



# Department of Education “Review and Comment” Process for Construction Projects

**SPECIAL REVIEW**  
November 7, 2019

**OFFICE OF THE LEGISLATIVE AUDITOR**  
STATE OF MINNESOTA

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November 7, 2019

Members of the Legislative Audit Commission:

In May 2019, our office received a complaint from a member of the public regarding the Minnesota Department of Education's process for commenting on school district construction proposals. After conducting some preliminary research about the complaint, we initiated a "special review" to more thoroughly examine issues related to this process.

We concluded that the department's process for commenting on school district construction projects should be improved. State law provides minimal direction to the department regarding the content of these reviews. We found that the department's comments on local projects comply with state law, but they typically provide no explanation of the department's conclusions. Furthermore, the department is directed by state law to include public comments in its "review and comment" documents, but the department has not established a process for soliciting that input. We suggest changes in state law to address these issues.

We received cooperation from the Minnesota Department of Education during the preparation of this report.

Sincerely,

Handwritten signature of James Nobles in black ink.

James Nobles  
Legislative Auditor

Handwritten signature of Joel Alter in black ink.

Joel Alter  
Director, Special Reviews



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# Department of Education “Review and Comment” Process for Construction Projects

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Minnesota school districts operate about 175 million square feet of building space. The districts decide when and how to invest in these buildings—and when to replace them entirely.

The Minnesota Department of Education also plays a role in school districts’ decisions regarding building construction or improvements. The department is required by law to “review and comment” on certain building proposals before school district residents vote on construction-related bond issues or before a district solicits construction bids.<sup>1</sup>

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## Conclusion

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We found that the Minnesota Department of Education complies with state law regarding the content of its “review and comment” documents. However, the statutory requirements for these documents are minimal; for example, they do not require the department to do more than give a school district project an overall rating. Typically, the department decides that a project should receive a “favorable” rating (meaning that the district can proceed toward construction of the project) but does not explain how it arrived at this decision. This is important because state law requires a school district to (1) hold a public meeting to discuss the department’s review and (2) publish a summary of the department’s review in the school district’s official local newspaper prior to a bond referendum. If it is unclear why the department determined that a project is (or is not) advisable, there may be little basis for discussion in a public meeting, and the department’s ratings may not help inform school district residents. For this reason, we concluded that the department’s ratings of school district construction proposals are not sufficiently useful or explanatory.

State law also requires the Minnesota Department of Education to publish comments from school district residents in its review and comment documents on district construction proposals. However, the law does not require the department (or school districts) to solicit such comments, and members of the public might be unaware of this opportunity for input. Public comments are not submitted to the department for most projects, perhaps because there is no established process for requesting public input.

In our view, the laws governing the Minnesota Department of Education’s review and comment proposals should provide clearer direction to the department. The Legislature should amend state law to require the department to explain the basis for its conclusions. The department suggested to us that such a change might be challenging to implement with existing staffing; if so, the department should provide the Legislature with a proposal to enhance staffing for its review and comment responsibilities. In addition, the

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<sup>1</sup> *Minnesota Statutes* 2019, 123B.70 and 123B.71.

Legislature should require school districts to inform district residents about the opportunity to comment on projects subject to state review; those comments would then be transmitted to the Minnesota Department of Education. The department should include a brief summary of that input in each review and comment document, in addition to copies of the unabridged correspondence it received regarding each local project.

## State “Review and Comment” Requirements

State law requires the Commissioner of the Minnesota Department of Education to “review and comment” on certain facility projects before school districts can proceed with them.<sup>2</sup> Specifically, the law says that districts may not hold a referendum for bonds nor solicit construction, expansion, or remodeling bids for projects exceeding \$2 million per school site prior to such a review. The dollar threshold is lower (\$500,000) for districts that have a capital loan outstanding.<sup>3</sup>

Under state law, the department’s review and comment document must address the “educational and economic advisability of the project.”<sup>4</sup> However, the law does not specify the meaning of “educational advisability” or “economic advisability.”



