



Organizational Meeting

MEETING AGENDA

May 3, 2005

9:00 a.m.

Arkansas Department of Education Auditorium

- I. Call to Order/Roll Call – *Dr. Ken James, Chair***
- II. Presentation of Powers and Responsibilities of the Commission – *Division Staff***
 - A) Adoption of Rules to Govern Meetings – *Dr. Ken James, Chair***
 - B) Appointment of Secretary of the Commission-**
 - C) Review and Consideration of Proposed Table of Organization for the Division and Hiring Plan for Division Staff –*Division Staff***
- III. Presentation of School Facilities Programs, Timelines and Funding – *Division Staff***
- IV. Academic Facilities Immediate Repair Program (*Division Staff*)**
- V. Catastrophic Repair Program (*Division Staff*)**
- VI. Adjournment**

MINUTES OF
COMMISSION ON PUBLIC SCHOOL ACADEMIC
FACILITIES AND TRANSPORTATION

Date: May 3, 2005

Place: ADE Auditorium, Little Rock, AR

Attendees: Dr. Ken James, Director, Arkansas Department of Education
Richard Weiss, Director, Arkansas Department of Finance and Administration
Mac Dodson, President, Arkansas Development Finance Authority

Others in attendance: Dave Floyd, Randy Fischer, Aliza Jones, Brett Kingrey, Chad Davidson, Drew Coppock, Senator Shane Broadway, Mark Hudson, Tristan Greene, Charles Knox, Mike Stormes, Greg Rogers, Paul Grier, Dr. Kellar Noggle, and media representatives.

All those in attendance were presented a packet of information that included the following:

- 1) Meeting Agenda, p.1
- 2) Oversight of Arkansas' Academic Facilities (12 slides) PowerPoint Presentation, pp. 2-5
- 3) Proposed Rules for Commission (Members, Meetings and Notice of Meetings), pp. 6-7
- 4) Commission Organization Chart, Powers and Duties, Responsibilities and Expiration, pp 8-9
- 5) Oversight Committee (Organization Chart, Powers and Duties, Committee Assistance and Meetings), pp 10-11
- 6) Advisory Committee (Organization Chart, Powers and Duties), pp. 12-13
- 7) Projects and Processes (six slides) PowerPoint Presentation, pp. 14-15
- 8) Commission (Members and Secretary and Interim Director of Division of PSAFT), p 16
- 9) Proposed Table of Organization for the Division, p. 17
- 10) Request for Architectural and Engineering Consulting Services, p. 18
- 11) Immediate Repair Program (six slides) PowerPoint Presentation, pp. 19-20
- 12) Emergency Rules Governing the Academic Facilities Immediate Repair Program, pp. 21-27
- 13) Immediate Repair Program Guidelines (Draft), pp. 28-39
- 14) Catastrophic Program (five slides) PowerPoint Presentation, pp. 40-41
- 15) Emergency Rules Governing the Academic Facilities Catastrophic Program, pp. 42-45
- 16) Catastrophic Program, pp. 46-48
- 17) Summary of 2005 Acts Related to Academic Facilities, pp. 49-55

- I. Dr. James called the initial meeting of the Commission on Public School Academic Facilities and Transportation to order and introduced fellow Commission members, Mac Dodson and Richard Weiss. Dr. James stated the three of them would comprise the Commission and as a result of all that has transpired legislatively and several things that need to start up July 1, it is now incumbent upon the commission and the new facilities division to begin that process. To proceed through the agenda, Dave Floyd, Interim Director of the Division of Public School Academic Facilities and Transportation, was introduced.

Mr. Floyd introduced Randy Fischer, the designee of the program manager's office through the entire assessment process, and who, as a part of the contract, is continuing to help the newly formed division.

- II. Mr. Floyd presented a PowerPoint presentation and other information concerning the powers and duties, organization, responsibilities, and expiration of the Commission (pp.2-9) and stated that recommendations would be made for actions needed today to get this division staffed and operating so that needed programs could be put in place to start the process of distributing funds to take care of facility needs identified during the assessment completed last year.

