

spending by GAAs during that time, the Commission believes that it is appropriate to increase the annual fee for GAAs by \$150.00.

To implement imposition of the proposed fee increase, the Commission proposes that N.J.A.C. 19:25-20.20(a) and (b) be amended to indicate a \$575.00 annual fee for each GAA.

As the Commission has provided more than a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendment to N.J.A.C. 19:25-20.20 is expected to have minimal social impact, as the proposed fee increase affects only registered GAAs.

Economic Impact

The proposed amendment will increase the annual fee for GAAs by \$150.00. The annual fee is only applicable to GAAs who register to lobby in the State of New Jersey, of which there are currently 984. GAAs are retained by a "represented entity," that is, "any person, partnership, committee, association, corporation, labor union, or any other organization that employs, retains, designates, engages, or otherwise uses the services of any governmental affairs agent to influence legislation, regulation, or governmental processes"; see N.J.A.C. 19:25-20.2. Individuals who spend less than 20 hours per calendar year to influence legislation, regulation, or governmental processes are not GAAs, need not register with the Commission, and, therefore, will not be subject to the proposed registration fee increase. The Commission believes that the importance of creating and maintaining electronic filing systems in order to maintain transparency in lobbying activity outweighs the economic impact of the proposed inflationary adjustment in GAA registration fees.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendment concerns New Jersey GAAs. The amendment is not subject to any Federal requirements or standards.

Jobs Impact

The proposed amendment is not expected to result in the generation or loss of jobs.

Agriculture Industry Impact

The proposed amendment is not expected to have any impact on the agriculture industry in the State of New Jersey.

Regulatory Flexibility Analysis

The proposed amendment does not impose recordkeeping or reporting requirements on small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, GAAs who file with the Commission may be small businesses, and will have increased compliance expenses under the proposed amendment, that is, an increased annual registration fee. The Commission believes that the costs associated with complying with the proposed amendment are not prohibitive and serves a clear public interest in the disclosure of the required information.

Housing Affordability Impact Analysis

The proposed amendment will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the amendment regarding the increase in annual fees for GAAs would evoke a change in the average costs associated with housing.

Smart Growth Development Impact Analysis

The proposed amendment will have an insignificant impact on smart growth development and there is an extreme unlikelihood that it will evoke a change in housing production in Planning Areas 1 or 2, within designated centers, under the State Development and Redevelopment Plan in New Jersey because the amendment concerns annual fees for GAAs.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 20. REPRESENTED ENTITIES AND GOVERNMENTAL AFFAIRS AGENTS

19:25-20.20 Annual fee

(a) Each governmental affairs agent who is an individual and whose activities are subject to the Act during any part of a 12-month period commencing on January 1 and ending on the following December 31 shall pay an annual fee of [\$425.00] **\$575.00**, and shall submit with the agent's annual fee two identical, two-by-two-inch, color photographs taken of the governmental affairs agent within six months showing a full-face, front view of the agent with a plain white or off-white background.

(b) In the event that the governmental affairs agent is a partnership, committee, association, corporation, or other organization or group of persons, the annual fee shall be [\$425.00] **\$575.00** for each individual from the partnership, committee, association, corporation, or other organization or group of persons, who is required to wear a name tag pursuant to N.J.A.C. 19:25-20.6.

(c)-(e) (No change.)

(a)

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

School Facilities Projects: Section 15 Grant Procedures

Proposed Readoption with Amendments: N.J.A.C. 19:32

Proposed Repeals: N.J.A.C. 19:32-1.9 and 1.16

Authorized By: New Jersey Schools Development Authority, Charles B. McKenna, Chief Executive Officer.

Authority: P.L. 2007, c. 137, § 4k (N.J.S.A. 52:18A-238k; 52:18A-240) (rulemaking authority); P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.) and P.L. 2007, c. 137 (N.J.S.A. 52:18A-235 et seq.) (enabling statutes).

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2015-020.

Submit written comments via mail, e-mail, or facsimile by May 1, 2015, to:

Cecelia Haney, Administrative Practice Officer
New Jersey Schools Development Authority
PO Box 991
Trenton, NJ 08625-0991
Phone: 609-858-2968
Fax: 609-656-5076
chaney@njsda.gov

The agency proposal follows:

Summary

The New Jersey Schools Development Authority (SDA) proposes to readopt with amendments and repeals N.J.A.C. 19:32, School Facilities Projects: Section 15 Grant Procedures (the "rules").

Chapter 32 governs the SDA's administration of a grant program for the State share of the final eligible costs of certain school facilities projects undertaken by non-SDA districts, pursuant to Section 15 of the Educational Facilities Construction and Financing Act ("EFCFA" or "the Act"), P.L. 2000 c. 72 (N.J.S.A. 18A:7G-1 et seq.). Chapter 32 was originally adopted as special new rules for the administration of the Section 15 grant program by the New Jersey Economic Development Authority (EDA), the entity previously responsible for funding and management of the schools construction program under EFCFA. See 33 N.J.R. 2702(a). Chapter 32 was subsequently readopted as regular rules by the EDA, and expired on May 22, 2007. The expired rules of Chapter 32 with technical amendments were then adopted as new rules by the SDA effective January 7, 2008, with the exception of former Subchapter 5, Affirmative Action and Set Asides in Authority-Financed School Facilities Construction Projects Financed and Contracted For by the

Authority, which was renamed and proposed for separate re-adoption and recodification as N.J.A.C. 19:39, Affirmative Action Rules. See 40 N.J.R. 199(a); 39 N.J.R. 5369(a). Currently, Chapter 32, governing the grants program, is set to expire on July 6, 2015, pursuant to N.J.S.A. 52:14B-5.1.c(2).

The SDA has reviewed Chapter 32 and has determined that, with the addition of the proposed amendments and repeals described herein, this chapter remains adequate, reasonable, and necessary for the purposes for which it was originally promulgated: to provide a mechanism by which eligible school districts can receive Section 15 grants, and to ensure that such grant funds are used properly by the grantee school districts.

