

COMMISSION FOR ARKANSAS PUBLIC SCHOOL  
ACADEMIC FACILITIES AND TRANSPORTATION  
RULES GOVERNING THE FACILITIES MASTER PLAN

July 2013 Effective: \_\_\_\_\_

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LEGISLATIVE RESEARCH

1.00 REGULATORY AUTHORITY

1.01 The Commission for Arkansas Public School Academic Facilities and Transportation's enacts these Rules pursuant to its authority as set forth in Ark. Code Ann. §§ 6-21-114, 6-21-801 et seq, and 25-15-201 et seq., and Acts 542 and 935 of 2017.

2.00 PURPOSE

2.01 The purpose of these Rules is to establish a program and process for establishing a format for districts to ~~begin creating~~ create facilities master plans in accordance with State legislation, in an ongoing effort to remediate deficiencies in academic facilities.

3.00 DEFINITIONS

For the purposes of these Rules, the following terms mean:

3.01 Academic facility – a building or space, including related areas such as the physical plant and grounds, where public school students receive instruction that is an integral part of an adequate education as described in Ark. Code Ann. § 6-20-2302.

3.01.1 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 Ark. Code Ann. § 6-16-137 shall not be considered an academic facility for the purposes of this rule to the extent that the building, space, or related area is used for extracurricular activities or organized physical activities courses, except for physical educational training and instruction under Ark. Code Ann. § 6-16-132;

3.01.2 The Division of Public School Academic Facilities and Transportation shall determine the extent to which a building, space, or related area is used for extracurricular activities or organized physical activities courses based on information supplied by the school district and, if necessary, on-site inspection.

3.01.3 Buildings or spaces, including related areas such as the physical plant and grounds, used for pre-kindergarten education shall not be considered academic facilities for purposes of these Rules; and

- 3.01.4 District administration buildings and spaces, including related areas such as the physical plant and grounds, shall not be considered academic facilities for the purpose of these Rules.
- 3.02 Amended Facilities Master Plan - A revised Facilities Master Plan, submitted at any time during the six-year cycle if a district has encountered one of the following conditions:
- 3.02.1 A major enrollment change; or
- 3.02.2 A major disaster; or
- 3.02.3 A major curriculum change; or
- 3.02.4 An unforeseen occurrence.
- 3.02.5 The format for submission will be as outlined in the most current Master Plan Guidelines.
- 3.03 Annexation – the joining of an affected school district or part of the school district with a receiving district under Ark. Code Ann. §§ 6-13-1401 et seq.
- 3.04 Appendix – A shortened amendment to an approved Master Plan submitted if a district has begun or completed a self-funded project over which the Division has only review authority, but which was omitted from the Master Plan submittal. The format for submission will be as outlined in the most current Master Plan Guidelines.
- 3.05 “Building” means any structure used or intended for supporting or sheltering any use or occupancy.
- 3.05.1 “Building” does not include a shed or other structure not capable of supporting occupancy.**
- 3.056 Building Value – A percentage value reflecting the depreciated value of an academic facility with an assumed depreciation of two per cent (2%) per year. Building Value does not consider improvements that may have been made to the facility.
- 3.056.1 Building value is calculated by multiplying two (2) times the age of the academic facility, and subtracting that product from one hundred (100) (Value = 100 – (2 x Age)). The output of this equation may be a positive or negative percentage.
- 3.056.2 For the purpose of this calculation, an academic facility’s age is calculated as the difference between the master plan year and the year of the facility’s construction completion.

- 3.056.3 When an academic facility has multiple additions constructed at different times, a building value may be computed for each addition.
- 3.056.4 Building value will be used to develop the Division's state-wide needs priority list per A.C.A. § 6-21-112 (f) (18).
- 3.056.5 Districts are not required to replace an academic facility when the building value is at or below zero percent (0%).
- 3.067 CMMS (Computerized Maintenance Management System) – The computerized software system purchased by the Division at no cost to the districts to track maintenance work orders and preventative maintenance work.
- 3.078 Consolidation - the joining of two (2) or more school districts or parts of the districts to create a new single school district under Ark. Code Ann. §§ 6-13-1401 et seq.
- 3.089 “Conversion Project” – (1) A new construction project that converts existing academic or non-academic space into a missing academic core, special education or student dining component of the Program of Requirements (POR) and the conversion project is part of an add-on project for which the district has applied for partnership assistance; or (2) A new construction project that converts existing academic or non-academic space into a missing academic core space only and is in compliance with the POR space requirements. Conversion projects are subject to the criteria and restrictions set forth in the Commission for Arkansas Public School Academic Facilities and Transportation Rules Governing the Academic Facilities Partnership Program.
- 3.0910 Custodial activities – routine and renovation cleaning activities related to daily operations and upkeep of a public school facility, including related supervisory and management activities.
- 3.4011 Division – The Division of Public School Academic Facilities and Transportation.
- 3.4112 Facility Condition Index - that particular index obtained by dividing the existing condition costs (that cost to bring a public school academic facility up to current standards) by the facility's replacement cost, using data for such costs available in 2004 or later data if the Division has such data available.
- 3.4213 Facilities distress status – a public school district determined by the Commission for Public School Academic Facilities and Transportation as being in academic facilities distress status.
- 3.4314 Facilities master plan – a six (6) year plan developed by a school district that contains:

