

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 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.

13

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Subtitle

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

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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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (B) The written notice shall be provided via certified
36 mail to the president of the school board and the superintendent of the

1 school district.

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

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

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

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

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

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

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

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

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

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

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

35 (1)(A) Provide on-site technical evaluation and assistance and
36 make recommendations to the district superintendent regarding the care and

1 maintenance of any academic facility in the district.

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

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

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

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

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

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

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

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

26 ~~(6)(7)~~ Return the administration of the school district to the
27 former board or place the administration of the school district in a newly
28 elected school board;

29 ~~(7)(8)~~ Require school district staff and employees to attend
30 training in areas of concern for the public school or school district;

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

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

4 ~~(9)(10)~~ Notify the public school or school district in writing
5 that the deficiencies regarding academic facilities shall be corrected within
6 a time period designated by the division;

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

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

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

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

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

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

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

36 (B) The state board shall assign the public school

1 district's territory, property, and debt;

2 and

3 ~~(11)~~(14) Take any other action allowed by law that is deemed
4 necessary to assist a public school or school district in removing criteria
5 of facilities distress.

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

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

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

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

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

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

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

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

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

35 (1) The commission in conjunction with the Academic Facilities
36 Oversight Committee shall:

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

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

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

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

15
16 /s/ Cook
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