

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

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As Engrossed: S2/16/17
A Bill

SENATE BILL 308

By: Senators A. Clark, J. English, J. Hendren, Hester, J. Hutchinson, B. Johnson

By: Representatives Lowery, Ballinger, D. Douglas, Gates, K. Hendren, G. Hodges, Sullivan

For An Act To Be Entitled

AN ACT TO GRANT PUBLIC CHARTER SCHOOLS A RIGHT OF ACCESS TO UNUSED OR UNDERUTILIZED PUBLIC SCHOOL FACILITIES; TO CLARIFY RIGHTS OF FIRST REFUSAL TO PURCHASE OR LEASE UNUSED OR UNDERUTILIZED PUBLIC SCHOOL FACILITIES; AND FOR OTHER PURPOSES.

Subtitle

TO GRANT PUBLIC CHARTER SCHOOLS A RIGHT OF ACCESS TO UNUSED OR UNDERUTILIZED PUBLIC SCHOOL FACILITIES.

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

SECTION 1. Arkansas Code § 6-21-803, concerning definitions in the Arkansas Public School Academic Facilities Program Act, is amended to add an additional subdivision to read as follows:

(17) “Unused or underutilized public school facility” means a public school facility or other real property that:

(A) As a whole or in a significant portion, is not being used for a public educational, academic, extracurricular, or administrative purpose and the nonuse or underutilization threatens the integrity or purpose of the public school facility or other real property as a public education facility; and

(B) As of the effective date of this act, is not subject to:

(i) A lease to a third party for fair market value;



or

(ii) An executed offer to purchase by a third party for fair market value.

SECTION 2. Arkansas Code § 6-21-806(a), concerning requirements for the Academic Facilities Master Plan Program, is amended to add an additional subdivision to read as follows:

(7)(A) Submit a report to the division by February 1 of each year that identifies:

(i) All unused or underutilized public school facilities in the school district; and

(ii) The unused or underutilized public school facilities, if any, that are designated in the district's facilities master plan to be re-used, renovated, or demolished as part of a specific committed project or planned new construction project.

(B)(i) The division shall identify a public school facility or other real property as an unused or underutilized public school facility if the school district fails to identify in the report the public school facility or other real property.

(ii) A school district may appeal an identification made by the division under subdivision (a)(7)(B)(i) of this section to the commission.

SECTION 3. Arkansas Code Title 6, Chapter 21, Subchapter 8, is amended to add additional sections to read as follows:

6-21-815. Right of access to unused or underutilized public school facilities.

(a) As used in this section and in § 6-21-816, "public charter school" means:

(1) An open-enrollment public charter school as defined in § 6-23-103;

(2) An eligible entity as defined in § 6-23-103 that applies to authorize, amend, or renew a charter for an open-enrollment public charter school; and

(3) A legal entity that is affiliated with or acting on behalf of an open-enrollment public charter school or eligible entity.

(b) Annually by March 1 the Division of Public School Academic Facilities and Transportation shall publish a list on its website identifying all unused or underutilized public school facilities.

(c)(1) Except as otherwise provided in this section, a school district shall make unused or underutilized public school facilities available for lease or purchase for no more than fair market value to any public charter school located within the geographical boundaries of the school district.

(2) Once a public school facility or other real property is identified by the division as an unused or underutilized public school facility, a public charter school may give notice of its intent to purchase or lease the public school facility or other real property from the school district no earlier than the later of:

(A) The date the public school facility or other real property is first identified by the division as an unused or underutilized public school facility; or

(B) If the public school facility or other real property has already been designated in the school district's facilities master plan to be reused, renovated, or demolished as part of a specific committed project or planned new construction project, two (2) years from the date the public school facility or other real property is first identified by the division as an unused or underutilized public school facility.

(3)(A) If the public charter school and school district are unable to agree on terms and execute the sale or lease within sixty (60) days of the notice of intent, the public charter school may petition the Commission for Arkansas Public School Academic Facilities and Transportation for an order directing the school district to lease the public school facility to the public charter school for fair market value.

(B) The lease shall be for a term of between five (5) and thirty (30) years, as determined by the public charter school.

