AGENDA (timeframes are estimated for planning purposes)

I. Roll Call

II. Board Member Participation by Other Means

III. Public Participation (15 minutes maximum) 2:00 – 2:15 p.m.

IV. *Rules for Adoption (Darren Reisberg, Shelley Helton) 2:15 – 2:30 p.m.
   A. Part 151 (School Construction Program) (Deb Vespa) (pp. 2-9)
   B. Part 5001 (Access to Info of the State Board of Education under the Freedom of Information Act) (Matt Vanover) (pp. 10-16)

V. Committee Agenda Planning/Additional Items

VI. Adjourn

* Items listed with an asterisk (*) will be discussed in committee and action may be taken in the plenary session.
TO: Illinois State Board of Education

FROM: Christopher A. Koch, Ed.D., State Superintendent of Education
Linda Riley Mitchell, Chief Financial Officer
Darren Reisberg, Deputy Superintendent and General Counsel

Agenda Topic: Amendments for Adoption – Part 151 (School Construction Program)

Materials: Recommended Amendment

Staff Contact(s): Debbie Vespa

Purpose of Agenda Item
The purpose of this agenda item is to present the proposed amendments for adoption.

Relationship to/Implications for the State Board’s Strategic Plan
This item is technical in nature, but the rulemaking indirectly links to Strategic Plan Goal 3, safe and healthy learning environments, in that it incorporates statutory requirements pertaining to “green” buildings.

Expected Outcome(s) of Agenda Item
The Board will be asked to adopt amendments to Part 151.

Background Information
P.A. 96-37, effective August 25, 2009, made several changes to the School Construction Program, including setting forth “green” building standards for any school construction projects for which school districts make application on or after July 1, 2009. While the Board adopted amendments resulting from this public act last year related to school maintenance and energy efficiency grants, the portion of the law addressing school construction grants was inadvertently omitted from that rulemaking.

Section 151.30(f) currently addresses options for providing evidence of meeting “green” building standards for applications submitted on or after July 1, 2007. That subsection is being amended to provide for the new standards, which include a link to the website where information about the standards can be found.

The proposed rules were published January 3, 2011, in the Illinois Register to elicit public comment. One letter of comment was received, and it is discussed under “Policy Implications” below.
Analysis and Implications for Policy, Budget, Legislative Action and Communications

Policy Implications. Under the law, any district seeking funds under the School Construction Program on or after July 1, 2009, must ensure that its project receives silver certification from the U.S. Green Building Council’s Leadership in Energy and Environmental Design Green Building Rating System. The proposed rule incorporates this requirement by reference and, in accordance with the Illinois Administrative Procedure Act (IAPA), includes the date of the most recent iteration of the standards.

The Active Transportation Alliance has expressed its concern that the proposed rule does not allow for any future versions of the standards to be used. As noted above, the IAPA authorizes state agencies to incorporate standards of other entities without the need for reproducing the standards in their entirety in the rules. The law, however, limits this authority by requiring that later amendments to or editions of the any standards incorporated are not binding unless the rule is updated to explicitly require the later version. For this reason, the agency is unable to craft a more general rule that allows all future iterations of the standards to be used. Care will be taken to update the rule when the standards for silver certification are changed.

Budget Implications. None.
Legislative Action. None.
Communication. See “Next Steps” below.

Pros and Cons of Various Actions
The amendment is technical in nature and is intended to provide clarity and ensure districts’ awareness of all applicable requirements. Failure to make this change would not alter districts’ obligation to comply with the School Construction Law.

Superintendent's Recommendation
The State Superintendent recommends that the State Board of Education adopt the following motion:

The State Board of Education hereby adopts the proposed rulemaking for:

School Construction Program (23 Illinois Administrative Code 151).

Further, the Board authorizes the State Superintendent of Education to make such technical and nonsubstantive changes as the State Superintendent may deem necessary in response to suggestions or objections of the Joint Committee on Administrative Rules.

