



OHIO LEGISLATIVE SERVICE COMMISSION

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Fiscal Note & Local Impact Statement

Bill: H.B. 491 of the 132nd G.A.

Status: As Passed by the Senate

Sponsor: Rep. Edwards

Local Impact Statement Procedure Required: No

Subject: Modifies various laws related to primary and secondary education

State & Local Fiscal Highlights

School treasurer liability for loss of public funds

- The bill limits the circumstances in which a school treasurer or superintendent may be held liable for a loss of public funds, likely preventing a school district or educational service center from recovering the cost of improper payments in some cases. Such situations appear to be rare.
- The amount of any unrecovered losses will vary depending on the circumstances of each case, but could be more than minimal.

School resource officer training

- If the Ohio Peace Officer Training Academy (OPOTA) offers a specialized training program for school resource officers, as authorized by the bill, its operating expenses and fee revenues will likely increase.

Substitute license for specified pupil services personnel

- The bill requires the State Board of Education to issue a substitute license to specified pupil services personnel who wish to work in a school as a substitute rather than a full-time employee. The current fee for a substitute license is \$15 per year less than the fee for a pupil services license. Therefore, under the bill the State Board's licensing revenue may decrease.
- If the bill encourages more individuals to obtain licenses, however, the State Board's licensing revenue as well as its licensing costs will increase.

Counselor, Social Worker, and Marriage and Family Therapist Board

- The Counselor, Social Worker, and Marriage and Family Therapist Board may experience a minimal increase in costs to process additional licenses, which will be offset by a minimal gain in licensing revenues.

High school graduation pathways

- The bill extends alternative high school graduation pathways similar to those for students in the class of 2018 to students in the classes of 2019 and 2020, allowing more students in those classes to graduate on time.

Detailed Fiscal Analysis

Provisions related to school treasurers

Liability for loss of public funds

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

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

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

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

However, several of those audits indicated that the overpaid employee repaid or was in the process of repaying the misspent money.

Violations of treasurer professional duties

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

This provision may marginally reduce the number of professional conduct cases investigated by ODE's Office of Professional Conduct, which administers the educator disciplinary process. In 2017, 21 (1.4%) of the Office's roughly 1,500 investigations into allegations of educator misconduct involved misuse of school funds. The Office's operating expenses are supported by educator license fees deposited into the Teacher Licensure and Certification Fund (Fund 4L20).

Procedure for payment of teacher services

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

School resource officer training course requirements

H.B. 318 of the 132nd General Assembly requires each school resource officer (SRO) newly appointed after November 2, 2018 to complete at least 40 hours of specialized training through one of three entities: (1) the National Association of School Resource Officers, (2) the Ohio School Resource Officer Association, or (3) a peace officer certified to conduct a course that meets the bill's requirements. H.B. 318 also requires the Ohio Peace Officer Training Commission to develop and conduct a basic SRO training course aligned with the specialized training. The Attorney General's Office, through the Commission, administers the Ohio Peace Officer Training Academy (OPOTA), which is funded, in part, by course fees charged to local law enforcement officers or their departments.¹

¹ <https://www.ohioattorneygeneral.gov/Law-Enforcement/Ohio-Peace-Officer-Training-Academy/Course-Catalog/Tuition>.

In general, the bill streamlines the provision of SRO training by removing the responsibility for OPOTA to develop and conduct a basic training course and clarifying that any one of (instead of only one of) the three entities may conduct the specialized training, provided the specialized training has been approved by the Commission. The bill also replaces the certified peace officer with OPOTA generally, as an entity that may conduct the specialized training. Thus, OPOTA expenses may increase if it develops and provides the specialized training, depending on the number of new courses created and offered, but may be lower than otherwise due to the elimination of the basic training course requirement. Presumably, an increase in OPOTA expenses will be offset by corresponding gain in OPOTA course fee revenue.

