



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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Sub. H.B. 87*

132nd General Assembly
(As Reported by S. Education)

Reps. Roegner, Becker, Blessing, Butler, Dean, DeVitis, Dever, Duffey, Fedor, Hambley, Henne, Hill, Keller, Leland, Patterson, Patmon, Rezabek, Riedel, Schaffer, Slaby, K. Smith, R. Smith, Stein, Thompson, Vitale, Young, Faber, Anielski, Antonio, Barnes, Boggs, Boyd, Brown, Carfagna, Celebrezze, Cera, Clyde, Craig, Cupp, Galonski, Ginter, Green, Holmes, Howse, Ingram, Johnson, Koehler, Lepore-Hagan, Manning, O'Brien, Perales, Ramos, Rogers, Ryan, Schuring, Sheehy, Strahorn, Sweeney, Sykes, West

BILL SUMMARY

Community school provisions

- Provides the Department of Education with specific guidance on distributing funds returned to the state from a community school as the result of a finding for recovery from the Auditor of State.
- If the funds are returned because of an audit of a community school's enrollment records, requires the Department to credit the funds to certain public school district's state education aid.
- Requires the Superintendent of Public Instruction to establish by rule standards for learning management software to be used by e-schools.
- Specifies that the Auditor of State must consult with the Department of Education when the Department develops certain payment policies regarding community schools, instead of jointly developing those policies as under current law.

Safe harbor from certain provisions for enrolling displaced e-school students

- Contingently amends provisions of S.B. 216 of the 132nd General Assembly, upon enactment and becoming effective that do the following:

* This analysis was prepared before the report of the Senate Education Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Exempts community schools from closure if a specified percentage of students who were enrolled in an e-school that had its operations suspended by its sponsor in the 2017-2018 school year (displaced enrollees) enroll in the community school.
- Exempts a school district from being considered a new challenged school district if it enrolls displaced enrollees under certain circumstances.

Other school provisions

- Changes the latest date that school districts, community schools, and STEM schools may submit their annual five-year financial forecasts from October 31 (as under administrative rule) to November 30.
- Makes changes with respect to the capacity in which a school district treasurer may sign certain employment-related or record-keeping documents.
- Expressly authorizes a school district board to propose a ballot question to substitute an emergency levy at an election held in the year after the emergency levy expires.
- Permits political subdivisions (including a school district) and county boards of developmental disabilities to enter into agreements with other political subdivisions to procure or contract for providers of medical or health services.

CONTENT AND OPERATION

Community school provisions

Auditor of State and finding for recovery from enrollment records audit

The bill provides specific guidance to the Department of Education for distributing funds returned to the state from a community school because of a finding of recovery by the Auditor of State resulting from an audit of the enrollment records of the community school.¹ Under continuing law, the Auditor is charged with auditing public offices and certain funds and accounts of private institutions, associations, boards, and corporations that have received public funds. In certain instances, the Auditor may audit all funds of a private entity that has received public funds.² If the

¹ R.C. 3314.52.

² R.C. 117.10, not in the bill.

audit report shows that public money was illegally expended, then the Auditor may issue a finding for recovery to have the money returned to the state.³

Department of Education to credit returned funds to state education aid

The bill provides specific guidance to the Department of Education for crediting the funds returned to the state when the Auditor's finding for recovery from a community school resulted from an audit of the school's enrollment records.⁴ In that situation, the Department must credit the returned funds to the public school district's state education aid from which the money was initially deducted, in the amount that was originally deducted. Under continuing Ohio law, money is deducted from the state aid given to a public school district and credited to a community school when a student who could have enrolled in the public school instead enrolls in a community school.⁵ The money returned to the public school district from a finding for recovery resulting from an audit of a community school's enrollment records reverses this deduction.⁶

Operation of e-schools

Under continuing law, an Internet- or computer-based community school is a community school in which the students work primarily from their residences on assignments in nonclassroom-based learning opportunities provided by way of (1) an Internet- or other computer-based instructional method that does not rely on regular classroom instruction or (2) "comprehensive instructional methods" that include Internet-based, or other computer-based, and noncomputer-based learning opportunities, unless a student receives career-technical education. The bill makes changes to some of the laws regarding e-schools.

