

# ARKANSAS REGISTER

## Transmittal Sheet

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Secretary of State

**Mark Martin**

500 Woodlane, Suite 026

Little Rock, Arkansas 72201-1094

(501) 682-5070

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

Name of Agency Commission for Arkansas Public School Academic Facilities and Transportation

Department Division of Public School Academic Facilities and Transportation

Contact Lori Freno E-mail lori.freno@ade.arkansas.gov Phone 501-682-4234

Statutory Authority for Promulgating Rules Ark. Code Ann. §§ 6-21-114, 6-20-2507, and 6-20-2512

**Rule Title:** CAPSFT Rules Governing the Academic Facilities Partnership Program Sections 5.00 and 7.00 only

**Intended Effective Date**

(Check One)

Emergency (ACA 25-15-204)

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

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

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**Date**

11/28, 29, 30, 2022

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

Lori Freno

lori.freno@ade.arkansas.gov

May 19, 2023

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

501-682-4234

lori.freno@ade.arkansas.gov

Phone Number

E-mail Address

General Counsel, Arkansas Department of Education

Title

May 19, 2023

Date

**COMMISSION FOR ARKANSAS PUBLIC SCHOOL ACADEMIC FACILITIES  
AND TRANSPORTATION RULES GOVERNING THE ACADEMIC  
FACILITIES PARTNERSHIP PROGRAM**

**Effective: May 29, 2023**

1.00 AUTHORITY

The Commission for Arkansas Public School Academic Facilities and Transportation (CAPSAFT) authority for promulgating these Rules is pursuant to Ark. Code Ann. §§ 6-21-114, 6-20-2507, 6-20-2512, and 25-15-201 *et seq.*

2.00 PURPOSE AND SCOPE

2.01 The purpose of these Rules is to establish a process whereby the Arkansas Division of Public School Academic Facilities and Transportation shall provide state financial participation based upon a school district's academic facilities wealth index in the form of cash payments to a school district for eligible new construction projects.

2.02 CAPSAFT Rules Governing the Academic Facilities Partnership Program that were in effect January 23, 2020, apply to 2021-2023 project funding cycle.

3.00 DEFINITIONS - For the purpose of these Rules, the following terms mean:

3.01 "Academic Facility" – A building or space, including related areas such as the physical plant and grounds, where public school students receive instruction that is an integral part of an adequate education as described in Ark. Code Ann. § 6-20-2302.

3.01.1 A public school building or space, including related areas such as the physical plant and grounds, used for an extracurricular activity or an organized physical activity course as defined in Ark. Code Ann. § 6-16-137 shall not be considered an academic facility for the purposes of funding in these Rules to the extent that the building, space, or related area is used for extracurricular activities or organized physical activities courses, except for physical educational training and instruction under Ark. Code Ann. § 6-16-132;

3.01.2 The Division of Public School Academic Facilities and Transportation may determine the extent to which a building, space, or related area is used for extracurricular activities or organized physical activities courses based on information supplied by the school district and, if necessary, on-site inspection;

3.01.3 Buildings or spaces used for pre-kindergarten education, including

related areas such as the physical plant and grounds, shall not be considered academic facilities for purposes of funding in these Rules;

3.01.4 District administration buildings and spaces, including related areas such as the physical plant and grounds, shall not be considered academic facilities for the purpose of these Rules; and

3.01.5 Facilities owned, operated, or both, by education service cooperatives, as well as leased facilities (other than facilities that are part of a lease purchase agreement), portable buildings, modular buildings, and facilities owned by others but occupied by school districts are not considered academic school facilities for purposes of these Rules.

3.01.6 In order to be eligible for Partnership Program funding, facility spaces must be fully utilized only for academic purposes. The Division reserves the right to monitor facility use, and should it find that funded facility spaces are not being utilized entirely for academic instruction, may require full or partial repayment of any state financial participation in the facility.

3.02 “Academic Facilities Partnership Program” – The process under which the Arkansas Division of Public School Academic Facilities and Transportation shall provide state financial participation based upon a school district's academic facilities wealth index in the form of cash payments to a school district for eligible new construction projects.

3.03 “Academic Facilities Wealth Index” – A percentage derived from the computations set forth in Ark. Code Ann. § 6-20-2502(1).

3.03.1 In the case of a voluntary consolidation or annexation, the wealth index shall be calculated as specified in Ark. Code Ann. § 6-20-2510(b).

3.04 “Additions” – Additional academic areas or spaces that are constructed as a part of or separate additions to an existing academic area or space, and that fall under the definition of “New Construction” contained in Section 3.20 of these Rules.

3.04.1 Additions will be considered only for missing academic space.

3.04.2 Any additions must be connected to the standing facility directly or by a conditioned and fully enclosed walkway (hallway), and must be at least ten thousand (10,000) square feet. If site conditions or projected enrollment make this provision unduly burdensome, the Division will consider a waiver.

3.05 “Arkansas Public School Academic Facilities Manual” – A document that contains uniform standards to guide the planning, design, and construction of new academic facilities and additions to existing academic facilities, which is Appendix “A” to these Rules. The Manual can also be accessed on the

Division's website.

- 3.06 "Alternative Project" – A project proposed by the Division that will accomplish creating a safe, dry, and healthy atmosphere, meet the suitability need of the school district or individual school facility, and is in compliance with the state standards. The Division will coordinate the development of an alternative project with the school district.
- 3.07 "Building Value" – A percentage value reflecting the depreciated value of an academic facility with an assumed depreciation of two percent (2%) per year. Building Value does not consider improvements that may have been made to the facility.
- 3.07.1 Building Value is calculated by multiplying two (2) times the age of the academic facility, and subtracting that product from one hundred (100) ( $\text{Value} = 100 - (2 \times \text{Age})$ ). The output of this equation may be a positive or negative percentage.
- 3.07.2 For the purpose of this calculation, an academic facility's age is calculated as the difference between the master plan year and the year of the facility's construction completion.
- 3.07.3 When an academic facility has multiple additions constructed at different times, a Building Value shall be computed for each addition.
- 3.07.4 Building Value will be used to develop the Division's statewide needs priority list per Ark. Code Ann. § 6-21-112 (f) (18).
- 3.07.5 Districts are not required to replace an academic facility when the Building Value is at or below zero percent (0%), nor is a Building Value of zero percent (0%) or below sufficient justification for state financial participation in replacing a facility.
- 3.08 "Campus Value" – A composite percentage value of depreciated Building Values that includes all of the academic facilities on a campus.
- 3.08.1 Campus Value is calculated by multiplying the Building Value of each individual academic facility on a campus by the area in square feet of that individual facility, then adding together the products of that calculation for all academic facilities on the campus, and then dividing that sum by the overall area in square feet of all academic facilities on the campus.
- 3.08.2 In instances where multiple campuses are involved with a Warm, Safe, and Dry project, a Campus Value may be computed using the same process for all the campuses involved with the project.
- 3.09 "Commission" – The Commission for Arkansas Public School Academic Facilities and Transportation.

