

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
90th General Assembly
Regular Session, 2015

As Engrossed: H3/17/15 H3/25/15

A Bill

HOUSE BILL 1842

By: Representative Murdock

For An Act To Be Entitled

AN ACT TO CLARIFY TERMS UNDER THE ARKANSAS FISCAL ASSESSMENT AND ACCOUNTABILITY PROGRAM; AND FOR OTHER PURPOSES.

Subtitle

TO CLARIFY TERMS UNDER THE ARKANSAS FISCAL ASSESSMENT AND ACCOUNTABILITY PROGRAM.

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

SECTION 1. Arkansas Code § 6-13-112(c), concerning the responsibilities of the State Board of Education and Commissioner of Education regarding school districts under state authority, is amended to read as follows:

(c) A person appointed by the state board or the commissioner to operate a school district under the authority of the state board or the commissioner shall not have previously been an administrator responsible for a school district that was placed in fiscal distress or fiscal distress status, academic distress, facilities distress, or in violation of the Standards for Accreditation of Arkansas Public Schools and School Districts.

SECTION 2. Arkansas Code § 6-13-1601, concerning definitions, is amended to add an additional subdivision to read as follows:

(7) "Fiscal distress" means that a school district has been placed under the daily management and control of the Department of Education after the State Board of Education or the Commissioner of Education has



removed the school district board of directors as permitted by state law.

SECTION 3. Arkansas Code § 6-20-401(4)(C)(iii), concerning the definition of "revenue receipts of a school district", is amended to read as follows:

(iii) Declining balances attributed solely to a school district's compliance with the requirements of subdivision (4)(C)(ii) of this section shall not be considered an indicator of fiscal distress or fiscal distress status; and

SECTION 4. Arkansas Code § 6-20-402(f), concerning the limitation on current indebtedness, is amended to read as follows:

(f) If the state board withholds state aid from a school district under subsection (e) of this section, the school district shall be identified by the department to be a school district in fiscal distress or fiscal distress status under § 6-20-1906.

SECTION 5. Arkansas Code § 6-20-415(c)(4), concerning consultants, is amended to read as follows:

(4) A school district that fails to comply with the requirements of the department under this subsection shall be identified by the department as being in fiscal distress or fiscal distress status and subject to the applicable enforcement provisions as provided by law.

SECTION 6. Arkansas Code § 6-20-1204(c)(3), concerning forms of bonds, is amended to read as follows:

(3) If the ~~commissioner~~ commissioner withholds state funding from a school district pursuant to this subsection, the Department of Education shall identify the school district to be a school district in fiscal distress or fiscal distress status under the Arkansas Fiscal Assessment and Accountability Program, § 6-20-1901 et seq.

SECTION 7. Arkansas Code § 6-20-1204(d)(3)(C), concerning forms of bonds, is amended to read as follows:

(C) If the department makes payment under subdivision (d)(3)(A) of this section, it may identify the school district on behalf of

which the payment is made to be a school district in fiscal distress or fiscal distress status under the Arkansas Fiscal Assessment and Accountability Program, § 6-20-1901 et seq.

SECTION 8. Arkansas Code § 6-20-1801(d), concerning the filing of audit reports, is amended to read as follows:

(d)(1) If the department has identified a school as being in fiscal distress or fiscal distress status by June 30 of any year, the annual audit of that school district shall be completed and filed with the department and the Legislative Joint Auditing Committee within six (6) months following the end of each fiscal year.

(2) If the committee determines that circumstances warrant, the committee may extend the time to file the audit report of a ~~fiscally distressed~~ school district in fiscal distress or fiscal distress status for up to an additional ninety (90) days.

SECTION 9. Arkansas Code § 6-20-1802 is amended to read as follows:
6-20-1802. Fiscal distress for failure to file.

(a) ~~Any~~ A school district ~~failing~~ that fails to file an audit report required by § 6-20-1801 within the nine-month time period or within the time period under an extension granted by the Department of Education shall automatically be considered by the department to be in fiscal distress or fiscal distress status.

(b) By January 31 of each year, the department, by certified mail, shall notify any school district failing to file the required audit report that the school district is considered in fiscal distress or fiscal distress status.

SECTION 10. Arkansas Code § 6-20-1902 is amended to read as follows:
6-20-1902. Purpose.

The purpose of this subchapter ~~shall be~~ is to establish and implement a program by which the Department of Education shall identify, assess, and address school districts in fiscal distress or fiscal distress status.

SECTION 11. Arkansas Code § 6-20-1903, concerning the definition of "fiscal distress", is amended to add an additional subdivision to read as

follows:

(9) "Fiscal distress" means that a school district has been placed under the daily management and control of the department after the state board or the Commissioner of Education has removed the school district board of directors as permitted by state law.

