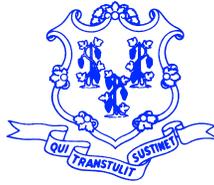


The Connecticut General Assembly

Legislative Commissioners' Office

Edwin J. Maley, Jr.
Commissioner
William A. Hamzy
Commissioner

Larry G. J. Shapiro
Director



Legislative Office Building
Suite 5500
Hartford, Connecticut
06106-1591
(860) 240-8410
fax (860) 240-8414
e-mail: lco@cga.ct.gov

Memorandum

To: Legislative Regulation Review Committee
From: Legislative Commissioners' Office
Committee Meeting Date: October 23, 2012

Regulation No:	2012-45
Agency:	Department of Education
Subject Matter:	School Construction Grants
Statutory Authority: (copy attached)	10-287c, 4b-1b(d)

	Yes or No
Mandatory	Y
Federal Requirement	N
Permissive	N

For the Committee's Information:

Pursuant to section 4b-1b(d), the Department of Construction Services became a successor department to the Department of Education with regard to school construction grants, although the Department of Education retains some authority. The Department of Education is submitting the proposed regulations under section 4-168(g), which authorizes an agency to make purely technical amendments to effect a statutory transfer of authority without prior notice and hearing.

The existing regulations the department is amending contains provisions that have not been updated since the 1980s and 1990s. As a result, the proposed regulations contain numerous substantive issues created by the failure to revise the regulations to reflect

statutory changes. Since correcting obsolete references is not one of the reasons referenced under section 4-168(g), the agency would need to comply with the notice and hearing requirements of chapter 54 in order to make such changes. However, since the Department of Construction Services is the successor agency, it is questionable whether the Department of Education has the statutory authority to make the substantive changes recommended in this section of the report. There may be some changes that only touch upon the Department of Education's role in the process, in which case said department could make the changes, after notice and a hearing. The authorizing legislation required the agencies to adopt regulations in consultation with one another, which the Department of Education has done for this regulation. The Department of Construction Services is required by section 10-287c of the general statutes to adopt regulations by July 1, 2013, and should also update the existing regulations to remove or correct obsolete references.

Since it is questionable whether the Department of Education could make the following changes, they are not noted as Substantive Concerns for purposes of this report.

1. On page 3, section 10-287c-6 references section 10-287g of the general statutes which was repealed on July 1, 1997. Additionally, section 10-287c-6 appears to be obsolete because the state no longer provides bond interest subsidy grants to towns for new school building projects, and the grant payments that remain are governed by sections 10-287j and 10-292k of the general statutes.

2. On page 4, section 10-287c-12(c) states that applicants have until June 30th of the year following the legislative authorization to "appropriate sufficient funds to pay for the project". However, this provision conflicts with section 10-283(d) of the general statutes, which prohibits the Commissioner of Education from accepting any application for a school building project unless the applicant has secured funding authorization for the local share of the project costs prior to application.

3. On page 4, in section 10-287c-13, the phrase "including space limitations, if applicable, shall apply" conflicts with section 10-286(a)(2) of the general statutes which states, "any project involving the purchase and renovation of an existing facility, may be exempt from the standard space specifications".

4. On page 5, section 10-287c-14(b) regarding interest grant estimates is obsolete and conflicts with sections 10-287j and 10-292k of the general statutes.

5. On page 5, in the catchline for section 10-287c-15, "Reference: Section 10-283a", is incorrect and should be bracketed and replaced by the appropriate statutory provision, if applicable. This section of the regulations concerns state standard space specifications and eligible and ineligible costs, whereas section 10-283a of the general statutes concerns committee review of the listing of eligible school building projects.

6. On page 6, in section 10-287c-15(d), the reference to "subdivision (9) of subsection (a) of section 10-286 of the Connecticut General Statutes" is obsolete and should be deleted. There are no longer any provisions in section 10-286 regarding the leasing of facilities and the current version of said subdivision concerns air quality.

7. On page 6, in section 10-287c-17, subsections (a) and (b) are obsolete and conflict with sections 10-287 and 10-287i of the general statutes and subsection (d) should be amended by inserting brackets around "interest grant payments" because that provision is obsolete.

