

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

A Bill

SENATE BILL 847

5 By: Senators A. Clark, J. Hendren
6

For An Act To Be Entitled

8 AN ACT TO ADOPT A RIGHT OF ACCESS FOR OPEN-ENROLLMENT
9 PUBLIC CHARTER SCHOOLS; AND FOR OTHER PURPOSES.
10

Subtitle

11 TO ADOPT A RIGHT OF ACCESS FOR OPEN-
12 ENROLLMENT PUBLIC CHARTER SCHOOLS.
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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19 SECTION 1. Arkansas Code § 6-21-811(a)(1), concerning the Academic
20 Facilities Distress Program, is amended to add an additional subdivision to
21 read as follows:

22 (H) Material failure to fully utilize academic facilities
23 or to notify the division of unused or underutilized academic facilities as
24 required under § 6-21-815 as to the unused or underutilized public school
25 academic facility only; and
26

27 SECTION 2. Arkansas Code Title 6, Chapter 21, Subchapter 8, is amended
28 to add an additional section to read as follows:

29 6-21-815. Unused or underutilized academic facilities – Access for
30 open-enrollment public charter schools.

31 (a) As used in this section:

32 (1)(A) "Underutilized" means that a significant portion or
33 portions of an academic facility are not being used for a public educational,
34 academic, extracurricular, or administrative purpose when the
35 underutilization threatens the integrity or purpose of the facility as a
36 public education facility.



1 (B) The Director of the Division of Public School Academic
2 Facilities and Transportation may determine that an underutilized facility
3 may be better used by an open-enrollment public charter school that is
4 located within the boundaries of the same school district where the facility
5 is located; and

6 (2)(A) "Unused" means an academic facility that is not being
7 used for a public educational, academic, extracurricular, or administrative
8 purpose when the nonuse threatens the integrity or purpose of the facility as
9 a public education facility.

10 (B) The director may determine that an unused facility
11 should be better used by an open-enrollment public charter school that is
12 located within the boundaries of the same school district where the facility
13 is located.

14 (b) An open-enrollment public charter school has a right of access to
15 lease unused or underutilized public school academic facilities or portions
16 thereof located in a school district in which the open-enrollment public
17 charter school is located as authorized under this section.

18 (c)(1) The Division of Public School Academic Facilities and
19 Transportation shall review the facilities master plan and other school
20 facility information of each school district annually and identify unused or
21 underutilized public school academic facilities.

22 (2) If the division identifies an unused or underutilized public
23 school academic facility under subdivision (c)(1) of this section the
24 division shall promptly notify the school district so that the school
25 district may exercise the school district's options under subsection (f) of
26 this section.

27 (3)The division shall compile and make publicly available a list
28 of all unused or underutilized public school academic facilities statewide.

29 (4)(A) An open-enrollment public charter school may petition the
30 division to lease an unused or underutilized public school academic facility
31 for a public education fair market value of a nominal amount to be set by the
32 state board based on the anticipated public educational advantage.

33 (B) The division shall establish a process to hear and
34 consider petition requests from open-enrollment public charter schools.

35 (C)(i) The division may require a school district to issue
36 a long-term lease of five (5) years, ten (10) years, fifteen (15) years, or

1 twenty (20) years or other term less than twenty (20) years as deemed
 2 necessary for the unused or underutilized public school academic facility to
 3 an open-enrollment public charter school.

4 (ii) An open-enrollment public charter school may
 5 select from the available lease terms the term that is most appropriate for
 6 the open-enrollment public charter school's needs.

7 (d)(1) The purpose of this section is to:

8 (A) Acknowledge that taxpayers intend a public
 9 school facility to be used as a public school; and

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

11 (2) This subsection does not diminish the opportunity for
 12 an Arkansas Better Chance Program to bid on the purchase or lease of the
 13 public school facility on an equal basis with the open-enrollment public
 14 charter school.

15 (e)(1) The division shall maintain a list of unused or underutilized
 16 public school academic facilities and make the list available on the
 17 division's website.

18 (2) No later than January 15 each year, the board of directors
 19 of a school district shall notify the division in writing if a public school
 20 academic facility that was previously used for classroom instruction,
 21 extracurricular activity space, or administrative space will be unused or
 22 underutilized in the upcoming school year.

23 (3) The division shall update the list published on its website
 24 within fifteen (15) days of being notified by a school district of an unused
 25 or underutilized public school academic facility.

26 (4) A notice of an unused or underutilized public school
 27 academic facility that is sent to the division shall include the following
 28 information:

29 (A) The condition of the public school academic facility;

30 (B) The total square footage of the public school academic
 31 facility;

32 (C) Maximum occupancy of the public school academic
 33 facility; and

34 (D) A description of how the public school academic
 35 facility was most recently used.

36 (f)(1)(A)(i) A public school academic facility that appears for the

1 first time on the unused or underutilized list shall be designated as
2 unavailable if the school board of directors of the school district in which
3 the public school academic facility is located indicates on the notice
4 submitted to the division that the public school academic facility may be
5 reclaimed for classroom instruction, extracurricular activity space, or
6 administrative space within the next two (2) years.

7 (ii) A school district that utilizes the reclamation
8 provisions of subsection (f) of this section shall provide the division at
9 the time the reclamation request is made proof, in the form of the school
10 district's facility master plans, board resolution, or other similar
11 document, that commits the school district to the full use of the public
12 school academic facility during the next two (2) years.

13 (B) The two-year period under subdivision (f)(1)(A) of
14 this section begins on the date the public school academic facility is listed
15 on the division's website.

