

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.

Act 996 of the Regular Session

1 State of Arkansas *As Engrossed: H3/14/07 H3/16/07 S3/22/07 S3/26/07*

2 86th General Assembly

A Bill

3 Regular Session, 2007

HOUSE BILL 2426

4

5 By: Representative Cook

6 By: *Senator Broadway*

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For An Act To Be Entitled

10 AN ACT TO ACCELERATE THE PROCESS OF ENSURING THAT
11 PUBLIC SCHOOL DISTRICT ACADEMIC FACILITIES ARE
12 ADEQUATE; AND FOR OTHER PURPOSES.

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Subtitle

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

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22 **SECTION 1. FINDINGS.** *The General Assembly finds that:*

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(1) The General Assembly adopted Acts 34 and 35 of the First Extraordinary Session of 2006 to determine whether school districts were unable to contribute local resources necessary to qualify for participation in state-funded facilities programs;

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(2) School districts with insufficient bonding capacity were accommodated by the passage of Acts 22 and 23 of the First Extraordinary Session of 2006, which removed the bonded debt ratio, thus removing the cap on bond issuance;

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(3) School districts with declining enrollment were addressed by Act 2206 of 2005 by allowing a three-year average to be used in determining the school district's facilities wealth index and by Act 21 of the First Extraordinary Session of 2006, which provided additional funding for declining enrollment based on the previous two (2) years' average daily



1 membership. No evidence was presented during the hearings held in 2006
2 pursuant to Act 57 of any school district suffering from a problem related to
3 this;

4 (4) The General Assembly researched a school district with a low
5 assessed property valuation and a low facilities wealth index and determined
6 that it is treated the same as a school district with high property valuation
7 and a high facilities wealth index. The research indicated, for example,
8 that Poyen is required to use the same amount of mills to build facilities
9 for ten percent (10%) of its students as Bryant, which is in the middle, and
10 as Bentonville, which is on top. No evidence was presented during the
11 hearings held in 2006 pursuant to Act 57 of any school district suffering
12 from a problem related to this; and

13 (5) School districts at or above the 95th percentile are
14 addressed through SB962 of the 86th General Assembly. It provides that every
15 school district at 100% of the facilities wealth index or above is adjusted
16 to the same amount as the first district below one hundred percent (100%) on
17 the facilities wealth index, unless that would exceed five thousandths
18 (.005). In that case, the amount is capped at five thousandths (.005). No
19 evidence was presented during the hearings held in 2006 pursuant to Act 57 of
20 any school district suffering from a problem related to this.

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22 SECTION 2. Arkansas Code § 6-21-811 is amended to read as follows:
23 6-21-811. Academic Facilities Distress Program.

24 (a) ~~The Division of~~ Commission for Arkansas Public School Academic
25 Facilities and Transportation shall identify a public school or school
26 district as being in academic facilities distress if the division ~~determines~~
27 recommends and the commission concurs that the public school or school
28 district has engaged in actions or inactions that result in any of the
29 following:

30 (1) Any act or violation determined by the division to
31 jeopardize any academic facility used by a public school or school district,
32 including, but not limited to:

33 (A) Material failure to properly maintain academic
34 facilities in accordance with this subchapter and rules adopted by the
35 Commission for Arkansas Public School Academic Facilities and Transportation;

36 (B) Material violation of local, state, or federal fire,

1 health, or safety code provisions or laws;

2 (C) Material violation of applicable building code
3 provisions or law;

4 (D) Material failure to provide timely and accurate
5 facilities master plans to the division;

6 (E) Material failure to comply with state law governing
7 purchasing or bid requirements in relation to academic facilities projects;
8 ~~or~~

9 (F) Material default on any school district debt
10 obligation; or

11 (G) Material failure to plan and progress satisfactorily
12 toward accomplishing the priorities established by the division and the
13 approved school district master plan; and

14 (2) Any other condition of an academic facility or facilities in
15 a public school or school district that is determined by the division to have
16 a detrimental impact on educational services provided by that public school
17 or school district.

18 (b) The division shall provide written notice, via certified mail,
19 return receipt requested, to the president of the school board and the
20 superintendent of the public school or school district identified as being in
21 facilities distress.

22 (c)(1) A public school or school district identified as being in
23 facilities distress shall develop a facilities improvement plan within thirty
24 (30) days from the date of receipt of the notice and promptly submit the
25 facilities improvement plan to the division for review and approval.

26 (2) A public school or school district shall review and revise
27 its facilities improvement plan on a periodic basis as determined by the
28 division and submit the updated facilities improvement plan to the division
29 in order for the division to determine whether the public school or school
30 district is correcting its deficient areas of practice regarding academic
31 facilities.

32 (3) A school district shall use facilities improvement plans as
33 necessary to supplement and update its facilities master plan.

