

AN ACT

To amend sections 3315.17, 3315.18, 3316.03, 3316.042, 3316.06, 3316.20, 5705.13, 5705.29, and 5705.38 and to enact sections 3315.19, 3316.031, 3316.061, and 3318.053 of the Revised Code to address certain school district mandates and to establish additional procedures for avoiding fiscal problems in school districts.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 3315.17, 3315.18, 3316.03, 3316.042, 3316.06, 3316.20, 5705.13, 5705.29, and 5705.38 be amended and sections 3315.19, 3316.031, 3316.061, and 3318.053 of the Revised Code be enacted to read as follows:

Sec. 3315.17. (A) The board of education of each city, exempted village, local, and joint vocational school district shall establish a textbook and instructional materials fund ~~and. Each board annually shall deposit into that fund four per cent, or another percentage if established in rules adopted under division (C) of this section, of all an amount derived from revenues received by the district for operating expenses that is equal to three per cent of the formula amount for the preceding fiscal year, as defined in section 3317.02 of the Revised Code, or another percentage if established by the auditor of state under division (C) of this section, multiplied by the district's student population for the preceding fiscal year.~~ Money in the fund shall be used solely for textbooks, instructional software, and instructional materials, supplies, and equipment. Any money in the fund that is not used in any fiscal year shall carry forward to the next fiscal year.

(B) Notwithstanding division (A) of this section, if in a fiscal year a district board deposits in the textbook and instructional materials fund an amount of money greater than the amount required to be deposited by this section or the rules adopted under division (C) of this section, the board may deduct the excess amount of money from the amount of money required to be deposited in succeeding fiscal years.

(C) The state superintendent of public instruction and the auditor of state jointly shall adopt rules in accordance with Chapter 119. of the Revised

Code defining what constitutes textbooks, instructional software, and instructional materials, supplies, and equipment for which money in a school district's textbook and instructional materials fund may be used. The ~~jointly adopted rules~~ auditor of state also may designate a percentage, other than ~~four~~ three per cent, of ~~district operating revenues~~ the formula amount multiplied by the district's student population that must be deposited into the fund. ~~The auditor of state shall adopt rules under section 117.20 of the Revised Code authorizing up to a three-year phase-in period for district boards to meet the percentage requirements of division (A) of this section, and specifying the manner in which district boards may deduct from a required deposit an excess amount deposited into the textbook and instructional materials fund in a prior fiscal year.~~

(D) Notwithstanding division (A) of this section, a district board of education in any fiscal year may appropriate money in the district textbook and instructional materials fund for purposes other than those permitted by that division if both of the following occur during that fiscal year:

(1) All of the following certify to the district board in writing that the district has sufficient textbooks, instructional software, and instructional materials, supplies, and equipment to ensure a thorough and efficient education within the district:

(a) The district superintendent;

(b) In districts required to have a business advisory council, a person designated by vote of the business advisory council;

(c) If the district teachers are represented by an exclusive bargaining representative for purposes of Chapter 4117. of the Revised Code, the president of that organization or the president's designee.

(2) The district board adopts, by unanimous vote of all members of the board, a resolution stating that the district has sufficient textbooks, instructional software, and instructional materials, supplies, and equipment to ensure a thorough and efficient education within the district.

(E) Notwithstanding any provision to the contrary in Chapter 4117. of the Revised Code, the requirements of this section prevail over any conflicting provisions of agreements between employee organizations and public employers entered into on or after November 21, 1997.

(F) As used in this section and in section 3315.18 of the Revised Code, "student population" means the average, daily, full-time-equivalent number of students in kindergarten through twelfth grade receiving any educational services from the school district during the first full school week in October, excluding students enrolled in adult education classes, but including all of the following:

(1) Adjacent or other district students enrolled in the district under an open enrollment policy pursuant to section 3313.98 of the Revised Code;

(2) Students receiving services in the district pursuant to a compact, cooperative education agreement, or a contract, but who are entitled to attend school in another district pursuant to section 3313.64 or 3313.65 of the Revised Code;

(3) Students for whom tuition is payable pursuant to sections 3317.081 and 3323.141 of the Revised Code.

The department of education shall determine a district's student population using data reported to it under section 3317.03 of the Revised Code for the applicable fiscal year.

Sec. 3315.18. (A) The board of education of each city, exempted village, local, and joint vocational school district shall establish a capital and maintenance fund ~~and. Each board annually shall deposit into that fund four per cent, or another percentage if established in rules adopted under division (B) of this section, of all~~ an amount derived from revenues received by the district that would otherwise have been deposited in the general fund ~~that is~~ equal to three per cent of the formula amount for the preceding fiscal year, as defined in section 3317.02 of the Revised Code, or another percentage if established by the auditor of state under division (B) of this section, multiplied by the district's student population for the preceding fiscal year, except that money received from a permanent improvement levy authorized by section 5705.21 of the Revised Code may replace general revenue moneys in meeting the requirements of this section. Money in the fund shall be used solely for acquisition, replacement, enhancement, maintenance, or repair of permanent improvements, as that term is defined in section 5705.01 of the Revised Code. Any money in the fund that is not used in any fiscal year shall carry forward to the next fiscal year.

(B) The state superintendent of public instruction and the auditor of state jointly shall adopt rules in accordance with Chapter 119. of the Revised Code defining what constitutes expenditures permitted by division (A) of this section ~~and. The auditor of state may designate a percentage, other than four three per cent, of district operating revenues~~ the formula amount multiplied by the district's student population that must be deposited into the fund. The auditor of state shall adopt rules under section 117.20 of the Revised Code authorizing up to a three-year phase-in period for district boards to meet the percentage requirements of division (A) of this section.