As the SDA has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

A summary of the rules proposed for re-adoption and the proposed amendments and repeals follows.

N.J.A.C. 19:32-1.1 Applicability and scope

This section describes the applicability of the rules as implementing Section 15 of the Act, which establishes a grant program to fund the State share of the final eligible costs of school facilities projects undertaken by school districts whose district aid percentage is less than 55 percent. The section has been proposed for re-adoption with amendments to eliminate obsolete provisions that extended grant eligibility to school districts with a district aid percentage of 55 percent or greater and that had a school facilities project approved by the Department, but which had not issued debt for such project prior to July 18, 2000, the effective date for N.J.S.A. 18A:7G-15.

N.J.A.C. 19:32-1.2 Construction of rules

This section, which provides that the chapter is to be liberally construed to permit the Authority to discharge its statutory functions under the Act, is proposed for re-adoption without amendment.

N.J.A.C. 19:32-1.3 Definitions

This section sets forth the meaning of the words and terms used throughout this chapter. Amendments to the section include changes to previously defined terms, the addition of new terms, and the deletion of terms and definitions rendered obsolete by the proposed amendments, as set forth below. Additionally, subsection (b) has been amended to delete reference to N.J.A.C. 6A:26A-1.3, as Chapter 26A has been repealed.

The following new terms have been added:

“Office of the Attorney General,” which refers to the New Jersey Department of Law and Public Safety, Office of the Attorney General as the successor to the Unit of Fiscal Integrity within the Office of the Attorney General created by N.J.S.A. 18A:7G-43, and replaces references to the now-defunct Division of Criminal Justice, Bureau of Fiscal Oversight previously referenced in the rules;

“LWD,” which refers to the New Jersey Department of Labor and Workforce Development and which replaces the deleted acronym “DOL”; and

“SDA school district,” which refers to a school district that received education opportunity aid or preschool expansion aid in the 2007-2008 school year, as defined at P.L. 2007, c. 260, § 39 (N.J.S.A. 18A:7G-3).

The following terms are proposed for amendment:

“Act,” which refers to the Educational Facilities Construction and Financing Act, is amended to include a reference to the public law amending the original law, P.L. 2007, c. 137, and to indicate that the Act “authorizes the school construction program”;

“Authority” which refers to the Schools Development Authority, is amended to include reference to the acronym “SDA” and to refer to the SDA’s origination statute as codified. The definition is further amended to include a brief description of the mission of the SDA as an entity “statutorily charged with undertaking and funding school facilities projects, pursuant to the Act”;

“Event of default” and “termination” have been proposed for amendment to update cross-references to N.J.A.C. 19:32-1.13 and 1.14, due to the recodification of those sections from the proposed repeal of N.J.A.C. 19:32-1.9;

“Punchlist,” which refers to a list of incomplete or defective work to be performed or remedied by a contractor, has been proposed for

amendment to specify that the incomplete or defective work is to be performed or remedied after substantial completion, “but before final completion”;

“State share,” which refers to the State’s proportionate share of the final eligible costs of a school facilities project, has been proposed for amendment to the calculation of State share, to delete a “115 percent” multiplier of the district’s aid percentage, consistent with similar legislative changes to N.J.S.A. 18A:7G-15; and

“Voucher,” which refers to form filed by a district to accompany a disbursement request, has been proposed for amendment to provide greater specificity regarding the purpose of the form as a certification of the progress of the school facilities project, and a calculation of prior grant disbursements, to be executed by the district’s authorized officer.

The following terms are proposed for deletion:

“Division of Criminal Justice, Bureau of Fiscal Oversight/SDA” or “Bureau of Fiscal Oversight/SDA,” which referred to a now-defunct unit within the Office of the Attorney General whose investigative function with regard to these rules has been assumed by the Office of the Attorney General generally, is proposed for deletion in favor of a reference to the Office of the Attorney General; and

“DOL,” which had referred to the New Jersey Department of Labor and Workforce Development, but which has been replaced with the acronym “LWD.”

N.J.A.C. 19:32-1.4 Administration and performance of grant agreements

This section, which provides that the district, not the Authority, is responsible for the administration and success of the school facilities project, is proposed for re-adoption without amendment.

N.J.A.C. 19:32-1.5 Disclosure and publicity

This section, which provides that submissions received by the Authority shall constitute public records and that public dissemination of information by the district concerning the school facilities project shall acknowledge the Authority’s financial assistance, is proposed for re-adoption without amendment.

N.J.A.C. 19:32-1.6 Access and record retention

This section provides that the NJEDA, the Authority, the Department of Education, and other governmental units may have broad access to records pertaining to the school facilities project and that a district or contracted parties are required to provide such access. A district must also include in all contracts a provision requiring contracted parties to permit the NJEDA, the Authority and other governmental units to investigate, audit, examine, and inspect these records. This section additionally addresses record retention requirements for records relating to school facilities projects funded with Section 15 grants. This section is proposed for re-adoption with amendments to replace references to the Bureau of Fiscal Oversight/SDA and DOL with references to the Office of the Attorney General and LWD, respectively.

N.J.A.C. 19:32-1.7 Fraud and other unlawful or corrupt practices

This section addresses a district’s responsibilities in administering moneys pursuant to this chapter, the grant agreement, and any contracts entered into in connection with a school facilities project, free from bribery, graft, and corrupt practices. This section also provides that a district must take appropriate remedial actions with respect to any allegations or evidence of such illegality or corrupt practices. This section is proposed for re-adoption with amendments to replace references to the Bureau of Fiscal Oversight/SDA with references to the Office of the Attorney General.