Next Steps
Notice of the adopted amendments will be submitted to the Joint Committee on Administrative Rules to initiate JCAR’s review. When that process is complete, the amendments will be filed with the Secretary of State and disseminated as appropriate.
TITLE 23: EDUCATION AND CULTURAL RESOURCES
SUBTITLE A: EDUCATION
CHAPTER I: STATE BOARD OF EDUCATION
SUBCHAPTER c: FINANCE

PART 151
SCHOOL CONSTRUCTION PROGRAM

SUBPART A: SCHOOL CONSTRUCTION PROJECT GRANTS

Section
151.10 Purpose
151.20 Eligible Applicants
151.30 Application for School Construction Project Grant Entitlement
151.35 Application for School Construction Project Grant Entitlement - Districts With A Population Exceeding 500,000
151.40 Award of Construction Project Grant Entitlement
151.50 Priority Ranking of Construction Grant Entitlements
151.55 Needed Capacity for Unit Districts
151.60 Grant Index
151.70 Debt Service Grants (Repealed)

SUBPART B: SCHOOL MAINTENANCE PROJECT GRANTS

Section
151.100 Purpose; Eligible Applicants
151.110 Definitions
151.120 Application for School Maintenance Project Grants
151.130 Award of School Maintenance Project Grants - Applicants With a Population of 500,000 or Fewer
151.135 Award of School Maintenance Project Grants - School Districts With a Population Exceeding 500,000
151.140 Terms of the Grant

SUBPART C: SCHOOL ENERGY EFFICIENCY PROJECT GRANTS

Section
151.200 Purpose; Eligible Applicants
151.210 Definitions
151.220 Application for School Energy Efficiency Project Grants
151.230 Award of School Energy Efficiency Project Grants - Applicants with a Population of 500,000 or Fewer
151.235 Award of School Energy Efficiency Project Grants - School Districts with a Population Exceeding 500,000
151.240 Terms of the Grant

AUTHORITY: Implementing the School Construction Law [105 ILCS 230] and authorized by Section 5-55 of that Law.


SUBPART A: SCHOOL CONSTRUCTION PROJECT GRANTS

Section 151.30 Application for School Construction Project Grant Entitlement

a) A school district seeking a school construction project grant entitlement shall submit an application that includes a District Facilities Plan. A district shall annually update its application in order to establish eligibility for a construction grant.

b) Applications shall be addressed as follows:

Illinois State Board of Education
School Construction Program
100 North First Street
Springfield, Illinois  62777-0001
c) Applications or updates must be received at the address shown in subsection (b) of this Section by April 1 preceding the beginning of the fiscal year in question. Each application or update must include the Capital Development Board’s program statement as defined in 71 Ill. Adm. Code 40.

d) An application that is incomplete will be returned and will not be processed until it is complete. An application must be complete by the applicable filing deadline in order to be considered. All information contained in the application shall be subject to verification and correction by the State Board of Education and the Capital Development Board by means including on-site inspection and review of documents.

e) Each application shall include the following information.

1) A narrative description of the present educational program of the district and anticipated changes in the educational program over the next five years, including:

   A) the number of schools currently operated by the district;

   B) the configuration of the district’s schools by grade level;

   C) the basis upon which students are assigned to the district’s schools; and

   D) the nature and estimated impact of any changes in these factors over the next five years.

2) A description of the present and projected financial position of the district, including but not limited to the availability of current revenue, fund balances, the amount of general obligation debt of the district, and the amount of unused bonding power. This requirement may be met by attaching or, if already on file with the State Board, incorporating by reference:

   A) a copy of the district’s basic financial statements (i.e., Statement of Revenues Received/Revenues, Expenditures Disbursed/Expenditures, Other Financing Sources (Uses), and Changes in Fund Balances) from the district’s Annual Financial
NOTICE OF ADOPTED AMENDMENT

Report for the fiscal year ending June 30 immediately preceding the fiscal year in which the application or update is submitted;

B) a copy of Part III (Budget Summary) and Part IV (Summary of Cash Transactions) from the School District Budget Form for the fiscal year in which the application or update is submitted; and

C) a statement showing the amount of the district’s unused bonding power as determined under Article 19 of the School Code [105 ILCS 5/Art. 19].

