

1 **State of Arkansas**  
2 **78th General Assembly**  
3 **Regular Session, 1991**

# **A Bill ACT 724 OF 1991**

## **HOUSE BILL 1807**

4 **By: Representatives Stephens, McCuiston, and McJunkin**

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### **For An Act To Be Entitled**

8 "AN ACT TO PROVIDE CIVIL PENALTIES FOR VIOLATING CERTAIN  
9 ARKANSAS LAWS RELATING TO FISCAL RESPONSIBILITY AND  
10 MANAGEMENT OF COUNTIES, MUNICIPALITIES AND SCHOOL  
11 DISTRICTS; AND FOR OTHER PURPOSES."

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13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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15 SECTION 1. SHORT TITLE. This Act may be known and cited as the "Local  
16 Fiscal Management Responsibility Act".

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18 SECTION 2. DEFINITIONS. As used in this Act, unless the Act otherwise  
19 provides:

20 (a) "Public officer or employee" means any officer or employee of a  
21 county, municipality, or school district located in the State of Arkansas;

22 (b) "Fiscal responsibility and management laws" means the following  
23 laws, as amended, and as applicable to the following subdivisions:

24 (1) Counties:

25 (A) Revision of County Government, Amendment 55 of the Arkansas  
26 Constitution;

27 (B) County Record Retention, Title 13, Chapter 10 of the Arkansas Code  
28 Annotated;

29 (C) County Legislative Procedures, Title 14, Chapter 14, Subchapter 9 of the  
30 Arkansas Code Annotated;

31 (D) County Executive Powers, Title 14, Chapter 14, Subchapter 11 of the  
32 Arkansas Code Annotated;

33 (E) County Personnel Procedures, Title 14, Chapter 14, Subchapter 12 of the  
34 Arkansas Code Annotated;

35 (F) County Officers, Title 14, Chapter 15 of the Arkansas Code Annotated;

36 (G) Sale of County Property, Arkansas Code Annotated §§ 14-16-105 and 14-16-

1                               106;

2 (H) County Funds, Title 14, Chapter 21 of the Arkansas Code Annotated;

3 (I) County Purchasing Procedures, Title 14, Chapter 22 of the Arkansas Code

4                               Annotated;

5 (J) Claims Against Counties, Title 14, Chapter 23 of the Arkansas Code

6                               Annotated;

7 (K) County Warrants, Title 14, Chapter 24 of the Arkansas Code Annotated;

8 (L) Arkansas County Accounting Law of 1973, Title 14, Chapter 25 of the

9                               Arkansas Code Annotated;

10 (M) Correction of Errors on Tax Books, Arkansas Code Annotated 26-28-111;

11 (N) Settlement - Payment of Taxes, Arkansas Code Annotated 26-39-201; and

12 (O) Review of Audit Reports by Legislative Governing Bodies, Act 187 of 1991;

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14 (2) Municipalities:

15 (A) Prohibited Actions by Municipal Council Members or Municipal Officials and

16                               Employees, Arkansas Code Annotated §§ 14-42-107 and 14-42-

17                               108;

18 (B) Powers and Duties of Municipal Officers Generally, Title 14, Chapter 43,

19                               Subchapter 5 of the Arkansas Code Annotated;

20 (C) Purchase, Lease and Sale of Real and Personal Property, Arkansas Code

21                               Annotated § 14-54-302;

22 (D) Cities of First Class Generally, Title 14, Chapter 58 of the Arkansas Code

23                               Annotated;

24 (E) Municipal Accounting Law of 1973, Title 14, Chapter 59 of the Arkansas Code

25                               Annotated;

26 (F) Municipal Water and Sewer Department Accounting Law, Title 14, Chapter 237

27                               of the Arkansas Code Annotated;

28 (G) Arkansas Municipal Courts, Police Courts, City Courts, And Justice of the

29                               Peace Courts Accounting Law, Title 16, Chapter 10,

30                               Subchapter 2 of the Arkansas Code Annotated; and

31 (H) Review of Audit Reports by Legislative Governing Bodies, Act 187 of 1991;

