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4

As Engrossed: S2/16/17

# A Bill

SENATE BILL 308

5 By: Senators A. Clark, J. English, J. Hendren, Hester, J. Hutchinson, B. Johnson  
6 By: Representatives Lowery, Ballinger, D. Douglas, Gates, K. Hendren, G. Hodges, Sullivan  
7

## For An Act To Be Entitled

9 AN ACT TO GRANT PUBLIC CHARTER SCHOOLS A RIGHT OF  
10 ACCESS TO UNUSED OR UNDERUTILIZED PUBLIC SCHOOL  
11 FACILITIES; TO CLARIFY RIGHTS OF FIRST REFUSAL TO  
12 PURCHASE OR LEASE UNUSED OR UNDERUTILIZED PUBLIC  
13 SCHOOL FACILITIES; AND FOR OTHER PURPOSES.  
14

## Subtitle

15  
16 TO GRANT PUBLIC CHARTER SCHOOLS A RIGHT  
17 OF ACCESS TO UNUSED OR UNDERUTILIZED  
18 PUBLIC SCHOOL FACILITIES.  
19  
20  
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
23

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

27 (17) "Unused or underutilized public school facility" means a  
28 public school facility or other real property that:

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

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

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



1 or

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

4  
5 SECTION 2. Arkansas Code § 6-21-806(a), concerning requirements for  
6 the Academic Facilities Master Plan Program, is amended to add an additional  
7 subdivision to read as follows:

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

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

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

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

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

23  
24 SECTION 3. Arkansas Code Title 6, Chapter 21, Subchapter 8, is amended  
25 to add additional sections to read as follows:

26 6-21-815. Right of access to unused or underutilized public school  
27 facilities.

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

30 (1) An open-enrollment public charter school as defined in § 6-  
31 23-103;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (A) Utilities;

8 (B) Insurance;

9 (C) Maintenance;

10 (D) Repairs; and

11 (E) Renovation.

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

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

17 (A) Any bond rights attached to the public school facility  
18 or other real property; or

19 (B) Any tax-exempt financing related to the public school  
20 facility or other real property.

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

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

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

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

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

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

1 comply with this section as being in academic facilities distress under § 6-  
2 21-811.

3 (2) The charter school authorizer may take action under § 6-23-  
4 105 on the charter of a public charter school that fails to comply with this  
5 section.

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

8  
9 6-21-816. Sale or lease of public school facilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (e)(1)(A) If the division receives a petition under subsection (d) of  
10 this section, the division, within five (5) days after receiving the  
11 petition, shall notify each eligible entity granted a charter under § 6-23-  
12 101 et seq. and statewide organization representing charter schools in  
13 Arkansas by certified mail of the petition.

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

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

22 (3) An objection shall include:

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

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

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

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

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

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

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

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

10 (h)(1) The division may classify a school district that fails to  
11 comply with this section as being in academic facilities distress under § 6-  
12 21-811.

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

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

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

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

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

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

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

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

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

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



