

**ADMINISTRATIVE RULES SUBCOMMITTEE
OF THE
ARKANSAS LEGISLATIVE COUNCIL**

Thursday, May 18, 2023

9:00 a.m.

Room A, MAC

Little Rock, Arkansas

- A. Call to Order**
- B. Adoption of Subcommittee Rules**
- C. Reports from the Executive Subcommittee Concerning Emergency Rules**
 - 1. Meeting of the Executive Subcommittee on December 15, 2022**
- D. Reports from ALC Subcommittees Concerning the Review of Rules**
- E. Reports on Administrative Directives Pursuant to Act 1258 of 2015**
 - 1. Department of Corrections (Lindsay Wallace)**
 - a. For the Quarter Ending December 31, 2022**
 - b. For the Quarter Ending March 31, 2023**
 - 2. Parole Board (Lindsay Wallace)**
 - a. For the Quarter Ending December 31, 2022**
 - b. For the Quarter Ending March 31, 2023**
- F. Rules Filed Pursuant to Ark. Code Ann. § 10-3-309**
 - 1. DEPARTMENT OF EDUCATION, ARKANSAS STATE LIBRARY
(Shastady Wagner, Jennifer Chilcoat)**
 - a. SUBJECT: ASL Rules Governing the State and Federal Documents
Depository Programs**

DESCRIPTION: The Department of Education’s Arkansas State Library (“ASL”) proposes amendments to its Rules Governing the State and Federal Documents Depository Programs. The previous version of the

rules referred to “state agencies” rather than “state entities.” The rules have been amended to replace “state agencies” with “state entities” to ensure consistency with Transformation. The rules were amended to clarify what an agency liaison is and what the responsibilities of an agency liaison are. The rules were amended to remove outdated language and processes and were updated accordingly.

PUBLIC COMMENT: A public hearing was held on December 12, 2022. The public comment period expired January 6, 2023. The agency indicated that it received no public comments.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that the proposed rules do not have a financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 13-2-210, ASL shall serve as the state’s regional depository library for federal documents and shall become the official depository for state and local documents. Additionally, Ark. Code Ann. §§ 13-2-212 (a) and (b), state that ASL shall create and maintain a State and Local Government Publications Clearinghouse and shall make such rules as may be necessary to carry out the purposes of the clearinghouse. Further rulemaking authority can be found in Ark. Code Ann. §§ 13-2-211(a) and (b), which provide that ASL may enter into depository agreements with any city, county, district, regional, town, school, college, or university library in this state, and shall establish standards for eligibility as a depository library under Ark. Code Ann. §§ 13-2-210 13-2-214.

b. SUBJECT: ASL Rules Governing Distribution of Scholarship Assistance

DESCRIPTION: The Department of Education’s Arkansas State Library (“ASL”) proposes amendments to its Rules Governing Distribution of Scholarship Assistance. The rules were amended to state that scholarship requirements are consistent, and no additional requirement can be imposed by individual libraries. The rules currently require the completion of twelve (12) semester hours before being eligible for the scholarship. The rules were amended to allow applicants that already serve as library directors to seek a waiver of the completed twelve (12) semester hours. This amendment serves to eliminate a financial barrier to seeking a master’s degree in library and information science. The rules were amended to limit the funding obligation to only the semester hours and courses necessary to receive a master’s degree in library and information science.

PUBLIC COMMENT: A public hearing was held on December 12, 2022. The public comment period expired January 6, 2023. The agency provided the following summary of the public comment it received and its response to that comment:

Commenter's Name: Rev. John Paul, Regional Librarian, Wynne, AR

Comment: I wholeheartedly approve dropping the 12-hour requirement at your/the board's discretion. However, I am going to recommend that you expand the scholarship program to include post-graduate certificates to further strengthen the workforce in the state. Priority should still be given to MLS candidates, but Arkansas would benefit from having librarians with some stronger credentials running amok. **Response:** Comment considered. The purpose of the scholarship is to assist public libraries in employing librarians with master's degrees in library and information sciences. No changes were made.

