



Ohio Legislative Service Commission

122nd Senate Bill Analysis

Am. Sub. S.B. 6

122nd General Assembly

(As Reported by H. Finance & Appropriations)

Sens. Kearns, Dix, Oelslager, Gillmor, Suhadolnik, Gaeth, Zaleski, Ray, McLin, J. Johnson, Espy, Howard

Reps. Reid, Johnson, Sykes, Thomas, Corbin, Roberts, Perz, Mallory, Tavares, Opfer, Krebs, O'Brien, Boyd, Core, Prentiss

- Requires the Office of Budget and Management to adopt rules under which the Board of Regents must place a state university or college (except a university branch) on a "fiscal watch" when criteria specified in the rules apply to the institution.
- Provides that the fiscal watch criteria must include a requirement that the Auditor of State notify the Board of Regents, Director of Budget and Management, Legislative Budget Office, and chairpersons and ranking minority members of the Finance committees if an audit of a university or college reveals a budget deficit or other substantive negative findings.
- Authorizes the Governor to transfer the powers and duties of the board of trustees of an institution on a fiscal watch to a temporary conservator and governance authority when criteria adopted in rule by the Office of Budget and Management warrant the transfer.
- Provides that the authority, duties, and pay of the president or chief executive officer of a university or college are suspended upon the appointment of a conservator.
- Authorizes the governance authority for the university or college to reinstate the authority, duties, and pay, or terminate the employment contract of the president or chief executive officer after conducting a performance evaluation of the person.
- Requires the development of a model for voluntary training of members of the boards of trustees of all state universities and colleges and the Board of Regents.
- Appropriates \$10.3 million to the Office of Budget and Management for Central State University deficit reduction.

CONTENT AND OPERATION

"Fiscal watch" for state universities and colleges

(secs. 3345.71, 3345.72, and 3345.74(A); repealed sec. 3345.031; Section 3)

The bill provides for the creation of standards and procedures for instituting and terminating "fiscal watches" for all state universities, state medical colleges, state community colleges, community colleges, and technical colleges. These provisions do not apply to university branches.

The bill requires the Office of Budget and Management to adopt and file rules for these standards and procedures within 30 days after the effective date of the nonappropriation provisions of the bill. The rules are to be adopted under Revised Code section 111.15. In developing the rules, the Office is to work with the Auditor of State, Ohio Board of Regents, and two representatives of state universities and colleges. The Chancellor of the Board of Regents must appoint the two university and college representatives, one of whom must represent a four-year institution and one a two-year institution. The rules must include (1) criteria for determining when to declare a fiscal watch, (2) actions to be taken by a state university or college while under a fiscal watch, (3) criteria for determining when to declare the termination of a fiscal watch, and (4) the fiscal information that an institution under a fiscal watch must report to the Board of Regents (as well

as frequency and deadlines for this reporting) so that the Board can determine when the standards have been met for either terminating the watch or transferring the powers and duties of the institution's board of trustees to a conservator and governance authority.

The criteria for determining when to declare a fiscal watch must include:

--A requirement for the submission of a quarterly report from each state university or college within 30 days after the end of each calendar quarter. Copies of the report are to be submitted to the Board of Regents, Director of Budget and Management, Legislative Budget Office, and chairpersons and ranking minority members of the House and Senate Finance committees;

--A requirement that each university and college annually prepare a year-end financial statement consistent with audit requirements prescribed by the Auditor of State, and submit the statement to the Auditor within four months after the end of the fiscal year;

--A requirement that if a university or college fails to submit its financial statement on time, the Auditor of State must notify the Board of Regents, Director of Budget and Management, Legislative Budget Office, and chairpersons and ranking minority members of the Finance committees;

--A requirement that the Auditor of State notify those same agencies and persons if an audit of a university or college reveals (1) substantive audit findings, such as an inability to make timely payments to vendors, delays in pension retirement contributions, or requests for advanced state funding, (2) a significant variance between budgeted and actual spending for a fiscal year, or (3) a significant operating budget deficit for a fiscal year.

