

SUMMARY OF REVISIONS

COMMISSION FOR ARKANSAS PUBLIC SCHOOL ACADEMIC FACILITIES AND TRANSPORTATION RULES GOVERNING BONDED DEBT ASSISTANCE

Amendments to these rules reflect changes made to bonded debt assistance law contained in Act 931 of 2017. Through bonded debt assistance, the state provides school districts financial assistance for the purpose of retiring outstanding bonded indebtedness in existence as of January 1, 2005. Prior to Act 931, school district expenditure of savings yielded from refunding these bonds was restricted to support academic facilities. This restriction resulted in inefficiencies and was time consuming to implement because refunding and restructuring the bonds multiple times made it difficult to track and accurately restrict and report bond savings, and any benefit derived from the restriction was minimal. Act 931 eliminated the restriction (and thus the inefficiency and undue expenditure) by allowing school districts to expend savings realized from the refunding of these bonds for any legitimate district purpose.

The proposed amendments also remove outdated language and provisions governing programs that have expired or been repealed, and bring language to reflect the current state of law.

~~ARKANSAS DIVISION OF COMMISSION FOR ARKANSAS PUBLIC SCHOOL~~
~~ACADEMIC FACILITIES AND TRANSPORTATION RULES~~
~~GOVERNING THE RETIREMENT AND TERMINATION OF BONDED DEBT~~
~~ASSISTANCE, GENERAL FACILITIES FUNDING AND SUPPLEMENTAL~~
~~MILLAGE INCENTIVE FUNDING~~
March 2010 Effective _____

1.0 AUTHORITY

- 1.01 ~~The Commission for Arkansas Public School Academic Facilities and Transportation's authority for promulgating this Rule~~ these Rules is pursuant to Ark. Code Ann. §§ 6-20-2501 et seq., and 25-15-201 et seq., and Act 1479 of 2009 931 of 2017.
- 1.02 ~~This Rule~~ These Rules shall be known as the ~~Arkansas Division of Commission for Arkansas Public School Academic Facilities and Transportation (Division)~~ Rule Rules Governing Bonded Debt Assistance.

2.0 DEFINITIONS

- 2.01 ~~“Academic facility” means a building or space, including related areas such as the physical plant and grounds, where students receive instruction that is an integral part of an adequate education as described in § 6-20-2302. A public school building or space, including related areas such as the physical plant and grounds, used for an extracurricular activity or an organized physical activity course as defined in § 6-16-137 shall not be considered an academic facility for the purposes of this rule~~ these rules to the extent that the building space, or related area is used for extracurricular activities or organized physical activities courses, ~~except for physical educational training and instruction under § 6-16-132.~~ has the same meaning as in Ark. Code Ann. § 6-20-2502(2).
- ~~2.02 “Academic facilities wealth index” means a percentage derived from the following computations:~~
- ~~2.02.1 Determine the value of one (1) mill per student in each school district, as follows:~~
- ~~2.02.1.1 Multiply the value of one (1) mill by the total assessed valuation of taxable real, personal, and utility property in the school district as show by the applicable county assessment for the most recent year; and~~
- ~~2.02.1.2 Divide the product from § 2.02.1.1 of this section by the greater of the prior year average daily membership of the school district or the prior three-year average of the school district's average daily membership.~~

- 2.02.1.3 — ~~Determine student millage rankings by listing the computation under § 2.02.1.1 of this section for each school district from students with the lowest value per mill to students with the highest value per mill;~~
- 2.02.1.4 — ~~Allocate the student millage rankings into percentiles with the first percentile containing the one percent (1%) of students with the lowest value per mill and the one hundredth percentile containing the one percent (1%) of students with the highest value per mill; and~~
- 2.02.1.5 — ~~Divide the value of one (1) mill per student in each school district as computed under § 2.02.1.1 of this section by the amount corresponding to the ninety-fifth percentile of the student millage rankings under § 2.02.1.4 of this section by the amount corresponding to the ninety-fifth percentile of the student millage rankings under subdivision § 2.02.1.4 of this section.~~
- 2.02.1.6 — ~~The percentage derived from the computation under § 2.02.1.5 of this section is the academic facilities wealth index for a school district, which shall be computed annually and used to determine the amount of the school district's share of financial participation in a local academic facilities project eligible for state financial participation under priorities established by the division.~~
- 2.02.1.7 — ~~The state's share of financial participation in a local academic facilities project eligible for state financial participation under priorities established by the division is the percentage derived from subtracting the school district's percentage share of financial participation determined under § 2.02.1.6 of this section from one hundred percent (100%).~~

2.032 “Average daily membership” means the total number of days of school attended plus the total number of days absent by students in grades kindergarten through twelve (K-12) during the first three (3) quarters of each school year divided by the number of school days actually taught in the school district during that period of time rounded up to the nearest hundredth. has the same meaning as in Ark. Code Ann. § 6-20-2502(3).

