

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

A Bill

HOUSE BILL 1448

5 By: Representative J. Hutchinson
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For An Act To Be Entitled

9 AN ACT TO AMEND ARKANSAS CODE § 6-20-402 TO APPLY
10 TO A SCHOOL FACILITY; TO PERMIT SUBLEASING OF A
11 SCHOOL BUILDING OR FACILITY; TO PROVIDE A SALES
12 AND USE TAX EXEMPTION FOR MATERIALS PURCHASED TO
13 CONSTRUCT LEASED SCHOOL FACILITIES; AND FOR OTHER
14 PURPOSES.

Subtitle

15
16 AN ACT TO AMEND ARKANSAS CODE § 6-20-
17 402, TO PERMIT SUBLEASING OF A SCHOOL
18 BUILDING OR FACILITY, AND TO PROVIDE A
19 SALES AND USE TAX EXEMPTION FOR
20 MATERIALS PURCHASED TO CONSTRUCT LEASED
21 SCHOOL FACILITIES.
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25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

26
27 Section 1. Arkansas Code § 6-20-402 is amended to read as follows:

28 6-20-402. Limitation on current indebtedness - Postdated warrants and
29 installment contracts - Liability.

30 (a)(1)(A) The amount of obligations incurred by a school district for
31 any school fiscal year shall not be in excess of the revenue receipts of the
32 district for that year except as provided in this section and in §§ 6-20-801
33 et seq. and 6-20-1201 et seq.

34 (B) School districts may enter into public-private
35 partnerships whereby the school district enters into lease-purchase
36 agreements for ~~school buildings built~~ the acquisition, construction, or



1 renovation of a school building or related facility, including roofing
2 components, mechanical infrastructure, lighting fixtures, and heating,
3 ventilating, and air conditioning equipment built or acquired by the private
4 entities with facilities bonds exempt from federal taxes under 26 U.S.C. §
5 142(a)(13), as in existence on January 1, 2003, or otherwise exempt under 26
6 U.S.C. § 103, as it existed on January 1, 2005.

7 (2) School districts may issue postdated warrants or enter into
8 installment contracts or short-term lease-purchase agreements for the
9 following purposes:

- 10 (A) Purchase of school buses;
- 11 (B) Payment of premiums of insurance policies on school
12 buildings, facilities, and equipment in instances in which the insurance
13 coverage extends three (3) years or longer;
- 14 (C) Purchase of equipment;
- 15 (D) Installation or purchase, or both, of energy
16 conservation measures in school facilities;
- 17 (E) Repair and renovation of school facilities;
- 18 (F) Purchase of school sites;
- 19 (G) Payment on loans secured for settlement resulting from
20 litigation against a school district;
- 21 (H) Payment of the district's pro rata part of employing
22 professional appraisers as authorized by laws providing for the appraisal or
23 reappraisal and assessment of property for ad valorem tax purposes; and
- 24 (I) The professional development and training of teachers
25 or other programs authorized under the federally recognized Qualified Zone
26 Academy Bond Program codified at 26 U.S.C. § 1397E.

27 (b)(1)(A) Except as provided in subdivisions (b)(1)(B) and (C) of this
28 section, a postdated warrant, short-term lease-purchase agreement, or an
29 installment contract must be paid within ~~ten (10)~~ fifteen (15) years of the
30 date of issuance of the postdated warrant or the execution of the written
31 lease-purchase agreement or installment contract, as the case may be.

32 (B) A school district's acquisition of energy conservation
33 measures under § 6-20-405 may be financed by the school district over a
34 fifteen-year period after the execution by the school district of the
35 postdated warrant, lease-purchase agreement, or installment contract.

36 (C) A long-term lease agreement allowed under subdivision

1 (a)(1)(B) of this section:

2 (i) ~~must~~ Shall be paid within thirty (30) years of
3 the date of the execution of the written lease-purchase agreement; and

4 (ii)(a) May contain a provision allowing the school
5 district an option to terminate the agreement at the end of any fiscal year
6 for the school district.

7 (b) Any long-term lease containing an option
8 to terminate at the end of a fiscal year shall not be included in the
9 calculation of the debt ratio applicable to that school district.

10 (D)(i) A school district may sublease a portion of a
11 school building or facility whenever that building or facility is not being
12 used for educational purposes.

13 (ii) Rent received from a sublease:

14 (a) Shall be deposited in the school
15 district's general fund; and

16 (b) May be used for any operational or capital
17 purpose.

18 ~~(D)~~(E) Postdated warrants, lease-purchase agreements, and
19 installment contracts must be registered on forms provided or approved by the
20 State Board of Education with the treasurer of the district and the board.

21 (2)(A) Lease-purchase agreements and installment contracts must
22 have attached thereto a schedule of the rent or installments to be paid
23 showing:

- 24 (i) The payee and any assignee;
- 25 (ii) The school district;
- 26 (iii) The purpose of the purchase or payment;
- 27 (iv) The due date of each installment; and
- 28 (v) The amount of principal and interest of each
29 installment and the fiscal year in which the installment is to be paid.

