

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.

Act 1289 of the Regular Session

As Engrossed: H3/3/09 H3/19/09 S4/2/09

A Bill

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009

HOUSE BILL 1606

4
5 By: Representative Saunders
6
7

8 **For An Act To Be Entitled**

9 AN ACT TO PROVIDE FISCAL ACCOUNTABILITY FOR
10 EDUCATION SERVICE COOPERATIVES; AND FOR OTHER
11 PURPOSES.
12

13 **Subtitle**

14 TO PROVIDE FISCAL ACCOUNTABILITY FOR
15 EDUCATION SERVICE COOPERATIVES.
16
17

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

20 *SECTION 1. Arkansas Code § 6-13-1011(a), concerning personnel policies*
21 *of education service cooperatives, is amended to read as follows:*

22 *(a) (1) Personnel of education service cooperatives shall be employed*
23 *in accordance with laws, rules, regulations, and procedures applicable to the*
24 *school districts of this state.*

25 *(2) In lieu of a salary schedule, an education service*
26 *cooperative annually may submit to the Department of Education a complete*
27 *listing of all employees of the education service cooperative and each*
28 *employee's position, salary, and benefits.*
29

30 *SECTION 2. Arkansas Code § 6-13-1013(b), concerning the regulatory*
31 *authority of the State Board of Education over education service*
32 *cooperatives, is amended to read as follows:*

33 *(b) ~~Such policies, rules, and regulations~~ The policies and rules shall*
34 *include, but not be limited to, without limitation:*

35 *(1) those concerns that keep the The rules governing the*



1 operation of an education service cooperatives operating cooperative within
2 appropriate state and federal laws ~~and;~~

3 ~~(2) serve as guides~~ Guidelines for settling possible disputes
4 between school districts and in equity or jurisdictional matters relating to
5 shared assets and services;

6 (3) The obligation of an education service cooperative board of
7 directors for overseeing administrative and program expenditures; and

8 (4) The fiscal distress status of an education service
9 cooperative under §§ 6-13-1027 — 6-13-1031.

10
11 SECTION 3. Arkansas Code § 6-13-1020 is amended to read as follows:

12 6-13-1020. Policies and procedures – Expenditures, reports, and
13 audits.

14 ~~(a)(1)~~ (a) On or before August 31 of each year, each education service
15 cooperative shall file with the State Board of Education for the state
16 board's approval:

17 (1) The policies and procedures for each of the education
18 service cooperative, shall be filed with and approved by the State Board of
19 Education. This report shall be filed on or before June 1 of each year and
20 shall contain, but is not limited to, including, without limitation, the
21 board of directors' policies and procedures for overseeing the administrative
22 and program expenditures of the education service cooperative;

23 (2) a record of the education service cooperative's employment
24 policies and practices for the year. This annual employment record must
25 include that includes, without limitation:

26 (A) the race and sex of each person the education
27 service cooperative employed or terminated during the year by the education
28 service cooperative and;

29 (B) the race and sex of every person who sought
30 employment with the education service cooperative during the year; and

31 (C) The employment report must further disclose The name
32 of each person employed by the education service cooperative during the year
33 who is related by blood or marriage to another employee or board member of
34 the education service cooperative; and

35 ~~(2) (3)(A) Reports~~ A report of its receipts and expenditures
36 shall also be filed with the state board on forms provided and time schedules

1 ~~set by the~~ made in accordance with uniform accounting procedures adopted by
 2 the Commissioner of Education.

3 ~~(B) These reports~~ The report shall contain, ~~but not be~~
 4 ~~limited to~~ without limitation;

5 ~~(i) an~~ An itemization of administrative and
 6 ~~programmatic program~~ expenditures. ~~Expenditures shall be reported in~~
 7 ~~accordance with uniform accounting procedures adopted by the Department of~~
 8 ~~Education.~~; and

9 ~~(ii)~~ The result of the board of directors' review of
 10 the expenditures made under its oversight function.

11 (b) The Department of Education may prescribe the forms and procedures
 12 for filing the information required by subsection (a) of this section.

13 ~~(3) (c) Education~~ Each education service ~~cooperatives~~ shall be
 14 cooperative is subject to an annual ~~audits~~ audit by the Legislative Joint
 15 Auditing Committee.

16 ~~(b) (d)(1)(A)~~ (d)(1)(A) In an annual meeting of the board of directors which
 17 ~~must be convened~~ convene between May 15 and July 15, ~~the~~ each education
 18 service ~~cooperatives~~ cooperative shall report to ~~their~~ its constituent school
 19 districts on the year's operations.

20 ~~(B)~~ The report also shall include information on fiscal
 21 distress under § 6-13-1027.