### Information about Projects that School Districts Must Submit to the Minnesota Department of Education for the Review and Comment Process

- Geographic area and student population to be served
- List of existing facilities by age and use, and an assessment of the availability of alternate facilities
- List of deficiencies that demonstrate the need for a new or renovated facility
- Project description, including acreage, square footage, estimated expenditures, and dates for starting and completing the project
- Sources of financing for the project
- Scheduled date for a bond issue, the schedule of payments, and the impact of the project on property taxes
- Documents obligating the district and contractors to:
  - Comply with municipal contracting requirements
  - Implement sustainable design
  - Comply with heating, ventilation, air conditioning, and air filtration requirements
  - Comply with standards on maximum background noise levels
  - Comply with the State Fire Code
  - Comply with building codes
  - Consult with governmental units about the project’s impact on roads, utilities, other infrastructure, traffic, and safe access for pedestrians and bikers

—*Minnesota Statutes 2019, 123B.71, subd. 9.*

State law says that the department must use information submitted by school districts—as prescribed in law (and shown in the box)—and “other information the commissioner

<sup>2</sup> *Minnesota Statutes 2019, 123B.71, subd. 8.* The statute applies to school districts, special education cooperatives, and other educational cooperative units. Facility additions, maintenance projects, or remodeling projects funded only with general education revenue, lease levy proceeds, capital facilities bond proceeds, or long-term facilities maintenance revenue are exempt from this requirement. Certain technology-only projects are also exempt.

<sup>3</sup> The law also says districts may not initiate installment contracts for purchase or lease agreements for projects that are above the \$2 million and \$500,000 thresholds prior to a Minnesota Department of Education review.

<sup>4</sup> *Minnesota Statutes 2019, 123B.71, subd. 11.*

determines is necessary” as the basis for its review and comment.<sup>5</sup> The department’s review and comment document must also include input about the proposal submitted by residents of the district. According to state law, the department’s review process must result in a positive, unfavorable, or negative finding:

- If the department makes a **positive finding** on a proposal, the local school board may proceed with the next steps toward building the reviewed project. State law requires the school board to publish a summary of the review and comment in the legal newspaper of the district.<sup>6</sup> The board must also hold a public meeting to discuss the department’s review and comment document.<sup>7</sup> For a project in which the district will incur financial obligations that will be paid over time, the project must then receive approval from more than 50 percent of the district’s voters.<sup>8</sup> A project that receives a positive finding can also qualify to receive state debt service equalization aid.<sup>9</sup>
- If the department makes an **unfavorable finding**, the school board may still decide to pursue its proposal. If the board proceeds—by resolution of the board—it must hold a public meeting regarding the Minnesota Department of Education’s review and comment document.<sup>10</sup> In addition, the school board must publish a summary of the review and comment in the legal newspaper of the district.<sup>11</sup>

Furthermore, the project must then receive approval from at least 60 percent—not 50 percent—of district voters for construction to proceed.<sup>12</sup>

Rating	Can Project Proceed?	Percentage of Voters that Must Approve Referendum	Is Project Eligible for Debt Service Equalization Aid?
Positive	Yes	50%	Yes
Unfavorable	Yes	60%	No
Negative	No	Not Applicable	Not Applicable

Projects that receive unfavorable ratings from the department are not eligible to receive state debt service equalization aid.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Minnesota Statutes* 2019, 123B.71, subd. 12. The summary must be published at least 20 days but not more than 60 days prior to the bond referendum or solicitation of bids for the project.

<sup>7</sup> *Minnesota Statutes* 2019, 123B.71, subd. 12.

<sup>8</sup> *Minnesota Statutes* 2019, 475.58, subd. 1.

<sup>9</sup> Through the debt service equalization program, the state guarantees a certain amount of tax base per student for projects. The program is said to “equalize” uneven amounts of tax base among school districts by offering state aid to help those districts that have relatively low amounts of tax base per student and high amounts of debt service. Our office issued an evaluation report on this program in 2019; see Office of the Legislative Auditor, Program Evaluation Division, *Debt Service Equalization for School Facilities* (St. Paul, 2019).

