

## CAPSAFT Rules Governing the Academic Facilities Program

### PUBLIC COMMENTS AND RESPONSES OF THE DIVISION FOR ARKANSAS PUBLIC SCHOOL ACADEMIC FACILITIES AND TRANSPORTATION

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#### Public Comment Period

Commenter Name: Aliza Jones, Consultant (8/17/2021)

Comment (1): Section 2.02. The numerous proposed changes in these draft rules are very significant, changing many processes that have been in place since the last major rules revisions in March 2008. The promulgation process for these rules will take several months. Historically, the Rules have not been approved by the Legislative Committee until January; this would be devastating to districts to have these rules in place after Early Review Meetings and two months from application deadline. These draft rules have major implications in developing project applications and Partnership Program project applications for early review are due by November 1, 2021. Commissioner's Memo FT-21-006 contained an IMPORTANT NOTE that said project applications receiving an early review would be reviewed using the current rules, and proposed rule changes would be discussed for the district to revise the project applications for proposed changes. The significance of these draft rules regarding enrollments, PORs, and suitability analyses would mean districts would have to start over on the project applications after the review conference before the March 1 deadline. This is burdensome and not practical to require districts to redo project applications. Therefore, the use of any rule changes should be delayed until the 2025- 2027 project funding cycle .

Division Response: **Comment considered. It is not the intent or the desire of the Division to cause any district to miss out on funding opportunities due to compliance issues with the proposed rules should they be adopted or to cause distress to any district. Please see the points below:**

**1. Districts should follow the rule promulgation process and be aware of possible changes to the Master Plan. Should any change in statute and/or rule change results in a requirement for additional documents, the Division will notify the district and the district will have a reasonable amount time to provide those documents even if the application is turned in right before the March 1 deadline.**

**2. If a district requests an early review, the early review will be based on the current rule, to include the estimated potential SFP. During that early review, districts will be advised what changes the district will need to make IF the new rules are adopted as proposed. Again, when/if the rules are adopted districts will be given a reasonable length of time to make any required changes.**

**3. There is very little that a district would need to add to their application if the proposed rules are adopted. Many of the proposed rules are simply putting into rule our current policies and procedures. The schematics, if compliant with current rule should be**

**compliant with the adopted proposed rules. The revised POR, if adopted, would require a rerun, but the Division will be doing that work during the evaluation process. Obviously, the division currently and will continue to require an accurate POR be submitted.**

Comment (2): Section 3.16. Do not agree with this change. Districts should continue to be allowed to submit district generated enrollment projections, including documentation and justification, and the Division currently has the opportunity to review and approve/disapprove the district's projections. The Division enrollment projections are developed by a contractor with a one size fits all approach. Districts may have knowledge of planned commercial developments, real estate developments, or other factors that can provide better projections over the planning period.

Division Response: **Comment considered. Based on historic data the Division enrollment projections have proved to be more accurate than District provided enrollment projections. For example several sets of past enrollment projections were analyzed. The data show that the District enrollment projections were approximately 50% over actual enrollment (one was 111% over actual enrollment), while Division projected enrollment was approximately 10% over actual enrollment. Therefore in this set of data Division projections were five times more accurate than district ones. These inflated enrollment projections mean that some districts overbuild and consume state and local taxpayer resources that can help meet needs in other districts. The purpose of this change is to ensure that enrollment projection forecasts are reasonable and fair to the rest of the districts in the state. No changes made.**

Comment (3): Section 3.24. Again with new Program of Requirements going into place during this planning cycle will cause districts to have to redo all PORs after Early Review and only two months from submission

Division Response: **It is not the intent or the desire of the Division to cause any district to miss out on funding opportunities due to compliance issues with the proposed rules should they be adopted or to cause distress to any district. Please see the points below:**

- 1. Districts should follow the rule promulgation process and be aware of possible changes to the Master Plan. Should any change in statute and/or rule change results in a requirement for additional documents, the Division will notify the district and the district will have a reasonable amount of time to provide those documents even if the application is turned in right before the March 1 deadline.**
- 2. If a district requests an early review, the early review will be based on the current rule, to include the estimated potential SFP. During that early review, districts will be advised what changes the district will need to make IF the new rules are adopted as proposed. Again, when/if the rules are adopted districts will be given a reasonable length of time to make any required changes.**
- 3. There is very little that a district would need to add to their application if the proposed rules are adopted. Many of the proposed rules are simply putting into rule our current policies and procedures. The schematics, if compliant with current rule should be**

**compliant with the adopted proposed rules. The revised POR, if adopted, would require a rerun, but the Division will be doing that work during the evaluation process. Obviously,**

Comment (4): Section 3.28. Maximum cost factor should be increased above \$200/sf. Current construction costs are about \$250/SF. Section references two non-existent sections, Sections 3.26.1 and 3.26.2. Appears references should be 3.28.1 and 3.28.2.

Division Response: **Comment considered. "Project" replaced with "qualified." Replaced "in Section 3.26.1 and 3.26.2 of these Rules" with "below". The Division intends to implement the cost factor as recommended by the Facilities Advisory Committee and monitor the fluctuations in actual costs to help inform the need for any cost factor modifications in the future. Non-substantive changes made.**

Comment (5): Section 4.02. Please provide clarifying language with two sentences beginning with, "State financial participation for undersized facilities shall ..." The two sentences do not provide clear definitions.

Division Response: **Comment considered. The Division has considered the comment and decided to strike "not". Non-substantive changes made.**

Comment (6): Section 4.02. There are some extraneous notes in last sentences in last paragraph.

Division Response: **Notes have been removed**

Comment (7): Section 4.02. This section should be clarified. Many gym spaces are used for PE instruction during school hours and athletic competition after school hours.

Division Response: **Proposed new language in 3.01.6 and 7.02 (xii) and similar language in Project Agreement will be struck for clarity.**

Comment (8): Section 4.07. Section should be amended to allow separable unique un-walled POR spaces that are sometimes used in schools of innovation.

Division Response: **Comment considered. No changes made.**

Comment (9): Section 4.08. If Applications are to be completed for Early Review, then they should follow existing Rules for both review and final evaluation

Division Response: **Comment considered. No changes made**

Comment (10): Section 3.04.1. This section has potential significant implications based on its interpretation, so clarification is needed. Does this section apply to a campus or district? Suitability computations address surplus of area, if any. Based on this section, will the Division not fund only the overage of POR required space, such as 12 SF for a 862 SF classroom, or the entire classroom space? The Division has always permitted projects to use Support Space allowance for a new school and suitability allowance for an addition to construct additional

academic spaces, resulting in a surplus of academic areas. Does this section remove that flexibility?

**Division Response: Comment considered. Proposed Section 3.04.1 will be removed. Non-substantive change made.**

Comment (11): Section 3.04.2. Dining Space and Media Space should still be allowed as student growth expands, districts often need additional space in these critical support areas.

**Division Response: Comment considered. Proposed Section 3.04.1 will be removed. Non-substantive change made.**

Comment (12): Section 3.07.5. Please clarify if building value is a Division consideration for building replacement. Section 3.37.2 implies the only factor for replacement consideration is a FCI value of 65% or greater.

**Division Response: Comment considered. A building value of zero does not justify replacement; life cycle data is advisory only and shall not be sufficient to support the approval of a building replacement. No changes made.**

Comment (13): Section 3.24.1. Do not agree with this change. See comment on Section 3.16. Division enrollment projections may not be as accurate as a district-developed enrollment projection.

**Division Response: Comment considered. The Division has considered the comment. Based on historic data the Division enrollment projections have proved to be more accurate than District provided enrollment projections. For example several sets of past enrollment projections were analyzed. The data shows that the District enrollment projections were approximately 50% over actual enrollment (one was 111% over actual enrollment), while Division projected enrollment was approximately 10% over actual enrollment. Therefore in this set of data Division projections were five times more accurate than district ones. These inflated enrollment projections mean that some districts overbuild and consume state and local taxpayer resources that can help meet needs in other districts. The purpose of this change is to ensure that reasonable enrollment projection forecast are reasonable and fair to the rest of the districts in the state. No changes made.**

Comment (14): Section 3.24.2. Do not agree with this change. Districts should continue to have the opportunity to submit school POR enrollments with justification for projected distribution of the total students in a district. Present school enrollments may not reflect school enrollment changes that may occur during the five to ten year planning cycle.

**Division Response: Comment considered. No change**

Comment (15): Section 3.24.3. Section needs clarification on different use of the 5- year and 10-year projection. The Advisory Committee recommended use of 5- year projections in combination with 10- year projections for single- purpose spaces (PE, student dining, media center).

**Division Response: Comment considered. No changes made.**

**Comment (16):** Section 3.35.1 (i). Do not agree with this change. The process to determine suitability in new schools and additions was negotiated at great length by leaders in ADE and school districts during the development of the last major rules change in March 2008. The basis of those extended negotiations was that construction of a new school often necessitates a district-wide rezoning, so looking at space in other schools was applicable. A school addition normally does not require rezoning, so space in other schools should not be considered. This change implies that children can readily be shifted to other schools, but parents usually don't like for a school district to change school assignments since such attendance changes can be detrimental to a student's education. Additionally, the reduction in CTE spaces will create excess square footage. This needs to be an added section under the POR Suitability Tab so districts are not penalized for excess sqft created by this reduction.

**Division Response: Comment considered. For additions, changing "district" back to "campus." Non-substantive changes made.**

**Comment (17):** Section 3.35.1 (ii). Again, indicating it is okay for a district to have a parent put their child in school not zoned for their area.

**Division Response: Comment considered. No changes made.**

**Comment (18):** Section 3.35.2 (i). Do not agree with this change. Changing circumstances in a district may necessitate the construction of phased projects, where the second phase was not needed when the original application was submitted two years earlier. With a four year timeline to construct a project and a two year planning process, phased projects may overlap.

District master planning is dynamic with changes in students, superintendents, and school boards.

**Division Response: Comment considered. This does not preclude phased projects. No changes made.**

**Comment (19):** Section 3.35.2 (i). Need clarification of "all other campuses capable of servicing the same grade(s)". In theory, any school could serve students in any grade and again implies rezoning of students is fine.

**Division Response: Comment considered. Non-substantive change made.**

**Comment (20):** Section 3.37.1 (i). Do NOT agree with this change. Example: I have a 100,000 sqft facility that needs a new roof, but my current enrollment and subsequent POR says the facility should only be 50,000 sqft; does this mean the Division will only Partner on the 50,000 sqft and not full facility?

**Division Response: Comment considered. Non-substantive change made.**

Comment (21): Section 3.37.1 (ii). Please clarify inconsistency in this section. First sentence on top of page 17 states that upgrades of existing systems are not eligible. But, last sentence of 3.37.1 (ii) which says any security upgrades must receive relevant state agency approvals, indicates security upgrades are eligible for state funding.

Division Response: **Comment considered. Non-substantive change made.**

Comment (22): Section 3.37.2. Do not agree with this change. Although FCI values of 65% or greater are an important factor in a building replacement, there are other factors such as building age (building value), classroom sizes, and general academic adequacy of a building. The COVID-19 pandemic has increased the importance of adequately sized spaces to allow for social distancing. For example, a building built in 1951 (building value of - 20%), 650 SF classrooms, and FCI of 60% should be replaced.

Division Response: **Comment considered. No changes made.**

Comment (23): Section 3.37.2. Does this mean building can not be gutted and repurposed for non-academic space for students or for additional CTE space

Division Response: **Comment considered. No changes made.**

Comment (24): Section 3.37.4. The reference to building value in Section 3.37.4 indicates there are other factors in building replacement determinations than only a FCI of 65% as indicated in Section 3.37.2.

Division Response: **Comment considered. A building value of zero does not justify replacement; life cycle data is advisory only and shall not be sufficient to support the approval of a building replacement. No changes made.**

Comment (25): Section 4.05.10. There are several issues with Section 4.05.10 as proposed. The definitions of maintenance expenditures and revenues and the Excel format are not clearly defined. And, the generation of this data will be burdensome to the district. If maintenance expenditures and revenue data is to be used, the Division should extract applicable data from district cycle report data submissions so all data will be uniformly developed. A greater issue is the use of maintenance expenditures as a higher project funding priority could lead to districts relaxing preventative maintenance in order to incur larger repair maintenance costs. If Districts are to begin keeping record of expenditures in School Dude; notice needs to be in place indicating as such.

Division Response: **Comment considered. Section 4.05.10 has been stricken; the Division will pull these data. Non-substantive changes made.**

Comment (26): Section 5.05.1 and 5.05.2. Please explain how the Division will obtain FCI data in Section 5.05.1 (ii) Who is responsible? Can a district hire a third party to assist?

Division Response: **Comment considered. FCI is generated from school district condition surveys (subject to varification). No changes made.**

Comment (27): Section 5.05.3. The penalty for district non-compliance with Section 5.05.3 (v) for maintenance is so severe, the Division should establish a timeline to inform the district of its compliance or non-compliance with maintenance requirements. In the case of non-compliance, there should be ample time allowed for the district to correct its deficiencies and gain compliance to avoid a project ranking penalty.

