign only those contracts, agreements, memoranda of understanding or other documents of the Commission for which the Commission has delegated its authority to the Secretary. The Secretary may further designate a member of the staff to sign on his or her behalf.

Section 9. Public Records Practices.

(a) All requests for public records from the Commission shall be in writing and processed according to this Section. For purposes of the Wyoming Public Records Act, the Secretary is the custodian of all public records of the Commission.

(b) The Commission incorporates by reference the following uniform rule:

(i) Chapter 2 – Uniform Procedures, Fees, Costs, and Charges for Inspecting, Copying, and Producing Public Records, adopted by the Department of Administration and Information and effective on September 6, 2016, found at: <https://rules.wyo.gov>;

(ii) The Commission has determined that incorporation of the full text in this rule would be cumbersome or inefficient given the length or nature of the rule;

(iii) The incorporation by reference does not include any later amendments or edition of the incorporated matter beyond the applicable date identified in subsection (b)(i); and

(iv) The incorporated rule is maintained at the Department's Cheyenne office and is available for public inspection and copying at cost at the same location.

Chapter 2

Rules of Practice and Procedure for Contested Case Proceedings; Exception Requests

Section 1. Authority. This Chapter is promulgated by the Commission under the authority of Wyoming Statutes 16-3-102(a)(i), 16-3-102(d), 21-15-114(a)(xv), 21-15-116(e) and 21-15-116(f).

Section 2. Application of Rules. This Chapter shall apply to district requests for exceptions from the Commission, contested case proceedings brought before the Commission, and informal reviews authorized by Wyoming Statutes brought before the Department by a district.

Section 3. Exception Requests.

- (a) The Commission may grant exceptions on a case-by-case basis to the following:
- (i) Building capacity based on a most cost effective remedy study;
 - (ii) Budget recommendations;
 - (iii) Allowable square footage calculator;
 - (iv) A determination of the Department rejecting a request to use a non-Commission-approved contract as described in Chapter 9 Section 7(a)(ii);
 - (v) A determination of the Department rejecting a request for a value engineering waiver as described in Chapter 9 Section 8(a)(i); and
 - (vi) Specific requirements of the Design Standards and Guidelines.
- (b) A district making an exception request shall include documentation explaining the exception request. Such documentation should include, at a minimum:
- (i) The precise nature of the exception requested;
 - (ii) The justification for the exception request; and
 - (iii) Necessary supporting documentation as identified by the Department.
- (c) The Department shall create a thorough written record supporting the granting or denial of every exception request. Exception requests shall be initially presented to the Department for its review. The Department shall then present the request to the Commission with a recommendation at the next meeting for which the submission of additional Commission matters is timely.

(d) The Commission shall at a minimum consider the reasons why the exception is being requested, the nature of the request, any cost implications of the request, whether granting the request comports with the Commission's statutory duties and authority, and whether alternative means exist to accomplish the purposes of the request.

Section 4. Informal Review Proceedings.

(a) Districts shall request an informal review before the Department Director before pursuing a contested case review. The time period for filing a formal request shall begin when the district receives a decision from the Department Director with respect to the informal review.

(b) A district requesting an informal review shall do so, in writing, to the Director of the Department. The request shall contain:

- (i) The decision of the Department the district would like reviewed;
- (ii) An explanation of why the decision should be reviewed; and
- (iii) The legal authority upon which it is believed a decision was made in error.

(c) The Department may reject any request that lacks any of the required elements listed under Section 3(b) of this chapter. Such rejection does not constitute a final administrative decision of the Department and is not a prejudicial decision with respect to the district's right to re-file its request for informal review.

(d) The Director shall issue a written decision, in consultation with the Department's advising attorneys, laying forth the factual and legal basis for his or her decision.

(e) If, following the Department's review, the district is still unsatisfied with the actions of the Department, it may file a request for a contested case hearing before the Commission.

Section 5. Contested Case Proceedings.

(a) A district aggrieved by a final administrative action taken by the Department after an informal review conducted under Section 3 of this chapter may file a timely request for a contested case proceeding. The request shall be in accordance with the provisions contained in this Section.

(b) To initiate a contested case proceeding, a district shall prepare and file with the Commission a request which includes the following:

(i) The name, telephone number, email, and mailing address of the district and the same information for the representing attorney, if applicable;

(ii) A statement, in ordinary and concise language, of the facts and of the errors alleged to have been committed and issues upon which the request is based, including particular references to statutory sections, contract provisions or rules, regulations, policies, and orders involved;

(iii) A copy of the Director's decision and relevant material which relates to the decision at issue;

(iv) The specific relief sought; and

(v) The signature of the district and the representing attorney, if applicable.

(c) The request shall be served on the Commission and other necessary parties. Service shall be made to the Wyoming School Facilities Commission, care of the Department, at the location listed on the Department's website. Service can be made in person, by mail or received by facsimile, 307-777-8711, during regular business hours. Any facsimile received after regular business hours will be treated as received during the regular business hours of the next working day.

(d) Contested case proceedings before the Commission shall be limited to the issues the district identified during the Department's informal review.

(e) The request shall be filed with the Commission within forty-five (45) days of the date of the final administrative decision at issue, or of the date of mailing of the final administrative decision as evidenced by a postmark, whichever is later.

Section 6. Incorporation by Reference. The Commission incorporates by reference the following uniform rule:

(a) Chapter 2 – Contested Case Proceedings adopted by the Office of Administrative Hearings and effective on July 20, 2017, found at <https://rules.wyo.gov>;

(i) The Commission has determined that incorporation of the full text in this rule would be cumbersome or inefficient given the length or nature of the rule;

(ii) The incorporation by reference does not include any later amendments or edition of the incorporated matter beyond the applicable date identified in subsection (a) of this section; and

(iii) The incorporated rule is maintained at the Department office and is available for public inspection and copying at cost at the same location.

Section 7. Final Decision. At the request of the Commission, the hearing officer shall make a recommended decision to the Commission. The Commission shall issue the final decision, which shall constitute final agency action.

Chapter 3

Uniform Adequacy Standards

Section 1. Authority. This Chapter is promulgated pursuant to Wyoming Statutes 21-15-114(a)(xv), (ix) and 21-15-115.

Section 2. Applicability. This Chapter applies to all buildings and facilities subject to the Commission's rules and regulations. The Wyoming statewide adequacy standards establish uniform statewide standards for the adequacy of school buildings and facilities necessary for providing educational programs prescribed by law for the public schools.

Section 3. Safety of the Educational Environment. School buildings shall be in compliance with federal, state and local building and fire codes and laws that are applicable to the particular building. Code compliance includes the completion of system improvements or site improvements that are mandated in writing by an authority having jurisdiction for the continued use of a school building or facility. School buildings shall comply with all lawful environmental regulations promulgated by the Wyoming Department of Environmental Quality, the Wyoming Environmental Quality Council, the federal Environmental Protection Agency, and any other governmental entity with jurisdiction over the building. An existing school building may be deemed adequate with respect to this provision if it complies with the International Existing Building Code.

Section 4. Building Site Requirements.

(a) Size requirements. For schools that intend to organize and operate more than one of the following school types on a single site, the higher of the site sizes serves as the applicable requirement. Sites larger than those in the following requirements are permissible but exceed these adequacy standards. If an alternative school shares a site with another school, the alternative school students shall contribute toward the site size calculation for the combined school site.

(i) For elementary schools, an adequate site size is up to four (4) acres, plus an additional acre for each one hundred (100) students.

(ii) For middle schools, an adequate site size is up to ten (10) acres, plus an additional acre for each one hundred (100) students.

(iii) For senior high schools, an adequate site size is up to twenty (20) acres, plus an additional acre for each one hundred (100) students.

(b) Many schools pre-date the Commission's authority to promulgate adequacy standards. Existing school sites smaller than the minimum size sites in subsection (a) of this section that pre-date the original adoption of these standards are deemed adequate with respect to this subsection unless the Commission determines otherwise.

(c) Sites shall:

- (i) Have play areas that are relatively flat and level;
- (ii) Have a playground(s) for grades K-6 accessible to students;
- (iii) Have access to parking for staff, students, and visitors that enables the school to deliver the required statewide educational program;
- (iv) Have separate areas for bus loading and unloading and student pickup and dropoff;
- (v) Be accessible to emergency vehicles;
- (vi) Have positive water drainage away from the building such that runoff does not undermine the structural integrity of the school buildings located on the site or create flooding, ponding or erosion resulting in a threat to health, safety or welfare; and
- (vii) Have exterior lighting at entrance(s), parking area(s), bus loading and unloading area(s), and student pickup and dropoff area(s).

Section 5. Building Performance Standards. A building shall:

- (a) Have an FCI score between 0.0 and 0.65;
- (b) Have exterior finishes that repel wind, snow, ice, and water intrusion;
- (c) Have roofing with positive water drainage;
- (d) Be structurally sound. A school building shall be considered structurally sound and safe if the building presents no imminent danger or major visible signs of decay or distress;
- (e) Be deemed adequate with respect to this subsection if the building systems are capable of maintaining an acceptable level of room comfort as determined by the Classroom Temperature Psychometric Chart adopted by the Commission and effective on August 27, 2020; and
- (f) Utilize one (1) or more of the following energy efficiency features:
 - (i) Energy-efficient lighting;
 - (ii) Light level control;
 - (iii) Occupancy sensors;
 - (iv) Multiple pane windows; and
 - (v) HVAC setback control.

Section 6. Special Needs Students. School buildings and facilities shall be deemed adequate with regard to this section if the building or facility meets the special needs of

students enrolled in the school as identified in their individualized education plans. If a special needs student enrolls in a district and the educational buildings and facilities that correspond to that student's needs are not adequate for the education and use of that student, the district shall notify the Department. The Department shall work with the Commission to develop a remedy to comply with the student's individualized education plan.

Section 7. Building and Facility Accessibility. The Department shall assess existing educational buildings and facilities with respect to accessibility and special needs requirements. The Department shall deem any building or facility that complies with local accessibility codes and is capable of complying with the Americans with Disabilities Act of 1990 and the Americans with Disabilities Act Accessibility Guidelines as being adequate with respect to accessibility.

Section 8. Adequacy of Educational Space for Required Programs.

Educational buildings shall provide adequate educational space. Educational space shall be deemed adequate if a district is able to provide the educational programs required by Wyoming Statute § 21-1-101. If a district is unable to provide the required programs because its educational space is inadequate, it shall immediately notify the Department and provide a detailed report explaining how the current space is not adequate for the delivery of the required educational programming. In the event the Department receives such a report, it shall make recommendations to the Commission evaluating the deficiency and suggesting remedies to alleviate the situation. The Department may satisfy its obligation under this section by utilizing the assessment of the adequacy of existing school buildings and facilities in developing its recommendation to the Commission.

(a) Instructional spaces shall be sufficient for the required educational programs. Temporary educational space shall not be considered in evaluating Subsections (b) through (e) of this Section.

(b) Elementary school buildings shall provide the following educational spaces:

(i) General classrooms.

(ii) Space for specific curriculum. Buildings shall have space adequate to deliver the required educational program for the following subjects at the elementary school level, whether in general classrooms or specialized spaces:

(A) Art;

(B) Music;

(C) Science; and

(D) Other parts of the required state educational program necessitating specialized instructional space.

(ii) Physical education spaces. Physical education space shall include:

(A) A gymnasium or multipurpose space; and

(B) A playfield and playground.

(c) Middle school and high school buildings shall provide the following types of educational spaces:

(i) General classrooms;

(ii) Science classrooms. Science classrooms shall:

(A) Have adequate lab space to deliver the required educational program;

(B) Have adequate infrastructure to support the equipment necessary to deliver the required educational program; and

(C) Be equipped with code required safety equipment.

(iii) Fine and performing arts spaces. Fine and performing art spaces shall include adequate space capable of being used to deliver the required Fine and Performing Arts Standards.

(iv) Career and technical education (CTE) space. Middle and high schools shall have adequate space to deliver the required CTE standards.

(d) Middle schools shall provide or have access to sufficient facilities capable of delivering the required physical education standards:

(i) A gymnasium with a basic scoreboard capable of tracking score, time, and period;

(ii) A playfield. Standard playfields are natural seed or sod with an automatic irrigation system. Districts may opt for alternative surfaces, such as turf, but alternative surfaces exceed these adequacy standards unless the Commission approves the use of an artificial surface based on a lifecycle cost analysis comparing the cost of maintaining turf and a natural seed or sod surface; and

(iii) Locker rooms are not mandatory, but, when present, may include the following items without exceeding these adequacy standards:

(A) Lockers and benches;

(B) Shower facilities; and

(C) Restroom facilities.

(e) High schools shall provide or have access to sufficient facilities capable of delivering the required physical education standards:

(i) A gymnasium with a basic scoreboard capable of tracking score, time, and period;

(ii) A soccer or football field; and

(A) Standard soccer or football fields are natural seed or sod with an automatic irrigation system. Districts may opt for alternative surfaces, such as turf, but alternative surfaces exceed these adequacy standards unless the Commission approves the use of an artificial surface based on a lifecycle cost analysis comparing the cost of maintaining turf and a natural seed or sod surface;

(B) The field may have football goal posts and/or fixed soccer goals;

(C) A basic scoreboard capable of tracking score, time, and period; and

(D) Additional features such as bleachers, upgraded scoreboards, concession stands, and field houses are allowed but exceed these adequacy standards.

(iii) Track and field facilities;

(A) High schools designated 3A and 4A in track and field may have up to eight (8) lanes with running surface width of thirty feet (30');

(B) High schools designated 1A and 2A in track and field may have up to six (6) lanes with running surface width of twenty-three feet (23');

(C) Allowable surfaces include synthetic impermeable textured surfaces, dirt, cinder, or asphalt;

(D) One of the "D" areas of the track infield may have a surface matching the athletic track; and

(E) Facilities to conduct field events, are not mandatory, but, when present, may include the items listed in this subparagraph without exceeding these adequacy standards. To the extent a district opts to include field event facilities, those facilities should be located in an appropriate area on the available site, use appropriate surfaces for the intended use, and be constructed consistent with National High School Field Standards. Districts may build facilities in excess of those allowable under this subparagraph, however those facilities exceed these adequacy standards. The allowable facilities include one (1) of each of the following:

(I) Two-way long jump;

(II) Triple jump runway with a landing pit at each end;

(III) Shot put pad;

(IV) Discus pad with cage;

(V) Pole vault runway and/or vaulting box;

(VI) Landing area; and

(VII) High jump approach and landing area.

(iv) Locker rooms are not mandatory, but, when present, may include the following items without exceeding these adequacy standards:

(A) Lockers and benches;

(B) Shower facilities; and

(C) Restroom facilities.

(f) All school buildings shall provide or have access to infrastructure, fixtures, and storage necessary to deliver the required educational program. “Infrastructure” does not include furniture or other furnishings.

(i) Educational spaces shall have the infrastructure and fixtures necessary for the normal activities of the required educational programs offered in the room and appropriate storage for classroom materials or access to appropriate storage.

(ii) Administrative, educational support, and facility support spaces in educational buildings shall have the minimum infrastructure and fixtures required for the necessary functions performed within. The following spaces, if present, should have the minimum infrastructure and fixtures needed to perform their necessary functions:

(A) Administrative offices;

(B) Student health, counseling and educational support space for the delivery of student health, counseling, and testing programs. The student health or nurse’s suite may have space to isolate sick students. It shall include secure storage for records, medications, and supplies, and a working communications system. The student health or nurse’s suite shall have a connected accessible restroom;

(C) Faculty workspace or teachers’ lounge, which may have more than one function, and may include a break area with a kitchenette;

(D) Network distribution space, which shall be accessible, securable, well-ventilated, temperature-controlled to accommodate routers, switches, servers and other devices to support school technology operational needs;

(E) Technology support space(s), which shall be sufficient to store and/or service user devices;

(F) Library, media, and research center, which shall have internet connectivity and fixtures, equipment, technology, and other resources necessary to provide the statewide educational program;

- (G) Maintenance or janitorial space, which may include janitorial sinks;
- (H) Assembly space, circulation space, and entry vestibules; and
- (I) Enough space, equipment, and storage necessary to provide regular meals to students during the school day.

(g) School buildings shall have plumbing fixtures in the minimum number as shown below in the chart adapted from the 2018 International Building Code.

Water Closets		Lavatories	
Male	Female	Male	Female
1 per 50		1 per 50	

(h) Alternate delivery methods. Notwithstanding Section 7(b)-(g) of this chapter, if a school district chooses to use an alternate delivery method for instruction, any space used for the alternate method shall be considered adequate so long as the district can deliver the required state educational program.

(i) For schools that intend to organize and operate more than one of the preceding school types on a single site or within a single building, each portion of the school shall meet the minimum standards for the grade levels served.

(j) Rural schools. Notwithstanding Section 7(b)-(f) of this chapter, rural schools are not required to have any of the spaces identified above provided that they have sufficient general classrooms.

Section 9. Capacity and Square Footage Requirements.

(a) The following methodologies are incorporated by reference in these Commission rules:

- (i) Enrollment Projection Methodology adopted by the Commission and effective on August 27, 2020;
- (ii) Capacity Calculation Methodology, adopted by the Commission and effective on August 27, 2020; and
- (iii) Maximum Allowable Educational Building Square Footage Methodology, adopted by the Commission and effective on August 27, 2020.

(b) A district-initiated project or element exceeds these adequacy standards if:

- (i) It results in square footage in excess of the amount calculated under paragraph (a)(iii) of this section;

(ii) It increases the capacity of a building or facility which had a pre-project capacity score of less than one hundred percent (100%) as calculated under paragraph (a)(ii) of this section; or

(iii) The project results in a ratio of district non-educational to educational square footage, as calculated in W.S. § 21-15-109(c)(vii)(A), that exceeds twenty-one to seventy-nine (21:79).

Section 10. Technological Capacity Criteria. Any school building or facility capable of being utilized to provide the required educational program under the state education technology plan is deemed adequate with respect to this section. An educational building or facility shall have technology infrastructure to support all aspects of the educational, operational, and administrative processes, with access to internet connectivity and telecommunications services.

Section 11. Adequacy Standards for Alternative Schools.

(a) Net educational space, at minimum, shall equal sixty-seven (67) sq. ft. per student. Because of the diversity of teaching strategies and the selective use of instructional areas, no designated type or size of space usage shall be mandatory, however the district must have access to sufficient space to deliver the required educational program.

(b) For alternative schools on an independent site, the educational facilities shall comply with the following provisions in this Chapter: §§ 3; 4(c)(iii), (iv), (vi), (vii); 5; 6; 7; 9; and 10.