<sup>10</sup> *Minnesota Statutes* 2019, 123B.71, subd. 12.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Minnesota Statutes* 2019, 123B.70, subd. 4.

- If a project receives a **negative finding** from the department, the district may not proceed to construction unless the Commissioner of Education reconsiders the proposal and changes the finding. After receiving a negative finding, the school board must appoint a group to advise the board and state education commissioner on the proposal and possible alternatives.<sup>13</sup> Also, there must be a public meeting (with the commissioner present) to discuss the department’s negative review and comment.<sup>14</sup> State law says the department’s review and comment document “shall clearly specify which portion of the proposal received a negative review and comment and which portion of the proposal received a positive review and comment.”<sup>15</sup>

For projects that received a positive or unfavorable rating which are proceeding to a public referendum, the law says, “Supplementary information shall be available to the public.”<sup>16</sup> However, the law does not specify whether this must be provided at the public meeting that is required for such a project.

State law places two additional restrictions on the Minnesota Department of Education’s review and comment findings. First, the law says that the commissioner “must not issue a negative or unfavorable review and comment...for a school facility solely based on too little acreage of the proposed school site.”<sup>17</sup> Second, the law says, “The commissioner’s evaluation of whether to replace a facility must not be solely based upon the ratio of renovation costs to replacement costs.”<sup>18</sup> While the department may not base its review and comment decisions solely on these two factors, the department may consider these factors in combination with others.

## Complaint

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In May 2019, the Office of the Legislative Auditor (OLA) received a complaint about the Minnesota Department of Education’s review and comment process. The complaint related to a 2019 proposal by two northern Minnesota school districts—Virginia and Eveleth-Gilbert—to jointly pursue a \$183 million bond referendum. The two districts proposed to collaborate on construction of a new high school and two new elementary schools that would serve the districts, plus demolition of existing facilities. On April 22, 2019, state Commissioner of Education Mary Cathryn Ricker notified the two districts that she was issuing a positive review and comment on the proposal.

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<sup>13</sup> *Minnesota Statutes* 2019, 123B.70, subd. 3(a)(2).

<sup>14</sup> *Minnesota Statutes* 2019, 123B.70, subd. 3(b).

<sup>15</sup> *Minnesota Statutes* 2019, 123B.71, subd. 11.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Minnesota Statutes* 2019, 123B.70, subd. 1(b).

<sup>18</sup> *Minnesota Statutes* 2019, 123B.70, subd. 1(c).

The OLA complainant suggested that the department did not adequately communicate the basis for its review and comment finding. The complainant said school buildings in the affected districts are old but in good condition. The complainant questioned whether the department’s review and comment process adequately considered the cost of upgrading existing facilities as it reviewed the districts’ proposals for building new facilities.

OLA received the complaint about two weeks before voters in each of the school districts approved a referendum to authorize the proposed projects. However, the complainant said the concerns expressed in this complaint were not specific to the Virginia/Eveleth-Gilbert project. The complainant asked that OLA consider the adequacy and transparency of the department’s review and comment process more generally.

In our review, we asked:

- **Has the Minnesota Department of Education followed state law in preparing its review and comment findings on proposed school district facilities projects?**
- **Has the department provided sufficient information about the basis for its review and comment decisions?**
- **Given that state law requires the department’s review and comment documents to include public comments on the proposed projects, how has the department obtained such input?**

## OLA Analysis

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To conduct this review, we asked the Minnesota Department of Education to provide our office with all documents the department prepared or considered when assessing the educational and economic feasibility of the Virginia/Eveleth-Gilbert project. OLA also met with department staff to discuss the review and comment process (for that project and more generally).

In addition to looking at the Virginia/Eveleth-Gilbert review and comment process, OLA examined the department’s review and comment documents for a sample of 98 projects from fiscal years 2016 through 2018.<sup>19</sup> Of those projects, 97 received a “positive” review and comment rating from the Minnesota Department of Education, and 1 received an “unfavorable” rating. Department officials could not recall any proposed projects for which the department had given a “negative” rating. OLA examined the documents the Minnesota Department of Education used to convey its review and comment findings to the districts.

