ARTICLE 67-09
APPROVAL FOR SCHOOL CONSTRUCTION ESTIMATED TO COST MORE THAN ONE HUNDRED FIFTY THOUSAND DOLLARS

Chapter
67-09-01 Approval for School Construction Estimated to Cost More Than One Hundred Fifty Thousand Dollars

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67-09-01-01. Definitions.

For purposes of this article:

1. "Application" means the appropriate construction approval application provided by the department, including all required supporting documentation.

2. "Board" means the North Dakota state board of public school education.

3. "Construction" means construction, purchase, repair, improvement, renovation, or modernization of any school building or facility which is estimated by the school board to cost more than one hundred fifty thousand dollars.

4. "Consult" means to meet with, discuss data and plans, and seek advice and counsel.

5. "Department" means the North Dakota department of public instruction.

6. "District" means a North Dakota public school district.

7. "Emergency construction" means any new construction or remodeling construction that is requested because of damage or destruction of buildings or facilities as a result of fire, tornado, flood, or other act of God.

8. "Facility" includes a parking lot, athletic complex, or any other improvement to real property owned by the district.

9. "Facility plan" means the school district's facility plan required for new construction, or remodeling construction estimated to cost three hundred fifty thousand dollars or more, completed on forms provided or sanctioned by the department.

10. "New construction" means any construction that provides additional area to the current buildings or facilities and is estimated to cost more than one hundred fifty thousand dollars.

11. "Project" means the building, facility, or improvement that would result from the construction.

12. "Remodeling construction" means any construction that improves current buildings or facilities and is estimated to cost more than one hundred fifty thousand dollars.

13. "Superintendent" means the North Dakota superintendent of public instruction.

14. "Technical assistance" means counsel, advice, and involvement in the completion of the application and facility plan.

History: Effective April 1, 1994; amended effective November 1, 2002; January 1, 2010; January 1, 2016.
General Authority: NDCC 15.1-36-01
Law Implemented: NDCC 15.1-06-09, 15.1-36-01

67-09-01-02. Construction must be approved by the superintendent of public instruction - Exception.

A district may not undertake construction of any school building or facility estimated to cost more than one hundred fifty thousand dollars unless:

1. The construction is approved by the superintendent; or

2. The construction is required as part of a plan to correct deficiencies required under North Dakota Century Code section 15.1-06-09, approved by the state fire marshal, and the estimated cost does not exceed one hundred fifty thousand dollars.

History: Effective April 1, 1994; amended effective May 1, 1999; November 1, 2002; January 1, 2010; January 1, 2016.
General Authority: NDCC 15.1-36-01
Law Implemented: NDCC 15.1-06-09, 15.1-36-01

67-09-01-02.1. General requirements for approval.

The superintendent may not approve any new construction or remodeling construction unless the school district demonstrates:

1. The need for the project;

2. The educational utility of the project;

3. Potential use of the project by a future reorganized school district;

4. The capacity to pay for the project; and

5. a. Demonstrates student population has been stable or increased during the past five years and projects that student population will be stable or will increase during the ensuing five years, or

   b. Demonstrates by clear and convincing evidence that despite declining enrollment, there are no feasible alternatives to the proposed project.

History: Effective November 1, 2002; amended effective January 1, 2010; January 1, 2016.
General Authority: NDCC 15.1-36-01
Law Implemented: NDCC 15.1-06-09, 15.1-36-01

67-09-01-03. Consultation with the department required.

1. The district shall consult with the department at least forty-five days prior to the submission of an application if the construction is new construction, or remodeling construction estimated to cost three hundred fifty thousand dollars or more.

2. The department may waive the timelines in this section for emergency construction.

History: Effective April 1, 1994; amended effective November 1, 2002; January 1, 2010; January 1, 2016.
General Authority: NDCC 15.1-36-01
Law Implemented: NDCC 15.1-36-01

67-09-01-04. Preparing the application.

The district shall obtain the appropriate application from the department. The district may request and shall receive and consider technical assistance provided by the department in preparing the application.

History: Effective April 1, 1994; amended effective January 1, 2016.
General Authority: NDCC 15.1-36-01
Law Implemented: NDCC 15.1-36-01

67-09-01-05. Facility plan required for certain construction.

Repealed effective November 1, 2002.

