Jennifer Stump *Legislative Service Commission*

S.B. 345

123rd General Assembly
(As Introduced)

Sens. Gardner, Cupp

BILL SUMMARY

- Establishes two accounts within the School District Solvency Assistance Fund: (1) the School District Shared Resource Account, to be used for advancements to school districts, and (2) the Catastrophic Expenditures Account, to be used generally for grants to districts faced with a catastrophic event.

- Eliminates the requirement that each school district maintain a budget reserve fund.

- Reduces and makes uniform the amount of money a school district must deposit into both its textbook and instructional materials fund and its capital and maintenance fund from 4% of all revenues (reduced to 3% by the Auditor of State) to 3% of the formula amount for the current fiscal year multiplied by the district's formula ADM for that fiscal year.

- Creates the category of fiscal caution for school districts that the Superintendent of Public Instruction determines are employing unsound fiscal practices that could produce a state of fiscal watch or fiscal emergency.

- Modifies the conditions for placing a school district in fiscal watch by (1) reducing the operating deficit trigger from 8% to a range of 2 to 5% of the district's general fund revenue for the preceding fiscal year, and (2) adding a new qualifying condition based upon a reasonable determination by the Superintendent of Public Instruction that the district is unwilling to comply with recommended corrections to unsound fiscal practices.

- Modifies the conditions for placing a school district in fiscal emergency by (1) reducing the operating deficit trigger from 15% to a range of 5 to

8% of the district's general fund revenue for the preceding fiscal year, (2) adding a new trigger based upon a reasonable determination by the Superintendent of Public Instruction that a district in fiscal watch is not complying with an approved financial plan, and (3) making the receipt of *any* advancement from the School District Solvency Assistance Fund a trigger for a declaration of fiscal emergency.

- Permits the dissolution of a financial planning and supervision commission for a fiscal emergency school district upon a joint determination by the State Superintendent and the Auditor of State that the commission has not produced an acceptable recovery plan or is not materially complying with its plan.

- Permits the Superintendent and Auditor to jointly appoint a "fiscal arbitrator" to succeed to the powers and duties of a dissolved commission.

CONTENT AND OPERATION

School District Solvency Assistance Fund

(sec. 3316.20)

Background

The School District Solvency Assistance Fund was created for the purpose of providing interest-free advancements to school districts to enable them to remain solvent and to pay unforseeable expenses of a temporary or emergency nature that they are unable to pay from their existing resources. The Fund currently consists of all funds appropriated by the General Assembly for the Fund's purposes. Under continuing law, advancements from the Fund are made by the Superintendent of Public Instruction in accordance with rules jointly adopted by the Superintendent and the Auditor of State specifying approval criteria and procedures necessary for administering the Fund. Continuing law also requires the school district to repay any advancement, or if the districts fails to do so, the Director of Budget and Management must repay it from funds the district would otherwise receive under the School Foundation Program or other direct appropriations from the General Assembly. The deadline for repayment is the end of the second fiscal year following the fiscal year in which the advancement was made.

Changes made by the bill

The bill creates a two-tiered structure within the School District Solvency Assistance Fund by dividing the Fund into separate accounts:

(1) The School District Shared Resource Account provides the short-term emergency advancements to school districts for which the Fund was originally established. Deposits into the account consist of funds appropriated by the General Assembly.

(2) The Catastrophic Expenditures Account provides funds for the following purposes: (a) grants to school districts that suffer an unplanned catastrophic event that severely depletes the district's resources as determined by the Superintendent of Public Instruction and the Director of Budget and Management, with the approval of the Controlling Board, and (b) temporary advancements to districts if funds from the School District Shared Resource Account have been exhausted. Account deposits consist of any appropriations by the General Assembly for the account plus the combined investment earnings from both accounts in the Fund.

