

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

DEPARTMENT/AGENCY Department of Education
DIVISION Public School Finance and Administrative Support
DIVISION DIRECTOR Patricia Martin
CONTACT PERSON Annette Berry
ADDRESS #4 Capitol Mall, Rm. 202-A – Little Rock, AR 72201
PHONE NO. 501/682-5124 FAX NO. 501/682-9035

INSTRUCTIONS

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

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

- 1. What is the short title of this rule?
Rules and Regulations Identifying and Governing Self-Construction Projects by Public Education Entities
- 2. What is the subject of the proposed rule?
To describe how the department will identify, assist, monitor and address public educational entities that self-construct
- 3. Is this rule required to comply with federal statute or regulations?
Yes _____ No X _____

If yes, please provide the federal regulation and/or statute citation.
- 4. Was this rule filed under the emergency provisions of the Administrative Procedures Act? Yes _____ No X _____
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 regular provisions of the Administrative Procedure Act? Yes _____ No X _____

5. Is this a new rule? Yes X _____ No _____

Does this repeal an existing rule? Yes _____ No _____
If yes, please provide a copy of the repealed rule.

Is this an amendment to an existing rule? If yes, please attach a markup showing the changes in the existing rule and a summary of the substantive changes.

6. What state law grants the authority for this proposed rule? If codified, please give Arkansas Code citation.
A.C.A. §6-11-105 and Act 1204 of 2001

7. What is the purpose of this proposed rule? Why is it necessary?
The purpose is to describe how the Department will identify, assist, monitor and address public educational entities that self-construct.

8. Will a public hearing be held on this proposed rule? Yes X _____ No _____
If yes, please give the date, time, and place of the public hearing.
September 13, 2001 – 2:00 PM – Arch Ford Education Rm. 201-A

9. When does the public comment period expire?
October 5, 2001

10. What is the proposed effective date of this proposed rule?
November 15, 2001

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

12. Please give the names of persons, groups, or organizations which you expect to comment on these rules. Please provide their position (for or against) if known.

Public Education Entities

PLEASE ANSWER ALL QUESTIONS COMPLETELY

July 28, 1995

DEPARTMENT Education
DIVISION Public School Finance and Administrative Support
PERSON COMPLETING THIS STATEMENT Annette Berry
TELEPHONE NO. 501/682-5124 FAX NO. 501/682-9035

FINANCIAL IMPACT STATEMENT

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

SHORT TITLE OF THIS RULE _____
Rules and Regulations Identifying and Governing Self-Construction Projects by Public Education Entities

1. Does this proposed, amended, or repealed rule or regulation have a financial impact?
Yes _____ No X _____

2. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.
N/A

3. If the purpose of this rule or regulation is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation.

<u>2001-02 Fiscal Year</u>	<u>2002-03 Fiscal Year</u>
General Revenue <u>N/A</u>	General Revenue <u>N/A</u>
Federal Funds _____	Federal Funds _____
Cash Funds _____	Cash Funds _____
Special Revenue _____	Special Revenue _____
Other _____	Other _____
Total _____	Total _____

4. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule or regulation?

<u>2001-02 Fiscal Year</u>	<u>2002-03 Fiscal Year</u>
N/A	N/A

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

<u>2001-02 Fiscal Year</u>	<u>2002-03 Fiscal Year</u>
N/A	N/A

July 28, 1995

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

Regulation Title: Rules and Regulations Identifying & Governing Self-Construction Projects by Public Educational Entities

Summary Description of Regulatory Proposal:

Proposed Rules and Regulations Identifying and Governing Self-Construction Projects by Public Education Entities

Cite Statutory Authority for this Regulatory Proposal: A.C.A. §6-11-105 and Act 1204 of 2001

- I. Fiscal Impact on the Department: (include whether impacts are non-recurring or recurring) N/A
 - A. Resources Required - Personnel, equipment, office space.
 - B. Time Required for Implementation.
 - C. Procedural Changes.
 - D. Other.

