



# Division of Elementary and Secondary Education

*Transforming Arkansas to lead the nation in student-focused education*

**Johnny Key**  
*Secretary*

December 8, 2020

**State Board  
of Education**

Ms. Jessica Sutton  
Rules Administrator  
Bureau of Legislative Research  
One Capitol Mall, Fifth Floor  
Little Rock, AR 72201

Charisse Dean  
*Little Rock*  
**Chair**

R. Brett Williamson  
*El Dorado*  
**Vice Chair**

**Re: Proposed Rules (for Subcommittee Review): Commission for  
Arkansas Public School Academic Facilities and Transportation  
Rules Governing the Academic Facilities Partnership Program;  
Section 6.02 Only**

Susan Chambers  
*Bella Vista*

Dear Ms. Sutton:

Dr. Fitz Hill  
*Little Rock*

Attached is the subject proposed rules amendment, as well as a post-public comment summary, a Financial Impact Statement, and a summary of public comments and Division responses. The Commission respectfully requests that this proposed rules amendment be placed on the ALC Administrative Rules Subcommittee agenda.

Kathy McFetridge  
*Springdale*

Dr. Sarah Moore  
*Stuttgart*

On September 24, 2020, the Commission approved this rules amendment for public comment release. On October 9, 2020, the Governor's Office approved the amendment. Following public comment, no changes were made to the proposed amendment. On December 7, 2020, the CAPSAFT gave its final approval to this rules amendment.

Ouida Newton  
*Poyen*

Steve Sutton  
*Marion*

Adrienne Woods  
*Rogers*

If you have any questions or require further information, please do not hesitate to call me at (501) 682-4234.

Respectfully submitted,

Lori Freno  
General Counsel  
Arkansas Department of Education

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

**Effective: December 30, 2019  
(As amended January 23, 2020)**

- 6.02 ~~To the extent a district's Partnership Program Project has been ranked of such low priority and there are not sufficient state funds available to fully fund the district's Partnership Project, the district shall be entitled to the following:~~
- ~~(i) The Division shall consider the district's current application a valid application for the next Partnership Project cycle and will prioritize and fund the application consistent with the prioritization and funding amounts utilized in the next Partnership Project cycle; or~~
  - ~~(ii) The district may choose to withdraw its project application prior to the next Partnership Program cycle and reapply for Partnership Project assistance in a subsequent cycle based upon that year's availability of funding pursuant to that cycle's adjusted funding rate and Partnership Program.~~
  - (ii) Approved projects not funded in the first year of a Partnership Program cycle will be moved to the second year of the Partnership Program same cycle and ranked after all of the approved year-two projects per Section 5.05 of these Rules. No project that is approved but not funded in a Partnership Program cycle will be moved to the next cycle.

## SUMMARY OF AMENDMENTS

### COMMISSION FOR ARKANSAS PUBLIC SCHOOL ACADEMIC FACILITIES AND TRANSPORTION RULES GOVERNING THE ACADEMIC FACILITIES PARTNERSHIP PROGRAM – SECTION 6.02 ONLY

This amendment is intended to bring clarity to Section 6.02 of the Partnership Program Rules. As currently written, Section 6.02 has been interpreted by some to allow a Partnership Program project that is approved but not funded during a Partnership Program funding cycle (with each funding cycle being two consecutive years) to carry over indefinitely to upcoming cycles (without reapplication) until the project is funded.

The amendment to Section 6.02 would clarify that if a project is approved for the first year of a Partnership Program cycle but is not funded that year, it will carry over into the second year of the same cycle and funded if funding is available. However, projects approved during a cycle that are not funded by the end of the cycle will *not* carry over to any subsequent cycles. With this amendment, school districts will be on notice of the need to reapply in a timely manner for each cycle in which they wish their project to be considered.

This will realign the Partnership Program with its original intent, which was a two-year funding cycle.