34 (d)(1) Every two (2) years beginning February 1, 2009, the division
35 shall determine whether the progress of each school district complies with
36 the school district's facilities master plan and shall notify the school

1 district of any noncompliance.

2 (2) Beginning on February 1, 2008 and each biennium thereafter,
3 the division shall review the applications made for the Academic Facilities
4 Partnership Program established under § 6-20-2507, to identify any school
5 district that did not apply for state funding for necessary facilities to
6 meet adequacy requirements and shall notify the school district of any
7 deficiencies.

8 (3) Within thirty (30) days of receiving the notice provided
9 under subdivision (d)(1) or (2) of this section, the school district shall
10 submit a facilities improvement plan to the division for its review and
11 approval that states how the school district will address the noncompliance
12 issues contained in the notice.

13 (4) If the division does not approve the facilities improvement
14 plan submitted by the school district, it shall identify the school district
15 as being in facilities distress.

16 (5) A school district may appeal the decision of the division
17 under this subsection (d) to the commission pursuant to the procedures
18 established by the commission;

19 (e)(1)(A) Within ten (10) days of a school district's failure to pass
20 a millage required to fulfill its obligations under the school district's
21 facilities master plan, the division shall provide written notice to the
22 school district of the date, time, and place for a conference with the school
23 district at which the division will:

24 (1) Determine whether as a result of the failed
25 millage there are facilities issues relating to:

26 (a) Immediate repairs under § 6-20-2504(b)(4);

27 (b) The presence and number of suitability
28 needs of public school academic facilities, which shall be defined by rule;
29 or

30 (c) Immediate need for academic facilities to
31 meet student growth; and

32 (ii) Thoroughly discuss and explain the sanctions
33 and requirements that are available to the commission if the school district
34 is identified as being in facilities distress under this section and § 6-21-
35 812.

36 (B) The written notice shall be provided via certified

1 mail to the president of the school board and the superintendent of the
2 school district.

3 (C) The commission shall establish rules for the
4 implementation of this subdivision (e)(1).

5 (2)(A) If the commission determines that there are immediate
6 repairs, growth, or suitability issues that require expedited attention, the
7 commission may direct the school district to conduct a special election to
8 vote on a millage increase.

9 (B)(i) The division and the school district shall agree
10 upon the issues to be submitted for a vote in the special election.

11 (ii) The special election may not include any issues
12 other than the issues that are mutually agreed upon.

13 (C) The special election shall be held on a date that is:

14 (i) Mutually agreed upon by the division and the
15 school district; and

16 (ii) Not later than seven (7) months from the date of
17 the election at which the millage failed, unless it is necessary to extend
18 the date beyond seven (7) months because of restrictions on the number of
19 elections that may be held within a calendar year.

20 (D) If within ninety (90) days from the notice provided to
21 the school district under subdivision (d)(1)(A) the school district has not
22 set an election date, the division shall identify the school district as
23 being in facilities distress.

24 (E)(i) If the school district is able to finance the
25 immediate repairs, growth, and suitability improvements without the necessity
26 of a special election on increasing its millage, the school district may
27 enter into an agreement with the division to fund its improvements
28 separately, which shall include an implementation timeframe.

29 (ii) The division shall identify the school district
30 as being in facilities distress for failure to implement the agreed upon plan
31 for immediate repairs, growth, and suitability improvements within the
32 timeframe specified in the agreement.

33 ~~(d)(f)~~ When a school district is identified by the ~~division~~ commission
34 to be in facilities distress, the division may with the approval of the
35 commission:

36 (1)(A) Provide on-site technical evaluation and assistance and

1 make recommendations to the district superintendent regarding the care and
2 maintenance of any academic facility in the district.

3 (B) Any school district identified as being in facilities
4 distress status shall accept on-site technical evaluation and assistance from
5 the division.

6 (C) The recommendations of the division are binding on the
7 district, the superintendent, and the school board;

8 (2) Require the superintendent to relinquish all administrative
9 authority with respect to the school district;

10 (3)(A) Appoint an individual in place of the superintendent to
11 administratively operate the school district under the supervision and
12 approval of the ~~Director of the Division of Public School Academic Facilities~~
13 ~~and Transportation~~ Commissioner of Education, or his designee.

14 (B) The division may direct the school district to
15 compensate from school district funds the individual appointed to operate the
16 school district;

17 (4) Suspend or remove any or all members of the current board of
18 directors and call for the election of a new school board for the school
19 district, in which case the school district shall reimburse the county board
20 of election commissioners for election costs as otherwise required by law;

21 (5) Require the school district to operate without a local
22 school board under the supervision of the local superintendent ~~or an~~
23 ~~individual or panel appointed by the director;~~

24 (6) Require the school district to operate without a local
25 school board under the supervision of an individual or panel appointed by the
26 commissioner.