(C) WITHIN ITS CAPITAL AND MAINTENANCE FUND, A SCHOOL DISTRICT BOARD OF EDUCATION MAY ESTABLISH A SEPARATE ACCOUNT SOLELY FOR THE PURPOSE OF

NG FUNDS TRANSFERRED FROM THE DISTRICT'S RESERVE BALANCE ACCOUNT ESTABLISHED UNDER FORMER DIVISION (H) OF SECTION 5705.29 OF THE REVISED CODE. AFTER THE EFFECTIVE DATE OF THIS AMENDMENT, A BOARD MAY DEPOSIT ALL OR PART OF THE FUNDS FORMERLY INCLUDED IN SUCH RESERVE BALANCE ACCOUNT IN THE SEPARATE ACCOUNT ESTABLISHED UNDER THIS SECTION. FUNDS DEPOSITED IN THIS SEPARATE ACCOUNT AND INTEREST ON SUCH FUNDS SHALL BE UTILIZED SOLELY FOR THE PURPOSE OF PROVIDING THE DISTRICT'S PORTION OF THE BASIC PROJECT COSTS OF ANY PROJECT UNDERTAKEN IN ACCORDANCE WITH CHAPTER 3318. OF THE REVISED CODE.

(D) Notwithstanding any provision to the contrary in Chapter 4117. of the Revised Code, the requirements of this section prevail over any conflicting provisions of agreements between employee organizations and public employers entered into after ~~the effective date of this section~~ November 21, 1997.

Sec. 3315.19. notwithstanding the provisions of sections 3315.17 and 3315.18 of the Revised Code as they exist after the effective date of this section, the board of education of any school district annually may elect to set aside funds for textbooks and instructional materials or for capital and maintenance in accordance with the provisions of those sections as they existed prior to the effective date of this section and the rules adopted under those sections. Any district board making such an election under this section shall notify the auditor of state within ninety days after the beginning of the fiscal year whether the district intends to comply with the provisions of one or both former sections. A school district making an election under this section shall not be required to comply, during the fiscal year of the election, with the provisions of the applicable sections as they exist after the effective date of this section.

Sec. 3316.03. (A) The existence of a fiscal watch shall be ~~determined~~ declared by the auditor of state. The auditor of state may make ~~the a~~ a determination on the auditor of state's initiative, or upon receipt of a written request for such a determination, which may be filed by the governor, the superintendent of public instruction, or a majority of the members of the board of education of the school district. ~~The~~

(1) ~~The~~ The auditor of state shall declare a school district to be in a state of fiscal watch if the auditor of state determines that ~~division (A)(1), (2), or (3)~~ of this section applies to the school district:

(1) ~~All~~ Both of the following conditions are satisfied with respect to the

school district:

(a) An operating deficit has been certified for the current fiscal year by the auditor of state, and the certified operating deficit exceeds eight per cent of the school district's general fund revenue for the preceding fiscal year;

~~(b) The unencumbered cash balance in the school district's general fund at the close of the preceding fiscal year, less any advances of property taxes, was less than eight per cent of the expenditures made from the general fund for the preceding fiscal year;~~

~~(c) A majority of the voting electors have not voted in favor of levying a tax under section 5705.194 or 5705.21 or Chapter 5748. of the Revised Code that the auditor of state expects will raise enough additional revenue in the next succeeding fiscal year that ~~divisions~~ division (A)(1)(a) and ~~(b)~~ of this section will not apply to the district in such next succeeding fiscal year.~~

(2) The auditor of state shall declare a school district to be in a state of fiscal watch if the auditor of state determines that the school district has outstanding securities issued under division (A)(4) of section 3316.06 of the Revised Code, and its financial planning and supervision commission has been terminated under section 3316.16 of the Revised Code.

~~(3) The school district has received an advancement under section 3316.20 of the Revised Code~~ auditor of state shall declare a school district to be in a state of fiscal watch if both of the following conditions are satisfied:

(a) The superintendent of public instruction has reported to the auditor of state that the superintendent has declared the district under section 3316.031 of the Revised Code to be under a fiscal caution, has found that the district has not acted reasonably to eliminate or correct practices or conditions that prompted the declaration, and has determined the declaration of a state of fiscal watch necessary to prevent further fiscal decline;

(b) The auditor of state determines that the decision of the superintendent is reasonable.

If the auditor of state determines that the decision of the superintendent is not reasonable, the auditor of state shall provide the superintendent with a written explanation of that determination.

(4) The auditor of state may declare a school district to be in a state of fiscal watch if all of the following conditions are satisfied:

(a) An operating deficit has been certified for the current fiscal year by the auditor of state, and the certified operating deficit exceeds two per cent, but does not exceed eight per cent, of the school district's general fund revenue for the preceding fiscal year;

(b) A majority of the voting electors have not voted in favor of levying a

tax under section 5705.194 or 5705.21 or Chapter 5748. of the Revised Code that the auditor of state expects will raise enough additional revenue in the next succeeding fiscal year that division (A)(4)(a) of this section will not apply to the district in the next succeeding fiscal year;

(c) The auditor of state determines that there is no reasonable cause for the deficit or that the declaration of fiscal watch is necessary to prevent further fiscal decline in the district.

~~(B)(1) The auditor of state, after consulting with the superintendent of public instruction, shall issue an order declaring a school district to be in a state of fiscal emergency if the auditor of state determines that division (B)(1), (2), (3), or (4) of this section applies to the school district;~~

~~(1) All Both of the following conditions are satisfied with respect to the school district:~~

~~(a) The board of education of the school district is not able to demonstrate, to the auditor of state's satisfaction, the district's ability to repay outstanding loans received pursuant to section 3313.483 of the Revised Code or to repay securities issued pursuant to section 133.301 of the Revised Code in accordance with applicable repayment schedules unless the board requests additional loans under section 133.301 of the Revised Code in an aggregate principal amount exceeding fifty per cent of the sum of the following:~~

~~(i) The aggregate original principal amount of loans received in the preceding fiscal year under section 3313.483 of the Revised Code;~~

~~(ii) The aggregate amount borrowed by the district under section 133.301 of the Revised Code, excluding any additional amount borrowed as authorized under division (C) of that section.~~

~~(b) An operating deficit has been certified for the current fiscal year by the auditor of state, and the certified operating deficit exceeds fifteen per cent of the school district's general fund revenue for the preceding fiscal year. In determining the amount of an operating deficit under division (B)(1)(b)(a) of this section, the auditor of state shall credit toward the amount of that deficit only the amount that may be borrowed from the spending reserve balance as determined under section 133.301 and division (F) of section 5705.29 of the Revised Code.~~

~~(e)(b) A majority of the voting electors have not voted in favor of levying a tax under section 5705.194 or 5705.21 or Chapter 5748. of the Revised Code that the auditor of state expects will raise enough additional revenue in the next succeeding fiscal year that ~~divisions~~ division (A)(B)(1)(a) and (b) of this section will not apply to the district in such next succeeding fiscal year.~~