**Division Response: Comment considered. Preventive maintenance is required by law and Partnership project ranking penalties apply if preventive maintenance is not completed. Districts are required by law to complete preventive maintenance and document work order in CMMS. The Division regularly contacts school districts that have not completed their preventive maintenance. Non-substantive changes made.**

Comment (28): Section 5.05.5. In Section 5.05.5 (ii), the first line should also include Systems Replacement projects.

**Division Response: Comment considered. Non-substantive change made.**

Comment (29): Section 7.05.2 (I). Should clarify that if the Division grants an early start request, all project expenses may be reimbursed pending Commission approval and funding.

**Division Response: Comment considered. Non-substantive changes made.**

Comment (30): Section POR. Break out Health Center into two required spaces to include Health Center office with required space of 100 SF.

**Division Response: Comment considered. The office is included in the Health Center POR space and verified in the plan review. No changes made.**

Comment (31): Section POR. With the reduction in individual CTE program space square footages, this will create Excess Space at no fault of the District. Excess Space could result in their not receiving Partnership Funding. Indicator should be included under the "Suitability Analysis" tab of the POR which would allow district to report CTE spaces constructed before 2021 when the Space Changes take effect.

**Division Response: Comment considered. Any excess CTE space can be repurposed for other academic uses. Therefore, the Division believes that changes are not necessary. No changes made.**

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Commenter Name: Chad Davidson, Consultant (8/20/2021)

Comment (1): Section 3.24. Waivers to allow for district submitted differing enrollment projections should be accepted on grounds that district can provide sufficient justification & validation for said differing projections.

**Division Response: Comment considered. Based on historic data the Division enrollment projections have proved to be more accurate than District provided enrollment projections. For example several sets of past enrollment projections were analyzed. The data show that the District enrollment projections were approximately 50% over actual enrollment (one was 111% over actual enrollment), while Division projected enrollment was approximately 10% over actual enrollment. Therefore in this set of data Division projections were five times more accurate than district ones. These inflated enrollment projections mean that some districts overbuild and consume state and local taxpayer resources that can help meet needs in other districts. The purpose of this change is to ensure that enrollment projection forecast are reasonable and fair to the rest of the districts in the state. No changes made.**

Comment (2): Section 4.05. No comment needed now, as indication has been made that this proposed rules change will no longer be proposed.

**Division Response: Comment considered. No changes made.**

Comment (3): Section 5.05. With this proposed rules change, Warm, Safe, & Dry Space Replacement and Warm, Safe, & Dry Systems Replacement will NOW be combined into one category, ranked & funded together. This is an extremely detrimental proposed rules change, as these two already separately distinguishable categories aren't similar enough to be combined into one category. The only similarities they share are in name (Warm, Safe, & Dry), and in thematic for 'replacement', and the name similarity was only (relatively) recently changed (2015 Partnership cycle). As to the name of Warm, Safe, & Dry, aren't technically all projects, including New Space (for growth or suitability) for Warm, Safe, & Dry? Wasn't that what the intent of the 2002 Lakeview lawsuit – to provide for all districts with a 'need' towards achieving Warm, Safe, & Dry public school facilities? Approximately between 2008-2010, the Arkansas Division of Public School Academic Facilities & Transportation has since recognized, approved, & funded in THREE distinct project types, categories, & priorities of New Space, Space Replacement, & Systems Renovations (Replacement). There is no need to now change what has worked so well since then. The definition of these three distinct project categories has only positively served to better identify what types of projects needed by districts. If a split in the 'pot' of funding were to occur, rather than a 50/50 (lumping two categories together), it would make more logical sense to continue with three distinct project types, and split the funding accordingly – 40% (New Space); 40% (Space Replacement); & 20% (Systems Renovations).

**Division Response: Moving from three categories to two was recommended by the Advisory Committee on Public School Academic Facilities, which was established in accordance with Act 801 of 2017, and adopted by the CAPSAFT.**

Comment (4): Section 7.02. 4.02 & 7.02 These two non-competition clauses for proposed rules change seem contradictory in language to each other. One dis-allows Partnership awarded areas for non-'competition' areas, and another allows for use as athletic outside of normal school operating hours.

**Division Response: Comment considered. Section 7.02 has been amended for clarity. Non-substantive change made.**

Comment (5): Section 3.35.1. Disapproving every POR where the total size may exceed POR-allocated campus size is not a beneficial change to districts, as a project may be for the addition of a missing single-purpose area, which could then put the entire campus over the allotted POR total campus size.

Division Response: **Comment considered. No changes made.**

Comment (6): Section 3.35.2. Requiring excess POR's will mean either re-zoning issues for districts, or reduced Partnership. This requirement especially creates a problem with consolidated districts, who may have similar grade configuration schools that are MILES apart physically, but one may have excess space, whereas the other may be growing. At the very least, this could extremely transportation costs, and increase average student ride time. Requiring excess POR's, and basing reduced Partnership awards off of that, is not a good idea, and will be detrimental to a great many districts. At the very least, if this rules change goes through, a waiver should be allowed and accepted in instances referenced above.

Division Response: **Comment considered. No changes made.**

Comment (7): Section 3.37.1 (i). Basing a WSD Systems Partnership award off of POR size is not a good rules change proposal. For example, if an older existing 60,000 SqFt campus needs & is approved for an HVAC replacement, but that school's enrollment size (for a new campus with that enrollment) would ONLY be 38,000, then 22,000 would Not be eligible for Partnership. This change will only serve to financially harm decreasing enrollment districts, and would treat them unfairly versus a growing enrollment district.

Division Response: **Comment considered. Non-substantive change made.**

Comment (8): Section . 4.02 & 7.02 These two non-competition clauses for proposed rules change seem contradictory in language to each other. One dis-allows Partnership awarded areas for non-'competition' areas, and another allows for use as athletic outside of normal school operating hours.

Division Response: **Comment considered. Section 7.02 has been amended for clarity. Non-substantive change made.**

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Commenter Name: Charles Stein, Consultant (8/7/2021)

Comment (1): Section 2.02. The numerous proposed changes in these draft rules are very significant, changing many processes that have been in place since the last major rules revisions in March 2008. The promulgation process for these rules will take several months. These draft rules have major implications in developing project applications and Partnership Program project applications for early review are due by November 1, 2021. Commissioner's Memo FT-21-006

contained an IMPORTANT NOTE that said project applications receiving an early review would be reviewed using the current rules, and proposed rule changes would be discussed for the district to revise the project applications for proposed changes. The significance of these draft rules regarding enrollments, PORs, and suitability analyses would mean districts would have to start over on the project applications after the review conference before the March 1 deadline. This is burdensome and not practical to require districts to redo project applications. Therefore, the use of any rule changes should be delayed until the 2025-2027 project funding cycle and the 2024 Master Plan.

**Division Response: Comment considered. It is not the intent or the desire of the Division to cause any district to miss out on funding opportunities due to compliance issues with the proposed rules should they be adopted or to cause distress to any district. Please see the points below:**

- 1. Districts should follow the rule promulgation process and be aware of possible changes to the Master Plan. Should any change in statute and/or rule change results in a requirement for additional documents, the Division will notify the district and the district will have a reasonable amount time to provide those documents even if the application is turned in right before the March 1 deadline.**
- 2. If a district requests an early review, the early review will be based on the current rule, to include the estimated potential SFP. During that early review, districts will be advised what changes the district will need to make IF the new rules are adopted as proposed. Again, when/if the rules are adopted districts will be given a reasonable length of time to make any required changes.**
- 3. There is very little that a district would need to add to their application if the proposed rules are adopted. Many of the proposed rules are simply putting into rule our current policies and procedures. The schematics, if compliant with current rule should be compliant with the adopted proposed rules. The revised POR, if adopted, would require a rerun, but the Division will be doing that work during the evaluation process. Obviously, the division currently and will continue to require an accurate POR be submitted.**

**Comment (2): Section 3.16. Do not agree with this change. Districts should continue to be allowed to have the option to submit district generated enrollment projections, including documentation and justification, which the Division can review and approve/disapprove. The Division enrollment projections are developed by a contractor with a one size fits all approach based on historic enrollments and county births. Districts may have knowledge of future planned commercial or real estate developments, community activities, or other factors that can provide better enrollment projections over the planning period.**

**Division Response: Comment considered. Based on historic data the Division enrollment projections have proved to be more accurate than District provided enrollment projections. For example several sets of past enrollment projections were analyzed. The data show that the District enrollment projections were approximately 50% over actual enrollment (one was 111% over actual enrollment), while Division projected enrollment was approximately 10% over actual enrollment. Therefore in this set of data Division projections were five**

**times more accurate than district ones. These inflated enrollment projections mean that some districts overbuild and consume state and local taxpayer resources that can help meet needs in other districts. The purpose of this change is to ensure that enrollment projection forecast are reasonable and fair to the rest of the districts in the state. No changes made.**

Comment (3): Section 3.28. Recommend increase of maximum cost factor to \$250/SF to reflect current construction costs. The Advisory Committee recommendation of \$200/SF was made over three years ago. Section references two non-existent sections, Sections 3.26.1 and 3.26.2. Appears references should be 3.28.1 and 3.28.2.

Division Response: **Comment considered. Replaced "project" with "qualified". Replace "in Section 3.26.1 and 3.26.2 of these Rules" with "below". The Division intends to implement the cost factor as recommended by the Facilities Advisory Committee and monitor the fluctuations in actual costs to help inform the need for any cost factor modifications in the future. Non-substantive changes made.**

Comment (4): Section 4.02. Please provide clarifying language with two sentences beginning with, “State financial participation for undersized facilities shall ...” The two sentences do not provide clear definitions.

Division Response: **The Division has considered the comment and decided to strike the following language: "shall not be limited to the space required to bring the facility up to size, and".**

Comment (5): Section 4.02. There are some extraneous notes in last sentences in last paragraph.

Division Response: **Comment considered. Non-substantive changes made.**

Comment (6): Section 4.02. This section should be clarified. Many gym spaces are used for PE instruction during school hours and athletic competition after school hours. Perhaps include language similar to 3.01.6.

Division Response: **Proposed new language in 3.01.6 and 7.02 (xii) and similar language in Project Agreement will be struck for clarity. No substantive changes made**

Comment (7): Section 4.07. Section should be amended to allow separable unique un-walled POR spaces that are sometimes used in schools of innovation.

Division Response: **Comment considered. Non-substantive changes made.**

Comment (8): Section 6.03. Division written determination letters sent to districts are an important part of the overall district planning process. Recommend in first line of second paragraph, replace “may” with “shall”. Also, place a specific date with September – September 1 or September 30?

Division Response: **Comment considered. It is the Division's practice and goal to send these out before September 30th. Normally these are sent in August. No changes made.**

Comment (9): Section 7.07. POR - Break out Health Center into two required spaces to include Health Center office with required space of 100 SF.

Division Response: **Comment considered. The Division has considered the comment and decided changes are not necessary. This space is verified during plan reviews. No changes made.**

Comment (10): Section 7.07. Section 7.07 (following Section 7.16) – Should be numbered 7.17.

Division Response: **Comment considered. Non-substantive changes made.**

Comment (11): Section 3.04.1. This section needs clarification since it has potential significant implications based on its interpretation. Does this section apply to a campus or district? Suitability computations address surplus of area, if any. Based on this section, will the Division not fund only the overage of POR required space, such as 12 SF for a 862 SF classroom, or the entire classroom space? The Division has always permitted projects to use Support Space allowance for a new school and suitability allowance for an addition to construct additional academic spaces, resulting in a surplus of academic areas. Does this section remove that flexibility?

Division Response: **Comment considered. Proposed Section 3.04.1 will be removed. Non-substantive change made.**

Comment (12): Section 3.07.5. Please clarify if building value is a Division consideration for building replacement. Section 3.37.2 implies the only factor for replacement consideration is a FCI value of 65% or greater.

Division Response: **Comment considered. A building value of zero does not justify replacement; life cycle data is advisory only and shall not be sufficient to support the approval of a building replacement. No changes made.**

Comment (13): Section 3.24.1. Do not agree with this change. See comment on Section 3.16. Division enrollment projections may not be as accurate as a district-developed enrollment projection.

Division Response: **Comment considered. Based on historic data the Division enrollment projections have proved to be more accurate than District provided enrollment projections. For example several sets of past enrollment projections were analyzed. The data show that the District enrollment projections were approximately 50% over actual enrollment (one was 111% over actual enrollment), while Division projected enrollment was approximately 10% over actual enrollment. Therefore in this set of data Division projections were five times more accurate than district ones. These inflated enrollment projections mean that some districts overbuild and consume state and local taxpayer resources that can help meet needs in other districts. The purpose of this change is to ensure that enrollment projection forecast are reasonable and fair to the rest of the districts in the state. No changes made.**

Comment (14): Section 3.24.2. Do not agree with this change. Districts should continue to have the opportunity to submit school POR enrollments with justification for projected distribution of the total students in a district. Present school enrollments may not reflect school enrollment changes that may occur during the five to ten year planning cycle.