Standards for e-school learning management software

The bill requires the Superintendent of Public Instruction to establish by rule standards for learning management software to be used by e-schools.⁷

Adoption of policies on e-school payment reductions for nondelivery

Since 2001, current law has required the Superintendent of Public Instruction jointly with the Auditor of State to develop policies under which the Department of

³ R.C. 117.28, not in the bill.

⁴ R.C. 3314.52.

⁵ R.C. 3314.08, not in the bill.

⁶ R.C. 3314.52.

⁷ R.C. 3314.232.



Education must reduce the amounts otherwise payable to any community school that includes in its program the provision of computer hardware and software to students, if the hardware and software materials have not been timely delivered, installed, and activated.⁸ The bill specifies instead that the Auditor of State only consult with the state Superintendent on adoption of the payment reduction policies and not to jointly adopt them.⁹

Safe harbor from certain provisions for enrolling displaced e-school students

The bill contingently amends provisions of S.B. 216 of the 132nd General Assembly regarding the enrollment of students displaced from an Internet- or computer-based community school (e-school) that had its operations suspended by its sponsor in the 2017-2018 school year.

S.B. 216 of the 132nd General Assembly creates exemptions from evaluations and designations related to community schools and school districts whose enrollments increase significantly with students who, prior to enrolling in that community school or district, were enrolled in an Internet- or computer-based community school ("e-school") that had its operations suspended by its sponsor in the 2017-2018 school year. That bill defines such students as "displaced enrollees." Displaced enrollees are students who were enrolled at any time in the 2017-2018 school year in an e-school that had its operations suspended by its sponsor prior to the end of that school year and who, prior to or after the suspension of e-school operations, enrolled in a different community school or school district-operated school.¹⁰

First, S.B. 216 excludes the inclusion of displaced enrollees for purposes of community school sponsor evaluations. For community sponsor evaluations for the 2017-2018 and 2018-2019 school years, the bill directs the Department of Education to exclude displaced enrollees from the average daily membership of community schools in a sponsor's portfolio when calculating the academic performance component of a sponsor evaluation under current law.¹¹ This provision remains unchanged by the bill.

Next, S.B. 216 exempts a community school from mandatory closure based on poor performance for two out of three years, as required under current law,¹² in the

⁸ R.C. 3314.08, as amended by H.B. 94 of the 124th General Assembly. The provision was then codified in division (N). It is now in division (J)(2).

⁹ R.C. 3314.08(J)(2).

¹⁰ Section 11(A)(3) of S.B. 216.

¹¹ Section 11(B)(1); see R.C. 3314.016, not in the bill.

¹² R.C. 3314.35, not in the bill.



2017-2018 through 2019-2020 school years, if the enrollment of that community school increased by more than 10% in the 2017-2018 school year due to displaced enrollees. However, if that school performs poorly for three consecutive years, that school is still subject to closure under the poor performance parameters in current law.¹³ The bill changes the S.B. 216 exemption so that it applies only to a community school whose enrollment increases by 20% due to displaced enrollees rather than 10%. Further, the bill subjects a community school whose scores would subject it to closure under current law if the scores of the displaced enrollees were removed from the calculations. Thus, a community school that performed poorly for two out of the three most recent school years and fell under the parameters of current law closure without the displaced enrollees, would still be subject to closure regardless of its enrolling of displaced enrollees.¹⁴

Finally, for the 2018-2019 and 2019-2020 school years, S.B. 216 exempts school districts that had more than a 10% increase in enrollment in the 2017-2018 school year from being considered a new challenged school district, where new start-up community schools may be located under current law. The bill changes the threshold to a 20% enrollment increase in order for a school district to be exempted from the provision.¹⁵

Other school provisions

Five-year financial forecasts for all public schools

Continuing law requires each school district, community school, and STEM school annually to prepare and submit to the Department of Education a five-year projection of its operating revenue and expenditures. The forecast must be prepared in accordance with joint rules of the Department and the Auditor of State. Under the current administrative rule, each district and school must submit its annual projection by October 31. The bill specifies that the Department and the Auditor of State, in their joint rules may not require districts or schools to submit their projections prior to November 30 of any fiscal year.¹⁶

¹³ Section 4 of the bill amending Section 11(B)(2) of Sub. S.B. 216 of the 132nd General Assembly.