- 3.10 “Configuration (Reconfiguration)” – The systematic grouping of grades as determined by the school district at any school(s) campus. Reconfiguration is the process of changing the present school(s) configuration, by the school district, to align a different grade configuration. The configuration or reconfiguration is determined by the school district.
- 3.11 “Consolidation/Annexation Project” – A new, complete school campus or one or more additions to existing campuses for the specific purpose of supporting a voluntary consolidation or annexation petition brought by two or more contiguous districts and approved by the Arkansas State Board of Education pursuant to Ark. Code Ann. § 6-13-1401 et seq.
- 3.12 “Construction Cost” – The actual cost of constructing a new construction project as defined in Section 3.20 of these Rules. It consists of all construction related costs, both direct and indirect, to include but not be limited to construction contract costs and costs associated with design, advertisement, and reimbursable expenses.
- 3.13 “Conversion Project” –
- 3.13.1 A new construction project that converts existing academic or non-academic space into a missing academic core, special education, or student dining component of the POR and the conversion project is part of an addition project for which the district has applied for partnership assistance. In such conversions, any partnership assistance funding from the state is limited to only that amount of square footage required by the suitability analysis for the addition project subject to the requirements of Section 3.35 of these Rules. The component shall meet the POR specifications when converting or adding such a space to the district; or
- 3.13.2 A new construction project that converts existing academic or non-academic space into a missing academic core space only and is in compliance with the POR space requirements. For this type of conversion project, state partnership assistance funding shall only be allowed provided the district has no suitability square footage need and the project is limited to no more than the component number and square footage spaces required in Academic Core of the POR.
- 3.13.3 The erection of walls in an existing “open format” school shall not constitute an eligible conversion project.
- 3.14 “Division” – The Arkansas Division of Public School Academic Facilities and Transportation.

- 3.15 “Energy Saving Contract” – Shall have the same meaning and meet the requirements set forth in the CAPSAFT Rules Governing the Acquisition of Energy Conservation Measures for Public Schools.
- 3.16 “Facilities Master Plan” – A six-year plan developed by a school district that contains Division provided enrollment projections for ten (10) years from the date of the plan; the school district’s strategy for maintaining, repairing, renovating, and improving through new construction or otherwise the school district’s academic facilities and equipment; and other information as required by law.
- 3.17 “Facilities Improvement Plan” – An improvement plan developed by a school district for a public school or school district identified as being in academic facilities distress, or by a school district that has been notified by the Division of non-participation in the Academic Facilities Partnership Program by failing to apply for state funding for necessary facilities to meet adequacy requirements, which supplements the school district’s facilities master plan by:
- 3.17.1 Identifying specific interventions and actions the public school or school district will undertake in order to correct deficient areas of practice with regard to custodial, maintenance, repair, and renovation activities with regard to academic facilities in the school district; and
- 3.17.2 Describing how the school district will remedy those areas in which the school district is experiencing facilities distress, including the designation of the time period by which the school district will correct all deficiencies that placed the school district in facilities distress status.
- 3.18 “Local Resources” – Any moneys lawfully generated by a school district for the purpose of funding the school district’s share of financial participation in any academic facilities project for which a school district is eligible to receive state financial participation under priorities established by the Division. Also referred to as “raised funds” for the purpose of defining “Self-Funded Project.”
- 3.19 “Maintenance, Repair, and Renovation” – Any activity or improvement to an academic facility and, if necessary, related areas such as the physical plant and grounds, that maintains, conserves, or protects the state of condition or efficiency of the academic facility.
- 3.20 “New Construction” – Any improvement to an academic facility and, if necessary, related areas such as the physical plant and grounds, that brings the state, condition, or efficiency of the academic facility to a state of condition or efficiency better than the academic facility’s current condition of completeness or efficiency. “New construction” includes a new addition to an existing facility and construction of a new academic facility.
- 3.20.1 No state financial participation will be provided for improvements that could be classified as maintenance, repair, and renovation, other than a total renovation project. That portion of a new construction project that

consists of maintenance, repair, or renovation will not be considered in calculating state financial participation in a new construction project, nor in prioritization of a new construction project.

- 3.21 “New Facilities” – A new construction project that is neither an addition to, total renovation, or conversion of an existing facility; nor a project involving maintenance, renovation, or repair of an existing facility; but is a new addition to a school district’s building inventory.
- 3.22 “Non-academic Facility” – A building or space that is not used for the provision of student instruction that is an integral part of an adequate education as described in Ark. Code Ann. § 6-20-2302. The term “non- academic facility” comprises, but is not limited to, those buildings, spaces, and grounds described in Subsections 3.01.1, 3.01.3, 3.01.4 and 3.01.5 of these Rules, or any buildings, spaces or grounds that do not fit the definition of “Academic Facility” set forth in Section 3.01 of these Rules. Non-academic spaces shall not be eligible for funding.
- 3.23 “Prioritization” – The methodology established by the Commission, and set forth in these Rules in Section 5.05, which provides a system of ranking new construction projects submitted for state financial participation in the Partnership Program, in order to comply with Ark. Code Ann. § 6-20-2507 and the necessary and appropriate allocation of limited funding resources.
- 3.24 “Program of Requirements (POR)” – The requirements that each new construction project that is not a Warm, Safe, and Dry Systems Replacement project is required to adhere to as the established minimum adequate components, and total square footage required in a school construction project as otherwise permitted in Section 4.02 of these Rules for add-on projects. The POR is contained in the Arkansas Public School Academic Facilities Manual, which is Appendix “A” to these Rules. The District shall submit accurate and complete PORs, which shall include all existing spaces, for any new construction project that is not a Warm, Safe, and Dry Systems Replacement project for the Division’s review in accordance with Section 3.35 of these Rules. Submission of inaccurate PORs, including but not limited to incorrect building sizes, inaccurate reporting of existing spaces, and inaccurate existing campus size, may be grounds for project disapproval.
  - 3.24.1 Enrollments on PORs shall reflect the state produced enrollment projections.
  - 3.24.2 School enrollments shall reflect the current school enrollment (as reported to the Division of Elementary and Secondary Education in October), plus or minus the appropriate percentage of student gain or loss indicated by the enrollment projections.
  - 3.24.3 All POR enrollments will represent the highest five (5) year projection from requested funding date for all grades involved in the project.

Districts may request to use ten (10) year enrollment projections to be used in calculating all spaces and space sizes.

3.24.4 In the case of districts with declining enrollment, POR enrollment shall be based on enrollment for the two (2) years beyond the requested potential project funding year. For purposes of this Section, “declining enrollment” means a drop in the ten (10) year enrollment projection.

- 3.25 “Project” - An undertaking in which a school district engages in:
- 3.25.1 Maintenance, repair, and renovation activities with regard to an academic facility;
  - 3.25.2 New construction; or
  - 3.25.3 Any combination of maintenance, repair, and renovation activities with regard to an academic facility and new construction activities with regard to an academic facility.
- 3.26 “Project Funding Cycle” – A two (2) year cycle for which school districts’ Partnership Projects submitted by a specified deadline in an even-numbered year are reviewed by the Division for state financial participation by May 1 of the succeeding odd-numbered year.
- 3.27 “Public School Facility” – Any public school building or space, including related areas such as the physical plant and grounds, that are used for any purpose, including, without limitation:
- 3.27.1 An extracurricular activity;
  - 3.27.2 An organized physical activity course defined in Ark. Code Ann. § 6-16-137;
  - 3.27.3 Pre-kindergarten education;
  - 3.27.4 District administration; or
  - 3.27.5 Delivery of instruction to public school students that is an integral part of an adequate education as described in Ark. Code Ann. § 6-20-2302.
- 3.28 “Qualified Cost” – A projected qualified construction cost for funding purposes determined by the Division utilizing the specific project cost funding factors set forth in Ark. Code Ann. § 6-20-2509 and localized to regional cost centers in the state. It serves as the basis for the estimated state financial participation for partnership projects per square foot, although a school district’s actual cost might exceed the state cost funding factors. The specific project cost funding factors for New Facilities, Warm, Safe, and Dry Systems Replacement, and Conversion Projects are defined as set forth in Sections



3.28(i) and 3.28(ii) of these Rules. These funding factors shall not include land purchases, mold abatement or removal, environmental clean-up, supersite clean-up, or qualification for LEED or Green Globes certification pursuant to Section 10.0 of these Rules.