- II. Fiscal Impact on Local School District or Others? (Include whether impacts are non-recurring or recurring) N/A
 - A. Resources Required - Personnel, equipment, office space.
 - B. Time Required for Implementation.
 - C. Procedural Changes.
 - D. Other.

- III. Additional Comments.

Prepared by: Patricia Martin
Assistant Director – PSF&AS
August 13, 2001

**ARKANSAS DEPARTMENT OF EDUCATION
RULES AND REGULATIONS IDENTIFYING AND GOVERNING
SELF-CONSTRUCTION PROJECTS BY PUBLIC EDUCATION ENTITIES
August 13, 2001**

1.0 REGULATORY AUTHORITY

- 1.01 These regulations shall be known as the Arkansas Department of Education's Rules and Regulations Identifying and Governing Self-Construction Projects by Public Education Entities.
- 1.02 These regulations are enacted pursuant to the Arkansas State Board of Education's authority under Ark. Code Ann. § 6-11-105 and Act 1204 of 2001.

2.00 PURPOSE

- 2.01 The purpose of these regulations is to describe how the department will identify, assist, monitor and address public educational entities that self-construct.

3.00 DEFINITIONS

- 3.01 "Public educational entities" (Entities) is defined to mean Arkansas public school Entitys, charter schools, educational cooperatives or any publicly supported entity having supervision over public educational entities.
- 3.02 "Self-construction" is defined to mean any construction where the public educational entity uses its own employees, acts as a general contractor or uses a construction manager while acting as a general contractor.
- 3.03 "Construction" is defined to mean making or forming an improvement by combining parts, labor or materials; the erection, alteration or repair of a structure or physical object under the supervision or ownership of a public educational entity.
- 3.04 "Design professional" is defined to mean a person or firm who provides professional expertise in order to carry out a capital erection, repair or improvement project. Design professionals may include, but may not be limited to the following professionals: planners (land, city, utilities, etc.), architects, landscape architects, surveyors (land), engineers (consulting and professional engineers providing expertise in various licensed fields such as civil, electrical, mechanical, structural, sanitary, etc.).
- 3.05 "Maintenance work" is defined to mean the limited repair but not the replacement of existing facilities when the size, capacity and type of the existing facility or equipment is not thereby substantially changed or increased.
- 3.06 "Commodities" is defined to mean all supplies, goods, material, equipment, machinery, facilities, and personal property purchased for or on behalf of an Entity.
- 3.07 "Open market purchases" is defined to mean those purchases of commodities by any purchasing official in which competitive bidding is not required.

- 3.08 “Administrator” is defined to mean a school Entity superintendent, an educational cooperative director, the Administrator, Director, Chairman, or President of a charter school, or other educational entity.

4.00 NOTIFICATION OF INTENT

- 4.01 When an Entity board votes to self-construct, the Administrator of the Entity shall notify the office of School Plant Services of the action and submit a completed report on a form provided by School Plant Services.
- 4.02 The document to be used for the notification of an Entity’s intent to self-construct will be the Arkansas Department of Education School Site Approval Form. The Administrator of the Entity shall provide all information requested by the Arkansas Department of Education in the School Site Approval Form.
- 4.03 Upon receiving an Entity’s notification of intent to self-construct, the office of School Plant Services shall provide by certified mail a copy of the “Rules and Regulations Identifying and Governing Self-Construction Projects by Public Education Entities” to the Entity’s Administrator and board president.
- 4.04 Upon receiving an Entity’s notification of intent to self-construct, the office of School Plant Services shall provide a written assessment of the Entity’s decision to self-construct.

