

**As Rereferred to the House Finance and Appropriations
Committee**

**128th General Assembly
Regular Session
2009-2010**

Sub. H. B. No. 268

Representative Driehaus

**Cosponsors: Representatives Foley, Fende, Skindell, Belcher, Newcomb,
Boyd, Heard, Garland, Harris, Bolon, Slesnick, Williams, B., Lundy,
Weddington, Luckie, Gerberry, Sayre**

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A B I L L

To amend section 3314.088 of the Revised Code to	1
temporarily reduce the per pupil base-cost	2
payments to certain community schools in academic	3
watch or academic emergency, to use the aggregate	4
of those reductions to make supplemental payments	5
for Auxiliary Services for chartered nonpublic	6
school students and for administrative cost	7
reimbursement to chartered nonpublic schools, and	8
to make an appropriation.	9

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 3314.088 of the Revised Code be	10
amended to read as follows:	11

Sec. 3314.088. (A) For purposes of applying sections 3314.08	12
and 3314.13 of the Revised Code to fiscal years 2010 and 2011:	13

(1) The base formula amount for community schools for fiscal	14
year 2010 is \$5,718 and for fiscal year 2011 is \$5,703. These	15
respective amounts shall be applied wherein sections 3314.08 and	16

3314.13 of the Revised Code the base formula amount is specified, 17
except for deducting and paying amounts for special education 18
weighted funding and vocational education weighted funding and 19
except as prescribed in division (C) of this section. 20

(2) The base funding supplements under section 3317.012 of 21
the Revised Code shall be deemed in each year to be the amounts 22
specified in that section for fiscal year 2009. 23

(3) Special education additional weighted funding shall be 24
calculated by multiplying the applicable weight specified in 25
section 3317.013 of the Revised Code for fiscal year 2009 times 26
\$5,732. 27

(4) Vocational education additional weighted funding shall be 28
calculated by multiplying the applicable weight specified in 29
section 3317.014 of the Revised Code for fiscal year 2009 times 30
\$5,732. 31

(5) The per pupil amounts paid to a school district under 32
sections 3317.029 and 3317.0217 of the Revised Code shall be 33
deemed to be the respective per pupil amounts paid under those 34
sections to that district for fiscal year 2009. 35

(6) A community school may receive all-day kindergarten 36
payments under section 3314.13 of the Revised Code only for 37
all-day kindergarten students who are entitled to attend school in 38
school districts that, for fiscal year 2009, met the eligibility 39
requirements of division (D) of section 3317.029 of the Revised 40
Code. For students entitled to attend school in such school 41
districts that actually received payment for all-day kindergarten 42
for fiscal year 2009, the payments to community schools under 43
section 3314.13 of the Revised Code shall be deducted from the 44
school district's state education aid. For students entitled to 45
attend school in such school districts that did not receive 46
payment for all-day kindergarten for fiscal year 2009, the 47

payments to community schools under section 3314.13 of the Revised Code shall be paid out of the funds appropriated under appropriation item 200550, foundation funding, as appropriated in section 265.10 of Am. Sub. H.B. 1 of the 128th ~~General Assembly~~ general assembly. As used in this division, "entitled to attend school" has the same meaning as in section 3314.08 of the Revised Code.

(B) For purposes of applying section 3314.085 of the Revised Code to fiscal years 2010 and 2011, the minimum per pupil expenditure required for pupil instruction under that section is \$2,931, which equals the minimum amount required by that section for fiscal year 2009.

(C) This division applies only to each community school that is rated as academic watch or academic emergency on the school's report card published by the department of education for the prior school year and is not a community school in which a majority of the enrolled students are children with disabilities receiving special education and related services in accordance with Chapter 3323. of the Revised Code.

Unless division (C)(3)(a), (b)(i), or (b)(ii)(II) of Section 5 of Sub. H.B. 268 of the 128th general assembly applies, for each of fiscal years 2010 and 2011, the base formula amount attributed to each student enrolled in a community school to which this division applies shall be as follows:

(1) The base formula amount for the purpose of the deductions from school districts required by division (C) of section 3314.08 of the Revised Code, except for deductions for special education weighted funding and vocational education weighted funding, shall be the respective amount specified in division (A)(1) of this section.

