

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 7. EDUCATION

CHAPTER 6. SCHOOL FACILITIES BOARD

[R08-139]

PREAMBLE

1. Sections Affected

R7-6-258
R7-6-301
R7-6-502
R7-6-504
R7-6-601
R7-6-758

Rulemaking Action

Amend
Amend
Amend
Amend
Amend
Amend

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 41-1003

Implementing statutes: A.R.S. §§ 15-2002(A), 15-2011(F); 15-2041(A), (C) through (F), and (J)

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 12 A.A.R. 1710, May 19, 2006

Notice of Rulemaking Docket Opening: 13 A.A.R. 1987, June 8, 2007

Notice of Proposed Rulemaking: 13 A.A.R. 1959, June 8, 2007

Notice of Termination of Rulemaking: 14 A.A.R. 1746, May 9, 2008 (*in this issue*)

Notice of Rulemaking Docket Opening: 14 A.A.R. 1756, May 9, 2008 (*in this issue*)

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Monica Petersen, Deputy Director of Finance
School Facilities Board

Address: 700 W. Washington St., Suite 230
Phoenix, AZ 85007

Telephone: (602) 364-0283

Fax: (602) 542-6529

E-mail: mpetersen@azsfb.gov

5. An explanation of the rule, including the agency's reasons for initiating the rule:

In 2005, the School Facilities Board was required to conduct a Five-year Rule Review and submit the results of that review to the Governor's Rule Regulatory Review Council. This proposed rulemaking implements actions found and reported by the School Facilities Board in the course of the Five-year Rule Review and contained within the report submitted to the Governor's Rule Regulatory Review Council, June 9, 2005. The proposed rules fix grammatical mistakes regarding the number of square feet required for administrative space in school district facilities as well as at the Arizona School for the Deaf and Blind to meet minimum adequacy standards; eliminates the computation methodology for expansion of core facilities since the School Facilities Board no longer funds core facilities; clarifies that the Board makes a determination on a school site rather than on square footage with respect to considering input from a

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military airport on school site selection; clarifies that a school district's acceptance of a project is indicated by its acceptance of the Terms and Conditions; clarifies that donations for land will be distributed at the start of construction which reflects Board practice rather than upon notification from the district to the Board that the land donation has been accepted by the district; reduces the percentage of a new construction project budget that will be set aside for contingency from five percent to three percent to reflect current practice. Other rule changes amend language to clarify meanings or correct grammar.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

The rule does not diminish a previous grant of authority of a political subdivision of this state.

8. The preliminary summary of the economic, small business, and consumer impact:

The amended rules do not create a significant economic, small business, and consumer impact. The amended language clarifies actual practice of the School Facilities Board and staff or corrects grammatical errors but do not significantly change the economic impact to small business and consumers. The proposed rule that reduces the percentage of a new construction project budget that will be set aside for contingency from five percent to three percent reflects the practice that has been in place by the School Facilities Board for several years so it will have no new fiscal impact. The contingency amount may not be used on a project unless unforeseen circumstances arise. The operational change from five to three percent allowed the additional two percent to be used on the project's cost.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Monica Petersen, Deputy Director of Finance
School Facilities Board
Address: 700 W. Washington St., Suite 230
Phoenix, AZ 85007
Telephone: (602) 364-0283
Fax: (602) 542-6529
E-mail: mpetersen@azsfb.gov

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

No proceedings are currently scheduled.

Persons requesting an oral proceeding may contact Monica Petersen at the School Facilities Board within 30 days of the date this notice of proposed rulemaking is published. When requesting an oral proceeding a person shall state the purpose of the proceeding in a written request, delivered to:

School Facilities Board
Monica Petersen, Deputy Director of Finance
Attention: 5-year Rule Adjustments
1700 W. Washington St., Suite 230
Phoenix, AZ 85007

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

There are no incorporations by reference in the Proposed Rulemaking.