N.J.A.C. 19:32-1.8 Debarment

This section provides that a district and its consultants or contractors shall not enter into a contract for work on a school facilities project with any person or firm that has been debarred, suspended, or disqualified from State, Authority, or Federal government contracting. This section also sets forth requirements for statements in contracts and bid specifications relating to debarment, suspension or disqualification from contracting. Addressed as well is a district’s affirmative obligation to notify the Authority and the Office of the Attorney General in writing whenever it has knowledge that any contracted party, sub-consultant, or

subcontractor is on the Treasurer's, the Authority's, the Corporation's, or the Federal government's List of Debarred, Suspended or Disqualified Bidders. This section is proposed for readoption with amendments to subsection (c) to replace reference to the Bureau of Fiscal Oversight/SDA with reference to the Office of the Attorney General, and to subsection (d) to provide specificity to the phrase "the Treasurer's, the NJEDA's, the Authority's, or Federal government's List" by modifying "List" to read "List of Debarred, Suspended or Disqualified Bidders."

N.J.A.C. 19:32-1.9 Performance evaluation policy and procedure

This section, which provided that the Authority may establish and maintain a consultant and contractor performance evaluation policy and procedure, is proposed for repeal, as the Authority has not implemented such a performance evaluation policy, and is not required by N.J.S.A. 18A:7G-36 (the statute mandating performance evaluations of contractors on school facilities projects undertaken by the Authority) to perform performance evaluations for projects undertaken by districts pursuant to an Authority grant. Subsequent sections shall be proposed for readoption and recodification in accordance with the repeal of this section.

N.J.A.C. 19:32-1.10 Noncompliance

This section provides that the Authority may take one or more of the remedial actions specified in this section (issuance of a notice of noncompliance; withholding or suspension of payment of grant monies; or termination or rescission of the grant agreement) in the event of noncompliance with any provisions of the Act, any condition of the grant agreement, or any requirement of this chapter. This section is proposed for readoption recodified as N.J.A.C. 19:32-1.9, with amendments updating cross-references to N.J.A.C. 19:32-1.11, 1.12, and 1.13 due to the proposed repeal of N.J.A.C. 19:32-1.9.

N.J.A.C. 19:32-1.11 Notice of noncompliance

This section requires the Authority to notify the district in the event the Authority determines that the district is not in compliance with any provision of the Act, any condition of the grant agreement, or any condition of Chapter 32, and further provides that the Authority may require the district or its contractors or consultants to correct such noncompliance. The section makes this notice process a precondition to the remedial actions of withholding funds or terminating the grant agreement. This section is proposed for readoption recodified as N.J.A.C. 19:32-1.10, with amendments updating cross-references to N.J.A.C. 19:32-1.12 and 1.13 due to the proposed repeal of N.J.A.C. 19:32-1.9.

N.J.A.C. 19:32-1.12 Withholding of funds

This section provides that the Authority may withhold, upon written notice to the district, grant disbursements or any portion thereof when the Authority determines that a district has failed to comply with any provision of the Act, any condition of the grant agreement, or any requirement of Chapter 32. This section is proposed for readoption recodified as N.J.A.C. 19:32-1.11, without further amendment.

N.J.A.C. 19:32-1.13 Termination of the grant agreement for cause

This section sets forth the procedures for terminating the grant agreement upon an event of default, defining events of default, describing the process of termination and termination actions, addressing assignment of contracts, return of funds by the district, and payment by the district of expenses incurred by the Authority in collecting the repayment of the grant or enforcement of performance or observation of other obligations of the district in the event of default. This section is proposed for readoption recodified as N.J.A.C. 19:32-1.12, with an amendment to replace reference to the Bureau of Fiscal Oversight/SDA with reference to the Office of the Attorney General.

N.J.A.C. 19:32-1.14 Termination by mutual agreement

This section provides that the Authority and the district may terminate the grant agreement when both parties agree that the continuation of the school facilities project would not produce beneficial results commensurate with the further expenditure of funds. This section is proposed for readoption recodified as N.J.A.C. 19:32-1.13, without further amendment.

N.J.A.C. 19:32-1.15 Severability

This section states that if any provision of this chapter or the application thereof is held invalid by a court of competent jurisdiction, that invalidity will not affect other provisions or applications. This section is proposed for readoption recodified as N.J.A.C. 19:32-1.14, without further amendment.

N.J.A.C. 19:32-1.16 Waiver

This section, which provided a waiver of compliance with these rules for districts that received Department approval for a project prior to June 29, 2001, is proposed for repeal as obsolete. N.J.A.C. 19:32-1.17 shall be proposed for readoption and recodification in accordance with the repeal of this section and N.J.A.C. 19:32-1.9.

N.J.A.C. 19:32-1.17 Appeals

This section provides for the commencement of an informal appeals process at the discretion of the district in response to a decision of the Authority, and a formal hearing in the event that the matter is a contested case. This section is proposed for readoption recodified as N.J.A.C. 19:32-1.15, without further amendment.

Subchapter 2. Eligibility

N.J.A.C. 19:32-2.1 Applicability

This section provides that this subchapter establishes the Authority's procedures and requirements governing the eligibility determination for a grant and the execution of every grant agreement pursuant to Section 15 of the Act. This section is proposed for readoption without amendment.

N.J.A.C. 19:32-2.2 Eligibility

This section sets forth the conditions for grant eligibility, including approval of the district's long-range facilities plan, approval of the school facilities project, a determination by the Department of Education of the project's final eligible costs and the State share, final disposition of any appeal taken by the district to any of the required approvals, and approval of the district's local share. The section is proposed for readoption with amendments to delete cross-references to waiver provisions that are now obsolete.

N.J.A.C. 19:32-2.3 Eligibility determination

This section addresses the conditions precedent for the Authority's determination of the district's grant eligibility. The section is proposed for readoption with an amendment in subsection (a) to delete an unnecessary requirement for a "brief description of the school facilities project," as this information is gleaned through other means in the grant application process, and an amendment in subsection (b) to correct the omission of the article "the."