Division Response: **The Division has considered the comment. Based on historic data the Division enrollment projections have proved to be more accurate than District provided enrollment projections. For example several sets of past enrollment projections were analyzed. The data shows that the District enrollment projections were approximately 50% over actual enrollment (one was 111% over actual enrollment), while Division projected enrollment was approximately 10% over actual enrollment. Therefore in this set of data Division projections were five times more accurate than district ones. These inflated enrollment projections mean that some districts overbuild and consume state and local taxpayer resources that can help meet needs in other districts. The purpose of this change is to ensure that reasonable enrollment projection forecasts are reasonable and fair to the rest of the districts in the state. No changes made**

Comment (15): Section 3.24.3. Section needs clarification on different use of the 5-year and 10-year projection. In addition to clarification, suggest this section be revised to use the Advisory Committee recommendation of use of 5-year projections for academic spaces in combination with 10-year projections for single-purpose spaces (PE, student dining, media center). It is much easier to add academic spaces with additional classrooms than to increase the size of media centers, cafeterias, and gyms

Division Response: **Comment considered. Non-substantive changes made.**

Comment (16): Section 3.35.1(i). Do not agree with this change. The process to determine suitability in new schools and additions was negotiated at great length by leaders in ADE and school districts during the development of the last major rules change in March 2008. The basis of those extended negotiations was that construction of a new school often necessitates a district-wide rezoning, so looking at space in other schools was applicable. A school addition normally does not require rezoning, so space in other schools should not be considered. This change implies that children can readily be shifted to other schools, but changes in school assignments can be disruptive and detrimental to a student's education and are met with opposition from parents.

Division Response: **Comment considered. For additions, changing "district" back to "campus." Non-substantive changes made.**

Comment (17): Section 3.35.2(i). Disagree with change not allowing future cycle projects for additions of space not yet built. With a two year planning cycle and four years to complete construction of a funded project, a project may not be constructed until five or six years after the initial planning. During that time, circumstances in the district may change. The Division can disapprove any project, including a phased project, that is not justified or a prudent use of funds.

Division Response: **Comment considered. This does not preclude phased projects. No changes made.**

Comment (18): Section 3.35.2(i). Please clarify, “all other campuses capable of servicing the same grades”. In a liberal interpretation, any school could service any grade level.

Division Response: **Comment considered. Non-substantive change made.**

Comment (19): Section 3.37.1(ii). Please clarify inconsistency in this section. First sentence on top of page 17 states that upgrades of existing systems are not eligible. But, last sentence of 3.37.1 (ii) which says any security upgrades must receive relevant state agency approvals, indicates security upgrades are eligible for state funding.

Division Response: **Comment considered. Non-substantive change made.**

Comment (20): Section 3.37.2. Do not agree with this change. Although FCI values of 65% or greater are an important factor in a building replacement, there are other factors such as building age (building value), classroom sizes, and general academic adequacy of a building. The COVID-19 pandemic has increased the importance of adequately sized spaces to allow for social distancing. For example, a building built in 1951 (building value of -20%), 650 SF classrooms, and FCI of 60% should be replaced.

Division Response: **Comment considered. No changes made.**

Comment (21): Section 3.37.2. Do not agree with this change. Projects should not incur a suitability penalty for smaller, newer buildings with FCI less than 65%, when the Division has determined the main campus building should be replaced. This rules change would lead to districts continuing to use smaller, dispersed buildings while replacing the main building. The Division should encourage school replacement projects to replace the entire campus and be under one roof to promote campus security.

Division Response: **Comment considered. No changes made.**

Comment (22): Section 3.37.4. Please clarify. The reference to building value in Section 3.37.4 indicates there are other factors in building replacement determinations than only a FCI of 65% as indicated in Section 3.37.2.

Division Response: **Comment considered. A building value of zero does not justify replacement; life cycle data is advisory only and shall not be sufficient to support the approval of a building replacement. No changes made.**

Comment (23): Section 4.05.10. As recommended by the Advisory Committee, agree with using a maintenance indicator as part of project prioritization for funding. However, there are several issues with Section 4.05.10 as proposed. The definitions of maintenance expenditures and revenues and the Excel format are not clearly defined. And, the generation of this data will be burdensome to the district. If maintenance expenditures and revenue data is to be used, the Division should extract applicable data from district cycle report data submissions so all data will be uniformly developed. A greater issue is the use of maintenance expenditures as a higher project funding priority could lead to districts relaxing preventative maintenance to incur larger

repair maintenance costs. A better maintenance indicator is a Facilities Maintenance Composite Assessment as recommended by the Advisory Committee.

**Division Response: Comment considered. Section 4.05.10 has been stricken; the Division will pull these data. Non-substantive changes made.**

Comment (24): Section 5.05.1(ii). Section needs to explain how Division will obtain FCI data referenced in this section.

**Division Response: Comment considered. FCI is generated from school district condition surveys (subject to verification). No changes made.**

Comment (25): Section 5.05.2. This section needs further explanation on how district suitability will be computed. What enrollment projections will be used? Will the Division run PORs for every campus in the district and sum the campus suitabilities? Or, will the Division run a district-wide POR?

**Division Response: Comment considered. Suitability is based upon current data (for example, enrollment, square foot per student, existing square footage). No changes made.**

Comment (26): Section 5.05.3. The penalty for district non-compliance with Section 5.05.3 (v) for maintenance is so severe, the Division should establish a timeline to inform the district of its compliance or non-compliance with maintenance requirements. In the case of non-compliance, there should be ample time allowed for the district to correct its deficiencies and gain compliance to avoid a project ranking penalty.

**Division Response: Comment considered. Preventive maintenance is required by law and Partnership project ranking penalties apply if preventive maintenance is not completed. Districts are required by law to complete preventive maintenance and document work order in CMMS. The Division regularly contacts school districts that have not completed their preventive maintenance. Non-substantive changes made.**

Comment (27): Section 5.05.5. In Section 5.05.5 (ii), the first line should also include Systems Replacement projects.

**Division Response: Comment considered. Non-substantive change made.**

Comment (28): Section 6.02(ii). Agree with the concept of this change, but disagree with the process proposed. It is labor intensive and redundant for the district to be required to reenter all project information for an identical project with the only change in project number. Recommend the district send a written request to the Division with a new project number and the Division perform the necessary project entry requirements or roll-over so the project becomes a valid project for the next cycle.

**Division Response: Comment considered. No changes made.**

Comment (29): Section 7.05.2 (i). Should clarify that if the Division grants an early start request, all project expenses may be reimbursed pending Commission approval and funding.

Division Response: **Comment considered. Non-substantive changes made.**

Comment (30): Section POR. Break out Health Center into two required spaces to include Health Center office with required space of 100 SF.

Division Response: **Comment considered. The office is included in the Health Center POR space and verified in the plan review. No changes made.**

Comment (31): Section Project Agreement. Project Agreement – Section V.A. – For sentence beginning with, “Districts combining projects shall ...” change to read, “Districts combining projects shall provide separate project contract information.” In some instances, a contract change order can be issued to complete a separate project.

Division Response: **Comment considered. Non-substantive change made.**

Comment (32): Section Project Agreement. Project Agreement – Title. Should be changed to applicable for projects for 2023-2025 Biennium (or 2025-2027 if rules promulgation completion is extended past applicability for 2023- 2025).

Division Response: **Comment considered. The new Project Agreement will start at the beginning of the 2023-2025 Biennium. Non-substantive change made.**

Comment (33): It appears a major focus of these proposed rules is to bring about an overall reduction in Partnership Program funding. A consequential item in the rules that was not changed was the maximum cost factor which is currently limited in the rules to \$200 per square foot, much less than actual costs being experienced by school districts. Such focus on Partnership Program funding reduction misses two key points. First, Partnership Program funding is a cost-shared program with school districts required to participate in projects with significant amounts of district funding. School district boards of directors and superintendents must answer to their patrons regarding their stewardship of district resources, so districts must propose projects that are prudent uses of both local and state funds. Second, virtually all expenditures for academic facilities benefit students by providing educational opportunities. To focus on reductions in Partnership Program funding, while the state currently enjoys a billion dollar surplus, seems unwise and overlooks the long-term costs associated with the lost opportunities for educational adequacy.

Division Response: **Comment considered. Funding levels for the Facilities Partnership Program are established by the Arkansas General Assembly and are not influenced by the program rules. The focus of these rule changes are to implement the recommendations from the Facilities Advisory Committee and recent statutory changes, as well as to improve the efficiency and effectiveness of the Facilities Partnership Program. No changes made.**

Comment (34): The CAPSAFT Rules Governing the Academic Facilities Partnership Program released with Commissioner’s Memo COM-22-008 represent the most sweeping changes of the

Partnership Program rules since the 2008 March rules. Those March 2008 rules were developed by a team of school district and Arkansas Department of Education leaders over a two-month period of focused and extensive negotiations that resulted in the Program of Requirements (POR), the definitions of suitability, and most Partnership Program processes still currently in use. Although these proposed rules changes were not developed with such a collaborative process, many of the changes were recommended by the Advisory Committee on Public School Academic Facilities in its July 2018 report. The intent of the Advisory Committee recommendations was to place the state on a course to develop a state plan with an annual budget to address the state's school facility needs over a prescribed timeline. To help generate Partnership Program cost savings to establish the recommended annual budget, the committee proposed some changes in the Partnership Program rules and processes. These proposed rules adopt some of the major recommendations of the Advisory Committee such as statewide needs lists and new processes for ranking approved projects for funding to ensure the greatest needs receive the highest priority. These proposed rules also adopt some parts of the Advisory Committee recommended savings processes, although there has not been a Division recommendation to use those savings to create an annual budget to enable creation of a long-term state plan.

**Division Response: Comment considered. No changes made.**

**Comment (35):** There is a significant issue about the timing of these changes. Districts are currently working on the 2022 Master Plan due by February 1, 2022, and early project applications for a Division review conference for the 2023-2025 project funding cycle. With the early applications due by November 1, requiring school board resolutions no later than October, the late July initiation of promulgation of such numerous and significant rules changes with comments not due until August 20 is occurring too late for use during this planning cycle. It is recommended that any Partnership Program rules changes go into effect for the 2024 Master Plan and the 2025-2027 project funding cycle.

**Division Response: Comment considered. It is not the intent or the desire of the Division to cause any district to miss out on funding opportunities due to compliance issues with the proposed rules should they be adopted or to cause distress to any district. Please see the points below:**

- 1. Districts should follow the rule promulgation process and be aware of possible changes to the Master Plan. Should any change in statute and/or rule change results in a requirement for additional documents, the Division will notify the district and the district will have a reasonable amount time to provide those documents even if the application is turned in right before the March 1 deadline.**
- 2. If a district requests an early review, the early review will be based on the current rule, to include the estimated potential SFP. During that early review, districts will be advised what changes the district will need to make IF the new rules are adopted as proposed. Again, when/if the rules are adopted districts will be given a reasonable length of time to make any required changes.**

**3. There is very little that a district would need to add to their application if the proposed rules are adopted. Many of the proposed rules are simply putting into rule our current policies and procedures. The schematics, if compliant with current rule should be compliant with the adopted proposed rules. The revised POR, if adopted, would require a rerun, but the Division will be doing that work during the evaluation process. Obviously, the division currently and will continue to require an accurate POR be submitted.**

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Commenter Name: Darrell Tessman, Consultant (8/5/2021)

Comment (1): Section 3.31. "Add on" should be changed to "addition" to remain consistent.

Division Response: **Comment considered. Non-substantive changes made.**

Comment (2): Section 6.03. "May" notify, should be "Shall" notify if a district is approved or disapproved. Does the "may" relate to the division notifying the district by September or does the "may" relate to the division "notifying" the district of approval/disapproval at any time?

Division Response: **Comment considered. It is the Division's practice and goal to send these out before September 30th. Normally these are sent in August. No changes made.**

Comment (3): Section 3.01.4. If Pre K is not considered an academic space and the Pre K space is located in an otherwise "academic facility" then 3.01.6 states the whole facility in which the Pre K space resides is not being "fully utilized". This would also apply to 3.01.4 "District Administration" spaces contained within an otherwise "academic facility". This would also hold true for "extracurricular activities or organized physical activities courses" 3.01.1. There needs to be clarification as to how the non-academic Pre K and District Administration play a role in district suitability and classification of used/unused/underutilized.

Division Response: **Comment considered. Non-substantive changes made to 3.01.6.**

Comment (4): Section 3.01.6. The term "fully" and "only" in the phrase "fully utilized only for academic purposes" needs to be further defined. Unless these terms are defined, or not given a percentage threshold tolerance, any building that contains a nonacademic space would be deemed nonacademic and not eligible for state financial participation.

Division Response: **Comment considered. Buildings must remain academic until the Division approves them for decommissioning. No changes made.**

Comment (5): Section 3.07.1. If "Building Value" holds no relevance to the determination/assessment of a structure's replacement condition, the value is not needed to be addressed in the Master Plan for school district planning or assessing structure conditions See 3.07.5. The facilities division has all district building values calculated and stored within its own database as seen on school district summary report. Also, if "building value" holds no actual physical condition value of a structure, then the State Wide Needs list (5.05.1), developed by the

facilities division, is also not a validation of actual physical conditions/needs. Currently, districts with building values in the negative value range are being penalized for proper maintenance/repair while newer structures benefit from an FCI analysis performed by the division.