(2) The base formula amount for the purpose of the payments

to the community school required by division (D) of section 79
3314.08 of the Revised Code for each full-time equivalent student 80
who is not a child with a disability, except for payments for 81
vocational education weighted funding, shall be \$5,018 for fiscal 82
year 2010 and \$5,003 for fiscal year 2011. 83

(3) The base formula amount for the purpose of the payments 84
to the community school required by division (D) of section 85
3314.08 of the Revised Code for each full-time equivalent student 86
who is a child with a disability, except for payments for special 87
education weighted funding and vocational education weighted 88
funding, shall be the respective amount specified in division 89
(A)(1) of this section. 90

(4) The department shall pay into the auxiliary services and 91
administrative cost supplement fund, created by Section 3 of Sub. 92
H.B. 268 of the 128th general assembly, an amount equal to \$700 93
for each full-time equivalent student enrolled in the community 94
school who is not a child with a disability. 95

As used in this division, "child with a disability" means a 96
child with a disability, as defined in section 3323.01 of the 97
Revised Code, who is receiving special education and related 98
services in accordance with Chapter 3323. of the Revised Code. 99

Section 2. That existing section 3314.088 of the Revised Code 100
is hereby repealed. 101

Section 3. The Auxiliary Services and Administrative Cost 102
Supplement Fund is hereby created in the state treasury. The fund 103
shall consist of moneys described in division (C) of section 104
3314.088 of the Revised Code. The Department of Education shall 105
make payments from the fund as prescribed in Section 5 of this 106
act. 107

Section 4. All items in this section are hereby appropriated 108
as designated out of any moneys in the state treasury to the 109
credit of the State Special Revenue Fund. For all appropriations 110
made in this act, those in the first column are for fiscal year 111
2010 and those in the second column are for fiscal year 2011. The 112
appropriations made in this act are in addition to any other 113
appropriations made for the FY 2010-FY 2011 biennium. 114

Appropriations

EDU DEPARTMENT OF EDUCATION 115

State Special Revenue Fund 116

5HEO 200649	Auxiliary Services	\$	33,985,931	\$	33,493,921	117
	and Administrative					
	Cost Supplement					

TOTAL SSR State Special Revenue	\$	33,985,931	\$	33,493,921	118
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Fund

TOTAL ALL BUDGET FUND GROUPS	\$	33,985,931	\$	33,493,921	119
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AUXILIARY SERVICES AND ADMINISTRATIVE COST SUPPLEMENT 120

The foregoing appropriation item 200649, Auxiliary Services 121
and Administrative Cost Supplement, shall be used by the 122
Department of Education to make supplemental Auxiliary Service 123
payments to school districts and supplemental administrative cost 124
reimbursement payments to chartered nonpublic schools as described 125
in Section 5 of this act. 126

An amount equal to the unexpended, unencumbered portion of 127
appropriation item 200649, Auxiliary Services and Administrative 128
Cost Supplement, at the end of fiscal year 2010 is hereby 129
reappropriated to fiscal year 2011 for use under the same 130
appropriation item. 131

Section 5. (A) Subject to division (C) of this section, the 132
Department of Education shall use up to \$23,382,321, in fiscal 133

year 2010, and up to \$23,043,817, in fiscal year 2011, of the 134
aggregate amount paid into the Auxiliary Services and 135
Administrative Cost Supplement Fund, created by Section 3 of this 136
act, to make supplemental Auxiliary Service payments to school 137
districts, which shall be administered in accordance with section 138
3317.06 of the Revised Code and which shall be used by the 139
districts in accordance with that section. 140

(B) Subject to division (C) of this section, the Department 141
shall use up to \$10,603,611, in fiscal year 2010, and up to 142
\$10,450,103, in fiscal year 2011, of the aggregate amount paid 143
into the Auxiliary Services and Administrative Cost Supplement 144
Fund, created by Section 3 of this act, to make supplemental 145
administrative cost reimbursement payments to chartered nonpublic 146
schools, which shall be administered in accordance with section 147
3317.063 of the Revised Code and which shall be used by chartered 148
nonpublic schools in accordance with that section. The combined 149
amount paid to each chartered nonpublic school for administrative 150
cost reimbursement under this division and under Section 265.30.10 151
of Am. Sub. H.B. 1 of the 128th General Assembly shall not exceed 152
the maximum amount prescribed in section 3317.063 of the Revised 153
Code. 154

