

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003

A Bill

HOUSE BILL 2303

4
5 By: Representative Mahony
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For An Act To Be Entitled

8
9
10 AN ACT TO CREATE A DIVISION OF EDUCATION
11 ACCOUNTABILITY; AND FOR OTHER PURPOSES.
12

Subtitle

13
14 AN ACT TO CREATE A DIVISION OF EDUCATION
15 ACCOUNTABILITY.
16
17

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

20 SECTION 1. Arkansas Code Title 10 is amended to add an additional
21 chapter to read as follows:

22 10-7-101. Division of Education Accountability created - Authority -
23 Exemption.

24 (a) There is created under the authority of the General Assembly a
25 “Division of Education Accountability”.

26 (b) The division shall be headed by a director who is vested with the
27 authority to audit by collecting, analyzing, verifying and reporting
28 information regarding the performance of the Department of Education,
29 Department of Higher Education, State Board of Workforce Education and Career
30 Opportunities, State Board of Education, school districts, individual
31 schools, early childhood education programs, institutions of higher
32 education, or any other educational unit in Arkansas or any function thereof,
33 receiving state-appropriated funds, cash funds, or any other fund derived
34 under the authority or by virtue of state law.

35
36 10-7-102. Qualifications of director.



1 (a) The director shall not be related in the second degree of
 2 consanguinity or affinity to any state officer, department head,
 3 superintendent, principal, or disbursing officer of any department, office,
 4 or agency of the state, whom under this act it shall be his or her duty to
 5 audit.

6 (b) The director shall not serve in any ex officio capacity on any
 7 administrative board or commission or have any financial interest in the
 8 transactions of any department, board, bureau, institution, commission, or
 9 agency of the state.

10
 11 10-7-103. Employment and removal of director.

12 (a) The director shall be employed by a majority vote of the
 13 membership of the House Committee on Education and the Senate Committee on
 14 Education, and the name of the person so selected shall be presented to each
 15 house of the General Assembly for confirmation by both houses if the General
 16 Assembly is in session at the time of the selection.

17 (b) If the director is selected while the General Assembly is not in
 18 session, he or she shall in all respects carry out the functions, powers, and
 19 duties as provided in this act until the next regular session of the General
 20 Assembly. At that time the name of the person selected as director shall be
 21 presented to both houses of the General Assembly for confirmation. Unless
 22 upon the presentation his or her selection shall be rejected, he or she shall
 23 in all respects continue to carry out the functions, powers, and duties
 24 provided in this act.

25 (c) If a vacancy in the position of director exists, the position
 26 shall be filled at a joint meeting of the House and Senate Education
 27 Committees by majority action of the total membership thereof, subject to
 28 approval of both houses of the General Assembly at its next regular session.

29 (d) The director may be removed at any time by a majority vote of both
 30 the House and Senate Education Committees for cause after a public hearing
 31 thereon.

32
 33 10-7-104. Written appointment of director.

34 The chairs of the House and Senate Education Committees, upon vote or
 35 approval of the majority of the membership of the committee, shall execute a
 36 written appointment of the person so employed as the director and cause the

1 written appointment to be filed in the office of the Secretary of State.

3 10-7-105. Director - Oath and bond.

4 (a) Upon appointment, the director shall qualify by taking the
 5 constitutional oath and executing a bond to cover his or her official acts
 6 and the acts of his or her employees, to be approved by the House and Senate
 7 Education Committees, payable to the State of Arkansas, in the sum of twenty-
 8 five thousand dollars (\$25,000), conditioned upon the faithful discharge of
 9 his or her duties, with a surety company authorized to do business in the
 10 State of Arkansas.

11 (b) The premium due the surety company for the execution of the bond
 12 shall be paid for by the state.

13 (c) The person appointed as director, within ten (10) days after his
 14 or her appointment, shall file in the office of the Secretary of State his or
 15 her oath and approved bond, and if he or she fails to do so, the House and
 16 Senate Education Committees or a majority of the membership thereof shall
 17 appoint some other qualified person to fill the office.

18 (d) The director may require any of his or her employees to post bond
 19 to reimburse him or her for any loss that he or she might incur on his or her
 20 bond due to the acts of the employees.

22 10-7-106. Duties of director.

23 (a) The director shall have the authority and it shall be his or her
 24 duty to:

25 (1) Monitor the performance of any educational unit in Arkansas
 26 that receives state-appropriated funds, cash funds, or any other fund derived
 27 under the authority or by virtue of state law, including, but not limited to,
 28 the Department of Education, State Board of Education, Department of Higher
 29 Education, Arkansas Higher Education Coordinating Board, Department of
 30 Workforce Education, State Board of Workforce Education and Career
 31 Opportunities, all school districts, individual schools, early childhood
 32 education programs, and institutions of higher education;

33 (2) Personally, or by his or her authorized assistants, examine
 34 information, reports, or other documents necessary to monitor the performance
 35 of any educational unit;

36 (3)(A) Make any recommendations to the General Assembly in

1 respect to the alteration or improvement of the performance of any
2 educational unit.