**Division Response: Comment considered. No changes made.**

**Comment (6):** Section 3.13.1. "Add-on" should be "addition" to keep consistent with changed definition.

**Division Response: Comment considered. Non-substantive changes made.**

**Comment (7):** Section 3.24.1. "Enrollments on PORs shall reflect the state produced enrollment projections". This conveys that the division will not accept/review projections created by the district in the event of sudden economic/population growth. This would also require changes in master plan rule which gives the district an opportunity to propose alternate enrollments. If the division is going to make an exception to this rule, in any case, it should be explicitly notated as a subject worthy of a waiver.

**Division Response: Comment considered. Based on historic data the Division enrollment projections have proved to be more accurate than District provided enrollment projections. For example several sets of past enrollment projections were analyzed. The data shows that the District enrollment projections were approximately 50% over actual enrollment (one was 111% over actual enrollment), while Division projected enrollment was approximately 10% over actual enrollment. Therefore in this set of data Division projections were five times more accurate than district ones. These inflated enrollment projections mean that some districts overbuild and consume state and local taxpayer resources that can help meet needs in other districts. The purpose of this change is to ensure that reasonable enrollment projection forecasts are reasonable and fair to the rest of the districts in the state. The Division has therefore decided changes are not necessary.**

**Comment (8):** Section 3.24.4. What is the definition of "declining enrollment". Is the declination based on the division's future projections? Is the declination based on actual prior year enrollments? Would a one year drop of actual enrollment decrease designate a district as declining? A definition of what "declining enrollment" is needs to be included.

**Division Response: Comment considered. Non-substantive changes made.**

**Comment (9):** Section 3.35.1. I interpret this as if a district is applying for a new building, or an addition project, that there must be PORs submitted for each campus that also contain the same grades as the new construction project campus? Will excess square footage on other campus PORs be held against the suitability of the new construction campus? If excess suitability on another campus decreases the suitability of the project campus I interpret this to force a district to rezone the district and burden the district to bus students away from the communities local campus.

**Division Response: Comment considered. For additions, changing "district" back to "campus." Non-substantive changes made.**

**Comment (10):** Section 3.37.1. Strike “etc” from rules. 3.37.1 (i), 3.37.1 (ii), 4.07 If there are other items in the lists, I would like to know. This is rule and should not hold ambiguity.

**Division Response: Comment considered. Non-substantive change made.**

**Comment (11):** Section 3.37.1(i). "Warm, Safe, and Dry (Systems) Systems Replacement is limited to the POR required space size for the current campus enrollment." This would disenfranchise districts who have experienced a decline of enrollment but still have to sustain facilities that were constructed for an increased enrollment previously and had most likely complied to previous facilities division space/size requirements.

**Division Response: Comment considered. Non-substantive change made.**

**Comment (12):** Section 3.37.2. A) 3.37.2 - FCI - System Evaluations - "Any building determined to be inadequate by the Division or taken out of the suitability analysis may not be used for any activity in which students are in the building. " If an FCI evaluation performed by the division yields a score => 65% is this the value that states a building is “determined to be inadequate”? If so, at the time of determination I am interpreting that a district’s building “may not be used for any activity in which student are in the building”. Is this an immediate evacuation of the structure? Does this mean after the structure is replaced evacuation is required? Will the division require improvements to the structure to lower the FCI value below 65% in able to house students? If a structure deemed “inadequate” is later brought to an FCI above 65% can it house students? These items need to be clarified.

**Division Response: Comment considered. Non-substantive change made.**

**Comment (13):** Section 3.37.2. A) 3.37.2 - FCI - System Evaluations - What qualifications/training have present division personnel achieved to inspect facilities. To ensure that all evaluations are equitable and consistent throughout the state I see a desperate need for documentable competency. Can a qualified/trained third party (architect/engineer/systems specialist) be obtained by a school district to dispute or perform an initial FCI assessment? I believe third party intervention needs to be an option and funding factor reimbursed through the partnership program if the project is approved/funded. The involvement of an optional qualified third party inspector needs to be included in rule. The FCI is used as a factor of ranking the Statewide Warm, Safe, and Dry Needs List/Ranking/Funding formula (5.05). I see a need for equitable competency between state and private sector inspections.

**Division Response: Comment considered. The Division has always considered third-party FCI evaluations and will continue to do so. No changes made. .**

**Comment (14):** Section 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.

**Division Response: Comment considered. A building value of zero does not justify replacement; life cycle data is advisory only and shall not be sufficient to support the approval of a building replacement. No changes made.**

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Commenter Name: David Kellogg, Prairie Grove School District (8/20/2021)

Comment (1): Section 2.02. It seems this change could affect approved projects and/or projects already submitted. If true, this is a concern.

**Division Response: Comment considered. No changes made.**

Comment (2): Section 3.28 (a). The \$200 per SF will be very difficult to not exceed in northwest Arkansas.

**Division Response: Comment considered. The Division intends to implement the cost factor as recommended by the Facilities Advisory Committee and monitor the fluctuations in actual costs to help inform the need for any cost factor modifications in the future. No changes made.**

Comment (3): Section 3.35.2. This could make long term planning even more difficult.

**Division Response: Comment considered. No changes made.**

Comment (4): Section 3.37.2. The conditions of older buildings can vary so greatly based on modern plumbing needs, HVAC- fresh air, ventilation, controls, COVID-19 concerns, etc. The potential of spending a great deal of money to remodel plus having undue future maintenance expenses if the 65% rule is enacted. The timelines of a substantial remodel would be near impossible to complete during summer breaks. This could necessitate to need for temporary classrooms to be leased or bought during the remodel.

**Division Response: Comment considered. No changes made.**

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Commenter Name: Harvie Nichols, Consultant (8/20/2021)

Comment (1): Section 4.02. I would echo my earlier comments about the competition gym I do not understand the language “State financial participation for undersized facilities shall not 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.” Once again, the drafters of the language probably understand what the rule intends to accomplish but I believe that they have the responsibility to draft the rule so it is clear and unambiguous and easily understood by those affected by the rule. My assumption would be that if the

commissioners were asked to explain the meaning of the rule they would likely not be able to do so without detailed explanation from division staff.

**Division Response: Comment considered. Non-substantive change made.**

Comment (2): Section 4.04. I oppose the inclusion of the language here using the paragraph 4.02. Should it not be 4.04?

**Division Response: Comment considered. Non-substantive changes made.**

Comment (3): Section 5.05. I oppose adoption of the rule as written. The proposed change eliminated ranking districts based on enrollment and wealth index which have been the standard for several years. Those ranking factors were developed to insure that the state is providing assistance to districts like the original litigants in the Lakeview case.

**Division Response: Comment considered. Enrollment and Wealth Index are still used in the ranking formula. No changes made.**

Comment (4): Section 7.02. I oppose this section being implemented. Again, the cheerleaders practicing in the cafeteria during school hours is but one of many examples that could be offered.

**Division Response: Comment considered. Section 7.02 has been amended for clarity. Non-substantive change made.**

Comment (5): Section 3.01.6. This addition to the rules appears to be punitive in nature and would appear to be an attempt to eliminate state participation in any “competition gym”. To my knowledge it is not predicated on any new state statute and is not, as I recall, a part of the advisory committee recommendations. It should not be implemented because it penalizes districts who previously have not received this assistance and rewards those who have received funding. I assume that it would be applied only for future projects but the wording of the rule does not address whether the division would retroactively apply the rule to facilities previously approved for funding. It also does not seem to have any timeline for such a review. What if the facility is at some point in the next fifty years no longer used? Would the rule as written require the district to repay the funds expended by the state? Currently there are many parts of a school facility that are not fully utilized for academic purposes only. If cheerleaders use the cafeteria for practice during times the cafeteria is not in use is that a violation of this rule?

**Division Response: Comment considered. Buildings must remain academic until the Division approves them for decommissioning. Rules will not be applied retroactively. No changes made.**

Comment (6): Section 3.04.1. The wording in this section is unclear to me. When and how does the division intend to calculate surplus of areas, spaces or sizes of academic areas? Partnership funding is based on a POR using projected enrollment numbers which in many cases will result in a surplus for the short term or longer depending on actual enrollment patterns. Perhaps the parties who drafted this language understood what they hoped to accomplish but to the reader it is not clear.

**Division Response: Comment considered. Proposed Section 3.04.1 will be removed. Non-substantive change made.**

Comment (7): Section 3.04.2. Please define missing academic spaces. If a district has a science lab that is too small and wants to use it as a classroom and build a new science lab that meets space requirements is the science lab a missing space that could be a part of an addition? More clarification of the rule is needed.

**Division Response: Comment considered. Non-substantive change made.**

Comment (8): Section 3.04.3. Again, this appears to be punitive in nature and is not based on new acts passed by the General Assembly. It penalizes districts that just now are beginning to make additions to their facilities. If the rule is appropriate for an addition to an existing school then will the same rule apply to new schools?

**Division Response: Comment considered. Section has been stricken. Non-substantive change made.**

Comment (9): Section 3.04.4. This rule will add significant costs to the state and the school district. It is not a prudent use of taxpayer funds. If the rule is based on some defensible basis, then the rule, if adopted, should also apply to new school construction.

**Division Response: Comment considered. Section 3.04.4 allows for waiver. No changes made.**

Comment (10): Section 3.24.1. This rule, while intended to eliminate a practice used by some districts, places too much authority in the enrollment projections issued by the state. There should be a mechanism for appeal to the commission for districts that feel the state projections are inaccurate. To not incorporate an appeal process means there is no true partnership in the partnership program.

**Division Response: The Division has considered the comment. Based on historic data the Division enrollment projections have proved to be more accurate than District provided enrollment projections. For example several sets of past enrollment projections were analyzed. The data shows that the District enrollment projections were approximately 50% over actual enrollment (one was 111% over actual enrollment), while Division projected enrollment was approximately 10% over actual enrollment. Therefore in this set of data Division projections were five times more accurate than district ones. These inflated enrollment projections mean that some districts overbuild and consume state and local taxpayer resources that can help meet needs in other districts. The purpose of this change is to ensure that reasonable enrollment projection forecasts are reasonable and fair to the rest of the districts in the state. No changes made**

Comment (11): Section 3.24.2. Again, the drafters of the language probably have a clear picture of how this would work but to a practitioner in the field it is difficult to fully understand what is meant by this section of the rule.

**Division Response: Comment considered. No Change**

**Comment (12):** Section 3.24.3. I believe this is saying that the POR enrollments to be used are based on the highest state provided enrollment projection within the next five years. Is that five years from the current date or five years from the project date. I would recommend for clarification purposes that the language also be amended to refer to state provided projections in this section. What is meant by the language about “calculating all spaces and space sizes” Does that mean that a district can request to use ten year projections as has been the practice for districts that hire professionals to develop their own enrollment projections? No district should be allowed to use ten year enrollment projections without a transparent appeal to the commission.

**Division Response: Comment considered. Non-substantive changes made.**

**Comment (13):** Section 3.35.1. This change should not be implemented as drafted. The term “all other campuses in the district capable of serving the same grade(s)” is not clear. There might be space available at a remote high school campus but it would not be appropriate to place elementary students on that campus. So what does the term “capable” mean. The language should reflect more clearly the intent of the rule.

**Division Response: Comment considered. For additions, changing "district" back to "campus." Non-substantive changes made.**

**Comment (14):** Section 3.35.2. Again, the same concern about the term “capable”. We must consider access to other instructional support services when deciding what the term means. The sentence “Districts shall not submit future cycle projects for additional space or conversions in a new facility yet unbuilt or POR’s that effectively negate the excess space POR’s and results of this section” is unclear. I think I know what is meant here but please amplify so the meaning is understandable to a practitioner.

**Division Response: Comment considered. Non-substantive change made.**

**Comment (15):** Section 3.37.1 (i). The major concern in this section is restricting the replacement to the POR required space size for the current campus enrollment. It is the case that the district would be actually replacing units for example that serve a cafeteria that is in use but would only receive partial funding because the space on the POR is reduced from the actual size. Or a plumbing or roofing project that would require complete replacement of the systems but the state would reduce their assistance. This is unfair to districts with declining enrollment.

**Division Response: Comment considered. Non-substantive change made.**

**Comment (16):** Section 4.03.1. Although there is no actual change proposed here, I would repeat my comments from over the years that the language regarding suitability should be expanded to include vocational labs and shops as well as music facilities that exist as standalone buildings. A district may need a new Agri shop but have no suitability need shown by a POR.

However, it is not feasible to renovate existing classroom space into an Agri shop or band room. There are physical limitations that exist that make that impossible.

**Division Response: Comment considered. No changes made.**

**Comment (17):** Section 4.05.10. The adoption of this rule would be an unfunded mandate on schools as this information is not currently required to be captured and to do so would require additional staff for the district. There is no indication that the current practice that has been in effect for more than a decade is not satisfactorily meeting the data needs of the state. Some of the information requested in this section is already available to the state and requiring resubmission would be a violation of state statute that requires that once data is submitted that the district can't be asked to resubmit that same information to another section of that state agency. It would create redundant work duties for district staff and would not be a prudent use of taxpayer dollars.