¹⁴ Section 4 of the bill amending Section 11 of Sub. S.B. 216 of the 132nd General Assembly.

¹⁵ Section 4 of the bill amending Section 11(C) of Sub. S.B. 216 of the 132nd General Assembly and R.C. 3314.02, not in the bill.

¹⁶ R.C. 5705.391, applicable to community schools and STEM schools through references in R.C. 3314.03 and 3326.11, the latter not in the bill. The administrative rule on five-year forecasts is Ohio Administrative Code 3301-92-04.



Signing of certain documents by school district treasurers

The bill makes changes with respect to two different types of documents a school district treasurer must sign in a capacity other than a representative of the school district. First, the bill specifies that the school district superintendent or the president of the district's board of education (instead of the school district treasurer) must execute on behalf of the school district the employment contracts, salary notices, and other employment-related documents of the treasurer or any member of the treasurer's family.¹⁷ Thus, under the bill, when the treasurer signs any document having to do with the treasurer's employment, the treasurer does so in the treasurer's personal capacity.

Second, the bill clarifies that the recording of meetings of the district board of education by the district treasurer is a ministerial duty and that the treasurer's attestation required under continuing law is to the accuracy of the information. The bill further provides that the attestation must not be construed to serve as authorization or execution of any action taken or not taken during a meeting.¹⁸

School district "substitute" levy election dates

The bill authorizes a school board that has levied an emergency levy to propose a ballot question to substitute the levy at an election held in the year following the last year the emergency levy is imposed.¹⁹ Current law does not clearly permit a substitute levy to be proposed at an election held after the last year the emergency levy is imposed. Under the bill, a substitute levy may be proposed at an election held in February, May (March in presidential primary years), or November of the last year the levy is imposed—as under current law—or at any of those elections in the ensuing year. (A levy is imposed in a year when it is extended on the tax list for that year, as distinct from when the levy begins to be collected, which customarily is not until the ensuing year.)

In the case of emergency levies and most other kinds of property tax levies, current law clearly permits a school board or other local taxing authority to propose to renew a levy at an election held in either the levy's final year or the ensuing year: only "existing" levies may be renewed, and the law specifies that an expiring levy is

¹⁷ R.C. 3313.241.

¹⁸ R.C. 3313.26.

¹⁹ R.C. 5705.194.



considered to be an existing levy through the end of the ensuing year.²⁰ No such provision clearly governs substitute levies under current law.

In addition to specifying that the substitution of an emergency levy may be put on the ballot at an election in the year after the last year it is imposed, the bill clarifies existing law by specifying that where the phrase "existing levy" is used in the statute prescribing the ballot form for an emergency levy renewal (R.C. 5705.197, not in the bill), the phrase is controlled by the definition of "existing levy" that permits an emergency levy to be renewed in either the last year of the levy or the ensuing year.

Emergency levies and substitute levies—background

Emergency levies

The bill involves two special classes of property tax levies known as emergency levies and substitute levies. Emergency levies may be proposed to cover unspecified "emergency requirements" or to "avoid an operating deficit." They may not be levied for more than ten years. As distinct from the most common kinds of operating levies, emergency levies are designed to raise a specified amount of revenue each year regardless of changes in property valuation over time; the tax rate is changed each year to offset valuation changes.

Another distinguishing characteristic is that an emergency levy is not counted toward the 20-mill "floor," which has the effect of allowing a district to maintain operating revenue in excess of 20 mills per dollar of valuation (2%) to the extent of its emergency millage, and of protecting its other operating millage from further reduction by the tax reduction factor law. The 20-mill floor is the minimum effective operating tax rate reserved for school districts: each district is guaranteed an effective operating tax rate of 20 mills per dollar of taxable value even if the tax reduction factor law would otherwise result in a lower effective rate.²¹ (When the 20-mill floor was enacted, it corresponded with the 20-mill "qualifier" requiring each district to maintain that tax rate for operations in order to receive state funding and with an equalizing component of the contemporary funding formula that subtracted 20 mills' worth of revenue from each district's basic funding amount.²²) The tax reduction factor law limits the amount of revenue to the extent of market-driven appreciation in existing real property values.