(4) The commission may deny the petition if the school district makes an affirmative showing by a preponderance of the evidence that:

(A) The public school facility, or the property to which the public school facility is attached, will be needed by the school district to accommodate future growth of the school district; or

(B) Use of the public school facility or other real property by a public charter school would have a materially negative impact

on the overall educational environment of an educational campus located within five hundred feet (500') of the public school facility or other real property sought to be leased.

(d)(1) Upon the execution of a lease, the public charter school shall be responsible for all direct expenses related to the public school facility, including without limitation:

- (A) Utilities;
- (B) Insurance;
- (C) Maintenance;
- (D) Repairs; and
- (E) Renovation.

(2) The school district shall remain responsible for any bonded debt incurred or mortgage liens that attached to the public school facility or other real property prior to a sale or lease.

(3) The public charter school shall take no actions that have a materially negative impact on:

- (A) Any bond rights attached to the public school facility or other real property; or
- (B) Any tax-exempt financing related to the public school facility or other real property.

(4) The public charter school shall indemnify the school district for any mortgages, liens, or debt that attach to the public school facility or other real property by the public charter school's action or inaction.

(e) The terms of a lease executed under this section shall provide that the lease shall be cancelled and be of no effect if:

(1) The public charter school fails to use the public school facility or other real property for direct student instruction or administrative purposes within two (2) years of the effective date of the lease;

(2) The public charter school closes, has its charter revoked, or has its charter application denied by the authorizer; or

(3) The public charter school initially uses the public school facility or other real property, but then leaves the public school facility or other real property unused for more than one hundred eighty (180) days.

(f)(1) The division may classify a school district that fails to

comply with this section as being in academic facilities distress under § 6-21-811.

(2) The charter school authorizer may take action under § 6-23-105 on the charter of a public charter school that fails to comply with this section.

(g) The commission shall promulgate rules to implement this section, including without limitation a standard lease form.

6-21-816. Sale or lease of public school facilities.

(a)(1) Except as otherwise provided in this section, if a school district determines that any public school facility or other real property is no longer needed for school purposes or is unused or underutilized, the school district may sell or lease the facility in accordance with §§ 6-13-103 and 6-13-620 and this subchapter.

(2)(A) Money derived from the sale or lease of property under this section shall be placed in the appropriate school fund established under applicable law, as determined by the school district.

(B) Money derived from the sale or lease may be used for any purpose allowed by law, including without limitation redemption of bonds related to the financing of the facility sold or leased.

(3) A school district may not make a covenant that prohibits the sale or lease of a public school facility or other real property to an open-enrollment public charter school that is located within the geographic boundary of the school district.

(b)(1)(A) If a school district decides to sell, lease, or otherwise transfer ownership of an academic facility, an open-enrollment public charter school located within the school district's boundaries shall have a right of first refusal to purchase or lease the facility for fair market value.

(B) If the school district ceases to use a public school facility as an academic facility, the right of first refusal shall continue for two (2) years after the date the public school facility or other real property was last used as an academic facility.

(C) If there is more than one (1) open-enrollment public charter school located within the boundaries of the school district, the right of first refusal shall be available to the open-enrollment public charter school according to a priority list determined by the charter

authorizer following a review of the comparative status and educational needs of the open-enrollment public charter schools.

(2)(A) If an open-enrollment public charter school decides to sell or lease a public school facility or other real property purchased by the public charter school under this section or under § 6-21-815, and the sale or lease is to a third party that is not a public charter school, the school district in which the public school facility or other real property is located shall have a right of first refusal to purchase or lease the public school facility or other real property for fair market value, subject to any mortgage or lien attached to the public school facility or other real property.

(B) The school district may waive its right of first refusal under subdivision (b)(2)(A) of this section if the public school facility or other real property or its revenues are to be pledged by the public charter school as security for debt to fund the purchase or renovation of the public school facility or other real property.

(3) Subject to the priority list under subdivision (b)(1)(C) of this section, nothing in this subchapter shall be construed to delay or limit the authority of a school district to sell, lease, or otherwise transfer a public school facility or other real property to a public charter school on terms agreed to by the school district and public charter school.