The bill provides that if a university or college fails to submit the quarterly report that is required under the criteria within 30 days after the end of a calendar quarter, the Board of Regents must withhold payment of any instructional subsidies to the institution until it submits the report.

The bill eliminates the provisions of current law that (a) require the board of trustees of each state institution of higher education to file an annual budget plan for current operating expenses with the Board of Regents and the Legislative Budget Office and quarterly progress reports on the performance of such operating budgets with the Board of Regents, (b) require the Board of Regents to direct the board of trustees of an institution to reduce expenses if it appears that the projected expenses of the institution will exceed projected revenues, and (c) require the Board of Regents to report to the Director of Budget and Management, Legislative Budget Office, and chairmen of the House and Senate Finance committees, if a board of trustees fails to take effective action to balance receipts and expenditures.

Under the bill, if the Board of Regents determines that a state university or college meets the criteria for a fiscal watch, the Board must adopt a resolution declaring the watch. To make such a determination, the Board is required to establish a financial tracking system and to use the system to assess each state university or college regularly with respect to the criteria for a fiscal watch. Prior to declaring the watch, the bill provides, the Board does not have to submit a fiscal analysis of the impact of the declaration, as is required under current law for all Regents' actions (sec. 3333.021, unaffected by the bill).

While under a fiscal watch, a university or college must take the actions and report the fiscal information required under the Office of Budget and Management's rules for watches. The Board of Regents must adopt a resolution declaring the termination of the fiscal watch if the Board determines that the criteria for termination have been satisfied.

In making assessments and determinations as to whether a fiscal watch should be instituted or terminated, the bill states, the Board must use (1) the annual income report that a university or college files with the Board, or (2) any other documents, records, or information available to the Board or to the Auditor of State related to the criteria for determining when to institute or terminate a fiscal watch. A Board of Regents' determination to institute or terminate a fiscal watch is final and conclusive and not appealable, the bill provides. Whenever a fiscal watch is instituted or terminated, the Board must certify the action to the Governor, the Director of Budget and Management, the Speaker and Minority Leader of the House of Representatives, the President and Minority Leader of the Senate, the Legislative Budget Office, and the chairpersons and ranking minority members of the House and Senate Finance committees.

Temporary conservator and governance authority for state universities and colleges

(secs. 3345.71, 3345.73 through 3345.78, and 3345.99; Section 3)

Under the bill, the powers and duties of the board of trustees of a state university or college that is on a fiscal watch could, if certain criteria are met, be transferred initially to a conservator and subsequently to a five-member governance authority. Moreover, members of the board themselves could be removed from their positions. The president or chief executive officer of the university or college would be suspended without pay, and the governance authority would appoint an executive director to manage the day-to-day operations of the university or college. After conducting a

performance evaluation of the president or chief executive officer, the governance authority could reinstate the person's authority, duties, and pay, or could terminate the person's employment contract. The governance authority would also have to issue specified reports, including information on the progress of the institution. After the university or college demonstrates sufficient stability, the powers and duties of the board of trustees would be restored, and vacancies on the board would be filled.

Transferring the powers and duties of a board of trustees to a conservator

(secs. 3345.73 and 3345.74; Section 3)

The bill requires the Office of Budget and Management to work with the Auditor of State, the Board of Regents, and two representatives of state universities and colleges, to develop rules, establishing financial indicators and standards for using these indicators that (1) the Board of Regents is to employ to determine whether a university or college under a fiscal watch is experiencing sufficient fiscal difficulties to warrant appointing a conservator, and (2) the subsequent governance authority for a state university or college is to employ to determine whether the institution is experiencing sufficient fiscal stability to warrant terminating that governance authority and restoring the powers and duties of the board of trustees. The Chancellor of the Board of Regents must appoint the two university and college representatives, one of whom must represent a four-year institution and one a two-year institution. In the rules, the indicators and standards must be designed so as to take into account at least the revenues, expenditures, assets, liabilities, and fund balances of a state university or college. They also must be designed to indicate the financial performance and position of a state university or college. The bill requires the Office of Budget and Management to adopt and file the rules for these indicators and standards within 30 days after the effective date of the nonappropriation provisions of the bill. The rules must be adopted under Revised Code section 111.15.