67-09-01-05.1. Approval of remodeling construction costing less than three hundred fifty thousand dollars.

The superintendent may approve remodeling construction estimated to cost less than three hundred fifty thousand dollars if the district demonstrates:

1. The need for the remodeling construction by showing that the remodeling is required to address any of the following criteria:

   a. Implementation of the life safety code;

   b. Implementation of the Americans with Disabilities Act of 1990 [42 U.S.C. 12101, et seq.];

   c. Implementation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794];

   d. Asbestos abatement or removal;

   e. The part of the building or facility that is to be remodeled has exceeded its useful life;

   f. The building or facility has been damaged as a result of fire, tornado, flood, or other act of God; or

   g. Violations of fire, health, safety, and any other required state or federal standards will be corrected by the construction;

2. The remodeling construction will enhance or facilitate delivery of educational services in the district; and

History: Effective November 1, 2002; amended effective January 1, 2010; January 1, 2016.
General Authority: NDCC 15.1-36-01
Law Implemented: NDCC 15.1-36-01

67-09-01-05.2. Approval of new construction or remodeling construction costing three hundred fifty thousand dollars or more.

The superintendent may approve new construction or remodeling construction estimated to cost three hundred fifty thousand dollars or more, if the district meets the following requirements:

1. The district must submit a completed facility plan with the application for construction approval.

2. At the time of consultation with the department, the district shall complete and review its facility plan with the department. The district shall receive and consider technical assistance provided by the department in completing and reviewing the district's facility plan. If the district submitted an acceptable facility plan within the preceding three years. The superintendent may require the district to update or revise the plan.

3. The facility plan must include:

   a. A description and preliminary diagrams of the proposed construction;

   b. A description of programs to reduce energy costs and waste disposal costs;

   c. Trend data on school or facility maintenance;

   d. The estimated difference in operation costs as a result of construction completion; and

   e. Any other information deemed advisable by the superintendent.

4. The facility plan must address the following factors, which relate to the need for the project, but may also relate to the other general requirements for approval as indicated in section 67-09-01-02.1:

   a. A description of district schools and facilities;

   b. Alternatives considered by the district and reasons for rejecting alternatives;

   c. Evidence that demonstrates that, despite attempted cooperation or collaboration with area schools and other education agencies and political subdivisions, no form of cooperation with another entity will result in buildings or facilities that meet the needs of the students;

   d. The need for buildings or facilities could not be met within the district or adjacent districts at a comparable cost by leasing, repairing, remodeling, or sharing existing buildings or facilities or by using temporary buildings or facilities;

   e. Description of district programs and services and an assessment of improvements that will occur as a result of construction completion;

   f. Violations of fire, health, safety, and any other required state or federal standards, which will be corrected by the construction;

   g. The new construction or remodeling is required to address any of the following criteria:

      (1) Implementation of the life safety code;

(2) Implementation of the Americans with Disabilities Act of 1990 [42 U.S.C. 12101, et seq.];

(3) Implementation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794];

(4) Asbestos abatement or removal;

(5) The school:

(a) Demonstrates student population has been stable or increased during the past five years and projects that student population will be stable or will increase during the ensuing five years; or

(b) Demonstrates by clear and convincing evidence that despite declining enrollment, there are no feasible alternatives to the proposed project.

(6) The building or facility, or part of the building or facility, has exceeded its useful life; or

(7) The building or facility has been damaged or destroyed as a result of fire, tornado, flood, or other act of God; and

h. Any other information deemed advisable by the superintendent.

5. The facility plan must address the following factors, which relate to the educational utility of the project construction, but may also relate to the other general requirements for approval as indicated in section 67-09-01-02.1:

a. The building or facility will enhance or facilitate delivery of educational services in the district;

b. The building or facility meets or exceeds the size standards recommended by the department;

c. The proposed building or facility is comparable in size, cost, and quality to buildings or facilities recently constructed in other districts that have similar enrollment; and

d. Any other information deemed advisable by the superintendent.

6. The facility plan must address the following factors, which relate to the general requirements for approval as indicated in section 67-09-01-02.1:

a. Past, present, and projected enrollment data;

b. The economic and population bases of the communities to be served are likely to grow or to remain stable;

c. The building or facility will be in use for the life of the building or facility; and

d. Any other information deemed advisable by the superintendent.