N.J.A.C. 19:32-2.4 Execution of the grant agreement

This section addresses the terms and conditions for execution of the grant agreement. This section is proposed for readoption with amendments to extend the period for execution of the grant agreement from 180 days to 18 months, to recognize the need for a longer timetable for securing local share funding of the grant project prior to execution of the grant agreement. Further amendments are proposed to eliminate language requiring the Authority to actively rescind a grant agreement offer, in favor of an automatic rescission of the grant offer 18 months after the Department's determination of final eligible costs.

N.J.A.C. 19:32-2.5 No assignment of grant agreement or grant by the district

This section, which prohibits the district from assigning the grant agreement or grant, but permits the Authority to assign the grant agreement to another instrumentality of the State, is proposed for readoption without amendment.

N.J.A.C. 19:32-2.6 Effect of grant awards

This section addresses when the grant agreement is effective, provides that it shall constitute an obligation in the amount of the grant agreement, and asserts that the award of the grant shall not be used as a defense by the district to an action brought by any governmental agency on account of the district's failure to comply with the Act or in order to obtain any

requisite permit, license or operating certificate. This section is proposed for readoption without amendment.

Subchapter 3. Disbursement of the Grant

N.J.A.C. 19:32-3.1 Amount of the grant

This section provides that the grant shall be in the amount of the State share and may be reduced upon final completion. This section also requires the district to certify to the Authority the total costs of the school facilities project and requires the Authority to adjust the amount of the grant if the total costs are less than the final eligible costs. This section is proposed for readoption with amendment to alter the calculation of the grant amount to delete a reference to a 115-percent multiplier, to conform to a similar 2007 amendment to N.J.S.A. 18A:7G-15 which changed the calculation of the State share of final eligible costs for a schools facility project.

N.J.A.C. 19:32-3.2 Cost overruns

This section, which provides that cost overruns of the school facilities project shall be the sole responsibility of the district, is proposed for readoption without amendment.

N.J.A.C. 19:32-3.3 Legal and/or equitable interest

This section provides that the district shall have no legal or equitable interest in the assets of the NJEDA or the Authority in any amount on deposit in the funds and accounts of the NJEDA or the Authority, which may provide funding of the grant. This section is proposed for readoption without amendment.

N.J.A.C. 19:32-3.4 Disbursements

This section provides that the disbursement of grant funds shall be made at intervals as work progresses and expenses are incurred by the district and approved by the Authority. The section provides for a general disbursement schedule, and several alternate disbursement schedules for application to various types of projects of limited size or time-sensitive nature. This section is proposed for readoption with several amendments. The general disbursement schedule consisted of six disbursements: after execution of the grant agreement, completion of the design phase checklist and other requirements, after completion of each of three construction completion steps, and upon final completion. The second disbursement schedule corresponds to relatively small size projects or time-sensitive projects that include a design phase, and provides for five disbursements. The third disbursement schedule corresponds to small-size or time-sensitive projects, not including a design phase, and provides for four disbursements. The fourth disbursement schedule is tailored to small school facilities projects (final eligible costs less than or equal to \$250,000) and provides for only three disbursements. Finally, the section contains a waiver provision allowing deviation from the applicable schedule of disbursements in the case of special circumstances and/or extraordinary need.

The first type of amendments proposed in this section serve to alter the grant disbursement schedule to delete the former first disbursement of one-half of one percent of the grant after grant execution and make associated changes to the remaining disbursement schedule to reflect that deletion. Further proposed amendments provide a brief description of the compliance obligations of Executive Order No. 215 (1989), and add requirements for compliance with Executive Order No. 24 (2002) regarding the inclusion of LEED (Leadership in Energy and Environmental Design) "green building principles" in school facility projects, and compliance with P.L. 2007, c. 1 (N.J.S.A. 52:27D-130.5) regarding requirements for construction permits for child care or education centers in certain locations.

N.J.A.C. 19:32-3.4(c) provided a specific disbursement schedule for school facilities project with final eligible costs of less than or equal to \$500,000 but greater than \$250,000, or time-sensitive projects with final eligible costs greater than \$250,000. N.J.A.C. 19:32-3.4(d) provided an alternate disbursement schedule for school facilities projects without a design phase which have final eligible costs of less than or equal to \$500,000 but greater than \$250,000, or time-sensitive projects with final eligible costs greater than \$250,000. These subsections are proposed for

deletion as superfluous, because SDA is no longer supporting these types of grant projects.

N.J.A.C. 19:32-3.5 Conditions precedent to payment of a disbursement

This section, which sets forth the conditions precedent to the payment of a disbursement by the Authority to a district, is proposed for readoption without amendment.

N.J.A.C. 19:32-3.6 Checklists

This section, which provides that the district shall be required to report to the Authority on the progress of the school facilities project by completing various checklists at various time points during the design and construction of the school facilities project, is proposed for readoption without amendment.

N.J.A.C. 19:32-3.7 Closeout procedures

This section, which provides that closeout shall occur when all applicable administrative actions and all required work have been completed by the district, and enumerates the steps for closeout, is proposed for readoption without amendment.

Subchapter 4. Undertaking the School Facilities Project

N.J.A.C. 19:32-4.1 General provisions

This section requires the school district to design and construct the school facilities project pursuant to the plans and specifications and as approved by the Department of Education. This section addresses changes in the school facilities project impacting educational adequacy and the approval needed for change orders, and further specifies that changes in the project, whether reviewed by the Department of Education or not, are not eligible for funding under the grant agreement. This section is proposed for readoption without amendment.