22 ~~(2) Such reports~~ The education service cooperative shall ~~be~~
 23 ~~supplemented~~ supplement its report with written reports to each school
 24 district and to the department on a school-by-school, service-by-service
 25 accounting basis.

26 (e) Following the end of each fiscal year, ~~Any~~ any balances in
 27 particular service accounts must be apportioned and returned to the schools
 28 involved or credited to their accounts for the following year.

30 SECTION 4. Arkansas Code Title 6, Chapter 13, Subchapter 10, is
 31 amended to add five (5) additional sections to read as follows:

32 6-13-1027. Fiscal distress.

33 (a) As used in this section:

34 (1) "Fiscal integrity" means the education service cooperative's
 35 ability to comply completely, accurately, and timely with financial
 36 management, accounting, auditing, and reporting procedures required by state

1 or federal law and regulations; and

2 (2) "Material" means that the act, omission, or violation
3 jeopardizes the fiscal integrity of the education service cooperative.

4 (b) Any education service cooperative that meets one (1) or more of
5 the following criteria may be identified by the Department of Education as
6 being in fiscal distress upon final approval of the State Board of Education:

7 (1)(A) A declining balance that jeopardizes the fiscal integrity
8 of the education service cooperative.

9 (B) The department shall not use capital outlay
10 expenditures from the education service cooperative's balance for facilities
11 to identify the education service cooperative as being in fiscal distress;

12 (2) A material failure to meet the education service
13 cooperative's obligation to maintain the education service cooperative's
14 facilities;

15 (3) A material violation of local, state, or federal law or
16 regulations relating to:

17 (A) Fire, health, or safety codes;

18 (B) Construction codes;

19 (C) Audit requirements; or

20 (D) Procurement, bidding, and purchasing requirements;

21 (4) A material failure to provide timely and accurate legally
22 required financial reports to the department, the Division of Legislative
23 Audit, the General Assembly, or the Internal Revenue Service;

24 (5) A material failure to maintain sufficient funds to cover
25 payroll, salary, employment benefits, or legal tax obligations;

26 (6) A material default on any debt obligation;

27 (7) A material discrepancy between budgeted and actual
28 expenditures; or

29 (8) Any other fiscal condition of the education service
30 cooperative that the department determines materially impacts the education
31 service cooperative's delivery of education services.

32 (c)(1) The department may identify an education service cooperative as
33 being in fiscal distress at any time a fiscal condition of the education
34 service cooperative is discovered to have a detrimental negative impact on
35 the continuation of educational services provided by the education service
36 cooperative.

1 (2)(A) If the department identifies an education service
2 cooperative as being in fiscal distress, the department shall notify the
3 education service cooperative in writing of the identification of fiscal
4 distress within ten (10) calendar days.

5 (B) The department shall identify in the notice each
6 criteria for fiscal distress on which the department based the identification
7 of fiscal distress.

8 (C) The department shall deliver the notice by certified mail,
9 return receipt requested, and addressed to:

10 (i) The president of the education service cooperative's
11 board of directors; and

12 (ii) The director of the education service cooperative
13 employed under § 6-13-1010.

14 (d) The identification of fiscal distress made by the department under
15 this section may be appealed to the State Board of Education under § 6-13-
16 1031, in which case the final order entered upon appeal is the final
17 classification of fiscal distress.

18 (e) Within two (2) weeks following the date the education service
19 cooperative receives the final classification by the state board of fiscal
20 distress, the education service cooperative shall:

21 (1) Notify in writing each public school district in its service
22 area that the education service cooperative is classified as being in fiscal
23 distress; and

24 (2) File with the department a fiscal distress plan under § 6-
25 13-1028.

26 (f) An education service cooperative that is identified as being in
27 fiscal distress shall not incur any debt without the prior written approval
28 of the department.

29 (g) The education service cooperative shall include in the annual
30 report to constituent school districts under § 6-13-1020(d) the progress the
31 education service cooperative had made on its fiscal distress plan.

32
33 6-13-1028. Fiscal distress plan.

34 (a) An education service cooperative that is classified by the State
35 Board of Education as being in fiscal distress shall file with the Department
36 of Education a fiscal distress plan that:

1 (1) Addresses each area of fiscal distress identified by the
2 department;

3 (2) Describes how the education service cooperative will remedy
4 the areas experiencing fiscal distress; and

5 (3)(A) Establishes the schedule by which the education service
6 cooperative will implement the fiscal distress plan.

7 (B) The fiscal distress plan implementation schedule shall
8 not exceed two (2) years from the date of the final *classification* of fiscal
9 distress.

10 (c) The department shall approve the fiscal distress plan before the
11 education service cooperative implements the fiscal distress plan.