~~(d) The school district is one that, at the time of the auditor of state's determination under this section, had a total student count of more than ten thousand students as most recently determined by the department of education pursuant to section 3317.03 of the Revised Code.~~

(2) The auditor of state shall issue an order declaring a school district to be in a state of fiscal emergency if the school district board fails, pursuant to section 3316.04 of the Revised Code, to submit a plan acceptable to the state superintendent of public instruction within one hundred twenty days of the auditor of state's declaration under division (A) of this section or an updated plan when one is required by division (C) of section 3316.04 of the Revised Code;

(3) A The auditor of state shall issue an order declaring a school district to be in a state of fiscal emergency if both of the following conditions are satisfied:

(a) The superintendent of public instruction has reported to the auditor of state that the district is not materially complying with the provisions of an original or updated plan as approved by the state superintendent under section 3316.04 of the Revised Code, and that the state superintendent has determined the declaration of a state of fiscal emergency necessary to prevent further fiscal decline;

(b) The auditor of state finds that the determination of the superintendent is reasonable.

If the auditor of state determines that the decision of the superintendent is not reasonable, the auditor of state shall provide the superintendent a written explanation of that determination.

(4) The auditor of state shall issue an order declaring a school district to be in a state of fiscal emergency if a declaration of fiscal emergency is required by division (D) of section 3316.04 of the Revised Code;

(4) The school district has received more than one advancement under section 3316.20 of the Revised Code within a two-year period, or has received only one such advancement but also has an operating deficit as described in division (B)(1)(b) of this section (5) The auditor of state may issue an order declaring a school district to be in a state of fiscal emergency if all of the following conditions are satisfied:

(a) An operating deficit has been certified for the current fiscal year by the auditor of state, and the certified operating deficit exceeds ten per cent, but does not exceed fifteen per cent, of the school district's general fund revenue for the preceding fiscal year;

(b) A majority of the voting electors have not voted in favor of levying a tax under section 5705.194 or 5705.21 or Chapter 5748. of the Revised

Code that the auditor of state expects will raise enough additional revenue in the next succeeding fiscal year that division (B)(5)(a) of this section will not apply to the district in the next succeeding fiscal year;

(c) The auditor of state determines that a declaration of fiscal emergency is necessary to correct the district's fiscal problems and to prevent further fiscal decline.

(C) In making the determinations under this section, the auditor of state may use financial reports required under section 117.43 of the Revised Code; tax budgets, certificates of estimated resources and amendments thereof, annual appropriating measures and spending plans, and any other documents or information prepared pursuant to Chapter 5705. of the Revised Code; and any other documents, records, or information available to the auditor of state that indicate the conditions described in divisions (A) and (B) of this section.

(D) The auditor of state shall certify the action taken under division (A) or (B) of this section to the board of education of the school district, the director of budget and management, the mayor or county auditor who could be required to act pursuant to division (B)(1) of section 3316.05 of the Revised Code, and to the superintendent of public instruction.

(E) A determination by the auditor of state under this section that a fiscal emergency condition does not exist is final and conclusive and not appealable. A determination by the auditor of state under this section that a fiscal emergency exists is final, except that the board of education of the school district affected by such a determination may appeal the determination of the existence of a fiscal emergency condition to the court of appeals having territorial jurisdiction over the school district. The appeal shall be heard expeditiously by the court of appeals and for good cause shown shall take precedence over all other civil matters except earlier matters of the same character. Notice of such appeal must be filed with the auditor of state and such court within thirty days after certification by the auditor of state to the board of education of the school district provided for in division (D) of this section. In such appeal, determinations of the auditor of state shall be presumed to be valid and the board of education shall have the burden of proving, by clear and convincing evidence, that each of the determinations made by the auditor of state as to the existence of a fiscal emergency condition under this section was in error. If the board of education fails, upon presentation of its case, to prove by clear and convincing evidence that each such determination by the auditor of state was in error, the court shall dismiss the appeal. The board of education and the auditor of state may introduce any evidence relevant to the existence or

nonexistence of such fiscal emergency conditions. The pendency of any such appeal shall not affect or impede the operations of this chapter; no restraining order, temporary injunction, or other similar restraint upon actions consistent with this chapter shall be imposed by the court or any court pending determination of such appeal; and all things may be done under this chapter that may be done regardless of the pendency of any such appeal. Any action taken or contract executed pursuant to this chapter during the pendency of such appeal is valid and enforceable among all parties, notwithstanding the decision in such appeal. If the court of appeals reverses the determination of the existence of a fiscal emergency condition by the auditor of state, the determination no longer has any effect, and any procedures undertaken as a result of the determination shall be terminated.

Sec. 3316.031. (A) The state superintendent of public instruction, in consultation with the auditor of state, shall develop guidelines for identifying fiscal practices and budgetary conditions that, if uncorrected, could result in a future declaration of a fiscal watch or fiscal emergency within a school district.

(B)(1) If the state superintendent determines from a school district's five-year forecast submitted under section 5705.391 of the Revised Code that a district is engaging in any of those practices or that any of those conditions exist within the district, after consulting with the district board of education concerning the practices or conditions, the state superintendent may declare the district to be under a fiscal caution.

(2) If the auditor of state finds that a district is engaging in any of those practices or that any of those conditions exist within the district, the auditor of state shall report that finding to the state superintendent and, after consulting with the district board of education concerning the practices or conditions, the state superintendent may declare the district to be under a fiscal caution.

(3) Unless the auditor of state has elected to declare a state of fiscal watch under division (A)(4) of section 3316.03 of the Revised Code, the state superintendent shall declare a school district to be under a fiscal caution if the conditions described in divisions (A)(4)(a) and (b) of that section are both satisfied with respect to the school district.

(C) When the state superintendent declares a district to be under fiscal caution, the state superintendent shall promptly notify the district board of education of that declaration and shall request the board to provide written proposals for discontinuing or correcting the fiscal practices or budgetary conditions that prompted the declaration and for preventing the district from experiencing further fiscal difficulties that could result in the district being

declared to be in a state of fiscal watch or fiscal emergency.