- (i) The Qualified Cost for newly constructed academic facilities or additions for which a square foot cost would be applicable to all facets of the construction will be the lesser of either:
  - (a) New Facilities Project Cost Funding Factor shall be that factor established on a regional basis by the Division in effect as of May 1, 2009, and updated annually by the Division in compliance with Ark. Code Ann. § 6-20-2509; plus the appropriate soft cost for demolition costs and/or asbestos abatement in the amount of one percent of the Funding Factor for each category (however, the Funding Factor shall not increase to more than \$200.00 per square foot without the approval of the Commission) multiplied by the project approved size in square feet; or
  - (b) The actual construction cost amount of the project.
- (ii) The Qualified Cost for conversion projects or projects that are building systems or components thereof, not covered in Section 3.28(i) of these Rules (above), will be the lesser of either:
  - (a) The Warm, Safe, and Dry Systems Replacement and Conversion Project Cost Funding Factor, which shall be that factor established on a regional basis by the Division in effect as of May 1, 2009, and updated annually by the Division in compliance with Ark. Code Ann. § 6-20-2509; plus the appropriate soft cost for demolition costs and/or asbestos abatement in the amount of one percent of the Funding Factor for each category multiplied by the approved unit of measure per project (however, the Funding Factor shall not increase to more than \$200.00 per square foot without the approval of the Commission) multiplied by the project approved size in square feet; or
  - (b) The actual construction cost of the project.
- (iii) In calculating the amount of state financial participation in a facilities project that includes a tornado shelter or designated reinforced area, the Division shall deduct from the Qualified Cost the total amount of grant funds received by the school district for the shelter or area. Districts shall indicate the amount of grant funds on the initial budget sheet. If a district receives information concerning the grant amount or grant approval after funding/payment by the Division, the district shall

immediately report to the Division the grant amount, which will be subtracted from the qualified project cost, resulting in a change to state financial participation. Any monies paid by the Division over the revised state financial participation shall be repaid by the district to the Division.

3.28.1 New Facilities Project Cost Funding Factor – That factor, based upon grade level configuration of the public school academic facility and the proposed enrollment within the facility and regionalized to twelve (12) different areas within the state, which the Division will use to provide a funding amount for construction projects covered by Section 6.03(i) of these Rules on a square foot basis.

3.28.2 Warm, Safe, and Systems Replacement and Conversion Project Cost Funding Factor – That factor, based upon the amount of square footage contained, the type of conversion of existing space to a different use, or the type of item or system renovation regionalized to twelve (12) different areas within the state, which the Division will use to provide a funding amount for construction projects covered by Section 6.03(ii) of these Rules on a square foot basis.

- 3.29 “Renovation Project” – A Warm, Safe, and Dry Systems Replacement new construction project addressing a facility system per Section 3.37.1 of these Rules or addressing all building systems per Section 3.37.2 of these Rules. To receive state financial participation, the project must be a Warm, Safe, and Dry Systems Replacement or Space Replacement project.
- 3.30 “Resolution” – A written document voted upon and approved by at least a majority of a quorum of a school district's Board of Directors at a lawfully convened meeting, which certifies the school district’s dedication of local resources to meet the school district’s share of financial participation in the new construction project.
- 3.31 “Schematic Drawing” – A diagram that fully illustrates all of the areas, spaces and dimensions of a new construction project. Schematic drawings shall include as a minimum: single line drawings with all outside dimensions, including all offsets and overall gross square footage. For additions or conversion projects, the drawing also shall be labeled to identify each interior space with interior room net square footage in the “footprint” of the entire project. For Warm, Safe, and Dry Systems Replacement projects, the replacement major system components and their tentative location shall be identified.
- 3.31.1 The schematic drawing does not have to be prepared by a licensed architect, but must meet the approval of the Division as to the actual detail required.

3.31.2 An aerial photograph is not a “diagram” and may not serve as the basis for the required schematic drawing.

- 3.32 “School district” – A geographic area with an elected board of directors that qualifies as a taxing unit for purposes of ad valorem property taxes under Title 26 of the Arkansas Code, and which board conducts the daily affairs of public schools under the supervisory authority vested in it by the General Assembly and Title 6 of the Arkansas Code.
- 3.33 “Self-Funded Project” – A project where the monies needed to complete the project are one hundred percent (100%) raised and provided by the school district, and that shall be submitted to and approved by the Division upon compliance with state codes and standards. Any project, whether the district requests state financial participation or not, shall meet the standards of the Arkansas Public School Academic Facilities Manual, industrial codes, and the Program of Requirements.
- 3.34 “State Financial Participation” – The state’s share of financial participation in a local academic facilities project eligible for state financial participation according to the prioritization schedule established by the Commission and set forth in Section 5.05 of these Rules.
- 3.35 “Suitability” – The process undertaken by the Division to determine whether any existing academic facility is eligible for state financial participation for new construction projects, as set forth in Section 5.05 of these Rules. The state financial participation shall be the qualified cost described in Section 3.28, multiplied by the difference of one hundred percent (100%), minus the school district’s wealth index. Except for approved Warm, Safe, and Dry Systems Replacement projects, only that total gross square footage space required by the POR that is not already deemed available to a school district, whether on an existing campus or a new school campus, shall be determined eligible for state financial participation.

3.35.1 On An Existing Campus

- (i) When a school district is proposing a new construction project on an existing campus with existing educational facilities, the district shall submit accurate and complete PORs of the existing campus. The Division shall compare the appropriate existing total gross square footage space of the existing facilities on the **campus** to the total gross square footage space requirements of the POR for the proposed new school facility based on the projected student enrollment by grade level. After making the comparison, the school will only be deemed to not be suitable and thus eligible for state financial participation on a proposed facility project for the additional gross square footage space required in the POR that is not currently available on the school **campus** (based on the Division’s campus reports, submitted

PORs, onsite inspections, or other confirmed information made available to the Division) or on other campuses affected by grade reconfigurations as part of the project. The Division shall disapprove any additional spaces that result in spaces, space sizes, or both, that are above POR requirements. The district shall submit accurate and complete PORs for all campuses and grades affected by the grade reconfigurations, based on the one highest enrollment projection year, that are a part of the project. However, the state recognizes that four particular space areas existing in school districts on or before 2008 may skew the comparison of existing space to that of the required POR space. Therefore, the Division will not count as existing space that total gross footage area above the required POR standard for the following four areas that existed on or before 2008: Physical Education, Media Center, Student Dining, and Performing Arts.

- (ii) Consolidation and annexation projects containing proposed additions to existing facilities will be evaluated in accordance with Section 3.35.1, except that the Division may consider all school closings in the consolidation or annexation when determining space when available on other campuses.

#### 3.35.2 On A New School Campus:

- (i) When a school district is proposing a new construction project on a school campus for which the Division determines there are no other currently existing appropriate school facilities or the district is seeking a separate LEA number for the new academic facility, the district shall submit a POR for the new school campus and all other campuses servicing the same grade(s). The Division shall compare the total gross square footage required by the POR for the proposed facility for the appropriate student grade population to that currently existing total gross square footage available in the **district** (based on the Division's campus and district reports, submitted PORs, onsite inspections, or other confirmed information made available to the Division) for the appropriate student grade population in their final grade configuration less the gross square footage to be demolished as part of the proposed project. The Division also shall include other campuses and grades affected by grade reconfigurations as part of the project. The district shall submit complete and accurate PORs for all campuses and grades affected by the grade reconfigurations that are a part of the project. After making the comparison, the school only will be deemed to not be suitable and thus eligible for state financial participation on a proposed facility project for that additional space required in the POR not currently available in the school

district for the appropriate student population in their final grade reconfiguration. Districts shall not submit future cycle projects for additional space or conversions in a new facility yet unbuilt or PORs that effectively negate the excess space PORs and results of this Section. The State recognizes that the four particular space areas mentioned in Section 3.35.1 of these Rules that existed in the school district on or before 2008 may skew the comparison. As a result, the Division will give the same consideration and not count as existing space that total gross footage area above the required POR standard for those four areas that existed in the district on or before 2008.