Section 12. Site Security. Security features included in the Facility Design Guidelines do not exceed these adequacy standards. School buildings shall have:

- (a) The following locking systems and hardware:
 - (i) Locks on the inside of classroom doors;
 - (ii) Exterior door locks; and
 - (iii) Door keying systems;
- (b) The following access control features:
 - (i) A single point of entry for visitors;
 - (ii) A secured vestibule;
 - (iii) Main entry control systems; and
 - (iv) A visitor management system;
- (c) The following communications systems:

- (i) Two-way communication; and
- (ii) Mass notification systems;
- (d) The following site and perimeter features:
 - (i) Site landscaping;
 - (ii) Site vehicle barricades;
 - (iii) A secure site perimeter to protect students from hazards and to discourage unauthorized access to the campus;
 - (iv) Clearly marked loading, unloading, drop-off zones, and fire zones;
 - (v) Security signage; and
 - (vi) Site lighting;
- (e) Video surveillance at the following locations, with recording capability in place:
 - (i) Main entry and other building entrances, with both front and back views of approach; and
 - (ii) Key exterior and interior areas, including but not limited to:
 - (A) The area outside restrooms, locker rooms, counseling offices, and administrative offices,
 - (B) Bus drop-off and pick up areas;
 - (C) Stairwells;
 - (D) Main hallways;
 - (E) Cafeteria;
 - (F) The entrance to gymnasium and athletic fields;
 - (G) Parking lots; and
 - (H) Library;
- (f) The following egress and refuge features:
 - (i) Classroom doors constructed of durable material; and
 - (ii) The ability to lockdown the following areas:

- (A) All classrooms;
- (B) Main entrances;
- (C) Library; and
- (D) Gymnasium.

Section 13. Nonstudent-related buildings and facilities. All nonstudent-related buildings and facilities shall comply with the following provisions in this Chapter: §§ 3, 4(c)(v) and (vi), 5, 7, and 10, as applicable. Any building or facility other than a student-related or nonstudent-related building or facility exceeds these adequacy standards.

Chapter 9

Implementation of Remedies and Project Management

Section 1. Authority. This Chapter is promulgated pursuant to Wyoming Statutes 21-15-114(a)(xv), 21-15-117, 21-15-118(c) and 21-15-123(f)(v).

Section 2. Relationship Between the State Construction Department and School Districts.

(a) Master Memoranda of Understanding (MOU's) and Project Agreements shall be developed to establish the working relationship between the Department and the district.

(i) Master MOUs. The Master MOU defines the duties and responsibilities of the Department and the district for non-capital construction functions, including, but not limited to, major building and facility repair and replacement, facility planning, condition assessments, and annual reporting.

(ii) Project Agreements. Project Agreements define the duties and responsibilities of the Department and the district for construction and renovation of school buildings and facilities, including, but not limited to, determination of the most cost effective remedy, land purchase, design, procurement and construction. No work or disbursement of funds shall proceed on projects until a Project Agreement is executed between the Department and the district. Districts shall not expend any appropriated project funds until authorized by the Director.

(b) Departmental Review. The Department shall review school construction projects for compliance with uniform statewide adequacy standards. This review shall be ongoing throughout the planning, budgeting, design, and construction process.

Section 3. Program Planning. Upon determination of the most cost effective remedy, the Department shall develop a detailed scope of the work and estimated budget for the remedy in consultation with the district. The scope of the work and estimated budget shall form the basis of any future budget request. A request to change the scope of the work shall be presented to the Commission along with all financial implications and justification for the change. If approved by the Commission, the Department shall amend the scope of work and estimated budget.

Section 4. Prototypical Designs.

(a) To further the concept of value-added projects, the Commission encourages using prototypical designs and prototypical components. When appropriate and feasible to meet the needs of a district, prototypes may shorten design time, simplify value engineering, decrease costs, and increase construction efficiency.

(b) The Department shall maintain a database of school floor plans that districts may consider for re-use.

(c) School districts may consider the use of prototype designs (past designs) from the Department database or other designs that may be available from architects. The district may utilize the services of a design consultant to determine whether prototype designs may be appropriate or whether modifications of prototype plans are feasible to meet the needs of the district.

Section 5. Determination of Delivery Method.

(a) Projects shall be designed and constructed using the design-bid-build delivery method unless extenuating circumstances exist that necessitate the adoption of an alternate method. District requests for the Commission to approve an alternate design and construction delivery method shall explain the reason(s) an alternate project delivery method is preferable to the design-bid-build delivery method.

(b) The Commission shall consider the following non-exclusive and non-prioritized list of factors in making a determination to allow alternate design and construction delivery methods:

- (i) Size and complexity of the remedy;
- (ii) Budget and availability of funds;
- (iii) Urgency of time;
- (iv) Past experience with the delivery method;
- (v) Anticipated cost of the possible various delivery methods;
- (vi) Market conditions, including access to and availability of personnel to provide design or construction services; and
- (vii) District input and recommendations regarding delivery method.

Section 6. Site Analysis and Land Acquisition.

(a) Requests for land acquisition may originate with a request by a district to the Department or as a Department recommendation. The Commission shall determine if there is a need based on capacity, condition, health, safety, determination of the most cost effective remedy, or the best interests of the State.

(i) Many Wyoming schools pre-date the adoption of current standards. School sites which pre-date the original adoption of standards in 2003 may be larger or smaller than the recommended sizes. School sites smaller than these recommendations are presumed to be adequately sited unless the Commission determines otherwise.

- (b) If the Commission determines a need exists, the Commission shall:
- (i) Examine availability of current district land;
 - (ii) If a replacement building or facility renovation or addition, determine if the current site is appropriate;
 - (iii) If new land is required, consider land swaps and acquisition of publicly-owned land or land in conjunction with a development prior to considering other private land.
- (c) If the Commission determines that land acquisition is necessary, the district in consultation with the Department shall conduct an analysis of potential sites or land. Prior to initiating non-confidential site analysis activities the district in consultation with the Department shall obtain a proposed purchase agreement fixing the purchase price and other conditions of purchase, subject to site analysis and due diligence investigation results that are acceptable to the district and Department. Site analysis shall be conducted in accordance and comply with the Commission rules and design guidelines and shall be approved by the Commission. Prior to acquisition the district in consultation with the Department shall conduct a due diligence investigation, which includes the following:
- (i) Legal description of property;
 - (ii) Title commitment;
 - (iii) Two (2) land appraisals (using the average of two if within five percent (5%) of each other, otherwise a third appraisal will be obtained and the average of the two (2) closest appraisals will be used);
 - (iv) Site survey to include soil conditions, traffic patterns, utilities and site topography;
 - (v) Phase 1 environmental assessment;
 - (vi) Annexation and zoning issues;
 - (vii) Local development requirements; and
 - (viii) Preliminary and final plat.
- (d) The Commission may grant a waiver to any of the above due diligence requirements for good cause.
- (e) All phases of the land acquisition process may be kept confidential. Neither the district nor the Commission shall divulge information on proposed land acquisitions prior to such time as all due diligence has been completed and the land purchase price has been negotiated, unless both the Commission and the district consent to the disclosure.

Section 7. Services and Contracts.

- (a) General.
- (i) Districts shall use Commission contracts for capital projects, unless otherwise approved by the Commission and Attorney General's Office.

(ii) Modifications to Commission contracts, including adjustments to further stipulate services and reflect the scope of the particular project, on a project-by-project basis may be submitted to the Department for review and approval in consultation with the Attorney General's Office. Major modifications, as determined by the Department, or alternatives to Commission contracts require approval by the Department, Attorney General's Office, and the Commission.

(iii) Contracts shall be executed by the district and other parties and routed to the Department for its review and approval as to form.

(iv) Contracts modified and executed without the necessary approvals shall not be eligible for State funding.

(b) Owner's Representative.

(i) Owner's representatives are individuals or entities contracted on a project-specific basis to assist the district and State in ensuring the project is managed and completed in accordance with the contracts related to the project.

(ii) The Department shall determine whether an Owner's Representative is necessary, taking into consideration the expense, time, and ability of district and departmental staff.

Section 8. Value Engineering.

(a) Value engineering is a process to achieve the best balance of cost-to-value in projects for districts and the State. In addition to value engineering required by design or construction contracts, the Department shall conduct a value engineering analysis using a collaborative process to objectively consider the best approach to design and construct projects in accordance with Section 12(d) of this Chapter. Value engineering shall include life cycle cost analysis of all major systems in the facility.

(i) Value engineering review shall occur at the schematic design phase (10% Design and the design documents phase (35% Design) or as otherwise determined by the Department. The design of the facility shall conform to value engineering recommendations before it proceeds into the next phase of development unless waived in writing by the Director.

(ii) Value engineering strategies learned on previous projects shall be considered for subsequent projects.

Section 9. Project Closeout. Absent extenuating circumstances, fund balances remaining from project budgets that are unencumbered or unobligated are subject to reversion no later than one year after the date of Substantial Completion.

Section 10. On-site or Off-site Infrastructure.

(a) On-site or off-site infrastructure includes streets, sidewalks, traffic signals, bike and walk paths, electric, gas, water, sewage systems, storm systems, telephone, data, and other facilities approved by the Commission.

(i) On-site infrastructure solely attributable to the needs of the project and of the capacity required to serve the school facility remedy in accordance with the Commission's design guidelines shall be included in the cost per square foot budget for the building.

(ii) The Department shall budget for the cost of the development of on-site or off-site infrastructure solely attributable to the needs of the project and additional infrastructure costs attributable to shared use.

(b) Requests for on-site or off-site infrastructure to be shared with others shall be made by the district in writing and shall include a full description of the project, including the cost of the proposed infrastructure, the functional capacity properly attributable to the needs of the project, contemplated excess functional capacity, and a dedicated source of repayment.

(i) Requests shall be presented to the Department during the initial planning and budgeting for the proposed project. The Department shall make a determination whether further information, such as design engineering or cost data, is required before the request is presented to the Commission for its consideration as part of its budget recommendation. The district shall notify the affected municipality or local governmental entity of the request and of the time and location at which it will be considered by the Commission.

(ii) Requests will only address infrastructure needed for the school building and facility.

(iii) The Department, in consultation with the Attorney General's Office, shall determine if a contractual agreement is required for cost-sharing, repayment, or operation agreement(s) with the affected parties. Cost-sharing or repayment agreements shall include provisions for reimbursement of departmental expenditures for functional capacity beyond the capacity properly attributable to the needs of the project to be repaid to the Department over time with interest. Amounts repaid shall be deposited by the Department into the school capital construction account.

(iv) The functional capacity needs of school buildings and facilities shall take precedence over the needs of others.

(c) If extensions to municipal or other Department-approved utilities are not available or are cost prohibitive, then on-site systems may be constructed.

(d) The district shall notify the affected municipality or other local governmental entity in writing of Commission action taken related to on-site or off-site infrastructure and reasons for the action.

Section 11. Changes to Budgeted Funding.

(a) In accordance with W.S. 21-15-119(c) and W.S. 28-11-301(c)(iv), budgets for prioritized projects may be adjusted by the Commission and transfers between project phases may be made by the Department.

(b) In the event that any particular project budget is or appears to be insufficient to fully fund that project remedy, the following non-exclusive and non-prioritized list of factors shall be considered by the Department in recommending whether, and how, that project will be allowed to proceed with legislative funding:

(i) Verify value engineering recommendations have been followed;

(ii) Verify aspects of the design of the project to identify cost savings which may be generated within the project. In this regard, all parties shall reexamine earlier assumptions in the search for viable, cost-effective and efficient design changes;

(iii) Verify the scheduling, or phasing, of the project to determine if budgeted funds will be required and cost-savings or cost-deferrals may be obtained by that scheduling. Decision-making shall take into account the funding cycles of the Legislature and the uncertainty of future funding.

(c) If these non-prioritized factors are insufficient to achieve project costs within the project budget, including adjustment for inflation, the Commission shall consider the following additional factors:

(i) Change of delivery method;

(ii) Other sources of funding, including funding held by the Commission;

(iii) Delayed start date of the project; and

(iv) Complete or partial re-planning or re-design of the project.

Section 12. Facility Design Standards and Guidelines.

(a) The Commission's Facility Design Standards and Guidelines do not apply to existing school buildings and facilities and shall not be used for evaluating the adequacy of any existing school building or facility.

(b) For all Projects, as defined in W.S. 21-15-111(a)(iv), appropriated by the legislature or funded by the Commission, the Department shall include in the Project Agreement the most recent version of the Commission's applicable Facility Design Standards and Guidelines. The Department shall require that the Facility Design Standards and Guidelines incorporated in the Project Agreement govern the expenditure of state funds for that project for the duration of that project.

(c) In accordance with W.S. 21-15-114(a)(vii), the Commission shall adopt Facility Design Standards and Guidelines for the following types of school buildings and facilities:

- (i) Educational Buildings;
- (ii) Outdoor Physical Education Facilities; and
- (iii) School Bus Maintenance and Parking Facilities.

(d) The Department shall include in the Project Agreement a provision requiring that when the Facility Design Standards and Guidelines are not specific on the type, quantity, or quality of a design element or component, the architect shall select the most efficient and cost effective type, quantity, or quality of the element or component, subject to approval by the Department. The provision shall further provide that if a district opts for an element or component exceeding that approved by the Department, such element or component shall be considered district-initiated and shall not be funded out of the capital construction budget.

(e) The Department shall include in the Project Agreement a requirement that, in the event the legislature funds a project of a type that is not covered by the Commission's existing Facility Design Standards and Guidelines, the architect shall work with the Department to ensure that the design is adequate, efficient and cost effective and shall utilize the Commission's existing Facility Design Standards and Guidelines in doing so to the extent those Guidelines are applicable.

(f) Project Agreements. Project Agreements define the duties and responsibilities of the Department and the district for construction and renovation of school buildings and facilities, including, but not limited to, determination of the most cost effective remedy, land purchase, design, procurement and construction. Prior to the beginning of any Project, as defined in W.S. 21-15-111(a)(iv), the Department and district shall sign a Project Agreement that enumerates what portion of the work is state funded. No work or disbursement of funds shall proceed on Projects until a Project Agreement is executed between the Department and the district. Districts shall not be reimbursed and the Department shall not pay for any work done on any portion of the project prior to the Director's authorization. Furthermore, the Department shall not pay for or reimburse any district for expenses incurred prior to the execution of the Project Agreement and a commission-approved contract with the professional service provider or contractor, with the exception of reasonable owner's overhead expenses.

(g) Districts shall provide to the Department, prior to the commencement of any capital construction project as that term is defined in W.S. 9-2-3001(b)(ii), an opportunity to review the final design, drawings and plans of the project. This review shall include, but is not limited to, consideration of whether the design, drawings and plans of the proposed project utilizes energy efficient best practice techniques and processes. This provision applies to any capital construction project for which the state is required to expend state funds to fully or partially pay for operations, routine maintenance or major maintenance expenses, including state-initiated remedies that include district-initiated elements and district-initiated projects.

(h) The Commission shall incorporate reasonable community and district input and participation for conforming an aesthetic design within the community when a new school

building or facility is designed. The Commission shall defer to the reasonable aesthetic design choices of the district, provided that those design choices do not bring the building or facility to a condition exceeding the Commission's relevant adequacy standards.

Chapter 10

District-Initiated Elements, District-Initiated Projects, and Local Enhancements

Section 1. Applicability. This Chapter applies to all district-initiated projects and elements at the time of the renovation, construction, replacement, repair, or other improvement of or to any school building or facility.

Section 2. State responsibility to pay for district-initiated elements and projects; identification of district-initiated projects as local enhancements.

(a) State capital construction funds shall not be spent on district-initiated elements or projects. Costs associated with obtaining leadership in energy and environmental design (LEED) design certification and commissioning the school building or facility in accordance with that certification shall be considered district-initiated elements.

(b) A district may opt, at any time, to implement a district-initiated project. A district-initiated project shall be considered a local enhancement to the extent that, when completed, the building or element exceeds the Commission's relevant adequacy standards, whether for a design feature(s) or additional square footage. Regardless of any present or future recognition of the district-initiated element or project as not exceeding the Commission's adequacy standards, neither the State, the Department, nor the Commission shall reimburse the district the cost of a district-initiated element or project.

(c) The Department shall maintain a record identifying all local enhancements.

Section 3. Cost allocation between State-initiated remedies and district-initiated elements.

(a) If a district intends to include a district-initiated element in the design of a state-initiated remedy, the district shall notify the Department prior to design. Preliminary information shall indicate the nature, scope, cost and schedule of the district-initiated element. The district bears the responsibility for consulting the Commission's adequacy standards and the Facility Design Standards and Guidelines and identifying elements that exceed those documents. The Department shall make reasonable efforts to help the district identify any design elements in excess of the relevant guidelines or standards through the value engineering process and the notice to proceed. The Commission shall consider any reasonable aesthetic design requests made by the district in accordance with Chapter 9, Section 12(h) of these Rules. Notwithstanding this requirement, the district is ultimately responsible for the identification of district-initiated elements, and a design element shall not be considered state-initiated merely because the district fails to identify it as district-initiated, regardless whether the Department has reviewed or approved the plans. The funding and construction of the district-initiated element shall proceed as follows:

(i) The Department shall determine the appropriate method of allocating costs between the district-initiated element and the legislatively-funded portion of the project.

(ii) The district shall bear all costs of the district-initiated element, including all design and other consultant costs and construction costs attributable to the element. In no event shall state funds be spent on purchasing, constructing, installing, or furnishing a district-initiated element.

(iii) If a district opts to go forward with a district-initiated element, it shall bid the element separately as an alternate, with the enhancements calculated as a percentage of the overall project cost, or a combination thereof. The allocation for costs associated with a local enhancement shall be identified and split on a percentage basis as follows:

(A) When the district-initiated element is the result of the inclusion of a design feature(s) which exceeds or fails to comply with the Facility Design Standards and Guidelines or is not in compliance with the recommendations of value engineering made subject to Chapter 9, Section 8, it shall be bid as a construction alternate. The construction alternate shall include all costs attributable to the district-initiated element plus all costs for modifications to the legislatively-funded portion of the project that are attributable to the district-initiated element.

(B) When the district-initiated element results in the inclusion of additional square footage of school building and facilities such that the school building or facility exceed the total square footage allowed by the Commission's adequacy standards, the difference between the allowable square footage and the project total square footage shall be computed as a percentage. Project costs will be attributed on the basis of the percentage as identified, or as subsequently revised in the event of a change in the square footage. When changes affect the entire project and result in additional costs, the costs shall be shared based on this percentage.

(b) At the conclusion of a project that consists of or includes a district-initiated element(s), the Department shall evaluate the district-initiated element(s) with the Commission's Adequacy Standards under Chapter 3 of these Rules. The Department shall identify any district-initiated element that exceeds the Adequacy Standards as a local enhancement, designate it as such, and exclude the identified local enhancement from its calculation of district square footage for the purpose of calculating major maintenance payments.

(c) A district-initiated element shall be considered to exceed the Commission's adequacy standards unless the district petitions the Commission under Section 4 of this Chapter.