(D) The state superintendent, or a designee, may visit and inspect any district that is declared to be under a fiscal caution. The department of education shall provide technical assistance to the district board in implementing proposals to eliminate the practices or budgetary conditions that prompted the declaration of fiscal caution and may make recommendations concerning the board's proposals.

(E) If the state superintendent finds that a school district declared to be under a fiscal caution has not made reasonable proposals or otherwise taken action to discontinue or correct the fiscal practices or budgetary conditions that prompted the declaration of fiscal caution, and if the state superintendent considers it necessary to prevent further fiscal decline, the state superintendent may determine that the district should be in a state of fiscal watch. As provided in division (A)(3) of section 3316.03 of the Revised Code, the auditor of state shall declare the district to be in a state of fiscal watch if the auditor of state finds the superintendent's determination to be reasonable.

Sec. 3316.042. The auditor of state, on the auditor of state's initiative, may conduct a performance audit of a school district that is under a fiscal caution under section 3316.031 of the Revised Code, in a state of fiscal watch, or in a state of fiscal emergency, in which the auditor of state reviews any programs or areas of operation in which the auditor of state believes that greater operational efficiencies or enhanced program results can be achieved. ~~A~~

The auditor of state shall conduct a performance audit of a school district that is under a fiscal caution, in a state of fiscal watch, or in a state of fiscal emergency if requested by the state superintendent of public instruction.

The cost of a performance audit conducted under this section shall be paid by the department of education.

A performance audit under this section shall not include review or evaluation of school district academic performance.

Sec. 3316.06. (A) Within one hundred twenty days after the first meeting of a school district financial planning and supervision commission, the commission shall adopt a financial recovery plan regarding the school district for which the commission was created. During the formulation of the plan, the commission shall seek appropriate input from the school district board and from the community. This plan shall contain the following:

(1) Actions to be taken to:

(a) Eliminate all fiscal emergency conditions declared to exist pursuant

to division (B) of section 3316.03 of the Revised Code;

(b) Satisfy any judgments, past-due accounts payable, and all past-due and payable payroll and fringe benefits;

(c) Eliminate the deficits in all deficit funds;

(d) Restore to special funds any moneys from such funds that were used for purposes not within the purposes of such funds, or borrowed from such funds by the purchase of debt obligations of the school district with the moneys of such funds, or missing from the special funds and not accounted for, if any;

(e) Balance the budget, avoid future deficits in any funds, and maintain on a current basis payments of payroll, fringe benefits, and all accounts;

(f) Avoid any fiscal emergency condition in the future;

(g) Restore the ability of the school district to market long-term general obligation bonds under provisions of law applicable to school districts generally.

(2) The management structure that will enable the school district to take the actions enumerated in division (A)(1) of this section. The plan shall specify the level of fiscal and management control that the commission will exercise within the school district during the period of fiscal emergency, and shall enumerate respectively, the powers and duties of the commission and the powers and duties of the school board during that period. The commission may elect to assume any of the powers and duties of the school board it considers necessary, including all powers related to personnel, curriculum, and legal issues in order to successfully implement the actions described in division (A)(1) of this section.

(3) The target dates for the commencement, progress upon, and completion of the actions enumerated in division (A)(1) of this section and a reasonable period of time expected to be required to implement the plan. The commission shall prepare a reasonable time schedule for progress toward and achievement of the requirements for the plan, and the plan shall be consistent with that time schedule.

(4) The amount and purpose of any issue of debt obligations that will be issued, together with assurances that any such debt obligations that will be issued will not exceed debt limits supported by appropriate certifications by the fiscal officer of the school district and the county auditor. Debt obligations issued pursuant to section 133.301 of the Revised Code shall include assurances that such debt shall be in an amount not to exceed the amount certified under division (B) of such section. If the commission considers it necessary in order to maintain or improve educational opportunities of pupils in the school district, the plan may include a proposal

to restructure or refinance outstanding debt obligations incurred by the board under section 3313.483 of the Revised Code contingent upon the approval, during the period of the fiscal emergency, by district voters of a tax levied under section 718.09, 718.10, 5705.194, 5705.21, 5748.02, or 5748.08 of the Revised Code, that is not a renewal or replacement levy and that will provide new operating revenue. Notwithstanding any provision of Chapter 133. or sections 3313.483 to 3313.4811 of the Revised Code, following the required approval of the district voters and with the approval of the commission, the school district may issue securities to evidence the restructuring or refinancing. Those securities may extend the original period for repayment, not to exceed ten years, and may alter the frequency and amount of repayments, interest or other financing charges, and other terms of agreements under which the debt originally was contracted, at the discretion of the commission, provided that any loans received pursuant to section 3313.483 of the Revised Code shall be paid from funds the district would otherwise receive under sections 3317.022 to 3317.025 of the Revised Code, as required under division (E)(3) of section 3313.483 of the Revised Code. The securities issued for the purpose of restructuring or refinancing the debt shall be repaid in equal payments and at equal intervals over the term of the debt and are not eligible to be included in any subsequent proposal for the purpose of restructuring or refinancing debt under this section.

(B) Any financial recovery plan may be amended subsequent to its adoption. Each financial recovery plan shall be updated annually.

(C) Each school district financial planning and supervision commission shall submit the financial recovery plan it adopts or updates under this section to the state superintendent of public instruction for approval immediately following its adoption or updating. The state superintendent shall evaluate the plan and either approve or disapprove it within thirty calendar days from the date of its submission. If the plan is disapproved, the state superintendent shall recommend modifications that will render it acceptable. No financial planning and supervision commission shall implement a financial recovery plan that is adopted or updated on or after the effective date of this amendment unless the state superintendent has approved it.

Sec. 3316.061. If any school district financial planning and supervision commission fails to submit to the state superintendent of public instruction under section 3316.06 of the Revised Code a financial recovery plan that is acceptable to the state superintendent, or if the state superintendent and the director of budget and management find that a commission is not materially

complying with the provisions of its financial recovery plan, the state superintendent and the director may jointly dissolve the financial planning and supervision commission and jointly appoint an individual to act as the fiscal arbitrator of the district.

When a financial planning and supervision commission is dissolved under this section, the commission ceases to exist and the appointed fiscal arbitrator becomes the successor to the commission. A fiscal arbitrator appointed under this section has all of the rights, powers, and duties given by this chapter to the commission that the arbitrator succeeds. A reference in any statute, rule, contract, or other document to a school district financial planning and supervision commission is deemed to refer to a fiscal arbitrator appointed under this section.