13. The full text of the rules follows:

TITLE 7. EDUCATION

CHAPTER 6. SCHOOL FACILITIES BOARD

ARTICLE 2. MINIMUM SCHOOL FACILITY GUIDELINES

Section
R7-6-258. Administrative Space

ARTICLE 3. SQUARE FOOTAGE CALCULATIONS

Section
R7-6-301. Square Footage Calculations

ARTICLE 5. NEW SCHOOL AND LAND FUNDING

Section
R7-6-502. Funding for New Schools or Additional Square Footage
R7-6-504. Donations of Real Property

ARTICLE 6. CONTINGENCY FUNDS

Section
R7-6-601. Allocation and Use of Contingency ~~Monies~~ Funds

ARTICLE 7. MINIMUM SCHOOL FACILITY GUIDELINES FOR THE ARIZONA STATE SCHOOLS FOR THE DEAF AND BLIND

Section
R7-6-758. Administrative Space

ARTICLE 2. MINIMUM SCHOOL FACILITY GUIDELINES

R7-6-258. Administrative Space

- A. No change
- B. No change
- C. A school facility shall have work space available to the faculty. This space is in addition to any work area available to a teacher, that is in or near a classroom. ~~One~~ The work space shall be one square foot per student with a ~~maximum~~ minimum of 150 square feet and a maximum of 800 square feet is required. The maximum may be exceeded. The space may be divided into more than one room. This space may have more than one function.

ARTICLE 3. SQUARE FOOTAGE CALCULATIONS

R7-6-301. Square Footage Calculations

- A. No change
- B. No change
- C. No change
- D. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
- E. No change
- F. ~~The method of computing the funding and square footage for any expansion of a core facility previously funded by the School Facilities Board shall follow the same method that was used for computing the original core facility.~~

ARTICLE 5. NEW SCHOOL AND LAND FUNDING

R7-6-502. Funding for New Schools or Additional Square Footage

- A. No change
- B. ~~If the~~ proposed new school facilities are located in territory in the vicinity of a military airport as defined in A.R.S. § 28-8461, the Board shall provide notice to the military airport of the request for public comment about the proposed new school facility construction ~~and~~. The Board shall also seek the military airport's comments and analysis concerning compatibility of the proposed school facilities with the high noise or accident potential generated by military airport operations that may have an adverse effect on public health and safety. The Board shall consider and analyze the comments and analysis provided by the military airport prior to making a final determination to fund the new square footage site.
- C. No change
- D. A school district that is approved project funding for additional square footage shall ~~have~~ within 60 days from the date of ~~notification~~ the Board's approval ~~to~~ officially accept, ~~in writing~~ through a signed Terms and Conditions, the project fund-

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ing for the square footage approved by the Board or the project approval shall expire and funding expires. For projects of \$500,000 or more, after a school district has accepted a project in writing and has signed the Terms and Conditions for new school funding, the Board shall provide allocate five percent of the project monies approved for architectural and engineering fees, for projects of \$500,000 or more. The individual school district shall be responsible for establishing the actual A and E architect and engineering fees amount.

- E. A school district that receives a project approval and associated funding for additional square footage from the Board shall develop proceed with the design development plan and design specifications for the project. The school district shall submit to Board staff two copies of the proposed educational goals or specifications and schematic design, with budget estimates, are required to be submitted to the Board's staff. The items required to be included school district shall include in the estimated budget are all costs elements of new construction, excluding land acquisition. After Board staff review, the school district shall prepare a preliminary bid package. These elements Costs of new construction include, but are not limited to:
1. Architectural and engineering fees;
 2. Costs for survey, testing, permits, advertising, and printing;
 3. Construction costs;
 4. Furniture, fixtures, and equipment costs;
 5. Any necessary project management costs; and
 6. A five three percent contingency amount.
- After Board staff review, the school district shall proceed with a preliminary bid package.
- F. If the school district includes reasonable upgrades to the new construction project for energy conservation purposes, the Board shall provide funding upgrades above the formula-based award to cover the full amount of the upgrade. Upgrades will only be funded if the upgrade receives pre-approval approval by the Board staff prior to construction and the school district architect or engineer certifies that the upgrade will provide dollar savings in excess of the cost of the upgrade within an eight-year period.
- G. Upon review of the submitted schematic design construction documents, budget estimates and preliminary final bid package, the Board's staff shall make a recommendation to the Board regarding the appropriateness of the school district to proceed with the additional square footage and the efficiency and effectiveness of the plan. The staff recommendation shall be based on the following:
1. whether Whether the project is within the original scope and Board-approved budget (including square footage and number of students);
 2. the The project meets the building adequacy standards;
 3. initial Initial comments from the local building authority; and
 4. whether Whether revised student population projections continue to justify the additional square footage. If the Board approves the project, the school district shall be authorized to proceed with the final bid package. Prior to authorization to contract, the school district shall document that it has obtained local (city, county or equivalent) building department approval. For projects outside of the original scope and/or or Board-approved budget or that do not meet the minimum adequacy guidelines, the Board may instruct the school district to resubmit the project, or the Board may make an alternative decision. The school district may use local Local funds may be used by the school district in conjunction with the Board-approved funding.
- H. Upon receipt of bids by the school district, the Executive Director shall authorize the district to proceed with the contract if the school district has documented that it has obtained local (city, county, or equivalent) building department approval, and the bid is within the original scope and Board-approved budget, and meets the building adequacy standards. The Executive Director may make an alternative recommendation to the full Board.
- I. The Board-approved funding for additional square footage shall be available to the school district for one year from the date of notification. The bid process shall be completed within the one year period. The Board shall consider requests for an extension beyond the one year and may grant an extension for good reason.
- J. No change