**Division Response: Comment considered. Section 4.05.10 has been stricken; the Division will pull these data. Non-substantive changes made.**

**Comment (18):** Section 5.05.3. Adoption of 4.05.10 is impossible to be determined without additional staffing so section (iii) isn't feasible. Additionally, that section rewards inefficiency when it ranks districts based on maintenance expenditures because salaries and benefits are typically higher in larger districts. They also have the resources to do more maintenance and improvement projects which again inflates their ranking. The rule also does not define district revenues thus districts that receive larger amounts of federal revenue that can't be spent on operational costs would see their percentage reduced thus negatively impacting their scores. Section (iv) while well intended is too severe a penalty for the inadvertent failure to complete one or more mandated inspection. Loss of a key employee charged with completion of a work order or entry of the documentation close to the end of a fiscal year and the difficulty of replacing that individual could result in a district not meeting this requirement. Or even worse a disgruntled employee could change the status of a work order in the CMMS and thus cause a badly needed project to be effectively disqualified since the bottom of the list never gets funded. Students should not be penalized so severely because if an error by an employee. This section is far too drastic an approach in an effort to improve CMMS compliance.

**Division Response: Comment considered. Section 4.05.10 has been stricken. Preventive maintenance is required by law and Partnership project ranking penalties apply if preventive maintenance is not completed. Districts are required by law to complete preventive maintenance and document work order in CMMS. The Division regularly contacts school districts that have not completed their preventive maintenance. Non-substantive changes made.**

**Comment (19):** Section 5.05.5. Is there any mention oin the rule about warm, safe and dry systems replacement funding? Section (ii) talks about space replacement projects but I do not see any mention of systems replacement projects. This omission should be addressed and the rule sent out again for public comment based on the approach developed in the revised proposed rule.

**Division Response: Comment considered. Non-substantive change made.**

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Commenter Name: Janet Schwanhausser, Bentonville School District (8/19/2021)

Comment (1): Section 3.16. Districts should be permitted to submit enrollment projections with appropriate justification. New or expanding residential and commercial developments that will accelerate growth will not be factored into state enrollment projections. Using state enrollment projections exclusively could lead to underfunding.

Division Response: **Comment considered. Based on historic data the Division enrollment projections have proved to be more accurate than District provided enrollment projections. For example several sets of past enrollment projections were analyzed. The data show that the District enrollment projections were approximately 50% over actual enrollment (one was 111% over actual enrollment), while Division projected enrollment was approximately 10% over actual enrollment. Therefore in this set of data Division projections were five times more accurate than district ones. These inflated enrollment projections mean that some districts overbuild and consume state and local taxpayer resources that can help meet needs in other districts. The purpose of this change is to ensure that enrollment projection forecasts are reasonable and fair to the rest of the districts in the state. No changes made.**

Comment (2): Section 3.01.6. We would like to request clarification of this rule. Does the requirement for academic purpose apply in perpetuity? If the Division determines repayment of state financial participation, how is that repayment calculated? This requirement will place a hardship on districts experiencing rapid growth, where facility use changes from year to year and the district seeks to provide space to all staff and students when many facilities are at or over capacity.

Division Response: **Comment considered. Buildings must remain academic until the Division approves them for decommissioning. No changes made.**

Comment (3): Section 3.28.1. The \$200.00 per square foot Funding Factor maximum is not a realistic price. If the intent of the rule is to qualify only a portion of the construction cost for all projects in the state, then the maximum should be adjusted based upon regional construction costs. Without that adjustment, districts in areas where construction costs are higher will unfairly experience a lower ratio of actual construction costs that will qualify for funding.

Division Response: **Comment considered. The Division intends to implement the cost factor as recommended by the Facilities Advisory Committee and monitor the fluctuations in actual costs to help inform the need for any cost factor modifications in the future. No changes made.**

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Commenter Name: Jared Cleveland, Springdale School District (8/18/2021)

Comment (1): Section 2.02. The numerous proposed changes in these draft rules are very significant, changing many processes that have been in place since the last major rules revisions in March 2008. The promulgation process for these rules will take several months. These draft rules have major implications in developing project applications and Partnership Program project applications for early review are due by November 1, 2021. Commissioner's Memo FT-21-006 contained an IMPORTANT NOTE that said project applications receiving an early review would be reviewed using the current rules, and proposed rule changes would be discussed for the district to revise the project applications for proposed changes. The significance of these draft rules regarding enrollments, PORs, and suitability analyses would mean districts would have to start over on the project applications after the review conference before the March 1 deadline. This is burdensome and not practical to require districts to redo project applications. Therefore, the use of any rule changes with the exception of an increase in maximum project cost factor should be delayed until the 2025-2027 project funding cycle and the 2024 Master Plan. As stated above, an increase in the maximum project cost factor should be implemented in the 2023-2025 funding cycle.

Division Response: **It is not the intent or the desire of the Division to cause any district to miss out on funding opportunities due to compliance issues with the proposed rules should they be adopted or to cause distress to any district. Please see the points below:**

- 1. Districts should follow the rule promulgation process and be aware of possible changes to the Master Plan. Should any change in statute and/or rule change results in a requirement for additional documents, the Division will notify the district and the district will have a reasonable amount time to provide those documents even if the application is turned in right before the March 1 deadline.**
- 2. If a district requests an early review, the early review will be based on the current rule, to include the estimated potential SFP. During that early review, districts will be advised what changes the district will need to make IF the new rules are adopted as proposed. Again, when/if the rules are adopted districts will be given a reasonable length of time to make any required changes.**
- 3. There is very little that a district would need to add to their application if the proposed rules are adopted. Many of the proposed rules are simply putting into rule our current policies and procedures. The schematics, if compliant with current rule should be compliant with the adopted proposed rules. The revised POR, if adopted, would require a rerun, but the Division will be doing that work during the evaluation process. Obviously, the division currently and will continue to require an accurate POR be submitted.**

Comment (2): Section 3.16. Do not agree with this change and recommend that it be deleted. Districts should continue to be allowed to have the option to submit district generated enrollment projections, including documentation and justification, which the Division can review and approve/disapprove. The Division enrollment projections are developed by a contractor with a one size fits all approach based on historic enrollments and county births. Districts may have knowledge of future planned commercial or real estate developments, community activities, or other factors that can provide better enrollment projections over the planning period.

**Division Response: Comment considered. Based on historic data the Division enrollment projections have proved to be more accurate than District provided enrollment projections. For example several sets of past enrollment projections were analyzed. The data show that the District enrollment projections were approximately 50% over actual enrollment (one was 111% over actual enrollment), while Division projected enrollment was approximately 10% over actual enrollment. Therefore in this set of data Division projections were five times more accurate than district ones. These inflated enrollment projections mean that some districts overbuild and consume state and local taxpayer resources that can help meet needs in other districts. The purpose of this change is to ensure that enrollment projection forecast are reasonable and fair to the rest of the districts in the state. No changes made.**

Comment (3): Section 3.28. The proposed rules did not change this section, but I recommend an increase of maximum cost factor to \$250/SF to reflect current construction costs. The Advisory Committee recommendation of \$200/SF was made over three years ago. A change in maximum cost factor is needed immediately to support new construction projects.

**Division Response: Comment considered. The Division intends to implement the cost factor as recommended by the Facilities Advisory Committee and monitor the fluctuations in actual costs to help inform the need for any cost factor modifications in the future.**

Comment (4): Section 4.02. Please provide clarifying language with two sentences beginning with, "State financial participation for undersized facilities shall ... " The two sentences do not provide clear definitions.

**Division Response: The Division has considered the comment and decided to strike the following language: "shall not be limited to the space required to bring the facility up to size, and".**

Comment (5): Section 4.02. There are some extraneous notes in last sentences in last paragraph.

**Division Response: Comment considered. Non-substantive changes made.**

Comment (6): Section 4.07. Section should be amended to allow separable unique un-walled POR spaces that are sometimes used in schools of innovation.

**Division Response: Comment considered. Non-substantive changes made.**

Comment (7): Section 6.03. Division written determination letters sent to districts are an important part of the overall district planning process. Recommend in first line of second paragraph, replace "may" with "shall". Also, place a specific date with September, such as September 1 or September 30.

**Division Response: Comment considered. It is the Division's practice and goal to send these out before September 30th. Normally these are sent in August. No changes made.**

Comment (8): Section 7.07. Section 7.07 (following Section 7.16)- Should be numbered 7.17.

**Division Response: Comment considered. Non-substantive changes made.**

**Comment (9):** Section 3.04.1. Please clarify this section since it has potential significant implications based on its interpretation. Does this section apply to a campus or district? Suitability computations address surplus of area, if any. Based on this section, will the Division not fund only the overage of POR required space, such as 12 SF for a 862 SF classroom, or the entire classroom space? The Division has always permitted projects to use Support Space allowance for a new school and suitability allowance for an addition to construct additional academic spaces, resulting in a surplus of academic areas. Does this section remove that flexibility?

**Division Response: Comment considered. Proposed Section 3.04.1 will be removed. Non-substantive change made.**

**Comment (10):** Section 3.07.5. Please clarify if building value is a Division consideration for building replacement.

**Division Response: Comment considered. A building value of zero does not justify replacement; life cycle data is advisory only and shall not be sufficient to support the approval of a building replacement. No changes made.**

**Comment (11):** Section 3.24.1. Do not agree with this change and recommend that it should be deleted. See comment on Section 3.16. Division enrollment projections may not be as accurate as a district- developed enrollment projection.

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Comment (13): Section 3.24.3. Section needs clarification on different use of the 5-year and 10-year projection. In addition to clarification, suggest this section be revised to use the Advisory Committee recommendation of use of 5-year projections for academic spaces in combination with 10-year projections for single-purpose spaces (PE, student dining, media center). The Advisory Committee recommendations were based on discussions that it is much easier to add academic spaces with additional classrooms than to increase the size of media centers, cafeterias, and gyms.

Division Response: **Comment considered. Non-substantive changes made.**

Comment (14): Section 3.35.1 (i). Do not agree with this change in the first sentence of this section and recommend that it be deleted. The process to determine suitability in new schools and additions was negotiated at great length by leaders in ADE and school districts during the development of the last major rules change in March 2008. The basis of those extended negotiations was that construction of a new school often necessitates a district-wide rezoning, so looking at space in other schools was applicable. A school addition normally does not require rezoning, so space in other schools should not be considered. This change implies that children can readily be shifted to other schools, but changes in school assignments can be disruptive and detrimental to a student's education and are met with opposition from parents.

Division Response: **Comment considered. For additions, changing "district" back to "campus." Non-substantive changes made.**

Comment (15): Section 3.35.2 (i). Disagree with change not allowing future cycle projects for additions of space not yet built and recommend this change be deleted. With a two year planning cycle and four years to complete construction of a funded project, a project may not be constructed until five or six years after the initial planning. During that time, circumstances in the district may change. And, many times phased projects can be combined in one construction contract for prudent use of district and state funds. This change is not needed since the Division can disapprove any project, including a phased project, that is not justified or a prudent use of funds.

Division Response: **Comment considered. This does not preclude phased projects. No changes made.**

Comment (16): Section 3.35.2 (i). Please clarify, "all other campuses capable of servicing the same grades". In a liberal interpretation, any school could service any grade level.

Division Response: **Comment considered. Non-substantive change made.**

Comment (17): Section 3.37.1 (ii). Please clarify inconsistency in this section. First sentence on top of page 17 states that upgrades of existing systems are not eligible. But, last sentence of 3.37.1 (ii) which says any security upgrades must receive relevant state agency approvals, indicates security upgrades are eligible for state funding.

Division Response: **Comment considered. Non-substantive change made.**

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Division Response: **Comment considered. No changes made.**

Comment (19): Section 3.37.2. Do not agree with this change and recommend that it be deleted. Projects should not incur a suitability penalty for smaller, newer buildings with FCI less than 65%, when the Division has determined the main campus building should be replaced. This rules change would lead to districts continuing to use smaller, dispersed buildings while replacing the main building. The Division should encourage school replacement projects to replace the entire campus and be under one roof to promote campus security.

Division Response: **Comment considered. No changes made.**

Comment (20): Section 3.37.2. implies the only factor for replacement consideration is a FCI value of 65% or greater.

Division Response: **Comment considered. A building value of zero does not justify replacement; life cycle data is advisory only and shall not be sufficient to support the approval of a building replacement. No changes made.**

Comment (21): Section 3.37.4. Please clarify. The reference to building value in Section 3.37.4 indicates there are other factors in building replacement determinations than only a FCI of 65% as indicated in Section 3.37.2.

Division Response: **Comment considered. A building value of zero does not justify replacement; life cycle data is advisory only and shall not be sufficient to support the approval of a building replacement. No changes made.**

Comment (22): Section 4.05.10. As recommended by the Advisory Committee, agree with using a maintenance indicator as part of project prioritization for funding. However, there are several issues with Section 4.05.10 as proposed. The definitions of maintenance expenditures and revenues and the Excel format are not clearly defined. And, the generation of this data will be burdensome to the district. If maintenance expenditures and revenue data is to be used, the Division should extract applicable data from district cycle report data submissions so all data will be uniformly developed. A greater issue is the use of maintenance expenditures as a higher

project funding priority could lead to districts relaxing preventative maintenance to incur larger repair maintenance costs. A better maintenance indicator is a Facilities Maintenance Composite Assessment as recommended by the Advisory Committee.

**Division Response: Comment considered. Section 4.05.10 has been stricken; the Division will pull these data. Non-substantive changes made.**

**Comment (23):** Section 5.05.1 (ii). Section needs to explain how Division will obtain FCI data referenced in this section.

