

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 H3/16/07

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.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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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 86th 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, which shall include an
15 implementation timeframe.

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

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

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

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

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

36 ~~(d)(g)~~ When a school district is identified by the ~~division~~ commission

1 to be in facilities distress, the division may with the approval of the
2 commission:

3 (1)(A) Provide on-site technical evaluation and assistance and
4 make recommendations to the district superintendent regarding the care and
5 maintenance of any academic facility in the district.

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

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

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

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

17 (B) The division may direct the school district to
18 compensate from school district funds the individual appointed to operate the
19 school district;

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

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

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

30 ~~(6)(7)~~ Return the administration of the school district to the
31 former board or place the administration of the school district in a newly
32 elected school board;

33 ~~(7)(8)~~ Require school district staff and employees to attend
34 training in areas of concern for the public school or school district;

35 ~~(8)(A)(9)(A)~~ Require a school district to cease ~~immediately~~ all
36 expenditures related to activities not described as part of an adequate

1 education in § 6-20-2302 and place money that would have been spent on the
2 activities into an academic facilities escrow account to be released only
3 upon approval by the division for use in conjunction with a local academic
4 facilities project.

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

8 ~~(9)~~(10) Notify the public school or school district in writing
9 that the deficiencies regarding academic facilities shall be corrected within
10 a time period designated by the division;

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

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

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

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

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

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

35 (13)(A) If the division recommends and the commission concurs
36 that the academic facilities in the public school district in facilities

1 distress are inadequate to provide an adequate education, the state board may
2 dissolve the district and transfer students to public schools in other public
3 school districts.

4 (B) The state board shall assign the public school
5 district's territory, property, and debt;
6 and

7 ~~(11)~~(14) Take any other action allowed by law that is deemed
8 necessary to assist a public school or school district in removing criteria
9 of facilities distress.

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

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

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

22 (k)(1)(A) If a school district is identified as being in facilities
23 distress and has safe, dry, and healthy, growth, or suitability improvement
24 issues, the division, in addition to any other remedy under this section and
25 § 6-21-812, may provide a loan to the school district to be repaid from any
26 funds available that are not required to provide an adequate education.

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

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

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

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

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

3 (1) The commission in conjunction with the Academic Facilities
4 Oversight Committee is requested to:

5 (1) Reexamine the role and function of the State Facility
6 Assessment of 2004;

7 (2) Assess the progress made by the state in the mandates of the
8 Arkansas Supreme Court in Lake View School District No. 25 v. Huckabee, No.
9 01-836; and

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

12
13 SECTION 3. NOT TO BE CODIFIED. The document attached hereto titled
14 "Arkansas Department of Education, Analysis of the Academic Facilities Wealth
15 Index for Providing Facilities for 10% of a District's ADM", dated March 8,
16 2007, is specifically adopted by the House Education Committee and the Senate
17 Education Committee and recommended to the General Assembly and shall be
18 filed in the journals of the House and Senate.

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20 /s/ Cook
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