The presentation outlined the organization and powers and duties of the Commission on Public School Academic Facilities and Transportation. Mr. Floyd stated a recommendation would be made regarding a secretary (who is to be an employee of the new division).

In satisfying the Supreme Court mandates following Lakeview versus the State of Arkansas, a legislative committee is to be created and known as the Academic Facilities Oversight Committee. The organization

chart, powers and duties, committee assistance, and meetings information regarding the oversight committee are presented on pages 10-11 of the attachment.

An Academic Facilities Advisory Committee will be formed in line with the Task Force to the Joint Committee on Educational Facilities that worked during the assessment process and following activities. The organization chart and powers and duties are presented on pages 12-13. Reading from the right, the last three are to be nominated from the organizations as shown. The organizations have been notified and names are being submitted of those who have an interest in participating on this committee.

Mr. Floyd asked if there were any questions?

- III. Mr. Floyd continued with a six-slide PowerPoint presentation (pp. 14-15) regarding the academic facilities programs adopted by the 85th General Assembly that are to be the responsibility of the Division of PSAFT: Immediate Needs Repair Program, Catastrophic Program, Transitional Program, Partnership Program, Distress Program, and Master Plan Program. The transitional program and the partnership program are funding mechanisms to get money to qualifying districts. The transitional program will provide safe financial participation based on a school district's academic facilities wealth index in the form of reimbursement to the school district for eligible new construction projects for which debt is incurred or funds are spent after January 1, 2005 and on or before June 30, 2006. This is basically for existing debt or the commitment school districts already have from the State to finance projects. The debt service supplement or commitment from the State will be continued throughout the life of a particular bond issue. This program will take care of projects that occur up until the time the partnership program becomes the method used for facility funding. A recommendation will not be brought before the commission for the academic facilities distress program until the division is sure that this program is the same type of program as those established for fiscal and academic distress. The master plan program requires each district to address needs and goals in a 10-year master plan.

The division also has the responsibility of developing the following manuals:

- 1) Academic Facilities Custodial, Maintenance, Repair and Renovation Manual – much of the work has been done by a Task Force committee and with some further development this manual will be brought to the commission for approval. The purpose of this manual is to keep the condition of the buildings from further deterioration and to have procedures in place to properly care for our current facilities, as well as renovated facilities and new construction.
- 2) Public School Academic Facilities Manual – will address such issues as new standards for instructional spaces, square footage per student, systems to be brought to code, etc. Since school districts cannot complete master plans without adopted standards, the division plans to come back to the commission after receiving input from public hearings later in the summer.
- 3) Public School Academic Equipment Manual - much of the work has been done by a Task Force committee (made up of public school teachers, counselors, media specialists, administrators, etc.) and was presented with the assessment report. With some further development this manual will also be brought to the commission for approval.

Dr. James asked if there were any questions. There were none and Mr. Floyd referred back to the Proposed Rules for Commission Meetings (pp. 6-7) that define the three commission members, procedures for meetings (items 1-7), preparation of minutes (item 8), and notice of meetings to the public (item 9).

Mr. Floyd stated that legal counsel has determined that it is not permissible for a voting member to assign a designee, but that two members of the commission shall constitute a quorum for the purpose of conducting business.

Item 1 under meetings states that the commission shall meet at least quarterly upon the call of the chair, but Mr. Floyd said that meetings would probably need to be held on a more regular basis during the first few months of this process and that there is a need for another meeting around the middle of June. Once an agreeable date is determined, the procedures for making the announcement to the public will be followed.

Although meetings of the Commission may be held anywhere in the State, Mr. Floyd recommended that as many meetings as possible be held in Little Rock for the convenience of the commission and all interested parties who have representatives located here.