- 3.4314.1 Enrollment projections for ten (10) years from the date of the plan;
  - 3.4314.2 The school district's strategy for maintaining, repairing, renovating, and improving through new construction or otherwise the school district's academic facilities and equipment; and
  - 3.4314.3 Other information required by law.
- 3.4415 Foundation funding – shall have the same meaning as in Ark. Code Ann. § 6-20-2303.
- 3.4516 Local resources – any moneys 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. Also referred to as "raised funds" for the purpose of self-funded projects.
- 3.4617 Maintenance, repair, and renovation – any activity or improvement to a public school facility and, if necessary, related areas, such as the physical plant and grounds, that maintains, conserves, or protects the state, condition or efficiency of the public school facility.
- 3.4718 Master Plan Guidelines – Formatting and submission instructions published by the Division for the purpose of submitting master plans. They are found on the Division web site ([www.arkansasfacilities.arkansas.gov](http://www.arkansasfacilities.arkansas.gov)).
- 3.4819 New construction – 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 current condition of completeness or efficiency. New construction includes a new addition to an existing academic facility and construction of a new academic facility.
- 3.4819.1 No state financial participation will be provided for improvements that could be classified as maintenance, repair, and renovation, other than a total renovation project. That portion of a new construction project that consists of maintenance, repair, or renovation will not be considered in calculating state financial participation in a new construction project, nor in prioritization of a new construction project.
- 3.4920 Project – an undertaking in which a school district engages in:
- 3.4920.1 Maintenance, repair, and renovation activities with regard to an academic facility;
  - 3.4920.2 New construction of an academic facility; or

- 3.1920.3 Any combination of maintenance, repair, and renovation activities with regard to an academic facility and new construction activities with regard to an academic facility.
- 3.2021 Public School Facility – any public school building or space, including related areas such as the physical plant and grounds, that is used for any purpose, including, without limitation:
- 3.2021.1 An extracurricular activity;
  - 3.2021.2 An organized physical activity course defined in Ark. Code Ann. § 6-16-137;
  - 3.2021.3 Pre-kindergarten education;
  - 3.2021.4 District administration; or
  - 3.2021.5 Delivery of instruction to public school students that is an integral part of an adequate education as described in Ark. Code Ann. § 6-20-2302.
- 3.2122 Public School Facilities Custodial, Maintenance, Repair and Renovation Manual - a document ~~which that~~ contains uniform standards to direct custodial, maintenance, repair, and renovation activities in public school facilities, ~~and which is hereby incorporated into and made part of these rules,~~ as “Appendix C” to these rules, ~~as if the Manual was fully set forth herein.~~
- 3.2223 Public School Academic Facilities Manual – a document ~~which that~~ contains uniform standards ~~to~~ and guidelines for the planning, design, and construction of new academic facilities and additions to existing academic facilities, ~~and which is hereby incorporated into and made a part of these Rules, as “Appendix B” to these Rules, as if the Manual was fully set forth herein.~~
- 3.2223.1 Variances to the Arkansas Public School Academic Facilities Manual standards may be granted by the Division upon the presentation of evidence of:
    - 3.2223.1.1 Existing conditions that makes compliance with applicable standards impractical or unreasonably burdensome; or
    - 3.2223.1.2 Other conditions determined by the Division as warranting a variance from applicable public school academic facility standards.
- 3.2324 Reconstitution – the reorganization of the administrative unit or the governing school board of a school district, including, but not limited to, the replacement

or removal of a current superintendent, the removal or replacement of a current school board, or both.

3.2425 School district – a geographic area with an elected board of directors that qualifies as a taxing unit for purposes of ad valorem property taxes under Title 26 of the Arkansas Code and which board conducts the daily affairs of public schools under the supervisory authority vested in it by the General Assembly and Title 6 of the Arkansas Code.

3.2526 Self-Funded Project - a project that is one hundred percent (100%) raised and funded by the school District, that shall be submitted to and approved by the Division upon compliance with state codes and standards. It will be submitted as an Appendix to the most current school district Master Plan.

3.27 “Unused or underutilized public school facility” has the same definition as in the Commission for Arkansas Public School Academic Facilities and Transportation Rules Governing *Right of Access to Unused or Underutilized Public School Facilities and the Sale or Lease of Public School Facilities.*

3.2628 Work Order – an approved work request that will be tracked using the CMMS.

3.2729 Work Request – the initial identification of a perceived maintenance need to the maintenance department of a public school. A work request may or may not be identified by a designated official to be a work order.

#### 4.00 ACADEMIC FACILITIES MASTER PLAN PROGRAM – PURPOSE

4.01 The purpose of the Academic Facilities Master Plan Program is to:

4.01.1 Establish a mechanism for state supervision of school district activities impacting academic facilities and equipment;

4.01.2 Develop and continually update information critical to identifying academic facilities needs at the local level across the state; and

4.01.3 Allow the state to manage state financial participation in eligible local academic facilities projects.

*4.01.4 Collect and disseminate information concerning unused or underutilized public school facilities or other real property as required by law.*

