

**ARKANSAS DIVISION OF PUBLIC SCHOOL ACADEMIC
FACILITIES AND TRANSPORTATION EMERGENCY RULE
GOVERNING THE RETIREMENT AND TERMINATION OF BONDED DEBT
ASSISTANCE, GENERAL FACILITIES FUNDING AND SUPPLEMENTAL
MILLAGE INCENTIVE FUNDING**

1.0 AUTHORITY

- 1.01 The authority for promulgating this Rule is pursuant to § § 6-20-2501 et seq. and 25-15-201 et seq.
- 1.02 This Rule shall be known as the Arkansas Division of Public School Academic Facilities and Transportation (Division) Rule Governing Bonded Debt Assistance.

2.0 DEFINITIONS

- 2.01 “Academic facility” means a building or space, including related areas such as the physical plant and grounds, where students receive instruction that is an integral part of an adequate education as described in § 6-20-2302. 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 § 6-16-137 shall not be considered an academic facility for the purposes of this rule 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 § 6-16-132.
- 2.02 “Academic facilities wealth index” means a percentage derived from the following computations:
 - 2.02.1 Determine the value of one (1) mill per student in each school district, as follows:
 - 2.02.1.1 Multiply the value of one (1) mill by the total assessed valuation of taxable real, personal, and utility property in the school district as show by the applicable county assessment for the most recent year; and
 - 2.02.1.2 Divide the product from § 2.02.1.1 of this section by the greater of the prior year average daily membership of the school district or the prior three-year average of the school district’s average daily membership.
 - 2.02.1.3 Determine student millage rankings by listing the computation under § 2.02.1.1 of this section for each school district from students with the lowest

- value per mill to students with the highest value per mill;
- 2.02.1.4 Allocate the student millage rankings into percentiles with the first percentile containing the one percent (1%) of students with the lowest value per mill and the one-hundredth percentile containing the one percent (1%) of students with the highest value per mill; and
- 2.02.1.5 Divide the value of one (1) mill per student in each school district as computed under § 2.02.1.1 of this section by the amount corresponding to the ninety-fifth percentile of the student millage rankings under § 2.02.1.4 of this section by the amount corresponding to the ninety-fifth percentile of the student millage rankings under subdivision § 2.02.1.4 of this section.
- 2.02.1.6 The percentage derived from the computation under §2.02.1.5 of this section is the academic facilities wealth index for a school district, which shall be computed annually and used to determine the amount of the school district's share of financial participation in a local academic facilities project eligible for state financial participation under priorities established by the division.
- 2.02.1.7 The state's share of financial participation in a local academic facilities project eligible for state financial participation under priorities established by the division is the percentage derived from subtracting the school district's percentage share of financial participation determined under § 2.02.1.6 of this section from one hundred percent (100%).
- 2.03 "Average daily membership" means the total number of days of school attended plus the total number of days absent by students in grades kindergarten through twelve (K-12) during the first three (3) quarters of each school year divided by the number of school days actually taught in the school district during that period of time rounded up to the nearest hundredth.
- 2.04 "Eligible school district" means any school district deemed to have existing bonded debt as of January 1, 2005, and said debt continues to exist each fiscal year the district qualifies for bonded debt financial assistance.
- 2.05 "Facility condition index" means a methodology established by the division for comparing the cost of repairing the condition of a public

school academic facility to the cost of replacing the public school academic facility with a public school academic facility containing the same amount of square footage.