R7-6-504. Donations of Real Property

- A. No change
- B. No change
- C. No change
- D. If the Board approves the district request to accept the donation, the Board staff shall notify the district. The distribution of Board's staff shall distribute 20 percent of the value of the accepted donation pursuant to A.R.S. § 15-2041 shall be awarded to the school district upon notification to the Board that the donation has been accepted by the district at the start of construction. The district shall submit documentation of its governing board action and documentation that the property title has been transferred to the district. Upon receipt of this documentation Board staff shall be authorized to distribute the approved 20 percent amount.
- E. No change

- F. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
 - 7. No change
 - 8. No change
- G. No change
- H. No change

ARTICLE 6. CONTINGENCY FUNDS

R7-6-601. Allocation and Use of Contingency ~~Monies~~ Funds

- A. ~~A sum equal to a percentage of the construction bid shall be set aside as a contingency fund to cover the cost of unknown conditions that could arise during construction.~~ The School Facilities Board shall set aside an amount equal to ~~five~~ three percent of the base cost for new construction to cover the cost of unknown conditions that could arise during construction. ~~and ten percent of the base cost for renovation of a structure or system replacement to cover these potential costs.~~ Contingency funds are not part of the construction budget and shall not be ~~are to be used~~ unless ~~only~~ if needed. ~~For deficiency corrections projects, any contingency funds which are not used shall be returned to the deficiency corrections fund.~~ For projects funded by the new school facilities fund, any contingency funds ~~which~~ that are not used may be used by the school district in accordance with A.R.S. § 15-2041.
- B. No change
 - 1. No change
 - 2. No change
 - 3. No change
- C. No change
- D. The following conditions apply to the use of all contingency ~~funds~~ monies allocated to a specific project approved by the School Facilities Board.
 - 1. ~~If the district wishes to issue change orders that do not comply with this subsection these rules,~~ the associated costs shall be:
 - a. ~~accounted~~ Accounted for separately,
 - b. ~~and not~~ Not considered part of the approved project, and
 - c. ~~In other words, they would need to be paid~~ Paid out of separate monies and would not be considered part of the approved project, even ~~though they might be~~ if included in the same basic contract. ~~These costs would be paid for using local funds.~~
 - 1-2. ~~The school district may use contingency funds ~~monies~~ only to cover change orders that are to correct unknown conditions.~~
 - 2-3. ~~A school district shall not use contingency funds may not be used to cover change orders for the other two types of situations discussed in subsection (B) above where:~~
 - a. ~~the~~ The district has determined to change the scope of work during construction by adding components as discussed under subsection (B)(2), or
 - b. ~~a~~ A change is required to correct a discrepancy created by the architect that could be considered an error or omission by the architect as discussed under subsection (B)(3).
 - 3. ~~For deficiency correction projects performed pursuant to A.R.S. § 15-2021 only, the Executive Director shall have the discretion to authorize the use of contingency funds for expansion of scope, to accommodate low budget estimates, and for all other project related costs.~~
 - 4. Contingency ~~funds~~ monies shall not be used to pay for "bid add alternates." These items are not part of the final approved project.
- E. ~~A school district whose deficiency correction projects are combined with the deficiency correction projects of one or more additional school districts pursuant to R7-6-401 shall have the contingency amount included as a percentage of the overall set of projects that have been grouped together for such purposes. The Executive Director shall have the discretion to use, transfer, and/or combine the contingency amounts for any projects within such a group to any other project within the group of projects. The Executive Director's adjustment authority pursuant to R7-6-401 shall be considered as a percentage or sum of the overall group of projects.~~
- F.E. The Board may modify or waive the requirements of this Section for good cause.