5.00 APPROVAL PROCEDURES

- 5.01 Upon receiving an Entity’s notification of intent to self-construct, the office of School Plant Services shall mail to the Entity: (1) a site approval form, and (2) a list of the Arkansas agencies required to review and approve the final construction documents before the project can be put out for bid or before self-construction may begin.
- 5.02 When an Entity develops plans for a self-construction project to be submitted to the office of School Plant Services for approval, the Entity shall ensure that the design and plans satisfy all Arkansas legal requirements including, but not limited to, the following:
- A. All construction plans, specifications and estimates shall be made by and the construction executed under the observation of the appropriate design professional. (Ark. Code Ann. § 22-9-101)
 - B. If the total cumulative and fair market value of construction or capital improvement is greater than \$25,000 an engineer, registered or licensed in the State of Arkansas, shall provide the required engineering services. (Ark. Code Ann. § 22-9-101 (b) (1))
 - C. If the total cumulative and fair market value of construction or capital improvement is greater than \$100,000, an architect registered or licensed in the State of Arkansas shall provide the required architectural services. (Ark. Code Ann. § 22-9-102 (b) (2))

6.00 BID, BOND AND LICENSING REQUIREMENTS

- 6.01 When an Entity self-constructs, the Entity shall ensure by written report compliance to all Arkansas laws, including the following:
- 6.02 Commodities Purchasing
- A. Open market purchases may be made where the purchase price is less than \$10,000.
 - B. In each instance where the estimated purchase price shall equal or exceed \$10,000, the commodity shall be procured by soliciting bids. (Ark. Code Ann. § 6-21-301)
- 6.03 Bidding Requirements
- A. When all estimated construction costs do not exceed \$20,000, the contract shall be solicited according to local school board policy.
 - B. When all estimated construction costs are between \$20,000.01 and \$50,000, the Entity shall publish public notice of intent to receive bids a minimum of one (1) time per week for one (1) week. The bids may be opened one (1) week after the last date of publication.
 - C. When estimated construction costs exceed \$50,000, the Entity shall publish public notice of intent to receive bids a minimum of one (1) time per week for two (2) consecutive weeks. The bids may be opened one (1) week after the last date of publication. (Ark. Code Ann. § 22-9-203 as amended by Act 1051 of 2001)
- 6.04 When giving public notice of intent to receive bids for construction, an Entity may include alternates in the bid specifications. If the Entity includes alternates in the bid specifications, the alternates must be deductive, no more than three (3) alternates may be used and the alternates must be set forth and considered in numerical order. (Ark. Code Ann. §22-9-203 as amended by Act 921 of 2001)
- 6.05 When advertising for bids for construction, an Entity may negotiate a final contract amount with the successful bidder if the low bid is within twenty-five percent (25%) of the amount appropriated for the project and all alternates have been exhausted. (Ark. Code Ann. § 22-9-203 as amended by Act 921 of 2001)
- 6.06 A five percent (5%) corporate bid bond or a certified check in the amount of five percent (5%) of the bid shall accompany all submitted bids on construction contracts that exceed \$20,000. (Ark. Code Ann. § 22-9-203 (2) (A) (D))
- 6.07 The successful bidder on construction that exceeds \$20,000 shall provide the owner a performance and payment bond for one hundred percent (100%) of the contract amount. This bond must be filed in the county where the work is being performed before authorization to proceed is granted. (Ark. Code Ann. § 18-44-503)
- 6.08 Any sub-trades contractor doing work in areas such as electrical, plumbing, HVAC, etc. must hold the required trades' licenses from the State of Arkansas. This applies to Entity personnel, as well as sub-trades contractors not employed by the Entity. Any contractor who performs a job that exceeds \$20,000 must also hold an Arkansas contractor's license. (Ark. Code Ann. §17-25-101 (a))

7.00 ENFORCEMENT

7.01 Any Entity Administrator or certified employee that knowingly submits to the Arkansas Department of Education or the office of School Plant Services a false report or false information required by Arkansas law or these rules and regulations shall be subject to having his license revoked, suspended or placed on probation pursuant to Ark. Code Ann. § 6-17-405 and Ark. Code Ann. § 6-17-410.