

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

As Engrossed: S3/15/07

A Bill

SENATE BILL 809

4
5 By: Senator Broadway
6
7

For An Act To Be Entitled

9 AN ACT TO CLARIFY THE ACADEMIC FACILITIES
10 EXTRAORDINARY CIRCUMSTANCES PROGRAM; AND FOR
11 OTHER PURPOSES.
12

Subtitle

14 AN ACT TO CLARIFY THE ACADEMIC
15 FACILITIES EXTRAORDINARY CIRCUMSTANCES
16 PROGRAM.
17

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

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

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

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

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



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

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

18
 19 SECTION 2. Arkansas Code § 6-21-811 is amended to read as follows:
 20 6-21-811. Academic Facilities Distress Program.

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

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

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

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

- 36 (A) Material failure to properly maintain academic

1 facilities in accordance with this subchapter and rules adopted by the
2 Commission for Arkansas Public School Academic Facilities and Transportation;

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

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

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

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

11 ~~or~~

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

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

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

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

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

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

35 (4) If the division does not approve the facilities improvement
36 plan submitted by the school district, it shall identify the school district

1 as being in facilities distress.

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (i) Mutually agreed upon by the division and the
36 school district; and

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

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

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

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

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

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

36 ~~(11)~~(13) Take any other action allowed by law that is deemed

1 necessary to assist a public school or school district in removing criteria
2 of facilities distress.

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

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

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

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

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

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

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

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

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

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33 SECTION 3. NOT TO BE CODIFIED. The document attached hereto titled
34 "Arkansas Department of Education, Analysis of the Academic Facilities Wealth
35 Index for Providing Facilities for 10% of a District's ADM", dated March 8,
36 2007, is specifically adopted by the House Education Committee and the Senate