- 2.06 “Foundation funding” means an amount of money specified by the General Assembly for each school year to be expended by school districts for the provision of an adequate education for each student as that amount is established in § 6-20-2305.
- 2.07 “Funding factor” means a funding factor per average daily membership determined by the Division for each fiscal year pursuant to § 6-20-2503(3)(A)(iii)(a) and (b).
- 2.08 “Immediate repair project” means a project involving a public school academic facility that is necessary to resolve a deficiency that presents an immediate hazard to:
 - 2.08.1 The health or safety of students, teachers, administrators or staff;
 - 2.08.2 The integrity of the public school academic facility with regard to meeting minimum health and safety standards; or
 - 2.08.3 The extraordinary deterioration of the public school academic facility.
- 2.09 “Local enhancements” means the portion of any maintenance, repair, or renovation project or new construction project that is designed to bring an academic facility or related areas such as the physical plant or grounds to a state of condition or efficiency that exceeds state academic facilities standards.
- 2.10 “Local resources” means 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.
- 2.11 “Local revenue per student” means in each school year ninety-eight percent (98%) of the amount of revenue available, whether or not collected, in a school district solely from the levy of the uniform rate of tax plus seventy-five percent (75%) of the average miscellaneous funds collected in the previous five (5) years or the previous year, whichever is less, divided by the average daily membership of the school district.
- 2.12 “Maintenance, repair, and renovation” means any activity or improvement to an academic facility and, if necessary, related areas such as the physical plant and grounds that:
 - 2.12.1 Maintains, conserves or protects the state of condition or efficiency of the academic facility; or

2.12.2 Brings the state of condition or efficiency of the academic facility up to the facility's original condition of completeness or efficiency.

2.13 **“Mandatory callable bonds” means a bond issue in which all net proceeds from debt service millage used to secure the issuance of that bond must be applied to payment of the issue and cannot be used for any other purpose.**

2.14 “Millage rate” means the millage rate listed in the most recent tax ordinance approved by the county quorum court under the authority of § 14-14-904.

2.15 “Miscellaneous funds” means those funds received by a local school district from federal forest reserves, federal grazing rights, federal mineral rights, federal impact aid, federal flood control, wildlife refuge funds, severance taxes, funds received by the district in lieu of taxes, and local sales and use taxes dedicated to education pursuant to §§ 26-74-201 et seq., 26-74-301 et seq., 26-75-301 et seq., and 14-164-301 et seq.

2.16 “New construction” means any improvement to an academic facility and, if necessary, related areas such as the physical plant and grounds that brings the state of condition or efficiency of the academic facility to a state of condition or efficiency better than the academic facility's original condition of completeness or efficiency and includes additions to existing academic facilities and new academic facilities.

2.17 “Project” means an undertaking in which a school district engages in:
2.17.1 Maintenance, repair and renovation activities with regard to an academic facility;
2.17.2 New construction of an academic facility; or
2.17.3 Any combination of maintenance, repair and renovation and new construction activities with regard to an academic facility.

2.18 “Space utilization” means the number of gross square feet per student in a public school academic facility adjusted for academic program, school enrollment, grade configuration and type of public school in accordance with rules promulgated by the Commission for Arkansas Public School Academic Facilities and Transportation.

2.19 “State wealth index” means the result of one (1) minus the ratio of local revenue per student divided by the difference between foundation funding and local revenue per student.

3.0 BONDED DEBT ASSISTANCE PROGRAM

3.01 In accord with the requirements and limitations set forth in this rule, the Division shall provide eligible school districts with financial assistance for

the purpose of retiring outstanding bonded indebtedness in existence as of January 1, 2005.