(d) The Department shall maintain a record of local enhancements made by school districts. These records shall include a list detailing the size and nature of building design features incorporated into capital construction projects as a result of past local enhancements. The list shall be reviewed by the Commission when acting in accordance with W.S. 21-15-115(c). The Department shall no less than once every four (4) years undertake efforts to ascertain whether national or regional research exists as to whether or not any of the enhancement categories identified in the list specified under this paragraph have a positive demonstrable effect upon delivery of education.

(e) If the Department's research conducted pursuant to subsection (d) of this Section indicates that a category of enhancement may have a positive demonstrable effect upon delivery of education, the Department shall gather available evidence and present that evidence along

with a recommendation to the Commission. The Department may consult with the Wyoming Department of Education, districts, and other stakeholders to consider whether any particular type of local enhancement has a positive demonstrable statewide effect upon delivery of the prescribed state educational program. Following presentation and analysis of available evidence provided to the Department, the Commission shall determine whether the identified local enhancements or category of local enhancements have a positive demonstrable statewide effect upon the delivery of the educational program. If the Commission determines that such a demonstrable effect exists, it shall make a determination whether and how such local enhancements should categorically be incorporated into the statewide adequacy standards.

Section 4. District petitions to the Commission for acknowledgment that a local enhancement no longer exceeds the Commission's adequacy standards or that a local enhancement should be incorporated into the Commission's adequacy standards.

(a) A space or facility deemed a local enhancement shall remain a local enhancement until such time the Commission acknowledges that the space or facility fits within the Commission's adequacy standards, subject to the following provisions.

(i) During facility planning, the Department shall work with districts to determine whether any enhancement designations should be removed because:

(A) The identified local enhancement no longer exceeds the Commission's adequacy standards;

(B) The district claims the local enhancement in question has a positive demonstrable effect upon delivery of the prescribed state educational program on a statewide basis and the district has evidence tending to show that that assertion is correct; or

(C) The Commission's methodologies change or the district's student population has grown to an extent such that enhanced square footage no longer exceeds the educational square footage allocated to the district under Chapter 3, Section 8 of these Rules.

(ii) At the completion of the facility planning process, the Department shall present to the Commission a list of local enhancements that should no longer be designated enhancements. If the Commission approves the list, the Department shall remove the enhancement designation from all included elements, square footage, or buildings, but maintain the record for historical reports to the Legislature.

(b) Any district claiming that a local enhancement has a positive demonstrable statewide effect upon delivery of the prescribed state educational program may petition the Commission for a review of the status of that type of local enhancement. The district shall provide evidence of that positive demonstrable effect to the Department in the form of statistical analysis that establishes a causative effect between the identified local enhancement and any purported positive demonstrable effect.

(c) Following presentation and analysis of the district's evidence under subsection (b) of this Section, the Commission shall determine whether the identified local enhancement has a positive demonstrable statewide effect upon the delivery of the educational program. If the Commission determines that such a demonstrable effect exists, it shall make a determination whether and how such local enhancements should categorically be incorporated into the statewide adequacy standards.

(d) In no event shall the State, the Department, or the Commission reimburse a district the cost of the element, square footage, building, or facility when the Commission removes the enhancement designation.

Chapter 1 General Provisions

Section 1. Authority. -This Chapter is promulgated pursuant to Wyoming Statute 21-15-114(a)(xv).

Section 2. Definitions. As used in these rules and all project agreements entered into by the Department:

(a) —“~~Aggrieved party~~” means a school district whose legal rights, duties or privileges have been harmed by an act of the Commission and which is entitled to a contested case proceeding as provided by law.

(b) —“~~Capital Construction~~” means those remedies receiving legislative funding. Capital Construction does not include major building and facility repair (major maintenance) funding.

(a) “Adequate” means a building, room, or other educational space is both sufficient and appropriate, as those terms are defined in this section.

(b) “Anticipated Hard Bid” means the funding limit of the total amount of proposals or bids to achieve capital construction work or the Work, on and off-site, unless identified otherwise in the budget worksheet including prime bids, multiple prime bids, allowances, alternates and other costs of the Work.

(c) “Appropriate” means a building, room, or other educational space that has the necessary infrastructure, storage, fixtures, and critical adjacencies to be compatible with the delivery of the required educational program.

(d) “Bidding Contingency” means the funding amount identified by the Owner and design professionals within the Anticipated Hard Bid to accommodate market variances or estimating errors.

(e) “Budget Worksheet” means the total funding structure of State Funds for a School Facilities Division capital construction project. The worksheet represents all project funds available through the State Construction Department for a project.

(~~ef~~) “Closed” means any school educational building or facility that is not currently being used and is capable of being reopened.

(~~dg~~) “Cohort Survival Calculation” means the rate of progression for each grade (K through 11) to the next grade (1 through 12) using the ten-year average for each grade progression.

(~~eh~~) “Component Level Recommendations” means recommendations by the

Commission to implement remedies to address ~~school~~educational building and facility condition by repairing or replacing components when it is determined by the Commission that it is not feasible for districts to do so solely with major maintenance funds.

(i) “Construction Contingency” means funding identified to address unanticipated or unknown costs identified subsequent to the proposal or bidding process to achieve the Work. Construction Contingency is not a bidding contingency.

~~(fj)~~ “Contractor” means any person who is a party to a contract with the Commission or a district to construct, erect, alter, install or repairaccomplish the Work of any Commission approved remedy.

(k) “Critical adjacency” refers to an educational, administrative, educational support, or facility support space within an educational building that must be located near another space in order to be functional as intended.

~~(gl)~~ “Department” means the State Construction Department.

~~(h) —“Design Charrette” means an interactive and collaborative process where participants (school district, architects and others) work in a focused and sustained effort to develop the basis for a feasible building design that meets the educational, budgetary and schedule goals for the project.~~

(m) “Design Contingency” means funding identified to address unanticipated costs associated with services provided by design professionals.

~~(jn)~~ “Design Professionals” means the architect or other professional contracted with the district to design a remedy.

(o) “District” means any school district established pursuant to the laws of Wyoming excluding community colleges and community college districts.

(p) “District-initiated” refers to any renovation, construction, replacement, repair or other improvement of or to any school building or facility that is not a State-initiated remedy or major maintenance included in the district’s facility plan. This includes, but is not limited to, a district’s decision to include in a State-initiated remedy any design features or components contrary to the recommendations of value engineering performed in accordance with the Commission’s Facility Design Standards and Guidelines unless waived by the Department or excepted by the Commission in accordance with Chapter 1 Section 10 of these Rules, in excess of the Commission’s Facility Design Standards and Guidelines unless excepted by the Commission in accordance with Chapter 1 Section 10 of these Rules, or that add square footage in excess of Square Footage Calculator whether through construction, renovation, or acquisition of additional square footage.

(q) “District-initiated element” means any component, design feature, or square footage that is district-initiated and occurs in conjunction with a State-initiated remedy.

(r) “District-initiated project” means any project that is district-initiated and occurs independent of a legislative appropriation or Commission funding.

(js) “Educational specifications or “Ed-specs” means those specifications used to define the programmatic, educational and functional goals of the educational facility.

(t) “Elementary school” means any school with a grade configuration of kindergarten through sixth grade, or any combination thereof.

(ku) “Facility Condition Assessment” (FCA) means the systematic process of collecting measured data, or making observations relative to the physical condition of a building or facility or one or more of its components or group(s) of components and recording the results.

(lv) “Facility Condition Index” (FCI) means a numerical rating or building condition score based on measured data or assessment of physical components or systems. The condition of a building is expressed as a ratio of the Cost to Repair Deficiencies, or “Deferred Maintenance” (DM) divided by the Current Replacement Value (CRV) of the building. The formula is:

$$FCI = \frac{\sum DM}{\sum CRV}$$

~~(m) “Facility Condition Needs Index” (FCNI) means a numerical rating or score assigned to a building represented by the FCI measured components and additional data comprised of technology readiness (TECH), illumination (ILLUM), and indoor air quality (IAQ). The FCNI is expressed as a ratio of the Cost to Repair Deficiencies or “Deferred Maintenance” (DM) plus the cost of the three additional systems divided by the Current Replacement Value (CRV) of the building plus the cost of the building improvements associated with the three systems. The formula is:~~

~~$$FCNI = \frac{\sum DM + DM_{ILLUM} + DM_{TECH} + DM_{IAQ}}{\sum CRV + CRV_{ILLUM} + CRV_{TECH} + CRV_{IAQ}}$$~~

(w) “High school” means any school with a grade configuration of ninth or tenth grade through twelfth grade.

~~(nx) “Informal Review” means the opportunity afforded a school district under W.S. 21-15-116(f) to consult with the Department or Commission regarding an action of the Department or Commission prior to seeking administrative review filing a request for a contested case proceeding before the Commission.~~

(oy) “Kick-off Meeting” means a meeting(s) between personnel of the Department and personnel of the district, in addition to such other persons as may be necessary to accomplish project planning.

(pz) “Leased Facilities” means any land, building or equipment or other capital asset that has been leased by or to a district.

(aa) “Major Maintenance” is a common reference term that means “Major building

and facility repair and replacement” as that term is defined in W.S. § 21-15-109(a)(iii).

(bb) “Middle school” means any stand-alone school or campus with any grade configuration that includes both seventh and eighth grade, but does not include the full range of grades down to kindergarten or up to twelfth grade. Districts may use an alternative descriptor such as “junior high school.”

(cc) “Most Cost Effective Remedy” means the most cost effective method of remediation as that phrase is used in W.S. 21-15-117(b).

(~~q~~dd) “Mothballed building or facility” is any district building or facility which is closed and not operational, has the potential to be re-opened, is not being replaced under a district’s facility plan approved by the Commission, is not determined surplus within the district’s facility plan, and is maintained in good condition, for a maximum of three (3) years without additional approval from the Commission. Mothball status can be renewed by Commission approval after the initial three (3) years.

(ee) “Nonstudent-related buildings and facilities” means any building or facility that is either an “office building” or a “warehouse building,” as those terms are defined in W.S. 21-15-109(a)(iv) and (a)(viii).

(~~f~~ff) “Payable-Leased Facilities” are those facilities which are used by the district to provide the approved educational programs as prescribed by W.S. 21-15-109(c)(i)(B). -These facilities shall be included in the district’s gross square footage totals.

(~~g~~gg) “Permanent Modular Building” means a pre-built, factory constructed and assembled school educational building or facility that is transported in an assembled condition to the location on which the building or facility is to be situated that is placed on a permanent foundation, and that is expected to be used by the district for its designed lifetime.

(hh) “Primarily used” means more than fifty percent (50%) of a school building or facility is used in connection with educational programs, district administrative functions, or storage of equipment, materials, and other district property.

(ii) “Project Audit” means a contract compliance audit by an independent auditing expertise of project budgets and expenditures undertaken in accordance with W.S. 21-15-123(f)(v)(J).

(~~t~~ji) “Project budget” means the amount of legislative funding allocated to a specific remedy. The project budget for any specific remedy shall be an amount determined by the Commission to be sufficient to fund the total project cost of the remedy. -Funds allocated to a specific remedy remain State funds and are not an entitlement of any district.

(kk) “Rural school” means a school located outside the main metropolitan area in which the district is located and from which the district does not bus students into the metropolitan area.

(ll) “Separate Account” means an individual account held by the district for depositing and expending major building and facility repair funds. -These funds shall not be commingled with any other funds or accounts.

(mm) “State-initiated remedy” means any renovation, construction, replacement, repair, or other improvement of or to any school building or facility initiated by the legislature through an appropriation or the Commission through a funding decision, including major building and facility repair and replacement undertaken pursuant to a district’s facility plan. The elements and features of a state-initiated remedy are limited to those provided in the Commission’s Facility Design Standards and Guidelines, and the addition of any element or feature not included in those guidelines is not considered state-initiated.

(nn) “Sufficient” means that a building, room, or other educational space is of such a size that it has enough space to enable delivery of the required educational program.

(oo) “Surplus building” means a building that is not within the commission’s adequacy standards due to a renovation, construction, replacement, repair, or other improvement of or to any school building or facility initiated by a school district, an approved construction or renovation project, or by changes in school population.

(pp) “Temporary building” and “modular building” are defined interchangeably with “portable building” as that term is defined in W.S. 21-15-109(a)(v).

(qq) “Total project cost” means all project costs, including but not limited to: land acquisition, site preparation, design, construction, contingencies, FF&E, special studies (e.g. traffic, lighting), surveys, environmental assessments, geotechnical investigations, demolition, commissioning, owner’s representative fees, testing and inspections, plan review, and building permit/occupancy fees.

(rr) “Work” means the achievement of the work of a project including equipment, material and labor specified in a construction agreement.

Section 3. Chair.

(a) The Chair shall preside at all meetings of the Commission.- The Chair shall appoint all committees and perform such duties as the statute, rule or the Commission specifies.

(b) In the absence of the Chair at any meeting of the Commission, the Vice-Chair shall serve as Acting Chair of the meeting. -If both the Chair and Vice-Chair are absent or otherwise unable to preside over the meeting or perform a specified duty, the Chair shall designate a commissioner to serve as Acting Chair for the meeting or task.

Section 4. Secretary; Minutes; Books and Records.

(a) The Administrator of the School Facilities Division shall function as Secretary to the Commission, and the Department shall administratively implement the Commission’s rules.

The Secretary for the Commission shall conduct and care for all the correspondence of the Commission and keep and maintain the minutes of all the meetings of the Commission and the books and records of the Commission. -The Secretary shall provide notice of the time and place of all meetings of the Commission, including an agenda of items to be discussed, to each Commissioner.

(b) All orders and final decisions of the Commission, the minutes of all its sessions, meetings and proceedings, and the Commission's rules shall be kept by the Secretary for permanent public record and shall be open for public inspection at the office of the Department, ~~700 West 21st Street, Cheyenne, WY 82002.~~ listed on the Department's website. The Secretary may certify to the correctness of any copies of such documents.

Section 5. Meetings; Attendance by Telecommunication; Quorum.

(a) The Commission shall meet at least quarterly and at other times as necessary to transact its business.

~~(b) Meetings of the Commission are open to the public, except for those meetings or portions of a meeting that may be conducted in executive session pursuant to W.S. 16-4-405.~~

~~(c) Commissioners may attend meetings using telephonic or other means of telecommunication.~~

~~(d) Meetings and hearings shall be separate functions.~~

~~(e) A majority vote of the members of the Commission present at a meeting shall be required for approval of any actions of the Commission.~~

Section 6. Order of Business; Agendas.

(a) An agenda shall be prepared by the Secretary and approved by the Chair. -The agenda shall set forth all matters to come before the Commission at the meeting and indicate for each matter whether it requires action to be taken by the Commission at the meeting. -Before each meeting of the Commission, the Secretary shall circulate to all Commissioners the agenda so prepared by the Secretary and approved by the Chair. ~~A public comment period may be included in the agenda at the discretion of the Chair.~~

(b) Other than for purposes of public comment, persons desiring to have a matter brought before the Commission shall make ~~such request~~ their requests through the Department ~~who will.~~ Department staff shall work with the Secretary and the persons making the request to determine how and when it is appropriate that the matter be presented to the Commission. The Secretary shall consult with the chairman of the Commission when making this determination.

Section 7 Recusal.

(a) A Commissioner shall recuse himself from all proceedings relating to a matter if

he or she has a personal or private interest in the matter. -The Commissioner shall recuse himself him or herself by serving a written or verbal notice of recusal upon the Chair, who shall notify all other Commissioners and any parties involved in the matter. On and after the date of recusal, the recused Commissioner shall not participate in any deliberations, decisions or other actions of the Commission relating to the matter.

(b) A recused Commissioner may attend hearings and other proceedings related to a recused matter as a member of the public. -The Commissioner may also attend any Commission meeting at which topics relating to the matter arise and participate in the deliberations, decisions and other actions of the Commission on topics unrelated to the matter upon which recusal has occurred.

Section 8. Signing of Contracts.- Contracts, agreements, memoranda of understandings and other documents of the Commission may be signed by the Chair, or by a designee of the chair. The Secretary shall sign only those contracts, agreements, memoranda of understanding or other documents of the Commission for which the Commission has delegated its authority to the Secretary. The Secretary may further designate a member of the staff to sign on his or her behalf.

Section 9. Public Records Practices.

(a) All requests for public records from the Commission shall be in writing and processed according to this Section. For purposes of the Wyoming Public Records Act, the Secretary is the custodian of all public records of the Commission.

(b) The Commission incorporates by reference the following uniform rule:

(i) Chapter 2 – Uniform Procedures, Fees, Costs, and Charges for Inspecting, Copying, and Producing Public Records, adopted by the Department of Administration and Information and effective on September 6, 2016, found at: <https://rules.wyo.gov>;

(ii) The Commission has determined that incorporation of the full text in this rule would be cumbersome or inefficient given the length or nature of the rule;

(iii) The incorporation by reference does not include any later amendments or edition of the incorporated matter beyond the applicable date identified in subsection (b)(i); and

(iv) The incorporated rule is maintained at the Department’s Cheyenne office and is available for public inspection and copying at cost at the same location.

Section 10. — Exceptions.

~~The Commission may grant exceptions to guidelines, standards, or methodologies on a case by case basis. The Department shall create a thorough written record supporting the granting or denial of every exception request. The Commission shall at a minimum consider the reasons why the exception is being requested, the nature of the request, any cost implications of the request, and whether alternative means exist to accomplish the purposes of the request.~~

~~Exception requests shall be initially presented to the Department for its consideration and recommendation to the Commission.~~

Chapter 2

Rules of Practice and Procedure for Contested Case Proceedings; Exception Requests

Section 1. Authority.- This Chapter is promulgated by the Commission under the authority of Wyoming Statutes 16-3-102(a)(i);(f), 16-3-102(d), 21-15-114(a)(xv), 21-15-116(e) and 21-15-116(f).

Section 2. Application of Rules. -This Chapter shall apply to district requests for exceptions from the Commission, contested case proceedings brought before the Commission, and informal reviews authorized by Wyoming Statutes and brought before the Commission ~~Department~~ by a properly aggrieved party ~~district~~.

Section 3. Exception Requests.

- (a) The Commission may grant exceptions on a case-by-case basis to the following:
- (i) Building capacity based on a most cost effective remedy study;
 - (ii) Budget recommendations;
 - (iii) Allowable square footage calculator;
 - (iv) A determination of the Department rejecting a request to use a non-Commission-approved contract as described in Chapter 9 Section 7(a)(ii);
 - (v) A determination of the Department rejecting a request for a value engineering waiver as described in Chapter 9 Section 8(a)(i); and
 - (vi) Specific requirements of the Design Standards and Guidelines.
- (b) A district making an exception request shall include documentation explaining the exception request. Such documentation should include, at a minimum:
- (i) The precise nature of the exception requested;
 - (ii) The justification for the exception request; and
 - (iii) Necessary supporting documentation as identified by the Department.
- (c) The Department shall create a thorough written record supporting the granting or denial of every exception request. Exception requests shall be initially presented to the Department for its review. The Department shall then present the request to the Commission with a recommendation at the next meeting for which the submission of additional Commission matters is timely.