Business commenced but not completed by a commission when it is dissolved under this section shall be completed by the appointed fiscal arbitrator with the same effect as if completed by the commission. No validation, cure, right, privilege, remedy, obligation, or liability is lost or impaired by reason of the dissolution of the commission and appointment of a fiscal arbitrator, but shall be administered by the arbitrator.

The superintendent of public instruction shall issue guidelines establishing the criteria that the superintendent will utilize in selecting qualified fiscal arbitrators under this section.

Sec. 3316.20. (A)(1) The school district solvency assistance fund is hereby created in the state treasury, to consist of such amounts designated for the purposes of the fund by the general assembly. The fund shall be used to ~~make advancements~~ provide assistance and grants to school districts to enable them to remain solvent and to pay unforeseeable expenses of a temporary or emergency nature that they are unable to pay from existing resources.

~~Advancements~~ (2) There is hereby created within the fund an account known as the school district shared resource account, which shall consist of money appropriated to it by the general assembly. The money in the account shall be used solely for solvency assistance to school districts that have been declared under division (B) (1) or (5) of section 3316.03 of the Revised Code to be in a state of fiscal emergency because of a certified operating deficit exceeding ten per cent.

(3) There is hereby created within the fund an account known as the catastrophic expenditures account, which shall consist of money appropriated to the account by the general assembly plus all investment earnings of the fund. Money in the account shall be used solely for the following:

(a) Solvency assistance to school districts that have been declared under division (B) (1) or (5) of section 3316.03 of the Revised Code to be in a state of fiscal emergency because of a certified operating deficit exceeding ten per cent, in the event that all money in the shared resource account is utilized for solvency assistance:

(b) Grants to school districts under division (C) of this section.

(B) Solvency assistance payments under division (A)(2) or (3)(a) of this section shall be made from the fund by the superintendent of public instruction in accordance with rules jointly adopted by the superintendent and the auditor director of state budget and management, after consulting with the superintendent, specifying advancement approval criteria and procedures necessary for administering the fund.

The fund shall be reimbursed for any solvency assistance amounts advanced paid under division (A)(2) or (3)(a) of this section not later than the end of the second fiscal year following the fiscal year in which the advancement solvency assistance payment was made. If not made directly by the school district, such reimbursement shall be made by the director of budget and management from the amounts the school district would otherwise receive pursuant to sections 3317.022 to 3317.025 of the Revised Code, or from any other funds appropriated for the district by the general assembly. Reimbursements shall be credited to the respective account from which the solvency assistance paid to the district was deducted.

(C) The superintendent of public instruction may make recommendations, and the controlling board may grant money from the catastrophic expenditures account to any school district that suffers an unforeseen catastrophic event that severely depletes the district's financial resources. A school district shall not be required to repay any grant awarded to the district under this division unless the district receives money from a third party, including an agency of the government of the United States, specifically for the purpose of compensating the district for expenses incurred as a result of the unforeseen catastrophic event.

Sec. 3318.053. Notwithstanding any provision of this chapter to the contrary, a school district board may use proceeds from the tax described in division (B) or (C) of section 3318.05 of the Revised Code for infrastructure improvements on and leading to the project sites that are not included in the basic project cost. The board may use proceeds of the tax in this manner only during the three-year period following the execution of the agreement under section 3318.08 of the Revised Code. If the board intends to use the proceeds of the tax in this manner, it shall include that fact as part of the purpose of the levy in the ballot language proposing it.

Sec. 5705.13. (A) ~~Except as otherwise provided for a board of education under division (H) of section 5705.29 of the Revised Code, a~~ a taxing authority of a subdivision, by resolution or ordinance, may establish a reserve balance account to accumulate currently available resources for any of the following purposes:

(1) To stabilize subdivision budgets against cyclical changes in revenues and expenditures;

(2) Except as otherwise provided by this section, to provide for the payment of claims under a self-insurance program for the subdivision, if the subdivision is permitted by law to establish such a program;

(3) To provide for the payment of claims under a retrospective ratings plan for workers' compensation.

The ordinance or resolution establishing a reserve balance account shall state the purpose for which the reserve balance account is established, the fund in which the account is to be established, and the total amount of money to be reserved in the account.

A subdivision that participates in a risk-sharing pool, by which governments pool risks and funds and share in the costs of losses, shall not establish a reserve balance account to provide self-insurance for the subdivision.

A taxing authority of a subdivision shall not have more than three reserve balance accounts at any time. Not more than one reserve balance account may be established for each of the purposes permitted under this section. Money to the credit of a reserve balance account may be expended only for the purpose for which the account was established.

A reserve balance account established for the purpose described in division (A)(1) of this section shall be established in the general fund of the subdivision, and the amount of money to be reserved in that account in any fiscal year shall not exceed five per cent of the general fund revenue for the preceding fiscal year. Subject to division (G) of section 5705.29 of the Revised Code, any reserve balance in an account established under division (A)(1) of this section shall not be considered part of the unencumbered balance or revenue of the subdivision under division (A) of section 5705.35 or division (A)(1) of section 5705.36 of the Revised Code.

At any time, a taxing authority of a subdivision, by resolution or ordinance, may reduce or eliminate the reserve balance in a reserve balance account established for the purpose described in division (A)(1) of this section.

A reserve balance account established for the purpose described in division (A)(2) or (3) of this section shall be established in the general fund

of the subdivision or by the establishment of a separate internal service fund established to account for the operation of the self-insurance or retrospective ratings plan program, and shall be based on sound actuarial principles. The total amount of money in a reserve balance account for self-insurance may be expressed in dollars or as the amount determined to represent an adequate reserve according to sound actuarial principles.

A taxing authority of a subdivision, by resolution or ordinance, may rescind a reserve balance account established under this division. If a reserve balance account is rescinded, money that has accumulated in the account shall be transferred to the fund or funds from which the money originally was transferred.

