

THE ARKANSAS COMMISSION OF PUBLIC SCHOOL  
ACADEMIC FACILITIES AND TRANSPORTATION  
EMERGENCY RULE GOVERNING THE  
ACADEMIC FACILITIES IMMEDIATE REPAIR PROGRAM  
May 3, 2005

1.00 REGULATORY AUTHORITY

- 1.0.1 These emergency rules are promulgated pursuant to Act 1327 and Act 2206 of the 85<sup>th</sup> General Assembly and Ark. Code Ann. § 25-15-204.

2.00 PURPOSE

- 2.01 The purpose of these emergency rules is to establish a program and process of providing state financial participation on a qualified basis for the correction of deficiencies in academic facilities that present an immediate hazard to the health and safety of students and staff, for meeting minimum health and safety building standards, or for addressing the extraordinary deterioration of the academic facility.

3.00 DEFINITIONS

- 3.01 For purposes of these rules, the following terms are as defined in § 1 of Act 2206 of the Regular Session of the 85<sup>th</sup> General Assembly:

- 3.01.1 Academic facility;
- 3.01.2 Academic facilities wealth index;
- 3.01.3 Average daily membership;
- 3.01.4 Facility condition index;
- 3.01.5 Immediate repair project;
- 3.01.6 Local enhancements;
- 3.01.7 Local resources;
- 3.01.8 Maintenance, repair and renovation;
- 3.01.9 Millage rate;
- 3.01.10 New construction;
- 3.01.11 Project; and
- 3.01.12 Space utilization

4.00 ACADEMIC FACILITIES IMMEDIATE REPAIR ELIGIBILITY CRITERIA

- 4.01 The Division of Public School Academic Facilities and Transportation shall provide qualified school districts with state financial participation for eligible immediate repair projects based on the following criteria:
- 4.01.1 The school district's application for financial participation is received by the division on a form provided by the division and incorporated into this rule as attached Exhibit A, via certified first

class mail or via stamped receipt of hand delivery to the office of the Director of the Division, no later than July 1, 2005;

- 4.01.2 The condition for which the immediate repair is needed was in existence on January 1, 2005;
- 4.01.3 The facility condition index (FCI) of the academic facility involved in the proposed repair is less than a threshold amount of sixty-five percent (65%); and
- 4.01.4 The repair project involves one (1) or more of the following:
  - 4.01.4.1 Heating, ventilation, and air conditioning systems;
  - 4.01.4.2 Floors;
  - 4.01.4.3 Roofs;
  - 4.01.4.4 Sewage systems;
  - 4.01.4.5 Water supplies;
  - 4.01.4.6 Asbestos abatement;
  - 4.01.4.7 Fire alarm systems;
  - 4.01.4.8 Exterior doors;
  - 4.01.4.9 Emergency exit or egress passageway lighting;
  - 4.01.4.10 Academic program or facility accessibility for individuals with disabilities; and
  - 4.01.4.11 Any other repair to a building system necessary to satisfy life-safety code requirements as determined by the division.

- 4.02 In addition, as part of and at the time of submission of its application for state financial participation in an immediate repair project, a school district shall provide the division with evidence of:

- 4.02.1 Documentation, including photographs, of the deficiency in need of correction and how it presents an immediate hazard to:
  - (A) The health or safety of students, teachers, administrators, or staff of a school district;
  - (B) The integrity of the public school academic facility with regard to meeting minimum health or safety standards; or
  - (C) The extraordinary deterioration of the public school academic facility.
- 4.02.2 That the estimated cost of an immediate repair project shall at a minimum be one hundred dollars (\$100) per student or fifty thousand dollars (\$50,000), whichever is less;
- 4.02.3 The availability of insurance and any other public or private emergency assistance to pay for the immediate repair project; and
- 4.02.4 Whether or not the academic facility is reasonably expected to close or be substantially replaced within three (3) years.