3) A description of the district’s maintenance plan and schedule, including but not limited to:

A) the maximum authorized operations and maintenance tax rate of the district;

B) the rate at which the operations and maintenance taxes were last extended;

C) the amount of operations and maintenance expenditures for the last fiscal year;

D) a statement assuring that new, renovated, and existing facilities are being or will be properly maintained; and

E) a brief explanation of how the district intends to maintain new, renovated, and existing facilities.

4) Facility inventory information, including:

A) a listing of each parcel of land, building, building addition, or other structure owned or used by the district to house its operations or held by the district for investment or revenue-producing purposes;

B) for each parcel of land, building, building addition, or other structure, a listing of the following information, as applicable:

i) the facility type;
STATE BOARD OF EDUCATION

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ii) the ownership class;

iii) an indication of whether the structure is a main building or a building addition;

iv) the functional age of the building or addition as determined under Section 151.50(d)(2) of this Part;

v) the enrollment capacity as determined pursuant to the standards specified in Section 151.50(d) of this Part;

vi) the type of school housed in the building or building addition;

vii) the number of students currently housed in the facility;

viii) the number of inadequately housed students currently housed in the facility as determined under Section 151.50(c) and (d) of this Part;

ix) an indication of the district’s plans for the facility within the next five years; and

x) an indication of which planned activities are the subject of a request for a school construction project grant.

f) Each application submitted on or after July 1, 2007, shall also include information demonstrating that the project conforms to the “green building” requirements of Section 5-40 of the School Construction Law [105 ILCS 230/5-40]. Conformance may be demonstrated by providing the evidence indicated either in subsection (f)(1) or (f)(2) of this Section, as applicable.

1) For each application submitted on or after July 1, 2007 through June 30, 2009:

   certification under the United States Green Building Council’s Leadership in Energy and Environmental Design Green Building
STATE BOARD OF EDUCATION

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Rating System [105 ILCS 230/5-40] posted at www.usgbc.org (2008; no later editions or revisions are incorporated); or

B)2) a rating under the Green Building Initiative’s Green Globes Green Building Rating System [105 ILCS 230/5-40] posted at www.thegbi.org/commercial/about-green-globes/rating-and-evaluation-process.asp (2007; no later editions or revisions are incorporated); or

C)3) compliance with green building standards established by the Illinois Capital Development Board, when codified by that agency in its rules in Title 71 of the Illinois Administrative Code; or


(Source: Amended at 35 Ill. Reg. _____, effective _____________)
TO: Illinois State Board of Education

FROM: Christopher A. Koch, Ed.D., State Superintendent of Education
      Matt Vanover, Director of Public Information
      Darren Reisberg, Deputy Superintendent and General Counsel

Agenda Topic: Action Item: Proposed Amendments for Adoption: Part 5001
(Access to Information of the State Board of Education under the
Freedom of Information Act)

Materials: Recommended Rules

Staff Contacts: Matt Vanover

Purpose of Agenda Item
The purpose of the agenda item is to present the proposed amendments for adoption.

Relationship to/Implications for the State Board’s Strategic Plan
The changes involve internal rules of the agency and do not directly relate to any of the Board’s Strategic Goals.

Expected Outcome of Agenda Item
The Board will be asked to adopt amendments to Part 5001. Because state agency rules related to the Freedom of Information Act are deemed internal rules, per the Administrative Procedures Act they are not required to go through the standard JCAR process. As noted in the “Next Steps” section at the end of this document, if and when the Board adopts the amendments, the rules will be filed with the Administrative Code Division to become effective immediately. They will be published in the Illinois Register and posted on the rules portion of the agency’s web site and otherwise disseminated as appropriate.