- (ii) Consolidation and annexation projects shall not be penalized for current space under Section 3.35.2(i), nor are they subject to the provisions of Section 5.02.

3.35.3 Warm, Safe, and Dry Systems Replacement: For new construction projects not requesting additional space or replacement of academic square footage, state financial participation only will be provided for Warm, Safe, and Dry Systems Replacement projects. Suitability analysis and determination shall be made on a project-by-project basis and shall be determined based on the actual need as determined by the Division using current Facilities Manual standards.

3.36 “Waiver” and “Variance” – The process by which a school district in unusual and limited circumstances may seek a waiver or variance from provisions of these Rules as approved by the Division.

3.37 “Warm, Safe, and Dry” – New construction projects deemed necessary by the Division to provide students a warm, safe, and dry educational environment. State financial participation may be available for two categories of Warm, Safe, and Dry projects:

3.37.1 “Warm, Safe, and Dry Systems Replacement” –

- (i) New construction projects that support a facility’s needs as they pertain to fire, safety, roofing, HVAC, and structural. Roofing, plumbing, fire, safety, and electrical projects must apply to the entire facility or system or if a separate building the entire building. Fire system needs include fire alarms, warning systems, and fire prevention/suppression systems. The Division shall verify system replacement needs through work orders documented in the state-provided Computerized Maintenance Management System, condition assessments submitted in master plans, on-site evaluations, etc. Life cycle alone shall not be sufficient justification for state financial partnership for state financial partnership in replacement. Partial HVAC projects may be approved by the Division if they are part of an energy-savings contract with performance of a comprehensive energy

savings plan, or if units have been installed within the previous five (5) years. Any project application including recently replaced HVAC units as a part of a system replacement must indicate in the application the date of recent installation and the square feet the recently installed components service.

(ii) Safety system projects must be part of a comprehensive campus security plan, which shall include any renovation projects that are designed to sustain active shooter protocols, efficiently implement lockdown procedures, and enable an overall immediate and legal response to crises, and include training for proper operation of systems. Eligible security upgrades shall include original installations of the following: secure entrance vestibule, ballistic-rated glass/films, CCTV, Electronic Access controls on doors, intruder locksets, and may include reinforced hallways adjunct to student occupied areas, fully enclosed walkways between buildings, permanently installed screening technology, visitor management systems, hallway security/fire doors, and vehicle barriers. Upgrades of existing systems, extensions of a system, and replacement of systems are not eligible. To be eligible for funding, districts shall provide with the application a detailed narrative describing all safety and security procedures and systems currently at the campus, new systems being requested for funding, and how the proposed project will enhance the safety and security of students and staff. All new construction projects must comply with applicable current codes. Any added security systems must receive approval from relevant state agencies, including but not limited to, the Fire Marshal, Arkansas Building Authority, Arkansas Department of Health, and the Division.

3.37.2 “Warm, Safe, and Dry Space Replacement” – New construction projects that build a new academic facility to replace an existing academic facility that is not deemed by the Division to provide students a warm, safe, and dry educational environment. In some instances, districts may perform a total facility renovation instead of a building replacement. Total renovation means that all building systems determined by the Division to be required to bring the facility to “like-new” condition are replaced. Total renovations shall comply with Sections 4.06 and 4.07 of these Rules, and shall represent a prudent use of state funds. To be eligible for state financial participation in a space replacement project, the facility condition index of **each** building or addition must be sixty-five percent (65%) or greater at the time of evaluation by the Division. Any building not meeting the sixty-five percent (65%) threshold is ineligible for state financial participation in replacement. Any building taken out of the suitability analysis may not be used for any activity in which students are in the building subsequent to replacement project completion.

3.37.3 Warm, Safe, and Dry projects do not include land purchases or

environmental clean-up or supersite clean-up.

- 3.37.4 Districts are not required to replace an academic facility when the Building Value is at or below zero percent (0%), nor is a building value at or below zero percent (0%) sufficient justification for state financial participation for a replacement building.

#### 4.00 SUBMISSION PROCESS

- 4.01 All applications for state financial participation under a Project Funding Cycle of this Partnership Program shall be submitted electronically by utilizing the Master Plan Web Tool located on the Division's Internet website no later than 4:30 p.m. on March 1 of every even-numbered year.

4.01.1 If during an even-numbered year the Arkansas State Board of Education orders the involuntary annexation or consolidation of school districts, the receiving or resulting school district after annexation or consolidation may submit an updated master plan to the Office of the Director of the Division of Public School Academic Facilities and Transportation no later than January 1 of the following odd-numbered year.

4.01.2 If during an even-numbered year the Arkansas State Board of Education orders the involuntary annexation or consolidation of school districts, the receiving or resulting school district after annexation or consolidation may submit an application for state financial participation under this Partnership Program to the Office of the Director of the Division of Public School Academic Facilities and Transportation no later than February 1 of the following odd-numbered year.

4.01.3 For the purposes of Section 4.01.1 and 4.01.2, the phrase "involuntary annexation or consolidation" includes annexations or consolidations approved or required by the Arkansas State Board of Education pursuant to Ark. Code Ann. 6-13-1601 et seq.

- 4.02 A school district may apply for state financial partnership participation under these Rules for projects that fall under either of the following categories:

- Warm, Safe, and Dry Space Replacement and Systems Replacement Projects, and;
- Space/Growth Projects (new facilities, additions, conversions)

If the state provides financial participation for an addition or conversion project, or a consolidation or annexation project that adds space to an existing campus, the district must construct any missing component to the POR specification. The district will have to submit an accurate and complete

POR, to include all existing spaces. If the POR indicates deficient space components, the district must satisfy these components in the following order:

- Academic Core Areas;
- Special Education;
- Student Dining;
- Administrative

The state will not participate in addition projects concerning gymnasiums, media centers, or auditoriums if the district already has this space or is in need (according to the POR) of Academic Core Areas, Special Education, or Student Dining Areas. State Financial Participation shall not be used for any gym space used for competition. State financial participation for undersized facilities shall be limited to the space required to bring a facility up to size, and shall not be approved for a new facility based on size alone. Any new project must be deemed a prudent use of state funds.

School districts are encouraged to discuss with the Division before entering into demolition projects when the districts will be filing applications for state partnership assistance.

School districts applying for state financial participation for projects that support their facilities master plan shall file applications (that include accurate and complete PORs, resolutions, schematic drawings, and other required documentation) in a format prescribed by the Division and shall list the applications in the district's Facilities Master Plan. No project shall be approved if the district does not have a complete and approved facilities master plan as of September 1 of each even-numbered year. No project application shall be submitted, reviewed, or approved if the district has begun construction on the project.

4.02.1 School districts must comply with the timelines set out in Section 4.01 of these Rules concerning submission of partnership applications with schematic drawings and district submitted PORs.

4.03 Any project that applies for state financial assistance must prove suitability. All Warm, Safe, and Dry Space Replacement projects that involve the Division-approved demolition or repurposing of space for replacement of the same space will be considered a prudent and resourceful expenditure of state funds issue upon approval by the Division and in compliance with POR requirements.