(B) A taxing authority of a subdivision, by resolution or ordinance, may establish a special revenue fund for the purpose of accumulating resources for the payment of accumulated sick leave and vacation leave, and for payments in lieu of taking compensatory time off, upon the termination of employment or the retirement of officers and employees of the subdivision. The special revenue fund may also accumulate resources for payment of salaries during any fiscal year when the number of pay periods exceeds the usual and customary number of pay periods. Notwithstanding sections 5705.14, 5705.15, and 5705.16 of the Revised Code, the taxing authority, by resolution or ordinance, may transfer money to the special revenue fund from any other fund of the subdivision from which such payments may lawfully be made. The taxing authority, by resolution or ordinance, may rescind a special revenue fund established under this division. If a special revenue fund is rescinded, money that has accumulated in the fund shall be transferred to the fund or funds from which the money originally was transferred.

(C) A taxing authority of a subdivision, by resolution or ordinance, may establish a capital projects fund for the purpose of accumulating resources for the acquisition, construction, or improvement of fixed assets of the subdivision. For the purposes of this section, "fixed assets" includes motor vehicles. More than one capital projects fund may be established and may exist at any time. The ordinance or resolution shall identify the source of the money to be used to acquire, construct, or improve the fixed assets identified in the resolution or ordinance, the amount of money to be accumulated for that purpose, the period of time over which that amount is to be accumulated, and the fixed assets that the taxing authority intends to acquire, construct, or improve with the money to be accumulated in the fund.

A taxing authority of a subdivision shall not accumulate money in a

capital projects fund for more than five years after the resolution or ordinance establishing the fund is adopted. If the subdivision has not entered into a contract for the acquisition, construction, or improvement of fixed assets for which money was accumulated in such a fund before the end of that five-year period, the fiscal officer of the subdivision shall transfer all money in the fund to the fund or funds from which that money originally was transferred or the fund that originally was intended to receive the money.

A taxing authority of a subdivision, by resolution or ordinance, may rescind a capital projects fund. If a capital projects fund is rescinded, money that has accumulated in the fund shall be transferred to the fund or funds from which the money originally was transferred.

Notwithstanding sections 5705.14, 5705.15, and 5705.16 of the Revised Code, the taxing authority of a subdivision, by resolution or ordinance, may transfer money to the capital projects fund from any other fund of the subdivision that may lawfully be used for the purpose of acquiring, constructing, or improving the fixed assets identified in the resolution or ordinance.

Sec. 5705.29. The tax budget shall present the following information in such detail as is prescribed by the auditor of state, unless an alternative form of the budget is permitted under section 5705.281 of the Revised Code:

(A)(1) A statement of the necessary current operating expenses for the ensuing fiscal year for each department and division of the subdivision, classified as to personal services and other expenses, and the fund from which such expenditures are to be made. Except in the case of a school district, this estimate may include a contingent expense not designated for any particular purpose, and not to exceed three per cent of the total amount of appropriations for current expenses. In the case of a school district, this estimate may include a contingent expense not designated for any particular purpose and not to exceed thirteen per cent of the total amount of appropriations for current expenses.

(2) A statement of the expenditures for the ensuing fiscal year necessary for permanent improvements, exclusive of any expense to be paid from bond issues, classified as to the improvements contemplated by the subdivision and the fund from which such expenditures are to be made;

(3) The amounts required for the payment of final judgments;

(4) A statement of expenditures for the ensuing fiscal year necessary for any purpose for which a special levy is authorized, and the fund from which such expenditures are to be made;

(5) Comparative statements, so far as possible, in parallel columns of

corresponding items of expenditures for the current fiscal year and the two preceding fiscal years.

(B)(1) An estimate of receipts from other sources than the general property tax during the ensuing fiscal year, which shall include an estimate of unencumbered balances at the end of the current fiscal year, and the funds to which such estimated receipts are credited;

(2) The amount each fund requires from the general property tax, which shall be the difference between the contemplated expenditure from the fund and the estimated receipts, as provided in this section. The section of the Revised Code under which the tax is authorized shall be set forth.

(3) Comparative statements, so far as possible, in parallel columns of taxes and other revenues for the current fiscal year and the two preceding fiscal years.

(C)(1) The amount required for debt charges;

(2) The estimated receipts from sources other than the tax levy for payment of such debt charges, including the proceeds of refunding bonds to be issued to refund bonds maturing in the next succeeding fiscal year;

(3) The net amount for which a tax levy shall be made, classified as to bonds authorized and issued prior to January 1, 1922, and those authorized and issued subsequent to such date, and as to what portion of the levy will be within and what in excess of the ten-mill limitation.

(D) An estimate of amounts from taxes authorized to be levied in excess of the ten-mill limitation on the tax rate, and the fund to which such amounts will be credited, together with the sections of the Revised Code under which each such tax is exempted from all limitations on the tax rate.

(E)(1) A board of education may include in its budget for the fiscal year in which a levy proposed under section 5705.194, 5705.21, or 5705.213, or the original levy under section 5705.212 of the Revised Code is first extended on the tax list and duplicate an estimate of expenditures to be known as a voluntary contingency reserve balance, which shall not be greater than twenty-five per cent of the total amount of the levy estimated to be available for appropriation in such year.

(2) A board of education may include in its budget for the fiscal year following the year in which a levy proposed under section 5705.194, 5705.21, or 5705.213, or the original levy under section 5705.212 of the Revised Code is first extended on the tax list and duplicate an estimate of expenditures to be known as a voluntary contingency reserve balance, which shall not be greater than twenty per cent of the amount of the levy estimated to be available for appropriation in such year.

(3) Except as provided in division (E)(4) of this section, the full amount

of any reserve balance the board includes in its budget shall be retained by the county auditor and county treasurer out of the first semiannual settlement of taxes until the beginning of the next succeeding fiscal year, and thereupon, with the depository interest apportioned thereto, it shall be turned over to the board of education, to be used for the purposes of such fiscal year.

(4) A board of education, by a two-thirds vote of all members of the board, may appropriate any amount withheld as a voluntary contingency reserve balance during the fiscal year for any lawful purpose, provided that prior to such appropriation the board of education has authorized the expenditure of all amounts appropriated for contingencies under section 5705.40 of the Revised Code. Upon request by the board of education, the county auditor shall draw a warrant on the district's account in the county treasury payable to the district in the amount requested.