**Division Response: Comment considered. FCI is generated from school district condition surveys (subject to varification). No changes made.**

**Comment (24):** Section 5.05.1 (iii and iv). This section needs further explanation on how district suitability will be computed. What enrollment projections will be used? Will the Division run PORs for every campus in the district and sum the campus suitabilities? Or, will the Division run a district-wide POR?

**Division Response: Comment considered. Suitability is based upon current data (for example, enrollment, square foot per student, existing square footage). No changes made.**

**Comment (25):** Section 5.05.3. The penalty for district non-compliance with Section 5.05.3 (v) for maintenance is so severe, the Division should establish a timeline to inform the district of its compliance or non-compliance with maintenance requirements. In the case of non-compliance, there should be ample time allowed for the district to correct its deficiencies and gain compliance to avoid a project ranking penalty.

**Division Response: Comment considered. Preventive maintenance is required by law and Partnership project ranking penalties apply if preventive maintenance is not completed. Districts are required by law to complete preventive maintenance and document work order in CMMS. The Division regularly contacts school districts that have not completed their preventive maintenance. Non-substantive changes made.**

**Comment (26):** Section 5.05.5. In Section 5.05.5 (ii), the first line should also include Systems Replacement projects.

**Division Response: Comment considered. Non-substantive change made.**

**Comment (27):** Section 6.02 (ii). Agree with the concept of this change, but disagree with the process proposed. It is labor intensive and redundant for the district to be required to reenter all project information for an identical project with the only change in project number. Recommend the district send a written request to the Division with a new project number and the Division perform the necessary project entry requirements or roll-over so the project becomes a valid project for the next cycle

**Division Response: Comment considered. No changes made.**

Comment (28): Section 7.05.2 (i). Should clarify that if the Division grants an early start request, all project expenses may be reimbursed pending Commission approval and funding.

Division Response: **Comment considered. Non-substantive changes made.**

Comment (29): Section POR. POR - Break out Health Center into two required spaces to include Health Center office with required space of 100 SF.

Division Response: **Comment considered. The Division has considered the comment and decided changes are not necessary. This space is verified during plan reviews. No changes made.**

Comment (30): Section Project Agreement. Project Agreement - Section V.A. - For sentence beginning with, "Districts combining projects shall ... " change to read, "Districts combining projects shall provide separate project contract information." In some instances, a contract change order can be issued to complete a separate project.

Division Response: **Comment considered. Non-substantive change made.**

Comment (31): Section Project Agreement. Project Agreement - Title. Should be changed to applicable for projects for 2023-2025 Biennium (or 2025-2027 if rules promulgation completion is extended past applicability for 2023- 2025).

Division Response: **Comment considered. The new Project Agreement will start at the beginning of the 2023-2025 Biennium. Non-substantive change made.**

Comment (32): It appears a major focus of these proposed rules is to bring about an overall reduction in Partnership Program funding. A consequential item in the rules that was not changed was the maximum cost factor which is currently limited in the rules to \$200 per square foot, much less than actual costs being experienced by school districts. Such focus on Partnership Program funding reduction misses two key points. First, Partnership Program funding is a cost-shared program with school districts required to participate in projects with significant amounts of district funding. School district boards of directors and superintendents must answer to their patrons regarding their stewardship of district resources, so districts must propose projects that are prudent uses of both local and state funds. Second, virtually all expenditures for academic facilities benefit students by providing educational opportunities. To focus on reductions in Partnership Program funding, while the state currently enjoys a billion dollar surplus, seems unwise and overlooks the long-term costs associated with the lost opportunities for educational adequacy.

Division Response: **Comment considered. Funding levels for the Facilities Partnership Program are established by the Arkansas General Assembly and are not influenced by the program rules. The focus of these rule changes are to implement the recommendations from the Facilities Advisory Committee and recent statutory changes, as well as to improve the efficiency and effectiveness of the Facilities Partnership Program. No changes made.**

Comment (33): The CAPSAFT Rules Governing the Academic Facilities Partnership Program released with Commissioner's Memo COM-22-008 represent the most sweeping changes of the Partnership Program rules since the 2008 March rules. Those March 2008 rules were developed by a team of school district and Arkansas Department of Education leaders over a two-month period of focused and extensive negotiations that resulted in the Program of Requirements (POR), the definitions of suitability, and most Partnership Program processes still currently in use. Although these proposed rules changes were not developed with such a collaborative process, many of the changes were recommended by the Advisory Committee on Public School Academic Facilities in its July 2018 report. The intent of the Advisory Committee recommendations was to place the state on a course to develop a state plan with an annual budget to address the state's school facility needs over a prescribed timeline. To help generate Partnership Program cost savings to establish the recommended annual budget, the committee proposed some changes in the Partnership Program rules and processes. These proposed rules adopt some of the major recommendations of the Advisory Committee such as statewide needs lists and new processes for ranking approved projects for funding to ensure the greatest needs receive the highest priority. These proposed rules also adopt some parts of the Advisory Committee recommended savings processes, although there has not been a Division recommendation to use those savings to create an annual budget to enable creation of a long-term state plan.

Division Response: **Comment considered. No changes made.**

Comment (34): There is a significant issue about the timing of these changes. Districts are currently working on the 2022 Master Plan due by February 1, 2022, and early project applications for a Division review conference for the 2023-2025 project funding cycle. With the early applications due by November 1, requiring school board resolutions no later than October, the late July initiation of promulgation of such numerous and significant rules changes with comments not due until August 20 is occurring too late for use during this planning cycle. It is recommended that any Partnership Program rules changes go into effect for the 2024 Master Plan and the 2025-2027 project funding cycle.

Division Response: **It is not the intent or the desire of the Division to cause any district to miss out on funding opportunities due to compliance issues with the proposed rules should they be adopted or to cause distress to any district. Please see the points below:**

- 1. Districts should follow the rule promulgation process and be aware of possible changes to the Master Plan and Partnership Program process. Should any change in statute and/or rule change results in a requirement for additional documents (at this time we can only think of a small handful of possible requirements), the Division will notify the district and the district will have a reasonable amount time to provide those documents even if the application is turned in right before the March 1 deadline.**
- 2. If a district requests an early review, the early review will be based on the current rule, to include the estimated potential SFP. During that early review, districts will be advised what changes the district will need to make IF the new rules are adopted as proposed. Again, when/if the rules are adopted districts will be given a reasonable length of time to make any required changes.**

**3. I believe there is very little, if anything, that a district would need to add to their application if the proposed rules are adopted. Many of the proposed rules are simply putting into rule our current policies and procedures. The schematics, if compliant with current rule should be compliant with the adopted proposed rule. The revised POR, if adopted, would require a rerun, but I foresee the Division doing that work during the evaluation process. Obviously, the division currently and will continue to require an accurate POR be submitted.**

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Commenter Name: Jeremy Lasiter, Bryant School District (8/20/2021)

Comment (1): Section 2.02. The numerous proposed changes in these draft rules are very significant, changing many processes that have been in place since the last major rules revisions in March 2008. The promulgation process for these rules will take several months. These draft rules have major implications in developing project applications and Partnership Program project applications for early review are due by November 1, 2021. Commissioner's Memo FT-21-006 contained an IMPORTANT NOTE that said project applications receiving an early review would be reviewed using the current rules, and proposed rule changes would be discussed for the district to revise the project applications for proposed changes. The significance of these draft rules regarding enrollments, PORs, and suitability analyses would mean districts would have to start over on the project applications after the review conference before the March 1 deadline. This is burdensome and not practical to require districts to redo project applications. Therefore, the use of any rule changes should be delayed until the 2025-2027 project funding cycle and the 2024 Master Plan.

Division Response: **Comment considered. It is not the intent or the desire of the Division to cause any district to miss out on funding opportunities due to compliance issues with the proposed rules should they be adopted or to cause distress to any district. Please see the points below:**

- 1. Districts should follow the rule promulgation process and be aware of possible changes to the Master Plan. Should any change in statute and/or rule change results in a requirement for additional documents, the Division will notify the district and the district will have a reasonable amount time to provide those documents even if the application is turned in right before the March 1 deadline.**
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Comment (3): Section 3.28. Recommend increase of maximum cost factor to \$250/SF to reflect current construction costs. The Advisory Committee recommendation of \$200/SF was made over three years ago. Section references two non-existent sections, Sections 3.26.1 and 3.26.2. Appears references should be 3.28.1 and 3.28.2.

Division Response: **Comment considered. Replace "project" with "qualified". Replace "in Section 3.26.1 and 3.26.2 of these Rules" with "below". The Division intends to implement the cost factor as recommended by the Facilities Advisory Committee and monitor the fluctuations in actual costs to help inform the need for any cost factor modifications in the future. Non-substantive changes made.**

Comment (4): Section 4.02. Please provide clarifying language with two sentences beginning with, "State financial participation for undersized facilities shall .. ." The two sentences do not provide clear definitions.

Division Response: **Comment considered. The following language has been strikenhas considered the comment and decided to strike the following language: "shall not be limited to the space required to bring the facility up to size, and". Non-substantive changes made.**

Comment (5): Section 4.02. There are some extraneous notes in last sentences in last paragraph.

Division Response: **Comment considered. Non-substantive changes made.**

Comment (6): Section 4.02. This section should be clarified. Many gym spaces are used for PE instruction during school hours and athletic competition after school hours. Perhaps include language similar to 3.01.6.

Division Response: **Comment considered. Proposed new language in 3.01.6 and 7.02 (xii) and similar language in Project Agreement will be struck for clarity. Non-substantive change made.**

Comment (7): Section 4.07. Section should be amended to allow separable unique un-walled POR spaces that are sometimes used in schools of innovation.

Division Response: **Comment considered. Non-substantive changes made.**

Comment (8): Section 6.03. Division written determination letters sent to districts are an important part of the overall district planning process. Recommend in first line of second paragraph, replace "may" with "shall". Also, place a specific date with September - September 1 or September 30?

Division Response: **Comment considered. It is the Division's practice and goal to send these out before September 30th. Normally these are sent in August. No changes made.**

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Comment (25): Section 5.05.2 (iii) and (iv). This section needs further explanation on how district suitability will be computed. What enrollment projections will be used? Will the Division run PORs for every campus in the district and sum the campus suitabilities? Or, will the Division run a district-wide POR?

**Division Response: Comment considered. Suitability is based upon current data (for example, enrollment, square foot per student, existing square footage). No changes made.**

Comment (26): Section 5.05.3. The penalty for district non-compliance with Section 5.05.3 (v) for maintenance is so severe, the Division should establish a timeline to inform the district of its compliance or non-compliance with maintenance requirements. In the case of non-compliance, there should be ample time allowed for the district to correct its deficiencies and gain compliance to avoid a project ranking penalty.

**Division Response: Comment considered. Preventive maintenance is required by law and Partnership project ranking penalties apply if preventive maintenance is not completed. Districts are required by law to complete preventive maintenance and document work order in CMMS. The Division regularly contacts school districts that have not completed their preventive maintenance. Non-substantive changes made.**

Comment (27): Section 5.05.5. In Section 5.05.5 (ii), the first line should also include Systems Replacement projects. Section 6.02 (ii) - Agree with the concept of this change, but disagree with the process proposed. It is labor intensive and redundant for the district to be required to reenter all project information for an identical project with the only change in project number. Recommend the district send a written request to the Division with a new project number and the Division perform the necessary project entry requirements or roll-over so the project becomes a valid project for the next cycle.

**Division Response: Comment considered. Non-substantive change made to Section 5.05(ii).**

Comment (28): Section 7.05.2 (i). Should clarify that if the Division grants an early start request, all project expenses may be reimbursed pending Commission approval and funding.

**Division Response: Comment considered. Non-substantive changes made.**

Comment (29): Section POR. POR - Break out Health Center into two required spaces to include Health Center office with required space of 100 SF.

**Division Response: Comment considered. The Division has considered the comment and decided changes are not necessary. This space is verified during plan reviews. No changes**

Comment (30): Section Project Agreement. Project Agreement - Section V.A. - For sentence beginning with, "Districts combining projects shall ... " change to read, "Districts combining projects shall provide separate project contract information." In some instances, a contract change order can be issued to complete a separate project.

**Division Response: Comment considered. Non-substantive change made.**

Comment (31): Section Project Agreement. Project Agreement - Title. Should be changed to applicable for projects for 2023-2025 Biennium (or 2025-2027 if rules promulgation completion is extended past applicability for 2023-2025) .

**Division Response: Comment considered. The new Project Agreement will start at the beginning of the 2023-2025 Biennium. Non-substantive change made.**

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Commenter Name: Jeremy Mangrum, Elkins School District (8/18/2021)

Comment (1): Section 3.16. This change should be deleted. Districts should be able to continue to submit justification for enrollment projections. The Division still has the option to disapprove the projections. Local districts have much more knowledge of the current level of residential development which is why the flexibility should be there to submit a different projection for consideration.