(d) The Commission shall at a minimum consider the reasons why the exception is being requested, the nature of the request, any cost implications of the request, whether granting the request comports with the Commission's statutory duties and authority, and whether alternative means exist to accomplish the purposes of the request.

Section 4. Informal Review Proceedings.

(a) Districts ~~may~~shall request an informal review before the Department ~~or the Commission~~Director before pursuing a contested case review. ~~The time period for filing a formal request shall be tolled for~~begin when the period of time~~district receives a decision from the date of that request until the conclusion of~~Department Director with respect to the informal review.

(b) A district requesting an informal review shall do so, in writing, to the Director of the Department. The request shall contain:

- (i) The decision of the ~~Commission or the~~ Department the district would like reviewed;
- (ii) ~~A brief~~An explanation of why the decision should be reviewed;
- (iii) ~~Any additional facts the district would like to be considered;~~ and
- (iv)iii) The legal authority upon which it is believed a decision was made in error.

(c) ~~A decision or action of the~~ The Department shall be reviewed in the first instance by the Director. If the district is unsatisfied by the Director's review, it may ask that the decision be reviewed by the Commission.

(d) ~~Informal reviews before~~reject any request that lacks any of the required elements listed under Section 3(b) of this chapter. Such rejection does not constitute a final administrative decision of the Department shall be held either at the Department's Cheyenne office, or, if agreeable and is not a prejudicial decision with respect to the district, via video or teleconference. The review shall be scheduled at the earliest convenience of the district and the Department, but in no event later than thirty (30) days after the request is made unless otherwise agreeddistrict's right to by both parties in writing.

~~(e) — Informal reviews before the Department shall proceed as follows:~~

~~(i) — Department staff will present the information and basis re-file its request for its decision or action; informal review.~~

~~(ii) — The district will present any additional facts and authority upon which it believes the Department acted in error; and~~

~~(iii)(d) The Director shall issue his a written decision as soon thereafter as reasonably practicable. The Director shall confirm his decision, in writing consultation with the Department's advising attorneys, laying forth the factual and outline the legal basis for that this or her decision.~~

~~(fe) If, following the Department's review, the district is still unsatisfied with the actions of the Department, it may file a request an informal review for a contested case hearing before the Commission.~~

~~(g) — Informal reviews before the Commission shall be limited to the information presented during the Department's review.~~

~~(h) — Informal reviews before the Commission shall be scheduled by the Commission.~~

~~(i) — If possible, the review shall be scheduled for the next regularly scheduled Commission meeting.~~

~~(ii) — If the next regularly scheduled Commission meeting is not available, or, if the district and the Commission agree the next regularly scheduled meeting of the Commission is not practical, the Commission may call an emergency meeting to address the informal review.~~

~~(iii) — The time allotted to the district's presentation will not exceed one (1) hour, unless otherwise agreed to by the district and Commission.~~

~~(i) — The Commission shall issue its decision as soon thereafter as reasonably practicable. The Chair shall follow up the decision in writing and outline the basis for that decision.~~

Section 45. - Contested Case Proceedings.

(a) A ~~properly~~ district aggrieved party by a final administrative action taken by the Department after an informal review conducted under Section 3 of this chapter may file a timely request for a ~~hearing with the Commission requesting a contested case proceeding.~~ -The request shall be in accordance with the provisions contained in this ~~Chapter~~ Section.

(b) To initiate a contested case proceeding, a district shall prepare and file with the Commission a request which includes the following:

(i) The name, telephone number, email, and mailing address of the district and the same information for the representing attorney, if applicable;

(ii) A statement, in ordinary and concise language, of the facts and of the errors alleged to have been committed and issues upon which the request is based, including particular references to statutory sections, contract provisions or rules, regulations, policies, and orders involved;

(iii) A copy of the Director's decision and relevant material which relates to the decision at issue;

(iv) The specific relief sought; and

(v) The signature of the district and the representing attorney, if applicable.

(c) The request shall be served on the Commission and other necessary parties. Service shall be made to the Wyoming School Facilities Commission, ~~e/o State Construction Department, School Facilities Division, 700 West 21st Street, Cheyenne, Wyoming 82002.~~ care of the Department, at the location listed on the Department's website. Service can be made in person, by mail or received by facsimile, 307-777-8711, during regular business hours. -Any facsimile received after regular business hours will be treated as received during the regular business hours of the next working day.

(d) Contested case proceedings before the Commission shall be limited to the issues the district identified during the Department's informal review.

(e) The request shall be filed with the Commission within forty-five (45) days of the date of the final administrative decision at issue, or of the date of mailing of the final administrative decision as evidenced by a postmark, whichever is later. ~~The Commission may grant an exception in circumstances where good cause is shown.~~

Section 5. Formal Request Contents and Requirements.

~~(a) To initiate a contested case proceeding the aggrieved party shall prepare and file with the Commission a request which includes the following:~~

~~(i) The name, telephone number, fax number, if available, and mailing address of the aggrieved party and the same information for the representing attorney, if applicable;~~

~~(iii) A copy of the (v) The signature of the aggrieved party and the representing attorney, if applicable.~~

Section 6. Incorporation by Reference. The Commission incorporates by reference the following uniform rule:

(a) Chapter 2 – Contested Case Proceedings adopted by the Office of Administrative

Hearings and effective on July 20, 2017, found at <https://rules.wyo.gov>;

(i) The Commission has determined that incorporation of the full text in this rule would be cumbersome or inefficient given the length or nature of the rule;

(ii) The incorporation by reference does not include any later amendments or edition of the incorporated matter beyond the applicable date identified in subsection (a) of this section; and

(iii) The incorporated rule is maintained at the Department office and is available for public inspection and copying at cost at the same location.

Section 7. Final Decision.- At the request of the Commission, the hearing officer shall make a recommended decision to the Commission. The Commission shall issue the final decision-, which shall constitute final agency action.

Chapter 3

Uniform Adequacy Standards

Section 1. Authority. This Chapter is promulgated pursuant to Wyoming Statutes 21-15-114(a)(xv), (ix) and 21-15-115.

Section 2. Applicability. This Chapter applies to all buildings and facilities subject to the Commission's rules and regulations. The Wyoming statewide adequacy standards establish uniform statewide standards for the adequacy of school buildings and facilities necessary for providing educational programs prescribed by law for the public schools.

Section 3. Safety of the Educational Environment. School buildings shall be in compliance with federal, state and local building and fire codes and laws that are applicable to the particular building. Code compliance includes the completion of system improvements or site improvements that are mandated in writing by an authority having jurisdiction for the continued use of a school building or facility. School buildings shall comply with all lawful environmental regulations promulgated by the Wyoming Department of Environmental Quality, the Wyoming Environmental Quality Council, the federal Environmental Protection Agency, and any other governmental entity with jurisdiction over the building. An existing school building may be deemed adequate with respect to this provision if it complies with the International Existing Building Code.

Section 4. Building Site Requirements.

(a) Size requirements. For schools that intend to organize and operate more than one of the following school types on a single site, the higher of the site sizes serves as the applicable requirement. Sites larger than those in the following requirements are permissible but exceed these adequacy standards. If an alternative school shares a site with another school, the alternative school students shall contribute toward the site size calculation for the combined school site.

(i) For elementary schools, an adequate site size is up to four (4) acres, plus an additional acre for each one hundred (100) students.

(ii) For middle schools, an adequate site size is up to ten (10) acres, plus an additional acre for each one hundred (100) students.

(iii) For senior high schools, an adequate site size is up to twenty (20) acres, plus an additional acre for each one hundred (100) students.

(b) Many schools pre-date the Commission's authority to promulgate adequacy standards. Existing school sites smaller than the minimum size sites in subsection (a) of this section that pre-date the original adoption of these standards are deemed adequate with respect to this subsection unless the Commission determines otherwise.

(c) Sites shall:

- (i) Have play areas that are relatively flat and level;
- (ii) Have a playground(s) for grades K-6 accessible to students;
- (iii) Have access to parking for staff, students, and visitors that enables the school to deliver the required statewide educational program;
- (iv) Have separate areas for bus loading and unloading and student pickup and dropoff;
- (v) Be accessible to emergency vehicles;
- (vi) Have positive water drainage away from the building such that runoff does not undermine the structural integrity of the school buildings located on the site or create flooding, ponding or erosion resulting in a threat to health, safety or welfare; and
- (vii) Have exterior lighting at entrance(s), parking area(s), bus loading and unloading area(s), and student pickup and dropoff area(s).

Section 5. Building Performance Standards. A building shall:

- (a) Have an FCI score between 0.0 and 0.65;
- (b) Have exterior finishes that repel wind, snow, ice, and water intrusion;
- (c) Have roofing with positive water drainage;
- (d) Be structurally sound. A school building shall be considered structurally sound and safe if the building presents no imminent danger or major visible signs of decay or distress;
- (e) Be deemed adequate with respect to this subsection if the building systems are capable of maintaining an acceptable level of room comfort as determined by the Classroom Temperature Psychometric Chart adopted by the Commission and effective on August 27, 2020; and
- (f) Utilize one (1) or more of the following energy efficiency features:
 - (i) Energy-efficient lighting;
 - (ii) Light level control;
 - (iii) Occupancy sensors;
 - (iv) Multiple pane windows; and
 - (v) HVAC setback control.

Section 6. Special Needs Students. School buildings and facilities shall be deemed adequate with regard to this section if the building or facility meets the special needs of

students enrolled in the school as identified in their individualized education plans. If a special needs student enrolls in a district and the educational buildings and facilities that correspond to that student's needs are not adequate for the education and use of that student, the district shall notify the Department. The Department shall work with the Commission to develop a remedy to comply with the student's individualized education plan.

Section 7. Building and Facility Accessibility. The Department shall assess existing educational buildings and facilities with respect to accessibility and special needs requirements. The Department shall deem any building or facility that complies with local accessibility codes and is capable of complying with the Americans with Disabilities Act of 1990 and the Americans with Disabilities Act Accessibility Guidelines as being adequate with respect to accessibility.

Section 8. Adequacy of Educational Space for Required Programs.

Educational buildings shall provide adequate educational space. Educational space shall be deemed adequate if a district is able to provide the educational programs required by Wyoming Statute § 21-1-101. If a district is unable to provide the required programs because its educational space is inadequate, it shall immediately notify the Department and provide a detailed report explaining how the current space is not adequate for the delivery of the required educational programming. In the event the Department receives such a report, it shall make recommendations to the Commission evaluating the deficiency and suggesting remedies to alleviate the situation. The Department may satisfy its obligation under this section by utilizing the assessment of the adequacy of existing school buildings and facilities in developing its recommendation to the Commission.

(a) Instructional spaces shall be sufficient for the required educational programs. Temporary educational space shall not be considered in evaluating Subsections (b) through (e) of this Section.

(b) Elementary school buildings shall provide the following educational spaces:

(i) General classrooms.

(ii) Space for specific curriculum. Buildings shall have space adequate to deliver the required educational program for the following subjects at the elementary school level, whether in general classrooms or specialized spaces:

(A) Art;

(B) Music;

(C) Science; and

(D) Other parts of the required state educational program necessitating specialized instructional space.

(ii) Physical education spaces. Physical education space shall include:

(A) A gymnasium or multipurpose space; and

(B) A playfield and playground.

(c) Middle school and high school buildings shall provide the following types of educational spaces:

(i) General classrooms;

(ii) Science classrooms. Science classrooms shall:

(A) Have adequate lab space to deliver the required educational program;

(B) Have adequate infrastructure to support the equipment necessary to deliver the required educational program; and

(C) Be equipped with code required safety equipment.

(iii) Fine and performing arts spaces. Fine and performing art spaces shall include adequate space capable of being used to deliver the required Fine and Performing Arts Standards.

(iv) Career and technical education (CTE) space. Middle and high schools shall have adequate space to deliver the required CTE standards.

(d) Middle schools shall provide or have access to sufficient facilities capable of delivering the required physical education standards:

(i) A gymnasium with a basic scoreboard capable of tracking score, time, and period;

(ii) A playfield. Standard playfields are natural seed or sod with an automatic irrigation system. Districts may opt for alternative surfaces, such as turf, but alternative surfaces exceed these adequacy standards unless the Commission approves the use of an artificial surface based on a lifecycle cost analysis comparing the cost of maintaining turf and a natural seed or sod surface; and

(iii) Locker rooms are not mandatory, but, when present, may include the following items without exceeding these adequacy standards:

(A) Lockers and benches;

(B) Shower facilities; and

(C) Restroom facilities.

(e) High schools shall provide or have access to sufficient facilities capable of delivering the required physical education standards:

(i) A gymnasium with a basic scoreboard capable of tracking score, time, and period;

(ii) A soccer or football field; and

(A) Standard soccer or football fields are natural seed or sod with an automatic irrigation system. Districts may opt for alternative surfaces, such as turf, but alternative surfaces exceed these adequacy standards unless the Commission approves the use of an artificial surface based on a lifecycle cost analysis comparing the cost of maintaining turf and a natural seed or sod surface;

(B) The field may have football goal posts and/or fixed soccer goals;

(C) A basic scoreboard capable of tracking score, time, and period; and

(D) Additional features such as bleachers, upgraded scoreboards, concession stands, and field houses are allowed but exceed these adequacy standards.

(iii) Track and field facilities;

(A) High schools designated 3A and 4A in track and field may have up to eight (8) lanes with running surface width of thirty feet (30');

(B) High schools designated 1A and 2A in track and field may have up to six (6) lanes with running surface width of twenty-three feet (23');

(C) Allowable surfaces include synthetic impermeable textured surfaces, dirt, cinder, or asphalt;

(D) One of the "D" areas of the track infield may have a surface matching the athletic track; and

(E) Facilities to conduct field events, are not mandatory, but, when present, may include the items listed in this subparagraph without exceeding these adequacy standards. To the extent a district opts to include field event facilities, those facilities should be located in an appropriate area on the available site, use appropriate surfaces for the intended use, and be constructed consistent with National High School Field Standards. Districts may build facilities in excess of those allowable under this subparagraph, however those facilities exceed these adequacy standards. The allowable facilities include one (1) of each of the following:

(I) Two-way long jump;

(II) Triple jump runway with a landing pit at each end;

(III) Shot put pad;

(IV) Discus pad with cage;

(V) Pole vault runway and/or vaulting box;

(VI) Landing area; and

(VII) High jump approach and landing area.

(iv) Locker rooms are not mandatory, but, when present, may include the following items without exceeding these adequacy standards:

(A) Lockers and benches;

(B) Shower facilities; and

(C) Restroom facilities.

(f) All school buildings shall provide or have access to infrastructure, fixtures, and storage necessary to deliver the required educational program. “Infrastructure” does not include furniture or other furnishings.

(i) Educational spaces shall have the infrastructure and fixtures necessary for the normal activities of the required educational programs offered in the room and appropriate storage for classroom materials or access to appropriate storage.

(ii) Administrative, educational support, and facility support spaces in educational buildings shall have the minimum infrastructure and fixtures required for the necessary functions performed within. The following spaces, if present, should have the minimum infrastructure and fixtures needed to perform their necessary functions:

(A) Administrative offices;

(B) Student health, counseling and educational support space for the delivery of student health, counseling, and testing programs. The student health or nurse’s suite may have space to isolate sick students. It shall include secure storage for records, medications, and supplies, and a working communications system. The student health or nurse’s suite shall have a connected accessible restroom;

(C) Faculty workspace or teachers’ lounge, which may have more than one function, and may include a break area with a kitchenette;

(D) Network distribution space, which shall be accessible, securable, well-ventilated, temperature-controlled to accommodate routers, switches, servers and other devices to support school technology operational needs;

(E) Technology support space(s), which shall be sufficient to store and/or service user devices;

(F) Library, media, and research center, which shall have internet connectivity and fixtures, equipment, technology, and other resources necessary to provide the statewide educational program;

- (G) Maintenance or janitorial space, which may include janitorial sinks;
- (H) Assembly space, circulation space, and entry vestibules; and
- (I) Enough space, equipment, and storage necessary to provide regular meals to students during the school day.

(g) School buildings shall have plumbing fixtures in the minimum number as shown below in the chart adapted from the 2018 International Building Code.

Water Closets		Lavatories	
Male	Female	Male	Female
1 per 50		1 per 50	

(h) Alternate delivery methods. Notwithstanding Section 7(b)-(g) of this chapter, if a school district chooses to use an alternate delivery method for instruction, any space used for the alternate method shall be considered adequate so long as the district can deliver the required state educational program.

(i) For schools that intend to organize and operate more than one of the preceding school types on a single site or within a single building, each portion of the school shall meet the minimum standards for the grade levels served.

(j) Rural schools. Notwithstanding Section 7(b)-(f) of this chapter, rural schools are not required to have any of the spaces identified above provided that they have sufficient general classrooms.

Section 9. Capacity and Square Footage Requirements.

(a) The following methodologies are incorporated by reference in these Commission rules:

- (i) Enrollment Projection Methodology adopted by the Commission and effective on August 27, 2020;
- (ii) Capacity Calculation Methodology, adopted by the Commission and effective on August 27, 2020; and
- (iii) Maximum Allowable Educational Building Square Footage Methodology, adopted by the Commission and effective on August 27, 2020.

(b) A district-initiated project or element exceeds these adequacy standards if:

- (i) It results in square footage in excess of the amount calculated under paragraph (a)(iii) of this section;

(ii) It increases the capacity of a building or facility which had a pre-project capacity score of less than one hundred percent (100%) as calculated under paragraph (a)(ii) of this section; or

(iii) The project results in a ratio of district non-educational to educational square footage, as calculated in W.S. § 21-15-109(c)(vii)(A), that exceeds twenty-one to seventy-nine (21:79).

Section 10. Technological Capacity Criteria. Any school building or facility capable of being utilized to provide the required educational program under the state education technology plan is deemed adequate with respect to this section. An educational building or facility shall have technology infrastructure to support all aspects of the educational, operational, and administrative processes, with access to internet connectivity and telecommunications services.

Section 11. Adequacy Standards for Alternative Schools.

(a) Net educational space, at minimum, shall equal sixty-seven (67) sq. ft. per student. Because of the diversity of teaching strategies and the selective use of instructional areas, no designated type or size of space usage shall be mandatory, however the district must have access to sufficient space to deliver the required educational program.

(b) For alternative schools on an independent site, the educational facilities shall comply with the following provisions in this Chapter: §§ 3; 4(c)(iii), (iv), (vi), (vii); 5; 6; 7; 9; and 10.