2.04 — “Capital repair” means any repair to an academic facility and, if necessary, related areas such as the physical plant and grounds that brings the state of condition or efficiency of the academic facility to a state of

~~condition or efficiency equal to the academic facility's original condition of completeness.~~

- 2.053 "Eligible school district" means any a school district deemed to have existing bonded debt as of January 1, 2005, and said debt continues to exist each fiscal year the district qualifies for bonded debt financial assistance and that applied for bonded debt assistance under Ark. Code Ann. § 6-20-2503 before July 1, 2005.
- ~~2.06 "Facility condition index" means a methodology established by the division for comparing the cost of repairing the condition of a public school academic facility to the cost of replacing the public school academic facility with a public school academic facility containing the same amount of square footage.~~
- 2.074 "Foundation funding" means an amount of money specified by the General Assembly for each school year to be expended by school districts for the provision of an adequate education for each student as that amount is established in § 6-20-2305.
- 2.085 "Funding factor" means a funding factor of \$18.03 per average daily membership determined by the Division for each fiscal year pursuant to Ark. Code Ann. § 6-20-2503 (b)(3)(A)(iii)(a) and (b).
- ~~2.09 "Immediate repair project" means a project involving a public school academic facility that is necessary to resolve a deficiency that presents an immediate hazard to:~~
- ~~2.09.1 The health or safety of students, teachers, administrators or staff;~~
 - ~~2.09.2 The integrity of the public school academic facility with regard to meeting minimum health and safety standards; or~~
 - ~~2.09.3 The extraordinary deterioration of the public school academic facility.~~
- ~~2.10 "Local enhancements" means the portion of any maintenance, repair, or renovation project or new construction project that is designed to bring an academic facility or related areas such as the physical plant or grounds to a state of condition or efficiency that exceeds state academic facilities standards.~~
- ~~2.11 "Local resources" means any moneys lawfully generated by a school district for the purpose of funding the school district's share of financial participation in any academic facilities project for which a school district is eligible to receive state financial participation under priorities established by the division.~~

- ~~2.1206~~ “Local revenue per student means in each school year ninety-eight percent (98%) of the amount of revenue available, whether or not collected, in a school district solely from the levy of the uniform rate of tax plus seventy-five percent (75%) of the average miscellaneous funds collected in the previous five (5) years or the previous year, whichever is less, divided by the average daily membership of the school district. “Per-student revenue” means the sum of projected revenue from the uniform rate of tax and miscellaneous funds divided by the average daily membership for the school district for the previous school year.
- ~~2.13~~ “Maintenance, repair, and renovation” means any activity or improvement to an academic facility and, if necessary, related areas such as the physical plant and grounds that:
- ~~2.13.1~~ Maintains, conserves or protects the state of condition or efficiency of the academic facility; or
- ~~2.13.2~~ Brings the state of condition or efficiency of the academic facility up to the facility’s original condition of completeness or efficiency.
- ~~2.14~~ “Mandatory callable bonds” means a bond issue in which all net proceeds from debt service millage used to secure the issuance of that bond must be applied to payment of the issue and cannot be used for any other purpose.
- ~~2.1507~~ “Millage rate” means the millage rate listed in the most recent tax ordinance approved by the county quorum court under the authority of Ark. Code Ann. § 14-14-904.
- ~~2.1608~~ “Miscellaneous funds” means those funds received by a local school district from federal forest reserves, federal grazing rights, federal mineral rights, federal impact aid, federal flood control, wildlife refuge funds, severance taxes, funds received by the district in lieu of taxes, and local sales and use taxes dedicated to education pursuant to §§ 26-74-201 et seq., 26-74-301 et seq., 26-75-301 et seq., and 14-164-301 et seq. has the same meaning as in Ark. Code Ann. § 6-20-2503(a)(3).
- ~~2.17~~ “New construction” means any improvement to an academic facility and, if necessary, related areas such as the physical plant and grounds that brings the state of condition or efficiency of the academic facility to a state of condition or efficiency better than the academic facility’s original condition of completeness or efficiency and includes additions to existing academic facilities and new academic facilities.
- ~~2.18~~ “Project” means an undertaking in which a school district engages in:
- ~~2.18.1~~ Maintenance, repair and renovation activities with regard to an academic facility;
- ~~2.18.2~~ New construction of an academic facility; or

