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# ARKANSAS REGISTER

## Proposed Rule Cover Sheet



Secretary of State

John Thurston

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(501) 682-5070

[www.sos.arkansas.gov](http://www.sos.arkansas.gov)



Name of Department \_\_\_\_\_

Agency or Division Name \_\_\_\_\_

Other Subdivision or Department, If Applicable \_\_\_\_\_

Previous Agency Name, If Applicable \_\_\_\_\_

Contact Person \_\_\_\_\_

Contact E-mail \_\_\_\_\_

Contact Phone \_\_\_\_\_

Name of Rule \_\_\_\_\_

Newspaper Name \_\_\_\_\_

Date of Publishing \_\_\_\_\_

Final Date for Public Comment \_\_\_\_\_

Location and Time of Public Meeting \_\_\_\_\_

**DIVISION OF HIGHER EDUCATION RULES GOVERNING  
THE SUSTAINABLE BUILDING MAINTENANCE PROGRAM FOR  
STATE-SUPPORTED INSTITUTIONS OF HIGHER EDUCATION**

**Effective Date:**

**1.00 DEFINITIONS.**

- 1.00    “Deferred maintenance” means necessary maintenance, repairs and upgrades or replacements that are put on hold until sometime in the future, most notably due to a lack of funds needed to complete a project.
- 1.01    “Critical maintenance” means deferred maintenance projects that, if not addressed, could result in substantial damage to the structural integrity of a building or are related to the imminent failure of building systems such as HVAC, electrical and plumbing.
- 1.02    “Renovation of state-owned property” means updates to existing institutional facilities to address changing program needs on a campus.

**2.00 LOANS.**

- 2.01    Under the Sustainable Building Maintenance Program for State-Supported Institutions of Higher Education, the Division of Higher Education may:
- 2.01.1   Authorize money to be loaned from the Sustainable Building Maintenance Program for State-Supported Institutions of Higher Education Revolving Loan Fund, pursuant to Arkansas Code § 19-5-1277, to a state-supported institution of higher education.
- 2.02    A loan from the fund made under 2.01 shall be:
- 2.02.1   For:
- 2.02.1.1   Deferred maintenance;
- 2.02.1.2   Critical maintenance; or
- 2.02.1.3   A renovation of state-owned property; and
- 2.02.2   In an amount that exceeds one hundred thousand dollars (\$100,000).
- 2.03    The term for repayment of a loan from the fund made under 1.01 of this section shall not exceed ten (10) years.
- 2.04    An applicant applying for a loan under this rule shall meet the following eligibility requirements:

2.04.1 Applications for loans for construction and/or renovation projects should be accompanied by a copy of the engineer's or architect's project budget guidelines.

2.04.2 Criteria for loan approval will include, but are not limited to, the following:

2.04.2.1 The institution's current debt service requirements:

2.04.2.1.1 The total annual debt service (including that for the loan, if approved) may not exceed 25% of annual student tuition and fee revenue or,

2.04.2.1.2 If local millage is pledged against the loan, the millage income must equal no less than 120% of total annual debt service;

2.04.2.2 Feasibility of and need for the proposed project in the context of the educational and general mission of the institution; and

2.04.2.3 Availability of loan funds.

### **3.00 LOAN APPROVAL PROCESS.**

3.01 An applicant for a loan from the Sustainable Building Maintenance Program for State-Supported Institutions of Higher Education Revolving Loan Fund under § 6-62-1202 shall:

3.01.1 Apply for the loan on a form approved by the Division of Higher Education.

3.01.1.1 The form under section 3.01.1 shall be posted on the division's website.

3.01.2 The division shall review an application submitted under 3.01.1 of this subsection to determine if the applicant satisfies the eligibility criteria for a loan from the fund.

3.01.3 Upon approval by the division, each application shall then be reviewed by the legislature for final approval.

3.02 The division shall provide an applicant for a loan from the fund with written notice of its determination regarding whether:

3.02.1 To offer the applicant a loan from the fund, and

3.02.2 Any conditions for making the loan from the fund.

3.03 After an applicant for a loan from the fund has satisfied the preconditions, if any, for the division's approval of the applicant's loan application, and has executed a contract for the loan from the fund, the division will present the contract for the loan from the fund to Higher Education Coordinating Board for its approval.