Background Information
P.A. 96-542, effective January 1, 2010, made several changes in the Illinois Freedom of Information Act (FOIA) that affect the agency’s rules governing FOIA requests. While most of the changes in the law are specific and need no further edification in rules, changes to align the rules to statute are being proposed. Chiefly, Subpart D regarding an appeal of an agency’s decision to deny a FOIA request is being repealed, as the responsibility for review is now housed with the Illinois Attorney General’s Public Access Counselor. The proposal also provides that oral requests will not be accepted (although the law authorizes agencies to accept them) and that requests must indicate if they are being made for a commercial purpose, as these types of requests are treated differently under the law.

In addition, further clarification is being added in Section 5001.300 concerning the type of responses that the agency might provide to a request. The agency repealed the substance of these proposed changes in 2005 as part of the statutorily mandated requirement to review and
“streamline” administrative rules but their inclusion is instructive to the reader. Finally, a provision waiving the fee for duplication if the total cost was $10 or less is being removed since the law requires government agencies to provide the first 50 pages free, and State Board staff will waive any charges assessed beyond the first 50 pages that are $7.50 or less.

**Analysis and Implications for Policy, Budget, Legislative Action and Communications**

Policy Implications: See “Background” above.
Budget Implications: None.
Legislative Action: None needed.
Communication: Please see “Next Steps” below.

**Pros and Cons of Various Actions**

Promulgation of this group of changes will improve the expression of several requirements, as outlined above, and respond to recent statutory changes. These updates allow those regulated by the rules to more fully understand the requirements that apply.

**Superintendent’s Recommendation**

The State Superintendent recommends that the State Board of Education adopt the following motion:

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The State Board of Education hereby adopts the proposed rulemaking for:

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**Next Steps**

The rules will be filed with the Administrative Code Division to become effective immediately. They will be published in the Illinois Register and posted on the rules portion of the agency’s web site and otherwise disseminated as appropriate.
ILLINOIS REGISTER

STATE BOARD OF EDUCATION

NOTICE OF ADOPTED AMENDMENTS

TITLE 2: GOVERNMENTAL ORGANIZATION
SUBTITLE F: EDUCATIONAL AGENCIES
CHAPTER I: STATE BOARD OF EDUCATION

PART 5001
ACCESS TO INFORMATION OF THE STATE BOARD OF EDUCATION
UNDER THE FREEDOM OF INFORMATION ACT

SUBPART A: INTRODUCTION

Section
5001.100 Summary and Purpose
5001.110 Definitions

SUBPART B: PROCEDURES FOR REQUESTING PUBLIC RECORDS

Section
5001.200 Office to Which Requests are Submitted
5001.210 Form and Content of Requests

SUBPART C: PROCEDURES FOR AGENCY RESPONSE TO REQUESTS FOR PUBLIC RECORDS

Section
5001.300 Agency Response
5001.310 Types of Responses (Repealed)

SUBPART D: PROCEDURES FOR APPEAL OF A DENIAL

Section
5001.400 Appeal of a Denial (Repealed)
5001.410 Superintendent's Response to Appeal (Repealed)

SUBPART E: PROCEDURES FOR PROVIDING PUBLIC RECORDS TO REQUESTERS

Section
5001.500 Inspection of Records
5001.510 Copies of Public Records; Fees
5001.520 General Materials Available from the Freedom of Information Office (Repealed)
SUBPART F: ACCESS TO MATERIALS INCORPORATED BY REFERENCE IN ADMINISTRATIVE RULES

Section 5001.600 Inspection of Materials

AUTHORITY: Implementing and authorized by Section 3(h) of the Freedom of Information Act [5 ILCS 140/3(h)] and Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100/5-15].