~~2.18.3 Any combination of maintenance, repair and renovation and new construction activities with regard to an academic facility.~~

~~2.19 "Renovation Project" a "warm, safe and dry" new construction project addressing a facility system.~~

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

~~2.2109~~ "State wealth index" means the result of one (1) minus the ratio of local revenue per student divided by the difference between foundation funding and local revenue per student. has the same meaning as in Ark. Code Ann. § 6-20-2503(a)(6).

3.0 BONDED DEBT ASSISTANCE ASSISTANCE PROGRAM

3.01 In accordance with the requirements and limitations set forth in ~~this rule~~ these Rules, the ~~Division~~ state shall provide eligible school districts with financial assistance for the purpose of retiring outstanding bonded indebtedness in existence as of January 1, 2005.

3.02 The Commission by way of ~~this rule~~ these Rules directs the Division to work with the Arkansas Department of Education to determine the amount of ~~financial bonded debt~~ assistance for each eligible school district as set forth in these Rules.

~~3.03~~ The Division shall ascertain the scheduled debt payment on a fiscal year basis from the principal and interest payment schedule in effect and on file with the Department of Education on January 1, 2005, and reduce the amount of the payment by ten percent (10%) as provided in § 4.01 of this rule.

~~3.043~~ The Commission shall determine the amount of ~~state~~ bonded debt ~~financial~~ assistance for each eligible school district no later than July 15 of each year.

~~3.04.1~~ ~~3.03.1~~ State bonded Bonded debt ~~financial~~ assistance shall be payable to each eligible school district in two (2) equal installments;

~~3.04.1~~ 3.03.2 The first ~~yearly~~ bonded debt ~~financial~~ assistance installment shall be paid by August 1 of each year; and

~~3.04.1~~ 3.03.3 The second ~~yearly~~ bonded debt ~~financial~~ assistance installment shall be paid by February 1 of each year.

- 3.054 For tracking purposes, Each each eligible school district receiving bonded debt ~~financial~~ assistance shall account for the funds received as restricted funds and shall account for the funds in accordance with provisions of law, including without limitation, the Arkansas Educational Financial Accounting and Reporting Act of 2004, § 6-20-2201 *et seq.*, and any other rules established by this Commission.
- 3.065 School districts are not prohibited from refunding bonds that were issued and outstanding as of January 1, 2005. Provided a school district qualifies for ~~state bonded debt financial~~ assistance, the amount of bonded debt assistance ~~is shall~~ not be reduced or altered as a result of refunding the bonds that were issued and outstanding as of January 1, 2005, and the bonded debt assistance will continue after the refunding based on the principal and interest payment schedule in effect and on file with the Department of Education on January 1, 2005.
- ~~3.06.1 A school district shall use the debt service savings, if any, produced by refunding the outstanding bonds as follows:~~
- ~~3.06.1.1 The annual savings produced by the refunding shall be deposited into a bond refunding savings fund to be used by the school district solely for the new construction, capital repairs, or renovation of academic facilities or the purchase of academic equipment; and~~
- ~~3.06.1.2 Before the date that refunding bonds are sold at a public sale, the school district shall certify to the commission that the yearly debt services saving will be used solely for the purposes described in § 3.07.1.1.~~
- ~~3.07 School districts are not prohibited from issuing second lien bonds. If a school district qualifies for state bonded debt financial assistance under this section, the amount of state financial assistance under this rule shall not be increased or reduced as a result of the issuance of second lien bonds.~~
- 3.086 Nothing in ~~this rule~~ these Rules shall be construed to prevent the annual adjustment of ~~state financial bonded debt~~ assistance in accordance with annual variations in the state wealth index and the school district's principal and interest payment schedule in effect and on file with the Department of Education on January 1, 2005. The state shall not assume any debt of a school district or incur any obligation with regard to a school district's bonded indebtedness by providing the ~~financial bonded debt~~ assistance described in ~~this rule~~ these rules. Any school district receiving

~~financial~~ bonded debt assistance under this section is and will remain independently liable for all outstanding indebtedness.