4.02 The Academic Facilities Master Plan Program shall require each school district to:

- 4.02.1 Develop a six (6) year district wide facilities master plan that shall be approved by the school district's board of directors for submission to and approval by the Division; and
- 4.02.2 Base its facilities plan on:
  - 4.02.2.1 Provisions of the Arkansas Public School Academic Facility Manual as adopted by the Commission for Public School Academic Facilities and Transportation;
  - 4.02.2.2 Priorities indicated by statewide assessment;
  - 4.02.2.3 Priorities established by the Division's statewide facility needs priority list; and
  - 4.02.2.4 Other pertinent data specific to the needs of the school district with regard to academic facilities and equipment.
- 4.03 The district wide facilities master plan shall include, at a minimum, the following:
  - 4.03.1 A schedule of custodial activities for each public school facility used by a school district;
  - 4.03.2 A schedule of maintenance, repair, and renovation for each academic public school facility used by a school district. The schedule shall distinguish between work associated with academic facilities and work associated with nonacademic public school facilities;
    - 4.03.2.1 School districts shall participate in the state-level ~~computerized maintenance management system~~ Computerized Maintenance Management System (CMMS) to track maintenance, repair, and renovation work orders.
    - 4.03.2.2 School districts are encouraged to implement a work-request system that allows certified staff and classified staff working primarily in a public school facility to utilize the CMMS to inform a public school's maintenance department of needs and to allow the responsible person to prioritize responses and establish work orders.
    - 4.03.2.3 A school district's maintenance work orders should reflect the designated work categories and should be documented upon completion.
  - 4.03.3 Documentation that describes preventive maintenance work for each public school facility and identifies the completion date of the work. The documentation shall distinguish between preventative

maintenance work associated with academic facilities and preventative maintenance work associated with nonacademic public facilities;

4.03.3.1 School districts shall ~~participate in the~~ fully utilize CMMS to track all reactive and preventative maintenance work.

4.03.3.2 School districts should ~~shall~~ should enter preventative maintenance schedules and reactive maintenance work into the CMMS for the systems existing in all academic and non-academic facilities.

4.03.3.3 School districts should ~~shall~~ should document completed preventative and reactive maintenance work orders in the CMMS.

4.03.3.4 School districts should ~~shall~~ should schedule state-mandated inspections required in Ark. Code Ann. § 6-21-813(e) in the CMMS. Only one schedule per system per district is required.

**NOTE: It is strongly recommended that school districts ensure that at least one (1) district employee has completed, or completes within three (3) years, the Certified Facility Director certification program offered by the Arkansas School Plan Management Association or a similar certification program.**

4.03.4 Annual expenditures of the school district for all custodial, maintenance, repair, and renovation activities in the school district. The section of the facilities master plan pertaining to annual expenditures shall distinguish between expenditures associated with academic facilities and expenditures associated with non-academic public school facilities;

4.03.5 A projected replacement schedule for major building systems in each public school facility;

4.03.6 Identification of issues with regard to public school facility and program access to individuals with disabilities and, if necessary, proposed methods for improving access;

4.03.7 Identification of committed projects within the district that includes, as applicable, a breakdown of the portion of each project between maintenance, repair, and renovation activities and new construction activities;

4.03.7.1 The portion of a committed project pertaining to maintenance, repair and renovation activities shall identify, as applicable activities associated with academic facilities



and activities associated with nonacademic public school facilities;

- 4.03.8 Annual expenditures of the school district for capital outlay;
- 4.03.9 Description of planned new construction projects with cost estimates for each public school facility, and needs prioritized as set forth in § Section 4.05 below; and
- 4.03.10 Narrative analysis of facility needs and response plans to address the overall district strategy of providing suitable, adequate and maintained public school facilities.

4.03.10.1      The narrative analysis shall include an accounting of any changes to building or campus use, size, utilization, status, or condition.

4.03.11 Accurate campus and building information including, but not limited to, campus grades, system condition assessment, building size, and other required information.

4.04      Districts shall submit a master plan to identify prioritized needs of the district as follows:

4.04.1      The district's Master Plan shall be submitted to the Division by February 1 of each even numbered year with the following needs to be addressed:

4.04.1.1      Immediate needs that the school district intends to address within three (3) years following the submission of the facilities master plan; and

4.04.1.2      Long term needs that the school district intends to address within the four (4) to six (6) years following the submission of the facilities master plan.

4.04.2      The district's Master Plan shall address all academic facilities with a building value of zero percent (0%) or less.

4.04.2.1      Each academic facility with a building value of zero percent (0%) or less shall be discussed in the narrative analysis per Section 4.03.10 of these Rules.

4.04.2.2      Planned new construction projects to replace or totally renovate academic facilities with a building value of zero percent (0%) or less should be described per Section 4.03.9 of these Rules.

4.04.2.3 Districts are not required to replace an academic facility when the building value is at or below zero percent (0%).

4.04.3 The district's Master Plan shall identify:

4.04.3.1 All unused or underutilized public school facilities in the school district in a format prescribed by the Division; and

4.04.3.2 The unused or underutilized public school facilities, if any, that are designated to be reused, renovated, or demolished as part of a specific committed project or planned new construction project.

4.05 In addition, as part of and at the same time of the submission of the facilities master plan, the school district shall provide evidence of the following:

4.05.1 Public comments from public hearings regarding the district's facilities master plan; which must be held in the same locality as the school district; and

4.05.2 Evidence of current student enrollment projections for a period of ten (10) years beginning with the first year of the master plan submission.

## 5.00 SUBMISSION PROCESS

Each school district in the state shall, in accordance with applicable state law, these Rules, and the guidelines published by the Division:

5.01 Submit the district's facilities master plan, with a summary of comments made at public hearing, to the Division by February 1 of each even numbered year.