SUBPART A: INTRODUCTION

Section 5001.110 Definitions

a) Terms used in this Part that are not defined in this Section shall have the same meaning as in the Freedom of Information Act.

b) "FOIA" means the Freedom of Information Act.

c) "Freedom of Information Officer Office" ("FIO") means the individual or his or her designee unit within the Agency who is responsible for receiving and responding to requests for public records.

d) "Requester" means a person who submits a request for public records in accordance with this Part.

e) "Agency" means the State Board of Education.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

SUBPART B: PROCEDURES FOR REQUESTING PUBLIC RECORDS

Section 5001.200 Office to Which Requests Are Submitted
a) Requests for public records shall be submitted in writing to the Freedom of Information Officer Office of the State Board of Education. Requests may be submitted by mail at the Freedom of Information Office, Illinois State Board of Education, 100 North First Street, Springfield, Illinois 62777, ATTN: FOIA Request; by email to foia@isbe.net; or by facsimile at 217-524-8585, to the following address:

   Freedom of Information Office  
   State Board of Education  
   100 North First Street  
   Springfield, Illinois 62777  
   ATTN: FOIA Request

b) Oral requests for public records shall not be accepted.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)

Section 5001.210  Form and Content of Requests

a) Requests in accordance with the FOIA and this Part shall be made in writing.

b) Forms will be available in the Agency’s offices (Springfield and Chicago) for requests for records.

c) The requester A request for public records shall provide the following information in a request for public records:

   a) The requester's full name, address and phone number, except that a requester who wishes to remain anonymous is not required to submit this information;

   b) A brief description of the public records sought, being as specific as possible;

   c) Whether the request is for inspection of public records, copies of public records, or both;
SUBPART C: PROCEDURES FOR AGENCY RESPONSE TO REQUESTS FOR PUBLIC RECORDS

Section 5001.300 Agency Response

a) The Agency shall respond to a written request for public records within the timeline provided in Section 3 or Section 3.1 of the FOIA, as applicable. The timeline shall begin on the day after the request is received by an Agency employee, regardless of whether the written request is submitted in accordance with the provisions of Section 5001.200(a) of this Part. The Agency may avail itself of all extensions of time and exceptions set forth in the FOIA.

b) If the request is approved, then the Agency shall make available the records, give notice that the material shall be made available upon payment of any fees charged pursuant to Section 5001.510 of this Part, or give notice of the time and place for inspection of the materials requested.

c) A written request from the Agency to the requester for additional information provided within the timelines specified in Section 3 or Section 3.1 of FOIA shall be considered a response to the FOIA request.

d) An individual or entity whose request for public records has been denied by the Agency may seek a review of that decision by the Public Access Counselor in accordance with the provisions of Section 9.5 of FOIA.

(Source: Amended at 35 Ill. Reg. _____, effective ____________)

SUBPART D: PROCEDURES FOR APPEAL OF A DENIAL

Section 5001.400 Appeal of a Denial (Repealed)
STATE BOARD OF EDUCATION

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a) A requester whose request has been denied by the FIO may appeal the denial to the State Superintendent of Education. The notice of appeal shall be made in writing and sent to:

State Superintendent of Education  
State Board of Education  
100 North First Street  
Springfield, Illinois 62777  
ATTN: FOIA Appeal

b) The notice of appeal shall include a copy of the original request, a copy of the denial received by the requester, and a statement of the reasons the appeal should be granted. The Superintendent shall respond to the appeal in accordance with the FOIA.

(Source: Repealed at 35 Ill. Reg. ______, effective ____________)

SUBPART E: PROCEDURES FOR PROVIDING PUBLIC RECORDS TO REQUESTERS

Section 5001.510 Copies of Public Records; Fees

a) Copies of public records shall be provided to the requester only upon payment of any charges that are due.

b) Charges for copies of public records shall be assessed in accordance with the "Fee Schedule for Duplication of Public Records," which shall be posted at http://www.isbe.net/htmls/foia.htm available in each of the Agency's offices.

c) Charges shall be waived if fees for an individual request amount to $10 or less. Charges shall also be waived if the request is from a State agency, a constitutional officer, or a member of the General Assembly. Charges shall not be waived when the records are to be used for political campaign purposes. Charges may be waived where the Agency determines that the waiver serves the public interest.

(Source: Amended at 35 Ill. Reg. ______, effective ____________)