N.J.A.C. 19:32-4.2 Contract award and compliance

This section addresses the district's broad range of responsibilities in awarding contracts for the school facilities project, including supervising design and construction, monitoring performance to ensure efficient and effective completion, exhausting remedies in the event of default, and prosecuting or defending legal actions involving the contracted party. This section requires the district to: obtain and maintain licenses and certifications required by governmental authorities; award contracts in accordance with the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq.; and to include in its construction contracts provisions requiring contractors' compliance with the New Jersey Prevailing Wage Act and the New Jersey Law Against Discrimination. This section incorporates the School Ethics Law by reference, and contains other conflict of interest provisions requiring the district to report certain improprieties to the Attorney General and the Executive Commission on Ethical Standards. This section further addresses the registration of contractors and subcontractors, the maintenance plan of a school facilities project, proof of insurance, district responsibilities regarding the tax-exempt status of bonds issued by the Authority, a variety of required district certifications, bid guarantees, performance bonds, and general language providing that the Authority may impose such other conditions as may be necessary and appropriate to implement the laws of the State and effectuate the purpose and intent of the Act. This section is proposed for readoption with amendments to subsections (b) and (g) to replace reference to the Bureau of Fiscal Oversight/SDA with references to the Office of the Attorney General.

Social Impact

The rules proposed for readoption with amendments and repeals will apply to all non-SDA school districts that seek to have the State share of the final eligible costs of a school facilities project funded by an SDA grant under section 15 of the Act, conditioned upon available State grant funding. The SDA believes that the rules proposed for readoption with amendments and repeals will have a positive social impact and that no negative impact will result. The provision of State share for these school facilities projects will affect school administrators, parents, students, teachers, and local taxpayers in a variety of ways. The funding of State share through Section 15 grants will enable students, teachers, and parents to benefit from school facilities that satisfy health and safety

standards, with rooms configured for incorporating the Core Curriculum Content Standards, and with increased capacity to meet expanding enrollments.

Economic Impact

The economic impact of the rules proposed for readoption with amendments and repeals has not changed since the original promulgation of the rules. The proposed readoption will allow for the continued implementation of section 15 of the Act, one of the largest public infrastructure investments programs in the State’s history. From its inception in 2002 through September 30, 2014, the SDA has executed 4,661 Section 15 grant agreements in all 21 counties of the State. To date, 1,706 schools in 515 districts have been impacted by the Section 15 grant program. Total project costs amount to over \$8.4 billion for which the State share totals over \$2.8 billion.

State share funding provided through section 15 grants will encourage many districts to undertake school facilities projects that they could not otherwise afford and may have previously deferred. Significant activity in the planning, construction, architecture, and engineering professions will directly result from these rules, providing obvious Statewide economic benefits in the short term. New and improved school facilities will support the achievement of the Core Curriculum Content Standards by New Jersey’s students, providing longer-term economic benefits as well. Section 15 grants may be funded with State contract bonds issued by the New Jersey Economic Development Authority pursuant to section 14 of the Act. The rules proposed for readoption with amendments and repeals further provide that the SDA may collect fees and recover expenses from school districts incurred in the collection of the repayment of the grant or in the enforcement of performance or observation of any other duties of the district upon an event of default.

Federal Standards Statement

The rules proposed for readoption with amendments and repeals implement a State statute, specifically N.J.S.A. 18A:7G-15. There are no Federal standards or requirements applicable to these rules. A Federal standards analysis, therefore, is not required.

Jobs Impact

The rules proposed for readoption with amendments and repeals provide a mechanism for grants to fund the State share of schools facilities projects in eligible districts. Thus, to the extent the rules have an effect on jobs, it will be to create jobs in New Jersey, primarily in the construction, consulting, and service sectors, rather than eliminate positions.

Agriculture Industry Impact

The rules proposed for readoption with amendments and repeals will have no impact on the agriculture industry.

Regulatory Flexibility Analysis

While the rules proposed for readoption with amendments and repeals impact New Jersey public schools, they either directly or indirectly through school districts will impose compliance requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The types of small businesses to which the rules will apply include consultants (for example, design consultants such as architects and engineers), contractors, and their subconsultants and subcontractors providing material or services to the school district in connection with a school facilities project. Because of the scale of school construction receiving State share pursuant to Section 15 grants, it is anticipated that the number of small businesses to which the rules will apply will be substantial. The rules address the following requirements: N.J.A.C. 19:32-1.6(b), school facilities project related records access and retention of records; N.J.A.C. 19:32-1.8(a) and (b) screening for debarred persons or firms and not entering into contracts with such persons or firms; N.J.A.C. 19:32-1.8(c), submitting and requiring the submission of sworn statements by bidders on government debarment, suspension, disqualification lists; N.J.A.C. 19:32-4.2(d), pre-qualification of contractors and subcontractors pursuant to N.J.S.A 18A:18A-18 and 18A:7G-41 (requiring submission of an application to the Authority with trade classification and aggregate rating limit); N.J.A.C. 19:32-4.2(e), requirement of compliance of contracted parties with the New Jersey

Prevailing Wage Act; N.J.A.C. 19:32-4.2(f), compliance of contracted parties with anti-discrimination provisions of applicable State law; N.J.A.C. 19:32-4.2(g), compliance with the School Ethics Law; N.J.A.C. 19:32-4.2(h), compliance with the Public Works Contractor Registration Act by annual registration and payment of registration fee with the Department of Labor and Workforce Development; N.J.A.C. 19:32-4(1), certifications by design consultants and other consultants; N.J.A.C. 19:32-4.2(m), requirement of bid guarantee; and N.J.A.C. 19:32-4.2(n), requirement of performance bonds. Many of the above requirements are designed to avoid corruption in the administration of grants and in the school facility procurement process, to ensure compliance with applicable laws, and to protect public funds distributed under the grant program. Due to the need for equity, fairness, and consistency in the administration of the grant program for the State share of final eligible costs of school facilities, no differentiation in the compliance, reporting, or recordkeeping requirements based on business size is warranted or appropriate.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments and repeals address the administration of a grant program for funding the State share of the construction of school facilities projects, and, therefore, will not have an impact on affordable housing or evoke a change in the average costs of housing in the State of New Jersey.

Smart Growth Development Impact Analysis

it is extremely unlikely that the rules proposed for readoption with amendments and repeals would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The rules address the administration of a grant program for funding the State share of the construction of school facilities projects.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:32.