4.03.1 Warm, Safe, and Dry Space Replacement projects that replace student dining, kitchen, or media center space are not required to prove the suitability described in Section 3.35.1. If the district provides a complete application for and the Division agrees with the need for replacement of the student dining, kitchen, or media center space, the project will be eligible for state financial participation to the POR



required size of a replacement student dining, kitchen, or media center space. Replacement of a student dining, kitchen, or media center space will be based on condition and will not be based on size considerations alone.

4.04 Any submission for state financial participation that does not comply with applicable state laws and these Rules and represent a prudent use of state funds shall be denied by the Division. Any district whose submission is denied by the Division under this Section may submit a written appeal of the Division's decision to the Commission.

4.05 In order to apply for state financial participation in a new construction project, a school district shall provide the Division with a detailed narrative, description, and justification for the project and evidence of:

4.05.1 Preparation for the new construction project as demonstrated by inclusion of the new construction project in the school district's facilities master plan;

4.05.2

- (i) The adoption of a resolution certifying to the Division the school district's dedication of local resources to meet the school district's share of financial participation in the new construction project.
- (ii) The resolution shall specify the approximate date that the board of directors of the school district intends to seek elector approval of any bond or tax measures. If as of the date of application the school district already has obtained elector approval of the bond or tax measure, the resolution shall identify the date of the election at which approval was obtained.
- (iii) If the board of directors of the school districts intends to apply other local resources to pay the school district's share of the financial participation in the new construction project, and does not intend to seek elector approval of a bond or tax measure, the resolution shall specify the approximate date the board intends to apply the other local resources.
- (iv) If the resolution does not identify an approximate date for elector approval or application of other local resources, the submission shall be denied by the Division;

4.05.3

- (i) The total estimated cost of the new construction project shall be a minimum of three hundred dollars (\$300) per student or one hundred and fifty thousand dollars (\$150,000), whichever is less, per campus or district depending upon whether the project is a campus or district project. This project

minimum does not apply to a construction project with a school nursing center.

- (ii) Same system projects may not be combined across multiple facilities (campuses) nor may multiple system projects be combined to meet the minimum dollar threshold for Partnership Program funding for a Warm, Safe, and Dry Systems Replacement project;

4.05.4 The new construction project's conformance with sound educational practices;

4.05.5 The new construction project's compliance with current academic facilities standards, including, without limitation, appropriate space utilization of the applicable school in the district as determined by the Division;

4.05.6 The allocation of project costs between new construction activities and maintenance, repair, and renovation activities if the new construction project includes improvements that could be classified as maintenance, repair, and renovation;

4.05.7 How the new construction 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; and

4.05.8 A statement of the district's intent, if any, to seek incentives for LEED Certification or Green Globes Certification pursuant to Section 10.03 of these Rules.

4.05.9 District submitted PORs in accordance with the requirements of Section 3.35 of these Rules:

- (i) On a new campus to compute suitability;
- (ii) On an existing campus to compute suitability;
- (iii) On other existing campuses to compute district suitability.

4.06 All proposed new construction projects shall be in compliance with the standards set forth in the Arkansas Public School Academic Facilities Manual.

4.06.1 Variances to the Arkansas Public School Academic Facilities Manual standards may be granted by the Division:

- (i) Upon the presentation by a school district of evidence of existing conditions that make compliance with applicable standards impractical

or unreasonably burdensome, and;

(ii) Based on other conditions determined by the Division that warrant a variance.

4.07 All applications for state financial participation under this Partnership Program for new construction projects that are not considered Warm, Safe, and Dry Systems Replacement projects pursuant to these Rules shall be prepared in accordance with the POR except in unusual and limited circumstances where the Division determines that a waiver of the POR is the only means whereby the district can meet adequacy requirements. In such instances, a district may submit a request in writing to the Division, signed by the district's Superintendent and President of its Board of Directors, setting forth in detail the circumstances requiring the waiver for the POR. No waiver shall result in the "combining" of funded spaces in which the waived space being added to another space results in one space being larger than the required POR size. POR-required spaces shall be individual and unique spaces and shall not consist of temporary or moveable walls, folding or temporary stages, etc. Floor to ceiling accordion-type walls may be permitted in limited and unusual circumstances upon district request and Division approval. No waiver request shall be deemed granted unless and until the Division issues a written notification that the waiver has been granted.

4.08 At least one hundred twenty (120) days before the application deadline set forth in Section 4.01 of these Rules, a district may request in writing by letter or e-mail (received by the Division during this period) and be granted by the Division an early review conference that shall be held within seventy-five (75) days after the date of request. The district may be advised through the early review conference process by an architectural and engineering firm if the school district pays the cost of the advice from the architectural and engineering firm. To be granted an early project review, the district must submit a complete application.

4.08.1 The early review conference shall consider the following:

- (i) That the proposed project is academic;
- (ii) The application of the space calculation to the project;
- (iii) The wealth index of the district and the date at which the wealth index will be applied to the partnership project if approved;
- (iv) The project cost promulgated by the Commission under Ark. Code Ann. § 6-20-2509 for the project and the date on which the project cost data will be applied to the partnership project if approved;
- (v) If the applicant provides a *complete application* (accurate and

complete PORs, resolutions, schematic drawings as required by Section 3.31, and other required documentation), a projected amount of state funding based on current application of the wealth index and the project cost promulgated by the Commission under Ark. Code Ann. § 6-20-2509 to the planned project for planning purposes to allow a projection of local funding share required;

- (vi) Whether or not the proposed application, as submitted, meets all of the technical requirements for partnership applications as set out in the application guidelines and Rules provided by the Division for the applicable partnership program application cycle.
- (vii) The Division shall make a written record of the findings of the review conference and provide a copy of the written record to the school district within five (5) working days after the written record is finalized. All findings are subject to final review and Commission approval.

4.09 The minimum requirement set forth in Section 4.05.3 of these Rules, may be waived by the Division upon a recommendation being made by the Director of the Division to the Commissioners for the Division for the minimum to be waived for cause and a majority of the Commission supports the waiver. Districts must request the waiver by submitting a formal letter signed by the superintendent on district letterhead, which shall include a detailed justification for the request. The request must be uploaded and submitted with the project application due by March 1 of the even year.

## 5.00 DIVISION'S EVALUATION AND APPROVAL OF SCHOOL DISTRICT'S APPLICATION

5.01 The Division shall use criteria to evaluate a school district's application for state financial participation in a new construction project, pursuant to Ark. Code Ann. § 6-20-2507, which shall include, without limitation, the following:

5.01.1 How the school district's facilities master plan and current academic facilities do not address the following:

- (i) Student health and safety, including, without limitation, but not limited to, critical health and safety needs;
- (ii) Compliance with current academic facilities standards, including, without limitation, appropriate space utilization of existing academic facilities in the district;
- (iii) Conformance with sound educational practices;

- (iv) Curriculum improvement and diversification, including, without limitation, the use of instructional technology, distance learning, and access to advanced courses in science, mathematics, language arts, and social studies;
- (v) Multischool, multidistrict, and regional planning to achieve the most effective and efficient instructional delivery system;
- (vi) Reasonable travel time and practical means of addressing other demographic considerations; and
- (vii) Scheduled and unscheduled maintenance, repair, and renovation as documented in the state-provided Computerized Maintenance Management System;

5.01.2 How the school district's facilities master plan and any new construction project under the facilities master plan address the following:

- (i) Student health and safety, including, without limitation, critical health and safety needs;
- (ii) Compliance with current academic facilities standards, including, without limitation, appropriate space utilization of existing academic facilities in the district;
- (iii) Conformance with sound educational practices;
- (iv) Curriculum improvement and diversification, including, without limitation, the use of instructional technology, distance learning, and access to advanced courses in science, mathematics, language arts, and social studies;
- (v) Multischool, multidistrict, and regional planning to achieve the most effective and efficient instructional delivery system;
- (vi) Reasonable travel time and practical means of addressing other demographic considerations; and
- (vii) Scheduled and unscheduled maintenance, repair, and renovation as documented in the state-provided Computerized Maintenance Management System (CMMS);

5.01.3 How the new construction 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;

5.01.3.1 The Division may perform on-site inspections of the school

district facilities during the evaluation of project applications.