30 (B) A copy of each contract and of the schedule of
31 payments shall be filed with the treasurer of the district and with the
32 board, and when so filed, each installment may be paid as it becomes due.

33 (3)(A) Except as provided in subdivision (b)(3)(B) of this
34 section, the unpaid principal amount of postdated warrants issued and
35 installment contracts and lease-purchase agreements entered into shall be a
36 part of the total debt of the district as limited by §§ 6-20-803 and 6-20-

1 1202, with the district fiscal officer and his or her surety liable for
 2 exceeding the limitations.

3 (B) The unpaid principal amount of postdated warrants,
 4 lease-purchase agreements, or installment contracts entered into in
 5 connection with a guaranteed energy savings contract under § 6-20-405 shall
 6 not be a part of the total debt of the district.

7 (4) A copy of any guaranteed energy savings contract that is
 8 executed in connection with the acquisition, installation, or construction of
 9 energy conservation measures under this section shall be filed with the
 10 Department of Education.

11 (5) Payments by a school district pursuant to postdated
 12 warrants, installment contracts, and lease-purchase agreements shall be
 13 charged against the budget of the school fiscal year in which they become due
 14 and shall be paid out of the revenue receipts for that fiscal year.

15 (6) All warrants issued or installment contracts and lease-
 16 purchase agreements entered into in excess of the revenue of a school
 17 district for a school fiscal year are null and void except as herein
 18 provided.

19 (7) It shall be the duty of the school fiscal officer to
 20 indicate on each school district warrant or on the schedule of payments
 21 attached to a written installment contract or lease-purchase agreement the
 22 school year's revenues against which the obligation was incurred and is to be
 23 paid, and it shall be unlawful for the school fiscal officer to issue a
 24 school district warrant or to enter into an installment contract or lease-
 25 purchase agreement the installments for which are to be charged against the
 26 revenues of a school year if the obligation thereof was incurred in a
 27 different school year except as otherwise authorized in this section.

28 (8) The school fiscal officer may comply with the provisions of
 29 this section by indicating on each warrant or schedule of payments attached
 30 to any installment contract or lease-purchase agreement the school year's
 31 revenues against which each payment is to be charged, or he or she may use a
 32 warrant of a distinct color for a particular year and shall advise the county
 33 treasurer, if the county treasurer serves as the school district treasurer,
 34 in writing of the color of warrant being used for credit against the revenues
 35 of a particular year.

36 (9) The county treasurer, or the district treasurer if the

1 school district has its own treasurer, and his or her surety shall be jointly
 2 liable with the school fiscal officer and his or her surety for the payment
 3 of any school warrant or payment on a contract or agreement which is charged
 4 against the revenues of a school year if the amount thereof is in excess of
 5 the revenue receipts of the district for the school year against which the
 6 school fiscal officer has indicated the payment is to be charged or if he or
 7 she approved the payment with knowledge that the payment is being charged by
 8 the school fiscal officer against the revenues of another school year in
 9 violation of this section.

10 (10) It is the purpose and intent of this section to place
 11 primary responsibility on the school fiscal officer and his or her surety for
 12 compliance with the provisions of this section and to make the county
 13 treasurer, or district treasurer if the school district has its own
 14 treasurer, and his or her surety liable for any payment on a warrant,
 15 contract, or agreement drawn in violation of this section when the amount of
 16 the payment exceeds the revenue receipts of the district for the school year
 17 against which it is charged as indicated on the warrant, contract, or
 18 agreement or where the county treasurer approves a payment with the knowledge
 19 that it is in payment of an obligation of a different school year as
 20 prohibited in this section.

21 (c)(1) A school district may refinance one (1) or more outstanding
 22 postdated warrants, lease-purchase agreements, or installment contracts and
 23 pay the usual, customary, and reasonable costs of the refinancing by issuing
 24 one (1) postdated warrant, lease-purchase agreement, or installment contract,
 25 if the refinancing:

26 (A)(i) Results in a net savings to the school district.