7. The facility plan must address the following factors, which relate to the potential utilization of the project by a future reorganized school district, but may also relate to the other general requirements for approval as indicated in section 67-09-01-02.1:

a. The location of school sites in each surrounding school district, including surrounding districts' attendance numbers in elementary and high school, capacity of buildings, and distances from the applicant's district;

b. Geographic information regarding the area proposed to be served;

c. Appropriate efforts to determine how this building or facility fits into the learning needs of the area have been made;

d. Information regarding the potential utilization of the project by a future reorganized school district; and

e. Any other information deemed advisable by the superintendent.

8. The facility plan must address the following factors, which relate to the district's capacity to pay for the project, but may also relate to the other general requirements for approval as indicated in section 67-09-01-02.1:

a. The availability and manner of financing the construction has been thoroughly evaluated;

b. Trend data on general fund revenues, expenditures, and fund balances;

c. Trend data on tax levies;

d. Trend data on taxable valuation per student;

e. Current bonded indebtedness, debt retirement schedules, and total capital expenditures of the district;

f. Current sources of district revenue;

g. The operating budget of the district can satisfactorily meet the projected operating cost of the proposed building or facility; and

h. Any other information deemed advisable by the superintendent.

History: Effective November 1, 2002; amended effective January 1, 2010; January 1, 2016.
General Authority: NDCC 15.1-36-01
Law Implemented: NDCC 15.1-36-01

67-09-01-06. Submission of application.

The district shall submit the application to the department, along with its approved facility plan, if necessary. If the superintendent determines the application or facility plan is not complete, the superintendent shall return the application and facility plan to the district for completion.

History: Effective April 1, 1994; amended effective November 1, 2002.
General Authority: NDCC 15.1-36-01
Law Implemented: NDCC 15.1-36-01

67-09-01-07. Demonstration of need and educational utility.

Repealed effective November 1, 2002.

67-09-01-08. Application acted on within forty-five days.

Within forty-five days of receipt of the completed application, the superintendent shall issue a written decision either approving or disapproving the application and shall provide a written rationale for the decision. However, if the application seeks approval of emergency construction, the superintendent shall approve or disapprove the application within seven days of receipt, or as soon thereafter as is reasonably possible.

History: Effective April 1, 1994; amended effective November 1, 2002; January 1, 2016.
General Authority: NDCC 15.1-36-01
Law Implemented: NDCC 15.1-36-01

67-09-01-09. Appeal of disapproved application to board.

1. If the superintendent disapproves the district's application, the district may appeal the superintendent's decision to the board by serving a written notice of appeal on the superintendent, with a statement of the reasons the application should be approved, within thirty days of the mailing of the notification of disapproval.

2. If the district includes new information in its written notice of appeal that was not considered by the superintendent when making the superintendent's decision, the matter shall be sent back to the superintendent for reconsideration. If the matter is sent back to the superintendent, the superintendent may request additional information from the district, and the timeline for initial consideration of an application shall apply.

3. Within sixty days of receipt of a written appeal request that does not include new information, the board shall review the application, the superintendent's written rationale for disapproval, and the district's statement of reasons the application should be approved, and determine whether the application should be approved. The board may ask questions of the school board and the school board's representatives, and the superintendent and the superintendent's representatives. The board's decision on the district's application is final.

History: Effective April 1, 1994; amended effective November 1, 2002.
General Authority: NDCC 15.1-36-01
Law Implemented: NDCC 15.1-36-01

67-09-01-10. Approval effective for three years - Change in approved plan.

Construction approval received under this chapter is effective for three years from the date of approval. If the district has not commenced construction within the three-year period, the district must apply again for construction approval. If a district modifies an approved plan and the modification results in a cost of more than one hundred fifty thousand dollars in excess of the cost of the approved plan, or if the modification changes the purpose or stated function of the approved plan, the district shall again obtain the approval of the superintendent as provided by this chapter.

History: Effective April 1, 1994; amended effective November 1, 2002; January 1, 2010; January 1, 2016.
General Authority: NDCC 15.1-36-01
Law Implemented: NDCC 15.1-36-01

67-09-01-11. Submission of architectural plans.

Repealed effective January 1, 2016.