27 ~~(6)(7)~~ Return the administration of the school district to the
28 former board or place the administration of the school district in a newly
29 elected school board;

30 ~~(7)(8)~~ Require school district staff and employees to attend
31 training in areas of concern for the public school or school district;

32 ~~(8)(A)~~ (9)(A) Require a school district to cease ~~immediately~~ all
33 expenditures related to activities not described as part of an adequate
34 education in § 6-20-2302 and place money that would have been spent on the
35 activities into an academic facilities escrow account to be released only
36 upon approval by the division for use in conjunction with a local academic

1 facilities project.

2 (B) School districts shall include a clause addressing
3 this contingency in all contracts with personnel who are involved with
4 activities not described as part of an adequate education;

5 ~~(9)(10)~~ Notify the public school or school district in writing
6 that the deficiencies regarding academic facilities shall be corrected within
7 a time period designated by the division;

8 ~~(10)(A)(11)(A)~~ Petition the ~~state board~~ State Board of Education
9 at any time for the consolidation, annexation, or reconstitution of a school
10 district in facilities distress or take other appropriate action as allowed
11 by this subchapter in order to secure and protect the best interest of the
12 educational resources of the state or to provide for the best interest of
13 students in the school district.

14 (B) The state board may approve the petition or take other
15 appropriate action as allowed by this subchapter.

16 (C)~~(1)~~ The state board shall consolidate, annex, or
17 reconstitute any school district that fails to remove itself from the
18 classification of a school district in facilities distress within two (2)
19 consecutive school years of receipt of notice of identification of facilities
20 distress status by the division;

21 ~~(ii)(a)~~ A school district may appeal the action of
22 the state board to the Commission for Public School Academic Facilities and
23 Transportation in accordance with procedures developed by the state board.

24 ~~(b)~~ The commission may reverse the action of
25 the state board if the commission finds that the school district could not
26 remove itself from facilities distress due to impossibility caused by
27 external forces beyond the school district's control; and

28 (12) Correct the failure of a school district to complete its
29 agreed plan or to pass the millage in the special election under subdivision
30 (d)(2) of this section by contracting for and completing the necessary
31 improvements under the agreed plan;

32 (13)(A) If the division recommends and the commission concurs
33 that the academic facilities in the public school district in facilities
34 distress are inadequate to provide an adequate education, the state board may
35 dissolve the district and transfer students to public schools in other public
36 school districts.

1 (B) The state board shall assign the public school
2 district's territory, property, and debt;
3 and

4 ~~(11)~~(14) Take any other action allowed by law that is deemed
5 necessary to assist a public school or school district in removing criteria
6 of facilities distress.

7 ~~(e)~~(g) No school district identified by the division as being in
8 facilities distress may incur any debt without the prior written approval of
9 the commission.

10 ~~(f)~~(h) A public school or school district in facilities distress may
11 petition the commission for removal from facilities distress status only
12 after the division has certified in writing that the public school or school
13 district has corrected all criteria for being classified as in facilities
14 distress and has complied with all division recommendations and requirements
15 for removal from facilities distress.

16 ~~(g)~~(i) The division shall submit a written evaluation on the status of
17 each school district in facilities distress to the commission and the state
18 board at least one (1) time every six (6) months.

19 (j)(1)(A) If a school district is identified as being in facilities
20 distress and has immediate repairs, growth, or suitability improvement
21 issues, the division, in addition to any other remedy under this section and
22 § 6-21-812, may provide a loan to the school district to be repaid from any
23 funds available that are not required to provide an adequate education.

24 (B) Funds available that are not required to provide an
25 adequate education include:

26 (i)(a) Fund balances and any cash on hand that are
27 not part of foundation funding or categorical funding under § 6-20-2305 and
28 are not otherwise required to provide an adequate education for students in
29 the public school district; and

30 (b) Revenues that are not obligated on bonds;

31 (ii) Funds remaining after the annual payment on a
32 bond obligation are included in funds that are not required to provide an
33 adequate education.

34 (2) The public school district shall repay the loan on the
35 schedule determined by the division.

36 (1) The commission in conjunction with the Academic Facilities

1 Oversight Committee shall:

2 (1) Reexamine the role and function of the State Facility
3 Assessment of 2004;

4 (2) Assess the progress made by the state in the mandates of the
5 Arkansas Supreme Court in Lake View School District No. 25 v. Huckabee, No.
6 01-836; and

7 (3) Make needed changes in the implementation of the academic
8 facilities program by modifying the commission's rules.

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10 SECTION 3. NOT TO BE CODIFIED. The document attached hereto titled
11 "Arkansas Department of Education, Analysis of the Academic Facilities Wealth
12 Index for Providing Facilities for 10% of a District's ADM", dated March 8,
13 2007, is specifically adopted by the House Education Committee and the Senate
14 Education Committee and recommended to the General Assembly and shall be
15 filed in the journals of the House and Senate.

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/s/ Cook

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APPROVED: 4/3/2007

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