3 (B)(i) The director may recommend to the General Assembly
4 any changes that in his or her opinion might improve the system of education
5 in an individual school, a school district, or on a state wide level.

6 (ii) If the director finds that the rules and
7 regulations of the Department of Education, or the requirements of state or
8 federal laws have not been implemented or followed by any educational unit or
9 employee of an educational unit, he or she shall report the failure to the
10 General Assembly and may make such recommendations as he or she considers
11 advisable or necessary for any alteration or correction; and

12 (4) Require the aid and assistance of all executives and
13 officials, teachers, principals, superintendents, deans, presidents, and
14 other employees of every department, board, bureau, institution, commission,
15 or agency of the state at all times in the inspection, examination, and
16 monitoring of any and all documents, reports, or other information.

17 (c)(1) The director shall have access at all times to all of the
18 books, accounts, reports, confidential or otherwise, or other records of
19 information in any state office, department, board, bureau, or institution of
20 any educational unit in the state.

21 (2) Nothing in this section shall be construed as authorizing or
22 permitting the publication of information prohibited by law.

23 (d) The director shall execute the duties and responsibilities of the
24 position of director as provided by law.

25
26 10-7-107. Disbursing officer - Payment of salaries.

27 (a) The director is designated as disbursing officer for the division,
28 and all vouchers issued in the payment of salaries and expenses incurred in
29 the operations of the division shall be approved by the director before they
30 are paid.

31 (b) If a vacancy exists in the position of director, the House and
32 Senate Education Committees shall designate a disbursing agent for the
33 division who shall serve until the position of the director may be filled.

34 (c) The salary of the director and the other employees of the division
35 shall be paid in the same manner and through the same procedure used for the
36 payment of salaries of other state employees.

1
2 10-7-108. Personnel.

3 (a) Subject to a biennial appropriation therefor, all auditors,
4 stenographic and clerical assistants, and other employees of the Division of
5 Education Accountability shall be named and appointed by the director.

6 (b) The director shall be free to select the most efficient personnel
7 available for each position in the division, to the end that he or she may
8 render to the members of the General Assembly the service that they have a
9 right to expect. The director may conduct such professional examination as
10 he or she may deem expedient in determining the qualifications of the persons
11 whom he or she contemplates placing on his or her staff.

12 (c) No person related to any member of the General Assembly or to the
13 director in the first degree of consanguinity or affinity may be employed on
14 the staff of the division.

15 (d) It is the intention and desire of the General Assembly to free the
16 director and his or her staff from partisan politics, and it is declared to
17 be against public policy for any member of the General Assembly or any
18 official or employee of the state government or any board, bureau,
19 department, or institution thereof to recommend or suggest the appointment of
20 any person to a position on the staff of the director.

21
22 10-7-109. Special audits.

23 (a) The House or Senate Education Committee, or interim committees
24 thereof, shall direct the director to make any special audit or review that
25 in its judgment is proper and necessary to carry out the purpose and intent
26 of this act or to assist the General Assembly in the proper discharge of its
27 duties.

28 (b) Any member of the General Assembly, by written request filed with
29 the committee at least six (6) days prior to any regular or special meeting
30 of the committee, may request a special auditing of any educational
31 institution of the state. Upon the vote of the majority of the membership of
32 the committee approving the request, the director shall make the audit.

33
34 10-7-110. Audit and biennial reports.

35 (a) Copies of each audit report shall be filed with the school
36 district audited and the House and Senate Education Committees.

1 (b)(1) The director shall file a biennial report with the Legislative
 2 Council, House and Senate Education Committees, the Governor, the Speaker of
 3 the House of Representatives, the Lieutenant Governor, each member of the
 4 General Assembly, and in the office of the Secretary of State.

5 (2) Each biennial report shall contain, among other things,
 6 copies of, or the substance of, reports made to the various departments,
 7 bureaus, institutions, and boards, as well as a summary of recommendations.

8 (c) Reports shall also contain specific recommendations to the General
 9 Assembly for the amendment of existing laws or the passage of new laws
 10 designed to improve the system or quality of education in the state.

11 (d)(1) All recommendations submitted by the director shall be confined
 12 to those matters properly coming within his or her jurisdiction, which is to
 13 see that the laws passed by the General Assembly dealing with education are
 14 in all respects carefully observed and that the attention of the General
 15 Assembly is directed to all cases of violations of the law and to those
 16 instances where there is need for change of existing laws or the passage of
 17 new laws to secure a general, suitable, and efficient system of public
 18 education.

19 (2) The director shall not include in his or her recommendations
 20 to the General Assembly any recommendations as to the sources from which
 21 taxes shall be raised to meet the governmental expense.

22 (e) All reports filed with the Secretary of State shall be open to
 23 public inspection.