Section 12. Site Security. Security features included in the Facility Design Guidelines do not exceed these adequacy standards. School buildings shall have:

- (a) The following locking systems and hardware:
 - (i) Locks on the inside of classroom doors;
 - (ii) Exterior door locks; and
 - (iii) Door keying systems;
- (b) The following access control features:
 - (i) A single point of entry for visitors;
 - (ii) A secured vestibule;
 - (iii) Main entry control systems; and
 - (iv) A visitor management system;
- (c) The following communications systems:

- (i) Two-way communication; and
- (ii) Mass notification systems;
- (d) The following site and perimeter features:
 - (i) Site landscaping;
 - (ii) Site vehicle barricades;
 - (iii) A secure site perimeter to protect students from hazards and to discourage unauthorized access to the campus;
 - (iv) Clearly marked loading, unloading, drop-off zones, and fire zones;
 - (v) Security signage; and
 - (vi) Site lighting;
- (e) Video surveillance at the following locations, with recording capability in place:
 - (i) Main entry and other building entrances, with both front and back views of approach; and
 - (ii) Key exterior and interior areas, including but not limited to:
 - (A) The area outside restrooms, locker rooms, counseling offices, and administrative offices,
 - (B) Bus drop-off and pick up areas;
 - (C) Stairwells;
 - (D) Main hallways;
 - (E) Cafeteria;
 - (F) The entrance to gymnasium and athletic fields;
 - (G) Parking lots; and
 - (H) Library;
- (f) The following egress and refuge features:
 - (i) Classroom doors constructed of durable material; and
 - (ii) The ability to lockdown the following areas:

- (A) All classrooms;
- (B) Main entrances;
- (C) Library; and
- (D) Gymnasium.

Section 13. Nonstudent-related buildings and facilities. All nonstudent-related buildings and facilities shall comply with the following provisions in this Chapter: §§ 3, 4(c)(v) and (vi), 5, 7, and 10, as applicable. Any building or facility other than a student-related or nonstudent-related building or facility exceeds these adequacy standards.

Section 14. Definitions. As used in this chapter:

(a) —“Adequate” means a building, room, or other educational space is both sufficient and appropriate, as those terms are defined in this section.

(b) —“Appropriate” means a building, room, or other educational space that has the necessary infrastructure, storage, fixtures, and critical adjacencies to be compatible with the delivery of the required educational program.

(c) —“Critical adjacency” refers to an educational, administrative, educational support, or facility support space within an educational building that must be located near another space in order to be functional as intended.

(d) —“Elementary school” means any school with a grade configuration of kindergarten through fifth or sixth grade. A sixth-grade class that is part of an elementary school shall be treated as an elementary grade for purposes of these rules, unless the grade configuration of the school is kindergarten through seventh grade or higher, in which case the standards applicable to the higher grade level control.

(e) —“High school” means any school with a grade configuration of ninth or tenth grade through twelfth grade.

(f) —“Middle school” means any school with any grade configuration of the sixth through ninth grades that includes both seventh and eighth grade, and is inclusive of schools denoted as “junior high schools” by districts. A sixth-grade class that is part of a middle school shall be treated as a middle school grade for purposes of these rules.

(g) —“Nonstudent related buildings and facilities” means any building or facility that is either an “office building” or a “warehouse building,” as those terms are defined in W.S. 21-15-109(a)(iv) and (a)(viii).

(h) —“Rural school” means a school located outside the main metropolitan area in which the district is located and from which the district does not bus students into the metropolitan area.

(i) ~~“Sufficient” means that a building, room, or other educational space is of such a size that it has enough space to enable delivery of the required educational program.~~

Chapter 9

Implementation of Remedies and Project Management

Section 1. Authority.- This Chapter is promulgated pursuant to Wyoming Statutes 21-15-114(a)(xv), 21-15-117, 21-15-118(c) and 21-15-123(f)(v).

Section 2. Relationship Between the State Construction Department and School Districts.

(a) Master Memoranda of Understanding (MOU's) and Project Agreements shall be developed to establish the working relationship between the Department and the district.

(i) Master MOUs. The Master MOU defines the duties and responsibilities of the Department and the district for non-capital construction functions, including, but not limited to, major building and facility repair and replacement, facility planning, condition assessments, and annual reporting.

(ii) Project Agreements. Project Agreements define the duties and responsibilities of the Department and the district for construction and renovation of school buildings and facilities, including, but not limited to, determination of the most cost effective remedy, land purchase, design, procurement and construction. No work or disbursement of funds shall proceed on projects until a Project Agreement is executed between the Department and the district. Districts shall not expend any appropriated project funds until authorized by the Director.

(b) Departmental Review. The Department shall review school construction projects for compliance with uniform statewide adequacy standards. This review shall be ongoing throughout the planning, budgeting, design, and construction process.

Section 3. Program Planning. -Upon determination of the most cost effective remedy, the Department shall develop a detailed scope of the work and estimated budget for the remedy in consultation with the district. The scope of the work and estimated budget shall form the basis of any future budget request. A request to change the scope of the work shall be presented to the Commission along with all financial implications and justification for the change. If approved by the Commission, the Department shall amend the scope of work and estimated budget.

Section 4. Prototypical Designs.

(a) To further the concept of value-added projects, the Commission encourages using prototypical designs and prototypical components. When appropriate and feasible to meet the needs of a district, prototypes may shorten design time, simplify value engineering, decrease costs, and increase construction efficiency.

(b) The Department shall maintain a database of school floor plans that districts may consider for re-use.

(c) School districts may consider the use of prototype designs (past designs) from the Department database or other designs that may be available from architects. The district may utilize the services of a design consultant to determine whether prototype designs may be appropriate or whether modifications of prototype plans are feasible to meet the needs of the district.

Section 5. Determination of Delivery Method.

(a) Projects shall be designed and constructed using the design-bid-build delivery method unless extenuating circumstances exist that necessitate the adoption of an alternate method. District requests for the Commission to approve an alternate design and construction delivery method shall explain the reason(s) an alternate project delivery method is preferable to the design-bid-build delivery method.

(b) The Commission shall consider the following non-exclusive and non-prioritized list of factors in making a determination to allow alternate design and construction delivery methods:

- (i) Size and complexity of the remedy;
- (ii) Budget and availability of funds;
- (iii) Urgency of time;
- (iv) Past experience with the delivery method;
- (v) Anticipated cost of the possible various delivery methods;
- (vi) Market conditions, including access to and availability of personnel to provide design or construction services; and
- (vii) District input and recommendations regarding delivery method.

Section 6. Site Analysis and Land Acquisition.

(a) Requests for land acquisition may originate with a request by a district to the Department or as a Department recommendation. The Commission shall determine if there is a need based on capacity, condition, health, safety, determination of the most cost effective remedy, or the best interests of the State.

(i) Many Wyoming schools pre-date the adoption of current standards. School sites which pre-date the original adoption of standards in 2003 may be larger or smaller than the recommended sizes. -School sites smaller than these recommendations are presumed to be adequately sited unless the Commission determines otherwise.

- (b) If the Commission determines a need exists, the Commission shall:
- (i) Examine availability of current district land;
 - (ii) If a replacement building or facility renovation or addition, determine if the current site is appropriate;
 - (iii) If new land is required, consider land swaps and acquisition of publicly-owned land or land in conjunction with a development prior to considering other private land.
- (c) If the Commission determines that land acquisition is necessary, the district in consultation with the Department shall conduct an analysis of potential sites or land. Prior to initiating non-confidential site analysis activities the district in consultation with the Department shall obtain a proposed purchase agreement fixing the purchase price and other conditions of purchase, subject to site analysis and due diligence investigation results that are acceptable to the district and Department. Site analysis shall be conducted in accordance and comply with the Commission rules and design guidelines and shall be approved by the Commission. Prior to acquisition the district in consultation with the Department shall conduct a due diligence investigation, which includes the following:
- (i) Legal description of property;
 - (ii) Title commitment;
 - (iii) Two (2) land appraisals (using the average of two if within five percent (5%) of each other, otherwise a third(3rd) appraisal will be obtained and the average of the two (2) closest appraisals will be used);
 - (iv) Site survey to include soil conditions, traffic patterns, utilities and site topography;
 - (v) Phase 1 environmental assessment;
 - (vi) Annexation and zoning issues;
 - (vii) Local development requirements; and
 - (viii) Preliminary and final plat.
- (d) The Commission may grant a waiver to any of the above due diligence requirements for good cause.
- (e) All phases of the land acquisition process ~~shall~~may be kept confidential. Neither the district nor the Commission ~~will~~shall divulge information on proposed land acquisitions ~~until~~prior to such time as all due diligence has been completed and the land purchase price has been negotiated, unless both the Commission and the district consent to the disclosure.

Section 7. Services and Contracts.

(a) General.

(i) Districts shall use Commission contracts for capital projects, unless otherwise approved by the Commission and Attorney General's Office.

(ii) Modifications to Commission contracts, including adjustments to further stipulate services and reflect the scope of the particular project, on a project-by-project basis may be submitted to the Department for review and approval in consultation with the Attorney General's Office. Major modifications, as determined by the Department, or alternatives to Commission contracts require approval by the Department, Attorney General's Office, and the Commission.

(iii) Contracts shall be executed by the district and other parties and routed to the Department for its review and approval as to form.

(iv) Contracts modified and executed without the necessary approvals shall not be eligible for State funding.

(b) Owner's Representative.

(i) Owner's representatives are individuals or entities contracted on a project-specific basis to assist the district and State in ensuring the project is managed and completed in accordance with the contracts related to the project.

(ii) The Department shall determine whether an Owner's Representative is necessary, taking into consideration the expense, time, and ability of district and departmental staff.

Section 8. Value Engineering.

(a) Value engineering is a process to achieve the best balance of cost-to-value in projects for districts and the State. In addition to value engineering required by design or construction contracts, the Department shall conduct a value engineering analysis using a collaborative process to objectively consider the best approach to design and construct projects in accordance with Section 12(d) of this Chapter. Value engineering shall include life cycle cost analysis of all major systems in the facility.

(i) Value engineering review shall occur at the schematic design phase (10% Design) and the design documents phase (35% Design) or as otherwise determined by the Department. The design of the facility shall conform to value engineering recommendations before it proceeds into the next phase of development unless waived in writing by the Director.

~~(ii) The Department shall consider the recommendations of value engineering~~

~~in assessment of enhancements. Any aspect of a design which does not conform to value engineering recommendations approved by the Department and proceeds without approval will be deemed an enhancement and will be the sole financial responsibility of the district.~~

(iii) Value engineering strategies learned on previous projects shall be considered for subsequent projects.

Section 9. Project Closeout. Absent extenuating circumstances, fund balances remaining from project budgets that are unencumbered or unobligated are subject to reversion no later than one year after the date of Substantial Completion.

Section 10. On-site or Off-site Infrastructure.

(a) On-site or off-site infrastructure includes streets, sidewalks, traffic signals, bike ~~and~~ walk paths, electric, gas, water, sewage systems, storm systems, telephone, data, and other facilities approved by the Commission.

(i) On-site infrastructure solely attributable to the needs of the project and of the capacity required to serve the school facility remedy in accordance with the Commission's design guidelines shall be included in the cost per square foot budget for the building.

(ii) The Department shall budget for the cost of the development of on-site or off-site infrastructure solely attributable to the needs of the project and additional infrastructure costs attributable to shared use.

(b) Requests for on-site or off-site infrastructure to be shared with others shall be made by the district in writing and shall include a full description of the project, including the cost of the proposed infrastructure, the functional capacity properly attributable to the needs of the project, contemplated excess functional capacity, and a dedicated source of repayment.

(i) Requests shall be presented to the Department during the initial planning and budgeting for the proposed project. The Department shall make a determination whether further information, such as design engineering or cost data, is required before the request is presented to the Commission for its consideration as part of its budget recommendation. The district shall notify the affected municipality or local governmental entity of the request and of the time and location at which it will be considered by the Commission.

(ii) Requests will only address infrastructure needed for the school building and facility.

(iii) The Department, in consultation with the Attorney General's Office, shall determine if a contractual agreement is required for cost-sharing, repayment, or operation agreement(s) with the affected parties. Cost-sharing or repayment agreements shall include provisions for reimbursement of departmental expenditures for functional capacity beyond the capacity properly attributable to the needs of the project to be repaid to the Department over time

with interest. Amounts repaid shall be deposited by the Department into the school capital construction account.

(iv) The functional capacity needs of school buildings and facilities shall take precedence over the needs of others.

(c) If extensions to municipal or other Department-approved utilities are not available or are cost prohibitive, then on-site systems may be constructed.

(d) The district shall notify the affected municipality or other local governmental entity in writing of Commission action taken related to on-site or off-site infrastructure and reasons for the action.

Section 11. ~~Local Enhancements.~~

~~(a) — Identifying Enhancements. The district's intent to pursue enhancements shall be brought to the attention of the Department by the district during facility planning or as early as feasible prior to design. Preliminary information shall indicate the nature, scope, cost and schedule of the enhancement. Enhancements shall be identified as:~~

~~(i) — Inclusion of a design feature(s) which exceeds or fails to comply with the statewide adequacy standards or is not in compliance with recommendations of value engineering.~~

~~(ii) — Inclusion of additional square footage of school building and facilities which exceeds the total square footage allowed by statewide adequacy standards.~~

~~(b) — Enhancement Acknowledgement. The district shall request Commission acknowledgment of enhancements to any school building and facility during project or enhancement planning on a form provided by the Department. This documentation shall identify dedicated sources of funding for the enhancement(s), the contractual arrangements and the means intended to account for the costs of the enhancement(s) separate from any Commission funded remedy. If the enhancement is associated with a legislatively funded remedy, planning and design of the enhancement(s) shall be identified in the most cost effective remedy if an enhancement is contemplated at that time. The Department will include the information in the project agreement. The district's acknowledgment request shall establish the anticipated impact to the design and construction schedule and cost to the legislatively funded remedy. As the project progresses and information changes, the district shall update the enhancement acknowledgement, which the Department shall then present to the Commission.~~

~~(c) Enhancement Cost Allocation. When local enhancements occur in conjunction with legislatively funded remedies and the cost of those local enhancements become part of a comprehensive school project, the Department shall determine the appropriate method of allocating costs between the enhancement(s) and the legislatively funded portion of the project. The cost of the enhancement shall include all design and other consultant costs and construction~~

~~costs attributable to the enhancement. The district shall bear all costs associated with the enhancement. The Department may require that the enhancements be bid separately as an alternate, that the enhancements be calculated as a percentage of the overall project cost, or a combination thereof, as follows:~~

~~(i) — When the enhancement is the result of a design preference, it shall be bid as an alternate, the alternate shall include all costs attributable to the enhancement plus all costs for modifications to the legislatively funded portion of the project that are attributable to the enhancement. Examples include, but are not limited to, additional building height, finishes, or features;~~

~~(ii) — When the enhancement is the result of additional square footage, the difference between the allowable square footage and the project total square footage shall be computed as a percentage. Project costs will be attributed on the basis of the percentage as identified, or as subsequently revised in the event of a change in the square footage. When changes affect the project that result in additional costs, the costs shall be shared based on this percentage.~~

~~(d) — Costs associated with leadership in energy and environmental design (LEED) design certification and commissioning will be considered an enhancement and shall be funded by the district.~~

Section 12. — Changes to Budgeted Funding.

(a) In accordance with W.S. 21-15-119(c) and W.S. 28-11-301(c)(iv), budgets for prioritized projects may be adjusted by the Commission and transfers between project phases may be made by the Department.

(b) In the event that any particular project budget is or appears to be insufficient to fully fund that project remedy, the following non-exclusive and non-prioritized list of factors shall be considered by the Department in recommending whether, and how, that project will be allowed to proceed with legislative funding:

(i) Verify value engineering recommendations have been followed;

(ii) Verify aspects of the design of the project to identify cost savings which may be generated within the project. In this regard, all parties shall reexamine earlier assumptions in the search for viable, cost-effective and efficient design changes;

(iii) Verify the scheduling, or phasing, of the project to determine if budgeted funds will be required and cost-savings or cost-deferrals may be obtained by that scheduling. Decision-making shall take into account the funding cycles of the Legislature and the uncertainty of future funding.

(c) If these non-prioritized factors are insufficient to achieve project costs within the project budget, including adjustment for inflation, the Commission shall consider the following

additional factors:

- (i) Change of delivery method;
- (ii) Other sources of funding, including funding held by the Commission;
- (iii) Delayed start date of the project; and
- (iv) Complete or partial re-planning or re-design of the project.

Section 12. Facility Design Standards and Guidelines.

(a) The Commission's Facility Design Standards and Guidelines do not apply to existing school buildings and facilities and shall not be used for evaluating the adequacy of any existing school building or facility.

(b) For all Projects, as defined in W.S. 21-15-111(a)(iv), appropriated by the legislature or funded by the Commission, the Department shall include in the Project Agreement the most recent version of the Commission's applicable Facility Design Standards and Guidelines. The Department shall require that the Facility Design Standards and Guidelines incorporated in the Project Agreement govern the expenditure of state funds for that project for the duration of that project.

(c) In accordance with W.S. 21-15-114(a)(vii), the Commission shall adopt Facility Design Standards and Guidelines for the following types of school buildings and facilities:

- (i) Educational Buildings;
- (ii) Outdoor Physical Education Facilities; and
- (iii) School Bus Maintenance and Parking Facilities.

(d) The Department shall include in the Project Agreement a provision requiring that when the Facility Design Standards and Guidelines are not specific on the type, quantity, or quality of a design element or component, the architect shall select the most efficient and cost effective type, quantity, or quality of the element or component, subject to approval by the Department. The provision shall further provide that if a district opts for an element or component exceeding that approved by the Department, such element or component shall be considered district-initiated and shall not be funded out of the capital construction budget.

(e) The Department shall include in the Project Agreement a requirement that, in the event the legislature funds a project of a type that is not covered by the Commission's existing Facility Design Standards and Guidelines, the architect shall work with the Department to ensure that the design is adequate, efficient and cost effective and shall utilize the Commission's existing Facility Design Standards and Guidelines in doing so to the extent those Guidelines are applicable.

(f) Project Agreements. Project Agreements define the duties and responsibilities of the Department and the district for construction and renovation of school buildings and facilities, including, but not limited to, determination of the most cost effective remedy, land purchase, design, procurement and construction. Prior to the beginning of any Project, as defined in W.S. 21-15-111(a)(iv), the Department and district shall sign a Project Agreement that enumerates what portion of the work is state funded. No work or disbursement of funds shall proceed on Projects until a Project Agreement is executed between the Department and the district. Districts shall not be reimbursed and the Department shall not pay for any work done on any portion of the project prior to the Director's authorization. Furthermore, the Department shall not pay for or reimburse any district for expenses incurred prior to the execution of the Project Agreement and a commission-approved contract with the professional service provider or contractor, with the exception of reasonable owner's overhead expenses.

(g) Districts shall provide to the Department, prior to the commencement of any capital construction project as that term is defined in W.S. 9-2-3001(b)(ii), an opportunity to review the final design, drawings and plans of the project. This review shall include, but is not limited to, consideration of whether the design, drawings and plans of the proposed project utilizes energy efficient best practice techniques and processes. This provision applies to any capital construction project for which the state is required to expend state funds to fully or partially pay for operations, routine maintenance or major maintenance expenses, including state-initiated remedies that include district-initiated elements and district-initiated projects.

