

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

# A Bill

HOUSE BILL 1606

4  
5 By: Representative Saunders  
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7

## For An Act To Be Entitled

8  
9 AN ACT TO PROVIDE FISCAL ACCOUNTABILITY FOR  
10 EDUCATION SERVICE COOPERATIVES; AND FOR OTHER  
11 PURPOSES.  
12

## Subtitle

13  
14 TO PROVIDE FISCAL ACCOUNTABILITY FOR  
15 EDUCATION SERVICE COOPERATIVES.  
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
19

20 SECTION 1. Arkansas Code § 6-13-1013(b), concerning the regulatory  
21 authority of the State Board of Education over education service  
22 cooperatives, is amended to read as follows:

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

25 (1) those concerns that keep the The rules governing the  
26 operation of an education service ~~cooperatives operating~~ cooperative within  
27 appropriate state and federal laws ~~and;~~

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

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

33 (4) The fiscal distress status of an education service  
34 cooperative under §§ 6-13-1027 — 6-13-1031.  
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36 SECTION 2. Arkansas Code § 6-13-1020 is amended to read as follows:



1           6-13-1020. Policies and procedures – Expenditures, reports, and  
2 audits.

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

6           (1) The policies and procedures for each of the education  
7 service cooperative, shall be filed with and approved by the State Board of  
8 Education. This report shall be filed on or before June 1 of each year and  
9 shall contain, but is not limited to, including, without limitation, the  
10 board of directors’ policies and procedures for overseeing the administrative  
11 and program expenditures of the education service cooperative;

12           (2) a record of the education service cooperative’s employment  
13 policies and practices for the year. This annual employment record must  
14 include that includes, without limitation:

15           (A) the The race and sex of each person the education  
16 service cooperative employed or terminated during the year by the education  
17 service cooperative and;

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

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

24           ~~(2)~~ (3)(A) Reports A report of its receipts and expenditures  
25 shall also be filed with the state board on forms provided and time schedules  
26 set by the made in accordance with uniform accounting procedures adopted by  
27 the Commissioner of Education.

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

30           (i) an An itemization of administrative and  
31 programmatic program expenditures. Expenditures shall be reported in  
32 accordance with uniform accounting procedures adopted by the Department of  
33 Education; and

34           (ii) The result of the board of directors’ review of  
35 the expenditures made under its oversight function.

36           (b) The Department of Education may prescribe the forms and procedures

1 for filing the information required by subsection (a) of this section.

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

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

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

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

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

18  
 19 SECTION 3. Arkansas Code Title 6, Chapter 13, Subchapter 10, is  
 20 amended to add five (5) additional sections to read as follows:

21 6-13-1027. Fiscal distress.

22 (a) As used in this section:

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

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

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

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

34 (B) The department shall not use capital outlay  
 35 expenditures from the education service cooperative's balance for facilities  
 36 to classify the education service cooperative as being in fiscal distress;

1           (2) A material failure to meet the education service  
2 cooperative’s obligation to maintain the education service cooperative’s  
3 facilities;

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

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

7                   (B) Construction codes;

8                   (C) Audit requirements; or

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

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

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

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

16           (7) A material discrepancy between budgeted and actual  
17 expenditures; or

18           (8) Any other fiscal condition of the education service  
19 cooperative that the department determines materially impacts the education  
20 service cooperative’s delivery of education services.

21           (c)(1) If the department classifies an education service cooperative  
22 as being in fiscal distress, the department shall notify the education  
23 service cooperative in writing by March 30 of each year of the classification  
24 of fiscal distress.

25           (2) The department shall identify in the notice each criteria  
26 for fiscal distress on which the department based the classification of  
27 fiscal distress.

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

30                   (A) The president of the education service cooperative’s  
31 board of directors; and

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

34           (d) A classification of fiscal distress made by the department and  
35 approved by the state board under this section is final unless appealed under  
36 § 6-13-1031, in which case the final order entered upon appeal is the final

1 classification of fiscal distress.

2 (e) Within two (2) weeks following the date the education service  
 3 cooperative receives the department's final classification of fiscal  
 4 distress, the education service cooperative shall:

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

8 (2) File with the department a fiscal distress plan under § 6-  
 9 13-1028.

10 (f) An education service cooperative that is classified as being in  
 11 fiscal distress shall not incur any debt without the prior written approval  
 12 of the department.

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

16  
 17 6-13-1028. Fiscal distress plan.

18 (a) An education service cooperative that is classified as being in  
 19 fiscal distress shall file with the Department of Education a fiscal distress  
 20 plan that:

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

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

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

27 (B) The fiscal distress plan implementation schedule shall  
 28 not exceed two (2) years from the date of the final classification of fiscal  
 29 distress.

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

32  
 33 6-13-1029. Fiscal distress actions.

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

36 (1)(A) Conduct an on-site evaluation and make recommendations

1 regarding the staffing and fiscal practices of the education service  
2 cooperative.

3 (B) The recommendations of the department are binding on  
4 the education service cooperative;

5 (2) Every six (6) months during which the education service  
6 cooperative is classified as being in fiscal distress, submit a written  
7 evaluation on the fiscal status of the education service cooperative; and

8 (3) Require the education service cooperative administrative  
9 staff and employees to obtain instruction or training in areas of fiscal  
10 concern for the education service cooperative.

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

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

17 (2) Reorganize the administrative unit of the education service  
18 cooperative by:

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

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

24 (iii) The department may compensate nondepartment  
25 agents operating the education service cooperative from the education service  
26 cooperative's funding; and

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

29 (3) Impose reporting requirements on the education service  
30 cooperative; or

31 (4) Monitor the fiscal operations and accounts of the education  
32 service cooperative.

33

34 6-13-1030. Removal from fiscal distress status.

35 (a) Within two (2) years of the State Board of Education's final  
36 classification of fiscal distress, the Department of Education shall

1 determine whether to recommend that the education service cooperative be  
 2 removed from fiscal distress status.

3 (b) The department shall certify in writing to the state board and to  
 4 the education service cooperative that the education service cooperative  
 5 should be removed from fiscal distress status when the department determines  
 6 that the education service cooperative has:

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

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

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

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

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

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

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

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

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

35  
 36 6-13-1031. Appeal.

1       (a) An education service cooperative may appeal to the State Board of  
2 Education:

3               (1) A classification of fiscal distress under § 6-13-1027; or

4               (2) The state board’s decision not to remove the education  
5 service cooperative from fiscal distress status under § 6-13-1030.

6       (b) The education service cooperative may lodge an appeal by filing a  
7 written appeal with the Commissioner of Education by certified mail, return  
8 receipt requested, within thirty (30) days of the date the education service  
9 cooperative received notice of the classification or decision.

10       (c) The written appeal shall state in clear terms the reason why the  
11 education service cooperative:

12               (1) Should not be classified as being in fiscal distress; or

13               (2) Should be removed from the classification of fiscal  
14 distress.

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

17       (e) Notwithstanding any appeal rights in this section, no appeal shall  
18 stay the state board’s or the Department of Education’s authority to take  
19 action to enforce the education service cooperative’s compliance with  
20 financial management, accounting, auditing, and reporting procedures required  
21 by state or federal law and regulations.

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

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

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