3.097 ~~Although school districts are not prohibited from~~ With the exception of refunding bonds ~~or issuing second lien bonds~~ as allowed in §§ ~~3.06 and 3.07 of this rule~~ 3.05 of these Rules, upon the termination of any other bonded debt for which a school district was receiving bonded debt ~~financial~~ assistance, said ~~state~~ bonded debt assistance shall likewise terminate on the termination date of that bonded debt.

4.0 BONDED DEBT ASSISTANCE FUNDING

4.01 Each year that ~~financial~~ bonded debt assistance is to be provided under ~~this rule~~ these Rules to an eligible school district, the Division shall ascertain the scheduled debt payment on a fiscal year basis from the principal and interest payment schedule in effect and on file with the Department of Education on January 1, 2005, ~~except mandatory callable debt payments which shall be calculated using the formula set forth in § 4.01.1.~~ The amount of scheduled debt payment calculated shall be reduced by ten percent (10%) except as allowed in § 4.02 of ~~this rule~~ these Rules.

~~4.01.1 Scheduled debt payments for mandatory callable bonds shall be the pledged millage for the mandatory callable bonds multiplied by the total assessed valuation of taxable real, personal, and utility property in the school district as shown by the applicable county assessment for each relevant school district for the most recent year.~~

4.02 Provided a school district ~~can demonstrate pursuant to § 5.0 of this rule and has demonstrated~~ to the satisfaction of the Division, or the Commission on valid appeal, that all or a portion of the ten percent (10%) reduction in its scheduled debt payment under § 4.01 of ~~this rule~~ these Rules can be attributed to the support of academic facilities, then the Commission shall reverse all or a portion of the ten percent (10%) reduction by a percentage proportionate to the amount attributable to academic facilities.

4.03 Each year that bonded debt ~~financial~~ assistance is to be provided to eligible school districts, the Division shall divide the scheduled debt payment as adjusted under § 4.02 of ~~this rule~~ these Rules by the total assessed valuation of taxable real, personal, and utility property in the school district as shown by the applicable county assessment for each relevant school district for the most recent year with the result multiplied by one thousand (1,000).

- 4.04 The product of § 4.03 of ~~this rule~~ these Rules shall then be multiplied by a funding factor of \$18.03 (established as required by law) ~~per and multiplied by the prior-year average daily membership of the school district.~~ The product of this calculation shall then be multiplied by the state wealth index, ~~and this shall be the net~~ The result is the amount of bonded debt financial assistance a school district is entitled to per for the fiscal year absent any appeal under § 5.0 of these rules.
- 4.05 The ~~net~~ result of the calculations in § 4.04 shall be paid as bonded debt ~~financial assistance as required in § 3.04 of this rule~~ 3.03 of these Rules.

~~5.0~~ — BONDED DEBT ASSISTANCE APPEAL

- 5.01 — Pursuant to § 4.02 of this rule, any school district which has been determined to be a school district eligible for bonded debt financial assistance from the state in the 2005-06 school year may submit a one-time written appeal to the Commission via the Division concerning the ten percent (10%) reduction in scheduled debt payment determined in § 4.01 of this rule.
- 5.02 — The school district written appeal shall be submitted via certified mail to the Office of the Director of the Division at 501 Woodlane, Suite 600, Little Rock, AR 72201. The appeal must be postmarked or received in the Office of the Director by 4:30 pm on October 31, 2005.
- 5.03 — The Division (with the assistance of consultants) shall review all appeals and submit its written recommendation on whether to reverse all or a portion of the ten percent (10%) reduction called for in § 4.01 of this rule by November 28, 2005 to each respective school district and the Commission.
- 5.04 — Any eligible school district who is notified that their appeal is recommended for denial by the Division to the Commission may request a limited hearing of their appeal before the Commission by submitting their written request for hearing to the Commission to the Office of the Director of the Division at 501 Woodlane, Suite 600, Little Rock, AR 72201 by 4:30 p.m. on December 9, 2005. The appeal must be received or postmarked by 4:30 pm on December 9, 2005.
- 5.05 — The Commission shall review all properly submitted appeals, consider the Division's recommendation and provide any necessary hearing before issuing the Commission's final determination on the school district's request to reverse all or a portion of the ten percent (10%) reduction called for in § 4.01 of this rule by December 30, 2005. Upon reaching a final determination, the Commission shall certify in writing the final determination for each appealing school district to the Department of