“Robert’s Rules of Order” will be followed and the use of a “Testimony Request Slip” was discussed. This is by no means meant to prevent anyone from participating, but to serve as an orderly way to conduct the business of the commission, as well as the best way to maximize time in order to get the new division operating as quickly as possible.

Dr. James acknowledged questions regarding the testimony request slip.

1) How far in advance is a testimony request slip to be submitted and does this in any way stifle conversation in a commission meeting? Mr. Floyd stated that when the agenda is presented there would be a period of three working days in which the slip could be presented to the chair.

2) Is this procedure common in Board of Education meetings? Mr. Floyd responded yes. Dr. James responded that in Board of Education meetings a time is set-aside for people to address the Board. A request is made in advance of the meeting and there is a time limit of three minutes. This has been the past practice of the State Board meetings.

3) Can a written opinion be submitted? Dr. James responded yes,

4) Or is this just an oral comment? Dr. James stated there is a caveat that gives the State Board chair the prerogative to recognize and allow a person to speak according to the topic being discussed. This might also need to happen here if there is a topic in need of discussion and, for whatever reason, a person has failed to submit the testimony request slip. In most organizations the purpose for this is to have advance notice and an understanding of the topic to be discussed, the kind of material to be presented, etc. This is not to be interpreted as any kind of a stifling mechanism and if at any point in time it is determined that this is occurring, the process should be circumvented to correct it. The questioner responded, “I am fine with that”. Mr. Floyd agreed and stated the intent was to conduct the meetings in an orderly, businesslike manner.

Any person may ascertain the time and place of all regular scheduled meetings by contacting the Division of PSAFT. Notice of all meetings will be published on the web site developed by the program manager’s office, <http://www.arkansasfacilities.com/>. Notice of time and place of meetings will be given to the public as follows: 1) regular meetings – one week; 2) meetings of an emergency nature - 24 hours; and 3) special meetings of an emergency nature - immediately upon the call of the meeting. Regular meetings will be posted immediately.

Dr. James asked if there were any questions from commission members relative to the proposed rules for commission meetings presented by Mr. Floyd, other than previously discussed.

Mr. Weiss expressed some concern over no designee and said that Mr. Stormes, Department of Finance and Administration, would sit in from time to time and would always be available for input. Dr. James restated that ADE legal counsel has said that the law does not permit a designee.

Mr. Weiss made a motion to adopt the Rules for Commission Meetings as presented by Mr. Floyd. Mr. Dodson seconded the motion. The motion was adopted unanimously.

Mr. Floyd recommended that Mrs. Tena Katchur, an employee of School Plant Services and now with the Division of PSAFT, be appointed secretary to the commission. Mrs. Katchur also served as secretary for all Task Force Executive Committee meetings, is well aware of the duties and responsibilities and is a competent and very trusted employee.

Mr. Weiss made a motion to appoint Mrs. Tena Katchur as commission secretary. Dr. James accepted the motion and Mr. Dodson seconded the motion. The motion was adopted unanimously.

Draft Table of Organization for the Division (p. 17). Mr. Floyd stated that this proposed flow chart is very preliminary and more detail will be given about the positions for which the approval of the commission is requested. Advertisements have been prepared to provide information about the positions and the responsibilities for each.

The following positions are listed: director, senior project administrator, fiscal manager, four area planning managers and four project administrators.

Senior Project Administrator – funding for this position and the four under it are in the appropriation bill. The Senior Project Administrator will serve as project director for construction projects (including administering architectural and construction management activities for public school design and construction), will provide engineering/architectural assistance to school districts in the development of master plans, and will work with the outside consultants.

Dr. James asked Mr. Floyd if the information under discussion was in the handout. Mr. Floyd responded no and that from now on the pages would be numbered as Mr. Weiss had requested.

Area Project Administrators (not requested at this time) – will coordinate projects as directed by the senior project administrator. Responsibilities will not overlap as activity over the next 18 months in approving eligible projects will be tremendous and the initial process planning must be emphasized. Then the projects sent to the state should flow more evenly. Two things are important: 1) proper planning to enable the commission to recognize that the positions are truly needed and project requirements are followed, and 2) assurance that funds are expended efficiently and all fiscal resources available to the division are used.