ARTICLE 7. MINIMUM SCHOOL FACILITY GUIDELINES FOR THE ARIZONA STATE SCHOOLS FOR THE DEAF AND BLIND

R7-6-758. Administrative Space

- A. No change
- B. No change
- C. A school facility shall have work space available to the faculty. This space is in addition to any work area available to a teacher, in or near a classroom. One square foot per student with a ~~maximum~~ minimum of 150 square feet and a maximum of 800 square feet is required. The maximum may be exceeded. The space may be divided into more than one room. This space may have more than one function.
- D. No change

NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

[R08-127]

PREAMBLE

1. Sections Affected Rulemaking Action
R20-5-602 Amend
2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
Authorizing statute: A.R.S. § 23-405(4)
Implementing statute: A.R.S. § 23-410
3. A list of all previous notices appearing in the Register addressing the proposed rule:
Notice of Rulemaking Docket Opening: 14 A.A.R. 1147, April 11, 2008
4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:
Name: William M. Wright, Assistant Director
Address: Industrial Commission of Arizona
Division of Occupational Safety and Health
800 W. Washington St., Suite 203
Phoenix, AZ 85007
Telephone: (602) 542-1695
Fax: (602) 542-1614
E-mail: wright.william.m@dol.gov
5. An explanation of the rule, including the agency's reasons for initiating the rule:
In order to conform to the Federal Occupational Safety and Health Standards as required by Section 18(c) of the Federal Occupational Safety and Health Act of 1970 requiring state administered occupational safety and health programs to adopt standards that are at least as effective as those adopted by the U.S. Department of Labor, the Industrial Commission is removing several references to consensus standards that have requirements that duplicate, or are comparable to, other OSHA rules, and is making a technical change to 29 CFR 1910.107(c)(1)(iv). When removing duplicative references to consensus standards, OSHA has replaced them with cross references to existing OSHA standards that have requirements that are essentially identical to the consensus standards. The retention of duplicate references is unnecessary and may confuse the regulated community. In doing so, OSHA believes that existing compliance objectives and/or employee protection will not be altered. These changes are incorporated by reference as published in the *Federal Register* 72 FR 71061 – 71070, December 14, 2007.

Copies of the incorporated by reference material are available for inspection or reproduction at the Arizona Division of Occupational Safety and Health, 800 W. Washington St., Room 203, Phoenix, AZ 85007, and can be downloaded from the Federal OSHA web site www.osha.gov.
6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data

underlying each study, and any analysis of each study and other supporting material:

None

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

The Federal Occupational Safety and Health Administration have determined that these amendments will have no economic impact on small business and/or consumers.

Cost and benefit analysis of these amendments is available for inspection, review, and copying at the Industrial Commission of Arizona, Division of Occupational Safety and Health, 800 W. Washington St., Phoenix, AZ 85007.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: William M. Wright, Assistant Director
Address: Industrial Commission of Arizona
Division of Occupational Safety and Health
800 W. Washington St., Suite 203
Phoenix, AZ 85007
Telephone: (602) 542-1695
Fax: (602) 542-1614
E-mail: wright.william.m@dol.gov

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

An oral proceeding has been scheduled as follows:

Date: June 13, 2008
Time: 9:00 a.m.
Location: Hearing Room A, first floor
Industrial Commission of Arizona
800 W. Washington St.
Phoenix, AZ 85007

Written comments may be submitted on or before 9:00 a.m. June 13, 2008

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

12. Incorporations by reference and their location in the rules:

29 CFR 1910 the Federal Safety and Health Standards for General Industry, with amendments as of December 14, 2007. This incorporation by reference will appear in R20-5-602.

13. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Section

R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910

Each employer shall comply with the standards in Subparts B through Z inclusive of the Federal Occupational Safety and Health Standards for General Industry, as published in 29 CFR 1910, with amendments as of ~~November 15, 2007~~ December 14, 2007 incorporated by reference. Copies of these reference materials are available for review at the Industrial Commission

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of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to general industry activity by all employers, both public and private, in the state of Arizona; provided that this rule shall not apply to those conditions and practices which are the subject of rule R20-5-601. This incorporation by reference does not include amendments or editions to 29 CFR 1910 published after ~~November 15, 2007~~ December 14, 2007.