SECTION 12. Arkansas Code § 6-20-1904 is amended to read as follows:
6-20-1904. Indicators of fiscal distress or fiscal distress status.

(a) A school district meeting any of the following criteria may be identified by the Department of Education to be a school district in fiscal distress status upon final approval by the State Board of Education:

(1)(A) A declining balance determined to jeopardize the fiscal integrity of a school district.

(B) However, capital outlay expenditures for academic facilities from a school district balance shall not be used to put the school district in fiscal distress;

(2) An act or violation determined to jeopardize the fiscal integrity of a school district, including without limitation:

(A) Material failure to properly maintain school facilities;

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

(C) Material violation of local, state, or federal construction code provisions or law;

(D) Material state or federal audit exceptions or violations;

(E) Material failure to provide timely and accurate legally required financial reports to the department, the Division of Legislative Audit, the General Assembly, or the Internal Revenue Service;

(F) Insufficient funds to cover payroll, salary, employment benefits, or legal tax obligations;

(G) Material failure to meet legally binding minimum teacher salary schedule obligations;

(H) Material failure to comply with state law governing purchasing or bid requirements;

(I) Material default on any school district debt

obligation;

(J) Material discrepancies between budgeted and actual school district expenditures;

(K) Material failure to comply with audit requirements; or

(L) Material failure to comply with any provision of the Arkansas Code that specifically places a school district in fiscal distress based on noncompliance; or

(3) Any other fiscal condition of a school district deemed to have a detrimental negative impact on the continuation of educational services by that school district.

(b)(1) By August 31 of each year, the department shall report to the superintendent of a school district if the department is aware that the school district has experienced two (2) or more indicators of fiscal distress status in one (1) school year that the department deems to be at a nonmaterial level but that without intervention could place the district in fiscal distress status.

(2) The superintendent of a school district shall report to the department if the superintendent is aware the school district has experienced two (2) or more indicators of fiscal distress status in one (1) school year that the superintendent deems to be at a nonmaterial level but that without intervention could place the district in fiscal distress status.

(3)(A) The department and the superintendent shall review all data related to the nonmaterial indicators of fiscal distress status.

(B)(i) Within thirty (30) days of the department's determination that the school district may be experiencing fiscal distress status at a nonmaterial level, the department shall provide a notice to the school district's superintendent and board of directors that:

(a) Describes the nonmaterial indicators of fiscal distress status that could jeopardize the fiscal integrity of the school district if not addressed; and

(b) Identifies the support available from the department to address each nonmaterial indicator of fiscal distress status.

(ii) The board of directors shall place on the agenda for the next regularly scheduled meeting of the board of directors a discussion of the notice of nonmaterial indicators of fiscal distress status.

SECTION 13. Arkansas Code § 6-20-1905(a), concerning notification and appeal, is amended to read as follows:

~~(a)(1)(A)(i)~~ (a)(1)(A) *The Department of Education shall provide written notice, via certified mail, return receipt requested, to the president of the school district board of directors and the superintendent of each school district identified as being in fiscal distress or fiscal distress status.*

~~(ii)(B)~~ *The department shall provide the notice required under ~~this~~ subdivision (a)(1)(A) of this section on or before March 30 of each year.*

~~(B)(i)(2)(A)~~ *At any time after March 30, the department may identify a school district as being in fiscal distress or fiscal distress status if the department discovers that a fiscal condition of a school district negatively impacts the continuation of educational services by the school district.*

~~(ii)(B)~~ *The department immediately shall provide the same notice required under subdivision ~~(a)(1)(A)(i)~~ (a)(1)(A) of this section to the school district identified under this subdivision ~~(a)(1)(B)~~ (a)(2).*

SECTION 14. Arkansas Code § 6-20-1906(a) and (b), concerning classification of fiscal distress status, is amended to read as follows:

(a) Those school districts identified by the Department of Education as being in fiscal distress or fiscal distress status shall be classified as school districts in fiscal distress or fiscal distress status upon final determination by the State Board of Education.

(b) A school district classified as in fiscal distress or fiscal distress status shall be required to publish at least one (1) time for two (2) consecutive weeks in a newspaper of general circulation in the school district the school district's classification as a school district in fiscal distress or fiscal distress status and the reasons why the school district was classified as being in fiscal distress or fiscal distress status.

*SECTION 15. Arkansas Code § 6-20-1907 is amended to read as follows:
6-20-1907. Debt issuance.*

~~No~~ A school district identified in fiscal distress or fiscal distress status may not incur any debt without the prior written approval of the Department of Education.