All repayments of advancements must be credited to the account from which the funds were originally loaned. *Grants* awarded to a district from the Catastrophic Expenditures Account do not have to be repaid unless a school district receives money from a third party specifically for the purpose of compensating the district for expenses incurred as a result of the catastrophic event.[1]

Elimination of budget reserve fund

(secs. 5705.13, 5705.29, and 5705.38; Section 3)

Current law requires every school district to establish and maintain a budget reserve fund, sometimes referred to as a "rainy day" fund, to cover unanticipated revenue shortfalls and other emergencies. Generally, the balance in a budget reserve fund must be increased each year that the district's revenue growth is at least 3% until the fund balance equals at least 5% of the preceding fiscal year's general fund revenue. The balance may be less, however, if a district is in a state of fiscal watch or fiscal emergency. Appropriations from the fund may be made for unanticipated deficiencies in revenue or other emergencies. However, all appropriations must be approved by two-thirds of the membership of the district board of education, and any

[1] *For example, if a district received an insurance payment for a boiler that blew up or federal aid for a disaster, such funds would be required to be used to reimburse the fund for money the district received from the catastrophic account for the boiler or to alleviate the disaster.*

such expenditures cannot occur until the Superintendent of Public Instruction approves the district's schedule for replenishing the fund.

The bill eliminates entirely the requirement that school districts maintain a budget reserve fund. A district, however, retains the authority to establish a reserve balance account under its taxing power as a political subdivision (sec. 5705.13).

Each district with money in its budget reserve fund on the effective date of the bill may either deposit the money in its general fund or leave it in the account to offset any future budget deficits. However, the bill stipulates that any portion of the money in the fund on that date that came from a refund from the Bureau of Workers' Compensation must be used solely to offset a budget deficit or for expenditures on school facility construction or renovation; textbooks or other instructional materials, including science equipment or laboratories; or professional development for teachers.[2]

Classification of school districts with financial difficulties

(secs. 3316.03, 3316.031, and 3316.04)

Under continuing law, the Auditor of State must declare a school district to be in a state of "fiscal watch" or "fiscal emergency" if the district meets certain "triggers" that threaten its financial solvency. A declaration by the Auditor that a district is in either state has legal consequences for the district and prompts different levels of fiscal intervention to restore financial integrity to the district. A fiscal watch district must develop a financial plan, approved by the Superintendent of Public Instruction, to address its financial problems. For a fiscal emergency district, the Auditor's declaration results in the creation of a financial planning and supervision commission, which has broad authority to manage the district's financial problems.

Creation of "fiscal caution" classification

The bill creates a third classification of "fiscal caution" for school districts that face potential financial problems in the future and establishes a procedure for earlier intervention. Under the bill, the State Superintendent, in consultation with the Auditor of State, must develop guidelines regarding fiscal practices and budgetary conditions that could contribute to a future declaration of fiscal watch or fiscal emergency for school districts. If the State Superintendent, upon examination

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[2] *Division (I) of section 5705.29 and Section 39 of Am. Sub. H.B. 770 of the 122nd General Assembly required all refunds of workers' compensation premium overpayments received by a district to be deposited in the district's rainy day fund, unless the district already had an amount equal to 5% of the district's prior year's operating revenues.*

of a district's five-year budget projection or, upon a report from the Auditor of State, finds that the district is engaged in unsound fiscal practices or that unstable budgetary conditions exist, the State Superintendent may declare the district to be under a fiscal caution.

A declaration of fiscal caution requires the State Superintendent to provide the district board with written recommendations for correcting the harmful fiscal practices or budgetary conditions and for preventing further financial decline. The State Superintendent may also appoint a monitor to conduct an inspection of and make recommendations to a fiscal caution district. An appointed monitor must help the district board comply with the recommendations for improvement and report to the State Superintendent on the district's progress in achieving financial stability. The State Superintendent may advise the Auditor of State to place a district in a state of fiscal watch if the State Superintendent determines that the district is not complying with the recommendations and considers the downgrade necessary to avoid additional financial problems.

Triggering conditions for state of fiscal watch

Under current law, the Auditor of State must declare that a school district is in a state of fiscal watch if any of the following triggers are met:

(1) The Auditor determines that (a) the district has an operating deficit for the current fiscal year that exceeds 8% of the district's general fund revenue for the preceding fiscal year, (b) the unencumbered cash balance in the district's general fund at the end of the prior fiscal year, less any advances of property taxes, was less than 8% of the district's general fund expenditures for that year, *and* (c) the district voters have not passed a tax levy that the Auditor expects will raise enough additional money to eradicate the conditions described in (a) and (b) in the next fiscal year;

(2) The district was under a fiscal emergency at one time and still has outstanding securities issued for the purpose of restructuring debt; or

(3) The district has received an advancement from the School District Solvency Assistance Fund.