Jason Kearney, an attorney with the Bureau of Legislative Research, asked the following question:

The amended rules indicate that they were approved by the State Library Board on August 12, 2005. Did that Board also approve these amended rules? **RESPONSE:** The ASL Board approved these rule changes for public comment pending Governor's Office approval on November 17, 2022, at their regularly scheduled board meeting.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that the proposed rules do not have a financial impact.

LEGAL AUTHORIZATION: ASL shall conduct courses of library instruction, hold library institutes in various parts of the state, and encourage the recruitment and training of library personnel in any suitable manner. *See Ark. Code Ann. § 13-2-207(7).*

2. **DEPARTMENT OF EDUCATION, COMMISSION FOR ARKANSAS
PUBLIC SCHOOL ACADEMIC FACILITIES AND TRANSPORTATION**
(Lori Freno, Tim Cain)

a. **SUBJECT:** Rules Governing the Academic Facilities Partnership Program, Sections 5.00 and 7.00 Only

DESCRIPTION: The Department of Education's Commission for Arkansas Public School Academic Facilities and Transportation

(“Commission”) proposes amendment to its CAPSAFT Rules Governing the Academic Facilities Partnership Program, Sections 5.00 and 7.00 only. These rules were amended to allow the Commission to transfer funds remaining in one project category (i.e., Warm, Safe, and Dry System Replacement and Space Replacement versus Space/Growth projects) to the other category in Year 1 of a funding cycle if funds remain in either category after all projects in that category are funded. Currently, funds remaining in one category cannot be transferred to the other until Year 2 of a funding cycle. Amendments also give the Division flexibility to grant school district requests for early construction starts in the case of “unusual and limited circumstances,” assuming the district is willing to assume the risk if the project ultimately is not funded. A technical correction also was made in Section 5.05.3(iii).

PUBLIC COMMENT: A public hearing was held on November 14, 2022. The public comment period expired on November 22, 2022. The Commission indicated that it received no public comments.

Jason Kearney, an attorney with the Bureau of Legislative Research, asked the following questions:

(1) Sub-section 7.05.1 – What prompted the Commission to amend the language in this sub-section [concerning the circumstances under which a district can start early construction without Commission approval]?

RESPONSE: There was a concern that the language was too restrictive and that it could prevent an early construction start in cases where district had “unusual and limited circumstances” that would make an early construction start reasonable. As currently written, the rules could put districts in a difficult position when they have a limited timeframe to complete a project. We believe that more flexibility is prudent.

(2) Does the agency anticipate that the amended language in sub-section 7.05.1 will increase the number of applications that will be made pursuant to the provisions of Section 7.05? **RESPONSE:** It is hard to know for sure if this change would increase the number of applications for an early construction start, but it is reasonable to assume that it would. This would not result in any additional cost to the State, however, because a district that chooses an early start will bear the risk of the project ultimately not being funded. Again, the reason for the proposed change is to allow school districts increased flexibility.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The Commission states that the proposed rules have no financial impact.

LEGAL AUTHORIZATION: Pursuant to Arkansas Code Annotated § 6-20-2512, the Commission for Arkansas Public School Academic Facilities and Transportation shall promulgate rules necessary to administer the Arkansas Public School Academic Facilities Funding Act (“Act”), Ark. Code Ann. §§ 6-20-2501 through 6-20-2517, which shall promote the intent and purposes of the Act and assure the prudent and resourceful expenditure of state funds with regard to public school academic facilities throughout the state. *See also* Ark. Code Ann. § 6-20-2507 (establishing the Academic Facilities Partnership Program).