SECTION 16. Arkansas Code § 6-20-1908(a)-(c), concerning a fiscal distress or fiscal distress status plan, are amended to read as follows:

(a) Those school districts identified by the Department of Education as being in fiscal distress shall file with the department within ten (10) days after the final classification by the State Board of Education a written fiscal distress or fiscal distress status improvement plan to address any area in which the school district is experiencing fiscal distress or fiscal distress status as identified by the department.

(b) Each school district shall seek and obtain approval of its plan from the department and shall describe how the school district will remedy those areas in which the school district is experiencing fiscal distress or fiscal distress status and shall establish the time period by which the school district will remedy all criteria ~~which~~ that placed the school district in fiscal distress status.

(c) A school district in fiscal distress or fiscal distress status may ~~only~~ petition the state board for removal from fiscal distress status only after the department has certified in writing that the school district has corrected all criteria for being classified as in fiscal distress or fiscal distress status and has complied with all department recommendations and requirements for removal from fiscal distress or fiscal distress status.

SECTION 17. Arkansas Code § 6-20-1909(a), concerning department actions, is amended to read as follows:

(a) In addressing school districts in fiscal distress or fiscal distress status, the Commissioner of Education may:

(1) Remove permanently, reassign, or suspend on a temporary basis the superintendent of the school district and:

(A) Appoint an individual in place of the superintendent to administratively operate the school district under the supervision and approval of the commissioner; and

(B) Compensate nondepartment agents operating the school district from school district funding;

(2) Suspend or remove some or all of the current board of directors and call for the election of a new board of directors for the school district, in which case the school district shall reimburse the county

board of election commissioners for election costs as otherwise recognized by law;

(3) Require the school district to operate without a board of directors under the supervision of the local superintendent or an individual or panel appointed by the commissioner;

(4) Waive the application of Arkansas law or the corresponding State Board of Education rules, with the exception of:

(A) The Teacher Fair Dismissal Act of 1983, § 6-17-1501 et seq.; and

(B) The Public School Employee Fair Hearing Act, § 6-17-1701 et seq.;

(5) Petition the state board for the annexation, consolidation, or reconstitution of the school district;

(6) In the absence of a school district board of directors, assume all authority of the board of directors as designated by the state board as ~~may be~~ necessary for the day-to-day governance of the school district;

(7)(A) Return the administration of the school district to the former board of directors or to a newly elected board of directors if:

(i) The Department of Education certifies in writing to the state board and to the school district that the school district has corrected all issues that caused the classification of fiscal distress or fiscal distress status; and

(ii) The state board determines that the school district has corrected all issues that caused the classification of fiscal distress or fiscal distress status.

(B) If the commissioner calls for an election of a new school district board of directors, the school district shall reimburse the county board of election commissioners for election costs as otherwise required by law;

(8) Otherwise reconstitute the school district; or

(9) Take any other action allowed by law that is deemed necessary to assist a school district in removing the classification of fiscal distress or fiscal distress status.

SECTION 18. Arkansas Code § 6-20-1910(d)-(f), concerning state board

actions, are amended to read as follows:

(d) If the Commissioner of Education assumes authority over a public school district in fiscal distress or fiscal distress status, under subsection (a) of this section, the state board may pursue the following process for returning a public school district to the local control of its residents:

(1) During the second school year following a school district's classification as being in fiscal distress or fiscal distress status, the state board shall determine the extent of the school district's progress toward correcting all issues that caused the classification of fiscal distress or fiscal distress status;

(2)(A) If the state board determines that sufficient progress has been made by a school district toward correcting all issues that caused the classification of fiscal distress or fiscal distress status, but the school district has not yet resolved all issues that caused the classification of fiscal distress, the commissioner, with the approval of the state board, may appoint a community advisory board of either five (5) or seven (7) members to serve under the supervision and direction of the commissioner.

(B) The members of the community advisory board shall be residents of the school district and shall serve on a voluntary basis without compensation.

(C) The Department of Education shall cause to be provided to the community advisory board technical assistance and training in, at a minimum, the areas required in § 6-13-629.

(D) The duties of the community advisory board include without limitation:

(i) Meeting monthly during a regularly scheduled public meeting with the state-appointed administrator regarding the progress of the public school or school district toward correcting all issues that caused the classification of fiscal distress or fiscal distress status;

(ii) Seeking community input from the patrons of the school district regarding the progress of the public school or school district toward correcting all issues that caused the classification of fiscal distress or fiscal distress status;

(iii) Conducting hearings and making recommendations to the commissioner regarding personnel and student discipline matters under

the appropriate district policies;

(iv) Working to build community capacity for the continued support of the school district; and

(v) Submitting quarterly reports to the commissioner and the state board regarding the progress of the public school or school district toward correcting all issues that caused the classification of fiscal distress or fiscal distress status.

