

1 State of Arkansas *As Engrossed: H3/17/15 H3/25/15*

2 90th General Assembly

# A Bill

3 Regular Session, 2015

HOUSE BILL 1842

4

5 By: Representative Murdock

6

7

## For An Act To Be Entitled

8

AN ACT TO CLARIFY TERMS UNDER THE ARKANSAS FISCAL

9

ASSESSMENT AND ACCOUNTABILITY PROGRAM; AND FOR OTHER

10

PURPOSES.

11

12

13

## Subtitle

14

TO CLARIFY TERMS UNDER THE ARKANSAS

15

FISCAL ASSESSMENT AND ACCOUNTABILITY

16

PROGRAM.

17

18

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

20

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

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

31

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

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



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

2  
3 SECTION 3. Arkansas Code § 6-20-401(4)(C)(iii), concerning the  
4 definition of "revenue receipts of a school district", is amended to read as  
5 follows:

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

10  
11 SECTION 4. Arkansas Code § 6-20-402(f), concerning the limitation on  
12 current indebtedness, is amended to read as follows:

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

17  
18 SECTION 5. Arkansas Code § 6-20-415(c)(4), concerning consultants, is  
19 amended to read as follows:

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

24  
25 SECTION 6. Arkansas Code § 6-20-1204(c)(3), concerning forms of bonds,  
26 is amended to read as follows:

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

32  
33 SECTION 7. Arkansas Code § 6-20-1204(d)(3)(C), concerning forms of  
34 bonds, is amended to read as follows:

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

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

4  
5 *SECTION 8. Arkansas Code § 6-20-1801(d), concerning the filing of*  
6 *audit reports, is amended to read as follows:*

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

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

16  
17 *SECTION 9. Arkansas Code § 6-20-1802 is amended to read as follows:*  
18 *6-20-1802. Fiscal distress for failure to file.*

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

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

28  
29 *SECTION 10. Arkansas Code § 6-20-1902 is amended to read as follows:*  
30 *6-20-1902. Purpose.*

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

34  
35 *SECTION 11. Arkansas Code § 6-20-1903, concerning the definition of*  
36 *"fiscal distress", is amended to add an additional subdivision to read as*

1 follows:

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

6  
7 SECTION 12. Arkansas Code § 6-20-1904 is amended to read as follows:  
8 6-20-1904. Indicators of fiscal distress or fiscal distress status.

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

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

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

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

19 (A) Material failure to properly maintain school  
20 facilities;

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

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

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

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

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

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

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

36 (I) Material default on any school district debt

1 obligation;

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

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

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

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

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

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

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

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

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

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

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

36

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

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

7           ~~(ii)(B)~~ The department shall provide the notice  
8 required under ~~this~~ subdivision (a)(1)(A) of this section on or before March  
9 30 of each year.

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

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

18  
19           SECTION 14. Arkansas Code § 6-20-1906(a) and (b), concerning  
20 classification of fiscal distress status, is amended to read as follows:

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

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

31  
32           SECTION 15. Arkansas Code § 6-20-1907 is amended to read as follows:  
33 6-20-1907. Debt issuance.

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

1  
2           SECTION 16. Arkansas Code § 6-20-1908(a)-(c), concerning a fiscal  
3 distress or fiscal distress status plan, are amended to read as follows:

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

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

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

22  
23           SECTION 17. Arkansas Code § 6-20-1909(a), concerning department  
24 actions, is amended to read as follows:

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

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

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

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

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

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

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

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

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

10 (B) The Public School Employee Fair Hearing Act, § 6-17-  
11 1701 et seq.;

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

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

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

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

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

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

31 (8) Otherwise reconstitute the school district; or

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

35

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

1 actions, are amended to read as follows:

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

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

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

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

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

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

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

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

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

1 *the appropriate district policies;*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30  
31 SECTION 19. Arkansas Code § 6-20-1911(a), concerning rules and  
32 regulations, is amended to read as follows:

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

36