12 (d) An education service cooperative identified as being in fiscal
13 distress is required to receive on-site technical evaluation and assistance
14 from the department.

15
16 6-13-1029. Fiscal distress actions.

17 (a) To address the identified areas of fiscal distress of an education
18 service cooperative, the Department of Education shall:

19 (1)(A) Conduct an on-site evaluation and make recommendations
20 regarding the staffing and fiscal practices of the education service
21 cooperative.

22 (B) The recommendations of the department are binding on
23 the education service cooperative;

24 (2) Every six (6) months during which the education service
25 cooperative is classified as being in fiscal distress, the department shall
26 submit to the state board a written evaluation on the fiscal status of the
27 education service cooperative;

28 (3) Monitor the fiscal operations and accounts of the education
29 service cooperative; and

30 (4) Require the education service cooperative administrative
31 staff and employees to obtain instruction or training in areas of fiscal
32 concern for the education service cooperative.

33 (b) The department also may take one (1) or more of the following
34 actions:

35 (1) Reorganize the administrative unit of the education service
36 cooperative by:

1 (A)(i) Removing and replacing the director of the
2 education service cooperative employed under § 6-13-1010.

3 (ii) An individual appointed to replace the director
4 shall administratively operate the education service cooperative under the
5 supervision and approval of the Commissioner of Education.

6 (iii) The department may compensate nondepartment
7 agents operating the education service cooperative from the education service
8 cooperative's funding; and

9 (B) Removing, replacing, or reassigning other
10 administrative staff of the education service cooperative; or

11 (2) Impose reporting requirements on the education service
12 cooperative.

13 (c) Within two (2) consecutive school years of the State Board of
14 Education's final classification of fiscal distress, the Department of
15 Education shall determine whether to recommend that the education service
16 cooperative be removed from fiscal distress status.

17
18 6-13-1030. Removal from fiscal distress status.

19 (a) The Department of Education shall certify in writing to the
20 education service cooperative that the education service cooperative may be
21 removed from fiscal distress status when the department determines that the
22 education service cooperative has:

23 (1) Corrected all of the criteria under § 6-13-1027 that led to
24 the classification of fiscal distress; and

25 (2) Complied with all department recommendations and
26 requirements for removal from fiscal distress status.

27 (b)(1) Within thirty (30) days of receiving the department's
28 certification under subsection (a) of this section, an education service
29 cooperative may petition the State Board of Education in writing for removal
30 from fiscal distress.

31 (2) An education service cooperative may not petition the state
32 board for removal from fiscal distress status before the department makes the
33 certification under subsection (a) of this section.

34 (c) Within sixty (60) days of receiving the petition for removal from
35 fiscal distress, the state board shall deny the petition or remove the
36 education service cooperative from fiscal distress status.

1 (d) If an education service cooperative fails to meet the department's
2 requirements for removal from fiscal distress status within two (2)
3 consecutive school years of being classified in fiscal distress, the state
4 board shall:

5 (1) Reorganize the administrative unit of the education service
6 cooperative under § 6-13-1029; or

7 (2)(A) Issue a written finding supported by a majority vote of
8 the state board explaining in detail that the education service cooperative
9 could not comply with this section due to impossibility caused by external
10 forces beyond the education service cooperative's control.

11 (B) The state board shall extend the classification of
12 fiscal distress for one (1) additional year within which time the education
13 service cooperative shall comply with all conditions for removal from fiscal
14 distress status under this section.

15 (e) Within fifteen (15) days of making a decision under this section,
16 the state board shall notify the education service cooperative of its
17 decision and include with the notice a copy of a written finding issued under
18 subsection (d) of this section.

19
20 6-13-1031. Appeal.

21 (a) An education service cooperative may appeal to the State Board of
22 Education the identification of fiscal distress under § 6-13-1027.

23 (b) The education service cooperative may lodge an appeal by filing a
24 written appeal with the Commissioner of Education by certified mail, return
25 receipt requested, within thirty (30) days of the date the education service
26 cooperative received notice of the identification of fiscal distress.

27 (c) The written appeal shall state in clear terms the reason why the
28 education service cooperative should not be classified as being in fiscal
29 distress.

30 (d) The state board shall hear the appeal within sixty (60) days of
31 receipt of the written notice of appeal.

32 (e) Notwithstanding any appeal rights in this section, no appeal shall
33 stay the state board's or the Department of Education's authority to take
34 action to enforce the education service cooperative's compliance with
35 financial management, accounting, auditing, and reporting procedures required
36 by state or federal law and regulations.

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(f)(1) The decision of the state board on the appeal is a final order.

(2) There is no further right of appeal except to Pulaski County Circuit Court pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

/s/ Saunders

APPROVED: 4/9/2009