Division Response: **The Division has considered the comment. Based on historic data the Division enrollment projections have proved to be more accurate than District provided enrollment projections. For example several sets of past enrollment projections were analyzed. The data show that the District enrollment projections were approximately 50% over actual enrollment (one was 111% over actual enrollment), while Division projected enrollment was approximately 10% over actual enrollment. Therefore in this set of data Division projections were five times more accurate than district ones. These inflated enrollment projections mean that some districts overbuild and consume state and local taxpayer resources that can help meet needs in other districts. The purpose of this change is to ensure that enrollment projection forecasts are reasonable and fair to the rest of the districts in the state. No changes made**

Comment (2): Section 3.28. The changes did not affect this section. However, the maximum cost factor should be increased to at least \$225 per square foot to reflect current construction costs.

Division Response: **Comment considered. The Division intends to implement the cost factor as recommended by the Facilities Advisory Committee and monitor the fluctuations in actual costs to help inform the need for any cost factor modifications in the future. No changes made.**

Comment (3): Section 3.38. Also, the current rules that limit the reimbursement amount to \$200 per square foot are not reflective of market conditions, particularly in certain areas of the state. I recommend that amount be increased to a higher amount that is more accurate. A fair number would be to increase the amount to \$225 per square foot.

Division Response: **Comment considered. The Division intends to implement the cost factor as recommended by the Facilities Advisory Committee and monitor the fluctuations in actual costs to help inform the need for any cost factor modifications in the future. No changes made.**

Comment (4): Section 6.03. The written determination letters are extremely important to the planning process. This should be required of the Division, not optional. Recommend replacing "may" with "shall."

Division Response: **Comment considered. It is the Division's practice and goal to send these out before September 30th. Normally these are sent in August. No changes made.**

Comment (5): Section 3.04.1. Does this section apply to a campus or district. Will the Division not fund a specific number of square feet that is constructed over the POR required space, or the entire classroom space?

**Division Response: Comment considered. Proposed Section 3.04.1 will be removed. Non-substantive change made.**

Comment (6): Section 3.04.4. This change has a disproportionate impact on smaller school districts. My district will rarely build an addition of classroom space that is greater than 10,000 square feet. This means that many of my projects that are only built as needed would not qualify for funding. This change should be deleted.

**Division Response: Comment considered. Section 3.04.4 allows for waiver. No changes made.**

Comment (7): Section 3.24.1. This change should be deleted. See comment on 3.16 above.

**Division Response: The Division has considered the comment. Based on historic data the Division enrollment projections have proved to be more accurate than District provided enrollment projections. For example several sets of past enrollment projections were analyzed. The data shows that the District enrollment projections were approximately 50% over actual enrollment (one was 111% over actual enrollment), while Division projected enrollment was approximately 10% over actual enrollment. Therefore in this set of data Division projections were five times more accurate than district ones. These inflated enrollment projections mean that some districts overbuild and consume state and local taxpayer resources that can help meet needs in other districts. The purpose of this change is to ensure that reasonable enrollment projection forecasts are reasonable and fair to the rest of the districts in the state. No changes made**

Comment (8): Section 3.24.2. This change should be deleted. Local districts that have an efficient 5-10 year plan cycle may forecast enrollment changes that are not visible through looking at historical data. Present school enrollments may not reflect these other local factors. Districts should be able to submit school POR enrollments with justification based on this local knowledge.

**Division Response: The Division has considered the comment. Based on historic data the Division enrollment projections have proved to be more accurate than District provided enrollment projections. For example several sets of past enrollment projections were analyzed. The data shows that the District enrollment projections were approximately 50% over actual enrollment (one was 111% over actual enrollment), while Division projected enrollment was approximately 10% over actual enrollment. Therefore in this set of data Division projections were five times more accurate than district ones. These inflated enrollment projections mean that some districts overbuild and consume state and local taxpayer resources that can help meet needs in other districts. The purpose of this change is to ensure that reasonable enrollment projection forecasts are reasonable and fair to the rest of the districts in the state. No changes made**

Comment (9): Section 4.05.10. The goal of this change is a good one. However the proposed change may have unintended consequences. The use of maintenance expenditures as a higher funding priority could result in less preventative maintenance being performed by districts in

order to qualify for partnership funding. Also, districts that do a good job of PM and keep maintenance costs down could, in effect, be punished by those working against them when requesting funding.

**Division Response: Comment considered. Section 4.05.10 has been stricken; the Division will pull these data. Non-substantive changes made.**

**Comment (10):** Generally, it is concerning that this memo signifying widespread changes in the partnership program rules was released on July 27, 2021 with a hearing date on August 5, 2021 and a deadline for comments of August 20, 2021. This gave all public school personnel who were planning for a new school year in the midst of a pandemic very little time to digest and respond to a new set of rules that appears to have negative consequences for my district and many other districts as well. Furthermore, I am already well into the process of planning for a partnership application for the upcoming deadline of March 2022. Why is this attempt to quickly make huge rules changes being made in the middle of this cycle? That is hard to understand. If the attempt of these changes is to drastically reduce the number of approved projects, and consequently reduce the amount of funding needed to help the planned projects come to fruition then that seems to be counterintuitive considering the purpose of the partnership program. The partnership program exists in order to help provide adequacy through facilities in public schools in Arkansas. Some of these proposed changes appear to move the program backward as far as adequacy is concerned.

**Division Response: Comment considered. The Division had no control over the timing of the rule release for public comments. Most of these proposed changes were recommended by the Advisory Committee in their report issued in 2018 and were discussed and debated since 2017 after the Advisory Committee was created by legislature and appointed by the Governor. It is not the intent or the desire of the Division to cause any district to miss out on funding opportunities due to compliance issues with the proposed rules should they be adopted or to cause distress to any district. Please see the points below:**

**1. Districts should follow the rule promulgation process and be aware of possible changes to the Master Plan and Partnership Program process. Should any change in statute and/or rule change results in a requirement for additional documents (at this time we can only think of a small handful of possible requirements), the Division will notify the district and the district will have a reasonable amount time to provide those documents even if the application is turned in right before the March 1 deadline.**

**2. If a district requests an early review, the early review will be based on the current rule, to include the estimated potential SFP. During that early review, districts will be advised what changes the district will need to make IF the new rules are adopted as proposed. Again, when/if the rules are adopted districts will be given a reasonable length of time to make any required changes.**

**3. I believe there is very little, if anything, that a district would need to add to their application if the proposed rules are adopted. Many of the proposed rules are simply putting into rule our current policies and procedures. The schematics, if compliant with current rule should be compliant with the adopted proposed rule. The revised POR, if**

**adopted, would require a rerun, but I foresee the Division doing that work during the evaluation process. Obviously, the division currently and will continue to require an accurate POR be submitted.**

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Commenter Name: JoAnne Wooldridge, Consultant (8/20/2021)

Comment (1): Section 3.24. Many districts spend a good amount of time and effort developing their own enrollment projections. District may be aware of knowledge within their district and city that the state's projections do not take consideration. This includes new housing developments, new businesses, or expansions of existing businesses. To be required only to use the division's enrollment projections could result in a district with rapid growth, to under build a school. This could possibly lead to an addition a few years down the road. Districts should be allowed to submit, with appropriate justification, their own enrollment projections for partnership program projects.

Division Response: **Comment considered. Based on historic data the Division enrollment projections have proved to be more accurate than District provided enrollment projections. For example several sets of past enrollment projections were analyzed. The data show that the District enrollment projections were approximately 50% over actual enrollment (one was 111% over actual enrollment), while Division projected enrollment was approximately 10% over actual enrollment. Therefore in this set of data Division projections were five times more accurate than district ones. These inflated enrollment projections mean that some districts overbuild and consume state and local taxpayer resources that can help meet needs in other districts. The purpose of this change is to ensure that enrollment projection forecast are reasonable and fair to the rest of the districts in the state. No changes made.**

Comment (2): Section 4.02. State Financial Participation shall not be used for any gym space used for competition. State financial participation for undersized facilities shall not 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. Clarification needed. This change seems to contradict rule change 3.01.6. If a district uses a gym for physical education during the day and competitions after regular school hours, then based on rule change 3.01.6, it would be eligible for partnership funds.

Division Response: **Comment considered. Language has been changed in Sections 3.01.6 and 702(xiii), as well as in the Project Agreement. Non-substantive changes made.**

Comment (3): Section 3.01.6. In order to be eligible for Partnership Program funding, a facility must be fully utilized only for academic purposes during the school day. The Division reserves the right to monitor facility use, and should it find that the facility is not being utilized entirely for academic instruction during the school day, may require full or partial repayment of any state financial participation in the facility. Many districts must change building use quite frequently. When a district completes a construction project using partnership program funds on an academic building, in some cases it is in the best interest to change the building use to non-

academic to better serve the district's needs. In reading this rule change, it appears a district might have to repay or partial repay partnership funds if not used for academic purpose during the school day.

**Division Response: Comment considered. Non-substantive changes made to 3.01.6. Buildings must remain academic until the Division approves them for decommissioning.**

Comment (4): Section 3.24.1. Many districts spend a good amount of time and effort developing their own enrollment projections. District may be aware of knowledge within their district and city that the state's projections do not take consideration. This includes new housing developments, new businesses, or expansions of existing businesses. To be required only to use the division's enrollment projections could result in a district with rapid growth, to under build a school. This could possibly lead to an addition a few years down the road. Districts should be allowed to submit, with appropriate justification, their own enrollment projections for partnership program projects.

**Division Response: Comment considered. Based on historic data the Division enrollment projections have proved to be more accurate than District provided enrollment projections. For example several sets of past enrollment projections were analyzed. The data show that the District enrollment projections were approximately 50% over actual enrollment (one was 111% over actual enrollment), while Division projected enrollment was approximately 10% over actual enrollment. Therefore in this set of data Division projections were five times more accurate than district ones. These inflated enrollment projections mean that some districts overbuild and consume state and local taxpayer resources that can help meet need No changes made.**

Comment (5): Section 3.35.2 (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 capable of servicing the same grade(s). Do not agree with the submission of all PORs for the same grade configuration within a district. This could create a re-zoning situation for many schools. For districts that have rapid growth, this could lead to a re-zoning happening every couple of years. Also, some smaller districts have multiple campuses that serve the same grades that are 37 miles apart (50 minute drive). In this situation one of the campuses might have a suitability need while the other has excess square footage. This change could create a busing situation that would have students on a bus for hours after school. This would not be in the best interest of the students or district.

**Division Response: Comment considered. No changes made.**

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Commenter Name: Karla Neatherly, Arkadelphia School District (8/16/2021)

Comment (1): Section 3.28. I recommend increase of maximum cost factor to \$250/SF to reflect current construction costs. The Advisory Committee recommendation of \$200/SF was made over three years ago. The cost factor should be increased due to rising construction costs.

Division Response: **Comment considered. The Division intends to implement the cost factor as recommended by the Facilities Advisory Committee and monitor the fluctuations in actual costs to help inform the need for any cost factor modifications in the future. No changes made.**

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Commenter Name: Leslie Dyess, Consultant (8/20/2021)

Comment (1): Section 3.04.4. 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. This requires clarification, because it does not seem to be in line with the recommendation of the Advisory Committee, and could prove to be unreasonably burdensome to many of the smaller districts who struggle with suitability constraints. Recommendation #3 from the Advisory Committee stated that there should be "no stand-alone addition of less than 10,000 SF" and "smaller additions could be approved when the final configuration of the building and addition were under one roof (or connected by an enclosed corridor).

Division Response: **Comment considered. Section 3.04.4 allows for waiver. No changes made.**

Comment (2): Section POR. Changes to CE Space Requirements(POR) Most, if not all of these spaces have been reduced (some by 50%), and my concern is that these reductions will create a surplus of existing space within many Districts. The affects of this change on suitability need to be studied to fully understand what the unintended consequences are going to be.

Division Response: **Comment considered. No changes made.**

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Commenter Name: Mike Mertens, Arkansas Association of Educational Administrators (8/19/2021)

Comment (1): Section 3.16. Master plan must contain Division provided enrollment projections. Districts have been allowed to provide their enrollment projections with documentation and justification. Recommendation: Districts should continue to be allowed to provide their enrollment projections with documentation and justification.

**Division Response: Comment considered. Based on historic data the Division enrollment projections have proved to be more accurate than District provided enrollment projections. For example several sets of past enrollment projections were analyzed. The data show that the District enrollment projections were approximately 50% over actual enrollment (one was 111% over actual enrollment), while Division projected enrollment was approximately 10% over actual enrollment. Therefore in this set of data Division projections were five times more accurate than district ones. These inflated enrollment projections mean that some districts overbuild and consume state and local taxpayer resources that can help meet needs in other districts. The purpose of this change is to ensure that enrollment projection forecast are reasonable and fair to the rest of the districts in the state. No changes made.**

Comment (2): Section 3.28. Qualified Cost discussion. Section limits cost factors to \$200/SF. Recommendation: Maximum cost factor should be increased above \$200/SF to reflect current construction costs.

**Division Response: Comment considered. The Division intends to implement the cost factor as recommended by the Facilities Advisory Committee and monitor the fluctuations in actual costs to help inform the need for any cost factor modifications in the future. No changes made.**

Comment (3): Section 4.02. Last paragraph before section 4.02.1 Recommendation: Remove the notes at the end of the section.

**Division Response: Comment considered. Non-substantive changes made.**

Comment (4): Section 4.02. State funding will not be used for any gym space used for competition. Recommendation: Add the word “exclusively” after the word “used” in the proposed language.