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<sup>19</sup> The department had provided these documents to OLA during 2018, as part of OLA’s evaluation of Minnesota’s debt service equalization program.

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**The Minnesota Department of Education complies with state law’s reporting requirements regarding its reviews of school construction projects. Those requirements are minimal.**

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State law has few requirements regarding the *content* of the Department of Education’s review and comment reports. The law says:

- The department’s review and comment process must result in a positive, unfavorable, or negative finding regarding the educational and economic advisability of the proposed project.<sup>20</sup>
- The department’s review and comment document must include comments from residents of the affected school district(s).<sup>21</sup>

The department’s review and comment documents typically follow—with limited exceptions—a standard template. First, there is a one-page letter from the Commissioner of Education to the affected superintendent(s). That letter largely highlights certain statutory requirements for school construction projects. The letter typically has one sentence that alludes to the outcome of the department’s review. In the case of the Virginia/Eveleth-Gilbert proposal, the letter said: “With this positive review and comment, the approval of both the voters and school boards of Virginia Public School District and Eveleth-Gilbert Public School District are required to proceed with the proposed project.”

A second page of the document lists the items that school districts are required by law to submit to the Minnesota Department of Education—to facilitate the department’s review and comment process. For example, districts must describe the population served, list the district’s existing facilities and the deficiencies of those facilities, and describe the project and its funding.

A third page (and sometimes more) contains a brief description of the proposed project—for example, overall cost estimates and project timing. Often, this page also describes the school district’s opinion about the proposed project, and it states whether the project will be eligible for state debt service equalization aid. The department’s “Review and Comment Statement” is a single sentence in this section of the document.<sup>22</sup> In the case of the Virginia/Eveleth-Gilbert proposal, the department said: “Based on the department’s analysis of the school districts’ required documentation and other pertinent information from sources of the Minnesota Department of Education, the Commissioner of Education provides a positive review and comment.” This section of the document closes with a sentence about where someone might seek additional

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<sup>20</sup> *Minnesota Statutes* 2019, 123B.70, subd. 1(a). *Minnesota Statutes* 2019, 123B.71, subd. 11, says that if the department issues a negative review and comment for a portion of a proposal, the department must clearly specify the negative and positive portions of the proposal.

<sup>21</sup> *Ibid.*

<sup>22</sup> The document provides no context for the department’s rating. For example, it does not outline the possible ratings (positive, unfavorable, and negative) specified in state law or the meaning of these ratings.

information on the project: “Persons desiring additional information regarding this proposal should contact the school district superintendent’s office.”<sup>23</sup>

In addition, the review and comment document appends public comments, if any, that were submitted by district residents. For the Virginia/Eveleth-Gilbert project, two residents submitted comments.

Because the department’s review and comment documents have included a statement of the department’s rating of each proposal (positive, unfavorable, or negative) and have attached comments submitted by the public on the projects, we concluded that the department has complied with statutory content requirements.

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**The Minnesota Department of Education’s review and comment documents typically do not explain the basis for the department’s ratings, which limits their usefulness in public discussions.**

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As noted above, the review and comment documents submitted by the Minnesota Department of Education to school districts provide minimal information about the department’s ratings. Typically, the documents simply state the department’s rating for a project (usually positive), with no explanation of what specific evidence or analysis led the department to award that rating. Likewise, the documents do not specify criteria for “educational advisability” or “economic advisability” that the department used.

In addition, we saw limited documentation for the basis of the department’s ratings in the supplemental documents we obtained. For the Virginia/Eveleth-Gilbert project, we asked the department to provide us with documents related to its ratings, including “memoranda, analyses, e-mails or other communications, ratings against criteria, or staff notes.” Most of the documents we received from the department for the project were e-mails. The department’s documents did not include explicit comparisons of the project against a set of standards or a checklist of questions, nor were there Minnesota Department of Education staff papers or memos discussing the project’s educational or economic merits. Department officials discussed the Virginia/Eveleth-Gilbert proposal in at least two internal meetings prior to the department’s issuance of its review and comment finding on that project, but there are no records of the discussions in those meetings.