The bill makes several changes to these triggering conditions. First, the bill reduces the operating deficit described above in (1) to 2% of the district's general fund revenue for the preceding fiscal year. However, a deficit of 2% or more is not a triggering condition for a fiscal watch declaration if the Auditor, in consultation with the State Superintendent, finds that there is a reasonable cause for it. But the Auditor cannot excuse any operating deficit of 5% or greater.

Second, the bill eliminates the triggering condition regarding districts that have received an advancement from the School District Solvency Assistance Fund.

Instead, districts that receive advancements under the bill must be placed directly in a state of fiscal emergency (see "***Triggering conditions for state of academic emergency***" below).

Finally, the bill adds a new triggering condition. The Auditor of State must declare a district to be in fiscal watch if the district is currently under the bill's new state of fiscal caution (see "***Creation of fiscal caution classification***" above), the State Superintendent has advised the Auditor to declare a state of fiscal watch for the district, due to the district's failure to comply with the Superintendent's recommendations for fiscal improvement, and the Auditor confirms that the Superintendent's finding is not "arbitrary or capricious."

Triggering conditions for state of fiscal emergency

Under current law, the Auditor of State, after consulting with the Superintendent of Public Instruction, must declare a school district to be in a state of fiscal emergency if any of the following triggers are met:

(1) The Auditor determines that (a) the district board of education cannot demonstrate to the Auditor's satisfaction that it can repay its existing emergency school loans, or the tax anticipation notes it issued against its approved spending reserve balance, without having to engage in additional such borrowing that would exceed 50% of the amounts previously borrowed pursuant to such loans and notes, (b) the district has an operating deficit for the current fiscal year that exceeds 15% of the district's general fund revenue for the prior fiscal year, (c) the district, at the time of the Auditor's determination, had an average daily membership (ADM) of more than 10,000 students, *and* (d) the district voters have not passed a tax levy that the Auditor expects will raise enough additional money in the next fiscal year to eradicate the conditions described in (a) and (b) in the next fiscal year;

(2) The district was previously in a state of fiscal watch, and it failed to submit an acceptable financial plan within the prescribed time;

(3) A declaration of fiscal emergency is required due to debt restructuring provisions of the school solvency law; or

(4) The district has received more than one advancement from the School District Solvency Assistance Fund within a two-year period, or has received only one such advancement but also has an operating deficit for the current fiscal year of 15% of the district's general fund revenue for the prior fiscal year.

The bill makes several changes to these triggering conditions. First, the bill eliminates the elements described above in (1) regarding the school district's ability to repay its existing emergency loans and the minimum ADM. The bill also reduces the operating deficit described above in (1) to 5% of the district's general fund

revenue for the preceding fiscal year. However, a deficit of 5% or more is not a triggering condition for a fiscal emergency declaration if the Auditor, in consultation with the State Superintendent, finds that there is a reasonable cause for it. But the Auditor must declare a fiscal emergency if a district's operating deficit is 8% or greater and the voters have not approved the needed tax levy.

Second, the bill specifies that *any* advancement from the School District Solvency Assistance Fund automatically triggers a declaration of fiscal emergency.

Finally, the bill adds a new triggering condition. The Auditor of State must declare a fiscal watch district to be in fiscal emergency upon receipt of a State Superintendent's report that the district has not submitted an approved financial plan to eliminate its operating deficit or is not "materially complying" with the provisions of an approved plan unless he finds the Superintendent's report to be "arbitrary and capricious."

Dissolution of Financial Planning and Supervision Commission

(secs. 3316.06 and 3316.061)

Under current law, when a school district is placed in fiscal emergency, a five member financial planning and supervision commission is appointed to oversee the financial recovery of the district. The commission consists of the Director of Budget and Management, or a designee; the Superintendent of Public Instruction, or a designee; one member appointed by the Governor, one member appointed by the Superintendent of Public Instruction, and one member appointed by a local official (either the mayor of the largest city or the county auditor if there is no municipal corporation in the district). The member appointed by the Superintendent must be the parent of a student in the district and the other two appointed members must have ties to the district through their residency or business.

Each commission is required to adopt a financial recovery plan for the district and must determine a level of fiscal and management control of the district it wishes to assume. The statute permits the commission to take over any of the powers and duties of the school board it considers necessary to successfully implement the financial recovery plan.

The bill requires any commission to submit its proposed recovery plan to the State Superintendent for approval immediately following its adoption or updating. The Superintendent must approve or disapprove it within 30 days. If the plan is disapproved, the Superintendent must suggest modifications to render it acceptable.