**Division Response: Comment considered. No changes made.**

Comment (5): Section 4.07. Waivers will not be approved to combine spaces greater than the POR. All POR spaces must be individual and unique spaces and not consist of temporary or moveable walls. Floor to ceiling accordion walls may be allowed with Division approval. What is the rationale for this change? It appears to limit the flexibility of building space for instructional purposes.

**Division Response: Comment considered. Non-substantive changes made.**

Comment (6): Section 4.08. Project applications must be complete to receive an early review conference with the Division. Recommendation: Please communicate to districts through a Commissioner’s Memo what a complete application consists of, in regard to early review conferences. .

**Division Response: Comment considered. COM FT-21-006 lists what is considered a complete application. The majority of the information is required to process the**

**application and fulfill the statute. It is impossible to evaluate an application without adequate information. No changes made.**

Comment (7): Section 3.04.1. Additional clarification is needed regarding this proposed change.

Division Response: **Comment considered. Section 3.04.1 will be removed. Non-substantive change made.**

Comment (8): Section 3.04.4. The new language says that any additions must be connected by a conditioned and fully enclosed walkway. Recommendation: Expand the statement to say that all/any requirements of this section may be waived for any conditions that make the requirements unduly burdensome.

Division Response: **Comment considered. Section 3.04.4 allows for waiver. No changes made.**

Comment (9): Section 3.07.5. Building value of 0% or below is not sufficient justification for state financial participation in replacing a facility. Recommendation: Please clarify if building value is a Division consideration for building replacement. Section 3.37.2 implies the only factor for replacement consideration is a FCI value of 65% or greater.

Division Response: **Comment considered. A building value of zero does not justify replacement; life cycle data is advisory only and shall not be sufficient to support the approval of a building replacement. No changes made.**

Comment (10): Section 3.24.1. PORs must use Division enrollment projections. Same Recommendation and Rationale for Section 3.16

Division Response: **The Division has considered the comment. Based on historic data the Division enrollment projections have proved to be more accurate than District provided enrollment projections. For example several sets of past enrollment projections were analyzed. The data shows that the District enrollment projections were approximately 50% over actual enrollment (one was 111% over actual enrollment), while Division projected enrollment was approximately 10% over actual enrollment. Therefore in this set of data Division projections were five times more accurate than district ones. These inflated enrollment projections mean that some districts overbuild and consume state and local taxpayer resources that can help meet needs in other districts. The purpose of this change is to ensure that reasonable enrollment projection forecasts are reasonable and fair to the rest of the districts in the state. No change**

Comment (11): Section 3.24.2. School POR enrollments must reflect the latest school actual enrollments reported to ADE, plus or minus Division projected enrollment loss or gain percentage. Same Recommendation and Rationale for Section 3.16. Present school enrollments may not reflect school enrollment changes that may occur during the five to ten year planning cycle.

**Division Response: Comment considered. No change**

**Comment (12):** Section 3.24.3. All POR enrollments must be quoted from the same school year and be representative of the highest 5-year projections for all grades involved in the project. Districts may request 10-year projections. Recommendation: This Section needs clarification on different uses of the 5-year and 10-year projection.

**Division Response: Comment considered. Non-substantive changes made.**

**Comment (13):** Section 3.35.1 (i). The new Language, “all other campuses in the district capable of serving the same grades(s)” indicates that a suitability review for an addition on an existing campus will use the same process currently used for a new school project. The Division will review areas in other schools in the district that can serve the same grade levels to determine excess space, if any, to deduct from the proposed addition. Recommendation: Delete this proposed new language.

**Division Response: Comment considered. For additions, changing "district" back to "campus." Non-substantive changes made.**

**Comment (14):** Section 3.37.1 (i). The Division will verify the need for system replacement projects through SchoolDude work orders, condition assessments submitted in master plans, and on-site inspections. Life cycle alone will not be justification for system replacement. Recommendation: Division expectations for work orders documented in the CMMS need to be clearly identified and communicated to school district personnel through a Commissioner’s Memo.

**Division Response: Comment considered. No changes made.**

**Comment (15):** Section 3.37.1 (ii). Upgrades or replacements of existing security systems are not eligible for state funding. Security upgrades require state agency approval. Recommendation: Clarify inconsistency in this section. Are security upgrades eligible for state funding or not?

**Division Response: Comment considered. Non-substantive change made.**

**Comment (16):** Section 3.37.2. Any building determined to be inadequate by the Division may not be used for any student activity in the building. Recommendation: Change the phrase, “any activity” to “academic purposes” in the last line.

**Division Response: Comment considered. No changes made.**

**Comment (17):** Section 3.37.2. Any space replacement project must have a FCI of 65% or greater. Recommendation: Eliminate this proposed new language.

**Division Response: Comment considered. No changes made.**

Comment (18): Section 4.05.10. Districts must submit with project applications five fiscal years of maintenance expenditures and revenues to compute the percentage of revenues spent on maintenance. Recommendation: Remove all of Section 4.05.10.

Division Response: **Comment considered. Section 4.05.10 has been stricken; the Division will pull these data. Non-substantive changes made.**

Comment (19): Section 5.05.3. Three project ranking factors starting in 2023-2025: wealth index (30%), statewide needs list ranking (50%), and percentage of revenues spent on maintenance (20%). Recommendations: (1) The “percentage of revenues spent on maintenance” should have a cap where, at some point, districts receive full credit for this project ranking factor.

Division Response: **Comment considered. No changes made.**

Comment (20): Section 7.05.2(i). Provides details on early construction starts. Recommendation: Add a statement that if the Division grants an early start request, all project expenses may be reimbursed pending Commission approval and funding.

Division Response: **Comment considered. Non-substantive changes made.**

Comment (21): The Division will check SchoolDude to see that all preventative maintenance, statewide inspections, and maintenance have been completed and documented. If not, the district’s projects will be dropped to the bottom of the project rankings. Rationale: Districts with a robust preventive maintenance program will spend less on major repairs and could be negatively impacted by this proposed language as written. A better indicator of facility maintenance, such as a Facilities Maintenance Composite Assessment recommended by the Advisory Committee, can be found, other than just a percentage of revenues spent on maintenance.

Division Response: **Comment considered. Preventive maintenance is required by law and Partnership project ranking penalties apply if preventive maintenance is not completed. Districts are required by law to complete preventive maintenance and document work order in CMMS. The Division regularly contacts school districts that have not completed their preventive maintenance. Non-substantive changes made.**

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Commenter Name: Tripp Walters, Arkansas Public School Resource Center- (8/19/2021)

Comment (1): Section 2.02. The proposed changes to the Partnership Rules are extensive and far-reaching in their scope and effect, and will cause many changes to the way districts will have to plan and prepare their partnership funding applications. At the same time that these Rules are making their way through the rulemaking process, the Division has advised the districts that they must submit their application materials to the Division by November 1, 2021 in order to obtain a review conference with the Division (also see comments on the review conference under Section 4.08). The language in Section 2.02 would presumably make these Rules effective for the 2023-

2025 funding cycle. We object to the imposition of these Rules on the upcoming partnership applications. Given that the partnership application requires extensive work on the part of the districts, it will place a great burden upon them to comply with the sweeping changes proposed in these Rules in time to properly prepare their applications for the 2023-2025 project funding cycle. We propose, instead, that the language in this Section be amended to state that, with the exception of any increase in the maximum project cost factor, the Rules will become effective for partnership projects submitted for the 2025-2027 funding cycle and the 2024 Master Plan.

**Division Response: Comment considered. It is not the intent or the desire of the Division to cause any district to miss out on funding opportunities due to compliance issues with the proposed rules should they be adopted or to cause distress to any district. Please see the points below:**

- 1. Districts should follow the rule promulgation process and be aware of possible changes to the Master Plan. Should any change in statute and/or rule change results in a requirement for additional documents, the Division will notify the district and the district will have a reasonable amount time to provide those documents even if the application is turned in right before the March 1 deadline.**
- 2. If a district requests an early review, the early review will be based on the current rule, to include the estimated potential SFP. During that early review, districts will be advised what changes the district will need to make IF the new rules are adopted as proposed. Again, when/if the rules are adopted districts will be given a reasonable length of time to make any required changes.**
- 3. There is very little that a district would need to add to their application if the proposed rules are adopted. Many of the proposed rules are simply putting into rule our current policies and procedures. The schematics, if compliant with current rule should be compliant with the adopted proposed rules. The revised POR, if adopted, would require a rerun, but the Division will be doing that work during the evaluation process. Obviously, the division currently and will continue to require an accurate POR be submitted.**

**Comment (2):** Section 3.28. A proposed change to this Section was not made, but should be. Section 3.28 (i)(a) should be amended to provide an increase in the New Facilities Funding Cost Factor to a maximum of \$250.00 per square foot. The current maximum of \$200.00 per square foot is outdated, having been recommended by the Advisory Committee three (3) years ago. Further, the statute upon which this cost factor is based (Ark. Code Ann. §6-20-2509) requires an annual update. With the rise in construction costs, which will be passed through to the districts, the cost factor needs to be increased to ensure that the districts are able to obtain sufficient state financial participation to fund their partnership projects. Otherwise, the State is not keeping pace with adequate inflationary cost relevant to real world construction cost.

**Division Response: Comment considered. The Division intends to implement the cost factor as recommended by the Facilities Advisory Committee and monitor the fluctuations in actual costs to help inform the need for any cost factor modifications in the future. No changes made**

Comment (3): Section 4.08. We object to the Division’s attempts to add conditions on the review conference process which are not contained in law (Ark. Code Ann.§6-20-2515). While Section 4.08 does accurately set out some of the review conference’s statutory requirements, the requirement that a district provide a “complete application” to the Division at this stage of the process is not contained in the statute. The proposed language should be removed, as it is contrary to the letter of the law.

**Division Response: Comment considered. COM FT-21-006 lists what is considered a complete application. The majority of the information is required to process the application and fulfill the statute. It is impossible to evaluate an application without adequate information. No changes made.**

Comment (4): Section 3.16 & 3.24.1. Sections 3.16 and 3.24.1: We object to the addition of the term “Division provided” enrollment projections in Section 3.16 (instead of “district provided”) enrollment projections, and request its removal. We believe that this change is concerning as it would deprive the district, which has the best and most direct knowledge of its local community and what factors are to be considered in making future enrollment projections, of providing this important information itself to the Division. Should the Division have questions about the substance or validity of the District’s supporting data, it may seek further or clarifying data from the District. School districts still need the option of submitting their enrollment projections to the Division. Since this is a school district application, it is only rational that the district be able to submit its own plan based on local district input and not have facts imputed to the district’s application by the State. As the proposed new Section 3.24.1 contains the language “state produced enrollment projections”, we also object to it on the same grounds.

**Division Response: The Division has considered the comment. Based on historic data the Division enrollment projections have proved to be more accurate than District provided enrollment projections. For example several sets of past enrollment projections were analyzed. The data shows that the District enrollment projections were approximately 50% over actual enrollment (one was 111% over actual enrollment), while Division projected enrollment was approximately 10% over actual enrollment. Therefore in this set of data Division projections were five times more accurate than district ones. These inflated enrollment projections mean that some districts overbuild and consume state and local taxpayer resources that can help meet needs in other districts. The purpose of this change is to ensure that reasonable enrollment projection forecasts are reasonable and fair to the rest of the districts in the state. No changes made.**

Comment (5): Section 3.35.1 (i):. We object to the proposed new language contained in the first sentence of this Section, and request its removal. The process to determine suitability in new schools and additions was negotiated at great length by leaders in ADE and school districts during the development of the last major rules change in March, 2008. The basis of those extended negotiations was that construction of a new school often necessitates a district-wide rezoning, so looking at space in other schools was applicable. A school addition normally does not require rezoning, so space in other schools should not be considered. This change implies that children can readily be shifted to other schools, but changes in school assignments can be disruptive and detrimental to a student’s education and often may not be factually possible.

**Division Response: Comment considered. For additions, changing "district" back to "campus." Non-substantive changes made.**

**Comment (6):** Section 3.37.2. (Comment 1): We object to the proposed change concerning the facility condition index, and request its removal. The proposed language change here fails to consider that there are other factors to consider in Warm, Safe, and Dry Space Replacement projects besides a sixty-five percent (65%) facility cost factor. Some examples of other factors to be considered include the age of the building; classroom sizes, and general academic adequacy of a building. The proposed change also fails to consider the realities currently facing school districts in their facility usage, including making accommodations for the proper spacing and housing of students and staff due to the current pandemic. For example, there may be severe functionality issues with a facility due to health or safety concerns that do not weigh into an FCI rating. Health and safety code issues are not considered in an FCI rating, but go to the health and safety of students and to the need to replace a facility.

**Division Response: Comment considered. No changes made.**

**Comment (7):** Section 3.37.2. (Comment 2): We object to this change, and request its removal. We believe that partnership projects should not incur a suitability penalty for smaller, newer buildings with FCI less than 65%, when the Division has determined the main campus building should be replaced. This change would lead to districts continuing to use smaller, dispersed buildings while replacing the main building. The Division should encourage school replacement projects to replace the entire campus and be under one roof to promote campus security and efficiency.

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