²⁰ See R.C. 5705.194 (end of second paragraph) and R.C. 5705.25 (end of first paragraph) latter not in the bill.

²¹ See R.C. 319.301(E)(2), not in the bill. Note that if a district has operating millage less than 20 mills before the tax reduction factor law is applied, it is guaranteed only its sub-20-mill tax rate.

²² See R.C. 3317.01(A), not in the bill for the qualifier. The funding formula no longer employs the 20-mill "charge-off" component.



Revenue increases are permitted only to the extent that new real property is added to the tax list or existing real property is reclassified (e.g., agricultural use to commercial use).²³ Levies that raise a specified, fixed amount of revenue each year are not subject to the tax reduction factor law because the amount of revenue from such levies does not respond to property value appreciation.

Substitute levies

When an emergency levy is nearing expiration, it may be renewed by another emergency levy, or it may be replaced by a "substitute" levy, which is a relatively new form of levy first authorized in 2008.²⁴ The distinction between an emergency levy and a substitute levy is that, whereas an emergency levy is configured to raise the same amount of revenue each year, a substitute levy is designed to raise more revenue as new property is added to the tax list and in proportion to the value of that property. But, like an emergency levy, a substitute levy is not subject to the tax reduction factor law and is not counted toward the 20-mill floor. By its terms, the tax reduction factor law does not apply to any levy that raises a "specified amount of tax money." Although the statute authorizing substitute levies states that they raise a specified amount each year, the amount they raise after the first year cannot be specified in advance because it depends entirely on future changes in the tax list; only the manner of computing the amount is specified.

The revenue limitation of a substitute levy—permitting revenue growth only from new construction as it is added to the tax list—is similar to that of the tax reduction factor law except that they each have different distributional effects over time. The tax reduction factor law prevents the tax shifting between the two classes of real property and between those classes and public utility tangible personal property that otherwise would result from disparate rates of appreciation or depreciation between them.²⁵ By contrast, taxes charged by substitute levies will tend to shift over time toward property in the class – for example, residential/agricultural – that experiences more rapid appreciation, and away from the class experiencing slower appreciation, or depreciation – e.g., commercial/industrial/mineral – and public utility property, as the

²³ The tax reduction factor law only limits revenue from real property; revenue arising from tangible personal property used by public utilities—which is the only other kind of taxable property—varies in proportion to its value. However, unlike real property, its taxable value tends to decline over time under a depreciation schedule, so it would generate additional revenue only as new tangible personal property is put into utility service.

²⁴ See R.C. 5705.199, not in the bill.

²⁵ The differential treatment of the real property classes is authorized specifically for this purpose, and no other, by a 1980 constitutional amendment necessitated by a longstanding constitutional requirement that all real property must be taxed uniformly. See Ohio Constitution, Article XII, Sections 2 and 2a.



more rapidly appreciating property class constitutes an increasingly greater share of the tax base.

Substitute levies may last for a fixed number of years or for a continuing period of time. Once a substitute levy is in effect, it may be replaced by another substitute levy.

Joint health and medical insurance programs by political subdivisions and county boards of developmental disabilities

The bill specifically permits political subdivisions (including school districts) and county boards of developmental disabilities that provide health care benefits to their officers and employees to enter into agreements with other political subdivisions to procure or contract for providers of medical or health services. Current law, unchanged by the bill, allows political subdivisions to join together to establish a joint self-insurance program to provide health care benefits.²⁶

HISTORY

ACTION	DATE
Introduced	02-22-17
Reported, H. Gov't Accountability & Oversight	01-25-18
Passed House (94-2)	03-07-18
Reported, S. Education	---

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²⁶ R.C. 9.833.