5.01.4 How the new construction project has been prioritized by the school district; and

5.01.5 The allocation and expenditure of funds in accordance with this subchapter and the Arkansas Public School Academic Facility Program Act, Ark. Code Ann. § 6-21-801 et seq.

5.01.6 In evaluating a school district's application for state financial participation in a new construction project, the Division may resolve any internal inconsistency in or conflict among the application components and supporting documentation by giving precedence to the application components in the following order:

- (i) The resolution adopted by the board of directors of the school district;
- (ii) The narrative application contents submitted electronically through the Master Plan Web Tool;
- (iii) Schematic drawings;
- (iv) Other supporting documents submitted with the application; and
- (v) Application consistency and accuracy.

5.02 The Qualified Cost shall be limited to the cost for an alternative project if the Division determines that an alternative project meets facility standards and addresses the suitability and warm, safe, and dry needs expressed by the district in its master plan and project application. The alternative project may consist of replacement of the original facility or component to the original configuration of construction at the most current state standard.

5.03 If a school district fails to comply with any of the requirements set forth in state law or these Rules concerning the Division's evaluation of its application, the Division and Commission may deny the application for state financial participation.

5.04

- (i) The Division shall review all projects submitted to determine their suitability for state financial participation, pursuant to the suitability criteria set forth in Section 3.35 of these Rules.
- (ii) No project that is determined by the Division to go beyond "suitable" will be approved for state financial participation.

## 5.05 Statewide Needs Lists, Project Ranking, and Project Funding

5.05.1 The following process will be used to develop the Statewide Warm, Safe, and Dry Needs List:

- (i) First, the Division shall numerically rank each campus based on campus value. The lowest value will be ranked first and the highest value will be ranked last.
- (ii) Second, the Division will numerically rank campuses based on the facilities condition index. The highest value will be ranked first and the lowest value will be ranked last. “Facilities condition index” has the same meaning as in the Commission for Academic Facilities and Transportation Rules Governing the Facilities Master Plan.
- (iii) Third, the Division will rank campuses by campus value ranking weighted fifty percent (50%) and facility condition index ranking weighted fifty percent (50%). Once each campus is ranked, the Division shall publish a list with the campus with the lowest score being ranked first and the campus with the highest score being ranked last.

5.05.2 The following process will be used to develop the Statewide Space/Growth needs List:

- (i) First, the Division will rank districts on five (5) year projected enrollment growth percentage based on Division projections. The highest value will be ranked first and the lowest value will be ranked last.
- (ii) Second, the Division will rank districts on five (5) year projected student enrollment growth based on Division projections. The highest value will be ranked first and the lowest value will be ranked last.
- (iii) Third, the Division will rank districts on school district suitability based on academic gross square feet needed minus academic gross square feet present. The highest value will be ranked first and the lowest value will be ranked last.
- (iv) Fourth, the Division will rank districts on school district suitability percentage based on suitability divided by academic gross square feet present. The highest value will be ranked first and the lowest value will be ranked last.
- (v) Fifth, the Division will rank districts by five (5) year projected student enrollment percentage ranking weighted twenty-five

percent (25%); five (5) year projected student enrollment growth ranking weighted twenty-five percent (25%); school district suitability ranking twenty-five percent (25%); and school district suitability percentage ranking twenty-five percent (25%). Once each district is ranked, the Division shall publish a list with the district with the lowest score being ranked first and the district with the highest score being ranked last.

5.05.3 Ranking of Projects: For the 2023-2025 and subsequent project funding cycles, all approved new construction projects shall be entitled to receive state partnership assistance in the following ranked order in two separate categories: (1) Warm, Safe, and Dry (Systems Replacement and Space Replacement) projects; and (2) Space/Growth projects.

- (i) First, the Division will rank all school projects based on the academic facilities wealth index of the school district. The district with the lowest wealth index shall be ranked first and the district with the highest wealth index shall be ranked last.
- (ii) Second, the Division will rank each project according to the Statewide Facilities Needs Lists (as calculated in Sections 5.05.1 and 5.05.2 of these Rules).
- (iii) Third, the Division will rank each project according to the percentage of district expenditures spent on maintenance of academic facilities for the last five (5) fiscal years. The district with the highest percentage spent on maintenance shall be ranked first, and the district with the lowest percentage spent on maintenance shall be ranked last.
- (iv) Fourth, the Division will rank projects by academic facility wealth index ranking weighted thirty percent (30%); Statewide Facility Needs List ranking weighted at fifty percent (50%); and percentage of district expenditures spent on maintenance of academic facilities for the last five (5) fiscal years ranking weighted twenty percent (20%). The project with the lowest score will be ranked first, and the project with the highest score will be ranked last.
- (v) The Division will ensure that all required district preventive maintenance inspections are completed and documented for the previous fiscal year. Supporting documentation shall include completed CMMS work orders and uploaded inspection documents. Projects from districts that have not completed and documented all required preventive maintenance inspections shall be moved to the bottom of the project ranking list, in the order the project was ranked under Section 5.05.3(i) through (iv).



### 5.05.5 Commission Funding of Projects

For each of the two years of a Partnership Program funding cycle there will be two (2) categories of funds from which to fund projects: one for Warm, Safe, and Dry System Replacement and Space Replacement projects; and one for Space/Growth projects. Projects will be funded as follows for each year of a funding cycle:

- (i) Fifty percent (50%) will be allocated to each category to fund projects in ranked order on the respective project ranking list.
  - (ii) Warm, Safe, and Dry projects will be funded in ranked order from the Warm, Safe, and Dry category until either all funds are allocated or until all of those projects are funded. If any funds remain after all Warm, Safe, and Dry projects are funded, and if there are any unfunded Space/Growth projects remaining, the remaining funds will be transferred to the Space/Growth category.
  - (iii) Space/Growth projects will be funded in ranked order from the Space/Growth category until either all funds are allocated or until all of those projects are funded. If funds remain after all Space/Growth projects are funded, and if there are any unfunded Warm, Safe, and Dry projects remaining, the remaining funds will be transferred to the Warm, Safe, and Dry category.
  - (iv) If funds become available during the funding cycle year due to rescinded projects, unfunded projects remaining in the appropriate category will be funded in ranked order.
  - (v) Any funds remaining after Year 2 will carry over into the next funding cycle and will not be designated as belonging to one category or the other.
- 5.06 If a school district's new construction project is approved for funding in the current funding cycle, the district must execute the Partnership Agreement, which is Appendix "B" to these Rules. If the Partnership Agreement is not executed within the time period set forth in Section 7.06 of these Rules, unless there is an approved waiver, the state's financial participation in part or in whole may be deemed null and void by the Commission.
- 5.07 In accordance with Ark. Code Ann. § 6-21-114(d) and the Commission's Rules Governing Property Insurance Requirements, every academic facility must be insured and remain insured for one hundred percent (100%) of replacement cost to be eligible for state financial participation. If, as of the date of application or at any point thereafter, an academic facility involved in a project is not sufficiently insured as required, as indicated in the district's current Statement of Values, the application shall be denied by the Division and any state financial participation shall cease.

## 6.00 AVAILABILITY OF STATE FINANCIAL PARTICIPATION AND TIMELINES

6.01 State financial participation under the academic facilities partnership program is not available until July 1 of each year. In allocating funds for state financial participation, the Division shall set aside funds sufficient to pay the incentives set forth in Section 10.0 of these Rules.