(F)(1) A board of education may include a spending reserve in its budget for fiscal years ending on or before June 30, 2002. The spending reserve shall consist of an estimate of expenditures not to exceed the district's spending reserve balance. A district's spending reserve balance is the amount by which the designated percentage of the district's estimated personal property taxes to be settled during the calendar year in which the fiscal year ends exceeds the estimated amount of personal property taxes to be so settled and received by the district during that fiscal year. Moneys from a spending reserve shall be appropriated in accordance with section 133.301 of the Revised Code.

(2) For the purposes of computing a school district's spending reserve balance for a fiscal year, the designated percentage shall be as follows:

Fiscal year ending in:	Designated percentage
1998	50%
1999	40%
2000	30%
2001	20%
2002	10%

(G) Except as otherwise provided in this division, the county budget commission shall not reduce the taxing authority of a subdivision as a result of the creation of a reserve balance account. Except as otherwise provided in this division, the county budget commission shall not consider the amount in a reserve balance account of a township, county, or municipal corporation as an unencumbered balance or as revenue for the purposes of division (E)(3) or (4) of section 5747.51 or division (E)(3) or (4) of section 5747.62 of the Revised Code. The county budget commission may require documentation

of the reasonableness of the reserve balance held in any reserve balance account. The commission shall consider any amount in a reserve balance account that it determines to be unreasonable as unencumbered and as revenue for the purposes of sections 5747.51 and 5747.62 of the Revised Code and may take such amounts into consideration when determining whether to reduce the taxing authority of a subdivision.

~~(H)(1) Each board of education shall include in its tax budget and shall establish a reserve balance account to accumulate currently available resources to stabilize the school district's budget against cyclical changes in revenues and expenditures. The balance in the reserve balance account shall not at any time be less than five per cent of general fund revenues for the most recently concluded fiscal year, except as provided in division (H)(2) or (3) of this section, and except for deficiencies arising from the appropriation of money from the account for unanticipated deficiencies in revenue or other emergencies pursuant to a resolution adopted by two-thirds of the membership of the board of education specifying the reason for the appropriation. The auditor of state and the superintendent of public instruction jointly shall adopt rules governing conditions that constitute unanticipated deficiencies in revenue or emergencies for which appropriations may be made from a reserve balance account. The rules also shall provide that a board of education that borrows against its spending reserve established in its tax budget for a fiscal year under division (F) of this section is not subject to division (H)(2) of this section for that fiscal year. A board of education shall not appropriate money from a reserve balance account without filing a schedule for replenishing the account with the superintendent of public instruction and receiving approval of the schedule from the superintendent of public instruction.~~

~~(2)(a) Beginning with the fiscal year ending in 1999 and continuing each fiscal year until the balance in the reserve balance account equals five per cent of the district's revenues received for current expenses for the preceding fiscal year, if the growth in a district's total revenues received for current expenses from one fiscal year to the next is at least three per cent, the board of education shall credit to its reserve balance account, from the general fund or from other sources that may lawfully be credited to the general fund, an amount that, when added to the account balance, is not less than:~~

~~(i) One per cent of revenues received for current expenses for the prior fiscal year; plus~~

~~(ii) The sum of the amounts credited under this section for all fiscal years that amounts were required to be credited under this section.~~

~~Each board shall maintain the balance in the district's reserve balance account at not less than five per cent of the district's revenues received for current expenses for the preceding fiscal year, except as otherwise authorized under division (H) of this section.~~

~~(b) Notwithstanding division (H)(2)(a) of this section, in no year shall a board be required to credit to its reserve balance account more than one per cent of revenues received for current expenses for the prior fiscal year.~~

~~(3) The balance in the reserve balance account of a school district may be less than five per cent of the general fund revenue for the most recently concluded fiscal year in any fiscal year in which the school district is in a state of fiscal watch or fiscal emergency pursuant to section 3316.03 of the Revised Code.~~

~~(4) Notwithstanding any provision to the contrary in Chapter 4117. of the Revised Code, the requirements of division (H) of this section prevail over any conflicting provisions of agreements between employee organizations and public employers entered into after November 21, 1997.~~

~~(5) Notwithstanding division (H)(2) of this section, a school district may, pursuant to rules adopted by the auditor of state, credit less than one per cent of its prior year's revenue received for current expenses into its reserve balance account.~~

~~(6) A school district board may apply to the state superintendent of public instruction for a one-time waiver of the deposit requirements of division (H)(2) of this section when it determines that meeting the requirements in the current or next fiscal year would cause the district to significantly reduce or eliminate important educational services. The district shall apply in the form and manner required by the state superintendent, and the application may request a waiver of all or part of the deposit required for the current or next fiscal year. The state superintendent may grant a waiver if the state superintendent and the auditor of state determine that meeting the requirement in the current or next fiscal year would cause the school district to significantly reduce or eliminate important educational services. A waiver may entirely exempt the district from making any deposit into its reserve balance account during the current or next fiscal year or, regardless of whether the district board applied for a waiver of the entire deposit, may simply reduce the amount of the deposit otherwise required during the current or next fiscal year by division (H)(2) of this section. A waiver is valid for one fiscal year: either the fiscal year in which the district board applied for it or the immediately following fiscal year. A district board may receive only one waiver under division (H)(6) of this section.~~

~~(I) Notwithstanding division (H)(2) of this section, whenever a city,~~

~~local, exempted village, or joint vocational school district receives from the bureau of workers' compensation a refund or other reimbursement of money that the district previously paid to the bureau, the district shall deposit the full amount of the refund or other reimbursement into the district's reserve balance account, unless the account already contains five per cent of the district's revenues received for current expenses for the preceding year as prescribed in division (H)(2)(a) of this section. A district may credit any amount it deposits into that account under this division toward any minimum deposit required for the account in that fiscal year.~~

Sec. 5705.38. (A) This division does not apply to school district appropriation measures. On or about the first day of each year, the taxing authority of each subdivision or other taxing unit shall pass an appropriation measure, and thereafter during the year it may pass any supplemental appropriation measures as it finds necessary, based on the revised tax budget and the official certificate of estimated resources or amendments of the certificate. If adoption of a tax budget was waived under section 5705.281 of the Revised Code, appropriation measures shall be based on the official certificate of estimated resources. If it desires to postpone the passage of the annual appropriation measure until an amended certificate is received based on the actual balances, it may pass a temporary appropriation measure for meeting the ordinary expenses of the taxing unit until no later than the first day of April of the current year, and the appropriations made in the temporary measure shall be chargeable to the appropriations in the annual appropriation measure for that fiscal year when passed.