(h) The Commission shall incorporate reasonable community and district input and participation for conforming an aesthetic design within the community when a new school building or facility is designed. The Commission shall defer to the reasonable aesthetic design choices of the district, provided that those design choices do not bring the building or facility to a condition exceeding the Commission's relevant adequacy standards.

Chapter 10

District-Initiated Elements, District-Initiated Projects, and Local Enhancements

Section 1. Applicability. This Chapter applies to all district-initiated projects and elements at the time of the renovation, construction, replacement, repair, or other improvement of or to any school building or facility.

Section 2. State responsibility to pay for district-initiated elements and projects; identification of district-initiated projects as local enhancements.

(a) State capital construction funds shall not be spent on district-initiated elements or projects. Costs associated with obtaining leadership in energy and environmental design (LEED) design certification and commissioning the school building or facility in accordance with that certification shall be considered district-initiated elements.

(b) A district may opt, at any time, to implement a district-initiated project. A district-initiated project shall be considered a local enhancement to the extent that, when completed, the building or element exceeds the Commission's relevant adequacy standards, whether for a design feature(s) or additional square footage. Regardless of any present or future recognition of the district-initiated element or project as not exceeding the Commission's adequacy standards, neither the State, the Department, nor the Commission shall reimburse the district the cost of a district-initiated element or project.

(c) The Department shall maintain a record identifying all local enhancements.

Section 3. Cost allocation between State-initiated remedies and district-initiated elements.

(a) If a district intends to include a district-initiated element in the design of a state-initiated remedy, the district shall notify the Department prior to design. Preliminary information shall indicate the nature, scope, cost and schedule of the district-initiated element. The district bears the responsibility for consulting the Commission's adequacy standards and Facility Design Standards and Guidelines and identifying elements that exceed those documents. The Department shall make reasonable efforts to help the district identify any design elements in excess of the relevant guidelines or standards through the value engineering process and the notice to proceed. Notwithstanding this requirement, the district is ultimately responsible for the identification of district-initiated elements, and a design element shall not be considered state-initiated merely because the district fails to identify it as district-initiated, regardless whether the Department has reviewed or approved the plans. The funding and construction of the district-initiated element shall proceed as follows:

(i) The Department shall determine the appropriate method of allocating costs between the district-initiated element and the legislatively-funded portion of the project.

(ii) The district shall bear all costs of the district-initiated element, including all design and other consultant costs and construction costs attributable to the element. In no

event shall state funds be spent on purchasing, constructing, installing, or furnishing a district-initiated element.

(iii) If a district opts to go forward with a district-initiated element, it shall bid the element separately as an alternate, with the enhancements calculated as a percentage of the overall project cost, or a combination thereof. The allocation for costs associated with a local enhancement shall be identified and split on a percentage basis as follows:

(A) When the district-initiated element is the result of the inclusion of a design feature(s) which exceeds or fails to comply with the Facility Design Standards and Guidelines or is not in compliance with the recommendations of value engineering made subject to Chapter 9, Section 8, it shall be bid as a construction alternate. The construction alternate shall include all costs attributable to the district-initiated element plus all costs for modifications to the legislatively-funded portion of the project that are attributable to the district-initiated element.

(B) When the district-initiated element results in the inclusion of additional square footage of school building and facilities such that the school building or facility exceed the total square footage allowed by the Commission's adequacy standards, the difference between the allowable square footage and the project total square footage shall be computed as a percentage. Project costs will be attributed on the basis of the percentage as identified, or as subsequently revised in the event of a change in the square footage. When changes affect the entire project and result in additional costs, the costs shall be shared based on this percentage.

(b) At the conclusion of a project that consists of or includes a district-initiated element(s), the Department shall evaluate the district-initiated element(s) with the Commission's Adequacy Standards under Chapter 3 of these Rules. The Department shall identify any district-initiated element that exceeds the Adequacy Standards as a local enhancement, designate it as such, and exclude the identified local enhancement from its calculation of district square footage for the purpose of calculating major maintenance payments.

(c) A district-initiated element shall be considered to exceed the Commission's adequacy standards unless the district petitions the Commission under Section 4 of this Chapter.

(d) The Department shall maintain a record of local enhancements made by school districts. These records shall include a list detailing the size and nature of building design features incorporated into capital construction projects as a result of past local enhancements. The list shall be reviewed by the Commission when acting in accordance with W.S. 21-15-115(c). The Department shall no less than once every four (4) years undertake efforts to ascertain whether national or regional research exists as to whether or not any of the enhancement categories identified in the list specified under this paragraph have a positive demonstrable effect upon delivery of education.

(e) If the Department's research conducted pursuant to subsection (d) of this Section indicates that a category of enhancement may have a positive demonstrable effect upon delivery of education, the Department shall gather available evidence and present that evidence along with a recommendation to the Commission. The Department may consult with the Wyoming Department of Education, districts, and other stakeholders to consider whether any particular

type of local enhancement has a positive demonstrable statewide effect upon delivery of the prescribed state educational program. Following presentation and analysis of available evidence provided to the Department, the Commission shall determine whether the identified local enhancements or category of local enhancements have a positive demonstrable statewide effect upon the delivery of the educational program. If the Commission determines that such a demonstrable effect exists, it shall make a determination whether and how such local enhancements should categorically be incorporated into the statewide adequacy standards.

Section 4. District petitions to the Commission for acknowledgment that a local enhancement no longer exceeds the Commission's adequacy standards or that a local enhancement should be incorporated into the Commission's adequacy standards.

(a) A space or facility deemed a local enhancement shall remain a local enhancement until such time the Commission acknowledges that the space or facility fits within the Commission's adequacy standards, subject to the following provisions.

(i) During facility planning, the Department shall work with districts to determine whether any enhancement designations should be removed because:

(A) The identified local enhancement no longer exceeds the Commission's adequacy standards;

(B) The district claims the local enhancement in question has a positive demonstrable effect upon delivery of the prescribed state educational program on a statewide basis and the district has evidence tending to show that that assertion is correct; or

(C) The Commission's methodologies change or the district's student population has grown to an extent such that enhanced square footage no longer exceeds the educational square footage allocated to the district under Chapter 3, Section 8 of these Rules.

(ii) At the completion of the facility planning process, the Department shall present to the Commission a list of local enhancements that should no longer be designated enhancements. If the Commission approves the list, the Department shall remove the enhancement designation from all included elements, square footage, or buildings, but maintain the record for historical reports to the Legislature.

(b) Any district claiming that a local enhancement has a positive demonstrable statewide effect upon delivery of the prescribed state educational program may petition the Commission for a review of the status of that type of local enhancement. The district shall provide evidence of that positive demonstrable effect to the Department in the form of statistical analysis that establishes a causative effect between the identified local enhancement and any purported positive demonstrable effect.

(c) Following presentation and analysis of the district's evidence under subsection (b) of this Section, the Commission shall determine whether the identified local enhancement has a positive demonstrable statewide effect upon the delivery of the educational program. If the

Commission determines that such a demonstrable effect exists, it shall make a determination whether and how such local enhancements should categorically be incorporated into the statewide adequacy standards.

(d) In no event shall the State, the Department, or the Commission reimburse a district the cost of the element, square footage, building, or facility when the Commission removes the enhancement designation.

State Construction Department

School Facilities Commission

Chapter 8: Criteria for Identifying and Prioritizing Remedies, and Establishing Project Budgets

Effective Date: 01/15/2020 to Current

Rule Type: Current Rules & Regulations

Reference Number: 027.0002.8.01152020

Chapter 8
Criteria for Identifying and Prioritizing Remedies, and Establishing Project Budgets

Section 1. Authority. This Chapter is promulgated pursuant to Wyoming Statutes 21-15-114(a)(xv), 21-15-117(a)(i), 21-15-119(a), (c), 21-15-121(a), and 28-11-301(c)(iv).

Section 2. Inventory: Assignment of Building Condition. The Commission shall prepare and maintain an inventory of district-owned school buildings and facilities. Each structure in the inventory shall be assigned scores, as applicable, to denote building condition, educational suitability, and capacity in accordance with these rules and regulations. Technology readiness shall be considered in arriving at a score for educational suitability. These scores shall be used to establish a state-wide needs index, which shall then be used in conjunction with District facility plans to arrive at a prioritization schedule for building and facility remediation.

Section 3. Prioritization of Building Remediation. In prioritizing projects for the schedule of remedies and submission to the Legislature for funding, the highest needs shall be addressed first. Buildings shall be ranked from highest need to lowest need as follows:

(a) Capacity Prioritization.

(i) Districts with capacity exceeding 100% (high capacity) shall be determined to be in need of immediate attention and shall take precedence before other capacity needs.

(ii) Districts with a capacity between 100% and 95% (medium capacity) may be considered for funding only after high capacity school needs have been addressed.

(iii) Districts with a capacity between 95% and 90% (low capacity) may be considered for planning funding.

(b) Condition Prioritization.

(i) Schools with an FCI score exceeding 0.65 (high condition) shall take precedence before other condition needs and may be forwarded for capital construction funding based on the determination of the most cost effective remedy.

(ii) Schools with an FCI score between 0.55 and 0.65 (medium condition) may be forwarded for consideration for planning funds and possible capital construction funding after high condition school needs have been addressed.

(iii) Schools with an FCI score below 0.55 (low condition) shall be remedied primarily using routine maintenance or major building and facility repair and replacement (major maintenance) funding.

(c) Educational suitability is addressed through routine maintenance, major maintenance, or capital construction projects funded by the Legislature.

(d) An updated method of calculating suitability has been adopted by the Commission and may be found in the “Educational Suitability Score Report” prepared by the Commission and attached hereto as Appendix C.

(e) The Commission may periodically review and verify needs assessment data and building and facility ratings for condition, capacity and suitability to ensure the assessments provide timely and uniform data in accordance with W.S. 21-15-115(b).

(f) At least biennially, a new prioritized needs index shall be developed by Commission and that needs index shall be the basis upon which legislatively funded remedies shall be determined. Calculation of the relative weights of the three scoring tools for purposes of developing that needs index shall be 50% weighting to facility condition, 35% weighting to facility capacity, and 15% weighting to educational suitability.

Section 4. Project Budgets.

(a) Budgets for prioritized projects shall be established as follows:

(i) The Department shall prepare budgets based on the schedule of building and facility remediation. Each budget shall include, but is not limited to, land, project planning, design, construction, and on-site and off-site infrastructure.

(ii) The Commission shall develop a schedule for building and facility remediation for each budget period. The schedule shall identify the remedies attached to each need for funding to include planning, design, and construction projects by category as follows: capacity, condition, and other needs determined by the Commission.

(iii) Using accepted accounting standards and the principles outlined above the Commission shall, not later than September 1 of each year, prepare and submit to the Governor and the Select Committee on School Facilities, a proposed budget, the prioritized list of projects proposed for funding, the amount of funding allocated to each project, the assessments conducted by the Commission of condition, capacity and suitability, and the annual building status report specified under W.S. 21-15-121.

Section 5. Identification and Determination of Remedy.

(a) The Commission considers various criteria to identify and determine the most cost effective method of remediation of building and facility needs to deliver quality educational services and to meet adequacy standards.

(i) Facility design guidelines, methodologies, procedures and policies of the Commission shall be considered by the Department, in consultation with the district, and appropriate data and facts shall be reported, which may be presented as a formal study identifying possible remedies to assist the Commission. The Department may utilize outside consultants to conduct studies.

(ii) The most cost effective method of remediation will initially be determined during the planning / budgeting phase of a legislatively-funded project but may be revised by the Commission to reflect changed conditions.

(iii) The Commission may consider the following non-exclusive list of factors in determining the most cost effective method of remediation:

- (A) School district facility plan;
- (B) Non-construction alternatives, including grade reconfiguration;
- (C) Non-capital remedies;
- (D) Availability of major building and facility repair and replacement funds;
- (E) Enrollment projections, design capacity, and square footage;
- (F) Immediacy of the need;
- (G) Compliance with statewide adequacy standards;
- (H) Educational specifications;
- (I) Total project cost and budget; and
- (J) Site, utilities, streets, and other physical data and characteristics that may impact a proposed method of remediation, including availability of existing school sites or district owned land or the need to acquire land.

2021 Rule Change Feedback Responses

Comments from school district personnel on SFC Rules and Regulations Chapters 1, 2, 8, 9 and 10 Collected via a google feedback form sent on February 12.

1: Charlie Cauffman, Business Manager, Platte County SD1 @ 2/22/2021 13:48:57

Chapter 1: [Blank]

Chapter 2: [Blank]

Chapter 8: Page 8-1; Prioritizing Condition of buildings of greater than .65 to be high priority seems to be rather unachievable (without complete building neglect) as there were only one building greater than that on the last condition assessment of 2016. It seems that there needs to be a greater range and while I understand the commission is looking at a new index with that being 49% of the overall weight it should be more inclusive instead of less inclusive. If the department is looking to reduce new capital construction spending and truly wishes to go to a asset preservation than it would seem it needs to expand the funding to do so. I agree that asset preservation is a great goal, but as of yet there are still some facilities that do need resolved and some of those need capital remedies. This would seem to be counter-productive in achieving that goal at the moment.

Chapter 9: "Under the value engineering under section 8, on page 9-5. The way that this is stated is the the district must take all recommendations of value engineering. This reads as more of a statement of must instead of the situation being more of a partnership with the state. Shall conform insists that there is zero flexibility in the process and really demonstrates the lack of input from the client who is the district. While value engineering can be a beneficial process it can in times also be a short-sighted one as well as it would appear that the districts and state are handcuffed to what a third-party firm would suggest and really appears to leave no flexibility within their own processes. Anything and everything outside of this third-party seems to be prohibited. It would seem that the state is placing its faith in the hands of people who are not beneficiaries of the process, but who also have no skin or motivation to produce great cost savings results for both parties. This could potentially come back on the organization and be a greater liability than it is anticipating with them placing all their eggs in the proverbial one basket of a value engineer. The other problem it would open up is if they change their engineer it could potentially produce a inequity from one what firm says to the next.

This section really deems that it is the state that should know what is best and if they truly do know what is best than why do they need a third-party to tell them what is best. They would need to be the ones who run it. This section also devalues the voices of the local constituents who are the recipients of these projects. These rule changes show an

unfortunate appearance of unwillingness to work collaboratively on these projects together. It would seem that for a state that values local control and local input that these new rules do not foster that kind of atmosphere.

Chapter 10: This whole sections depicts that if there are any errors within the process of design that this could mean that the district pays the costs. It would seem that the department has forgotten that mistakes occur in design and would turn any and all of this into the district's problem for pointing out these items and thus the district would be on the hook for this. I do understand there are situations in which a district does go above the scope of the project and I have no qualms about those being enhancements, but it would seem that this section would punish a district merely trying to get the best product for the money put forth by the state. These rules again eliminate the elements of local control and local participation. These also call in the question of major maintenance, and if a district were to replace a system that were indeed better than the previous system, would that be an enhancement? Would the district have to start reporting these types of improvements to the department? The lack of clarity in this section leaves this open to an interpretation that could be taken in a number of different directions and leaves the department open to many questions and possible legal overtures that I am sure are unwanted, but with ambiguity it does open this possibility.

A question could also be asked that if the district found ways to save the state money in design could the district be the beneficiaries as this system points out that anything additional is on the district to pay its costs?

This premise would also be in contrast to asset preservation. As a district is trying to get the best product available and remedy that has already gone through an MCER and waiting the legislature it would seem that any change would be at the district's expense even though it is the state's remedy? So then the district has to pay from its major maintenance or other state funded dollars to potentially fix a problem with the state's remedy? This would reduce the already limited major maintenance dollars which would then cause more problems down the road. It could give greater problems in this area.

While I am a proponent of wise use of tax payer dollars and state funds it would seem that this process is punitive and doesn't give any credit to the work of those who ultimately have to live with the building and then pay to maintain it in the long run, so if a value engineering blunder were to occur and this district cannot change it then they have to waste more state funds to fix it? This seems like an even greater waste of tax payer dollars instead of working with each other to get the best remedy on the ground.

There are some great items in these rules in regards to updating the enhancements if adequacy standards change to be inclusive and while that is good, there is unfortunately way too much ambiguity to these rules that need to be explored in order to benefit both

parties, as the state does deserve greater consideration in projects. I would like to see some clarification on whether major maintenance is included on these and some other options as to enhance the relationship between the department and the districts.

2: Ed Goetz, Business Manager, Albany County SD1 @ 2/24/2021 12:55:35

Chapter 1: None

Chapter 2: None

Chapter 8: Hopefully a School Facilities Commission hearing will be held to discuss the definition of educational suitability and the weighting so that varying points of view can be heard.

Chapter 9: None

Chapter 10: The definitions included in this document cause concern due to their narrow scope and could be subject to varying interpretation depending upon the Construction Department administration: District Initiated "improvements that add square footage in excess of Square Footage Calculator whether through construction, renovation, or acquisition of additional square footage." and State Initiated Remedy "The elements and features of a state-initiated remedy are limited to those provided in the Commission's Facility Design Standards and Guidelines, and the addition of any element or feature not included in those guidelines is not considered state-initiated." These definitions seem to be too narrow and could be a concern that any modifications even for security vestibules as an example beyond the Square Footage Calculator could be considered an enhancement."

3: Brandon Finney, Business Manager, Sheridan County SD2 @ 2/25/2021 12:51:55

Chapter 1: [Blank]

Chapter 2: [Blank]

Chapter 8: [Blank]

Chapter 9: [Blank]

Chapter 10: The clause doesn't read to me in a clear and precise manner. It sounds like all items will be done as an percentage but further down the language goes into bid alternate and paid for specifically: (iii) If a district opts to go forward with a district-initiated element, it shall bid the element separately as an alternate, with the

enhancements calculated as a percentage of the overall project cost, or a combination thereof.

It would be nice to have clear language on if a district can add an element if it is in the design standards, adequacy standards and budget. Current approach by the department is that this is a “District-initiated element” and therefore should be paid for by district even if the element is within the design standards, adequacy standards and budget.

4: Robert McCray, Support Services Coordinator, Park County SD1 @ 2/25/2021 16:12:20

Chapter 1: [Blank]

Chapter 2: [Blank]

Chapter 8: I believe that capacity evaluation at the building level is in the best interest of students. Moving children from their neighborhood or local school to another, maybe every year, will definitely have a detrimental impact on their educational growth. It could also separate siblings and create hardships for families who may have children in schools across town.

Capacity assessments should be separate from evaluation scores for buildings derived on suitability and/or condition. These items have much different ramifications and remediation's and should be evaluated as such. If a school is in poor condition or ranks low in suitability, the delivery of the appropriate level of education will definitely be impacted.

Chapter 9: It seems there is limited latitude in the Value Engineering adoption process. This basically states the the VE "recommendations" must be implemented unless waived by the director. Is there no option or possibility to veer away from a recommendation when school districts should have some basic form of local control for cultural, historic or regionally held ideas, beliefs or values without assuming all current and future costs related to those. Should recommendations become absolutely binding.