(c) If a public school facility or other real property has been identified by the Division of Public School Academic Facilities and Transportation as an unused or underutilized public school facility, the school district may sell or lease the unused or underutilized public school facility to a third party, other than an open-enrollment public charter school, no earlier than the later of:

(1) Two (2) years after the date the public school facility or other real property is identified by the division as an unused or underutilized public school facility, so long as no public charter school has claimed a right of access under § 6-21-815 or a right of first refusal under this section; or

(2) If the unused or underutilized public school facility has been designated in the school district's facilities master plan to be reused, renovated, or demolished as part of a specific committed project or planned new construction project, three (3) years from the date the public school

facility or other real property is identified by the division as an unused or underutilized public school facility.

(d)(1) A school district may petition the division for a waiver of subsection (c) of this section as it applies to an unused or underutilized public school facility within the school district.

(2) The petition shall include a statement that the school district believes that a public charter school would not be interested in leasing or purchasing the unused or underutilized public school facility.

(e)(1)(A) If the division receives a petition under subsection (d) of this section, the division, within five (5) days after receiving the petition, shall notify each eligible entity granted a charter under § 6-23-101 et seq. and statewide organization representing charter schools in Arkansas by certified mail of the petition.

(B) The notice under subdivision (e)(1)(A) of this section shall include a copy of the petition.

(2) Not later than thirty (30) days after an eligible entity granted a charter under § 6-23-101 et seq. or statewide organization representing charter schools in Arkansas receives a notice described in subdivision (e)(1)(A) of this section, the eligible entity or statewide organization representing charter schools may submit to the division an objection in writing to the petition.

(3) An objection shall include:

(A) The name of the open-enrollment public charter school that is interested in leasing or purchasing the unused or underutilized public school facility; and

(B) A time frame, which may not exceed one (1) year from the date of the objection, in which the open-enrollment public charter school intends to begin providing classroom instruction in the unused or underutilized public school facility.

(f)(1) If the division receives an objection that meets the requirements of subdivision (e)(3) of this section, the division shall deny the petition.

(2)(A) If the division does not receive an objection that meets the requirements of subdivision (e)(3) of this section, the division shall grant the petition.

(B) A school district that receives a waiver under this

section may sell, lease, or otherwise dispose of the unused or underutilized public school facility in accordance with §§ 6-13-103 and 6-13-620 and this subchapter.

(g)(1) A decision by the division under this section may be appealed to the Commission for Arkansas Public School Academic Facilities and Transportation.

(2) All time frames under this section, including subsection (c) and subdivision (e)(3)(B) of this section, shall be tolled during the pendency of an appeal.

(h)(1) The division may classify a school district that fails to comply with this section as being in academic facilities distress under § 6-21-811.

(2) The authorizer may take action under § 6-23-105 on the charter of a public charter school that fails to comply with this section.

(i) The commission may promulgate rules to implement this section.

SECTION 4. Arkansas Code § 6-23-501(d), concerning open-enrollment public charter schools, is repealed.

~~(d)(1) An open-enrollment public charter school shall have a right of first refusal to purchase or lease for fair market value a closed public school facility or unused portions of a public school facility located in a public school district from which it draws its students if the public school district decides to sell or lease the public school facility.~~

~~(2) The public school district may not require lease payments that exceed the fair market value of the property.~~

~~(3) The application of this subsection is subject to the rights of a repurchaser under § 6-13-103 regarding property taken by eminent domain.~~

~~(4) A public school district is exempt from the provisions of this subsection if the public school district, through an open bid process, receives and accepts an offer to lease or purchase the property from a purchaser other than the open-enrollment public charter school for an amount that exceeds the fair market value.~~

~~(5) The purposes of this subsection are to:~~

~~(A) Acknowledge that taxpayers intended a public school facility to be used as a public school; and~~

~~(B) Preserve the option to continue that use.~~

~~(6) Nothing in this subsection is intended to diminish the opportunity for an Arkansas Better Chance Program to bid on the purchase or lease of the public school facility on an equal basis as the open enrollment public charter school.~~

/s/A. Clark