

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

A Bill

HOUSE BILL

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;

- 1 (G) Sale of County Property, Arkansas Code Annotated §§ 14-16-105 and 14-16-
 2 106;
- 3 (H) County Funds, Title 14, Chapter 21 of the Arkansas Code Annotated;
- 4 (I) County Purchasing Procedures, Title 14, Chapter 22 of the Arkansas Code
 5 Annotated;
- 6 (J) Claims Against Counties, Title 14, Chapter 23 of the Arkansas Code
 7 Annotated;
- 8 (K) County Warrants, Title 14, Chapter 24 of the Arkansas Code Annotated;
- 9 (L) Arkansas County Accounting Law of 1973, Title 14, Chapter 25 of the
 10 Arkansas Code Annotated;
- 11 (M) Correction of Errors on Tax Books, Arkansas Code Annotated 26-28-111;
- 12 (N) Settlement - Payment of Taxes, Arkansas Code Annotated 26-39-201; and
- 13 (O) Review of Audit Reports by Legislative Governing Bodies, Act 187 of 1991;
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- 15 (2) Municipalities:
- 16 (A) Prohibited Actions by Municipal Council Members or Municipal Officials and
 17 Employees, Arkansas Code Annotated §§ 14-42-107 and 14-42-
 18 108;
- 19 (B) Powers and Duties of Municipal Officers Generally, Title 14, Chapter 43,
 20 Subchapter 5 of the Arkansas Code Annotated;
- 21 (C) Purchase, Lease and Sale of Real and Personal Property, Arkansas Code
 22 Annotated § 14-54-302;
- 23 (D) Cities of First Class Generally, Title 14, Chapter 58 of the Arkansas Code
 24 Annotated;
- 25 (E) Municipal Accounting Law of 1973, Title 14, Chapter 59 of the Arkansas Code
 26 Annotated;
- 27 (F) Municipal Water and Sewer Department Accounting Law, Title 14, Chapter 237
 28 of the Arkansas Code Annotated;
- 29 (G) Arkansas Municipal Courts, Police Courts, City Courts, And Justice of the
 30 Peace Courts Accounting Law, Title 16, Chapter 10,
 31 Subchapter 2 of the Arkansas Code Annotated; and
- 32 (H) Review of Audit Reports by Legislative Governing Bodies, Act 187 of 1991;
 33 (3) Schools:
- 34 (A) School Disbursing Officer, Arkansas Code Annotated §6-13-618;
- 35 (B) School District Treasurer, Title 6, Chapter 13, Subchapter 7 of the

1 Arkansas Code Annotated;

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

3 Arkansas Code Annotated;

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

5 (E)School's Acquisition of Commodities, Title 6, Chapter 21, Subchapter 3 of

6 the Arkansas Code Annotated; and

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

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

9 subdivisions:

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

11 Arkansas Constitution;

12 (B)Political Subdivisions Not to Become Stockholders in or Lend Credit to

13 Private Corporations, Article 12, Section 5 of the Arkansas

14 Constitution;

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

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

17 Constitution;

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

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

20 (G)Clerks of Courts, Collection and Settlement, Additional Fees, Investment of

21 Moneys held in trust, Arkansas Code Annotated §§16-20-106,

22 16-20-107, and 16-20-108;

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

24 Annotated;

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

26 (J)Local Fiscal Management Responsibility Act;

27 (c) "Political Subdivision" means any county, municipality, or school

28 district of the State of Arkansas;

29 (d) "Executive Officer" means the following for the applicable

30 political subdivisions:

31 (1)For school districts, an "executive officer" is the superintendent of the

32 school or the director of the educational cooperative;

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

34 city administrator;

35 (3)For counties, an "executive officer" is the elected official exercising

1 administrative control over a particular county employee; and
2 (e) "Knowingly" means that a person is aware or should have been aware
3 that his conduct will violate the fiscal responsibility and management laws.
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5 SECTION 3. COMPLIANCE WITH FISCAL RESPONSIBILITY AND MANAGEMENT LAWS.

6 All public officers and employees shall comply with the provisions of
7 the fiscal management and responsibility laws contained in this Act.
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9 SECTION 4. INVESTIGATION BY EXECUTIVE OFFICER. Upon discovery or
10 notification of an alleged violation of the fiscal responsibility and
11 management laws, the executive officer of the political subdivision shall
12 investigate such allegations and take appropriate administrative action.
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14 SECTION 5. DOCUMENTATION OF VIOLATION. After completing the
15 investigation, if the executive officer of the political subdivision
16 determines that one or more of the fiscal responsibility and management laws
17 have been violated, the facts and circumstances relating to a violation and
18 any corrective or remedial action shall be documented and placed in the
19 personnel files of the public officer or employee involved in the violation.
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21 SECTION 6. NOTIFICATION OF VIOLATION. The executive officer of the
22 political subdivision shall notify the public officer or employee of its
23 findings and any corrective or remedial action to be taken. Notification
24 shall be made in a manner ensuring actual notice to the public officer or
25 employee. The public officer or employee shall be notified that the failure
26 to make corrective or remedial action within thirty (30) days after the date
27 of notification creates the rebuttable presumption that the violation was
28 committed knowingly.
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30 SECTION 7. REBUTTABLE PRESUMPTION. The public officer or employee
31 violating a fiscal responsibility and management law shall be given not more
32 than thirty (30) days from the date of notification to effect corrective or
33 remedial action recommended by the executive director of the political
34 subdivision. Failure to make corrective or remedial action within thirty (30)
35 days after notification creates the rebuttable presumption that the violation

1 was committed knowingly.

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

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

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

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

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

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34 SECTION 11. RECOVERY OF COSTS. If the public officer or employee is
35 found by the Court to have knowingly violated the provisions of the fiscal

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

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

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

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

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

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