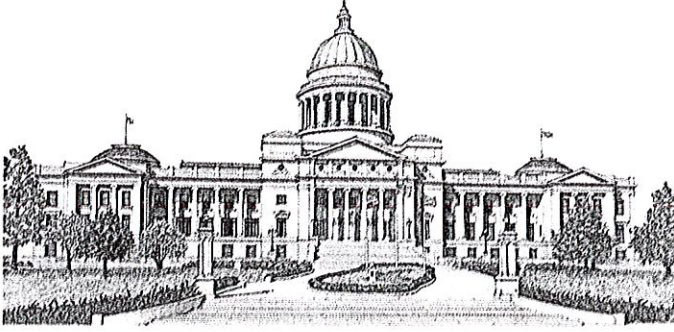


# ARKANSAS REGISTER

## Transmittal Sheet Use only for FINAL and EMERGENCY RULES



Secretary of State  
**Mark Martin**  
500 Woodlane, Suite 026  
Little Rock, Arkansas 72201-1094  
(501) 682-5070  
[www.sos.arkansas.gov](http://www.sos.arkansas.gov)



**For Office  
Use Only:**

Effective Date \_\_\_\_\_ Code Number \_\_\_\_\_

**RECEIVED**

Name of Agency Arkansas Department of Education

MAY 20 2019

Department Central Administration, Legal Unit

BUREAU OF  
LEGISLATIVE RESEARCH

Contact Taylor Dugan

E-mail taylor.dugan@arkansas.gov Phone 501-682-1958

Statutory Authority for Promulgating Rules \_\_\_\_\_

Ark. Code Ann. § 6-21-109, 6-21-301, 6-21-304, 17-25-101, 18-44-503, 18-44-507, 19-11-259, 22-9-101, 22-9-203, and 25-15-201

Rule Title: Commission For Arkansas Public School Academic Facilities and Transportation Rules Governing Self-Construction Projects by Public Educational Entities

**Intended Effective Date**  
(Check One)

**Date**

Emergency (ACA 25-15-204)

Legal Notice Published .....

August 4-6, 2018

10 Days After Filing (ACA 25-15-204)

Final Date for Public Comment .....

September 4, 2018

Other \_\_\_\_\_  
(Must be more than 10 days after filing date.)

Reviewed by Legislatice Council .....

May 15, 2019

Adopted by State Agency .....

December 12, 2018

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Taylor Dugan

taylor.dugan@arkansas.gov

5/17/19

Contact Person

E-mail Address

Date

### CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted  
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Signature

501-682-1958

taylor.dugan@arkansas.gov

Phone Number

E-mail Address

Attorney

Title

May 17, 2019

Date

SECRETARY OF STATE  
STATE OF ARKANSAS

2019 MAY 20 AM 10:14

REGISTERED

FILED

**COMMISSION FOR ARKANSAS PUBLIC SCHOOL ACADEMIC  
FACILITIES AND TRANSPORTATION RULES GOVERNING  
SELF-CONSTRUCTION PROJECTS BY PUBLIC EDUCATION ENTITIES  
Effective May 30, 2019**

1.00 REGULATORY AUTHORITY

1.01 These regulations shall be known as the Commission for Arkansas Public School Academic Facilities and Transportation Rules Governing Self-Construction Projects by Public Entities.

1.02 The Commission's authority for promulgating these rules is pursuant to Ark. Code Ann. § 6-21-109, 6-21-301, 6-21-304, 17-25-101, 18-44-503, 18-44-507, 19-11-259, 22-9-101, 22-9-203, and 25-15-201 *et seq.*

2.00 PURPOSE

2.01 The purpose of these rules is to establish how the Division of Public School Academic Facilities and Transportation (Division) will assess, identify, assist, monitor, and address public educational entities that self-construct.

3.00 DEFINITIONS

3.01 "Public educational entities" (Entities) means Arkansas public school districts, charter schools, educational cooperatives, or any publicly supported entity having supervision over public educational entities.

3.02 "Self-construction" means any construction where the public educational entity uses its own employees, acts as a general contractor, uses a construction manager while acting as a general contractor, or acts as its own construction manager using contracted construction services.

3.03 "Construction project" means making or forming an improvement by combining parts, labor, or materials; the erection or alteration that exceeds a cost of \$35,000 of a structure or physical object under the supervision or ownership of a public educational entity.

3.04 "Design professional" means a person or firm who provides professional expertise in order to carry out a capital erection, repair, or improvement project. Design professionals may include, but may not be limited to, the following professionals: planners (land, city, utilities, etc.), architects, landscape architects, surveyors (land), engineers (consulting and professional engineers providing expertise in various licensed fields such as civil, electrical, mechanical, structural, sanitary, etc.).



