



# OHIO LEGISLATIVE SERVICE COMMISSION

Jason Glover

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## Fiscal Note & Local Impact Statement

**Bill:** H.B. 705 of the 132nd G.A.

**Status:** As Passed by the House

**Sponsor:** Reps. Hambley and Ingram

**Local Impact Statement Procedure Required:** Yes

**Subject:** School treasurer liability for loss of public funds

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### Fiscal Highlights

- The bill limits the circumstances in which a school treasurer or superintendent may be held liable for a loss of public funds, likely preventing a school district or educational service center from recovering the cost of improper payments in some cases. Such situations appear to be rare.
- The amount of any unrecovered losses will vary depending on the circumstances of each case, but could be more than minimal.
- The bill may marginally reduce the number of professional misconduct cases the Ohio Department of Education (ODE) investigates by prohibiting ODE from considering the loss of public funds in certain circumstances as a violation of a school treasurer's professional duties.

### Detailed Fiscal Analysis

#### Liability for loss of public funds

Under current law, public officials are strictly and individually liable for the loss or misuse of public money under their control, regardless of blame. Like most public officials in Ohio, school district and educational service center (ESC) treasurers must obtain a bond conditioned on the treasurer's faithful performance of all official duties. The bond protects the school district or ESC, not the treasurer, against a loss in the event of misuse of public money.

The bill provides an exception to the general rule of strict liability for loss of public funds for a treasurer of a school district or ESC in the performance of official duties generally and to the treasurer's reliance on the accuracy of various nonfinancial information or data. Thus, a treasurer will not be held liable unless the funds are lost as a result of the treasurer's own negligence or other wrongful act. The bill also protects a school treasurer or superintendent from liability for any losses of public funds specifically stemming from the payment of a teacher who does not have the proper paperwork (for example, a valid educator license) on file unless the payment was due to

negligence or a wrongful act. The bill specifically applies its provisions to any pending cases at the time of its effective date.

In general, when an audit determines that public money has been illegally expended, the Auditor of State issues a finding for recovery against the liable public official and the official's bonding company. The public office may then make a claim to the bonding company to recoup the losses. The bonding company will seek reimbursement from the public official for any claims paid out as a result of the official's failure to faithfully perform duties.

The bill's limits on school treasurer and superintendent liability likely prevent the Auditor from issuing a finding for recovery against those individuals when a loss is not due to negligence or a wrongful act. If so, the school district or ESC will be unable to recover from the bonding company the amounts improperly paid. The amount of a school district's or ESC's unrecovered losses will vary depending on the circumstances of each case, but could be more than minimal. Overall, findings for recovery against school district treasurers and superintendents appear to be rare. As a point of reference, a brief review of the Auditor's records for FY 2017 and FY 2018 found four audits that resulted in a finding for recovery against a school district treasurer, mostly for overpayment of district personnel. The findings ranged from \$1,500 to \$22,000. However, several of those audits indicated that the overpaid employee repaid or was in the process of repaying the misspent money.

### **Violations of treasurer professional duties**

The bill also prohibits the Ohio Department of Education (ODE) from considering the loss of public funds not resulting from the treasurer's negligence or other wrongful act as a violation of a school treasurer's professional duties, provided that the treasurer has performed all official duties required of the treasurer with reasonable care. As with the bill's provisions regarding liability for loss of public funds, this provision applies to any professional conduct investigations that are pending on the bill's effective date.

This provision may marginally reduce the number of professional conduct cases investigated by ODE's Office of Professional Conduct, which administers the educator disciplinary process. In 2017, 21 (1.4%) of the Office's roughly 1,500 investigations into allegations of educator misconduct involved misuse of school funds. The Office's operating expenses are supported by educator license fees.

### **Procedure for payment of teacher services**

The bill makes changes to the procedure a school treasurer must follow in order to pay a teacher for services. Before making payment to a teacher, current law requires a treasurer to have received certain documentation from the teacher, including any required reports and a statement from the superintendent that the teacher has filed with the treasurer a valid educator license. Instead, the bill requires a treasurer to receive statements from the superintendent that the teacher has filed with the superintendent

the required reports and a valid license. This provision may make the processing of a teacher's paperwork more efficient.