5.02 Submit a report to the Division by February 1 of each odd-numbered year that includes:

5.02.1 An automated update of all completed projects since the most recent submission;

5.02.2 Current enrollment projections;

5.02.3 New or continuing needs of the district with regard to academic facilities; and

5.02.4 An accounting of any changes to the district's insurance coverage from the most recent submission.

5.03 Submit evidence of the school district's insurance coverage, including coverage amounts, types of coverage, identification of buildings covered,

policy renewal dates, and all riders, to the Division no later than February 1 of each even numbered year.

5.04 Submit a report to the Division by February 1 of each year that includes the information required in Section 4.04.3 of these rules.

5.045 A school district ~~which~~ that has encountered one of the conditions listed in Section 3.02 of these Rules may submit an Amended Master Plan to the Division out of the regular even-numbered year cycle.

## 6.00 DIVISION OF PUBLIC SCHOOL ACADEMIC FACILITIES AND TRANSPORTATION RESPONSIBILITIES

The Division shall:

6.01 Establish procedures (guidelines) and timelines for submittals of preliminary master plans, master plan outlines, and master plans;

6.02 Hold consultation meetings with districts regarding preliminary master plans, master plan outlines, and master plans to:

6.02.1 Assure understanding of the general goals of the master plans and reports, and the criteria by which projects will be evaluated;

6.02.2 Discuss ways the master plan may be structured to meet said goals;

6.02.3 Assist districts in preparing accurate budgets and reasonable projects schedules; and

6.02.4 Provide efficiency and productivity in the approval process as to both local academic facilities projects and state financial participation in local projects.

## 7.00 APPROVAL PROCESS

The Division shall:

7.01 Review, and upon all requirements being met, approve master plans no later than September 1 of each even numbered year; and

7.02 Notify a district no later than May 1 of each odd-numbered year whether the district's application for state financial participation for the upcoming biennium has been approved.

## 8.00 APPEAL PROCESS

8.01 Appeals of Division determinations are governed by the Commission For Arkansas Public School Academic Facilities And Transportation Rules

Governing Appeals From Determinations Of The Arkansas Division Of  
Public School Academic Facilities And Transportation.

1 State of Arkansas  
2 91st General Assembly  
3 Regular Session, 2017  
4

As Engrossed: S2/16/17

## A Bill

SENATE BILL 308

5 By: Senators A. Clark, J. English, J. Hendren, Hester, J. Hutchinson, B. Johnson  
6 By: Representatives Lowery, Ballinger, D. Douglas, Gates, K. Hendren, G. Hodges, Sullivan  
7

### For An Act To Be Entitled

9 AN ACT TO GRANT PUBLIC CHARTER SCHOOLS A RIGHT OF  
10 ACCESS TO UNUSED OR UNDERUTILIZED PUBLIC SCHOOL  
11 FACILITIES; TO CLARIFY RIGHTS OF FIRST REFUSAL TO  
12 PURCHASE OR LEASE UNUSED OR UNDERUTILIZED PUBLIC  
13 SCHOOL FACILITIES; AND FOR OTHER PURPOSES.  
14

### Subtitle

15  
16 TO GRANT PUBLIC CHARTER SCHOOLS A RIGHT  
17 OF ACCESS TO UNUSED OR UNDERUTILIZED  
18 PUBLIC SCHOOL FACILITIES.  
19

20  
21  
22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
23

24 SECTION 1. Arkansas Code § 6-21-803, concerning definitions in the  
25 Arkansas Public School Academic Facilities Program Act, is amended to add an  
26 additional subdivision to read as follows:

27 (17) "Unused or underutilized public school facility" means a  
28 public school facility or other real property that:

29 (A) As a whole or in a significant portion, is not being  
30 used for a public educational, academic, extracurricular, or administrative  
31 purpose and the nonuse or underutilization threatens the integrity or purpose  
32 of the public school facility or other real property as a public education  
33 facility; and

34 (B) As of the effective date of this act, is not subject  
35 to:

36 (i) A lease to a third party for fair market value;



1 or

2 (ii) An executed offer to purchase by a third party  
3 for fair market value.

4

5 SECTION 2. Arkansas Code § 6-21-806(a), concerning requirements for  
6 the Academic Facilities Master Plan Program, is amended to add an additional  
7 subdivision to read as follows:

8 (7)(A) Submit a report to the division by February 1 of each  
9 year that identifies:

10 (i) All unused or underutilized public school  
11 facilities in the school district; and

12 (ii) The unused or underutilized public school  
13 facilities, if any, that are designated in the district's facilities master  
14 plan to be re-used, renovated, or demolished as part of a specific committed  
15 project or planned new construction project.

16 (B)(i) The division shall identify a public school  
17 facility or other real property as an unused or underutilized public school  
18 facility if the school district fails to identify in the report the public  
19 school facility or other real property.

20 (ii) A school district may appeal an identification  
21 made by the division under subdivision (a)(7)(B)(i) of this section to the  
22 commission.

23

24 SECTION 3. Arkansas Code Title 6, Chapter 21, Subchapter 8, is amended  
25 to add additional sections to read as follows:

26 6-21-815. Right of access to unused or underutilized public school  
27 facilities.