32 (3) Schools:

33 (A) School Disbursing Officer, Arkansas Code Annotated §6-13-618;

34 (B) School District Treasurer, Title 6, Chapter 13, Subchapter 7 of the

35                               Arkansas Code Annotated;

1 (C)Arkansas Teachers' Salary Law, Title 6, Chapter 17, Subchapter 9 of the  
2 Arkansas Code Annotated;

3 (D)School Finance Acts, Title 6, Chapter 20 of the Arkansas Code Annotated;

4 (E)School's Acquisition of Commodities, Title 6, Chapter 21, Subchapter 3 of  
5 the Arkansas Code Annotated; and

6 (F)Review of Audit Reports by Boards, Act 4 of 1991;

7 (4) The following laws are applicable to some or all of the political  
8 subdivisions:

9 (A)Limitation on Legislative and Taxing Power, Article 12, Section 4 of the  
10 Arkansas Constitution;

11 (B)Political Subdivisions Not to Become Stockholders in or Lend Credit to  
12 Private Corporations, Article 12, Section 5 of the Arkansas  
13 Constitution;

14 (C)Lending Credit, Article 16, Section 1 of the Arkansas Constitution;

15 (D)Levy and Appropriation of Taxes, Article 16, Section 11 of the Arkansas  
16 Constitution;

17 (E)Local Capital Improvement Bonds, Amendment 62 of the Arkansas Constitution;

18 (F)Revenue Bonds, Amendment 65 of the Arkansas Constitution;

19 (G)Clerks of Courts, Collection and Settlement, Additional Fees, Investment of  
20 Moneys held in trust, Arkansas Code Annotated §§16-20-106,  
21 16-20-107, and 16-20-108;

22 (H)Depositories for Public Funds, Title 19, Chapter 8 of the Arkansas Code  
23 Annotated;

24 (I)Public Works, Title 22, Chapter 9 of the Arkansas Code Annotated; and

25 (J)Local Fiscal Management Responsibility Act;

26 (c) "Political Subdivision" means any county, municipality, or school  
27 district of the State of Arkansas;

28 (d) "Executive Officer" means the following for the applicable  
29 political subdivisions:

30 (1)For school districts, an "executive officer" is the superintendent of the  
31 school or the director of the educational cooperative;

32 (2)For municipalities, an "executive officer" is the mayor, city manager, or  
33 city administrator;

34 (3)For counties, an "executive officer" is the elected official exercising  
35 administrative control over a particular county employee; and

1 (e) "Knowingly" means that a person is aware or should have been aware  
2 that his conduct will violate the fiscal responsibility and management laws.

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4 SECTION 3. COMPLIANCE WITH FISCAL RESPONSIBILITY AND MANAGEMENT LAWS.

5 All public officers and employees shall comply with the provisions of  
6 the fiscal management and responsibility laws contained in this Act.

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8 SECTION 4. INVESTIGATION BY EXECUTIVE OFFICER. Upon discovery or  
9 notification of an alleged violation of the fiscal responsibility and  
10 management laws, the executive officer of the political subdivision shall  
11 investigate such allegations and take appropriate administrative action.

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13 SECTION 5. DOCUMENTATION OF VIOLATION. After completing the  
14 investigation, if the executive officer of the political subdivision  
15 determines that one or more of the fiscal responsibility and management laws  
16 have been violated, the facts and circumstances relating to a violation and  
17 any corrective or remedial action shall be documented and placed in the  
18 personnel files of the public officer or employee involved in the violation.

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20 SECTION 6. NOTIFICATION OF VIOLATION. The executive officer of the  
21 political subdivision shall notify the public officer or employee of its  
22 findings and any corrective or remedial action to be taken. Notification  
23 shall be made in a manner ensuring actual notice to the public officer or  
24 employee. The public officer or employee shall be notified that the failure  
25 to make corrective or remedial action within thirty (30) days after the date  
26 of notification creates the rebuttable presumption that the violation was  
27 committed knowingly.