3.03.1 In determining whether to approve an application, the board will:

3.03.1.1 First, based on project type give priority to critical maintenance needs.

3.03.1.2 Second give priority to deferred maintenance with renovation projects being the lowest priority for funding.

3.03.1.3 As funds become available, division staff will notify the eligible institution of the intent to present the loan award for approval at the next available board meeting.

3.03.2 Requirements for the issuance of a loan from the fund:

3.03.2.1 Upon approval of the loan by the Higher Education Coordinating Board, the institution must sign a Certificate of Indebtedness specifying a payout schedule and asserting the commitment of the institutional board to budget and allocate the sums necessary to make the payments agreed upon in the Certificate of Indebtedness.

3.03.2.2 The payout schedule will include a closing fee plus an annual service fee assessed by the Development Finance Authority as agreed upon by the division and the Authority and specified in the closing document(s).

3.03.2.3 The Certificate of Indebtedness will provide for penalties for late payments.

3.03.2.4 No penalties will be assessed for early retirement of the debt.

**QUESTIONNAIRE FOR FILING PROPOSED RULES WITH  
THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT \_\_\_\_\_  
BOARD/COMMISSION \_\_\_\_\_  
BOARD/COMMISSION DIRECTOR \_\_\_\_\_  
CONTACT PERSON \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
PHONE NO. \_\_\_\_\_ EMAIL \_\_\_\_\_  
NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING \_\_\_\_\_  
PRESENTER EMAIL(S) \_\_\_\_\_

**INSTRUCTIONS**

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes; (2) both a markup and clean copy of the rule; and (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, [miller-ricer@blr.arkansas.gov](mailto:miller-ricer@blr.arkansas.gov), for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, [garritym@blr.arkansas.gov](mailto:garritym@blr.arkansas.gov), for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

\*\*\*\*\*

1. What is the official title of this rule?  
\_\_\_\_\_
2. What is the subject of the proposed rule? \_\_\_\_\_
3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? Yes      No

*If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).*

If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? Yes      No

4. Is this rule being filed for permanent promulgation? Yes No

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

If yes, what was the effective date of the emergency rule? \_\_\_\_\_

On what date does the emergency rule expire? \_\_\_\_\_

5. Is this rule required to comply with a *federal* statute, rule, or regulation? Yes No

If yes, please provide the federal statute, rule, and/or regulation citation.

6. Is this rule required to comply with a *state* statute or rule? Yes No

If yes, please provide the state statute and/or rule citation.

Ark. Code Ann. § 6-62-1204

7. Are two (2) rules being repealed in accord with Executive Order 23-02? Yes No

If yes, please list the rules being repealed.

If no, please explain.

8. Is this a new rule? Yes No

Does this repeal an existing rule? Yes No

If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes No

If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s).

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?  
Yes      No

If yes, please provide the year of the act(s) and act number(s).

11. What is the reason for this proposed rule? Why is it necessary?

12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1).

13. Will a public hearing be held on this proposed rule? Yes      No

If yes, please complete the following:

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Place: \_\_\_\_\_

*Please be sure to advise Bureau Staff if this information changes for any reason.*

14. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. \_\_\_\_\_

15. What is the proposed effective date for this rule? \_\_\_\_\_

16. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice.

17. Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A).

18. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known.

19. Is the rule expected to be controversial? Yes      No

If yes, please explain.



**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY.**

**DEPARTMENT** \_\_\_\_\_  
**BOARD/COMMISSION** \_\_\_\_\_  
**PERSON COMPLETING THIS STATEMENT** \_\_\_\_\_  
**TELEPHONE NO.** \_\_\_\_\_ **EMAIL** \_\_\_\_\_

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

**TITLE OF THIS RULE** \_\_\_\_\_

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 no, please explain:

(a) how the additional benefits of the more costly rule justify its additional cost;

(b) the reason for adoption of the more costly rule;

(c) whether the reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

(d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

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 \_\_\_\_\_  
 Federal Funds \_\_\_\_\_  
 Cash Funds \_\_\_\_\_  
 Special Revenue \_\_\_\_\_  
 Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

**Next Fiscal Year**

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

Total \_\_\_\_\_

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

**Current Fiscal Year**

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

Total \_\_\_\_\_

**Next Fiscal Year**

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

Total \_\_\_\_\_

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

**Current Fiscal Year**

\$ \_\_\_\_\_

**Next Fiscal Year**

\$ \_\_\_\_\_

6. What is the total estimated cost by fiscal year to a state, county, or 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**

\$ \_\_\_\_\_

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.