At least annually, the Board of Regents must apply these indicators and standards to a state university or college under a fiscal watch to determine if the institution is experiencing sufficient fiscal difficulties to warrant transferring the powers and duties of its board of trustees to a conservator. If the Board of Regents determines that such transfer is warranted, it must request from the Office of Budget and Management (OBM) certification that sufficient fiscal difficulties exist to warrant appointment of a conservator. After OBM provides the certification, the Board of Regents must certify the determination to the Governor. The determination by the Board of Regents is final and conclusive and not appealable. As with the declaration of a fiscal watch, the bill provides that the Board does not have to submit a fiscal analysis of the impact of these determinations.

The bill authorizes the Governor to appoint a conservator upon certification by the Board of Regents that the appointment is warranted. Immediately upon appointment of a conservator, all powers and duties of the institution's board of trustees would be transferred to the conservator, and the president or chief executive officer of the institution would be suspended without pay. The Governor must set the conservator's compensation. The compensation and expenses of the conservator and others hired by the conservator are to be paid out of the institution's operating funds. From the time the conservator is appointed until the time the Governor issues an order terminating the governance authority, the bill empowers the Governor to remove any member of the board of trustees and not fill the vacancy.

Replacing a conservator with a governance authority

(sec. 3345.75)

Not later than 30 days after the appointment of a conservator for a state university or college, the Governor is required to appoint, with the advice and consent of the Senate, a governance authority for the institution. The authority is to consist of five members who would serve at the pleasure of the Governor.

Under the bill, a governance authority must appoint an executive director who would serve at the pleasure of the authority. The authority also must establish the compensation and other terms and conditions of the director's employment. With the approval of the authority's chairperson, the executive director could appoint additional personnel. The executive director is to oversee the day-to-day operation of the university or college, under the direction and supervision of the governance authority.

Upon appointment of all the members of a governance authority for a state university or college and upon the commencement date for the duties of the executive director appointed by that governance authority, all authority, responsibilities, duties, and references assumed by or conferred upon the conservator of that university or college terminate and are assumed by and conferred upon the governance authority for that institution. As with a conservator, the compensation of an executive director and of others hired by the executive director, and the expenses of a governance authority and executive director, and others hired by the executive director, are to be paid out of the institution's operating funds.

The bill requires a governance authority for a state university or college to prepare and submit to the Board of Regents,

the Governor, the Speaker and Minority Leader of the House of Representatives, and the President and Minority Leader of the Senate a quarterly report setting forth (1) the general condition of the institution, (2) the amounts of receipts and disbursements and for what the disbursements were made, (3) the numbers of professors, officers, teachers, and other employees and the position and compensation of each and the numbers of students by their courses of instruction, (4) an estimate of expenses for the ensuing fiscal quarter, (5) a statement of the institution's general progress, with indication of any improvements and specification of any experiments with institutional reform and the costs and results of these experiments, and (6) any other matters the governance authority considers useful to report. These reports must be prepared in accordance with rules adopted by the Board of Regents and filed within 30 days after the effective date of the bill.

The members of a governance authority are not to receive compensation, but are to be paid their reasonable and necessary expenses for official duties. Any vacancies in an authority are to be filled in the same manner as an original appointment. The Governor is required to designate one member as chairperson and to call the first meeting of a governance authority. A governance authority must meet at least four times annually. The affirmative vote of a majority of the members is necessary for any action taken by a governance authority.

Authority, duties, and liabilities of a conservator and governance authority

Initially a conservator (and subsequently a governance authority) appointed for a state university or college is to (1) assume management and control of the institution, (2) receive all duties, responsibilities, and powers assigned by law to the institution's board of trustees, and (3) become successor to, assume the lawful obligations of, and otherwise constitute the continuation of the board of trustees for purposes of all pending legal actions, contracts or other agreements, and obligations of the institution (secs. 3345.74(C) and 3345.75(C)).