Substitute license for specified pupil services personnel

Current law requires speech-language pathologists, audiologists, registered nurses, physical therapists, physical therapist assistants, occupational therapists, occupational therapist assistants, and social workers to hold both an Ohio occupational license from their professional licensing boards as well as a pupil services or associate license to work in a school from the State Board of Education.² This applies to individuals seeking to work in a school as a substitute or as a full-time employee. The current fee for the State Board license is \$40 per year.³

The bill requires the State Board to issue substitute licenses to individuals in these professions if they wish to work in a school as a substitute, not as a full-time employee. The current fee for a State Board substitute license is \$25 per year.⁴ To the extent individuals in these professions are currently working as substitutes, the State Board's licensing revenue to Fund 4L20 will decrease under the bill, as these individuals will likely opt for the cheaper of the two licenses.⁵ The lower fee may also encourage more of these individuals to get licensed as substitutes, which would increase licensing revenue to and the administrative costs associated with licensure from Fund 4L20. One of these costs is an annual fee of \$5 that is paid to the Attorney General for enrollment in the Retained Applicant Fingerprint Database (RAPBACK).

² Physical therapy and occupational therapy assistants are required to obtain an associate license. The other professions are required to obtain a pupil services license.

³ The State Board issues a one-year license with a \$40 fee or a five-year license with a \$200 fee.

⁴ The State Board issues a one-year substitute license with a \$25 fee or a five-year substitute license with a \$125 fee.

⁵ The bill prohibits the State Board from establishing additional qualifications for the substitute license. This Fiscal Note assumes that does not mean the State Board may not charge a fee. If the State Board is prohibited from charging a fee for these new licenses, licensing revenue will decrease further.

Counselor, Social Worker, and Marriage and Family Therapist Board – approval of counselor education programs

Currently, to be eligible for a professional clinical counselor or professional counselor license an individual must meet certain requirements including holding a graduate degree in counseling from an accredited educational institution. A graduate degree obtained from a mental health counseling program after January 1, 2018, is required to be from a specified counseling program that has been accredited by the Council for Accreditation of Counseling and Related Educational Programs. The bill allows a counseling education program temporarily approved by the Counselor, Social Worker, and Marriage and Family Therapist Board in rules to also meet this requirement. In addition, the bill allows the Board to adopt rules to temporarily approve such a program, but specifies certain requirements or conditions that must be included if rules are adopted.

As a result of this provision, additional individuals might meet the requirements for licensure. If this occurs, the Board would realize a gain in fee revenue and a subsequent increase in administrative costs to process any additional licenses. Any impact is likely to be minimal, but will depend on the number of additional licenses sought. The Board could also experience an increase in administrative costs for rule promulgation. The Board uses the Occupational Licensing and Regulatory Fund (Fund 4K90) to pay operating expenses and deposit fee revenue.

Alternative high school graduation pathways

H.B. 49 of the 132nd General Assembly created two alternative graduation pathways exclusively for students who are enrolled in a school district, other public school, or chartered nonpublic school and who entered ninth grade for the first time on or after July 1, 2014, but before July 1, 2015 (the class of 2018) in lieu of the three existing graduation pathways. A student qualified for a diploma under the alternative criteria if the student either:

- Took all applicable state tests, retook certain low-score end-of-course exams, completed the district's or school's curriculum, and satisfied two of a number of other conditions, including completion of a capstone project during the 12th grade, completion of 120 hours of community service or work-based learning, and a 93% attendance rate during the 12th grade; or
- Took all applicable state tests, completed the district's or school's curriculum, completed an approved career-technical training program, and satisfied one of a number of other conditions, including obtaining an industry recognized credential.

The bill extends the same alternative pathways to students who enter ninth grade prior to July 1, 2016 (the class of 2019) and similar pathways to students who enter the ninth grade prior to July 1, 2017 (the class of 2020), allowing more students to graduate on time than would be the case otherwise. Notably, students in the class of 2020 who use the first alternative pathway to graduate may not do so by meeting

attendance criteria and such students that complete a capstone project or community service or work-based learning hours must do so in compliance with guidance on those options to be developed by ODE. The guidance must be developed and issued by May 31, 2019. ODE must also recommend to the General Assembly a long-term proposal for diploma requirements by April 1, 2019. ODE's administrative workload will increase to develop the guidance and recommendations.

Credit for assignments completed during suspension

Current law requires each school district to permit a student that has been suspended to complete any classroom assignments missed because of the suspension. The bill replaces this general requirement with a provision requiring each school district to adopt a policy establishing parameters for completing and grading such assignments. As under current law, the policy must provide an opportunity for the student to complete missed classroom assignments but clarifies that (1) the student must be able to receive at least partial credit for a completed assignment and (2) the student may receive a reduced grade due to the suspension but cannot receive a failing grade solely because of the suspension.

This provision may minimally increase the administrative workload on school districts to formalize or implement policies that comply with the bill, to the extent that they do not do so currently.