28 (a) As used in this section and in § 6-21-816, "public charter school"  
29 means:

30 (1) An open-enrollment public charter school as defined in § 6-  
31 23-103;

32 (2) An eligible entity as defined in § 6-23-103 that applies to  
33 authorize, amend, or renew a charter for an open-enrollment public charter  
34 school; and

35 (3) A legal entity that is affiliated with or acting on behalf  
36 of an open-enrollment public charter school or eligible entity.

1 (b) Annually by March 1 the Division of Public School Academic  
2 Facilities and Transportation shall publish a list on its website identifying  
3 all unused or underutilized public school facilities.

4 (c)(1) Except as otherwise provided in this section, a school district  
5 shall make unused or underutilized public school facilities available for  
6 lease or purchase for no more than fair market value to any public charter  
7 school located within the geographical boundaries of the school district.

8 (2) Once a public school facility or other real property is  
9 identified by the division as an unused or underutilized public school  
10 facility, a public charter school may give notice of its intent to purchase  
11 or lease the public school facility or other real property from the school  
12 district no earlier than the later of:

13 (A) The date the public school facility or other real  
14 property is first identified by the division as an unused or underutilized  
15 public school facility; or

16 (B) If the public school facility or other real property  
17 has already been designated in the school district's facilities master plan  
18 to be reused, renovated, or demolished as part of a specific committed  
19 project or planned new construction project, two (2) years from the date the  
20 public school facility or other real property is first identified by the  
21 division as an unused or underutilized public school facility.

22 (3)(A) If the public charter school and school district are  
23 unable to agree on terms and execute the sale or lease within sixty (60) days  
24 of the notice of intent, the public charter school may petition the  
25 Commission for Arkansas Public School Academic Facilities and Transportation  
26 for an order directing the school district to lease the public school  
27 facility to the public charter school for fair market value.

28 (B) The lease shall be for a term of between five (5) and  
29 thirty (30) years, as determined by the public charter school.

30 (4) The commission may deny the petition if the school district  
31 makes an affirmative showing by a preponderance of the evidence that:

32 (A) The public school facility, or the property to which  
33 the public school facility is attached, will be needed by the school district  
34 to accommodate future growth of the school district; or

35 (B) Use of the public school facility or other real  
36 property by a public charter school would have a materially negative impact

1 on the overall educational environment of an educational campus located  
2 within five hundred feet (500') of the public school facility or other real  
3 property sought to be leased.

4 (d)(1) Upon the execution of a lease, the public charter school shall  
5 be responsible for all direct expenses related to the public school facility,  
6 including without limitation:

- 7 (A) Utilities;
- 8 (B) Insurance;
- 9 (C) Maintenance;
- 10 (D) Repairs; and
- 11 (E) Renovation.

12 (2) The school district shall remain responsible for any bonded  
13 debt incurred or mortgage liens that attached to the public school facility  
14 or other real property prior to a sale or lease.

15 (3) The public charter school shall take no actions that have a  
16 materially negative impact on:

- 17 (A) Any bond rights attached to the public school facility  
18 or other real property; or
- 19 (B) Any tax-exempt financing related to the public school  
20 facility or other real property.

21 (4) The public charter school shall indemnify the school  
22 district for any mortgages, liens, or debt that attach to the public school  
23 facility or other real property by the public charter school's action or  
24 inaction.

25 (e) The terms of a lease executed under this section shall provide  
26 that the lease shall be cancelled and be of no effect if:

27 (1) The public charter school fails to use the public school  
28 facility or other real property for direct student instruction or  
29 administrative purposes within two (2) years of the effective date of the  
30 lease;

31 (2) The public charter school closes, has its charter revoked,  
32 or has its charter application denied by the authorizer; or

33 (3) The public charter school initially uses the public school  
34 facility or other real property, but then leaves the public school facility  
35 or other real property unused for more than one hundred eighty (180) days.

36 (f)(1) The division may classify a school district that fails to



1 comply with this section as being in academic facilities distress under § 6-  
2 21-811.

3 (2) The charter school authorizer may take action under § 6-23-  
4 105 on the charter of a public charter school that fails to comply with this  
5 section.

6 (2) The commission shall promulgate rules to implement this section,  
7 including without limitation a standard lease form.

8  
9 6-21-816. Sale or lease of public school facilities.

10 (a)(1) Except as otherwise provided in this section, if a school  
11 district determines that any public school facility or other real property is  
12 no longer needed for school purposes or is unused or underutilized, the  
13 school district may sell or lease the facility in accordance with §§ 6-13-103  
14 and 6-13-620 and this subchapter.

15 (2)(A) Money derived from the sale or lease of property under  
16 this section shall be placed in the appropriate school fund established under  
17 applicable law, as determined by the school district.

18 (B) Money derived from the sale or lease may be used for  
19 any purpose allowed by law, including without limitation redemption of bonds  
20 related to the financing of the facility sold or leased.

21 (3) A school district may not make a covenant that prohibits the  
22 sale or lease of a public school facility or other real property to an open-  
23 enrollment public charter school that is located within the geographic  
24 boundary of the school district.

25 (b)(1)(A) If a school district decides to sell, lease, or otherwise  
26 transfer ownership of an academic facility, an open-enrollment public charter  
27 school located within the school district's boundaries shall have a right of  
28 first refusal to purchase or lease the facility for fair market value.