Area Planning Managers – four positions - worked with the districts through the assessment process and conferences for assessment review. The districts will need a direct contact person.

Fiscal Manager – the release of funds will be done through John Kunkel's office at the Department of Education and this person will be responsible for making this process flow as smoothly as possible.

Outsourcing Services of Architects and Engineers (p. 18) - at the time the legislature adopted the programs, it was obvious that the division would need more staff but the number needed could not be determined. Therefore, money was set aside to outsource architects and engineers. Then at the end of this biennium a determination of permanent staff needed would be made and appropriations requested. The Immediate Repair Program will require architects and engineers to make onsite visits to determine existing conditions and follow-up visits to make sure projects are completed successfully.

Mr. Floyd requested the following: 1) Approval to begin the hiring process for the six permanent positions (underlined above) that were in the appropriation. These are needed as the master plans from the districts are due February 1, 2006 basically within the same timeframe as the Immediate Repair Program applications and the permanent staff will not be able to handle all of this flow at one time, and 2) Approval to advertise for the outsourcing of architects and engineers.

Mr. Weiss stated he did not have a problem with a motion to approve all the permanent positions (underlined above) but requested additional discussion regarding outsourcing. Dr. James suggested this be done under two separate motions and if the commission was okay with the six positions presented, a motion be taken to go ahead and authorize the advertising of the six positions.

Mr. Weiss made the motion to approve the advertising for the six positions as presented by Mr. Floyd. Mr. Dodson seconded the motion. The motion was adopted unanimously.

A question was asked regarding current staff. At Dr. James' direction Mr. Floyd responded that the current staff is comprised of him, Tena Katchur, and Joy Owens, Secretary II, and Miss Owens had submitted her notice of resignation last week. Dr. James stated that the facilities division has really had two people and there is no doubt this new division is going to have needs.

Mr. Weiss asked about the number of architects and engineers needed, the cost, and if there would be an approval process. Mr. Floyd said there would be an approval process and estimated the need for the services of 10 to 12 architects and engineers (a rough total, no less but possibly a few more). Approval is requested to advertise and then present recommendations for contracting the services of architects and engineers to the commission at the June meeting. Mr. Weiss asked how many professionals were utilized in the assessment. Mr. Fischer stated a rough estimate of 100 in the assessment in a very short timeframe, as this is.

Mr. Dodson asked if there would be list of architects and engineers to use as needed. Mr. Floyd stated that the approved architects and engineers would sign contracts and then be used as needed with a salary cap for services. Mr. Floyd stated, as suggested by Dr. James, that the amount of money set aside would also be brought before the commission in June.

Mr. Weiss made a motion to advertise for the outsourcing of the architects and engineers with the full understanding that this would be brought back before the commission in June for final approval, along with some budget numbers. Mr. Dodson seconded the motion. The motion passed unanimously.

- IV. Mr. Floyd introduced the Academic Facilities Immediate Repair Program - the first program in which school districts will be eligible to request funding from the State. At the end of this presentation the commission will be requested to adopt emergency rules and regulations that will be good for 120 days. After 120 days the division will come before the commission and legislative rules committee to follow up with the process.

Mr. Floyd presented a six-slide PowerPoint presentation (pp. 19-20) which explained that school districts may apply for State financial participation in an immediate repair project if:

- 1) The school district's application is received by the division no later than July 1, 2005;
- 2) The condition of the needed repair was in existence on January 1, 2005;
- 3) The facility condition index of the academic facilities involved in the repair project is less than a threshold amount recommended by the division and approved by the commission;
- 4) The repair project involves one or more of the items listed on pages 19, 22 and 30.

