

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 *As Engrossed: H2/10/05 H2/18/05 H3/16/05 H4/1/05 S4/7/05*

2 85th General Assembly

A Bill

3 Regular Session, 2005

HOUSE BILL 1448

4

5 By: Representatives J. Hutchinson, Dunn, *M. Martin*

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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.

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Subtitle

17 AN ACT TO AMEND ARKANSAS CODE § 6-20-
18 402, TO PERMIT SUBLEASING OF A SCHOOL
19 BUILDING OR FACILITY, AND TO PROVIDE A
20 SALES AND USE TAX EXEMPTION FOR
21 MATERIALS PURCHASED TO CONSTRUCT LEASED
22 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 or construction of a



1 school building or related facilities, or acquired by the private entities
2 with facilities bonds exempt from federal taxes under 26 U.S.C. § 142(a)(13),
3 as in existence on January 1, 2003, or otherwise exempt under 26 U.S.C. §
4 103, as it existed on January 1, 2005.

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

8 (A) Purchase of school buses;

9 (B) Payment of premiums of insurance policies on school
10 buildings, facilities, and equipment in instances in which the insurance
11 coverage extends three (3) years or longer;

12 (C) Purchase of equipment;

13 (D) Installation or purchase, or both, of energy
14 conservation measures in school facilities;

15 (E) ~~Repair~~ Construction, repair and renovation of school
16 facilities;

17 (F) Purchase of school sites;

18 (G) Payment on loans secured for settlement resulting from
19 litigation against a school district;

20 (H) Payment of the district's pro rata part of employing
21 professional appraisers as authorized by laws providing for the appraisal or
22 reappraisal and assessment of property for ad valorem tax purposes; and

23 (I) The professional development and training of teachers
24 or other programs authorized under the federally recognized Qualified Zone
25 Academy Bond Program codified at 26 U.S.C. § 1397E.

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

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

35 (C) A long-term lease agreement allowed under subdivision
36 (a)(1)(B) of this section;

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

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

6 (b) Any long-term lease containing an option
7 to terminate at the end of a fiscal year shall not be included in the
8 calculation of the debt ratio applicable to that school district. Any long-
9 term lease allowed under subdivision (a)(1)(B) of this section that does not
10 contain an option to terminate at the end of the fiscal year shall be
11 included in the calculation of the debt ratio applicable to that school
12 district.

13 (iii) All school buildings or related facilities
14 shall comply with the requirements of the Arkansas School Facility Manual in
15 effect at the time the lease became effective.

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

19 (ii) Rent received from a sublease:

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

22 (b) May be used for any operational or capital
23 purpose.

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

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

30 (i) The payee and any assignee;
31 (ii) The school district;
32 (iii) The purpose of the purchase or payment;
33 (iv) The due date of each installment; and
34 (v) The amount of principal and interest of each
35 installment and the fiscal year in which the installment is to be paid.

36 (B) A copy of each contract and of the schedule of

1 payments shall be filed with the treasurer of the district and with the
2 board, and when so filed, each installment may be paid as it becomes due.

3 (3)(A) Except as provided in subdivision (b)(3)(B) of this
4 section, the unpaid principal amount of postdated warrants issued and
5 installment contracts and lease-purchase agreements entered into shall be a
6 part of the total debt of the district as limited by §§ 6-20-803 and 6-20-
7 1202, with the district fiscal officer and his or her surety liable for
8 exceeding the limitations.

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

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

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

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

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

34 (8) The school fiscal officer may comply with the provisions of
35 this section by indicating on each warrant or schedule of payments attached
36 to any installment contract or lease-purchase agreement the school year's

1 revenues against which each payment is to be charged, or he or she may use a
2 warrant of a distinct color for a particular year and shall advise the county
3 treasurer, if the county treasurer serves as the school district treasurer,
4 in writing of the color of warrant being used for credit against the revenues
5 of a particular year.

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

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

27 (c)(1) A school district may refinance one (1) or more outstanding
28 postdated warrants, lease-purchase agreements, or installment contracts and
29 pay the usual, customary, and reasonable costs of the refinancing by issuing
30 one (1) postdated warrant, lease-purchase agreement, or installment contract,
31 if the refinancing:

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

33 (ii) A net savings results if the outstanding
34 principal balance plus the remaining interest payments and any early-call
35 penalties is greater than the new principal balance plus the total interest
36 to be paid and the cost of the refinancing of the outstanding postdated

1 warrant, lease-purchase agreement, or installment contract;

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

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

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

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

20 (a) The school district realizes a savings
21 from the refinancing;

22 (b) The term of the debt obligation is not
23 extended; and

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

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

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

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

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

36 (3) Current indebtedness is not included in the term "bonded

1 indebtedness" and shall not be considered a part of the total debt of a
2 district as limited by §§ 6-20-803 and 6-20-1202.

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

6 (5) The amount of obligations incurred by a school district for
7 any school fiscal year, including current indebtedness, shall not be in
8 excess of the revenue receipts of the district for that year except as
9 expressly authorized in subsection (a) of this section.

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

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

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

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

34 (4) If the director is notified that a district is delinquent on
35 two (2) or more obligations for which a district has authorized withholding
36 of state aid to cure a delinquency, the director shall make payment to payees

1 or paying agents in the order of receipt of notices of the delinquencies.

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

5 (g) Any duties required of any officer of the state pursuant to
6 subsection (d) of this section shall be only ministerial in nature and shall
7 in no way transfer any liability of the debtor to the state or any agency or
8 any officer thereof.

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

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13 /s/ J. Hutchinson
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