3. **DEPARTMENT OF EDUCATION, DIVISION OF ELEMENTARY AND SECONDARY EDUCATION (Lori Freno)**

a. **SUBJECT: Rules Governing Home Schools**

DESCRIPTION: The Arkansas Department of Education, Division of Elementary and Secondary Education (“DESE”), proposes amendments to its Rules Governing Home Schools. The proposed amendments to these rules incorporate provisions of Act 623 of 2021. First, it reduced from fourteen (14) days to five (5) days the notice period a parent or guardian must provide to a school district before withdrawing their child for home schooling. (The law still provides, however, that the notice period may be waived by the school district). Second, it provided that if a student is enrolled in a public school that temporarily issued items, resources, supplies, materials, or other property to the student, the student is not eligible for home school enrollment until the items are returned, paid for, or the semester has ended. These amendments incorporate those two provisions. Non-substantive technical and editorial changes also were made.

No substantive changes were made to the proposed rules as a result of public comment. Only one minor technical change was made.

PUBLIC COMMENT: A public hearing was held on January 9, 2023. The public comment period expired on January 19, 2023. DESE provided the following summary of the public comment it received and their response to that comment:

Lisa Crook, Education Alliance: After reviewing the proposed amendments to the DESE rules governing home schools, the Education Alliance believes the proposed rules track with legislation the Arkansas General Assembly passed in 2021. Our organization has no objection to the proposed rule changes. Division Response: Comment considered. No changes made.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: DESE states that the proposed rules have no financial impact.

LEGAL AUTHORIZATION: Revisions to the amended rules include those made in light of Act 623 of 2021, sponsored by Representative Mark Lowery, which repealed the requirement that a parent or legal guardian wait a certain amount of time before withdrawing his or her child from a local school district, and repealed the requirement within a notification to home school that a parent or legal guardian include his or her child's intent to seek a driver's license in the current school year. Under Arkansas Code Annotated § 6-15-502(b), the State Board of Education is empowered to make such reasonable rules required for the proper administration of Title 6, Chapter 15, Subchapter 5 of the Arkansas Code, concerning home schools, that are not inconsistent with the intent of the subchapter.

4. **NORTHEAST ARKANSAS REGIONAL SOLID WASTE MANAGEMENT DISTRICT** (Joseph Pence, Robert F. Thompson)

a. **SUBJECT:** Northeast Arkansas Regional Solid Waste Management District Rules and Regulations

DESCRIPTION: The Northeast Arkansas Regional Solid Waste Management District is amending its rules to do the following:

- Make technical and grammatical changes to existing rules
- Make slight changes to the requirements for obtaining a Solid Waste Hauler's License
- Adjust assessments for hauling waste to the District's disposal facility
- Provide a fee for waste hauled outside the District

The purposes of the amended rules are to clean up language within the existing rules, to provide fees that allow the District to be financially solvent, and to provide a system where solid waste haulers can transport waste outside the District while still providing for financial solvency of the District.

PUBLIC COMMENT: No public hearing was held on this proposed rule. The public comment period expired on November 17, 2022. The agency indicated that it received no public comments.

Lacey Johnson, an attorney with the Bureau of Legislative Research, asked the following questions and received the following responses:

1. Sections 1.01 and 7.06 of the proposed rules, as well as the document title, retain the term “regulation.” In light of Act 315 of 2019, which concerned the uniform use of the term “rule” throughout the promulgation process, is there a reason the District has retained the term “regulation” for the present? **RESPONSE:** There is no specific reason the proposed rule uses the term “regulation” immediately following the word “rule.” This language was used in the rules approved by the legislative committee in 2018 and it has not been changed in our proposed amended rules.

2. Section 7.04 states, “Failure to pay the fee as prescribed in this section shall . . . revoke or suspend a Hauler’s License” Is a license automatically suspended upon failure to pay the fee, or does this section allow the District to revoke/suspend a license? **RESPONSE:** A waste hauler’s license is suspended if the fee is not paid – the District will suspend the license automatically. Language at the end of section 7.01 may clarify this. Payment will not be required until December 15, 2023, which will allow all waste haulers time to pay the fee.