Full text of the proposed amendments and repeals follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

19:32-1.1 Applicability and scope

These rules are promulgated by the New Jersey Schools Development Authority (“**SDA**” or the “Authority”) to implement Section 15 of the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72 (N.J.S.A. 18A:7G-15) and section 26 of P.L. 2007, c. 137 (collectively, the “Act”). Section 15 of the Act establishes a grant program to fund the State share of the final eligible costs of school facilities projects undertaken by school districts other than [Abbott] **SDA school** districts. [These rules also apply to a school district whose district aid percentage is 55 percent or greater, that had a school facilities project approved by the Department of Education, and had not issued debt prior to the effective date of P.L. 2000, c. 72.] These rules are adopted in order to provide the mechanism whereby school districts which are eligible to receive grants from the Authority can receive such grants and to ensure that these grant funds are used properly by the school districts. Any district applying for a grant or having received a grant pursuant to the Act shall at a minimum comply with the requirements of this chapter, as applicable.

19:32-1.3 Definitions

(a) The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise. Words in the singular shall include the plural and words in the plural shall include the singular where the context so requires.

“Act” means the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72[,] (N.J.S.A. 18A:7G-1 et seq.), as amended, **and P.L. 2007, c. 137 (N.J.S.A. 52:18A-235 et seq.), which authorizes the school construction program.**

“Authority” or “**SDA**” means the New Jersey Schools Development Authority established, pursuant to section 3 of P.L. 2007, c. 137 (N.J.S.A. 52:18A-237), [the] as successor [entity] to the New Jersey Schools Construction Corporation. **The SDA is statutorily charged with**

undertaking and funding school facilities projects pursuant to the Act.

...
 ["Division of Criminal Justice, Bureau of Fiscal Oversight/SDA" or "Bureau of Fiscal Oversight/SDA" means the unit which is the successor to the Unit of Fiscal Integrity within the Office of the Attorney General created by N.J.S.A. 18A:7G-43.

"DOL" means the New Jersey Department of Labor and Workforce Development.]

"Event of default" means any event specified in N.J.A.C. 19:32-[1.13]1.12.

...
"LWD" means the New Jersey Department of Labor and Workforce Development.

...
"Office of the Attorney General" means the New Jersey Department of Law and Public Safety, Office of the Attorney General, as successor to the Unit of Fiscal Integrity within the Office of the Attorney General created by N.J.S.A. 18A:7G-43.

...
 "Punchlist" means the list, prepared before substantial completion, of incomplete or defective work to be performed or remedied by a contractor after substantial completion, **but before final completion.**

...
"SDA school district" means a school district that received education opportunity aid or preschool expansion aid in the 2007-2008 school year, as defined at P.L. 2007, c. 260, § 39 (N.J.S.A. 18A:7G-3).

...
 "State share" means the State's proportionate share of the final eligible costs, which equals [115 percent of] the district aid percentage or 40 percent, whichever is greater as provided in N.J.S.A. 18A:7G-15.

...
 "Termination" means the cancellation of the grant agreement as a result of an event of default or by mutual consent of the parties pursuant to N.J.A.C. 19:32-[1.14]1.13.

...
"Voucher" means [the voucher in the form provided by the Authority] a form required by SDA in support of a district's grant disbursement request, that certifies the progress of the school facilities project and the amount of grant disbursements to date, and which must be executed by the district's authorized officer and delivered to the Authority by the district, together with a request for disbursement.

(b) Words and terms implementing the Act but not defined in this section shall have the meanings defined in N.J.A.C. 6A:26-1.2 [and 6A:26A-1.3].

19:32-1.6 Access and record retention

(a) The NJEDA, the Authority, the Department, the DCA, the [Bureau of Fiscal Oversight/SDA] **Office of the Attorney General**, the [DOL] **LWD**, and their duly authorized agents may, at their discretion and cost, investigate, audit, examine, and inspect the activities, documents, work product arising from audits, records, and accounts (pertaining to the school facilities project) of the district and other parties involved with the school facilities project as further set forth below:

1.-2. (No change.)

(b) The responsibilities of the district and/or the contracted parties with regard to access to the activities, documents, records, and accounts pertaining to school facilities projects shall be the following:

1. (No change.)

2. The districts shall include in all contracts a provision requiring contracted parties to permit the NJEDA, the Authority, the [Bureau of Fiscal Oversight/SDA] **Office of the Attorney General**, the Department, the [DOL] **LWD**, the DCA, and their duly authorized agents to investigate, audit, examine, and inspect in such manner and at such times as these parties deem necessary.

(c) (No change.)

19:32-1.7 Fraud and other unlawful or corrupt practices

(a) (No change.)

(b) The district shall diligently pursue available judicial and administrative remedies and take any other appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The district shall immediately notify the Authority and the [Bureau of Fiscal Oversight/SDA] **Office of the Attorney General** in writing when any such allegation or evidence comes to its attention and shall periodically advise the Authority and the [Bureau of Fiscal Oversight/SDA] **Office of the Attorney General** in writing of the status and ultimate disposition of any related matter.

19:32-1.8 Debarment

(a)-(b) (No change.)

(c) The district's bid specification for any work on the school facilities projects shall require all bidders to submit a sworn statement by the bidder, or an officer or partner of the bidder, indicating whether or not the bidder is, at the time of the bid, included on the State Treasurer's, the NJEDA's, the Authority's, or the Federal government's List of Debarred, Suspended or Disqualified Bidders as a result of action taken by any State or Federal agency, as the case may be. Bid specifications for the school facilities project shall also state that the district shall immediately notify the State, the Authority, and the [Bureau of Fiscal Oversight/SDA] **Office of the Attorney General** in writing whenever it appears that a bidder is on the Treasurer's, the NJEDA's, the Authority's, or the Federal government's List. The State and the Authority reserve the right in such circumstances to immediately suspend such bidder from contracting and/or engaging in work on the school facilities project and to take such other action as it deems appropriate pursuant to N.J.A.C. 19:38A-4 or any applicable regulation issued by the NJEDA or the Authority.

