



Ohio Legislative Service Commission

Final Analysis

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Sub. H.B. 167

130th General Assembly
(As Passed by the General Assembly)

Reps. Heard and Grossman, Brenner, Bishoff, Amstutz, Anielski, Duffey, Gonzales, Hackett, Kunze, McClain, Stebelton, Wachtmann, Batchelder

Sens. Hite, Beagle, Bacon

Effective date: Emergency, July 15, 2013

ACT SUMMARY

- Requires a qualifying school district (one that has an average daily membership of greater than 60,000 and is located in a city with a population of greater than 700,000) to create the position of "independent auditor" to be responsible for the district's internal auditing functions.
- Requires a qualifying school district to place the question of whether to create the position of independent auditor on the ballot at the next general election.
- Authorizes the mayor of a city in which a majority of a qualifying school district's territory is located to sponsor start-up community schools.
- Authorizes a qualifying school district to propose a levy for current operating expenses, a portion of which would be allocated to partnering community schools and distributed among those schools on a per-pupil basis.
- Requires a qualifying school district to place such a levy on the ballot at the next general or special election.
- Establishes a distribution and allocation process for the funds raised by such a levy.

CONTENT AND OPERATION

Overview

The act prescribes several provisions revising the management and tax levy authority of a large, urban school district. These provisions apply only to a school district with an average daily membership (student count) greater than 60,000, and that is located in a city with a population greater than 700,000. Currently, only the Columbus City School District meets those conditions.

Subject to voter approval, the act requires the district to create the position of "independent auditor" to be responsible for all internal auditing functions of the district. That independent auditor must be appointed by a "selection committee" made up of the district board president and specified municipal officers. The act requires the district board to place on the next general election ballot the question of whether the district should create the position of independent auditor.

The act also authorizes the mayor of the city in which the majority of the territory of the school district is located to sponsor start-up community schools, under certain conditions.

Finally, the act authorizes the district board to propose a levy for current operating expenses, a portion of which would be allocated to partnering community schools that have an endorsement agreement or a sponsorship agreement with the school district. In exercising that authorization, however, the act goes on to require the district board to place such a levy on the ballot by the next general or special election.

Independent auditor

The act requires the board of education of a school district that meets the specified conditions to create, subject to voter approval, the position of "independent auditor" to be responsible for "all internal auditing functions of the district." Specifically, that requirement applies to any school district with an average daily membership (student count) greater than 60,000 and, of which, the majority of the district's territory is located in a city with a population greater than 700,000, according to the most recent federal decennial census.¹ As noted above, the Columbus City School District is currently the only school district that meets those conditions. The term of office for the independent auditor runs for five years and may be renewed for successive terms by the independent auditor selection committee (see "**Selection committee**" below).

¹ R.C. 3311.60(A).



Sole duties of the independent auditor

Under the act, the independent auditor must do the following:

- (1) Recommend to the district board the employment of personnel necessary to carry out the activities of the independent auditor;
- (2) Prescribe duties and qualifications for those personnel;
- (3) Serve as the district's public records officer and oversee the maintenance and availability of the district's public documents;
- (4) Review, prior to certification by the district superintendent, reports and data that must be submitted to the Department of Education and the State Board of Education;
- (5) Receive any complaints of alleged wrongful or illegal acts regarding the district's operations, finances, and data reported to the Education Management Information System (EMIS), and supervise the internal investigation of those complaints;
- (6) Report the results of investigations of wrongful or illegal acts, whether criminal in nature or otherwise, to the appropriate authorities or agencies, including the district board, the city attorney of the city in which a majority of the district's territory is located, the county prosecutor of the county in which a majority of the district's territory is located, the Auditor of State, the Department of Education, and the Ohio Ethics Commission;
- (7) Propose to the selection committee a budget to support the independent auditor's operations and functions;
- (8) Audit funds a partnering community school receives from the district's "partnering community schools fund" (see "**Current expense levy partially allocated to partnering community schools**" below); and
- (9) Submit, not later than September 1, an annual report on the independent auditor's activities to the selection committee, the district board, and the General Assembly. The act expressly states that the report issued by the independent auditor is a public record.

The act also authorizes the independent auditor, at the independent auditor's discretion, to initiate investigations and, if sufficient funds are available, to obtain the



services of certified public accountants, qualified management consultants, or other professional experts necessary to perform the independent auditor's duties.²

Duties in coordination with the Auditor of State

The act authorizes, but does not require, the independent auditor to conduct or initiate, in cooperation with the district board and in coordination with the Auditor of State, financial and performance audits and analyses of the district to ensure the following goals are achieved:

(1) District activities and programs comply with all applicable laws and district policies, procedures, and appropriations;

(2) Student performance and enrollment data are accurately and clearly reported;

(3) Ballot requests to levy a tax are based on accurate analysis and the needs of the district;

(4) Individual contracts of the district are consistent with the district board's policies, procedures, budgets, and financial plans;

(5) Incentive-based distributions and plans are consistent with the district board's objectives;

(6) District operations are executed in a cost-effective and efficient manner consistent with the district board's objectives and appropriations;

(7) District financial statements and reports are accurate;

(8) Improvement recommendations made by the district board have been implemented;

(9) Operating units or departments have necessary and appropriate operating and administrative policies, procedures, internal controls, and data quality protocols; and

(10) District programs and activities are properly evaluated, including a full accounting of all funds.³

² R.C. 3311.60(C).