The department publishes a *Guide for Planning School Construction Projects in Minnesota*—for the benefit of school districts contemplating such projects—that offers some possible guidelines for the review and comment process.<sup>24</sup> For example, the *Guide* says “when the estimated costs of renovating/improving a school facility

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<sup>23</sup> This “third page” of the review and comment document—with a description of the project, statements summarizing the school districts’ views on the project, and the Minnesota Department of Education’s review and comment statement—was published in a local newspaper (Mesabi Daily News) for the Virginia/Eveleth-Gilbert project on April 24, 2019, about three weeks prior to the bond referendum.

<sup>24</sup> Minnesota Department of Education, *Guide for Planning School Construction Projects in Minnesota* (Roseville, MN, November 2018). According to the department’s website (<https://education.mn.gov/MDE/dse/schfin/fac/cons/>, accessed June 3, 2019), “The purpose of this guide is to encourage and guide school district planning of school construction projects that will enhance student achievement and school-community partnerships.”

approach 60 percent of the cost of replacing the facility, a school district needs to seriously consider replacement of the facility.”<sup>25</sup> However, we saw no reference to this benchmark in Minnesota Department of Education documents related to the Virginia/Eveleth-Gilbert proposal, and we did not see documents that presented side-by-side comparisons of that project’s maintenance and construction costs. In addition, the *Guide* lists a series of more than 20 questions and says, “The more ‘yes’ answers there are to the following questions, the greater the likelihood that a school facility...is not adequate...and needs to be replaced.”<sup>26</sup> However, we saw no evidence that Minnesota Department of Education reviewers systematically considered this list of questions during their review of the Virginia/Eveleth-Gilbert project.

As a standard part of the review and comment process, Minnesota Department of Education officials review information on district indebtedness. State law has restrictions regarding the amount of debt a school district may incur, and Minnesota Department of Education staff have applied additional debt benchmarks when assessing district construction proposals.<sup>27</sup> We observed that the Minnesota Department of Education’s internal documents for evaluating proposed construction projects typically have included a printout showing the school district’s fund balance, expenditures, and indebtedness. In our view, such information is relevant when considering a construction project’s economic viability. However, the review and comment documents that the department has submitted to school districts have typically not discussed district debt levels or how information on district finances affected the department’s ratings for a project.

The most detailed rationale we saw of a Minnesota Department of Education review and comment finding was in the only recent project for which the department did not give a favorable rating. Specifically, the department in 2018 gave an unfavorable rating to a project proposed by the Belle Plaine School District. The department concluded that there was insufficient evidence that the project would primarily serve educational purposes. The department said the project’s main benefit would be to the community as a whole (for recreational purposes) rather than the school district, and the department thought a joint powers agreement would help mitigate the school district’s risks. The department’s commentary in that case included the following:

Since the school district did not allocate any portion of existing employees’ salaries toward [the proposed] Community Center operations,

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<sup>25</sup> *Ibid.*, 52.

<sup>26</sup> *Ibid.*, 51.

<sup>27</sup> School districts for which the operating debt is greater than 2.5 percent of the expenditures in operating funds in the most recent fiscal year are considered to be in “statutory operating debt” (*Minnesota Statutes* 2019, 123B.81, subd. 2). According to subd. 1 of this statute, “The ‘operating debt’ of a school district means the net negative unreserved general fund balance calculated as of June 30 of each year in accordance with the uniform financial accounting and reporting standards for Minnesota school districts.” Districts in statutory operating debt are required by state law to follow procedures to eliminate this debt. Department staff told us that they sometimes flag—as a potential concern—districts with low fund balances that are not presently in statutory operating debt. In addition, *Minnesota Statutes* 2019, 475.53, subd. 4, says that, unless otherwise authorized by law, school districts shall not be subject to a net debt of greater than 15 percent of the estimated market value of all taxable property situated in the district, and department staff said they review compliance with this requirement, although they said this statutory provision sets a standard that is much higher than the amounts for which districts typically bond.