The bill provides that the conservator and governance authority appointed for a state university or college and the executive director employed by a governance authority are to be immune, indemnified, and held harmless from civil liability for any cause of action taken or duties performed by the conservator, governance authority, or executive director in good faith and in furtherance of the performance of their duties. (Secs. 3345.74(E) and 3345.75(D).)

Status of president or chief executive officer

The bill requires a conservator appointed for a state university or college to conduct a preliminary performance evaluation of the institution's president or chief executive officer (sec. 3345.74(D)). The conservator's findings and recommendations must be reported to the governance authority.

The governance authority appointed for a state university or college must conduct a final performance evaluation of the institution's president or chief executive officer (sec. 3345.75(B)(2)). Following this evaluation, the authority could reinstate any duties, authority, or pay of the president or chief executive officer that were suspended, or could terminate the person's employment contract in accordance with the terms of that contract.

The bill requires any employment contract between a state university or college and its president or chief executive officer (entered into on and after the bill's effective date) to provide for the performance evaluations, the suspension of authority, duties, and pay, and the termination of contract (sec. 3345.77).

Designation of the Attorney General as legal adviser to the conservator and governance authority

(sec. 3345.75(G))

The bill provides that the Attorney General is to be the legal adviser to the conservator and the governance authority, that the Attorney General may employ special counsel to aid the conservator or governance authority regarding any legal matter on behalf of the university or college, and that the conservator and governance authority may request the Attorney General to bring or defend suits or proceedings in the name of the university or college.

Replacement of the governance authority with a new board of trustees

(sec. 3345.76)

Using the indicators and standards adopted by the Office of Budget and Management, the bill requires a governance authority appointed for a state university or college to determine at least annually whether the institution is experiencing sufficient fiscal stability to warrant terminating that governance authority. Upon a determination that terminating the governance authority is warranted, the authority is to certify the determination to the Governor. The determination is final and conclusive and not appealable.

The bill authorizes the Governor to issue an order terminating a governance authority appointed for a state university or college, upon either (1) certification by the governance authority that termination is warranted or (2) a finding that in the

Governor's opinion termination is in the best interests of the state, the particular university or college involved, and the students of that university or college. Upon issuance of a termination order, the Governor must fill each vacancy on the board of trustees for the unexpired portion of the member's term or, if the term for the member has already expired, for the unexpired portion of the succeeding term.

Thirty days after the date on which the Board of Regents determines that all vacancies on the board of trustees have been filled, the governance authority for the state university or college is to cease to exist, and the management and control of the institution is to be resumed by the board of trustees. On that date the employment of the executive director hired by the governance authority is to cease, and the duties, authority, and pay of the institution's president or chief executive officer are to be reinstated unless the board of trustees provides otherwise.

Cooperation with the conservator or governance authority

(secs. 3345.78 and 3345.99)

The bill provides that any current or former employee or officer of a state university or college who knowingly conceals or withholds information from, falsifies information to, or impedes the work of a conservator, governance authority, or executive director, or any personnel appointed by the conservator or executive director is guilty of a felony of the fourth degree. For such a felony the court could impose a prison term of up to 18 months and a maximum fine of \$5,000.

Training for state university or college boards of trustees and the Board of Regents

(sec. 3333.045)

The bill requires the Board of Regents to work with the Attorney General, Auditor of State, and Ohio Ethics Commission to develop a model for training members of the boards of trustees of state universities and colleges, including university branches, and members of the Board of Regents. The model is to cover the authority and responsibilities of a board of trustees or the Board of Regents, including a review of fiduciary responsibilities, ethics, and fiscal management. Use of the model by members of a board of trustees and the Board of Regents is to be voluntary. These provisions do not apply to the three members of the board of trustees of the Northeastern Ohio Universities College of Medicine who are the presidents of state universities (University of Akron and Kent and Youngstown State Universities).

Appropriation

(Section 4)

The bill appropriates \$10.3 million to the Office of Budget and Management for reducing the deficit at Central State University.

HISTORY

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