29 (B) If the school district ceases to use a public school  
30 facility as an academic facility, the right of first refusal shall continue  
31 for two (2) years after the date the public school facility or other real  
32 property was last used as an academic facility.

33 (C) If there is more than one (1) open-enrollment public  
34 charter school located within the boundaries of the school district, the  
35 right of first refusal shall be available to the open-enrollment public  
36 charter school according to a priority list determined by the charter

1 authorizer following a review of the comparative status and educational needs  
2 of the open-enrollment public charter schools.

3 (2)(A) If an open-enrollment public charter school decides to  
4 sell or lease a public school facility or other real property purchased by  
5 the public charter school under this section or under § 6-21-815, and the  
6 sale or lease is to a third party that is not a public charter school, the  
7 school district in which the public school facility or other real property is  
8 located shall have a right of first refusal to purchase or lease the public  
9 school facility or other real property for fair market value, subject to any  
10 mortgage or lien attached to the public school facility or other real  
11 property.

12 (B) The school district may waive its right of first  
13 refusal under subdivision (b)(2)(A) of this section if the public school  
14 facility or other real property or its revenues are to be pledged by the  
15 public charter school as security for debt to fund the purchase or renovation  
16 of the public school facility or other real property.

17 (3) Subject to the priority list under subdivision (b)(1)(C) of  
18 this section, nothing in this subchapter shall be construed to delay or limit  
19 the authority of a school district to sell, lease, or otherwise transfer a  
20 public school facility or other real property to a public charter school on  
21 terms agreed to by the school district and public charter school.

22 (c) If a public school facility or other real property has been  
23 identified by the Division of Public School Academic Facilities and  
24 Transportation as an unused or underutilized public school facility, the  
25 school district may sell or lease the unused or underutilized public school  
26 facility to a third party, other than an open-enrollment public charter  
27 school, no earlier than the later of:

28 (1) Two (2) years after the date the public school facility or  
29 other real property is identified by the division as an unused or  
30 underutilized public school facility, so long as no public charter school has  
31 claimed a right of access under § 6-21-815 or a right of first refusal under  
32 this section; or

33 (2) If the unused or underutilized public school facility has  
34 been designated in the school district's facilities master plan to be reused,  
35 renovated, or demolished as part of a specific committed project or planned  
36 new construction project, three (3) years from the date the public school

1 facility or other real property is identified by the division as an unused or  
2 underutilized public school facility.

3 (d)(1) A school district may petition the division for a waiver of  
4 subsection (c) of this section as it applies to an unused or underutilized  
5 public school facility within the school district.

6 (2) The petition shall include a statement that the school  
7 district believes that a public charter school would not be interested in  
8 leasing or purchasing the unused or underutilized public school facility.

9 (e)(1)(A) If the division receives a petition under subsection (d) of  
10 this section, the division, within five (5) days after receiving the  
11 petition, shall notify each eligible entity granted a charter under § 6-23-  
12 101 et seq. and statewide organization representing charter schools in  
13 Arkansas by certified mail of the petition.

14 (B) The notice under subdivision (e)(1)(A) of this section  
15 shall include a copy of the petition.

16 (2) Not later than thirty (30) days after an eligible entity  
17 granted a charter under § 6-23-101 et seq. or statewide organization  
18 representing charter schools in Arkansas receives a notice described in  
19 subdivision (e)(1)(A) of this section, the eligible entity or statewide  
20 organization representing charter schools may submit to the division an  
21 objection in writing to the petition.

22 (3) An objection shall include:

23 (A) The name of the open-enrollment public charter school  
24 that is interested in leasing or purchasing the unused or underutilized  
25 public school facility; and

26 (B) A time frame, which may not exceed one (1) year from  
27 the date of the objection, in which the open-enrollment public charter school  
28 intends to begin providing classroom instruction in the unused or  
29 underutilized public school facility.

30 (f)(1) If the division receives an objection that meets the  
31 requirements of subdivision (e)(3) of this section, the division shall deny  
32 the petition.

33 (2)(A) If the division does not receive an objection that meets  
34 the requirements of subdivision (e)(3) of this section, the division shall  
35 grant the petition.

36 (B) A school district that receives a waiver under this

1 section may sell, lease, or otherwise dispose of the unused or underutilized  
2 public school facility in accordance with §§ 6-13-103 and 6-13-620 and this  
3 subchapter.

4 (g)(1) A decision by the division under this section may be appealed  
5 to the Commission for Arkansas Public School Academic Facilities and  
6 Transportation.

7 (2) All time frames under this section, including subsection (c)  
8 and subdivision (e)(3)(B) of this section, shall be tolled during the  
9 pendency of an appeal.

10 (h)(1) The division may classify a school district that fails to  
11 comply with this section as being in academic facilities distress under § 6-  
12 21-811.

13 (2) The authorizer may take action under § 6-23-105 on the  
14 charter of a public charter school that fails to comply with this section.