## 5.00 APPLICATION PROCESS

- 5.01 School districts may only submit one application and shall identify all immediate repair projects on the application that need immediate repair assistance.
- 5.02 School districts are required to identify and prioritize repair projects and provide a narrative description of the project including photographic documentation.
- 5.03 All applications shall be received, via first class mail return receipt requested or via stamped receipt of hand delivery, in the Office of the Director of The Division of Public School Academic Facilities and Transportation, 501 Woodlane St., Suite 520S, Little Rock, Arkansas 72201, no later than 4:30 pm on July 1, 2005.

#### 6.00 DIVISION APPROVAL PROCESS AND AUTHORITY

- 6.01 The division shall evaluate a school district's immediate repair application and may conduct an on-site inspection prior to making a decision on the application as it deems necessary.
- 6.02 The division shall notify a school district in writing to the office of the superintendent of the district, via first class mail return receipt, of the division's decision on the application and, if applicable, the amount of state financial participation provided.
- 6.03 The division shall base its decision to approve or not approve an application on several factors, including, but not limited to the following:
  - 6.03.1 The seriousness of the deficiency that the immediate repair project is intended to correct;
  - 6.03.2 Compliance with current academic facility standards, including, but not limited to, appropriate space utilization;
  - 6.03.3 The amount and availability of insurance and any other public or private emergency assistance;
  - 6.03.4 Whether the academic facility is reasonably expected to close or be substantially replaced within three (3) years;
  - 6.03.5 The academic facilities wealth index of the school district; and
  - 6.03.6 The prudent and resourceful expenditure of state funds with regard to public school academic facilities.
- 6.04 If a school district qualifies for state financial participation under this section, the division shall, within thirty (30) calendar days of approval, certify in writing the amount of participation to the Commission on Public School Academic Facilities and Transportation for oversight purposes. The Commission shall certify in writing, within thirty (30) calendar days of receipt of certification from the division, the amount to the Department

of Education, who shall then make payment to the approved school district.

#### 7.00 PROCESS FOR USE OF IMMEDIATE REPAIR STATE FUNDS

7.01 Upon receipt of written notification of award of state funds, the qualifying school district shall proceed as follows:

7.01.1 Contract with qualified design firm to correct immediate repair project(s) as required by law;

7.01.2 Advertise for bids to correct immediate repair project(s) as required by law; and

7.01.3 Receive and open bids to correct immediate repair projects(s) and notify the division of results and selection of contractor.

7.02 Upon receipt of the bid results from the school district, the division shall proceed with the following actions:

7.02.1 Review the submitted bid information;

7.02.2 If information is approved, the division shall approve the distribution of funds for the final immediate repair project cost(s); and

7.02.3 Certify the necessary funding and request the Arkansas Department of Education forward the required funds to the local school district.

7.03 Upon receipt of funding from the Arkansas Department of Education, the school district shall:

7.03.1 Enter into contract with construction trades to correct those approved immediate repair project(s);

7.03.2 Commence with approved repairs;

7.03.3 Provide monthly reports on the progress of the repairs to the division; and

7.03.4 Provide a close-out report on the approved project(s) to the division.

7.04 Upon receipt of a close-out report, the Division shall proceed as follows:

7.04.1 Dispatch an evaluation team to inspect the corrections to the immediate repair project(s);

7.04.2 After the school district obtains a final written approval from the division, the school district may release any retainage provided for in the contract; and

7.04.3 The immediate repair project shall be deemed completed and closed-out.

## 8.00 SCHOOL DISTRICT OBLIGATIONS

- 8.01 For tracking purposes, school districts shall account for the funds received as state financial participation under this section as restricted funds and shall account for the funds in accordance with provisions of law, including but not limited to, the Arkansas Educational Financial Accounting and Reporting Act of 2005, Ark. Code Ann. § 6-20-2201 et seq., and rules established by the Arkansas State Board of Education and the Commission.
- 8.02 School districts shall make every effort to conform any immediate repair project to current academic facilities standards, including but not limited to, appropriate space utilization requirements, unless the division determines it is impractical for the school district to conform the immediate repair project to current standards.
- 8.03 School districts shall use state financial participation funds in an immediate repair project to only pay the cost of the portion of an immediate repair project that is not covered by insurance proceeds or other public or private emergency assistance received by or payable to the school district.
- 8.04 School districts shall be solely responsible for all costs incurred in an immediate repair project(s) that is in excess of the state financial participation grant award and for any cost ineligible for state financial participation assistance.