Under the bill, if the commission does not submit a plan acceptable to the Superintendent or if the Superintendent and Auditor jointly determine at any time that the commission is not "materially complying" with the provisions of its adopted

plan, the Superintendent and Auditor may jointly dissolve the commission and instead jointly appoint an individual to act as the "fiscal arbitrator" of the district.

A fiscal arbitrator would have all the same rights, powers, and duties as the commission had, including the right to amend the plan and assume additional powers of the school board. All actions of the commission prior to dissolution would continue to be valid until legally altered by the arbitrator and no contractual or other rights would be lost by virtue of the replacement of the commission by the arbitrator.

School district set-asides for textbooks and maintenance

(secs. 3315.17 and 3315.18; Section 4)

Current law requires the board of education of each city, local, exempted village, and joint vocational school district to establish a textbook and instructional materials fund and a capital and maintenance fund, each to consist of a certain annual set-aside of a percentage of the district's revenues. The statute currently requires each district to annually deposit 4% of its operating revenues into each fund, but the Auditor of State has adopted rules as permitted by the statute reducing the required deposit to 3% of operating revenues.[3]

Uncodified law in the bill indicates that the General Assembly, in response to the Ohio Supreme Court's conclusion that these two mandated set-asides constituted "unfunded mandates upon school districts," utilized evidence presented to the Joint Committee to Examine the Base Cost of an Adequate Education to arrive at the changes the bill makes to the set-asides. Specifically, the evidence demonstrated that the set-asides would not be unfunded if they were adjusted to require only that 3% of the base cost formula amount per pupil were required to be set aside (rather than 3% or 4% of a district's total operating revenue). A study of the 103 districts that were utilized to develop the base cost formula amount used in the current state funding system found that the model districts in fact did spend at least 3% of their base cost amount (which amount is guaranteed to every district in the state for basic education costs under the state funding system) on instructional materials and maintenance.

In view of these findings, the bill changes the required annual deposit for both funds to 3% of the state base-cost formula amount, times the number of students in the district's current formula ADM. Formula ADM is an approximation of a district's average, full-time-equivalent enrollment for state funding calculations.[4]

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[3] *Ohio Administrative Code § 117-6-03.*

[4] *Sec. 3317.03(A), not in the bill.*

The state-base cost formula amount is a per pupil amount prescribed by statute.[5] The following chart shows the amount each district would be required to budget per pupil for the two set-asides in the next four years:

Fiscal Year	Base-Cost Formula Amount Per Pupil	Required per pupil fund amount (3% of formula amount)
FY 2001	$4,294	$128.82
FY 2002	$4,414	$132.42
FY 2003	$4,538	$136.14
FY 2004	$4,665	$139.95

For example, a district with a formula ADM of 1,000 students would be required to deposit $128,820 into *each* fund in FY 2001 (3% x $4,294 x 1,000 students). The amount varies from district to district based only on enrollment; it does not vary depending on a district's wealth, revenues, or on what percentage of the district's state formula payments are paid for with state versus local tax revenue.

The bill eliminates the Auditor of State's authority to adopt rules imposing a different percentage that must be deposited.

Textbook "opt-out" not affected by the bill

(sec. 3315.17(D))

The bill does not change the provision of current law allowing districts to use money in their textbook and instructional materials fund for other purposes, if so recommended by the district's superintendent, business advisory council, and teachers' union and unanimously approved by the board of education.

Mandated increase in academic units

(Section 4)

Law enacted by Am. Sub. S.B. 55 of the 122nd General Assembly phased in an increase in the number of academic units required for graduation from high school. The required units increased from 18 to 21. Uncodified law in the bill specifies that the General Assembly determined through its Joint Committee to

[5] *Secs. 3317.012(A) and 3317.022(B), neither section in the bill.*

Examine the Base Cost of an Adequate Education that this increase imposed a partially unfunded mandate on school districts, to the extent that the 103 model districts (whose expenditures determined the state's base cost level of guaranteed funding for school districts) required only an average of 19.6 academic units to graduate at the time the funding formula was calculated (1996). The additional 1.4 units required by Am. Sub. S.B. 55 were, accordingly, unfunded.

The bill includes uncodified language expressing the intent of the General Assembly to increase the base cost formula amount in future funding legislation to provide money for the unfunded 1.4 units.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	11-14-00	p. 2216

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