



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

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### **H.B. 705**

132nd General Assembly  
(As Introduced)

**Reps.** Hambley and Ingram, Scherer, Hill, Riedel, Seitz, R. Smith

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### **BILL SUMMARY**

- Protects from liability for loss of public funds a school district or educational service center treasurer whose official duties have been performed without negligence or wrongfulness.
  - Requires each teacher to file the required reports and a valid educator license with the district or service center superintendent prior to receiving payment for services.
  - Requires a district or service center superintendent to provide a written statement to the school treasurer confirming the superintendent's receipt of the required reports and a valid educator license from each teacher.
  - Protects from liability for loss of public funds for payments made to a teacher a school treasurer or superintendent unless the loss results from the negligence or wrongfulness of that treasurer or superintendent.
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### **CONTENT AND OPERATION**

#### **Performance of official duties generally**

The bill provides an exception to the general rule of strict liability for loss of public funds for the treasurer of a school district or educational service center (ESC) who has performed all official duties with reasonable care. As such, a treasurer will not be held liable unless the funds were lost as a result of the treasurer's own negligence or other wrongful act. This new standard applies to the performance of duties generally, and to a treasurer's reliance on the accuracy of nonfinancial information or data found

in the Education Management Information System (EMIS), student transportation reports, and licensure or other credentialing information.<sup>1</sup>

## **Payment for teacher services**

### **Procedure**

Under current law, a school district or ESC treasurer may pay a teacher for services only after the teacher files (1) all reports required by the State Board of Education and the district or ESC board or superintendent and (2) a written statement from the superintendent that the teacher has filed with the treasurer a valid educator license to teach the subjects or grades to which the teacher is assigned. The bill makes each teacher's payments contingent upon a written statement from the district or ESC superintendent or a designee that the teacher has filed with the superintendent or designee (and not the treasurer) the required reports and the valid educator license. The bill also expressly requires each teacher to file the reports and license.<sup>2</sup>

### **Liability for loss**

A treasurer who makes any payment in compliance with this new procedure cannot be held liable for a loss of public funds for that payment, unless the loss results from the treasurer's own negligence or other wrongful act.<sup>3</sup> This protection also extends to the district or ESC superintendent or designee, unless the loss results from the superintendent's or designee's own negligence or wrongful act.<sup>4</sup>

The bill does not address whether the ability to recover from a treasurer's (or superintendent's) bond is affected when the treasurer's (or superintendent's) actions do not rise to at least negligence.

## **Background**

### **Strict liability**

A general provision of the Revised Code states that "[a]ll public officials are liable for all public money received or collected by them or by their subordinates under color of office."<sup>5</sup> The Ohio Supreme Court has held public officials strictly and

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<sup>1</sup> R.C. 3313.25 and 3313.31.

<sup>2</sup> R.C. 3319.36(A).

<sup>3</sup> R.C. 3319.36(D).

<sup>4</sup> R.C. 3319.36(E).

<sup>5</sup> R.C. 9.39, not in bill.



individually liable for the loss or misuse of public money under their control, regardless of blame.<sup>6</sup>

### Recovery for loss of funds

Like most public officials in Ohio, a school district or ESC treasurer must obtain a bond conditioned on the treasurer's faithful performance of all official duties. When the Auditor of State finds that public money has been lost or misspent, the state may file an action for recovery of that money.<sup>7</sup> The law specifies that in addition to the liability of any public official who can be sued, the bonding entity is liable and may be sued in the same action in which the public official is sued.<sup>8</sup> The law further prohibits any legislative, executive, or judicial action to abate or compromise a claim for the loss of public funds made by the Auditor of State without written approval of the Attorney General.<sup>9</sup>

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## HISTORY

ACTION	DATE
Introduced	06-13-18

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<sup>6</sup> See for example, *Cordray v. International Preparatory School*, 128 Ohio St.3d 50 (2010) and *Seward v. National Surety Co.*, 120 Ohio St. 47 (1929).

<sup>7</sup> R.C. 117.28, not in bill.

<sup>8</sup> R.C. 117.32, not in bill.

<sup>9</sup> R.C. 117.33, not in bill.