Basically, the immediate repair program is needed to keep a facility safe, warm and healthy. Mr. Floyd emphasized to the commission that at the time of the assessment school districts were notified of conditions that would present an immediate threat to the safety of building occupants. Since that time school districts have taken the necessary steps to correct those conditions.

District processes and requirements are defined on pages 19-20, 22-25 and 30-34. The division's responsibilities are outlined on pages 20, 23-24 and 31-34.

Mr. Floyd presented the Emergency Rules Governing the Academic Facilities Immediate Repair Program (pp 21-27). These are the actual rules and regulations legal counsel has prepared and with commission approval will be made available to school districts to begin the process. Items 1, 2 and 3 state the legal authority the commission has for adopting these rules and regulations, the purpose, and the terms that are defined in Act 2206.

Item 4 defines the eligibility criteria (p. 22). The commission will be asked to adopt the facilities condition index (FCI) eligibility criteria as defined in 4.01.3 which sets the following FCI for a proposed repair - must be less than a threshold amount of 65%. The FCI is determined by dividing the estimated cost for repair by the total cost of new construction (estimated). If the FCI is 65% or higher, the immediate repair program will not be available. It is an accepted standard in the construction industry that if that type of figure is exceeded, it is more efficient to replace a building than to make major repairs to it.

Items 4-6 (pp. 22-23) - the services of a district's architect or engineer may be needed in the application process to determine the proposed cost for a repair, which further emphasizes the need for the actual cost,

and this will be confirmed by architects and engineers sent out by the division. Once the process is completed the division will send architects and engineers back to verify that the approved plans were carried out. The division would like to emphasize to the school districts that self-evaluation of a facility will not be permitted not because the judgment of the school districts, etc. is not trusted but because of direction received from the attorney general's office and what has been done in other states. During the past session, the legislature made it very clear that the intent was to provide needed monies but there would be accountability for the proper expenditure of those monies.

Items 7 and 8 (pp 24-25) - the division anticipates that applications will be processed and projects awarded by the latter part of August and that several projects will not be completed or even begun until the summer of next year as there will be a lot of roof replacements, HVAC system upgrades, and major repairs that cannot occur when school is in session. Funding will be based on the actual bid a district receives through the bidding process and all districts will follow the normal bidding process that is part of Arkansas statute. Some eligible items listed will be funded, put out for bid and completed during the school year, but because contractors will not want to bid too far in advance some projects will not actually be completed until next year. The division wants the commissioners and legislature to know that several projects, and there is no way to know how many at this time, will not be carried out until next summer. Districts are obligated to spend the state financial participation money only for the immediate repair projects for which they have received written notification of award of state funds and nothing will be done retroactively.

Dr. James stated that that the information presented by Mr. Floyd has been studied and this is not the first time the commission has had an opportunity to review the material. Dr. James asked if the commissioners had any questions pertaining to this first set of rules. **Mr. Weiss made a motion to approve the first set of rules, Emergency Rules Governing the Academic Facilities Immediate Repair Program, as presented by Mr. Floyd. Mr. Dodson seconded the motion. The motion was approved unanimously.** Dr. James stated that the rules had been approved but wanted to restate that in 120 days the process would be brought back before the rules committee and commission through the normal process. The urgency is the short time line we have to get this process started.

- V. Mr. Floyd presented a five-slide PowerPoint presentation on the Catastrophic Repair Program (pp 40-41). This program is intended to supplement insurance or any other funds a district has from public or private emergency assistance and a district is only eligible after such funds are exhausted (pp. 40, 45, 46). There may be a time a district may need such assistance but the most recent school facility loss in the state was Hope High School, whose insurance completely covered the replacement of the facility.