- 3.05 “Maintenance work” means the repair but not the replacement or alterations that exceed a cost of \$35,000 of existing facilities when the size, capacity, and type of the existing facility or equipment is not thereby substantially changed or increased
- 3.06 “Commodities” means all supplies, goods, material, equipment, machinery, facilities, and personal property purchased for or on behalf of an Entity.
- 3.07 “Open market purchases” means those purchases of commodities by any purchasing official in which competitive bidding is not required.
- 3.08 “Administrator” means a school Entity superintendent, an educational cooperative director, the Administrator, Director, Chairman, or President of a charter school, or other educational entity.
- 3.09 “Commission” means the Commission for Arkansas Public School Academic Facilities and Transportation.
- 3.10 “Division” means the Arkansas Division of Public School Academic Facilities and Transportation.

#### 4.00 NOTIFICATION OF INTENT

- 4.01 If an Entity board votes to self-construct, the Administrator of the Entity shall submit Part A and B of the Construction Approval Form, which is attached as Appendix “A” to these rules, to the Division indicating that the project is “Self Construction”. (The form may be found on the Division website at; <http://arkansasfacilities.arkansas.gov>). This submission must include all items required by Appendix “A.”
- 4.02 The Administrator of the Entity also must submit the written Assurance Impact Statement (*see Item 3 of Part A in Appendix A*) and the annual Equity Compliance Report (*see Item 4 of Part A in Appendix A*) to the Arkansas Department of Education, LEA State Funding—Loans and Bonds, Four Capitol Mall, Mail Slot 9, Little Rock, AR 72201.
- 4.03 Upon receiving an Entity’s notification of intent to self-construct, the Division shall review the Entity’s proposed self-construction project.

#### 5.00 APPROVAL PROCEDURES

- 5.01 When an Entity develops plans for a self-construction project to be submitted to the Division for approval, the Entity shall ensure that the

design and specifications satisfy all Arkansas legal requirements including, but not limited to, the following:

- A. All construction plans, specifications, and estimates shall be made by and the construction executed under the observation of an appropriate design professional. (Ark. Code Ann. § 22-9-101).
- B. If the total cumulative and fair market value of construction or capital improvement is greater than \$25,000, an engineer, registered or licensed in the State of Arkansas, shall provide the required engineering services. (Ark. Code Ann. § 22-9-101(b)(1)).
- C. If the total cumulative and fair market value of construction or capital improvement is greater than \$100,000, an architect, registered or licensed in the State of Arkansas, shall provide the required architectural services. (Ark. Code Ann. § 22-9-101(b)(2)).

5.02 Upon review of the foregoing requirements, the Division may approve or deny the self-construction project

## 6.00 BID, BOND, AND LICENSING REQUIREMENTS

6.01 When an Entity self-constructs, the Entity shall ensure by written report to the Division compliance with all Arkansas laws, including but not limited to the following:

6.01.1 Open market purchases may be made where the purchase price is less than the current amount set by the Commissioner of Education establishing the maximum purchase amount for open-market purchases. (Ark. Code Ann. § 6-21-304).

6.01.2 In each instance where the estimated purchase price shall equal or exceed the current amount set by Commissioner of Education establishing the maximum purchase amount for open-market purchases, the commodity shall be procured by soliciting bids. (Ark. Code Ann. § 6-21-304).

6.01.3 When all estimated construction costs do not exceed \$35,000, the contract shall be solicited according to local school board policy. (Ark. Code Ann. § 22-9-203).

6.01.4 When all estimated construction costs exceed \$35,000, the Entity shall publish public notice of intent to receive bids a

minimum of one (1) time per week for two (2) consecutive weeks. The bids may be opened one (1) week after the last date of publication. (Ark. Code Ann. § 22-9-203).

- 6.02 When giving public notice of intent to receive bids for construction, an Entity may include alternates in the bid specifications. If the Entity includes alternates in the bid specifications, the alternates must be deductive, no more than three (3) alternates may be used, and the alternates must be set forth and considered in numerical order. (Ark. Code Ann. § 22-9-203).
- 6.03 When advertising for bids for construction, an Entity may negotiate a final contract amount with the successful bidder if the low bid is within twenty-five percent (25%) of the amount appropriated for the project and all alternates have been exhausted. (Ark. Code Ann. § 22-9-203).
- 6.04 An entity shall accept the lowest qualified bid from a firm resident in Arkansas. This bid shall be accepted only if the bid does not exceed the lowest qualified bid from a nonresident firm by more than five percent (5%) and if one (1) or more firms resident in Arkansas made written claim for a preference at the time bids were submitted. (Ark. Code Ann. § 19-11-259).
- 6.05 A five percent (5%) corporate bid bond or certified check in the amount of five percent (5%) of the bid shall accompany all submitted bids on construction contracts that exceed \$35,000. (Ark. Code Ann. § 22-9-203).
- 6.06 The successful bidder on construction that exceeds \$20,000 shall provide the owner a performance and payment equal to the contract amount. This bond must be filed with the clerk of the circuit court of the county where the work is being performed before authorization to proceed is granted. (Ark. Code Ann. § 18-44-503 and 18-44-507).
- 6.07 Any sub-trades contractor doing work in areas such as electrical, plumbing, HVAC, etc. must hold the required trades' licenses from the State of Arkansas. This applies to Entity personnel, as well as sub-trades contractors employed by the Entity. Any contractor who performs a job that exceeds \$50,000 must also hold an Arkansas contractor's license. (Ark. Code Ann. § 17-25-101(a)).