24
 25 10-7-111. Witnesses - Penalty for failure to appear - Perjury.

26 (a) The director or any of his or her authorized assistants shall have
 27 the power in making any audit or examination to administer oaths and cause to
 28 be summoned to appear before them at a time and place and with such papers,
 29 files, and records as may be named in the summons, any person or persons
 30 whose testimony may be desired or deemed necessary in the audit or
 31 examination.

32 (b) The power of the director or any of his or her assistants to
 33 administer oaths and summon records under subsection (a) of this section
 34 shall apply to all state employees and officials as well as to any other
 35 person, business, firm, corporation, or association doing business with any
 36 state agency that the director or any of his or her authorized assistants may

1 have reason to believe have information or records that are necessary to a
2 full determination of matters pertaining to any audit authorized in this act.

3 (c) Any person summoned to appear before the director or any of his or
4 her authorized assistants to testify or submit papers, files, and records as
5 required in this section shall receive the same compensation as is received
6 by persons serving as witnesses in circuit courts of this state.

7 (d)(1) Any person who willfully fails or refuses to appear and testify
8 or submit papers, files, and records material and pertinent to the
9 examination, or willfully refuses to answer any material or pertinent
10 questions propounded to him or her by the director or any of his or her
11 assistants, shall be deemed guilty of a misdemeanor.

12 (2) Upon conviction by a court of competent jurisdiction, the
13 person shall be fined in any sum not less than one hundred dollars (\$100),
14 nor more than five hundred dollars (\$500), and any person appearing and
15 willfully and corruptly giving any false testimony that is material to the
16 investigation of his or her official conduct and pertinent to the examination
17 before the director or any of his assistants, shall be deemed guilty of
18 perjury.

19
20 10-7-112. Records - Public inspection.

21 (a) The director shall keep, or cause to be kept, a complete,
22 accurate, and adequate set of fiscal transactions of the Division of
23 Education Accountability.

24 (b) He or she shall also keep a complete file of copies of all audit
25 reports, examinations, investigations, and any and all other reports or
26 releases issued by him or her or his or her office, and a complete file of
27 work papers and other evidence pertaining to work of the division.

28 (c)(1) All working papers, including notes, memoranda, preliminary
29 drafts of audit reports, and other data gathered in the preparation of audit
30 reports by the division are exempt from all provisions of the Freedom of
31 Information Act of 1967, § 25-19-101 et seq., and are not to be considered
32 public documents for purposes of inspection or copying under the Freedom of
33 Information Act of 1967 or any other law of the State of Arkansas, except as
34 provided in this subsection.

35 (2) After a report has been presented to the House and Senate
36 Education Committees, the report and copies of any documents contained in the

1 working papers of the division shall be open to public inspection, except
 2 documents specifically exempted from disclosure under the Freedom of
 3 Information Act of 1967 and except documents that disclose auditing
 4 procedures and techniques.

5 (3) For the purposes of this subsection (c):

6 (A) "Documents which disclose auditing procedures and
 7 techniques" includes:

8 (i) Internal control questionnaires consisting of
 9 the checklist of accounting and administrative procedures employed by the
 10 division in the course of performing an audit; and

11 (ii) The audit program; and

12 (B) "Audit program", which means the instructions and
 13 guidelines formulated by the division to inform its accountants about the
 14 examination procedures to be followed in the course of examining records and
 15 accounts to verify their accuracy, including verifications that the
 16 examination procedures have been followed.

17
 18 10-7-113. Records and reports.

19 (a) Insofar as it is practical to do so and not inconsistent with the
 20 law, the Division of Education Accountability shall establish uniform systems
 21 of record keeping within the respective departments, boards, school
 22 districts, and other educational institutions.

23 (b) The director may require, on forms or formats prescribed and
 24 furnished by him or her, the filing with the division of information, reports
 25 or other data at such times as he or she shall deem advisable.

26
 27 10-7-114. Notice of deficiencies.

28 (a) The Legislative Joint Auditing Committee shall establish the
 29 following procedure for the purpose of giving written notice to a public
 30 servant of deficiencies in the operation or performance of his or her
 31 official duties as provided by the laws of the State of Arkansas in the
 32 fiscal management of the public servant's duties.

33 (b)(1) Notice to the public servant shall be given by certified letter
 34 from the cochairs of the committee with a provision for response to this
 35 letter thirty (30) days from the date of the receipt of the letter by the
 36 public servant.

GREETING:

You are invited to appear in Room, State Capitol Building, Little Rock, Arkansas, before the _____ Education Committee on the day of, 20. . ., at, and discuss with the committee your respective audit report, prepared by the staff of the committee, and if there is any additional evidence you would like to produce at this meeting, that is now in your custody or the custody of some other individual, you are requested to furnish the committees' staff with this information at least seven (7) days prior to the date of your appearance.

Witness my hand, as and the seal thereof, on this day of, 20.
.....
_____ Education Committee".

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