## 9.00 EMERGENCY

WHEREAS, the 85<sup>th</sup> Arkansas General Assembly enacted legislation in response to the matter of *Lake View School District No. 25, et al v. Mike Huckabee, et al* to create a program to provide state financial participation to school districts to help address immediate needs of school districts related to catastrophic damage or destruction to academic facilities caused by an act of God or violence; and, whereas, these needs may currently exist due to catastrophic damage caused by acts of God or violence; and, whereas, there currently is not a similar program to address these immediate needs caused by catastrophic damage or destruction of academic facilities, the Arkansas Commission of Public School Academic Facilities and Transportation finds imminent peril exists to the public health, safety and welfare to school children and staff; therefore, the Arkansas Commission of Public School Academic Facilities and Transportation promulgate this emergency rule pursuant to the authority of Ark. Code Ann. § 25-15-204.

10.00 EFFECTIVE DATE

- 10.01 These emergency rules shall become effective immediately upon approval by the Arkansas Commission of Public School Academic Facilities and Transportation.

QUESTIONNAIRE FOR FILING PROPOSED RULES WITH  
THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY Ark. Commission of Public School Academic Facilities & Transportation  
DIVISION Ark. Division of Public School Academic Facilities & Transportation  
DIVISION DIRECTOR Dave Floyd, Interim Director  
CONTACT PERSON Dave Floyd  
ADDRESS 501 Woodlane, Suite 520-S, Little Rock, AR 72201  
PHONE NO. 501-682-4261 FAX NO. 501-683-1200 E-MAIL dfloyd@arkedu.k12.ar.us

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INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire & financial impact statement attached to the front of two (2) copies of your proposed rule and required documents. Mail or deliver to:

Donna K. Davis  
Subcommittee on Administrative Rules and Regulations  
Arkansas Legislative Council  
Bureau of Legislative Research  
Room 315, State Capitol  
Little Rock, AR 72201

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1. What is the short title of this rule? ***Emergency Rules Governing the Academic Facilities Immediate Repair Program***
2. What is the subject of the proposed rule? ***Academic Facilities Immediate Repair Program***
3. Is this rule required to comply with federal statute or regulations? Yes \_\_\_\_\_ No x \_\_\_\_\_  
If yes, please provide the federal regulation and/or statute citation.
4. Was this rule filed under the emergency provisions of the Administrative Procedures Act?  
Yes \_\_\_\_\_ x \_\_\_\_\_ No \_\_\_\_\_  
If yes, what is the effective date of the emergency rule? ***May 3, 2005***  
  
When does the emergency rule expire? ***August 31, 2005***  
  
Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes \_\_\_\_\_ x \_\_\_\_\_ No \_\_\_\_\_

5. Is this a new rule? Yes ☒ No ☐ If yes, please provide a brief summary explaining the regulation. ***The regulation establishes the procedures for school districts to follow in applying for approval of immediate repair projects.***

Does this repeal an existing rule? Yes ☐ No ☒ If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes ☐ No ☒ If yes, please attach a markup showing the changes in the existing rule and a summary of the substantive changes. **NOTE: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law grants the authority for this proposed rule. If codified, please give Arkansas Code citation. ***Acts 590 and 2206 of 2005; A. C. A. 25-15-204.***

