

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

1.00 REGULATORY AUTHORITY

- 1.01 These emergency rules are promulgated pursuant to Act 1327 and Act 2206 of the 85th Arkansas General Assembly and Ark. Code Ann. § 25-15-204.

2.00 PURPOSE

- 2.01 The purpose of these emergency rules is to establish the rules governing a program and process of providing state financial participation to a school district based on a school district's academic facilities wealth index for eligible catastrophic repair and new construction projects to supplement insurance or other public or private emergency assistance received by or payable to the school district.

3.00 DEFINITIONS

- 3.01 For purposes of these rules, terms 3.01.1-3.01.12 shall be as defined in § 1 of Act 2206 of the 85th Arkansas 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 renovations;
 - 3.01.9 Millage rate;
 - 3.01.10 New construction;
 - 3.01.11 Project;
 - 3.01.12 Space utilization;
 - 3.01.13 "Act of God or Violence" means an act, event, happening or occurrence due to natural or man made causes (whether a criminal act or otherwise) such as flood, tornado, fire, earthquake, explosion, or other disasters which could not have been prevented by reasonable maintenance, repair or renovation of an academic facility.; and
 - 3.01.14 "Catastrophic project" means a repair, renovation, or construction project necessary due to such great damage or destruction to an academic facility caused by and Act of God or Violence.

4.00 ACADEMIC FACILITIES CATASTROPHIC PROGRAM

- 4.01 A school district may apply for state financial participation to assist with a catastrophic project provided an academic facility in the district has been damaged due to an Act of God or violence that otherwise could not have been prevented by reasonable maintenance, repair or renovation of the academic facility.
- 4.02 In order to apply, a school district shall submit a written application on the form herein incorporated as Attachment A and shall provide the division with documented evidence of:
 - 4.02.1 The estimated cost of the project;
 - 4.02.2 The availability of insurance and any other public or private emergency assistance to pay for the project; and
 - 4.02.3 How the catastrophic project supports the prudent and resourceful expenditure of state funds and improves the school district's ability to deliver an adequate and equitable education to public school students in the district.
- 4.03 The division shall evaluate a school district's application for catastrophic assistance and may conduct an on-site inspection prior to making a decision on the application as it deems necessary.

5.00 APPLICATION PROCESS

- 5.01 Applications for catastrophic assistance may be made to the division beginning on Wednesday, May 4, 2005. A school district should apply within sixty (60) days of the event of damage occurring. However, the division may waive this requirement for good cause.
- 5.02 In order to qualify for state financial participation to assist with a catastrophic project, a school district shall submit to the Office of the Director of the Division of Public School Academic Facilities and Transportation, 501 Woodlane St., Suite 520S, Little Rock, Arkansas 72201, the following:
 - 5.02.1 A Catastrophic Program Application form (see Attachment "A");
 - 5.02.2 A notarized statement from the school district treasurer certifying that the amount of state assistance requested for the emergency project is not covered by insurance or other public or private emergency assistance received by or payable to the school district;
 - 5.02.3 A written estimate from a licensed architect, engineer or contractor of the cost to repair the damaged facilities; and

5.02.4 A written statement how the catastrophic project supports the prudent and resourceful expenditure of state funds and improves the school district's ability to deliver and adequate and equitable education to public school students in the district.

5.03 The application shall be submitted via first class mail return receipt requested or via stamped recognition of hand delivery during normal business hours.

6.00 DIVISION APPROVAL CRITERIA

6.01 The division's consideration and approval will be based on several factors, including but not limited to the following:

6.01.1 School district compliance with appropriate academic facility standards, including but not limited to, appropriate space utilization;

6.01.2 The amount and availability of insurance or other public or private emergency assistance;

6.01.3 The academic facilities wealth index of the school district;

6.01.4 The prudent and resourceful expenditure of state funds with regard to public school academic facilities; and

6.01.5 Whether the facility is considered an academic facility. For example, the division shall not consider for approval applications for the replacement or repair of administrative buildings, athletic fields, and other facilities not meeting the definition of an academic facility.

6.02 The division shall consider each application for state financial participation in a catastrophic project on a case-by-case basis, taking into account the funding for the catastrophic program.

7.00 DIVISION AND SCHOOL DISTRICT OBLIGATIONS

7.01 If a school district qualifies for state financial participation under these rules, the division shall, within thirty (30) calendar days of approval, certify the amount of the state financial participation to the Commission for oversight purposes and the Commission shall, within thirty (30) calendar days written notice of certification, certify the amount to the Arkansas Department of Education.

7.02 School districts shall track and account for the catastrophic funds received as state financial participation under these rules 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.

- 7.03 Approved school districts shall make every effort a catastrophic project to current academic facilities standards, including appropriate space utilization requirements, unless the division determines it is impractical to conform the catastrophic project to current standards.
- 7.04 School districts shall use state financial participation funds in a catastrophic program to pay only for the cost of that portion of a catastrophic project that is not covered by insurance or other public or private emergency assistance received by or payable to the school district.
- 7.05 School districts shall comply with all local, state and federal laws and rules related to construction, repair or renovation projects, including but not limited to, bidding laws and rules.

8.00 EMERGENCY

- 8.01 WHEREAS, the 85th 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.

9.00 EFFECTIVE DATE

- 9.01 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

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

- 1. What is the short title of this rule? ***Emergency Rules Governing the Academic Facilities Catastrophic Program***
- 2. What is the subject of the proposed rule? ***Academic Facilities Catastrophic 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 _____ 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 _____ 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 catastrophic 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 to a school district based on a school district's academic facilities wealth index for eligible catastrophic repair and new construction projects to supplement insurance or other public or private emergency assistance received by or payable to the school district.***

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

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

Time: ***9:00 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 E MAIL 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 Catastrophic 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, the division has the authority to move line item appropriations into this program as needed.***
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 \$70 million *
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____ ****Amount appropriated for other programs. Funds can be allocated as needed.***

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 has local participation to meet on funded programs.***

Current Fiscal Year

\$ NA

Next Fiscal Year

\$ See above

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

Current Fiscal Year

\$ NA

Next Fiscal Year

\$ See above

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
Catastrophic Program***

Summary Description of Regulatory Proposal: ***It establishes a program and process of providing state financial participation to a school district based on a school district's academic facilities wealth index for eligible catastrophic repair and new construction projects to supplement insurance or other public or private emergency assistance received by or payable to the school district.***

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.
Very little.
 - 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.
Local participation on funded projects.
 - B. Time Required for Implementation.
Estimated two weeks to prepare application.
 - C. Procedural Changes.
None.
 - D. Other.
- III. Additional Comments.

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