(d) The district shall have a continuing and affirmative obligation so long as the grant agreement is in effect to immediately notify the State and the Authority in writing whenever it obtains knowledge that any contracted party, subconsultant or subcontractor is on the Treasurer's, the NJEDA's, the Authority's, or the Federal government's List of **Debarred, Suspended or Disqualified Bidders**. The State and the Authority reserve the right in such circumstances to immediately suspend such contracted party, subconsultant, or subcontractor from contracting and/or engaging in work on the school facilities project and to take such other action as it deems appropriate pursuant to N.J.A.C. 19:38A-4 or any applicable regulation issued by the NJEDA or the Authority.

[19:32-1.9 Performance evaluation policy and procedure

The Authority may establish and maintain a consultant and contractor performance evaluation policy and procedure. The performance of any consultants and contractors engaged by the district for the school facilities projects shall be evaluated by the district at the times and in the manner specified by the Authority. This evaluation shall consider, among other things, the consultants' and contractors' ability to deliver and complete the school facilities project within the specified time frame and budget established by the district and consistent with the requirements of the contracts.]

19:32-[1.10]1.9 Noncompliance

(a) In addition to any other remedies as may be provided by law or by the grant agreement, in the event of noncompliance with any provisions of the Act, any condition of the grant agreement or any requirement of this chapter, the Authority may take any of the following actions or combinations thereof.

1. Issue a notice of noncompliance pursuant to N.J.A.C. 19:32-[1.11]1.10;

2. Withhold grant moneys pursuant to N.J.A.C. 19:32-[1.12]1.11;

3. Suspend the provision of grant moneys pursuant to N.J.A.C. 19:32-[1.13]1.12; and/or

4. Terminate the grant agreement or rescind the grant moneys pursuant to N.J.A.C. 19:32-[1.13]1.12.

19:32-[1.11]1.10 Notice of noncompliance

In the event that the Authority determines that the district is not in compliance with any provision of the Act, any condition of the grant agreement, or any condition of this chapter, it will notify the district of the noncompliance in writing. The Authority may require the district, its consultants and/or contractors to take and complete corrective action. If the corrective action is not taken within the requisite time period

specified or if the action taken is inadequate as determined by the Authority, the Authority may take any of the following actions or combinations contained in N.J.A.C. 19:32-[1.12]1.11 and [1.13]1.12.

19:32-[1.12]1.11 (No change in text.)

19:32-[1.13]1.12 Termination of the grant agreement for cause

(a) The Authority may terminate the grant agreement upon an event of default, which shall include, but not be limited to:

1.-9. (No change.)

10. The district fails to permit the Authority or the [Bureau of Fiscal Oversight/SDA] **Office of the Attorney General** immediate entry or inspection.

(b)-(g) (No change.)

Recodify existing N.J.A.C. 19:32-1.14 and 1.15 as **1.13 and 1.14** (No change in text.)

[19:32-1.16 Waiver

If the district received approval from the Department for the school facilities project prior to June 29, 2001, the district may request a waiver from compliance with certain provisions of these regulations and the grant agreement with which it would not be possible for the district to comply. The request for a waiver must specify the specific provisions of these regulations and the grant agreement that the district is requesting should not apply together with a detailed explanation why such compliance is not possible. If such justification is found to be valid by the Authority, a waiver for such provision(s) shall be issued.]

19:32-[1.17]1.15 (No change in text.)

19:32-2.2 Eligibility

(a) All of the following conditions shall apply regarding eligibility for a grant:

1. The district shall obtain [one of the following:]

[i. Approval] **approval** of the district's long-range facilities plan pursuant to N.J.A.C. 6A:26-2.3[.];

[ii. A waiver for approval of the school facilities project pursuant to N.J.S.A. 18A:7G-4(b); or

iii. Approval for retroactive funding pursuant to N.J.S.A. 18A:7G-9(c)—second paragraph.]

2.-7. (No change.)

19:32-2.3 Eligibility determination

(a) To evidence eligibility for a grant, the district shall submit [the following] to the Authority[:

1. A brief description of the school facilities project and the proposed timetable for completion of the school facilities project; and

2. Evidence] **evidence** of the approvals required pursuant to N.J.A.C. 19:32-2.2.

(b) Eligibility determinations shall be made in **the** order in which the requirements of (a) above have been met.

19:32-2.4 Execution of the grant agreement

(a) (No change.)

(b) The district shall execute the grant agreement within such period of time as the Authority may determine in its sole discretion.

1. The district shall have [180 days] **18 months** from the date of the [Authority's offer of a grant agreement] **Department's determination of final eligible costs for a school facilities project** to [return an executed grant agreement together with all applicable attachments to the Authority for execution by the Authority] **secure funding for the local share of the project**.

[2. In the event that the Authority has not received an executed grant agreement with all applicable attachments, it will notify the district on or before 30 days prior to the end of the 180-day time period that failure to receive an executed grant agreement and all applicable attachments by day 180 will result in rescission of the grant agreement offer.]

[3.] **2.** In the event that the [Authority has not received an executed grant agreement with all applicable attachments by day 180] **district has not secured funding for the local share of the project within 18 months** from the date of the [Authority's offer of a grant agreement] **Department's determination of final eligible costs pursuant to N.J.S.A. 18A:7G-5.h and N.J.A.C. 6A:26-3.6**, the [Authority shall

rescind the offer and so notify the district in writing] **grant agreement shall be automatically rescinded. No action need be taken by the Authority to effect or confirm the rescission of the grant agreement offer.**

Recodify existing 4. and 5. as **3. and 4.** (No change in text.)

19:32-3.1 Amount of the grant

(a) (No change.)

(b) Prior to final completion and the final disbursement, the district shall certify to the Authority the total costs of the school facilities project. If such amount is less than the final eligible costs, the Authority shall adjust the amount of the grant accordingly pursuant to the following:

1. (No change.)