15 (i) The commission may promulgate rules to implement this section.  
16

17 SECTION 4. Arkansas Code § 6-23-501(d), concerning open-enrollment  
18 public charter schools, is repealed.

19 ~~(d)(1) An open enrollment public charter school shall have a right of~~  
20 ~~first refusal to purchase or lease for fair market value a closed public~~  
21 ~~school facility or unused portions of a public school facility located in a~~  
22 ~~public school district from which it draws its students if the public school~~  
23 ~~district decides to sell or lease the public school facility.~~

24 ~~(2) The public school district may not require lease payments~~  
25 ~~that exceed the fair market value of the property.~~

26 ~~(3) The application of this subsection is subject to the rights~~  
27 ~~of a repurchaser under § 6-13-103 regarding property taken by eminent domain.~~

28 ~~(4) A public school district is exempt from the provisions of~~  
29 ~~this subsection if the public school district, through an open bid process,~~  
30 ~~receives and accepts an offer to lease or purchase the property from a~~  
31 ~~purchaser other than the open enrollment public charter school for an amount~~  
32 ~~that exceeds the fair market value.~~

33 ~~(5) The purposes of this subsection are to:~~

34 ~~(A) Acknowledge that taxpayers intended a public school~~  
35 ~~facility to be used as a public school; and~~

36 ~~(B) Preserve the option to continue that use.~~



1 State of Arkansas  
2 91st General Assembly  
3 Regular Session, 2017  
4

# A Bill

SENATE BILL 646

5 By: Senator J. English  
6 By: Representative C. Douglas  
7

## For An Act To Be Entitled

8 AN ACT TO AMEND PROVISIONS OF THE ARKANSAS CODE  
9 CONCERNING PUBLIC SCHOOL ACADEMIC FACILITIES; AND FOR  
10 OTHER PURPOSES.  
11

## Subtitle

12 TO AMEND PROVISIONS OF THE ARKANSAS CODE  
13 CONCERNING PUBLIC SCHOOL ACADEMIC  
14 FACILITIES.  
15  
16  
17  
18  
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
21

22 SECTION 1. Arkansas Code § 6-20-1206(a)(2)(A), concerning the manner  
23 and terms of sale of school bonds, is amended to read as follows:

24 (2)(A)(i) Advertisement of a bond sale under this section shall  
25 be published ~~in on~~ at least ~~one (1) two (2)~~ two (2) separate dates in a newspaper  
26 published in the county ~~with the publication to be one (1) time a week for~~  
27 ~~two (2) weeks.~~

28 (ii) The first publication shall be at least  
29 ~~thirteen (13)~~ eight (8) days before the date of the sale, with the second  
30 publication on any date before the date of the sale.  
31

32 SECTION 2. Arkansas Code § 6-20-1229(b), concerning the issuance of  
33 second-lien commercial bonds, is amended to read as follows:

34 (b) All second-lien bonds issued by school districts shall have  
35 semiannual interest payments, ~~with the first interest payment due within~~  
36 ~~eight (8) months of the issuance of the second-lien bond. All second-lien~~



1 ~~bonds shall be repaid on payment schedules that are either:~~

2 ~~(1) Equalized payments in which the annual payments are~~  
3 ~~substantially equal in amount; or~~

4 ~~(2) Decelerated payments in which the annual payments decrease~~  
5 ~~over the life of the schedule.~~

6  
7 SECTION 3. Arkansas Code § 6-20-2502, concerning the definitions of  
8 the Arkansas Public School Academic Facilities Funding Act, is amended to add  
9 an additional subdivision to read as follows:

10 ~~(13) "Building" means a structure used or intended for~~  
11 ~~supporting or sheltering any use or occupancy.~~

12  
13 SECTION 4. Arkansas Code § 6-20-2507(b)(2)(A), concerning the Academic  
14 Facilities Partnership Program, is amended to read as follows:

15 ~~(2)(A) The life cycles requirement contained in the state~~  
16 ~~facility assessment of 2004 Life cycle data is advisory only and shall not be~~  
17 ~~sufficient to support the approval of those items in the list of approved~~  
18 ~~projects or individual items within a project.~~

19  
20 SECTION 5. Arkansas Code § 6-20-2509(a)(3), concerning academic  
21 facility project cost guidelines within the Arkansas Public School Facilities  
22 Funding Act, is amended to read as follows:

23 (3) The division shall establish a process for determining the  
24 cost of local enhancements and shall include a mechanism in the formulas for  
25 determining basic project cost that excludes the cost of local enhancements  
26 from the ~~adjusted~~ qualified project cost.

27  
28 SECTION 6. Arkansas Code § 6-20-2509(b), concerning academic facility  
29 project cost guidelines within the Arkansas Public School Facilities Funding  
30 Act, is amended to read as follows:

31 (b)(1) When a school district applies for state financial  
32 participation, the division shall use the appropriate formula to compute an  
33 ~~adjusted~~ a qualified project cost.

34 (2) The division shall determine the estimated amount of the  
35 state's share of financial participation based on the ~~adjusted~~ qualified  
36 project cost and the school district's wealth index as determined under § 6-

1 20-2502.

2

3 SECTION 7. Arkansas Code § 6-21-106 is amended to read as follows:

4 6-21-106. Fire hazards inspection prior to closing for breaks.

5 (a)(1)(A) At least seven (7) calendar days prior to the beginning of  
6 Christmas break, ~~the school superintendent~~ a local official of each public  
7 elementary and secondary school in this state shall request an inspection of  
8 the premises by the fire department providing fire protection to the school  
9 buildings.

10 (B) If the chief executive officer of the fire department  
11 receives the request at least seven (7) calendar days prior to the beginning  
12 of Christmas break, he or she shall cause the school buildings to be  
13 inspected for fire hazards.

14 (C) The inspection shall be conducted prior to the  
15 beginning of Christmas break.