## Division of Higher Education

101 E. Capitol Ave., Suite 300 • Little Rock, Arkansas • 72201-3827 • (501) 371-2000 • Fax (501) 371-2001

Jacob Oliva  
Secretary

Ken Warden, Ed.  
Commissioner

March 19, 2024

**Dr. Jim Carr**  
Secretary

### **Proposed Rules Governing the Sustainable Building Maintenance Program for State-Supported Institutions of Higher Education**

**Higher Education  
Coordinating  
Board**

#### **PURPOSE**

The Division of Higher Education is seeking Governor's review of proposed Rules Governing the Sustainable Building Maintenance Program for State-Supported Institutions of Higher Education.

**Mrs. Graycen  
Bigger**  
*Academic/Finance  
Committees  
Chair*

#### **BACKGROUND**

Pursuant to Act 751 of 2023, the Division is charged with promulgating rules regarding the Sustainable Building Maintenance Program for State-Supported Institutions of Higher Education, which is codified at Ark. Code Ann. § 6-62-1201 et seq. The Division is charged loaning money from the Program funds to state-supported institutions of higher education for deferred maintenance, critical maintenance, or renovation of state-owned property, for which the Department believes that rulemaking is required.

**Dr. Jerry Cash**  
*Academic  
Committee*

#### **KEY POINTS**

- Authorizes money to be loaned from the Sustainable Building Maintenance Program for State-Supported Institutions of Higher Education Revolving Loan Fund to a state-supported institution of higher education.
- Establishes that the loans under this fund be used for deferred maintenance, critical maintenance, or renovation of state-owned property, in an amount that exceeds \$100,000, with a repayment term not exceeding 10 years.
- Details the loan approval process, which requires upon division approval, legislative review for each loan request before final approval is made.

**Dr. Katherine  
Dudley**  
*Academic  
Committee*

**Mr. Chad Hooten**  
*Finance Committee*

#### **DISCUSSION**

Act 751 of 2023 created the Sustainable Building Maintenance Program for State-Supported Institutions of Higher Education Act codified at Ark. Code Ann. § 6-62-1201 et seq. The Act authorizes money to be loaned from the Sustainable Building Maintenance Program for State-Supported Institutions of Higher Education Revolving Loan Fund to a state-supported institution of higher education.

Act 751 of 2023 establishes that the loans under this fund be used for deferred maintenance, critical maintenance, or renovation of state-owned property, in an amount that exceeds \$100,000, with a repayment term not exceeding 10 years.

Act 751 of 2023 also details the loan approval process, which requires upon approval by the division, legislative review for each loan request before final approval is made.

**Mrs. Heather  
Maxey**  
*Finance Committee*

**Dr. Kyle Miller**  
*Finance Committee*

**Mr. Lucas Pointer**  
*Finance Committee*

**Mrs. Carolyn  
Rhinehart**  
*Academic  
Committee*

#### **RECOMMENDATION**

The Division of Higher Education recommends Governor's Office approval of this rule.

Notice of Rulemaking  
Public Comment Period: July 28-August 28

Pursuant to Arkansas Code Annotated § 25-15-201 et seq., notice is hereby given that the Division of Higher Education is considering new administrative rules. Public comment hearings will be held for the following rules:

- DHE Rule Governing Military Dependents Scholarship;
- DHE Rule Governing Sustainable Buildings Loan Fund;
- DHE Rule Governing Financial Aid Appeals Committee;
- DHE Rule Governing State Teacher Education Program;
- DHE Rule Governing Teacher Opportunity Program;
- DHE Rule Governing Washington Center Scholarship;
- DHE Rule Governing Law Enforcement Dependents Scholarship.