### 6.02

- (i) Approved projects not funded in the first year of a Partnership Program cycle will be moved to the second year of the Partnership Program cycle and ranked after all of the approved year-two projects per Section 5.05 of these Rules. No project that is approved but not funded in a Partnership Program cycle will be moved to the next cycle.
- (ii) If a project is approved but not funded during a Partnership Program cycle, a district may submit the *identical* project for the next funding cycle by sending a written request to the Division indicating the current cycle project number and requesting access to the web tool to enter the identical project for the next cycle. With the exception of the project number, these projects must be identical in every way and a complete submission must be made no later than July 1 of the even-numbered year (year 2 of the funding cycle). If the project is not funded in the subsequent cycle, the district must complete a new application in accordance with these Rules by March 1 of the even-numbered year.

6.03 With regard to an academic facilities project for which a school district intends to apply for state financial participation, the Division shall notify the school district of its final decision on the application and the estimated amount of state financial participation in the new construction project no later than May 1 of each odd-numbered year.

By September of each even-numbered year, the Division may notify districts of the approval or disapproval of projects, as well as of the approved square footage, and approved components of a Warm, Safe, and Dry Systems Replacement project. Districts wishing to appeal any of these Division determinations must do so within sixty (60) days of receipt of the Division's determination letter. Districts may appeal the funding cost factor calculation within sixty (60) days of the Commission's determination concerning projected funding.

The Division's notice of its decision on a school district's application for state financial participation in a new construction project will include an explanation of the evaluation factors underlying the decision of the Division to provide or not provide state financial participation in support of the new construction project.

- (i) New Construction Projects, which are newly constructed academic

facilities or additions for which a square foot cost would be applicable to all facets of the construction, may qualify for funding in the lesser amount of either Option A, which is the dollar amount set by the Division and incorporated herein or otherwise known as New Facilities Project Cost Funding Factor, which shall be that factor established on a regional basis by the Division in effect as of May 1, 2009, and updated annually by the Division in compliance with Ark. Code Ann. § 6-20-2509, plus the appropriate soft cost for demolition costs, asbestos abatement, or both, in the amount of one percent (1%) of the Funding Factor for each category multiplied by the approved project square feet multiplied by the difference of one hundred percent (100%) minus the school district's wealth index (however, the Funding Factor shall not increase to more than \$200.00 per square foot without the approval of the Commission); OR Option B, which is the actual construction cost amount multiplied by the difference of one hundred percent (100%) minus the school district's wealth index.

- (ii) Conversion projects or projects that are building systems or components thereof, not covered in (i) above may qualify for funding in the lesser amount of either Option A, which is the dollar amount set by the Division and incorporated herein or otherwise known as the Warm, Safe, and Dry Systems Replacement and conversion Cost Funding Factor, which shall be that factor established on a regional basis by the Division in effect as of May 1, 2009, and updated annually by the Division in compliance with Ark. Code Ann. §6-20-2509; plus the appropriate soft cost for demolition costs, asbestos abatement, or both, in the amount of one percent (1%) percent of the Funding Factor of each category multiplied by the approved unit of measure per project multiplied by the difference of one hundred percent (100%) minus the school district's wealth index (however, the Funding Factor shall not increase to more than \$200.00 per square foot without the approval of the Commission) OR Option B, which is the actual construction cost amount multiplied by the difference of one hundred percent (100%) minus the school district's wealth index.

## 7.00 AGREEMENT BETWEEN THE DIVISION AND THE SCHOOL DISTRICT CONCERNING STATE FINANCIAL PARTICIPATION

7.01 If the Division determines that the new construction project is eligible for state financial participation, the Division and the school district shall enter into an agreement specifying the terms of the state's financial participation and the conditions that must be satisfied by the school district.

7.02 At a minimum, the agreement shall:

- (i) Identify the estimated amount of local financial participation and state financial participation in the new construction project. The estimated amount of the state's financial participation, as stated in the agreement, will be arrived at after the schematic drawings and any variances to the

Arkansas Public School Academic Facilities Manual are considered for new facilities, new additions to facilities, or renovations or conversions. The final amount of the State's financial participation will be specified upon receipt of the final contract amount and determined as specified in Section 6.03 of these Rules;

- (ii) Define the method of and schedule for transferring state financial participation funds to the school district;
- (iii) Identify whether the new construction project includes any improvements that are classified as maintenance, repair, and renovation, and how the project costs will be allocated between new construction activities and maintenance, repair, and renovation activities;
- (iv) Define the detailed scope of work for which the agreement applies;
- (v) Provide that changes to the plans for the new construction project shall be made in consultation with the Division;
- (vi) Provide the areas of project responsibility of both parties during the course of the project;
- (vii) Provide that the district shall be in compliance with all state laws concerning bidding and construction;
- (viii) Provide that the Division or any person acting on behalf of the Division may conduct on-site inspections of the new construction project as frequently as the Division deems necessary to assure the prudent and resourceful expenditure of state funds with regard to public school academic facilities;
- (ix) Determine how risk will be allocated between the school district and the state if the new construction project is not completed;
- (x) Describe how changes in the school district's wealth index over the course of the new construction project will be treated; and
- (xi) Specify that the agreement is void and the state will have no further obligation to provide state funds to the school district for the new construction project that is the subject of the agreement if the school district does not raise local resources and apply local resources toward the project as provided under the agreement; and
- (xii) Specify that any facility built with Partnership Program funds must be used only for academic purposes as described in Section 3.01 of these Rules.

7.03 The agreement specified above and required by Ark. Code Ann. § 6-20-2507

and Section 5.06 of these Rules is Appendix “B” to these Rules.

7.04 All funding agreements under these Rules are contingent upon the prudent and resourceful expenditure of state funds as determined by the Division.

7.05 A district may *at its own expense and risk* begin developing construction plans and specifications and begin seeking all required state agency approvals before the Commission approves and funds the project. The Division and State of Arkansas are not obligated to pay an expenditure until the project has been approved and funded by the Commission. The Division will not review project plans/agency approvals until the project has been approved and funded by the Commission absent an early construction start waiver approved by the Division.

7.05.1 The district shall not begin construction on a project before the Commission approves and funds the project except in unusual and limited circumstances. If the district believes unusual and limited circumstances exist, the district shall contact the Division explaining these unusual and limited circumstances and requesting a written early construction start waiver from the Division allowing the district to begin construction *at its own expense and risk*.

7.05.2 Upon receipt of an early construction start request, the Division may:

- (i) Grant the early construction start request. All project expenses may be reimbursed pending Commission approval and funding;
- (ii) Grant a partial early construction start request in which the district shall pay for and not be reimbursed for any construction activities prior to the project funding date (the Division will recalculate the qualified project cost to subtract costs already incurred; or
- (iii) Deny the early construction start request completely.

7.06 Before the district is allowed to proceed and start construction on a project, the district must submit, and the Division must approve, its final plans and specifications, as well as all required state agency approvals.

7.07 Within sixty (60) days of the Commission’s final approval and funding of the district’s partnership project, the agreement referenced in Sections 7.02 and 7.03 of these Rules must be executed by the district and the Division. The Division shall have the right to grant a waiver from this provision if the district has unusual and limited circumstances which prevent it from executing the agreement within the sixty (60) day timeframe.

7.08 If the Partnership Agreement is not executed within the time period set forth in Section 7.07 of these Rules, unless there is an approved waiver request or

appeal pending before the Academic Facilities Review Board or Commission, the state's financial participation in whole or in part may be deemed null and void by the Division.