## FINANCIAL IMPACT STATEMENT

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Commission for Arkansas Public School Academic Facilities and Transportation \_\_\_\_\_

**DIVISION** Division of Public School Academic Facilities and Transportation \_\_\_\_\_

**PERSON COMPLETING THIS STATEMENT** lori.freno@arkansas.gov \_\_\_\_\_

**TELEPHONE NO.** (501) 682-4234 **FAX NO.** \_\_\_\_\_ **EMAIL:** lori.freno@arkansas.gov \_\_\_\_\_

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

**SHORT TITLE OF THIS RULE** CAPSAFT Rules Governing the Academic Facilities Partnership Program; SECTION 6.02 ONLY

1. Does this proposed, amended, or repealed rule have a financial impact? Yes  No
  
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?  
Yes  No
  
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes  No

If an agency is proposing a more costly rule, please state the following:

a) How the additional benefits of the more costly rule justify its additional cost;

b) The reason for adoption of the more costly rule;

c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and

d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

Next Fiscal Year

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

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

Total \$ 0.00

Total \$ 0.00

b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

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

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

Total \$ 0.00

Total \$ 0.00

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ 0

\$ 0

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ 0

\$ 0

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?  
Yes  No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
  - (a) justifies the agency's need for the proposed rule; and
  - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
  - (a) the rule is achieving the statutory objectives;
  - (b) the benefits of the rule continue to justify its costs; and
  - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

**CAPSAFT RULES GOVERNING THE ACADEMIC FACILITIES PARTNERSHIP  
PROGRAM, SECTION 6.02 ONLY**

**Public Comments and Responses of the Division for Arkansas Public School Academic  
Facilities and Transportation**

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Commenter Name: Rebecca Miller-Rice, Bureau of Legislative Research (10/13/20)

Comment: What prompted the Commission to propose the change to Section 6.02?

Division Response: Comment considered. The CAPSAFT agreed with the Division's desire to realign Section 6.02 of the Partnership Program rules with the Partnership Program's biennial project funding cycle. Without this rule change, projects conceivably could roll over in perpetuity from one two-year funding cycle to another. This could result in an extensive lists of unfunded projects from previous cycles that are no longer necessary or not truly tailored to a district's current needs. Additionally, school districts often complete unfunded projects on their own, thus making State Partnership Program funding no longer appropriate or available. The Division feels that this change to the rules will help ensure the long term stability of the Partnership Program and the prudent use of taxpayer funds. **No changes made.**

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Commenter Name: Charles Stein, Facilities Consultant (11/2/20)

Comment: With the proposed change it appears that districts would have to submit two applications for all Year Two projects, since funding for the first application in the first cycle would not be known until May 1, which is after the March 1 deadline for the second application for the next cycle. Is that correct?

Division Response: Comment considered. The Division is working on a process to streamline the reapplication process so that it will provide the least amount of work for the school districts and the Division, while at the same time ensuring that applications contain updated and timely information concerning school district needs. **No changes made.**

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Commenter Name: Scott Smith, Arkansas Public School Resource Center (11/17/20)

Comment: The APSRC does not support this rule change because it would cause increased work requirements for school districts with no benefits to the districts. As currently existing in the Partnership Program Rules, Section 6.02 states that approved Partnership Program projects that are not funded in a project funding cycle may be carried over to the next cycle without submission of a new application. This current process has two benefits for both school districts and the Division. The first benefit is that school districts do not have to submit a new application

to have the approved project considered for funding in the next funding cycle. To submit another application with the same information is redundant and not a beneficial use of the district's time and resources. The second benefit is that the existing process reduces paperwork for the Division that does not have to create another paper file folder for a duplicate project with the same information. During the presentation of this draft rule to the Commission for promulgation, the Division provided information that was incomplete. The Division stated that this rule change would revert to the original legislative intent that a new project application should be submitted for each funding cycle. That statement was true at the beginning of the Partnership Program in 2006 when the Commission funded projects for both years of the two-year project funding cycle following the Legislative Session every odd-numbered year. However, when the state initiated Fiscal Sessions in 2010 during the even-numbered years, the Commission began to fund projects annually following the Legislative session. Section 6.02 was inserted in rules following the annual funding process to alleviate districts from having to submit two project applications for Year Two projects due to timing issues as follows. Partnership Program project applications for the next funding cycle must be submitted by March 1 of every odd-numbered year. But, funding for Year Two projects of the current funding cycle is not known until about May 1 of every odd-numbered year, two months after the project application deadline for the next funding cycle. This timing means that districts will be required to submit duplicate and redundant project applications for all Year Two projects in a funding cycle to be considered for the next funding cycle in case the project is not funded in the current funding cycle. The Division has stated that the second application process will be simplified, but it will still be redundant and increase work for the district and Division.

Division Response: Comment considered. See Response to comment of Charles Stein (11/2/20). **No changes made.**