(B) A board of education shall pass its annual appropriation measure by the first day of October. If, by the first day of October, a board has not received either the amended certificates of estimated resources required by division (B) of section 5705.36 of the Revised Code or certifications that no amended certificates need be issued, the adoption of the annual appropriation measure shall be delayed until the amended certificates or certifications are received. Prior to the passage of the annual appropriation measure, the board may pass a temporary appropriation measure for meeting the ordinary expenses of the district until it passes an annual appropriation measure, and appropriations made in the temporary measure shall be chargeable to the appropriations in the annual appropriation measure for that fiscal year when passed. During the fiscal year and after the passage of the annual appropriation measure, a district may pass any supplemental appropriation measures as it finds necessary, based on the revised tax budget and the official certificate of estimated resources or amendments of the certificate. ~~The annual appropriation measure, and any temporary or~~

~~supplemental appropriation measure, shall provide for the reservation of a sufficient amount of money for the budget reserve fund as required under division (H) of section 5705.29 of the Revised Code.~~ School district appropriation measures shall be in the form as the auditor of state, after consultation with the tax commissioner, prescribes.

(C) Appropriation measures shall be classified so as to set forth separately the amounts appropriated for each office, department, and division, and, within each, the amount appropriated for personal services. In the case of a municipal university, the board of directors of which have assumed, in the manner provided by law, custody and control of the funds of the university, funds shall be appropriated as a lump sum for the use of the university.

SECTION 2. That existing sections 3315.17, 3315.18, 3316.03, 3316.042, 3316.06, 3316.20, 5705.13, 5705.29, and 5705.38 of the Revised Code are hereby repealed.

SECTION 3. Section 3315.17 of the Revised Code, as amended by this act, and section 3315.19 of the Revised Code, as enacted by this act, shall take effect July 1, 2001. The amendments by this act to divisions (A) and (B) of section 3315.18 of the Revised Code shall take effect July 1, 2001.

Section 4. After the effective date of this section, no board of education of any school district shall be required to establish and maintain a budget reserve account as previously required under divisions (H) and (I) of section 5705.29 of the Revised Code as that section existed prior to the effective date of this section. Any money on hand in a school district's budget reserve account established and maintained under those divisions on the effective date of this section may at the discretion of the district board of education be returned to the district's general fund or may be left in the account and may be used by the district board to offset any budget deficit the district may experience in future fiscal years. However, any portion of that money consisting of refunds or rebates from the Bureau of Workers' Compensation that was required to be deposited in the fund under Section 39 of Am. Sub. H.B. 770 of the 122nd General Assembly or division (I) of section 5705.29 of the Revised Code as it existed prior to the effective date of this section may be used solely to offset a budget deficit or for school facility construction, renovation, or repair; textbooks or instructional materials, including science equipment or laboratories; purchase of school buses; or professional development of teachers.

This section does not affect a district board's authority to establish a reserve balance account under section 5705.13 of the Revised Code as that section exists after the effective date of this section.

SECTION 5. The amendment by this act of section 3316.03 of the Revised Code does not nullify a declaration by the Auditor of State made prior to the effective date of this section, under former division (A)(3) or (B)(4) of that section, that a district is in a state of fiscal watch or fiscal emergency because the district received one or more advancements from the Solvency Assistance Fund. A school district declared to be in a state of fiscal watch or fiscal emergency prior to that date remains in that state and remains subject to Chapter 3316. of the Revised Code, including the sections as amended by this act, for as long as required by that chapter.

SECTION 6. Sections 3315.17 and 3315.18 of the Revised Code, which were enacted by Sub. H.B. 412 of the 122nd General Assembly, required school districts to set aside percentages of their general operating funds for textbooks and instructional materials and for capital and maintenance costs. Section 3313.603 of the Revised Code, enacted by Am. Sub. S.B. 55 of the 122nd General Assembly, increased from eighteen to twenty-one the minimum number of academic units required for students graduating from high school in this state after September 15, 2001. The Ohio Supreme Court, in

DeRolph v. State

SECTION (2000), 89 Ohio St. 3d 1, concluded that all of these requirements impermissibly imposed unfunded mandates upon school districts.

The General Assembly finds that the costs of the set-aside requirements of sections 3315.17 and 3315.18 are not unfunded to the extent the required set-asides are percentages of the base cost formula amount. Since fiscal year 1999, these set-asides have been included within the base cost formula amounts prescribed by section 3317.012 of the Revised Code, which was enacted by Am. Sub. H.B. 650 of the 122nd General Assembly. The General Assembly has reanalyzed fiscal year 1996 fiscal data of the one hundred three model effective school districts, described in section 3317.012 of the Revised Code, which served as the basis for the fiscal policies contained in Am. Sub. H.B. 650. This analysis is based on testimony and evidence presented in 2000 before the Joint Committee to Examine the Base Cost of an Adequate Education, which clearly demonstrated that in fiscal year 1996,

the model school districts spent at least the percentages prescribed in sections 3315.17 and 3315.18 of the Revised Code for textbooks and instructional materials and capital and maintenance costs as those percentages were adjusted by the auditor of state under those sections. The base cost formula amount enacted in Am. Sub. H.B. 650 was derived from these districts' costs, which include their expenditures for textbooks and instructional materials and capital and maintenance costs. The base cost formula amount therefore includes an amount adequate for school districts to meet the requirements of sections 3315.17 and 3315.18 provided that the required set-asides are percentages of the base cost amount and not of school district total revenues. Accordingly, this act amends the set-aside requirements to reflect this finding.

Other evidence submitted to the Joint Committee demonstrated that in fiscal year 1996 the average minimum number of academic units required to graduate from high school in the model school districts was nineteen and six-tenths, but that many students in those districts graduated with credits exceeding the minimum. The General Assembly therefore finds that the base cost formula amount reflects the cost of providing nineteen and six-tenths high school academic units. The General Assembly intends to increase the base cost formula amount in future education funding legislation to close the gap between the model districts' average of nineteen and six-tenths units and the required minimum of twenty-one units imposed by section 3313.603 of the Revised Code.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____