

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 86th General Assembly  
3 Regular Session, 2007  
4

As Engrossed: H3/14/07

# A Bill

HOUSE BILL 2426

5 By: Representative Cook  
6  
7

## For An Act To Be Entitled

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

### Subtitle

14 AN ACT TO ACCELERATE THE PROCESS OF  
15 ENSURING THAT PUBLIC SCHOOL DISTRICT  
16 ACADEMIC FACILITIES ARE ADEQUATE.  
17  
18

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

21 SECTION 1. FINDINGS. The General Assembly finds that:

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

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

30 (3) School districts with declining enrollment were addressed by  
31 Act 2206 of 2005 by allowing a three-year average to be used in determining  
32 the school district's facilities wealth index and by Act 21 of the First  
33 Extraordinary Session of 2006, which provided additional funding for  
34 declining enrollment based on the previous two (2) years' average daily  
35 membership. No evidence was presented during the hearings held in 2006  
36 pursuant to Act 57 of any school district suffering from a problem related to



1 this;

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

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

19  
 20 SECTION 2. Arkansas Code § 6-21-811 is amended to read as follows:

21 6-21-811. Academic Facilities Distress Program.

22 (a) As used in this section, "safe, dry, and healthy" means  
 23 improvements that are required for a public school academic facility to:

- 24 (i) Be in good and acceptable condition;  
 25 (ii) Provide a safe and comfortable environment for  
 26 the public school academic facility's inhabitants; and  
 27 (iii) Maintain the integrity of the academic  
 28 facility envelope.

29 ~~(a)~~(b) The Division of Public School Academic Facilities and  
 30 Transportation shall identify a public school or school district as being in  
 31 academic facilities distress if the division determines that the public  
 32 school or school district has engaged in actions or inactions that result in  
 33 any of the following:

- 34 (1) Any act or violation determined by the division to  
 35 jeopardize any academic facility used by a public school or school district,  
 36 including, but not limited to:

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

4 (B) Material violation of local, state, or federal fire,  
5 health, or safety code provisions or laws;

6 (C) Material violation of applicable building code  
7 provisions or law;

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

10 (E) Material failure to comply with state law governing  
11 purchasing or bid requirements in relation to academic facilities projects;

12 ~~or~~

13 (F) Material default on any school district debt  
14 obligation; or

15 (G) Material failure to progress according to the school  
16 district's facilities master plan; and

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

21 (c)(1) Every two (2) years beginning February 1, 2008, the division  
22 shall determine whether the progress of each school district complies with  
23 the school district's facilities master plan and shall notify the school  
24 district of any noncompliance.

25 (2) The division shall annually review the applications made for  
26 the Academic Facilities Partnership Program established under § 6-20-2507, to  
27 identify any school district that did not apply for state funding for  
28 necessary facilities to meet adequacy requirements of safe, dry, and healthy,  
29 suitability, and growth and shall notify the school district of any  
30 deficiencies.

31 (3) Within thirty (30) days of receiving the notice provided  
32 under subdivision (c)(1) or (2) of this section, the school district shall  
33 submit a facilities improvement plan to the division for its review and  
34 approval that states how the school district will address the noncompliance  
35 issues contained in the notice.

36 (4) If the division does not approve the facilities improvement

1 plan submitted by the school district, it shall identify the school district  
2 as being in facilities distress.

3 (5) A school district may appeal the decision of the division  
4 under this subsection (c) to the commission pursuant to the procedures  
5 established by the commission;

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

11 (i) Determine whether as a result of the failed  
12 millage there are facilities issues relating to:

13 (a) Safe, dry, and healthy public school  
14 academic facilities;

15 (b) The presence and number of suitability  
16 needs of public school academic facilities; or

17 (c) Immediate need for academic facilities to  
18 meet student growth; and

19 (ii) Thoroughly discuss and explain the sanctions  
20 and requirements that are available to the commission if the school district  
21 is identified as being in facilities distress under this section and § 6-21-  
22 812.

23 (B) The written notice shall be provided via certified  
24 mail to the president of the school board and the superintendent of the  
25 school district.

26 (C) The commission shall establish rules for the  
27 implementation of this subdivision (d)(1).

28 (2)(A) If the commission determines that there are safe, dry,  
29 and healthy, growth, or suitability issues, the commission may direct the  
30 school district to conduct a special election to vote on a millage increase.

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

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

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

36 (i) Mutually agreed upon by the division and the

1 school district; and

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

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

10 (E)(i) If the school district is able to finance the safe,  
11 dry, and healthy, growth, and suitability improvements without the necessity  
12 of a special election on increasing its millage, the school district may  
13 enter into an agreement with the division to fund its safe, dry, and healthy,  
14 growth, and suitability improvements separately.

15 (ii) The division shall identify the school district  
16 as being in facilities distress for failure to implement the agreed upon plan  
17 for safe, dry, and healthy, growth, and suitability improvements.

18 ~~(b)(e)~~ 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 ~~(e)(1)(f)(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)(g)~~ When a school district is identified by the division to be in  
35 facilities distress, the division may:

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.

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 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) Return the administration of the school district to the  
25 former board or place the administration of the school district in a newly  
26 elected school board;

27 (7) Require school district staff and employees to attend  
28 training in areas of concern for the public school or school district;

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

35 (B) School districts shall include a clause addressing  
36 this contingency in all contracts with personnel who are involved with

1 activities not described as part of an adequate education;

2 (9) Notify the public school or school district in writing that  
3 the deficiencies regarding academic facilities shall be corrected within a  
4 time period designated by the division;

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

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

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

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

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

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

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

34 (B) The state board shall determine the division of the  
35 public school district's territory and the division of its debt;  
36 and

1           ~~(11)~~(13) Take any other action allowed by law that is deemed  
2 necessary to assist a public school or school district in removing criteria  
3 of facilities distress.

4           ~~(e)~~(h) No school district identified by the division as being in  
5 facilities distress may incur any debt without the prior written approval of  
6 the commission.

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

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

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

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

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

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

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

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

33  
34           SECTION 3. NOT TO BE CODIFIED. The document attached hereto titled  
35 "Arkansas Department of Education, Analysis of the Academic Facilities Wealth  
36 Index for Providing Facilities for 10% of a District's ADM", dated March 8,



1 2007, is specifically adopted by the House Education Committee and the Senate  
2 Education Committee and recommended to the General Assembly and shall be  
3 filed in the journals of the House and Senate.

4  
5 SECTION 4. NOT TO BE CODIFIED. The Commission for Arkansas Public  
6 School Academic Facilities and Transportation is requested to reexamine the  
7 role and function of the State Facility Assessment of 2004 and report its  
8 findings to the House Interim Committee on Education and Senate Interim  
9 Committee on Education by May 1, 2008.

10  
11 /s/ Cook  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36