Mr. Weiss asked if somewhere in law school districts were required to carry insurance on buildings so that the state will not use resources in lieu of insurance. Mr. Floyd responded that according to legal counsel there is no law that requires a district to insure buildings and Senator Broadway responded that that would be introduced in the next session. Mr. Floyd stated that in this program and every other program drafted during this past session proof of insurance (including the amount of coverage on buildings and contents) must be provided when a district makes application. Mr. Weiss asked if there was a reason why this could not be adopted as a mandatory regulation in this program before any monies are expended. Mr. Floyd responded there is no law that mandates it. Mr. Weiss said that was understood but rules and regulations are being promulgated. Dr. James indicated that money should not be put into something that is not insured. Mr. Floyd stated that it would not be on the catastrophic, but in the other programs for funding proof of insurance must be provided. Mr. Weiss said or districts don't get money and Mr. Floyd responded or districts don't qualify for whatever program. Mr. Weiss said which in effect mandates coverage. Mr. Floyd said that is correct. Mr. Weiss wanted to make sure that was in there somewhere. Comment from audience was except for catastrophic. Mr. Weiss said OK. Mr. Floyd said the first step in applying for the catastrophic program would be to provide proof of coverage and then proof that insurance coverage had been exhausted.

Dr. James suggested that follow up be given for something that will serve as a protection for what has been discussed. Mr. Dodson suggested that the program be adopted and then it could be amended.

Mr. Floyd recommended that the Catastrophic Repair Program be approved and in June the division return with legal counsel's opinion as to how the program can be amended. There is real concern that as it is now if a district submits that insurance funds are exhausted and the district doesn't have insurance the district's funds would be exhausted.

Dr. James asked if the commission members had further questions on the catastrophic rules as presented. **Mr. Dodson made a motion to adopt the rules as submitted with the caveat that some additional information would be brought back for submission in June. Mr. Weiss seconded the motion. The motion was approved unanimously and the rules were adopted as submitted with the one caveat.**

Mr. Floyd stated that the next item for commission approval would be the Facility Standards Manual because it would contain the standards districts would need.

Mr. Floyd presented the Summary of 2005 Acts Related to Academic Facilities (pp. 49-55) and stated the division was working on development of rules and regulations through the normal process to be brought before the commission as soon as possible and no emergency rules and regulations would be needed. This concluded what the division had to bring before the commission.

Dr. James told Mr. Floyd, speaking on behalf of the commission members, it was known that the facilities division has had to make decisions very quickly at the end of the last legislative session and that Mr. Floyd and the facilities staff are to be commended for the excellent presentation and material that the commission has before it today. Commission members will be contacted regarding the June date for the next commission meeting.

Dr. James asked if there was there was anything else to be discussed. Mr. Floyd thanked Mr. Fischer for his assistance in getting all the material together through the program manager's office.

Dr. James stated that he was remiss at the beginning in not introducing Senator Shane Broadway who has been the shepherd of this project through a lot of different venues and gave Senator Broadway the opportunity to address those in attendance.

Senator Broadway said all who had spent the last two years working on this evolving process have probably felt this day would never come. At the beginning, no one had an idea as how to begin a study to look at all the buildings across the state. Now with an \$8.5 million study and the legislative session completed, implementation of these programs will ensure that Arkansas students have adequate facilities. In all likelihood this will become an economic engine for our state much in the same way as the ongoing highway improvements have had in the last few years. A lot of construction dollars in our state over the next several years will boost our economy while protecting our children and responding to a mandate.

Senator Broadway thanked the commissioners for their willingness to serve. There was a need for a commission and members were selected not because of titles and agencies, but because of respect for individual talents and the understanding each has for education and finance. Senator Broadway thanked Mr. Floyd, the program manager's staff and all those who have been with this process from the beginning. A lot of hours have been put in which the State will never be able to repay. This is a great beginning with a lot of work to be done in a very short amount of time and you have my commitment, as well as I believe my colleagues, to ensure that this process gets off on the right foot, that it continues to be there for school districts, that it is done right, and that taxpayers are ensured that dollars are spent wisely for the future.

Dr. James asked if there was anything else.

Mr. Weiss made a motion to adjourn. Mr. Dodson seconded the motion. The motion was approved unanimously. And the first meeting of the commission was adjourned.