³ R.C. 3311.60(D).



Selection committee

The act creates the independent auditor selection committee, consisting of the mayor, council president, and auditor of the city in which a majority of the district's territory is located; the president of the school district board; and the probate court judge of the county in which a majority of the district's territory is located. Members of the selection committee may not be compensated for their service. The act requires the selection committee to do the following:

- (1) Establish qualifications for the position of independent auditor;
- (2) Select an individual to serve as the independent auditor, by a majority vote of the selection committee members;
- (3) Recommend to the district board the independent auditor's compensation and the necessary additional funds to finance the operations and functions of the independent auditor;
- (4) Reappoint the independent auditor for an additional term, by a majority vote;
- (5) Appoint a successor, if a sitting independent auditor is not reappointed, by a majority vote;
- (6) Appoint a successor to the balance of the unexpired term of an independent auditor, in the event of a vacancy in the office, by a majority vote; and
- (7) Remove the independent auditor from office, by a two-thirds vote.⁴

After the selection committee selects an independent auditor, the district board must (1) execute a written contract of employment with the independent auditor, (2) appropriate funds to support the independent auditor's operations and functions, and (3) grant the independent auditor access to all district personnel, equipment, and records necessary to perform the independent auditor's duties.⁵

Independent auditor ballot question

Although the act requires a qualifying school district to create the position of independent auditor, in the case of a district to which the act's provisions currently apply (Columbus City School District), it goes further and subjects creation of the position to an affirmative vote of the district's voters. The question of whether to create

⁴ R.C. 3311.60(B).

⁵ R.C. 3311.60(A).



the position of independent auditor must be submitted to the voters at the general election occurring at least 90 days after the act's effective date.⁶

If a majority of the voters approve the question, the act specifies that the independent auditor selection committee and the district board must forthwith initiate proceedings to select an independent auditor so that the position is filled by March 31, immediately following the general election in which the question was approved.⁷

If a majority of the voters do not approve the question, the act states that "no action shall be taken to create the position of independent auditor."⁸

Mayoral sponsorship of community schools

The act authorizes the mayor of a city that contains a majority the territory of a school district to which the act's independent auditor provisions apply (the city of Columbus) to sponsor start-up community schools located in that district. The mayor may do so, however, only with the approval of the city council.

Prior to sponsoring a community school, the mayor also must establish and submit to the Department of Education standards with which community schools sponsored by the mayor must comply. Those standards must be established not later than 180 days after the act's effective date.

If the mayor applies to the Department for approval to sponsor a community school, as most sponsors are required to do under continuing law, the Department *must* approve the mayor as a sponsor upon receiving the mayor's application to do so. The act specifies that not later than 90 days after approving the mayor as a community school sponsor (which is automatic upon application), the Department must enter into a sponsor agreement with the mayor.⁹

Background

Community schools are public schools that operate independently from any school district under a contract with a sponsoring entity. A conversion community school, created by converting an existing school district school, may be located in and sponsored by any school district in the state. On the other hand, a new "start-up"

⁶ R.C. 3311.61.

⁷ R.C. 3311.61(C).

⁸ R.C. 3311.61(D).

⁹ R.C. 3314.02(C)(1)(g).



community school may be located only in a "challenged school district." A challenged school district is any of the following: (1) a "Big-Eight" school district (Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo, or Youngstown), (2) a poorly performing school district as determined by the school's performance index, value-added progress dimension, or overall score ratings on the state report card, or (3) a school district in the original community school pilot project area (Lucas County).

Under continuing law, the sponsor of a start-up community school may be any of the following:

- (1) The school district in which the school is located;
- (2) A school district located in the same county as the district in which the school is located has a major portion of its territory;
- (3) A joint vocational school district serving the same county as the district in which the school is located has a major portion of its territory;
- (4) An educational service center;
- (5) The board of trustees of a state university (or the board's designee) under certain specified conditions; or
- (6) A federally tax-exempt entity under certain specified conditions.¹⁰

The act adds the mayor of the qualifying city (Columbus) to the list of entities that may sponsor start-up community schools.

Current expense levy partially allocated to partnering community schools

In general

The act authorizes the board of education of a school district with an average daily membership greater than 60,000 and, of which, the majority of the district's territory is located in a city with a population greater than 700,000 (Columbus City School District) to propose a levy for current operating expenses, a portion of which would be allocated to partnering community schools. Under prior law, only a "municipal school district" (the Cleveland Metropolitan School District) had the authority to propose such a levy.