27 (ii) A net savings results if the outstanding
 28 principal balance plus the remaining interest payments and any early-call
 29 penalties is greater than the new principal balance plus the total interest
 30 to be paid and the cost of the refinancing of the outstanding postdated
 31 warrant, lease-purchase agreement, or installment contract;

32 (B) Does not extend the term of the postdated warrant,
 33 lease-purchase agreement, or installment contract more than five (5) years
 34 beyond the term of the existing individual outstanding postdated warrants,
 35 lease-purchase agreements, or installment contracts, and the original term
 36 together with any extension does not exceed ten (10) years;

1 (C) Does not increase the outstanding debt owed by the
2 school district under the existing outstanding postdated warrants, lease-
3 purchase agreements, or installment contracts except to the extent necessary
4 to cover usual, customary, and reasonable costs of issuance of the new
5 refunding postdated warrant, lease-purchase agreement, or installment
6 contract and except to the extent necessary for new financing as authorized
7 by subsection (a) of this section;

8 (D)(i) Except as allowed under subdivision (D)(ii) of this
9 section, the outstanding postdated warrants, lease-purchase agreements, or
10 installment contracts have not been previously refinanced;

11 (ii) Any outstanding postdated warrants, lease-
12 purchase agreements, or installment contracts may be refinanced more than one
13 (1) time if:

14 (a) The school district realizes a savings
15 from the refinancing;

16 (b) The term of the debt obligation is not
17 extended; and

18 (c) The refinancing does not increase the
19 total debt obligation of the school district; and

20 (E) The school district obtains the prior written approval
21 of the Department of Education to refinance one (1) or more outstanding
22 postdated warrants, lease-purchase agreements, or installment contracts.

23 (2) The State Board of Education may promulgate rules and
24 regulations as necessary to implement subdivision (c)(1) of this section.

25 (d)(1) A school district may incur current indebtedness and issue its
26 notes or other evidence thereof as provided in this subsection.

27 (2) All current indebtedness incurred in a fiscal year shall
28 mature on or before December 31 of the calendar year in which the fiscal year
29 ends.

30 (3) Current indebtedness is not included in the term "bonded
31 indebtedness" and shall not be considered a part of the total debt of a
32 district as limited by §§ 6-20-803 and 6-20-1202.

33 (4) Current indebtedness shall be payable from and may be
34 secured by a pledge of all or any part of the revenue receipts of the issuing
35 district for the fiscal year in which the debt is incurred.

36 (5) The amount of obligations incurred by a school district for

1 any school fiscal year, including current indebtedness, shall not be in
 2 excess of the revenue receipts of the district for that year except as
 3 expressly authorized in subsection (a) of this section.

4 (e)(1) As additional security for the payment of any postdated
 5 warrant, installment contract, lease-purchase agreement, or current
 6 indebtedness of a school district, the district may authorize the state board
 7 to cure any delinquencies in payment by withholding state aid due the
 8 district. Authorization shall be given at the time the postdated warrant,
 9 installment contract, or lease-purchase agreement is issued or the current
 10 indebtedness is incurred and shall be given in the manner and in the form
 11 that the state board shall prescribe.

12 (2)(A) If the debtor district has authorized withholding of
 13 state aid, then whenever the payee or the designated paying agent for receipt
 14 of the district's payments does not receive a payment when due pursuant to
 15 the authorizing documents, the payee or paying agent will be entitled to
 16 payment from the withheld state aid in an amount sufficient to cure the
 17 payment deficiency upon notifying the Director of the Department of Education
 18 and the superintendent of the district by telephone, facsimile, or other
 19 similar communication followed by written verification.

20 (B) Unless the director determines that payment has been
 21 made by the district and there is no longer a payment deficiency, the
 22 director shall withhold from the next distribution of state aid and remit to
 23 the payee or paying agent an amount sufficient to cure the deficiency.

24 (3) In the event that the amount next due to be distributed to
 25 the delinquent district is not sufficient to cure the delinquency, the
 26 director shall continue to withhold state aid as due and remit it to the
 27 payee or paying agent until the payment deficiency has been cured.

28 (4) If the director is notified that a district is delinquent on
 29 two (2) or more obligations for which a district has authorized withholding
 30 of state aid to cure a delinquency, the director shall make payment to payees
 31 or paying agents in the order of receipt of notices of the delinquencies.

32 (f) If the board withholds state aid from a school district pursuant
 33 to subsection (d) of this section, the school district shall be classified as
 34 a Phase III school district in distress as described in § 6-20-1609.

35 (g) Any duties required of any officer of the state pursuant to
 36 subsection (d) of this section shall be only ministerial in nature and shall

1 in no way transfer any liability of the debtor to the state or any agency or
2 any officer thereof.

3 (h) The rate of interest on postdated warrants, installment contracts,
4 lease-purchase agreements, and current indebtedness shall not exceed the
5 maximum interest rate for school bonds as determined under § 6-20-1206.

6
7 SECTION 2. Arkansas Code Title 26, Chapter 52, Subchapter 4 is amended
8 to add an additional section to read as follows:

9 26-52-438. Materials used in construction under a lease-purchase
10 agreement with a school district.

11 The gross receipts or gross proceeds derived from the sale of materials
12 incorporated in the construction or renovation of a school building or
13 related facility under a lease-purchase agreement authorized under § 6-20-402
14 are exempt from taxes levied under the Arkansas Gross Receipts Act of 1941, §
15 26-52-101 et seq. and the Arkansas Compensating Tax Act of 1949, § 26-53-101
16 et seq.

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