Chapter 10: The definition of a district initiated project is quite broad including about anything a district may wish to undertake to make their schools unique or different. If something a district wishes to do is within Design Guidelines and Adequacy Standards, this should not be considered an enhancement and therefore all funding now and into the future of that completely district responsibility.

5: Kim Nelson, Facilities Manager, Laramie County SD2 @ 2/26/2021 9:46:47

Chapter 1: Objection to the striking of "methodologies" as a subject allowing Districts to request an exception. Why is reference to FCNI being removed from the definition list?

Chapter 2: This re-write places too many constraints (ie roadblocks) on The District to be able to bring a dispute in front of the Commission. It appears that this process could drag out for many months, in effect blocking whatever request the District is seeking, particularly during a capital construction process.

Chapter 8: The SFD proposes ranking three categories: condition, adequacy, and capacity. They would call suitability a subsection of condition (NOT true). I'm not opposed to the breakdown in CH 8 section 3 (ii) with appropriateness (suitability) of environment .50; illumination .10, air quality .25, technology .15 (adequacy). That comes to 100%, and is a baseline for an independent category score for Suitability. Condition stands alone, as does Capacity (and as defined in SF002). The Division seeks to mix the categories all together.

In SF002, they call for the Commission to rank three categories: 21-15-117 (a) as (i) Condition, (iii) Suitability, and (iv) Capacity. Suitability would include adequacy *(illumination, IT readiness, air quality) as a subsection. Completely backwards to what the Division is pushing. SF002 language specifies capacity per building every time; it never mentions district capacity, which is the measure the Division seeks to use. It makes little sense to bus a couple students over many miles to use capacity in one building over another! We have buildings 40 miles apart – It doesn't make sense to send an elementary bus on an 80 mile round trip twice a day to utilize district capacity if a building is out of seats. Not only financially, but the best interests of students are not met with out-of-area transport.

In CH 8 section 3, (B) the scoring is questionable at best. According to the FEA Educational Building Condition Systems reference guide, any score above .50 is a failure. Anything above .25 is poor. How can they call a score of .65 to be the cutoff for high needs? The (FEA) assessments score crisis/failure at .50 (see chart). Medium needs should be at least .40, low needs at .35 (or lower). By the FEA assessment scores, .35 is still poor. The baseline for failure should not change due to lack of funding. The score is supposed to be objective, not subjective to budgets.

Ch. 8 (b) capacity is moving the mark for action to >100%. It is too late by then – remediation is at least a 3-year process. (Fund 1, design 2, and construct/renovate 3). Seems a call to action should occur at minimum 95% capacity, esp. as they are also moving the mark for utilization up to 100%.

Ch. 8 section 5 allows the Department (read Division) to utilize outside consultants to conduct studies. Districts should be allowed the same – and included in SF 002 21-5-117 (a) the “department shall ...acquire other relevant needs assessments data (in) coordination and cooperation with the districts for purposes of evaluation and prioritization.” That sounds to me like the legislators are allowing additional input from outside resources provided by the Districts to substantiate their needs.

Chapter 9: Section 2 (b) says the Department shall review school construction projects – even District initiated. They can’t have it both ways – either everything initiated by the District is an enhancement, outside the purview of the Department, or it is under their oversight, and so may be allowable – not immediately an enhancement. The SFD does not initiate our normal MM projects – so how might Major Maintenance funding play into that?

Ch. 9 section 4 – prototypical design is being forced down everyone’s throat. I know this is a big favorite of VE, but may not always make practical sense. Promoting prototypical systems makes sense, that’s how you develop adequacy standards, but we do NOT all need to have cookie cutter designs. If you stray from the prototype in any way, shape, or form, it is their excuse to call it an enhancement. In 4 (c) it says the District may consider prototypes, and that is reasonable. However, this Chapter alludes to VE as the sole determining factor for design.

However, in Ch. 9 section 8 (a) it does state that the Department shall conduct a value engineering analysis “using a collaborative process to objectively consider the best approach”. I read that to mean that VE does not have either veto powers or dictatorial power. Apparently, the Division disagrees.

Section 9 (fund balance reversions) should be amended to at least 18 months. Sometimes issues come up at the 11 month walk through that were not apparent at substantial completion. Moreover, substantial completion does not always mean full owner occupation. Fund balances cannot immediately revert at 12 months post SubComp. At Pine Bluffs Elementary, 2017, a change order was initiated at about 18 months post substantial completion – the flooding issues just weren’t immediately apparent. By the time we argued and fought with the civil engineers, we didn’t get a final change order until nearly 22 months post occupation. We did have capital money left in the project to cover the cost of the drainage remediation.

Section 12 (a) – If standards and guidelines do not apply to existing school buildings why are we evaluating Suitability? Evolving needs are the first and foremost criteria for suitability. That should be struck.

Under 12 (d) so long as the element or component is within the budget, guidelines, and standards it doesn’t matter if it was in the original design or not, nor if it is the cheapest

alternative. If a district has been frugal and found means of saving \$\$, they should be able to add or upgrade components. Additionally, Design occurs so far ahead of construction, there may always be mitigating conditions that require change. This is trying to make every 'new' District request an enhancement.

Chapter 10: Section 1 practically screams Major Maintenance! Most renovations, replacement, repair, and improvements are district initiated and fall under MM. With this definition, we no longer appear to have control of that.

Example - Upgrades to LED lighting may not be the cheapest up front, but long term saves much more in maintenance and utilities than it costs. That type of upgrade or alternate should NOT be an enhancement.

Definitions

“District-initiated” :This new language infers that every element (in a project) that is not VE approved is automatically an enhancement. Value engineering would have us put VCT on every square foot of floor space, because it is cheapest. I have issues with the endless use of the term “District initiated” to determine enhancement. Every MM project is district initiated – so must we wait for the SFD to come to us to suggest replacing a failed component? Feels like a slippery slope to get to that point.

Every request a District has for a (construction) project, capital or otherwise, is not an immediate enhancement. If it falls within the standards, guidelines, and budget it should be a normal part of the building. PERIOD. If it requires additional (state) funding, then there is opportunity to consider enhancement status. Just because a District funds it, doesn't mean it exceeds standards/guidelines. The legislature, and some Commission members, have been hinting for years that Districts need to have some “skin in the game”. If Districts step up to help fund projects, they should not be penalized by automatically withholding MM to maintain those facilities.

Chapter 1, General Provisions, Section 10 currently allows the Commission to “grant exceptions... on a case-by-case basis”. Ch. 3, Section 3, Enhancements and Adequacy Standards, states that for elements having “a positive demonstrable effect upon delivery of the educational program... the Commission shall make a determination whether and how such... should be incorporated into the statewide adequacy standards”. This new definition seeks to thwart that authority.

6: Daniel Selleroli, Facility Director, Sweetwater County SD1 @ 2/26/2021 13:18:20

Chapter 1: Will Charrettes no longer required? Will the FCNI be eliminated? Section 5 Commissioners will no longer be able to attend via Phone or other means? why?

Chapter 2: [Blank]

Chapter 8: By considering condition scores of .55 - .65 as medium needs, we will be right back to where we started, (building conditions) prior to the SFD.

Chapter 9: Why are we eliminating section 11?

Chapter 10: I do not agree with the District-initiated Definition. Remove and redefine; "any design features or components contrary to the recommendations of value engineering... "

7: Deanna Harger, Facilities Director, Teton County SD1 @ 2/26/2021 17:08:48

Chapter 1: No Comments

Chapter 2: No Comments

Chapter 8: • TCSD #1 does not support utilizing an aggregated score to determine the priority of remediation. Combing and weighting the four indices into one score may result in prioritizing a school with a low condition score over a school with serious capacity issues despite the fact that both condition may require remedy.

- TCSD #1 supports prioritizing each factor individually and then, if warranted, complete a MCER study to obtain prioritized remedies.

- TCSD #1 does not support changing the Life Cycle Planning for Education Facilities from 0.50 to 0.65. Maintaining building components in a facility that has less than 5 to 10 years' of useful life is not a good use of Major Maintenance funds.

- Section 3B Capacity: TCSD #1 does not support moving the baseline for high capacity to exceeding 100%. The process to determine and implement remediation typically takes around three years. Therefore, a lower baseline of 95% should trigger the initial call to action.

- Capacity: TCSD #1 recommends the SFC consider both district wide and building level capacity when prioritizing capacity issues

Chapter 9: •Value Engineering: TCSD #1 supports incorporating Value Engineering into the process to achieve the best value for the District and the State but requests that both life-cycle and maintenance costs be included in the evaluation. In many instances a less expensive piece of equipment or building component does not represent the best

value. In addition, suitability and the goals of the design should be considered when evaluating VE options.

- Section 12A: TCSD #1 recommends that the current Design Standards should be applied to existing buildings in order to consider suitability with current education standards as part of the project.
- Section 12D: TCSD #1 recommends giving the Districts flexibility in selecting individual design elements or components when managing project budgets rather than including the requirement for architects to specify the most cost effective component. This flexibility creates an opportunity to achieve the best overall value for the project and potentially a better product.

Chapter 10: •Section 2A: TCSD #1 recommends the SCD fund third party certification of energy efficient and sustainable design and construction practices. Requiring a third party certify the design and construction practices can reduce the overall cost of projects and ongoing maintenance of the building which presents good value. In addition, although many energy efficient components have higher up front cost they should not be considered upgrades or enhancements because they offer cost saving over multiple years making them good value.

- Section 3A: TCSD #1 recommends changing the language so that after the SCD has reviewed and approved the project design no element may be retroactively identified as a district-initiated component of a state-initiated project. Passing both the responsibility and risk of identifying all elements that exceed Facility Design Standards and Guidelines onto the District beyond design approval is unreasonable.

EXECUTIVE SUMMARY

- At present, the SFC staff are soliciting comment for Chapters 1,2,3,8, 9 and 10. They SFC just concluded a task force comprised of representatives from each of the quadrants in the State to provide input and expertise to the process.
- SFC/Department is looking at rule updates in order to align them with applicable Statute.
- There are 3 Key Issues:
 1. How remedy is prioritized
 2. The definition of an enhancement and the implications to districts
 3. Appeals to the School Facilities Commission
- At its heart, each key issue is about advocating for common-sense, project-specific, fiscally responsible approach as opposed to a one-size-fits-none mandates meant to achieve a result that is already being achieved.

KEY ISSUE 1: HOW REMEDY IS PRIORITIZED

The system for prioritizing remedies should leverage the common-sense, most cost-effective remedy (MCER) process that is already in place rather than working to replace it with equations that may work in certain instances while not in others.

1. The first step should be the prioritization of issues for analysis by looking at district and building deficiencies concurrently that pertain to capacity, condition and suitability.
2. The second step should be analyzing the top issues at a district scale to identify the most cost-effective remedies.
3. Only once the most cost-effective remedies are identified should those remedies be prioritized.

The reason the MCER process exists is because there is no single set of criteria that can equitably describe each situation. In some cases, the MCER will identify non-construction solutions to the issue that make sense for the state and the district. In such cases, those solutions will be developed in partnership with the district rather than forced alternatives.

Background

Prior to 2013, Chapter 8 analyzed capacity at the building level along with condition and suitability. A change occurred in that year amending the capacity analysis. Effectively, capacity is analyzed at the building level but remedy is prioritized at the district level - thought it the change has not been consistently implemented as a practice. The current draft of Chapter 8 would continue to look at capacity at the district level and further consolidate remedy prioritization into a single score that would encompass capacity, condition, and suitability.

Identifying and mitigating issues at the building level is generally the most equitable.

Capacity, condition, and suitability are all calculated at the individual building level. However, the capacity of in-town schools is the only criteria that is evaluated at the district level. Condition and suitability remedies are already prioritized at the school level. Capacity is already evaluated and mitigated at the building level for rural and alternative schools. The only way to equitably look at capacity is to look at the building capacity along with district capacity but simply because a district is not over capacity does not eliminate the possibility of a building level problem.

The tables below compare district-wide capacity issues as they have been defined by the state since 2013, with an alternate school-based capacity approach shown in the panel on the right.

District enrollment as a percentage of district capacity (current rule)		Percentage of students in a district enrolled in an over capacity school.	
1. Laramie #1 Elementary Schools	106%	1. Laramie #1 Elementary Schools	11%
2. Albany #1 Middle School	102%	2. Natrona #1 Elementary Schools	7%
3. Lincoln #2 Elementary Schools	100%	3. Lincoln #2 Elementary Schools	5%
4. Teton #1 Middle School	99%	4. Sweetwater #1 Elementary Schools	3%
5. Sheridan #2 Middle School	97%	5. Sweetwater #2 Elementary Schools	2%
6. Fremont #1 Elementary Schools	97%	6. Fremont #1 Elementary Schools	2%
7. Natrona #1 Elementary Schools	95%	7. Natrona #1 Middle Schools	2%
8. Sweetwater #1 High School	95%	8. Albany #1 Middle School	2%
9. Sheridan #2 Elementary Schools	94%	9. Converse #1 Elementary Schools	2%
10. Big Horn #2 Elementary School	94%	10. Sheridan # 2 Elementary Schools	1%

Combined there are 14 schools that appear among the two lists. Six are on both. Those six are the obvious priorities. In comparing the two approaches, the building-based approach bumps 4, near-capacity schools behind districts with at-capacity schools, but only to slots 13-16 in the rankings. Under the current rule, the 4 districts with overcapacity schools and under-capacity schools are outside the top 20, well out of consideration for study or remedy. Looking at school capacity excludes fewer issues from consideration than a focus on districtwide capacity.

Impact Example:

Is Sweetwater #1’s high school being near capacity is a bigger issue than moving 93 elementary school students out of overcapacity schools? It may be, but will it be in every case, and should the district be involved in that determination through a MCER? Under the current rules, the Sweetwater #1 elementary school issue is not even eligible for consideration of a temporary modular solution. We recommend the SFC prioritize issues only after considering both districtwide and school capacity issues.

The impact of capacity on students should be the focus.

Each list presents the top 10 capacity issues at the district level. The school-based alternative focuses on the percentage of students impacted by capacity issues. The larger districts with multiple in-town schools have more non-construction options on paper. Though the practical result of having multiple schools is that the number of students affected by re-drawing boundaries is multiplied. Using Sweetwater #1 as an example, one of the K-4 elementary schools is 93 students over capacity. If the immediately adjacent schools cannot accommodate all 93 students, it will cause a waterfall effect forcing even more than 93 students to be moved in order to address the single school capacity issue. A larger move to more evenly distribute capacity in the district would affect even more children, with the hope that they are only impacted once in the elementary career.

Impact Example:

When a student is moved to a different school it may not be closer to home, in better condition, or better suited to their education. Moving to a new school has advantages and disadvantage. Moving to a different school has the same disadvantages but does not necessarily have advantages. Research

supports keeping students in their home neighborhoods; forced moves impacts student achievement at the rate of 1 standard deviation for each forced move. Non-construction remedies must be analyzed, but if there are already school capacity issues in a district and the district is projecting additional growth, non-construction redistricting can compound student impacts without avoiding any costs.

Aggregated scoring of factors

The rules provide for assessment (scoring) of capacity, condition and suitability. Capacity is evaluated annually. Condition and suitability are evaluated on 4-year intervals. Each of these factors are weighted. Capacity is the most volatile of the factors while condition and suitability are slower moving and more predictable. The desired outcome sought by the legislature is to have each factor weight blended into an aggregated score – which will then result in being prioritized for a remedy.

Committee members have not been successful in weighting these factors in a coherent manner such that an absurd result is avoided. Districts will effectively need to become deficient in 2 or more areas to place high enough on the priority list to gain a remedy.

Impact Example:

District 1 has newer schools but is over capacity. District 2 has older schools and a condition and suitability deficiency. District 2 will obtain a remedy over District 1 because it checks 2 of the factors as a result of the added weight brought by the second factor. Both school Districts need remedy; however, District 2 will be prioritized over District 1 because it has multiple factors.

Recommendations

- First prioritize each factor. Then, if warranted, complete MCER studies. Then prioritize the remedies coming out of the MCERs.
- Consider both districtwide and building level capacity when prioritizing capacity issues.
- Do not weight the factors. Instead, chart and color code by low, medium and high priority. Present graphically to the Department and Commission in side-by-side tables. This will allow remedy to occur based on need rather than weight. It will also allow for capacity issues, which are more volatile, to be considered separately from the other issues. Showing the highest needs in each of the categories and prioritizing needs based on projects with multiple needs allows for the highest needs buildings to be identified and addressed in a prioritized manner.

Suggested Approach:

Combined Building Condition, Capacity and Suitability List - Test Data						
Condition	Capacity	Suitability				
0.65	100%	65				
0.55	95%	80				
0.00	90%	89				
Qualification						
Description	FCI	Percent Capacity	Educational Suitability	Condition	Capacity	Suitability
EXAMPLE SCHOOL 1	0.8000	110%	50	HIGH	HIGH	HIGH
EXAMPLE SCHOOL 2	0.7000	95%	70	HIGH	MEDIUM	MEDIUM
EXAMPLE SCHOOL 3	0.6000	97%	69	MEDIUM	MEDIUM	MEDIUM
EXAMPLE SCHOOL 4	0.5600	94%	67	MEDIUM	LOW	MEDIUM
EXAMPLE SCHOOL 5	0.3000	85%	81	LOW	ACCEPTABLE	LOW
EXAMPLE SCHOOL 6	0.2000	97%	90	LOW	MEDIUM	ACCEPTABLE

KEY ISSUE 2: THE DEFINITION OF AN ENHANCEMENT AND THE IMPLICATIONS TO DISTRICTS

Background:

- Section 21-15-11 (iii) defines an enhancement as “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.”
- The proposed rules create several definitions that are intended to flow from the above statute. Specifically, defined are the term District Initiated. This term expands the definition set forth in statute to include as a district financial responsibility any value engineering element not waived by the director.
- Districts are accustomed to the notion that enhancements such as larger gymnasiums, more robust playground structures or building finishes are the obligation of the district to fund. What is new is that any recommendation of the value engineer regardless of whether a project is within budget that is not waived by the director is the financial responsibility of the district.

Enhancements, District Initiated, District-Initiate Projects and District Initiated Elements. (Value engineering point)

KI.2.A: The new provisions rename and redefine enhancements. The rules expand the definition of enhancement to include a new section of code referred to as district-initiated projects. Of note, the rules provide generally that anything that exceeds state adequacy standards is an enhancement. They go on to hold that a district is also fiscally responsible for efforts meeting the newly defined terms *district initiated*; *district-initiated project* and *district-initiated element*. District initiated permits the State to burden districts with the costs of construction efforts regardless of whether they conform to or exceed the Design Guidelines.