16 (C) If a public school academic facility designated as
17 unavailable on the division's website remains unused for classroom
18 instruction, extracurricular activity space, or administrative space for two
19 (2) years after being reclaimed by a school district, then the school board
20 of directors of the school district shall designate the public school
21 academic facility as "available" on the division's website.

22 (2) If the school board of directors of a school district that
23 owns a public school academic facility does not indicate that the facility
24 may be reclaimed, the public school academic facility shall be designated as
25 "available" on the division's website.

26 (3) The school board of directors of a school district may
27 change the designation of a public school academic facility from
28 "unavailable" to "available" at any time by submitting notice to the division
29 but may reclaim a public school academic facility only one (1) time.

30 (g)(1)(A) If an open-enrollment public charter school petitions the
31 division to use a public school academic facility listed as "available" on
32 the division's website, the open-enrollment public charter school shall send
33 written notice of intent to the division.

34 (B)(i) Within thirty (30) days of receiving written notice
35 of intent from an open-enrollment public charter school, the division shall
36 notify the school board of directors of the open-enrollment public charter

1 school whether or not the school board of directors of the open-enrollment
2 public charter school may access the public school academic facility.

3 (ii) If two (2) or more open-enrollment public
4 charter schools submit a petition to the division to use the same public
5 school academic facility, the division shall make the public school academic
6 facility available to the open-enrollment public charter school who submitted
7 the petition first.

8 (C)(i) Within thirty (30) days of receiving notification
9 from the division that an open-enrollment public charter school may use a
10 public school academic facility, the school district that owns the public
11 school academic facility shall be required by the division to lease the
12 public school academic facility to the open-enrollment public charter school
13 for a public education fair market value of a nominal amount to be set by the
14 state board based on the anticipated public educational advantage shall offer
15 a long-term lease of five (5) years, ten (10) years, fifteen (15) years,
16 twenty (20) years or other term less than twenty (20) years as deemed
17 necessary for the unused or underutilized public school academic facility to
18 the open-enrollment public charter school.

19 (ii) If practical, an open-enrollment public charter
20 school may lease a portion of the available space of the public school
21 academic facility rather than the entire public school academic facility.

22 (2)(A) An open-enrollment public charter school that secures a
23 public school academic facility under subdivision (g)(1) of this section
24 shall begin using the public school academic facility for classroom
25 instruction within two (2) years of acquiring the public school academic
26 facility.

27 (B) If the allocation of major renovation costs cannot be
28 agreed on and contained in the lease agreement, the open-enrollment public
29 charter school is responsible for the payment of the major renovation costs
30 if the open-enrollment public charter school chooses to lease the public
31 school academic facility.

32 (C) If the public school academic facility is not used for
33 classroom instruction within two (2) years of having been acquired by the
34 open-enrollment public charter school, the public school academic facility
35 shall be relisted on the division's website.

36 (D) If during the term of the lease the open-enrollment

1 public charter school closes or ceases use of the public school academic
2 facility for classroom instruction, the public school academic facility shall
3 be relisted on the division's website.

4 (3)(A) During the term of a lease executed under this section,
5 an open-enrollment public charter school is responsible for the direct
6 expenses related to the leased public school academic facility, including
7 expenses for utilities, insurance, maintenance, repairs, and remodeling.

8 (B) The school district that owns the public school
9 academic facility is responsible for any debt incurred for or liens that are
10 attached to the public school academic facility before the open-enrollment
11 public charter school leased the public school academic facility and shall
12 continue to maintain the debt service without shifting the cost of the debt
13 service to the open-enrollment public charter school.

14 (C) An open-enrollment public charter school that leases a
15 public school academic facility under this section shall not take action that
16 negatively impact the bond rights that are attached to the facility.

17 (4)(A) A public school academic facility that is designated as
18 "available" on the division's website shall remain designated as "available"
19 and may not be sold or otherwise disposed of except as provided under this
20 section for at least two (2) years.

21 (B) After a public school academic facility has been
22 listed as "available" for at least two (2) years on the division's website
23 with no claim by an open-enrollment public charter school, the school board
24 of directors of the school district may sell or otherwise dispose of the
25 public school academic facility.

26 (h) This section applies to all public school academic facilities
27 owned by a school district that meet the definition of unused or
28 underutilized public school academic facility on or after January 1, 2015.

29 (i) A school district shall not sell, destroy, or otherwise convey a
30 real property academic facility subject to this section without providing an
31 open-enrollment public charter school located within the boundaries of in the
32 school district with an opportunity for a right of access to lease the
33 academic facility or right of first refusal to purchase the academic facility
34 for below fair market value, including a consideration of the anticipated
35 public educational advantage.

36 (j) The Commission for Arkansas Public School Academic Facilities and

1 Transportation shall promulgate rules necessary to administer this section.

2 (k) If there is a conflict between the terms of this act and any other
3 provision of law, the terms of this act shall controll.

4
5 SECTION 2. Arkansas Code § 6-23-501(d)(1), concerning funding for
6 open-enrollment public charter schools, is amended to read as follows:

7 (d)(1) An open-enrollment public charter school shall have a right of
8 first refusal to purchase or lease for a public education fair market value
9 of a nominal amount to be set by the state board based on the anticipated
10 public educational advantage, a closed public school facility or unused
11 portions of a public school facility located ~~in~~ within the boundaries of a
12 public school district from which it draws its students in which the open-
13 enrollment public charter school is located if the public school district
14 decides to sell ~~or~~, lease, dispose of, or destroy the public school facility.

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16 SECTION 3. Arkansas Code § 6-23-501(d)(4), concerning funding for
17 open-enrollment public charter schools, is repealed.

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