All hearings will be held August 21, 2024, at 10 a.m. at the Arkansas Department of Education, Arch Ford Building, Four Capitol Mall, Little Rock, AR, 72201. The public comment period for these rules ends on August 28, 2024. Written comments regarding these proposed rules may be mailed to ADE Legal Services, Four Capitol Mall, Room 302A, Little Rock, AR, 72201.

Comments may be emailed to [ADE.RulesComments@ade.arkansas.gov](mailto:ADE.RulesComments@ade.arkansas.gov). A copy of the proposed rules can be found on the Division of Higher Education's website at: <https://adhe.edu/data-publications/pending-policies>. Copies also may be obtained by contacting ADE's Office of Legal Services at the above address, via phone at (501) 683-1390, or via email at [legal@ade.arkansas.gov](mailto:legal@ade.arkansas.gov).

**From:** [Legal Ads](#)  
**To:** [Alisha N. Price \(ADE\)](#)  
**Subject:** Re: Department of Education Rules for Public Comment  
**Date:** Friday, July 26, 2024 2:39:21 PM  
**Attachments:** [image001.png](#)

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Done, but just barely (deadline was 12 noon today).

You will receive separate bills: one for Sun 7/28, the other for Mon 7/29 & Tues 7/30.

Thank you.

Gregg Sterne, Legal Advertising  
Arkansas Democrat-Gazette  
[legalads@arkansasonline.com](mailto:legalads@arkansasonline.com)

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**From:** "Alisha N. Price, ADE" <[Alisha.Price@ade.arkansas.gov](mailto:Alisha.Price@ade.arkansas.gov)>  
**To:** "Legal Ads" <[legalads@arkansasonline.com](mailto:legalads@arkansasonline.com)>  
**Sent:** Friday, July 26, 2024 2:21:47 PM  
**Subject:** RE: Department of Education Rules for Public Comment

Good afternoon,

Can we please have this run Sunday the 28<sup>th</sup>, Monday 29<sup>th</sup>, and Tuesday the 30<sup>th</sup> rather than just Sunday?

Thanks!



**Alisha Price**  
Associate Legal Counsel  
Arkansas Department of Education  
4 Capitol Mall, Suite 302  
Little Rock, Arkansas 72201  
Office: (501) 682-7590  
Email: [alisha.price@ade.arkansas.gov](mailto:alisha.price@ade.arkansas.gov)

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**From:** Legal Ads <[legalads@arkansasonline.com](mailto:legalads@arkansasonline.com)>  
**Sent:** Thursday, July 25, 2024 4:40 PM  
**To:** Alisha N. Price (ADE) <[Alisha.Price@ade.arkansas.gov](mailto:Alisha.Price@ade.arkansas.gov)>

**Subject:** Re: Department of Education Rules for Public Comment

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Will run Sun 7/28.

Thank you.

Gregg Sterne, Legal Advertising  
Arkansas Democrat-Gazette  
[legalads@arkansasonline.com](mailto:legalads@arkansasonline.com)

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**From:** "Alisha N. Price (ADE)" <[Alisha.Price@ade.arkansas.gov](mailto:Alisha.Price@ade.arkansas.gov)>  
**To:** "legalads" <[legalads@arkansasonline.com](mailto:legalads@arkansasonline.com)>  
**Cc:** "Andres Rhodes (ADE)" <[Andres.Rhodes@ade.arkansas.gov](mailto:Andres.Rhodes@ade.arkansas.gov)>, "LaBria Brown, ADE" <[LaBria.Brown@ade.arkansas.gov](mailto:LaBria.Brown@ade.arkansas.gov)>, "Daniel Shults, ADE" <[Daniel.Shults@ade.arkansas.gov](mailto:Daniel.Shults@ade.arkansas.gov)>  
**Sent:** Thursday, July 25, 2024 11:52:11 AM  
**Subject:** Department of Education Rules for Public Comment

Good morning,

Please see the attached regarding ADE's rules going for public comment. Please let me know if you have any questions or need anything else from us.

Thanks, and have a great day!



**Alisha Price**

Associate Legal Counsel  
Arkansas Department of Education  
4 Capitol Mall, Suite 302  
Little Rock, Arkansas 72201  
Office: (501) 682-7590  
Email: [alisha.price@ade.arkansas.gov](mailto:alisha.price@ade.arkansas.gov)