Thus, the rules effectively state that any Value Engineering (VE) recommendation not adopted by the district or waived by the Director constitutes a district-initiated project or element. It should be also observed that even if the project is within budget the district must accept all VE recommendations not waived by the Director or be financially responsible for the cost. VE is required for all state funded projects at the 10% and 35% design development stage.

This definition does not align with the plain language of 21-15-111(a)(iii).

Impact Example

The Value Engineer recommends that a district designing a new school that is within budget change the HVAC specification from units that last 30-40 years that can be serviced by staff to substitute roof top units that will only last 15 years and cannot be serviced by district staff but they are half the acquisition cost. The lifecycle operational cost and replacement cost at 15 years is more than double the cost impact to the State and district. If the department does not waive the recommendation of the value engineer, the district is burdened with the cost difference to acquire the 30-year system.

Unlawful Expansion of 21-15-111.a(iii)

All rule making is to be firmly grounded in statute and must effectively implement the legislative intent.

Chapter 21-15-111 a (iii) provides the definition of an enhancement. It also references the phrase district initiated. The draft documents create a new body of law to define that term and to assure that actions meeting the definition become the financial responsibility of the districts. When comparing the proposed rules to the Statutory definition there appears to be an impermissible expansion of this definition.

Specifically, Chapter 21 asserts that an enhancement is effectively any construction effort initiated by a school district that exceeds the State Design Standards. The districts on the committee do not quarrel with this definition. Where the concern lies is within the expansion of this section by administrative rulemaking to insert provisions not contemplated by the statute. Specifically, the rules create a new body of administrative law wherein a construction effort exceeding the “recommendation” of the value engineer (not waived by the director) conforming to or exceeding the Design Guidelines becomes a district-initiated project. Therefore, the effort is a district obligation to fund and maintain in perpetuity even if the project is within budget.

Emphasis is added to the word recommendations because the rule also makes the advice of the value engineer binding – unless waived by the department. This also has not been the past practice of the department to date.

In response to the expressed concerns of unlawful expansion, SCD staff advised districts that State legal counsel reviewed the matter and find the language is “permissible.” The districts on the committee are seeking a second opinion from Hickey & Evans Law Firm.

Impact Example

The Value Engineer recommends eliminating a stage in an elementary to bring the projected cost of a school within budget. Stages are allowed by the Design Standards. The district bids the school with the stage as a bid alternate. The bids are favorable, and the construction cost is within budget with room to include the stage. Unless waived by the director, the cost of the stage is the financial obligation of the district.

Ex post facto determinations.

The State Construction Department Administrative rules require that all district-initiated projects or elements be identified by the district. They go on to say the SFC staff will work with districts to help identify said projects and elements. However, it holds that despite this collaborative effort, the district may be held accountable for anything that exceeds the state standards not discovered during the

collaborative design process. Districts will thus be burdened with the cost of the element and the maintenance of the element in perpetuity.

Impact Example

During the design of an elementary, the plans provide for more parking than the design guidelines allow. Once construction is complete, the oversite is observed. Though the Department, the district, and the design team all reviewed the plans, the error is not observed until substantial completion. Thus, the cost of the additional stalls and the maintenance thereof become the responsibility of the district.

Recommendations

- Return to the plain language of 21-15-111.a.(iii) Should the Legislature wish to modify the definition, it may. To expand the definition dramatically through rule making is inappropriate and not supported by the plain language.
- Eliminate the district-initiated project language in Chapter 10 and return to the express language of Chapter 21 limiting district financial responsibilities to enhancements.
- Leave the VE process in accordance with past practice wherein SFC staff and District staff collaboratively consider the recommendations of the value engineer until the project returns to budget.
- Do not make the recommendations of the value engineer binding.
- Remove this language acknowledging that districts and the Department continually do their best to assure compliance with the design guidelines. If the expansion is intentional, the rules provide for enhancements and the matter is addressed in that manner.

KEY ISSUE 3: APPEALS TO THE SCHOOL FACILITIES COMMISSION.

It is not clear to the districts taking part on the committee whether the SCD will have final authority over disagreements between districts and the department. The district representatives recommend that in instances of disagreements with the department that the School Facilities Commission have authority to modify or affirm decisions made by the department as a means of avoiding the contested case process laid out in Chapter 2.

State Construction Department's Summary of Proposed Rule Changes with Responses to District Comments

Chapter 1

Chapter 1 contains the definitions used in the other chapters, and updated language has been added to clarify that these definitions apply to project agreements as well. The main change to Chapter 1 is the addition of new terms related to substantive changes in other chapters (such as “adequate,” “appropriate,” and “sufficient” as used in Chapter 3) and the removal of obsolete terms (such as “design charrette”) are reflected in this Chapter. There are a number of other minor changes being made because the language to be removed is redundant or unnecessary (such as the provision in Section 6(a) that provides that the Chair may add a public comment period to the agenda; this is unnecessary because the Commission, in a regular meeting may, by statute, amend the agenda at any time, and in a special meeting is prohibited by the same statute from doing so). Please note that the definitions related to Chapter 10 (“district-initiated” and related definitions) will be discussed further in the summary of that chapter. As the exception process fits more naturally in Chapter 2 than in Chapter 1, that process has been moved and updated.

Please note when reading the strikethrough version of rules that deletions do not necessarily mean that the opposite of the stricken language is now true. For example, one commenter questioned why the language permitting commissioners to attend meetings telephonically was stricken. The striking of that language does not mean that Commissioners are no longer allowed to attend telephonically. Rather, the Public Meetings Act specifically contemplates that meeting participation may be electronic, thus that language was redundant and made the rules longer than necessary. In the interest of efficient and concise rules, we are proposing the elimination of unnecessary provisions throughout the rules. Similarly, several commenters asked why certain definitions were being deleted. The definitions selected for deletion do not appear in the operative sections of the rules or in other Commission/Department documents or were duplicative of statute.

Chapter 2

The edits to Chapter 2 are intended to streamline the informal review process and the contested case process, as well as to clarify how those processes work and to ensure any district seeking consideration of a decision through those processes is afforded due process. As the exception process fits more naturally in Chapter 2 than in Chapter 1, that process has been moved into this Chapter. The update to the exception process primarily explains the specific circumstances in which the Commission can grant district exception requests as well as the documentation necessary in any such request.

The changes to the overall review process are intended to make the process more efficient, thereby expediting Commission review. To this effect, the exception process has been added to this chapter, providing an avenue for districts to quickly get before the Commission, and the informal review process has been streamlined by reducing unnecessary formalities. The new process is intended to reduce the burden on districts pursuing informal review, while still providing a clear and detailed record for the Commission in case of appeal. One commenter complained that the process “places too many constraints (ie roadblocks) on The District to be able to bring a dispute in front of the Commission.” We believe that with the addition of the

exception process and the streamlining of the informal review process, districts will have ample access to the Commission.

Chapter 3

The edits to Chapter 3 are very minor, as this chapter is new and set for final adoption here. The primary change is removing the definitions in Section 14, as they have been included in the updates to Chapter 1. Additional changes include amending section 11 to clarify how the adequacy standards apply to alternative schools, and various non-substantive typographical corrections.

Chapter 9

The changes to this Chapter include updates to formatting and terminology, the elimination of material moved to other Chapters of the SFC Rules (most notably Section 11, Local Enhancements), and the addition of Section 12, which clarifies the role of the Design Guidelines promulgated under Wyoming Statute § 21-15-114(a)(vii) and governed by the recently enacted § 21-15-119(d). Some of the language added to Section 12 comes from the previous Chapter 3. New language clarifies that the Guidelines are no longer to be used in assessing adequacy—that is the role of the uniform adequacy standards. The language also includes provisions governing the role of the design guidelines in project agreements and other project agreement-related provisions.

Several commenters expressed concerns about the fact that § 8 requires districts to accept value engineering recommendations unless waived by the Director. The comments state that this inflexible process takes control away from the districts. Several responses are in order. First, this is not a change—the comment is referring to existing language that is currently in effect. Second, the waiver process does provide substantial flexibility in this process. The Director has the authority to waive recommendations and the Commission can also grant a waiver through the simple exception process, rather than requiring informal or formal review. Third and finally, the value engineering process is required by statute and in order for the Commission and Department to fulfill their statutory obligations, the final determination on value engineering recommendations must rest with these entities.

One commenter asked why § 2(b) requires the Department “review school construction projects – even District initiated. They can’t have it both ways – either everything initiated by the District is an enhancement, outside the purview of the Department, or it is under their oversight, and so may be allowable – not immediately an enhancement.” The commenter misunderstands what an enhancement is. Per Wyoming Statute § 21-15-111(a)(iii), district-initiated projects are only an enhancement if they exceed the Commission’s adequacy standards. The Department must compare district-initiated projects to the adequacy standards to determine whether or not the project is an enhancement in order to properly identify the project in the AiM database and to ensure proper calculation of major maintenance payments. This review of district-initiated projects is intended to benefit districts by allowing them to bring such projects into regular inventory if they do not exceed the adequacy standards. This review is not intended to and by statute cannot impair a district’s ability to perform their own district-initiated projects. It is also worth noting that this is not a suggested change—the commenter’s issue is with language that is currently in effect and is not proposed for revision.

One commenter expressed dissatisfaction with § 4 how “prototypical design is being forced down everyone’s throat.” Two responses are in order. First, the Department is not suggesting any changes at this time to the section on prototypes. The commenter’s concern is with language that is already in effect. Second, this section merely states that the Commission encourages the use of prototypes and gives districts the ability to use any prototype design they wish. Nothing in this section requires the use of prototypes.

One commenter recommended that fund reversion in § 9 be extended to at least 18 months. The Department is not recommending changes to this section at this time, but can consider the comment for future proposed revisions if the Commission wishes.

The Department received two comments on § 12(d). The language proposed by the Department for that provision states that “when the Facility Design Standards and Guidelines are not specific on the type, quantity, or quality of a design element or component, the architect shall select the most efficient and cost effective type, quantity, or quality of the element or component, subject to approval by the Department.” Two comments requested removing this provision in favor of more flexibility for the districts. The Department does not recommend removing this provision, as it mirrors the statutory language and provides an important means of discharging the Commission’s obligation to “ensure adequate, efficient and cost effective school buildings and facilities.” Wyo. Stat. § 21-15-114(a)(vii); cf. § 21-15-117(b)-(d). Efficient and cost-effective do not mean “lowest initial cost,” therefore the Department believes this provision will allow sufficient flexibility to provide for districts’ needs while still discharging the Commission’s statutory obligations.

Chapter 10

The intent of this Chapter is to better conform the SFC’s rules’ use of the term “local enhancement” (or just “enhancement”) to the statutory definition of the term, to improve the process for recognizing the enhancement designation, and to establish a process for removing that designation when feature or structure no longer meets the definition of the term. This Chapter is not intended to (and as drafted does not) make significant changes to the current operations of the Department, and a significant portion of the language proposed for inclusion in this Chapter currently exists in other chapters of the SFC’s rules.

Definitions

These definitions are intended to better conform the Commission’s terminology to the statutory definitions. Per Wyoming Statute § 21-15-111(a)(iii), a “local enhancement” is a feature or building or facility that is (1) initiated by a school district and (2) exceeds the Commission’s adequacy standards. The second criteria is relatively straightforward and is governed by Chapter 3 of the SFC’s rules. The proposed definitions related to Chapter 10 (“district-initiated” and related definitions) are intended to clarify the first criteria. The comments evidence a great deal of confusion about what an “administrative rule” is. Administrative rules adopted pursuant to a statutory grant of authority and may be used to interpret ambiguous statutory provisions. In this case, the phrase “initiated by a school district” in § 21-15-111(a)(iii) leaves important ambiguities. It is neither defined in statute, nor is it used elsewhere in the body of Wyoming law such that the meaning of the phrase is readily discernible. The Commission has general rulemaking authority for all of Chapter 15 of Title 21, so its rulemaking authority is unquestionable. Much as the Commission’s adoption of FCI as the

means of measuring condition is a valid exercise of its duty and authority to measure the condition of school buildings and facilities (despite the fact that FCI is mentioned nowhere in statute), so too is the adoption of this rule to clarify the otherwise ambiguous phrase.

Many comments evidenced confusion on what an enhancement is, so it is very important to note that unless a feature or building meets **both** these criteria, it does not qualify as an enhancement. Thus, the mere fact that a project is a “district-initiated project” does not mean that it is necessarily an enhancement—that designation would only apply if it **also** exceeds the adequacy standards. These definitions are not intended to change what is and is not an enhancement—because that is a statutory category, neither the Commission nor the Department can change the statutory definition. Rather, these definitions are intended to clarify what it means for something to be “initiated by a school district” as that phrase is used in the statutory definition.

Some commenters expressed concerns about referencing VE in the definition of “district-initiated.” Because the waiver and exception processes provide significant flexibility in the VE process, the Department does not believe removing that reference is necessary. Rather, the inclusion of that reference is essential to discharging the Commission’s statutory duties. Additionally, two districts expressed concern that including un-waived VE recommendations in the definition of “district-initiated” amounted to an “unlawful expansion” of statute. This is not an accurate assessment. VE recommendations identify potential elements and features that are not necessary to an adequate building and are not efficient or cost-effective. The Department and Commission’s statutory obligation is to provide adequate, efficient, and cost-effective buildings. If a VE recommendation is not waived, that means that both the Department and Commission agree that the rejected alternative is not necessary for an adequate building and is not efficient or cost-effective. Consequently, the State is not statutorily required or permitted to fund the rejected alternative. Thus, logically, if the district insists on including the rejected alternative, that inclusion would be “district-initiated.” In sum, the proposed definition does not alter or expand statute, but rather is a common-sense application “firmly grounded” in the plain statutory language.

One commenter noted that this definition may include major maintenance. Because major maintenance projects are legislatively funded through an appropriation and approved by the Department and Commission through the district’s facility plan (see § 21-15-109(e)), major maintenance projects fall within the definition of state-initiated, not the definition of district-initiated. The definition of “district-initiated” was never intended to cover major maintenance and language has been added to the definitions section to clarify further that major maintenance is considered state-initiated.

Three districts raised questions about whether or not the Department may designate an element or component “district-initiated” after project completion, when it was not previously identified as such. The districts requested language explicitly prohibiting such a retroactive designation. The Department acknowledges that this is a difficult area, and there are compelling arguments for both allowing and prohibiting retroactive designations. The Department has no desire to trap districts or unreasonably scrutinize designs after project completion. The only situation where the Department anticipates pursuing a retroactive designation is where collusive, fraudulent, or materially misleading behavior by a district has occurred and will have an appreciable effect on major maintenance.

To allow the flexibility to handle such situations, the Department does not recommend adding a prohibition on retroactive designations. In the event of such a designation, the aggrieved district would have the opportunity to challenge the designation through the Commission's review process. The informal review will create a detailed record, including a full, written determination by the Department, for the Commission's ultimate determination. Thus, there would be significant safeguards to prevent unwarranted retroactive designations. As an alternative, the Commission could set a definitive point, after which retroactive designations are not permitted (e.g., substantial completion). If the Commission takes this approach, the Department recommends including an exception for material misstatement, collusion, or fraud, subject to the contested case process. Additionally, the Commission's contracts could be updated to make it the responsibility of the project architect, who is already charged with complying with the Design Guidelines and Adequacy Standards, to evaluate the design and identify areas that are in excess of the Commission's standards and guidelines.

Section 2

This section incorporates existing language from Chapter 9 § 11(d) of the SFC's current rules regarding LEED with the new terminology and additional explanation of how the enhancement designation applies. This section explicitly clarifies that a project or element is only an enhancement if it is **both** district-initiated **and** in excess of the adequacy standards. This section also forbids the Department or Commission from interfering with a district's desire to implement a district-initiated project. The final sentence clarifies that because no appropriation is associated with a district-initiated project, funds are not available to reimburse the costs of district-initiated elements or projects, even if the project or element is later deemed not to be an enhancement.

One commenter "recommends the SCD fund third-party certification of energy efficient and sustainable design and construction practices. Requiring a third party certify the design and construction practices can reduce the overall cost of projects and ongoing maintenance of the building which presents good value. In addition, although many energy efficient components have higher up front cost they should not be considered upgrades or enhancements because they offer cost saving over multiple years making them good value." The Department is not currently proposing any changes to the handling of energy efficiency expenses (the relevant provision is from the current Chapter 9 § 11(d) and was merely relocated and updated to match new definitions), but it will consider this comment for future rule changes, if the Commission wishes.

Section 3

Subsection (a) of this section is an update of the language currently found in Chapter 9 § 11 of the Commission's rules. It was determined that this language would be most helpful in a dedicated section on enhancements, and thus was taken out of Chapter 9 and included in this Chapter. One new provision states that an element or project does not cease to be district-initiated merely because it is not identified as such during design and construction. The requirement that the district bear ultimate responsibility for the identification of district-initiated elements is in recognition that the district is the one designing the building and thus in the best position to identify items outside the design guidelines. The Department is directed to assist districts in such an identification. Some commenters expressed concerns this could impose additional liability on the districts if they make mistakes in design and construction. This is not intended (and does not) create any additional liability for districts—neither the Department nor

the Commission is authorized to punish districts for failing to identify a district-initiated project or element. Rather, this provision simply recognizes that enhancement status is a statutory reality that does not depend on notice to the Department or acknowledgement by the Commission. Thus, should the identification of an element or project be delayed, the only impact would be that the Department, independent of any action by the school district, can update the AiM database to recognize the enhanced status, regardless whether the district ever chooses to present that item to the Commission. This will bring the Commission's practices more in line with the statutory definition of an enhancement, which says nothing about whether the Department or Commission receive notice of the enhancement, but rather hinges upon whether the feature, building, or facility is district-initiated and in excess of the adequacy standards. It also bears noting, in response to one commenter, that the Commission, despite the exception process currently in Chapter 1, has no authority to grant exceptions from the adequacy standards to make something a non-enhancement at the request of a district—"local enhancement" is a statutory category, and the Commission cannot grant exceptions to statute.

Subsection (b) clarifies that a project or element is only an enhancement if it is **both** district-initiated **and** in excess of the adequacy standards. It should be noted that this standard (that an enhancement satisfy both criteria) is derived from statute and is not a standard from which the Commission can deviate in rule or practice. *See* Wyoming Statute § 21-15-111(a)(iii). This section also implements the requirements of Wyoming Statute § 21-15-109 regarding the calculation of major maintenance. Subsections (c) and (d) incorporate the requirements of Wyoming Statute § 21-15-115(c) regarding the assessment of local enhancements for potential inclusion in the adequacy standards.

Section 4

This section creates a process for districts to remove the enhancement designation if circumstances change such that the element or building is no longer in excess of the adequacy standards. For example, if a district's enrollment changes such that a building no longer exceeds the Commission's adequacy standards, the district may petition the Commission to remove the enhancement designation, allowing the building to generate MM and making the building fully eligible for MM projects. Because there is no appropriation associated with a district-initiated project, funds are not available for reimbursement, even if the project is later deemed not to be an enhancement.