it is not clear what portion of existing employees’ time would be spent on activities related to the Community Center or how regular school district administrative staff functions may be impacted. The risk and uncertainties to the school district in operating a community center could also potentially impact regular PK-12 educational programming if reductions are needed to cover unexpected operating cost and/or revenue deficiencies of the proposed community center.<sup>28</sup>

Although the department’s explanation of its decision in the Belle Plaine proposal was more detailed than those in other cases we reviewed, the superintendent of the affected school district complained about the basis for the review and comment. In a 2019 report, our office summarized the superintendent’s views: “[The superintendent said that] the department appeared to base its decision on opinion and not on an objective standard supported by construction professionals... In the superintendent’s opinion, [the Minnesota Department of Education’s] comment letter lacked a standard based on professional expertise for determining whether the proposed project was ‘economically viable.’”<sup>29</sup> Nevertheless, the department’s review of the Belle Plaine proposal at least included some commentary and explanation; usually the department does not explain the rating it gives in a review and comment document.

In our view, a review and comment finding without explanation seems contrary to the apparent intent of state law. The law says that a school board must hold a public meeting “to discuss the [Minnesota Department of Education’s] review and comment before the referendum for bonds.”<sup>30</sup> However, discussing the review and comment at such a meeting could be difficult if the rationale for the department’s finding has not been revealed. Likewise, the law requires a school board to publish a summary of the department’s review and comment in the legal newspaper of the district at least 20 days prior to a referendum. A possible purpose of this requirement is to help inform and educate school district voters before the election. However, voters may not be helped by Minnesota Department of Education ratings that do not have explanations.

In the Virginia/Eveleth-Gilbert proposal, there was room for debate and discussion about the merits of the school districts’ plan. In an e-mail to the construction company that was working with the districts on the project, a Minnesota Department of Education staff person said that the “elephants in the room” regarding this project was the fact that both school districts had invested significantly in maintaining their existing high schools, and the buildings were “a lot better than many in the state.”<sup>31</sup> He asked, “What’s the justification for a new school other than [the districts will] only have to pay for a small portion of the costs?”<sup>32</sup> (The Iron Range Resources and Rehabilitation

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<sup>28</sup> Minnesota Department of Education, *Review and Comment on the School Construction Proposal of Belle Plaine Public Schools, ISD #0716* (April 9, 2018), 4.

<sup>29</sup> Office of the Legislative Auditor, Program Evaluation Division, *Debt Service Equalization for School Facilities* (St. Paul, 2019), 64.

<sup>30</sup> *Minnesota Statutes* 2019, 123B.71, subd. 12.

<sup>31</sup> Chris Kubesh, Minnesota Department of Education, e-mail message to Gary Benson, Kraus-Anderson, “RE: Review & Comment for Virginia & Eveleth-Gilbert,” December 20, 2018.

<sup>32</sup> *Ibid.*

(IRRR) Board had agreed to invest substantial funding into the project, thus shrinking the cost of the project that would be borne by school district residents.<sup>33</sup>)

In addition, there were questions about whether advocates of the new schools had fairly presented the costs of the project to the public. For example, a website supporting the Virginia/Eveleth-Gilbert construction project said that the maintenance costs of the existing schools would exceed the costs of building new schools. However, a Minnesota Department of Education staff person told us this claim did not take into account that IRRR financial assistance is available to school districts for maintenance and improvement of existing buildings, not just for new construction.

In our review of Minnesota Department of Education review and comment documents for a sample of projects, we saw many instances in which these documents appeared to convey more about the local *school district's* stance on a construction proposal than they did about the *department's* stance. For example, multiple review and comment reports issued by the department had statements such as the following:

The district...believes existing revenues, along with anticipated revenue from enrollment growth, will be sufficient to fund the operational cost increases associated with the proposed increase in building space. In addition, the school board believes the proposed projects are in the best long term interest of the district.

Needless to say, projects proposed for referenda by local school districts are generally supported by those districts' school boards. But, in our view, the Minnesota Department of Education's reviews of district construction proposals would be more valuable if they provided the department's independent commentary or analysis of the school districts' stated reasons for supporting the proposals.

