

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 87th General Assembly
3 Regular Session, 2009
4

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

A Bill

HOUSE BILL 1606

5 By: Representative Saunders
6
7

For An Act To Be Entitled

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

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*
36 *operation of an education service ~~cooperatives operating~~ cooperative within*



1 appropriate state and federal laws ~~and;~~

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

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

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

9
10 SECTION 3. Arkansas Code § 6-13-1020 is amended to read as follows:

11 6-13-1020. Policies and procedures – Expenditures, reports, and
12 audits.

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

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

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

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

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

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

34 ~~(2)~~ ~~(3)(A) Reports~~ A report of its receipts and expenditures
35 shall also be filed with the state board on forms provided and time schedules
36 set by the made in accordance with uniform accounting procedures adopted by

1 the Commissioner of Education.

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

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

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

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

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

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

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

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

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

28
29 SECTION 4. Arkansas Code Title 6, Chapter 13, Subchapter 10, is
30 amended to add five (5) additional sections to read as follows:

31 6-13-1027. Fiscal distress.

32 (a) As used in this section:

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

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

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

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

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

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

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

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

17 (B) Construction codes;

18 (C) Audit requirements; or

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

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

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

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

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

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

31 (c)(1) If the department identifies an education service cooperative
32 as being in fiscal distress, the department shall notify the education
33 service cooperative in writing by March 30 of each year of the identification
34 of fiscal distress.

35 (2) The department shall identify in the notice each criteria
36 for fiscal distress on which the department based the identification of

1 fiscal distress.

2 (3) The department shall deliver the notice by certified mail,
3 return receipt requested, and addressed to:

4 (A) The president of the education service cooperative's
5 board of directors; and

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

8 (d) The identification of fiscal distress made by the department under
9 this section is final unless appealed under § 6-13-1031, in which case the
10 final order entered upon appeal is the final identification of fiscal
11 distress.

12 (e) Within two (2) weeks following the date the education service
13 cooperative receives the final identification of fiscal distress, the
14 education service cooperative shall:

15 (1) Notify in writing each public school district in its service
16 area that the education service cooperative is identified as being in fiscal
17 distress; and

18 (2) File with the department a fiscal distress plan under § 6-
19 13-1028.

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

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

26
27 6-13-1028. Fiscal distress plan.

28 (a) An education service cooperative that is identified as being in
29 fiscal distress shall file with the Department of Education a fiscal distress
30 plan that:

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

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

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

1 (B) The fiscal distress plan implementation schedule shall
2 not exceed two (2) years from the date of the final *identification* of fiscal
3 distress.

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

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

9
10 6-13-1029. Fiscal distress actions.

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

13 (1)(A) Conduct an on-site evaluation and make recommendations
14 regarding the staffing and fiscal practices of the education service
15 cooperative.

16 (B) The recommendations of the department are binding on
17 the education service cooperative;

18 (2) Every six (6) months during which the education service
19 cooperative is *identified* as being in fiscal distress, submit a written
20 evaluation on the fiscal status of the education service cooperative;

21 (3) Monitor the fiscal operations and accounts of the education
22 service cooperative; and

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

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

28 (1) Petition the State Board of Education at any time for
29 authority to take steps to secure and protect the best interest of the
30 educational resources of the state and provide for the best interest of
31 public school students served by the education service cooperative;

32 (2) Reorganize the administrative unit of the education service
33 cooperative by:

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

36 (ii) An individual appointed to replace the director

1 shall administratively operate the education service cooperative under the
2 supervision and approval of the Commissioner of Education.

3 (iii) The department may compensate nondepartment
4 agents operating the education service cooperative from the education service
5 cooperative's funding; and

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

8 (3) Impose reporting requirements on the education service
9 cooperative.

10
11 6-13-1030. Removal from fiscal distress status.

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

16 (b) The department shall certify in writing to the state board and to
17 the education service cooperative that the education service cooperative
18 should be removed from fiscal distress status when the department determines
19 that the education service cooperative has:

20 (1) Corrected all of the criteria under § 6-13-1027 that led to
21 the identification of fiscal distress; and

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

24 (c) An education service cooperative may not petition the state board
25 for removal from fiscal distress status before the department makes the
26 certification under subsection (b) of this section.

27 (d) Within sixty (60) days of receiving the department's
28 certification, the state board shall approve or deny the department's
29 recommendation for removing the education service cooperative from fiscal
30 distress status.

31 (e) If an education service cooperative fails to meet the requirements
32 for removal from fiscal distress status under this section within two (2)
33 years of being identified in fiscal distress, the state board shall:

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

36 (2)(A) Issue a written finding supported by a majority vote of

1 the state board explaining in detail that the education service cooperative
2 could not comply with this section due to impossibility caused by external
3 forces beyond the education service cooperative's control.

4 (B) The state board shall include in its written finding
5 an extended deadline of not more than one (1) additional year for the
6 education service cooperative to comply with all conditions for removal from
7 fiscal distress status under this section.

8 (f) Within fifteen (15) days of making a decision under this section,
9 the state board shall notify the education service cooperative of its
10 decision and include with the notice a copy of a written finding issued under
11 subsection (e) of this section.

12
13 6-13-1031. Appeal.

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

16 (b) The education service cooperative may lodge an appeal by filing a
17 written appeal with the Commissioner of Education by certified mail, return
18 receipt requested, within thirty (30) days of the date the education service
19 cooperative received notice of the identification or decision.

20 (c) The written appeal shall state in clear terms the reason why the
21 education service cooperative should not be identified as being in fiscal
22 distress.

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

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

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

31 (2) There is no further right of appeal except to Pulaski County
32 Circuit Court pursuant to the Arkansas Administrative Procedure Act, § 25-15-
33 201 et seq.

34
35 /s/ Saunders