Substantive Concerns:

Technical Corrections:

1. Throughout the proposed regulation, introductory language should be used for proper form. On page 1, the introductory language "Section 1. Section 10-287c-1 of the Regulations of Connecticut State Agencies is amended to read as follows:" should be inserted prior to the section, for proper form. On page 2, the introductory language "Sec. 2. Sections 10-287c-3 to 10-287c-5, inclusive, of the Regulations of Connecticut State Agencies are amended to read as follows:" should be inserted prior to section 10-287c-3, for proper form. On page 3, the introductory language "Sec. 3. Sections 10-287c-11 to 10-287c-15, inclusive, of the Regulations of Connecticut State Agencies are amended to read as follows:" should be inserted prior to section 10-287c-11 for proper form. On page 6, the introductory language "Sec. 4. Section 10-287c-17 of the Regulations of Connecticut State Agencies is amended to read as follows:" should be inserted before section 10-287c-16. On page 8, the introductory language "Sec. 5. Sections 10-287c-21 and 10-287c-22 of the Regulations of Connecticut State Agencies are amended to read as follows:" should be inserted prior to section 10-287c-21.

2. Throughout the proposed regulation, effective dates should be deleted for proper form. For example, on page 2, in section 10-287c-3, "(Effective August 25,1989)" should be deleted for proper form.

3. On page 1, in section 10-287c-1(2), "(2) ["Board" means" should be "[(2) "Board" means" for proper form.

4. On page 1, in section 10-287c-1, in new subdivisions (2) and (3), opening and closing brackets should be inserted around "state" for accuracy.

5. On page 1, in section 10-287c-1(10), the underlining of the commas after "bonds" and "agreements" should be deleted to accurately reflect the text of the existing regulation.

6. On page 2, section 10-287c-2 should be deleted from the proposed regulation because there are no changes being made in that section.

7. On page 2, in sections 10-287c-3 to 10-287c-5, inclusive, all references to "commissioner" should be replaced with "Commissioner of Education" for accuracy and clarity. Said sections refer to section 10-287a of the general statutes in which the

responsibilities of the Commissioner of Education regarding school building projects were not transferred to the Commissioner of Construction Services.

8. On page 2, in section 10-287c-4, "[the] THE" should be "the" as there is no change being made to the text of the existing regulation.

9. On page 3, sections 10-287c-7 to 10-287c-10, inclusive, should be deleted from the proposed regulation because there are no changes being made to said sections.

10. On page 3, in section 10-287c-11(a), "the department in such manner as the Commissioner may prescribe" should be "the [department] Commissioner of Education in such manner as the Commissioner of Construction Services may prescribe" for accuracy because section 10-283 of the general statutes still requires boards of education to submit applications for school building projects to the Commissioner of Education but tasks the Commissioner of Construction Services with prescribing the manner.

11. On page 4, section 10-287c-12 should be deleted from the proposed regulation because the only change being made reflects the text of the existing regulation.

12. On page 3, in section 10-287c-11(b), "The Commissioner shall make" should be "The Commissioner of Education shall make", "On or before October 1" should be "On or before [October 1] August 31", "the Commissioner shall notify" should be "the Commissioner of Education shall notify" and "shall not preclude the Commissioner from placing" should be "shall not preclude the Commissioner of Education or the Commissioner of Construction Services from placing" to accurately reflect the changes made to section 10-283 of the general statutes.

13. On page 4, in section 10-287c-13, "notify the Commissioner when filing its application" should be "notify the [Commissioner] Commissioners of Education and Construction Services when filing its application" because the Commissioner of Education receives the application, but the Commissioner of Construction Services inspects the site and building prior to final review of the plans.

14. On page 5, section 10-287c-14 should be deleted from the proposed regulation since no changes are being made in said section.

15. On page 5, in section 10-287c-15(a)(2), the underlining of the commas after "Commissioner" and "prescribe" should be deleted to accurately reflect the text of the existing regulation.

16. On page 6, in section 10-287c-15(d), in the third to last line the reference to "subdivision (7) of subsection (a) of section 10-286 of the Connecticut General Statutes" should be "subdivision [(7)] (6) of subsection (a) of section 10-286 of the Connecticut General Statutes" for accuracy.

17. On page 6, section 10-287c-16 should be deleted from the proposed regulation because there are no changes being made in that section.

