

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 Enrolled: H3/14/07 H3/16/07 S3/22/07

A Bill

HOUSE BILL 2426

5 By: Representative Cook
6 By: Senator Broadway
7

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.
13

Subtitle

15 AN ACT TO ACCELERATE THE PROCESS OF
16 ENSURING THAT PUBLIC SCHOOL DISTRICT
17 ACADEMIC FACILITIES ARE ADEQUATE.
18
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

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

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

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

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



1 pursuant to Act 57 of any school district suffering from a problem related to
 2 this;

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

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

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

22 6-21-811. Academic Facilities Distress Program.

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

25 (i) Be in good and acceptable condition;

26 (ii) Provide a safe and comfortable environment for
 27 the public school academic facility's inhabitants; and

28 (iii) Maintain the integrity of the academic
 29 facility envelope.

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

35 (1) Any act or violation determined by the division to
 36 jeopardize any academic facility used by a public school or school district,

1 including, but not limited to:

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

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

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

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

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

13 ~~or~~

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (ii) Thoroughly discuss and explain the sanctions
21 and requirements that are available to the commission if the school district
22 is identified as being in facilities distress under this section and § 6-21-
23 812.

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

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

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

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

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

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

1 (i) Mutually agreed upon by the division and the
2 school district; and

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

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

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

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

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

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

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

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

1 ~~(d)~~(g) When a school district is identified by the ~~division~~ commission
2 to be in facilities distress, the division may with the approval of the
3 commission:

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

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

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

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

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

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

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

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

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

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

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

36 ~~(8)~~(A)(9)(A) Require a school district to cease ~~immediately~~ all

1 expenditures related to activities not described as part of an adequate
2 education in § 6-20-2302 and place money that would have been spent on the
3 activities into an academic facilities escrow account to be released only
4 upon approval by the division for use in conjunction with a local academic
5 facilities project.

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

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

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

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

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

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

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

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

36 (13)(A) If the division recommends and the commission concurs

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

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

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

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

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

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

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

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

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

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

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

1 adequate education.

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

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

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

8 (2) Assess the progress made by the state in the mandates of the
9 Arkansas Supreme Court in Lake View School District No. 25 v. Huckabee, No.
10 01-836; and

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

13

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

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21 /s/ Cook

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