~~Education and each respective school district by January 6, 2006. The decision of the Commission is final with no further right of appeal.~~

~~5.06—When filing an appeal pursuant to this rule, school districts shall submit a written appeal using the attached form referenced in § 5.06.1 known as exhibit A, which is hereby incorporated in this rule, and the district shall complete the form providing all information as requested in the form and provide the following documentation related to any bonded debt in order to have a valid appeal:~~

~~5.06.1 The district's written appeal as required in the attached exhibit A of this rule; and~~

~~5.06.2 Copy of the ballot title related to any bonded debt election; and/or~~

~~5.06.3 Copy of the bonded debt contract instrument related to the appealed bonded debt; and/or~~

~~5.06.4 Copy of related tax certificates filed with appropriate tax agencies related to the appealed bonded debt; and/or~~

~~5.06.5 Copy of any applications to the Department of Education which request permission to sell or refinance bonded debt, which related to the appealed bonded debt; and/or~~

~~5.06.6 Any other relevant evidentiary documentation.~~

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

~~5.08—When conducting its review of the appeals, the Commission shall use its best judgment to determine whether the school district's request for appeal meets the qualification for consideration in § 5.07 of this rule and whether by clear and convincing evidence the appeal demonstrates that the bonded debt can be attributed to the direct support of academic facilities.~~

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

~~6.0—GENERAL FACILITY FUNDING~~

~~6.01—The Commission shall compute the amount of general facilities funding that each school district received or would have received under the~~

~~Supplemental School District Funding Act of 2003, § 6-20-2401 et seq., during fiscal year 2005.~~

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

~~7.0—SUPPLEMENTAL MILLAGE INCENTIVE FUNDING~~

- ~~7.01—If a school district elected to receive supplement millage incentive funding under the Supplemental School District Funding Act of 2003, § 6-20-2401 et seq., during fiscal year 2005, the Commission shall compute the difference between the amount of supplemental millage incentive funding that a school district received in fiscal year 2005 and the amount of debt service funding supplement and general facilities funding that the school district would have received under the Supplemental School District Funding Act of 2003, § 6-20-2401 et seq., in fiscal year 2005.~~
- ~~7.02—In addition to any bonded debt financial assistance funding an eligible school district may be entitled to under this rule, a school district that elected to receive supplemental millage incentive funding under the~~

~~Supplemental School District Funding Act of 2003, § 6-20-2401 et seq., shall receive supplemental millage incentive funding assistance equal to all or a portion of the amount of supplemental millage incentive funding that exceeded the amount that the school district would have received under debt service funding supplement and general facilities funding under the Supplemental School District Funding Act of 2003, § 6-20-2401 et seq., in fiscal year 2005 except that the Commission shall phase out the supplemental millage incentive funding assistance provided under this rule over a ten-year period by reducing the amount received by a school district after fiscal year 2006 by one tenth (1/10) in each subsequent year of the ten-year period.~~

~~7.03 Savings from reduction of any supplemental millage incentive funding assistance shall be distributed through the Educational Facilities Partnership Fund Account in accordance with rules promulgated by the Commission.~~

~~7.04 Supplemental millage incentive funding assistance as provided pursuant to this rule shall be payable to each entitled school district, as determined by the Commission, in two (2) equal installments. The first installment of payments shall be made to school districts by August 1 of each school year and the second installment of payments shall be made by February 1 of each school year.~~

SUMMARY OF REVISIONS

COMMISSION FOR ARKANSAS PUBLIC SCHOOL ACADEMIC FACILITIES AND TRANSPORTATION RULES GOVERNING SELF-CONSTRUCTION PROJECTS BY PUBLIC EDUCATION ENTITIES

Amendments to these rules reflect changes made to law concerning public improvement contracts, commodities purchasing, and subcontractor licensure under Acts 725 and 1124 of 2017 (public improvement contracts and commodities purchasing), as well as under Act 1048 of 2015 (subcontractor licensure). These Acts raised the monetary amounts that triggered bidding and licensure requirements. Other changes made throughout the rules were stylistic or made for the purpose of clarification.