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**State law requires that the department's review of a school district's construction proposal include comments submitted by district residents, but it does not require the department to notify district residents about the opportunity to provide input.**

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The statutory requirement for review and comment documents to include public input is fairly recent. The 2017 Legislature amended the law to require the following: "The commissioner must include comments from residents of the school district in the review and comment."<sup>34</sup>

So far, the new language has not resulted in much public input. During our 2019 evaluation of school district debt service equalization, a Minnesota Department of Education staff person told our office that, since passage of the language, the department has received comments for only "a handful" of proposed projects each

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<sup>33</sup> Information at a project website suggested that 37 percent of the project's cost would be paid by the IRRR Board, 44 percent by state aid, and 19 percent by the school districts.

<sup>34</sup> *Laws of Minnesota* 2017, First Special Session, chapter 5, art. 5, sec. 5, as codified in *Minnesota Statutes* 2019, 123B.71, subd. 11. The law does not require the Minnesota Department of Education to take public comments into account when it assigns ratings to proposed projects.

year.<sup>35</sup> In our review of a sample of 35 review and comment documents issued by the department in Fiscal Year 2018, there were only 4 projects for which public comments were submitted to the department.<sup>36</sup>

We asked Minnesota Department of Education staff how and when they (or school district staff) solicit public input for the review and comment documents. A department staff person responded:

Neither the school district nor [the department] are directed by statute to provide notice to residents regarding their ability to submit comments to [the department]. The vast majority of resident comments are initiated by a phone call to [the department] from an unsupportive school board or community member. Callers are then directed to put their comments into a written format for submission to [the department]. Through word of mouth and/or social media postings, other like-minded residents learn of their ability to submit comments for inclusion into the [review and comment].<sup>37</sup>

The department does not formally solicit public input for its review and comment documents. School districts sometimes ask the department whether they should inform residents about the opportunity to submit comments, but the department lets school districts decide whether to do any public notification.

## Recommendations

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For several decades, state law has required the Minnesota Department of Education to review and comment on the educational and economic advisability of school district construction projects. In our view, this statutory requirement should be improved.

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### RECOMMENDATION

**The Legislature should amend state law to require the Minnesota Department of Education to explain the basis for its review and comment ratings.**

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When commenting on local building construction proposals, the Minnesota Department of Education has not provided sufficient explanation regarding its conclusions. The law requires the department to prepare a review and comment document that will be discussed at a public meeting, yet the department typically does not explain its ratings of proposed projects. Department staff told us that an explanation of its ratings is not

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<sup>35</sup> During the fiscal year 2016-2018 period, the department issued review and comment documents for an average of 45 construction proposals per year.

<sup>36</sup> The Commissioner of Education’s cover letters for the review and comment documents indicated whether public comments were submitted for each project.

<sup>37</sup> Chris Kubesh, Minnesota Department of Education, e-mail message to Joel Alter, Office of the Legislative Auditor, “RE: Additional questions on review/comment process,” June 27, 2019. Regarding the timing of public comments that are accepted for publication, the department told us it accepts public comments submitted any time prior to the finalization of its review and comment document.

explicitly required by state law, and they have been reluctant to provide more in their reports than what the language of the law requires. But, regardless of the rating given by the department, we think it would be useful—for purposes of public understanding and discussion—to know the basis on which the rating was given. Although the department’s review and comment documents comply with current law, the law’s reporting requirements are minimal. We recommend that the Legislature amend state law to require the department to explain its ratings.

The Legislature could define in statute what it means for projects to be “educationally and economically advisable,” or it could leave this to the Minnesota Department of Education’s interpretation. In either case, state law should require the department’s review and comment document to discuss the criteria or analyses used by the department to assess a school district construction project.