## 7.00 ENFORCEMENT

- 7.01 Any Entity Administrator or certified employee that knowingly submits to the Commission or Division a false report or false information required by Arkansas law or these rules and regulations shall be subject to having his

license revoked, suspended, or placed on probation pursuant to Ark. Code Ann. § 6-17-410.

# APPENDIX "A"

## DIVISION OF PUBLIC SCHOOL ACADEMIC FACILITIES AND TRANSPORTATION SCHOOL CONSTRUCTION APPROVAL FORM MAY 30, 2019

### Part A

#### Instructions

Pursuant to Ark. Code Ann. §§ 6-20-1407 and 6-21-109, entities [School Districts, Public Charter Schools, Education Service Cooperatives, or any publicly supported entity having supervision over public educational entities] that propose to construct and/or fund facility projects are required to submit written documentation.

Construction: Completion of this form is required for Division of Public School Academic Facilities and Transportation approval of an entity's construction if the process of self-construction is used.

Bond Applications: Completion of this form is required for loan or bond approval but is not required for non-voted refunding of existing debt.

Please answer the following questions, provide the required information, and submit the completed form with attachments to:

**Division of Public School Academic Facilities and Transportation  
One Capitol Mall, Suite 4D-200  
Little Rock, AR 72201**

#### General and Equity Information

Construction Approval applies to all construction projects costing over \$35,000 at public school facilities regardless of the source of funds. *(This section shall not apply to maintenance projects or construction projects costing \$35,000 or less.)*

1. Describe the proposed facility project: *(Indicate the Project Number from the Master Plan, Location, Campus, Building, and detailed description.)*



**DIVISION OF PUBLIC SCHOOL ACADEMIC FACILITIES AND TRANSPORTATION  
SCHOOL CONSTRUCTION APPROVAL FORM  
MAY 30, 2019**

**Part A – Continued**

2. Provide a written, detailed, substantial justification for the proposed facility projects. Projects shall be considered legitimately justified if, for example:
- A. The proposed facility project is necessary for the applying entity to comply with Arkansas Department of Education (*ADE*) rules and regulations, and/or State and Federal statutes and regulations; and/or
  - B. The proposed facility project is necessary to meet important educational goals of the entity. Completion of the proposed project should enable the applying entity to provide a better quality, desegregated education, necessary to meet the needs of its present and projected population. The entity must provide a desegregation impact statement showing that the proposed improvements will not have a segregative effect (see item #3 below). A detailed outline or explanation of the educational goal to be met shall be included.

3. Provide a written Assurance Statement indicating that the proposed facility project will not establish, continue, or ignore segregative activities and/or policies within the entity or contiguous districts. Also, indicate with the Assurance Statement that the proposed project in any school in any county contiguous to Pulaski County, Arkansas, will not have a substantial negative impact on the ability of any entity in Pulaski County, Arkansas, to effectively desegregate.

4. The Annual Equity Compliance Report must be filed with the Arkansas Department of Education before approval can be granted. The Division of Public School Academic Facilities and Transportation will confirm the filing with the Equity Assistance Center.



5. Provide *a* written Assurance Statement that the approval of the facilities project or the approval of any loan or bond financing the facilities project does not violate any Federal Court Order or federal or state law.

6. The written Assurance Statement referenced in paragraph 3 and the Annual Equity Compliance Report referenced in paragraph 4 must be submitted to:

**Arkansas Department of Education  
LEA State Funding - Loans & Bonds  
Four Capitol Mall, Mail Slot 9  
Little Rock, AR 72201**

7. What method of construction does the entity plan to use for the project? If the response is general contractor, no additional information is needed and only the superintendent's signature is required. *(If Self Construction is indicated then Part B must be completed and submitted with Part A.)*

General Contractor    
  General Contractor as CM    
  Design Build  
 Self-Construction    
  Construction Management    
  Lease Purchase