3. Section 9.01 lists types of waste to which the solid waste assessment fee is not applicable. This list appears to mirror the list in Ark. Code Ann. § 8-6-714(b). However, the list in the proposed rules does not include “household hazardous waste collected through a district’s household hazardous waste program.” See A.C.A. § 8-6-714(b)(7). Is there a reason this item was excluded from the proposed rule? **RESPONSE:** There is no particular reason that section 9.01 does not mirror exactly Ark. Code Ann. § 8-6-714(b). This rule was approved by the legislature in 2018, and we are not amending or modifying it with our proposed rules in this submission.

4. Section 9.02 sets forth the dollar amounts for the solid waste assessment fee. Ark. Code Ann. § 8-6-714(a)(1)(A) and (c)(1) authorize solid waste management districts to charge fees related to the movement and disposal of solid waste but cap those fees at \$2.00 per ton of solid waste. Are the fees in the proposed rules authorized under § 8-6-714 or is there some other authority for the § 9.02 fees?

RESPONSE: These fees are fees charged to anyone actually disposing of solid waste in the landfill operated by the District. Note the language in the earlier part of section 9.01: “This fee will be applicable to all solid waste that is collected and delivered to processing, transfer, or disposal facility.” I do not believe the \$2.00 per ton fee is intended to apply to solid waste disposed of in a landfill operated by a regional solid waste management district, especially since the fees by the District to ADEQ for

all solid waste disposed of in the District's landfill total \$1.50 per ton. I believe this interpretation is consistent with the legislature's approval in 2018 of the fees assessed by the District for solid waste disposed of in the District's landfill.

5. While the proposed rules amend the definition of "ADEQ" to "DEQ," the rules still refer to the Department of Environmental Quality rather than the Division of Environmental Quality. **RESPONSE:** There is no particular reason that the proposed rules use the word "Department" rather than "Division." This language was used in the rules approved by the legislative committee in 2018 and it has not been changed in our proposed amended rules.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency indicated that this rule has a financial impact.

Per the agency, this rule increases fees from \$11.75 per yard to \$13.00 per yard for loose waste and from \$12.00 per yard to \$13.50 per yard for compact waste. The expense of shingles will be \$20 per yard, and waste from outside the District will have an additional fee of 5%. The cost of the rule will be paid mostly by public and private waste haulers. The financial impact will depend on the amount of waste hauled by each public or private hauler.

LEGAL AUTHORIZATION: Regional solid waste management boards have the authority to issue licenses for solid waste haulers. Ark. Code Ann. § 8-6-721(a). "A regional solid waste management board may fix, charge, and collect rents, fees, and charges of no more than two dollars (\$2.00) per ton of solid waste related to the movement or disposal of solid waste within the regional solid waste management district, including without limitation fees and charges: (i) Related to the district's direct involvement with the district's disposal or treatment; or (ii) That support the district's management of the solid waste needs of the district." Ark. Code Ann. § 8-6-714(a)(1)(A). "The board may fix, charge, and collect fees or charges for solid waste generated: (A) Within or without the district delivered to a landfill or transfer station within the district, regardless of whether the disposal facilities are owned or operated by the district; or (B) Within the district but delivered to a location outside the district." Ark. Code Ann. § 8-6-714(a)(2).

The regional solid waste management boards may adopt rules "as are reasonably necessary" to administer their duties and ensure public participation in their findings and rulings. Ark. Code Ann. § 8-6-704(a)(6).

- G. Agency Updates on the Status of Outstanding Rulemaking Pursuant to Act 595 of 2021**
 - 1. Department of Agriculture (Wade Hodge)**
 - 2. Department of Education (Courtney Salas-Ford)**
 - 3. Department of Health, State Board of Health (Laura Shue)**
 - 4. Office of Arkansas Lottery (Brent Standridge)**
- H. Agency Updates on the Status of Outstanding Rulemaking Pursuant to Act 517 of 2019**
 - 1. Department of Agriculture, Arkansas Bureau of Standards (Wade Hodge)**
- I. Monthly Written Agency Updates Pursuant to Act 595 of 2021 Concerning Rulemaking Resulting from the 2022 Fiscal Session**
- J. Adjournment**