Department staff told us that providing more detail in the review and comment documents might require additional staff time. Typically, department staff prepare review and comment documents for multiple school district proposals with similar deadlines because state law prescribes certain dates during the year when school districts may hold special elections (for example, for bond referendums).<sup>38</sup> Before the Legislature amends state law to require more explanatory review and comment documents, it should consider any practical concerns—such as those related to staffing—the department wishes to express.<sup>39</sup>

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## RECOMMENDATION

**The Legislature should amend state law to require school districts to solicit public input for the Minnesota Department of Education’s review and comment process.**

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The law requires the Minnesota Department of Education’s review and comment documents to include public comments, but the law is silent regarding how that public input should be solicited. The department includes opinions from the public if it receives them, but it makes no systematic efforts to obtain these comments, nor does the law require such efforts. In our view, it would make sense for school districts to inform district residents of their opportunity to provide comments on projects—perhaps through school district website postings, public notices in local newspapers, or announcements at school board meetings. The law should require that the district forward all such comments to the Minnesota Department of Education in a timely manner.

We also think it would be useful for the department’s review and comment document on a given project to briefly summarize the public comments the department receives on that project. The department currently attaches copies of any comments it receives to the document, but a department summary of those comments might provide readers

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<sup>38</sup> *Minnesota Statutes* 2019, 205A.05, subd. 1a.

<sup>39</sup> A Minnesota Department of Education staff person estimated for us that the department devotes less than 1.0 full-time-equivalent staff to the review and comment function, including both professional and clerical staff time. A department official told us that the agency used to have “several” staff devoted to this function, but staffing for this function has decreased as the department’s overall size has decreased.

with a quick overview. For example, the department could include a statement such as: “The school district solicited public comments about the project on behalf of the Minnesota Department of Education. Seven district residents provided comments: three favored the proposed project, three opposed it, and one offered mixed opinions.”

Ultimately, school district voters decide whether to approve or disapprove public referendums to pay for proposed construction projects. It appears that the intent of the review and comment statutes is to give voters a chance to know—before going to the polls—the perspective of the Minnesota Department of Education on a project, as well as the perspectives of fellow school district residents. Our recommendations are intended to help ensure that these perspectives are fully considered.<sup>40</sup>

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<sup>40</sup> In this report, we have assumed—consistent with existing statutes—that the Legislature still sees a need for the Minnesota Department of Education to provide a state perspective on school district building projects. If that is not the case, or if the Legislature thinks that the staff time required for this activity does not justify the results, the Legislature should reconsider the need for this statutory requirement.





October 29, 2019

James R. Nobles, Legislative Auditor  
Office of the Legislative Auditor  
140 Centennial Office Building  
658 Cedar Street  
St. Paul, MN 55155

Dear Mr. Nobles:

Thank you for the opportunity to respond to the recommendations in the Office of the Legislative Auditor's (OLA) report on the Minnesota Department of Education (MDE) 'Review and Comment' Process for Construction Projects. We appreciate the diligent and professional work of your staff on this important issue.

***OLA Recommendation:*** *The Legislature should amend state law to require MDE to explain the basis for its review and comment ratings.*

**MDE Response:** MDE agrees that it would be helpful for review and comment statements to include additional information to help inform school district voters before the election, such as the factors considered by the department in the review process, the rationale for the department's findings, and the department's independent commentary or analysis of the proposed project. Enhancing the process in this manner, adding this information to the review and comment statements, and ensuring the statements are clearly written and objective will require a significant amount of additional staff time for each review and comment request that is received. If the legislature amends state law to require MDE to explain the basis for its review and comment ratings, it should consider increasing MDE's agency budget to fund the additional staff time.

***OLA Recommendation:*** *The Legislature should amend state law to require school districts to solicit public input for MDE's review and comment process.*

**MDE Response:** MDE concurs with this recommendation. By December 1, 2019, MDE will update its instructions to encourage school districts to inform district residents of their right under M.S. 123B.71, subd. 11 to provide comments on projects to the district and to MDE. This may result in an increase in the number of comments received, which will help inform school district voters before the election.

If you have further questions, please contact Denise Anderson, Chief Financial Officer, at (651) 582-8560.

Sincerely,

A handwritten signature in black ink that reads "Mary Cathryn Ricker". The signature is written in a cursive, flowing style.

Mary Cathryn Ricker, NBCT  
Commissioner

Cc: Denise Anderson, CFO  
Tom Melcher, School Finance Director

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