\_\_\_\_\_  
EDUCATIONAL ENTITY

\_\_\_\_\_  
COUNTY

\_\_\_\_\_  
SIGNATURE OF ENTITY ADMINISTRATOR

\_\_\_\_\_  
DATE

**DIVISION OF PUBLIC SCHOOL ACADEMIC FACILITIES AND TRANSPORTATION  
SCHOOL CONSTRUCTION PROCESS INFORMATION  
MAY 30, 2019**

**Part B**

*(To be completed only if Self-Construction is indicated)*

\_\_\_\_\_  
**EDUCATIONAL ENTITY**

\_\_\_\_\_  
**COUNTY**

\_\_\_\_\_  
**PROJECT**

\_\_\_\_\_  
**PROJECT NUMBER**

**Construction Information**

This form applies to all construction projects that exceed \$35,000, including but not limited to; academic, maintenance and operations facilities, transportation facilities, and other non-instructional facilities.

1. What method of self-construction does the district entity plan to use for the project?  
 Entity personnel  
 Entity will serve as its own general contractor  
 Entity will serve as its own general contractor and employ a construction manager  
 Entity will serve as its own Construction Manager and contract for performance of the work.
2. Provide the date that the Entity Board of Directors voted to self-construct the project.  
Date: \_\_\_\_\_.
3. Has the entity used the self-construction process on projects in the past?  
Yes \_\_\_ No \_\_\_.
4. If yes to question #4, provide the date(s) that the entity used the self-construction process.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
**SIGNATURE OF ENTITY ADMINISTRATOR**

\_\_\_\_\_  
**DATE**

**DIVISION OF PUBLIC SCHOOL ACADEMIC FACILITIES AND TRANSPORTATION  
SELF-CONSTRUCTION ASSURANCE STATEMENT  
MAY 30, 2019**

**Part B – *Continued***

\_\_\_\_\_  
**EDUCATIONAL ENTITY**

\_\_\_\_\_  
**COUNTY**

\_\_\_\_\_  
**PROJECT**

\_\_\_\_\_  
**PROJECT NUMBER**

Being the duly authorized administrator of the above educational entity, I certify that the entity is acting in compliance with the Commission for Arkansas Public School Academic Facilities and Transportation Rules Governing Self-Construction Projects by Public Education Entities, and are in compliance with such rules and regulations, and further certify that the above-mentioned educational entity will:

- 1) Have the plans drafted by an appropriate design professional;
- 2) Submit final plans to the proper state agencies for approval; and
- 3) Follow all applicable Arkansas statutes concerning commodities purchasing requirements, bidding requirements, and licensing requirements.

\_\_\_\_\_  
**SIGNATURE OF ENTITY ADMINISTRATOR**

\_\_\_\_\_  
**DATE**

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Commission for Arkansas Public School Academic Facilities and Transportation

**DIVISION** Division of Public School Academic Facilities and Transportation

**PERSON COMPLETING THIS STATEMENT** Taylor Dugan

**TELEPHONE** 501-682-1958      **FAX** 501-682-4249      **EMAIL:** Taylor.dugan@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

**SHORT TITLE OF THIS RULE** CAPSAFT Rules Governing Self-Construction Projects by Public Education Entities

- 1. Does this proposed, amended, or repealed rule have a financial impact?      Yes       No
  
- 2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?      Yes       No
  
- 3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered?      Yes       No

If an agency is proposing a more costly rule, please state the following:

(a) How the additional benefits of the more costly rule justify its additional cost;  
N/A

(b) The reason for adoption of the more costly rule;  
N/A

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;  
N/A

(d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.  
N/A

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

(a) What is the cost to implement the federal rule or regulation?

**Current Fiscal Year**

General Revenue N/A  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

**Next Fiscal Year**

General Revenue N/A  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_



Total \_\_\_\_\_

Total \_\_\_\_\_

(b) What is the additional cost of the state rule?

**Current Fiscal Year**

**Next Fiscal Year**

General Revenue Zero  
 Federal Funds \_\_\_\_\_  
 Cash Funds \_\_\_\_\_  
 Special Revenue \_\_\_\_\_  
 Other (Identify) \_\_\_\_\_  
 Total \_\_\_\_\_

General Revenue Zero  
 Federal Funds \_\_\_\_\_  
 Cash Funds \_\_\_\_\_  
 Special Revenue \_\_\_\_\_  
 Other (Identify) \_\_\_\_\_  
 Total \_\_\_\_\_

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

**Current Fiscal Year**

**Next Fiscal Year**

\$ Zero

\$ Zero

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

**Current Fiscal Year**

**Next Fiscal Year**

\$ Zero

\$ Zero

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes  No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
  - (a) justifies the agency's need for the proposed rule; and
  - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
  - (a) the rule is achieving the statutory objectives;
  - (b) the benefits of the rule continue to justify its costs; and
  - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.