Under continuing law, generally unchanged by the act, a partnering community school is a community school located within the territory of the school district that

¹⁰ R.C. 3314.02(C)(1)(a) through (f).



either is sponsored by the district or is a party to an agreement with the district whereby the district and the community school endorse each other's programs.¹¹

The act does not affect the levy of taxes by a municipal school district (Cleveland). Nor does it affect the distribution of the proceeds of a tax by a municipal school district. Rather the act, in authorizing a shared levy for the population-based qualifying school district (Columbus), directs how that district may collect and distribute those proceeds. These procedures, as described below, are unique to that district.

Qualification and distribution

Like a municipal school district, revenue from the community schools' share of the levy is to be credited to a "partnering community schools fund" created by the district board. However, unlike a municipal school district, the act permits the district board to distribute "all or a portion" of the amount in the fund during a fiscal year to partnering community schools. Furthermore, the act expressly states that the district board is not required to allocate the entire amount in the fiscal year in which a tax distribution is received and deposited in the fund.

Also unlike partnering community schools of a municipal school district, in order to qualify for a payment, a partnering community school must have either been sponsored by the district or entered into a partnership agreement with the district, *on or before June 1 of the preceding fiscal year*. Under the act, each of these community schools must receive a portion of the amount distributed by the board in the proportion that the number of its resident students bears to the aggregate number of resident students of all such partnering community schools as of the date the school district received and deposited the most recent tax distribution. To qualify as a "resident" student, the student must be entitled to attend a school of the "qualifying school district."

The act requires the district board to announce, by June 15 of each fiscal year, the estimated allocation to be distributed to partnering community schools. This estimate must be published on the web site of the school district and be expressed as a dollar amount per resident student. However, the act expressly provides that the actual allocation to community schools in a fiscal year need not conform to the published estimate provided that the estimate was made in good faith.¹²

Under the act, distributions from the fund must be made in accordance with the terms of any distribution agreements entered into by the district board and each

¹¹ R.C. 5705.21(B)(6)(b).

¹² R.C. 5705.21(B)(3)(b).



partnering community school. However, the act requires at least three distributions of funds per fiscal year with the first distribution being made not later than July 30. Under the act, those agreements must be certified to the Department of Education not later than July 30 of each fiscal year.¹³

Taxes affected

The act permits a population-based qualifying school district to levy the same types of taxes on a shared basis as permitted under continuing law for a municipal school district.

The resolution and ballot language proposing a shared levy must specify the portion of proceeds allocated to the school district and the portion allocated to partnering community schools. The tax could be levied for up to ten years or for a continuing period of time.¹⁴ The levy may be renewed or replaced, and may be combined with a bond levy for permanent improvements. If combined with such a bond levy, only the current expense levy revenue may be shared; the bond levy is solely for the purpose of the school district. If a shared levy is imposed for a continuing period of time, it may be reduced by initiative petition in the same manner as any continuing school district current expense levy. A renewal or replacement levy may increase or decrease the total millage as well as the amounts allocated to the school district and to partnering community schools. However, an initiative petition to reduce such a levy must decrease the amounts allocated to the school district and to partnering community schools in proportion to the decrease in the total millage.¹⁵

A shared levy may be imposed as an "incremental" levy, which is a series of successive levies whereby the total rate of the levy increases by stated increments over up to five years. If a shared levy is incremental, the portion allocated between the district and partnering community schools must remain a fixed proportion of the revenue for each year the tax is levied.¹⁶

If the school board levying a shared tax issues tax anticipation notes, it may anticipate only the district's share of the levy revenue.¹⁷

¹³ R.C. 5705.21(B)(3)(b), second paragraph.

¹⁴ R.C. 5705.21(B).

¹⁵ See R.C. 5705.192, 5705.21(C), 5705.218, and 5705.261.

¹⁶ R.C. 5705.212(C).

¹⁷ R.C. 5705.21(D)(4), 5705.212(C)(5), and 5705.218(J)(5).



Continuing law states that where, in the school funding law, reference is made to the amount of a school district's taxes, the reference includes only the district's share of levy revenue.¹⁸

Mandatory shared levy ballot question

The act requires the district board of the qualifying school district (Columbus City School District) to adopt a resolution within 30 days after the act's effective to submit to the voters of the district the question of a shared levy for the current expenses of the district and of partnering community schools as authorized by the act. The question must be submitted to the voters at the next general or special election occurring at least 90 days after the act's effective date.¹⁹

HISTORY

ACTION	DATE
Introduced	05-16-13
Reported, H. Education	05-29-13
Passed House (79-15)	05-29-13
Reported, S. Education	06-20-13
Passed Senate (31-1)	06-20-13
House concurred in Senate amendments (80-17)	06-25-13

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¹⁸ R.C. 5705.21(B)(5).

¹⁹ Section 3.