16 (2)(A) At least seven (7) calendar days prior to the end of the  
17 school year, ~~the school superintendent~~ of a local official with each public  
18 elementary and secondary school in this state shall request an inspection of  
19 the premises by the fire department providing fire protection to the school  
20 buildings.

21 (B) If the chief executive officer of the fire department  
22 receives the request at least seven (7) calendar days prior to the end of the  
23 school year, he or she shall cause the buildings to be inspected for fire  
24 hazards.

25 (C) The inspection shall occur prior to the end of the  
26 school year.

27 (b) The chief executive officer of the fire department shall file a  
28 written report of the inspection with the ~~superintendent~~ local official for  
29 the school district where the public school building is located within ten  
30 (10) calendar days after the inspection.

31 (c) The inspection shall be conducted at no cost to the school.

32 (d)(1) The ~~superintendent~~ local official shall file a written report  
33 with the chief executive officer of the fire department within seven (7)  
34 calendar days after receiving the inspection report.

35 (2) The ~~superintendent's~~ local official's report shall indicate:

36 (A) What action was taken in response to the inspection



1 report and the date the action was completed; or

2 (B) What action will be taken in response to the  
3 inspection report and the anticipated date of completion of the action.

4 (3) If the inspection report of the fire department includes  
5 deficiencies that require a response or other action, the ~~superintendent~~  
6 local official shall also file the ~~superintendent's~~ report required by this  
7 subsection with the State Fire Marshal Enforcement Section of the Department  
8 of Arkansas State Police.

9 (e)(1)(A) If the ~~superintendent~~ local official does not receive a  
10 written inspection report for a public school building as required by this  
11 section from the chief executive officer of the fire department providing  
12 fire protection to the public school building, the ~~superintendent~~ local  
13 official shall notify:

14 (i) The State Fire Marshal Enforcement Section of  
15 the Department of Arkansas State Police; and

16 (ii) The quorum court of the county in which the  
17 fire department is located.

18 (B) The ~~superintendent~~ local official shall provide the  
19 notifications required by this subdivision (e)(1) not less than thirty (30)  
20 days from the date the inspection was required to take place.

21 (2) The quorum court shall withhold from a fire department that  
22 is the subject of notification under this subsection the fire department's  
23 apportionment of distributions from the Fire Protection Premium Tax Fund  
24 under § 14-284-403 until the fire department completes the inspection and  
25 delivers the report to the ~~superintendent~~ local official.

26 (3) If the required inspection is subsequently performed, the  
27 fire department shall file the report required by under subsection (b) of  
28 this section with the ~~superintendent~~ local official and the State Fire  
29 Marshal Enforcement Section of the Department of Arkansas State Police.

30 (4)(A) Immediately upon receipt of the required report from the  
31 fire department, the ~~superintendent will~~ the local official shall notify the  
32 quorum court that the required report has been received.

33 (B) Upon receipt of the ~~superintendent's~~ local official's  
34 notification to the quorum court, the quorum court shall disburse any Fire  
35 Protection Premium Tax Fund apportionment previously withheld due to the fire  
36 department's ineligibility under this section.

1 (f) The chief executive officer of the fire department may inspect any  
2 work performed by or on behalf of the school or school district to correct  
3 deficiencies noted in the inspection report.

4 (g) The chief executive officer of the fire department shall notify  
5 the State Fire Marshal Enforcement Section of the Department of Arkansas  
6 State Police and the Department of Education if:

7 (1) The chief executive officer of the fire department does not  
8 receive the ~~superintendent's~~ local official's report required by under  
9 subsection (d) of this section, within seven (7) days of the date the report  
10 was due; or

11 (2) The school district does not correct all deficiencies noted  
12 in the inspection report by the completion date indicated in the  
13 ~~superintendent's~~ local official's report.

14 (h)(1) Any person who intentionally violates this section is subject  
15 to a fine not to exceed one hundred dollars (\$100) per violation.

16 (2) The failure of a public school ~~superintendent~~ local official  
17 to respond as provided in subsection (d) of this section to correct the  
18 deficiencies noted in an inspection report is an indicator of facilities  
19 distress under § 6-21-811.

20  
21 SECTION 8. Arkansas Code § 6-21-806(b), concerning academic facility  
22 master plans, is amended to an additional subdivision to read as follows:

23 (11) An update in a format prescribed by the division of any new  
24 public school facilities, as defined in § 6-21-803, constructed since the  
25 last master plan submission, including individual room types and sizes.  
26

27 SECTION 9. Arkansas Code § 6-21-811(g)(11)(C) is amended to read as  
28 follows:

29 (C) Except as set forth in subdivision (g)(11)(D) or  
30 ~~subsection (m)~~ subsection (n) of this section, the state board shall  
31 consolidate, annex, or reconstitute any school district that fails to remove  
32 itself from the classification of a school district in facilities distress  
33 within five (5) consecutive school years of classification of facilities  
34 distress status.

35  
36 SECTION 10. Arkansas Code § 6-21-811(m)(1) is amended to read as

1 follows:

2 (1) During the second full school year following a ~~school~~  
3 ~~district's classification as being in facilities distress status~~ the  
4 assumption of authority, the commission shall determine the extent of the  
5 school district's progress toward correcting all issues that caused the  
6 classification of facilities distress;

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**APPROVED: 04/05/2017**

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