- 3.02 The Commission by way of this rule directs the Division to work with the Arkansas Department of Education to determine the amount of financial assistance for each eligible school district as set forth in these rules.
- 3.03 The Division shall ascertain the scheduled debt payment on a fiscal year basis from the principal and interest payment schedule in effect and on file with the Department of Education on January 1, 2005, and reduce the amount of the payment by ten percent (10%) as **provided in § 4.01 of this rule.**
- 3.04 The Commission shall determine the amount of state bonded debt financial assistance for each eligible school district no later than July 15 of each year.
- 3.04.1 State bonded debt financial assistance shall be payable to each eligible school district in two (2) equal installments;
- 3.04.2 The first yearly bonded debt financial assistance installment shall be by August 1 of each year; and
- 3.04.3 The second yearly bonded debt financial assistance installment shall be by February 1 of each year.
- 3.05 Each eligible school district receiving bonded debt financial assistance shall account for the funds received 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, § 6-20-2201 *et seq.*, and any other rules established by this Commission.
- 3.06 School districts are not prohibited from refunding bonds that were issued and outstanding as of January 1, 2005. Provided a school district qualifies for state bonded debt financial assistance, the amount of bonded debt assistance is not reduced or altered as a result of refunding the bonds that were issued and outstanding as of January 1, 2005, and the bonded debt assistance will continue after the refunding based on the principal and interest payment schedule in effect and on file with the Department of Education on January 1, 2005.
- 3.06.1 A school district shall use the debt service savings, if any, produced by refunding the outstanding bonds as follows:
- 3.06.1.1 The annual savings produced by the refunding shall be deposited into a bond refunding savings fund to be used by the school district solely for the new

- construction of academic facilities or the purchase of academic equipment; and
- 3.06.1.2 Before the date that refunding bonds are sold at a public sale, the school district shall certify to the commission that the yearly debt services saving will be used solely for the purposes described in § 3.07.1.1.
- 3.07 School districts are not prohibited from issuing second lien bonds. If a school district qualifies for state bonded debt financial assistance under this section, the amount of state financial assistance under this rule shall not be increased or reduced as a result of the issuance of second lien bonds.
- 3.08 Nothing in this rule shall be construed to prevent the annual adjustment of state financial assistance in accordance with annual variations in the state wealth index and the school district's principal and interest payment schedule in effect and on file with the Department of Education on January 1, 2005. **(move this to after funding section)**
- 3.09 The state shall not assume any debt of a school district or incur any obligation with regard to a school district's bonded indebtedness by providing the financial assistance described in this rule. Any school district receiving financial bonded debt assistance under this section is and will remain independently liable for all outstanding indebtedness.
- 3.10 Although school districts are not prohibited from refunding bonds or issuing second lien bonds as allowed in §§ 3.06 and 3.07 of this rule, upon the termination of any bonded debt for which a school district was receiving bonded debt financial assistance, said state bonded debt assistance shall likewise terminate on the termination date of that bonded debt.
- 4.0 BONDED DEBT ASSISTANCE FUNDING
- 4.01 Each year that financial bonded debt assistance is to be provided under this rule to an eligible school district, the Division shall ascertain the scheduled debt payment on a fiscal year basis from the principal and interest payment schedule in effect and on file with the Department of Education on January 1, 2005, and reduce the amount of the payment by ten percent (10%) except as allowed in § 4.02 of this rule.
- 4.02 Provided a school district can demonstrate pursuant to § 5.0 of this rule and to the satisfaction of the Division, or the Commission on valid appeal, that all or a portion of the ten percent (10%) reduction in its scheduled debt payment under § 4.01 of this rule can be attributed to the support of

academic facilities, then the Commission shall reverse all or a portion of the ten percent (10%) reduction by a percentage proportionate to the amount attributable to academic facilities.

- 4.03 Each year that bonded debt financial assistance is to be provided to eligible school districts, the Division shall divide the scheduled debt payment as adjusted under § 4.01 of this rule by the total assessed valuation of taxable real, personal, and utility property in the school district as shown by the applicable county assessment for each relevant school district for the most recent year with the result multiplied by one thousand (1,000).
- 4.04 The product of § 4.03 of this rule shall then be multiplied by a funding factor (established as required by law) per average daily membership. The product of this calculation shall then be multiplied by the state wealth index and this shall be the net result of bonded debt financial assistance a school district is entitled to per fiscal year absent any appeal under § 5.0 of these rules.
- 4.05 The net result of the calculations in § 4.04 shall be paid as bonded debt financial assistance as required in § 3.04 of this rule.
- 5.0 BONDED DEBT ASSISTANCE APPEAL
- 5.01 Pursuant to § 4.02 of this rule, any school district which has been determined to be a school district eligible for bonded debt financial assistance from the state in the 2005-06 school year may submit a one-time written appeal to the Commission via the Division concerning the ten percent (10%) reduction in scheduled debt payment determined in § 4.01 of this rule.
- 5.02 The school district written appeal shall be submitted via certified mail to the Office of the Director of the Division at 501 Woodlane, Suite 600, Little Rock, AR 72201. The appeal must be postmarked or received in the Office of the Director by 4:30 pm on October 31, 2005.
- 5.03 The Division (with the assistance of consultants) shall review all appeals and submit its written recommendation on whether to reverse all or a portion of the ten percent (10%) reduction called for in § 4.01 of this rule by November 28, 2005 to each respective school district and the Commission.
- 5.04 Any eligible school district who is notified that their appeal is recommended for denial by the Division to the Commission may request a limited hearing of their appeal before the Commission by submitting their written request for hearing to the Commission to the Office of the Director