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29 SECTION 7. REBUTTABLE PRESUMPTION. The public officer or employee  
30 violating a fiscal responsibility and management law shall be given not more  
31 than thirty (30) days from the date of notification to effect corrective or  
32 remedial action recommended by the executive director of the political  
33 subdivision. Failure to make corrective or remedial action within thirty (30)  
34 days after notification creates the rebuttable presumption that the violation  
35 was committed knowingly.

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2 SECTION 8. REFERRAL TO PROSECUTING ATTORNEY. (a) If the executive  
3 officer determines that there has been a violation of the fiscal  
4 responsibility and management laws, the executive officer may request the  
5 appropriate prosecuting attorney to conduct an investigation regarding the  
6 violation(s).

7 (b) The Legislative Joint Auditing Committee may request the  
8 appropriate prosecuting attorney to conduct an investigation regarding  
9 violations of the fiscal responsibility and management laws documented in the  
10 audit report.

11 (c) The prosecuting attorney shall conduct a timely investigation into  
12 all matters referred to him under the provisions of this Act. If the  
13 prosecuting attorney fails to conduct a timely investigation or file a civil  
14 suit under the provisions of this Act, the executive officer or the  
15 Legislative Joint Auditing Committee may request the Attorney General to  
16 conduct an investigation into the violations.

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18 SECTION 9. CIVIL SUIT BY PROSECUTING ATTORNEY. After conducting an  
19 investigation into the alleged violations, the appropriate prosecuting  
20 attorney or the Attorney General may file a civil suit in Circuit Court  
21 against the public officer(s) or employee(s) alleged to have violated the  
22 fiscal responsibility and management laws. Venue shall be in the county where  
23 the political subdivision is located.

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25 SECTION 10. CIVIL PENALTY. If the public officer or employee is found  
26 by the Court to have knowingly violated the provisions of the fiscal  
27 responsibility and management laws, the Court shall impose a civil penalty  
28 upon the public officer or employee of not less than one hundred dollars  
29 (\$100), nor more than one thousand dollars (\$1,000) for each violation, and  
30 may subject the public officer or employee to the payment of damages resulting  
31 as a direct consequence of any violation.

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33 SECTION 11. RECOVERY OF COSTS. If the public officer or employee is  
34 found by the Court to have knowingly violated the provisions of the fiscal  
35 responsibility and management laws, the prosecuting attorney or the Attorney

1 General shall be allowed to recover costs and attorney fees associated with  
2 the civil suit from the public officer or employee. Any costs or fees  
3 recovered by a prosecuting attorney under this provision shall be deposited  
4 into an account administered by the prosecuting attorney and shall be used for  
5 expenses of the office. Any costs or fees recovered by the Attorney General  
6 under this provision shall be deposited into the State Treasury.

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8       SECTION 12. CIVIL PROCEDURES APPLY. All actions and procedures under  
9 the provisions of this Act are civil in nature and shall be governed by the  
10 appropriate rules, regulations, and laws regarding civil actions and remedies.

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12       SECTION 13. EXISTING REMEDIES NOT IMPAIRED. The provisions of this Act  
13 are supplemental to any other remedies available by law. In addition, the  
14 provisions of this Act do not limit or diminish any civil rights or  
15 administrative procedures available to any public officer or employee or  
16 political subdivision.

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18       SECTION 14. All provisions of this act of a general and permanent  
19 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
20 Code Revision Commission shall incorporate the same in the Code.

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22       SECTION 15. If any provision of this act or the application thereof to  
23 any person or circumstance is held invalid, such invalidity shall not affect  
24 other provisions or applications of the act which can be given effect without  
25 the invalid provision or application, and to this end the provisions of this  
26 act are declared to be severable.

27       SECTION 16. All laws and parts of laws in conflict with this act are  
28 hereby repealed.

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30                                   APPROVED: 3-25-91

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