7. What is the purpose of this proposed rule? Why is it necessary? ***To establish a program and process of providing state financial participation on a qualified basis for the correction of deficiencies in academic facilities that present an immediate hazard to the health and safety of students and staff, for meeting minimum health and safety building standards, or for addressing the extraordinary deterioration of the academic facility.***

8. Will a public hearing be held on this proposed rule? Yes ☒ No ☐  
If yes, please complete the following:

Date: ***August 16, 2005***

Time: ***10:00 a.m.***

Place: ***ADE Auditorium***

9. When does the public comment period expire for permanent promulgation? (Must provide a date.) ***August 12, 2005***

10. What is the proposed effective date of this proposed rule? (Must provide a date.)  
***September 2005***

11. Do you expect this rule to be controversial? Yes ☐ No ☒  
If yes, please explain.

12. Please give the names of persons, groups, or organizations that you expect to comment on these rules. Please provide their position (for or against) if known. ***None***



## FINANCIAL IMPACT STATEMENT

DEPARTMENT Ark. Commission of Public School Academic Facilities & Transportation

DIVISION Ark. Division of Public School Academic Facilities & Transportation

PERSON COMPLETING THIS STATEMENT Dave Floyd

TELEPHONE NO. 501-682-4261 FAX NO. 501-683-1200 EMAIL dfloyd@arkedu.k12.ar.us

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE ***Emergency Rule Governing the Academic Facilities Immediate Repair Program***

1. Does this proposed, amended, or repealed rule or regulation have a financial impact? Yes X No
2. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.  
***No, funds have been appropriated for the program.***
3. If the purpose of this rule or regulation is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation. Please indicate if the cost provided is the cost of the program.

### Current Fiscal Year

General Revenue                                     
Federal Funds                                     
Cash Funds                                     
Special Revenue                                     
Other (Identify)                                   

Total NA

### Next Fiscal Year

General Revenue \$20 million \*  
Federal Funds                                     
Cash Funds                                     
Special Revenue                                     
Other (Identify)                                   

Total                                     
***\*Amount appropriated for program***

4. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule or regulation? Identify the party subject to the proposed regulation and explain how they are affected. ***Local school districts. Each district funded has local participation to provide on funded projects.***

### Current Fiscal Year

\$ NA

### Next Fiscal Year

\$ 20 million

5. What is the total estimated cost by fiscal year to the agency to implement this regulation?

### Current Fiscal Year

\$ NA

### Next Fiscal Year

\$ 20 million

DEPARTMENT OF EDUCATION  
FISCAL IMPACT STATEMENT OF PROPOSED REGULATION  
(In compliance with Acts 884 and 1253 of 1995)

Regulation Title: ***Emergency Rule Governing the Academic Facilities  
Immediate Repair Program***

Summary Description of Regulatory Proposal: ***It establishes a program and process of providing state financial participation on a qualified basis for the correction of deficiencies in academic facilities that present an immediate hazard to the health and safety of students and staff, for meeting minimum health and safety building standards, or for addressing the extraordinary deterioration of the academic facility.***

Cite Statutory Authority for this Regulatory Proposal: ***Acts 590 and 2206; A.C.A. 25-15-204***

- I. Fiscal Impact on the Department: (include whether impacts are non-recurring or recurring)
  - A. Resources Required - Personnel, equipment, office space.  
***New division, appropriation has been made.***
  - B. Time Required for Implementation.  
***12-13 months.***
  - C. Procedural Changes.  
***None (new rules).***
  - D. Other.
- II. Fiscal Impact on Local School District or Others? (Include whether impacts are non-recurring or recurring)
  - A. Resources Required - Personnel, equipment, office space.  
***Funded programs will require local participation. Amount not known at this time (non-recurring).***
  - B. Time Required for Implementation.  
***Two weeks – preparing application.***
  - C. Procedural Changes.  
***None.***
  - D. Other.
- III. Additional Comments.

Prepared by: (Name) Dave Floyd  
(Title) Interim Director, PSAFT  
(Date) 6/21/05