of the Division at 501 Woodlane, Suite 600, Little Rock, AR 72201 by 4:30 p.m. on December 9, 2005. The appeal must be received or postmarked by 4:30 pm on December 9, 2005.

- 5.05 The Commission shall review all properly submitted appeals, consider the Division's recommendation and provide any necessary hearing before issuing the Commission's final determination on the school district's request to reverse all or a portion of the ten percent (10%) reduction called for in § 4.01 of this rule by December 30, 2005. Upon reaching a final determination, the Commission shall certify in writing the final determination for each appealing school district to the Department of Education and each respective school district by January 6, 2006. The decision of the Commission is final with no further right of appeal.

- 5.06 When filing an appeal pursuant to this rule, school districts shall submit a written appeal using the attached form referenced in § 5.06.1 known as exhibit A, which is hereby incorporated in this rule, and the district shall complete the form providing all information as requested in the form and provide the following documentation related to any bonded debt in order to have a valid appeal:
 - 5.06.1 The district's written appeal as required in the attached exhibit A of this rule; and
 - 5.06.2 Copy of the ballot title related to any bonded debt election; and/or
 - 5.06.3 Copy of the bonded debt contract instrument related to the appealed bonded debt; and/or
 - 5.06.4 Copy of related tax certificates filed with appropriate tax agencies related to the appealed bonded debt; and/or
 - 5.06.5 Copy of any applications to the Department of Education which request permission to sell or refinance bonded debt, which related to the appealed bonded debt; and/or
 - 5.06.6 Any other relevant evidentiary documentation.

- 5.07 Any school district appealing the ten percent (10%) reduction called for in § 4.01 of this rule shall prove by clear and convincing evidence that more than ninety percent (90%) of the outstanding bonded debt existing on January 1, 2005, was utilized to directly support academic facilities. To the extent that a school district can prove to the Commission that more than ninety percent (90%) of the outstanding bonded debt was utilized to directly support academic facilities, the Commission shall reverse all or a portion of the ten percent (10%) reduction by an amount attributable to academic facilities greater than ninety (90%) of the debt..

- 5.08 When conducting its review of the appeals, the Commission shall use its best judgment to determine whether the school district's request for appeal meets the qualification for consideration in § 5.07 of this rule and whether

by clear and convincing evidence the appeal demonstrates that the bonded debt can be attributed to the direct support of academic facilities.

- 5.09 In order to sustain all or a portion of an appeal, a majority of the Commission shall vote yes to sustain all of the appeal or yes to sustain a specific portion of an appeal.