2. The amount determined in (b)1 above shall be multiplied by [115 percent of] the district aid percentage or 40 percent, whichever is greater; and

3. (No change.)

19:32-3.4 Disbursements

(a) (No change.)

(b) Except as provided in (c) [through (f)] **or (d)** below, the disbursement schedule shall be as follows:

[1. The first disbursement of the grant in the amount of one half of one percent of the grant shall be made after execution of the grant agreement and submission of a request for disbursement as set forth in (a) above.]

[2.] **1.** The [second] **first** disbursement of the grant in the amount of 10 percent of the grant shall be made upon:

i. (No change.)

ii. Satisfactory compliance with [the] Executive Order No. 215 (1989) **(regarding the preparation and submission of environmental impact statements), Executive Order No. 24 (2002) (regarding inclusion of LEED (Leadership in Energy and Environmental Design) green building principles in school facility projects), and P.L. 2007, c. 1 (N.J.S.A. 52:27D-130.5) (regarding issuance of construction permits for child care or education centers in certain locations)**, if applicable, as determined by the Authority;

iii.-v. (No change.)

[3.] **2.** Following the [second] **first** disbursement and up to the disbursement upon final completion, the Authority shall make disbursements to the district upon submission to the satisfaction of the Authority of a request for disbursement based upon construction completion as follows:

i.-iii. (No change.)

Recodify existing 4. and 5. as **3. and 4.** (No change in text.)

[(c) In the case of a school facilities project with final eligible costs of less than or equal to \$500,000 but greater than \$250,000, or in the case of a time-sensitive project with final eligible costs greater than \$250,000, and in either case, the school facilities project includes a design phase, the disbursement schedule shall be as follows:

1. The first disbursement of the grant in the amount of one half of one percent of the grant shall be after execution of the grant agreement and submission of a request for disbursement as set forth in (a) above.

2. The second disbursement of the grant in the amount of 10 percent of the grant shall be made upon:

i. Completion to the satisfaction of the Authority of the design phase checklist;

ii. Satisfactory compliance with Executive Order No. 215 (1989), if applicable, as determined by the Authority;

iii. Approval by the Department of the final plans and specifications pursuant to N.J.A.C. 6A:26-5.4, if applicable;

iv. Submission to the Authority of acceptable documentation of required insurance coverages; and

v. Submission of a request for disbursement as set forth in (a) above.

3. The third disbursement of the grant in the amount of 45 percent of the grant shall be made upon a showing to the satisfaction of the Authority of 50 percent construction completion, submission of acceptable documentation of required insurance coverages, completion to the satisfaction of the Authority of the construction phase checklist for each contract/bid advertisement of the work constituting the relevant percentage completed, and submission of a request for disbursement as set forth in (a) above.

4. The fourth disbursement of the grant in the amount of 40 percent of the grant shall be made upon a showing to the satisfaction of the Authority of substantial completion, submission of acceptable documentation of required insurance coverages, completion to the satisfaction of the Authority of the construction phase checklist for each contract/bid advertisement of the work constituting the relevant percentage completed and submission of a request for disbursement as set forth in (a) above.

5. Upon final completion, the district shall prepare and submit to the Authority, for review and approval, a request for disbursement together with the final completion checklist. Upon approval, the Authority shall disburse the amounts remaining under the grant, the district shall thereupon make final payment to its contracted parties and thereupon, the Authority shall be released from any further responsibility to make any payments in connection with the school facilities project.

(d) In the case of a school facilities project that does not include a design phase but is otherwise described in (c) above, the amounts and requirements relating to the first and final disbursements of (c) above apply, but instead of five disbursements there are only four, and requirements of the second and third disbursements are as follows:

1. The second disbursement of the grant in the amount of 50 percent of the grant shall be made upon a showing to the satisfaction of the Authority of 50 percent construction completion, there is satisfactory compliance with Executive Order No. 215 (1989), if applicable, as determined by the Authority, submission of acceptable documentation of required insurance coverages, completion to the satisfaction of the Authority of the construction phase checklist for each contract/bid advertisement of the work constituting the relevant percentage completed and submission of a request for disbursement as set forth in (a) above.

2. The third disbursement of the grant in the amount of 45 percent of the grant shall be made upon a showing to the satisfaction of the Authority of substantial completion, acceptable documentation of required insurance coverage has been submitted to the Authority, completion to the satisfaction of the Authority of the construction phase

checklist for each contract/bid advertisement of the work constituting the relevant percentage completed and submission of a request for disbursement as set forth in (a) above.]

Recodify existing (e) and (f) as **(e) and (d)** (No change in text.)

[19:32-3.8 (Reserved)]

19:32-4.2 Contract award and compliance

(a) (No change.)

(b) The district shall obtain and maintain all licenses, certifications, authorizations, or any documents required by all governmental authorities wherever necessary. The district shall promptly notify the Authority and the [Bureau of Fiscal Oversight/SDA] **Office of the Attorney General**, in writing of any disciplinary action against itself or, if it has knowledge of, any contracted party or any change in the status of any license, permit, or other authorization required for the school facilities project.

(c)-(f) (No change.)

(g) No official or employee of the district who is authorized in his or her official capacity to negotiate, make, accept, or approve or to take part in such decision regarding a contract in connection with the school facilities project shall have any financial or other personal interest in any such contract. The School Ethics Law, N.J.S.A. 18A:12-21 et seq., and N.J.A.C. 6A:28 shall by reference be incorporated as part of the grant agreement.

1. The district shall report in writing to the Attorney General[, the Bureau of Fiscal Oversight/SDA] and the State Ethics Commission the solicitation of any fee, commission, compensation, gift, gratuity, or other thing of value by any State officer or employee or special State officer or employee from any State vendor.

2. (No change.)

(h)-(p) (No change.)

[SUBCHAPTER 5. (RESERVED)]