18. On page 7, in section 10-287c-17, the underlining of the commas after "education" in subsection (e) and after "inclusive" in subsection (g) should be deleted to accurately reflect the text of the existing regulation.

19. On page 7, sections 10-287c-18 to 10-287c-20, inclusive, should be deleted from the proposed regulation because there are no changes being made in those sections.

20. On page 8, in section 10-287c-21, in subsection (a), "department in such manner as the Commissioner may prescribe" should be "[department] Commissioners of Education and Construction Services, in such manner as the Commissioner of Construction Services may prescribe," to conform with sections 10-291 and 10-292 of the general statutes. In subsection (b), "The Commissioner shall review" should be "The [Commissioner] Commissioners of Education and Construction Services shall review" to conform with sections 10-291 and 10-292 of the general statutes. In subsection (d)(2), "and the Commissioner;" should be "and the [Commissioner] Commissioners of Education and Construction Services;" to conform with sections 10-291 and 10-292 of the general statutes. All other references to "the Commissioner" throughout this section should be "the Commissioner of Construction Services" for accuracy and clarity.

21. On page 8, in section 10-287c-21(c)(1), in subparagraph (B) "the State Department of Health Services," should be "the [State Department of Health Services] Department of Public Health," and in subparagraph (C) "the commissioner of public works," should be "the [commissioner of public works] Commissioner of Construction Services," for accuracy.

22. On page 8, in section 10-287c-22(a), "Section 10-286(a)(7)" should be "Section 10-286(a)[(7)] (6)" for accuracy.

23. On page 9, in section 10-287c-23, "[t] TO" and "effect [.]_" should be deleted because that language already exists in the text of the existing regulation and this section should be deleted from the proposed regulation because there are no changes being made in this section.

Recommendation:

<input checked="" type="checkbox"/>	Approval in whole
<input checked="" type="checkbox"/>	with technical corrections
<input checked="" type="checkbox"/>	with deletions
<input type="checkbox"/>	with substitute pages
<input type="checkbox"/>	Disapproval in whole or in part
<input type="checkbox"/>	Rejection without prejudice

Reviewed by: Christopher Cordima / Shannon McCarthy

Date: October 11, 2012

From 2012 Supplement

Sec. 10-287c. Regulations. (a) The State Board of Education is authorized to prescribe such rules and regulations as may be necessary to implement the provisions of this chapter, provided any rules or regulations to implement the provisions of sections 10-283, 10-287, 10-287a, 10-292d and subsection (d) of section 10-292m shall be prescribed in consultation with the Secretary of the Office of Policy and Management. Whenever the Commissioner of Education has made a commitment for a grant on or before June 30, 2011, prior to the completion of a project as provided in section 10-287a, and said commissioner has made advances thereon as provided in said section, any such regulations prescribed in accordance with this section which were in effect at the time of such commitment and advances shall be applicable to any additional commitment and subsequent advances with respect to such project.

(b) Not later than June 30, 2013, the Commissioner of Construction Services, in consultation with the Commissioner of Education, shall adopt regulations in accordance with the provisions of chapter 54 in order to implement the provisions of this chapter. Such regulations shall apply to any project for which a grant application is filed with the Department of Education on or after July 1, 2013.

From 2012 Supplement

Sec. 4b-1b (d)

(d) The Department of Construction Services shall constitute a successor department to the Department of Education in accordance with the provisions of sections 4-38d, 4-38e and 4-39 with respect to the issuance of school construction grants in accordance with chapter 173. On and after July 1, 2011, any regulation of the State Board of Education adopted pursuant to chapter 173 shall continue in force and effect until the Commissioner of Education, in consultation with the Commissioner of Construction Services, determines which regulations need to be transferred to the Department of Construction Services in accordance with chapter 54 and either the Department of Construction Services or the State Board of Education amends such regulations to effect such transfer. Where any order or regulation of said departments conflict, the Commissioner of Construction Services or the Commissioner of Education may implement policies or procedures consistent with the provisions of chapter 173 while in the process of adopting such policies or procedures in regulation form, provided notice of intent to adopt such regulations is printed in the Connecticut Law Journal not later than twenty days after implementation. Any such policies or procedures shall be valid until the time final regulations are adopted.