6.0 GENERAL FACILITY FUNDING

- 6.01 The Commission shall compute the amount of general facilities funding that each school district received or would have received under the Supplemental School District Funding Act of 2003, § 6-20-2401 *et seq.*, during fiscal year 2005.
- 6.02 In addition to any bonded debt financial assistance funding an eligible school district may be entitled to pursuant to this rule, each school district entitled to receive general facilities funding, as determined by the Commission, shall receive state general facilities funding assistance equal to all or a portion of the general facilities funding that the school district received or would have received under the Supplemental District Funding Act of 2003, § 6-20-401 *et seq.*, during fiscal year 2005 and each year thereafter except that, the Commission shall phase-out general facilities funding assistance over a ten-year time period by reducing the amount of general facilities funding assistance received by a school district starting after fiscal year 2006 by reducing by one-tenth (1/10) in each subsequent year of the ten-year period until the general facilities funding assistance to the school district is terminated in full.
- 6.03 Savings from the elimination of general facilities funding assistance to the school districts shall be distributed through the Educational Facilities Partnership Fund Account in accordance with rules promulgated by the Commission.
- 6.04 General facilities funding assistance payable to each school district entitled to payment, as determined by the Commission, shall be made in two (2) equal installments. The first installment of payments shall be made to the school districts by August 1 of each school year and the second installment of payments shall be made by February 1 of each school year.
- 6.05 The Commission shall certify in writing to the Department of Education the amount of payment to be made to each entitled school district.

7.0 SUPPLEMENTAL MILLAGE INCENTIVE FUNDING

- 7.01 If a school district elected to receive supplement millage incentive funding under the Supplemental School District Funding Act of 2003, § 6-20-2401 *et seq.*, during fiscal year 2005, the Commission shall compute the difference between the amount of supplemental millage incentive funding that a school district received in fiscal year 2005 and the amount of debt service funding supplement and general facilities funding that the school district would have received under the Supplemental School District Funding Act of 2003, § 6-20-2401 *et seq.*, in fiscal year 2005.
- 7.02 In addition to any bonded debt financial assistance funding an eligible school district may be entitled to under this rule, a school district that elected to receive supplemental millage incentive funding under the Supplemental School District Funding Act of 2003, § 6-20-2401 *et seq.*, shall receive supplemental millage incentive funding assistance equal to all or a portion of the amount of supplemental millage incentive funding that exceeded the amount that the school district would have received under debt service funding supplement and general facilities funding under the Supplemental School District Funding Act of 2003, § 6-20-2401 *et seq.*, in fiscal year 2005 except that the Commission shall phase-out the supplemental millage incentive funding assistance provided under this rule over a ten-year period by reducing the amount received by a school district after fiscal year 2006 by one-tenth (1/10) in each subsequent year of the ten-year period.
- 7.03 Savings from reduction of any supplemental millage incentive funding assistance shall be distributed through the Educational Facilities Partnership Fund Account in accordance with rules promulgated by the Commission.
- 7.04 Supplemental millage incentive funding assistance as provided pursuant to this rule shall be payable to each entitled school district, as determined by the Commission, in two (2) equal installments. The first installment of payments shall be made to school districts by August 1 of each school year and the second installment of payments shall be made by February 1 of each school year.

~~8.0 — EMERGENCY CLAUSE~~

- ~~8.01 — WHEREAS, the 85th Arkansas General Assembly enacted legislation in response to the constitutional mandate set forth in the matter of *Lake View School District No. 25, et al v. Mike Huckabee, et al.* to establish the Arkansas Public School Academic Facilities Funding Act § 6-20-2501 *et seq.*; and, whereas, this rule is necessary to implement the statutory~~

~~provisions called for above to address immediate needs and provide constitutional assistance to school districts so that said school districts are able to provide and maintain adequate educational facilities for student health, protection and learning; and, whereas, there currently is not a similar program to address these immediate academic facility needs, the Arkansas Commission of Public School Academic Facilities and Transportation finds and determines that imminent peril exist to the public health, safety and welfare of school children and staff; therefore, the Arkansas Commission of Public School Academic Facilities and Transportation promulgates this rule on an emergency basis pursuant to the authority of Ark. Code Ann. § 25-15-204.~~

~~8.02 Pursuant to Ark. Code Ann. §25-15-204 this emergency rule shall become effective immediately upon final approval by the Arkansas Commission of Public School Academic Facilities and Transportation for a time period not to exceed one hundred twenty (120) days.~~