(C)(1) For each of fiscal years 2010 and 2011, the Department 155
shall project the aggregate amount required to be paid into the 156
Auxiliary Services and Administrative Cost Supplement Fund under 157
division (C) of section 3314.088 of the Revised Code and shall 158
determine whether the corresponding aggregate reductions in 159
payments to community schools under that division may cause the 160
state to be out of compliance with the maintenance of effort or 161
use of funds obligations under the "American Recovery and 162
Reinvestment Act of 2009," Pub. L. No. 111-5, 123 Stat. 115. The 163
Department shall make the projection for fiscal year 2010 164
immediately after the effective date of this section. The 165

Department shall make the projection for fiscal year 2011 at the 166
same time that it issues report cards under section 3314.012 of 167
the Revised Code for the 2009-2010 school year. 168

(2) If the Department determines that the reduction of 169
payments to community schools will not cause the state to be out 170
of compliance with the federal maintenance of effort or use of 171
funds obligations, the Department shall make the reduced periodic 172
payments to community schools and pay the amount of the reductions 173
into the Auxiliary Services and Administrative Cost Supplement 174
Fund, as required under division (C) of section 3314.088 of the 175
Revised Code, and shall make payments to school districts and to 176
chartered nonpublic schools from the moneys in the fund as 177
provided under this section. 178

(3) If the Department determines that the reduction of 179
payments to community schools may cause the state to be out of 180
compliance with the federal maintenance of effort or use of funds 181
obligations, the Department shall forthwith apply to the United 182
States Secretary of Education for a waiver from either or both of 183
those obligations, as applicable, to the extent necessary lawfully 184
to reduce the payments to community schools and to pay the 185
aggregate amount of such reductions into the Auxiliary Services 186
and Administrative Cost Supplement Fund, so long as the Department 187
also reasonably determines that such a waiver is possible. 188

(a) If the Department reasonably determines that a waiver 189
from these obligations is not possible, the Department shall not 190
reduce periodic payments to community schools and shall not make 191
payments into the Auxiliary Services and Administrative Cost 192
Supplement Fund, as otherwise required under division (C) of 193
section 3314.088 of the Revised Code. Instead, the Department 194
shall pay each community school full periodic payments based on 195
the base formula amount prescribed in division (A)(1) of section 196
3314.088 of the Revised Code for the entire fiscal year. 197

(b) If the Department reasonably determines that a waiver 198
from these obligations is possible: 199

(i) Until the Department receives notice of the Secretary's 200
decision regarding the waiver, the Department shall not reduce 201
periodic payments to community schools and shall not make payments 202
into the Auxiliary Services and Administrative Cost Supplement 203
Fund, as otherwise required under division (C) of section 3314.088 204
of the Revised Code. Instead, the Department shall pay each 205
community school periodic payments based on the base formula 206
amount prescribed in division (A)(1) of section 3314.088 of the 207
Revised Code. 208

(ii) Upon receipt of the notice of the Secretary's decision 209
regarding the waiver: 210

(I) If the Secretary grants the waiver, for the balance of 211
the fiscal year, the Department shall reduce periodic payments to 212
community schools and pay the amount of the reductions into the 213
Auxiliary Services and Administrative Cost Supplement Fund, as 214
required under division (C) of section 3314.088 of the Revised 215
Code, in proportion to the number of months remaining in the 216
fiscal year and shall begin to make payments to school districts 217
and to chartered nonpublic schools from the moneys in that fund as 218
provided under this section. 219

(II) If the Secretary denies the waiver, for the balance of 220
the fiscal year, the Department shall continue to make full 221
periodic payments to community schools based on the base formula 222
amount prescribed in division (A)(1) of section 3314.088 of the 223
Revised Code and shall not make payments into the Auxiliary 224
Services and Administrative Cost Supplement Fund. 225

Section 6. Within the limits set forth in this act, the 226
Director of Budget and Management shall establish accounts 227
indicating the source and amount of funds for each appropriation 228

made in this act, and shall determine the form and manner in which 229
appropriation accounts shall be maintained. Expenditures from 230
appropriations contained in this act shall be accounted for as 231
though made in Am. Sub. H.B. 1 of the 128th General Assembly. 232

The appropriations made in this act are subject to all 233
provisions of Am. Sub. H.B. 1 of the 128th General Assembly that 234
are generally applicable to such appropriations. 235

Section 7. The sections of law contained in this act, and the 236
items of law of which the sections of law contained in this act 237
are composed, are not subject to the referendum. Therefore, under 238
Ohio Constitution, Article II, Section 1d and section 1.471 of the 239
Revised Code, the sections of law contained in this act, and the 240
items of law of which the sections of law contained in this act 241
are composed, go into immediate effect when this act becomes law. 242