(E) The members of the community advisory board shall serve at the pleasure of the commissioner until:

(i) The school district is returned to local control and a permanent board of directors is elected and qualified; or

(ii) The state board annexes, consolidates, or reconstitutes the school district under this section or under another provision of law;

(3)(A) By April 1 of each year following the appointment of a community advisory board under subdivision (d)(2) of this section, the state board shall determine the extent of the school district's progress toward correcting all issues that caused the classification of fiscal distress or fiscal distress status and shall:

(i) Allow the community advisory board to remain in place for one (1) additional year;

(ii) Return the school district to local control by calling for the election of a newly elected board of directors if:

(a) The department certifies in writing to the state board and to the school district that the school district has corrected all criteria for being placed into fiscal distress or fiscal distress status; and

(b) The state board determines that the school district has corrected all criteria for being placed into fiscal distress or fiscal distress status; or

(iii) Annex, consolidate, or reconstitute the school district pursuant to this title.

(B) If the state board or commissioner calls for an election of a new school district board of directors, the school district shall reimburse the county board of election commissioners for election costs as otherwise required by law;

(4)(A) *If the state board calls for an election of a new school district board of directors pursuant to subdivision (d)(3)(A)(ii) of this section, the commissioner, with the approval of the state board, may appoint an interim board of directors to govern the school district until a permanent school district board of directors is elected and qualified.*

(B) *The interim board of directors shall consist of either five (5) or seven (7) members.*

(C) *The members of the interim board of directors shall be residents of the school district and otherwise eligible to serve as school district board members under applicable law.*

(D) *The members of the interim board of directors shall serve on a voluntary basis without compensation.*

(e)(1) *If, by the end of the fifth school year following the school district's classification of fiscal distress or fiscal distress status, the school district in fiscal distress or fiscal distress status has not corrected all issues that caused the classification of fiscal distress or fiscal distress status, the state board, after a public hearing, shall consolidate, annex, or reconstitute the school district under this section.*

(2) *The state board may grant additional time for a public school or school district to remove itself from fiscal distress or fiscal distress status by issuing a written finding supported by a majority of the state board explaining in detail that the public school or school district could not remove itself from fiscal distress or fiscal distress status during the relevant time period due to impossibility caused by external forces beyond the control of the public school or school district.*

(f) ~~*Nothing in this section shall be construed to*~~ *This section does not prevent the department or the state board from taking any of the actions listed in § 6-20-1909 or this section at any time to address a school district in fiscal distress or fiscal distress status.*

SECTION 19. Arkansas Code § 6-20-1911(a), concerning rules and regulations, is amended to read as follows:

(a) *The Department of Education shall promulgate rules ~~and regulations~~ as necessary to identify, evaluate, assist, and address school districts in fiscal distress or fiscal distress status.*

SECTION 20. Arkansas Code § 6-20-2205(a), concerning penalties, is amended to read as follows:

(a) ~~Any~~ A school district or open-enrollment public charter school that does not follow the provisions of this subchapter shall be placed in fiscal distress or fiscal distress status as provided by law.

SECTION 21. Arkansas Code § 6-20-2207(c) and (d), concerning rule-making authority, are amended to read as follows:

(c) ~~Any~~ A school district, open-enrollment public charter school, or education service cooperative that fails to comply with state law or rules governing and providing a uniform chart of accounts for budgeting of revenues, expenditures, and financial reporting shall be deemed to be in fiscal distress or fiscal distress status and subject to the applicable enforcement provisions as provided by law.

(d) ~~Any~~ A school district, open-enrollment public charter school, or education service cooperative that fails to comply with the expenditure requirements of any public school, public school district, or education service cooperative funding law shall be deemed to be in fiscal distress or fiscal distress status and subject to the applicable enforcement provisions as provided by law.

SECTION 22. Arkansas Code § 6-23-304(b)(3), concerning requirements for open-enrollment public charter schools, is amended to read as follows:

(3) When the district has been classified by the Department of Education as in some phase of school improvement status under § 6-15-426 or some phase of fiscal distress or fiscal distress status under the Arkansas Fiscal Assessment and Accountability Program, § 6-20-1901 et seq., if the fiscal distress or fiscal distress status is a result of administrative fiscal mismanagement, as determined by the state board.

SECTION 23. Arkansas Code § 6-23-304(d)(2)(B), concerning requirements for open-enrollment public charter schools, is amended to read as follows:

(B) Been classified as in academic distress ~~or~~, fiscal distress, or fiscal distress status; and

/s/Murdock