- 7.09 Construction of the project, as evidenced by a signed construction contract, must begin within eighteen (18) months from the date of the final approval of the project by the Commission.
- 7.10 The district must obtain the Division's approval of the completion of all district project requirements within four (4) years from the date of final approval of the project by the Commission.
- 7.11 For the purpose of Section 7.00, the phrase "signed construction contract" includes construction management contracts specific to the approved and funded project.
- 7.12 For the purpose of these Rules, "completion" is defined as successful inspection by the Division and the Division's receipt from the district of a copy of the certificate of occupancy from the appropriate code authority.
- 7.13 Districts must complete all construction activities, successfully complete a "punch" list, make final retainage payments to the contractor, and submit its final pay request to the Division within five (5) years of funding of the project by the Commission.
- 7.14 Absent a written waiver or variance, the Division shall rescind, recapture, or both, Partnership funds if the project is found not to have been built to approved plans and specifications.
- 7.15 A district may request a waiver of timelines in Section 7.07 through 7.13 of these Rules if the district believes it can show unusual and limited circumstances which prevent it from meeting the timelines. State financial participation in a district's project is contingent upon the district meeting all timelines and deadlines set forth in these Rules.
- 7.16 Absent an approved appeal or waiver, the Division shall render the state's financial participation in a district's project null and void in whole or in part for failure to meet all of the timelines and deadlines set forth in these Rules and may recapture any state partnership funding assistance funds already paid to the district.
- 7.17 Payment of an incentive awarded pursuant to Section 10.0 of these Rules shall not be made to a district until the new facilities project is completed and the appropriate third-party certification entity or assessor has awarded final certification for the project.

## 8.00 APPEAL PROCESS

- 8.01 A school district may appeal any determination of the Division to the Commission pursuant to the Commission for Arkansas Public School Academic Facilities and Transportation Rules Governing Appeals From Determinations of the Arkansas Division of Public School Academic Facilities and Transportation.
- 8.02 If the district appeals the determination of the Division to the Commission or the Academic Facilities Review Board, the Commission or the Academic Facilities Review Board shall have the authority to fully review all parts of the district's Partnership Project(s) (project) and may approve, deny, reduce, or increase the amount of state financial participation in any or all of the appealed project(s).
- 8.03 Decisions of the Review Board are subject to review by the Commission consistent with the Commission's Rules Governing Appeals From Determinations of the Arkansas Division of Public School Academic Facilities and Transportation.

## 9.00 DISTRIBUTION AND TRACKING OF STATE FINANCIAL PARTICIPATION

- 9.01 If a school district qualifies for state financial participation under this Section, the Division shall certify the amount of state financial participation to the Commission for oversight purposes. The Commission shall certify the amount to the Arkansas Division of Elementary and Secondary Education for payment.
- 9.02 The amount of the State Financial Participation under these Rules is limited to the amount resulting from the application of the academic facilities wealth index to the project cost promulgated by the Commission to calculate the cost necessary to bring the academic facility into compliance with the Arkansas Public School Academic Facilities Manual under Ark. Code. Ann. § 6-20-2509, plus any incentives awarded pursuant to Section 10.0 of these Rules.
- 9.03 The Commission shall certify the amount to the Arkansas Division of Elementary and Secondary Education for payment, less any withholding or reduction imposed by the Commission under Ark. Code Ann. § 6-21-114(d) for a school district's failure to comply with the Commission's insurance requirements.
- 9.04 For tracking purposes, the school district 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, without limitation, the Arkansas Educational Financial Accounting and Reporting Act of 2004, Ark. Code Ann. § 6-20-2201 et seq., and Rules established by the Arkansas State Board of Education and the Commission.

## 0.00 INCENTIVES FOR “GREEN” FACILITIES

- 10.01 The purpose of this Section is to encourage school districts to build environmentally friendly new facilities by offering financial incentives through the Academic Facilities Partnership Program.
- 10.02 DEFINITIONS - For the purpose of this Section, the following terms mean:
- 10.02.1 “LEED Certification” means certification of a project by a professional third-party certification entity pursuant to the Leadership in Energy and Environmental Design (LEED) for Schools Rating System developed by the U.S. Green Building Council and administered by the Green Building Certification Institute.
- 10.02.2 “Green Globes Certification” means certification of a project by a professional third-party assessor pursuant to the Green Globes Rating System developed by the Green Building Initiative.
- 10.03 A new facilities project shall be eligible for financial incentives under this Section if the school district gives timely notice to the Division of the district’s intent to seek LEED certification or Green Globes certification for the project. In its notice, the district shall identify which specific type and level of certification it intends to seek.
- 10.03.1 Notice must be given concurrently with the district’s application for state financial participation under Section 4.0 of these Rules.
- 10.04 A district that completes an eligible new facilities project and successfully obtains LEED certification or Green Globes certification for the project shall be awarded an incentive calculated as a percentage of the amount of state financial participation in the project, as follows:
- (i) LEED Certification, Silver: one percent (1%);
  - (ii) LEED Certification, Gold: one and one-half percent (1.5%);
  - (iii) LEED Certification, Platinum: two percent (2%);
  - (iv) Green Globes Certification, Two Globes: one percent (1%);
  - (v) Green Globes Certification, Three Globes: one and one-half percent (1.5%); or
  - (vi) Green Globes Certification, Four Globes: two percent (2%).



- 10.05 A project shall be eligible for financial incentives under this Section for LEED certification or for Green Globes certification, but not for both certifications. No project shall be eligible for financial incentives for a level of certification higher than the level identified in the district's application for state financial participation.
- 10.06 Financial incentives awarded under this Section shall be in addition to the amount of state financial participation calculated under these Rules.
- 10.07 A district's application or eligibility for financial incentives under this Section shall have no effect on the prioritization of a project under Section 5.05 of these Rules.

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

DEPARTMENT/AGENCY \_\_\_\_\_  
DIVISION \_\_\_\_\_  
DIVISION DIRECTOR \_\_\_\_\_  
CONTACT PERSON \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
PHONE NO. \_\_\_\_\_ FAX NO. \_\_\_\_\_ E-MAIL \_\_\_\_\_  
NAME OF PRESENTER AT COMMITTEE MEETING \_\_\_\_\_  
PRESENTER E-MAIL \_\_\_\_\_

**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. Rule" below.
- E. Submit two (2) copies of the Questionnaire and Financial Impact Statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Jessica C. Sutton  
Administrative Rules Review Section  
Arkansas Legislative Council  
Bureau of Legislative Research  
One Capitol Mall, 5th Floor  
Little Rock, AR 72201

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- 1. What is the short title of this rule?
  
  
- 2. What is the subject of the proposed rule?
  
  
- 3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No  
If yes, please provide the federal rule, regulation, and/or statute citation.
  
  
- 4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?  
Yes No  
If yes, what is the effective date of the emergency rule? \_\_\_\_\_

When does the emergency rule expire? \_\_\_\_\_

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 rule.**

**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 mark-up 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 that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation.**

**7. What is the purpose of this proposed rule? Why is it necessary?**

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

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

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

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

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

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

\_\_\_\_\_

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

\_\_\_\_\_

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. \_\_\_\_\_

13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e). \_\_\_\_\_

14. 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.

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

DEPARTMENT \_\_\_\_\_  
DIVISION \_\_\_\_\_  
PERSON COMPLETING THIS STATEMENT \_\_\_\_\_  
TELEPHONE NO. \_\_\_\_\_ FAX NO. \_\_\_\_\_ EMAIL: \_\_\_\_\_

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two (2) copies with the Questionnaire and proposed rules.

**SHORT 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 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;
  
- b) The reason for adoption of the more costly rule;
  
- c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and
  
- d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.

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

Next Fiscal Year

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

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

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

Total \_\_\_\_\_

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

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

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

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

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

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

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.