



Ohio Legislative Service Commission

Bill Analysis

John Rau

Sub. H.B. 268

128th General Assembly

(As Re-referred to H. Finance and Appropriations)

Reps. Driehaus, Foley, Fende, Skindell, Belcher, Newcomb, Boyd, Heard, Garland, Harris, Bolon, Slesnick, B. Williams, Lundy, Weddington, Luckie, Gerberry, Sayre

BILL SUMMARY

- Reduces by \$700 the fiscal year 2010 and 2011 per pupil base-cost payments for nondisabled students to community schools in academic watch or academic emergency that are not also schools in which a majority of the students are special education students.
- Uses the reduction to finance (1) supplemental Auxiliary Services payments for chartered nonpublic school students and (2) supplemental administrative cost reimbursement payments to chartered nonpublic schools.
- Makes the bill's operation contingent on whether it may conflict with the state's maintenance of effort or use of funds obligations under the federal American Recovery and Reinvestment Act.
- Makes an appropriation.

CONTENT AND OPERATION

Reduction of community school payments

(R.C. 3314.088(C))

Under current law, not changed by the bill, students who attend community schools (public charter schools) are counted in the average daily membership (ADM) of their resident school districts so that the districts are credited with state operating funds attributable to those students. Then, specified per pupil amounts for those students are deducted from a resident district's state aid account and paid to the community school each student attends. The new funding system for school districts, recently enacted in Am. Sub. H.B. 1 of the 128th General Assembly, does not actually compute per pupil

amounts for each student in a district's ADM, as the former funding system did. But for fiscal years 2010 and 2011, H.B. 1 prescribes the following per pupil amounts to be used for community school payments and corresponding school district deductions: \$5,718 for fiscal year 2010 and \$5,703 for fiscal year 2011. Each amount represents a reduction of about 0.25% from the previous fiscal year.¹

The bill reduces by \$700 the per pupil base-cost payments for nondisabled students in fiscal year 2010 or 2011 for certain lower-performing community schools. Specifically, the bill's reduced payments apply only to community schools that are both:

(1) Rated as academic watch or academic emergency for the prior school year; and

(2) *Not* schools in which a majority of the students are children with disabilities receiving special education and related services.

The per pupil amount payable to an applicable community school under the bill is \$5,018 for fiscal year 2010 and \$5,003 for fiscal year 2011. However, the reduced base-cost payment does not apply to any special education students. The school would receive for those students the full per pupil base-cost amount.

The bill's reductions are triggered by a school's performance rating on its state report card issued for the previous school year. For example, a reduction of a school's payment for fiscal year 2010 (the 2009-2010 school year) would be based on the rating published in August 2009, which reflects the school's performance for the 2008-2009 school year. However, it appears that the bill affects only community schools that are in academic watch or academic emergency and are in at least their fourth year of operation. A community school's payments likely would not be reduced until after a report card has been issued for the school's third year of operation. That is because recent amendments by H.B. 1, which this bill does not change, provide that laws prescribing consequences for community schools based on report card ratings may not be applied to a school based on its rating for the first two years of operation.²

The amount deducted from a school district's account for each community school student remains the same as under current law. Thus, the bill creates a \$700 difference between the per pupil amount deducted from a student's resident school district and

¹ H.B. 1 establishes the same arrangement for transfer payments to independent STEM schools. For special education and vocational education, deductions and payments are computed by multiplying the respective fiscal year 2009 weight times the fiscal year 2009 formula amount of \$5,732. Per pupil deductions and payments for base funding supplements, poverty-based assistance, and parity aid also are based on fiscal year 2009 amounts.

² R.C. 3314.012 as amended by H.B. 1, not in the bill.

the per pupil amount actually paid to an applicable community school. The bill requires the Department of Education to transfer that difference into the Auxiliary Services and Administrative Cost Supplement Fund, which the bill creates.

Supplemental Auxiliary Services and administrative cost payments

(Sections 3, 4, and 5)

The bill creates in the state treasury the Auxiliary Services and Administrative Cost Supplement Fund, to consist of the aggregate difference between the per pupil deductions and payments for students attending community schools in fiscal years 2010 and 2011. Money in the fund must be used to make supplemental payments for students enrolled in chartered nonpublic schools for both Auxiliary Services and administrative cost reimbursement.

Specifically, the bill earmarks up to \$23,382,321, in fiscal year 2010, and up to \$23,043,817, in fiscal year 2011, for supplemental Auxiliary Services payments to school districts. The districts must use those payments to purchase goods and services for students enrolled in chartered nonpublic schools, just as they must use regular Auxiliary Services funds paid to them under current law.

It also earmarks up to \$10,603,611, in fiscal year 2010, and up to \$10,450,103, in fiscal year 2011, for supplemental administrative cost reimbursement payments to chartered nonpublic schools. Nonpublic schools must use those payments to defray some of the cost of record-keeping and other administrative mandates imposed on them by state or federal law or local regulations, just as they must use regular administrative cost reimbursements they receive under current law. However, the total amount of reimbursement payments to each chartered nonpublic school, both regular and supplemental payments combined, may not exceed the \$325 per pupil limit prescribed by current law.³

Background

A chartered nonpublic school is a private school that has been issued a charter by the State Board of Education. In return for abiding by certain chartering standards, a nonpublic school's students are entitled to some goods and services purchased with state Auxiliary Services funds by the school district in which the school is located. Auxiliary Services funds may be used to purchase such things as secular books, instructional materials, computers, diagnostic services, special education, gifted education, remedial services, and counseling.⁴ In addition, each chartered nonpublic

³ The \$325 per pupil limit is established by R.C. 3317.063, as amended by H.B. 1, not in the bill.

⁴ R.C. 3317.06, not in the bill.

school may receive direct reimbursement of some of its administrative costs. Reimbursable administrative costs include, among other things, the preparation, filing, and maintenance of records for charter approval, student attendance and transfer, student health, transportation, federal grants, standardized testing, and educator licensure.⁵

H.B. 1 appropriated and earmarked for each of fiscal years 2010 and 2011 \$111,979,388 for Auxiliary Services and \$50,838,939 for administrative cost reimbursement. The supplemental payments prescribed by the bill are in addition to these regular payments.

Contingency; federal waiver

(Section 5(C))

The federal American Recovery and Reinvestment Act of 2009, among other things, provides economic stimulus funding to assist states in stabilizing their education budgets, so that operating moneys to schools for 2010 and 2011 do not fall below 2009 levels. Ohio received funds under that act and appropriated \$387,583,913 and \$457,449,362, respectively, for state fiscal years 2010 and 2011 for this purpose.⁶ Among the federal act's requirements are obligations for the state to sustain a particular level of state funding (called "maintenance of effort") and to use the federal funds for the purpose Congress intended.

The bill includes a provision making its operation contingent on whether it may conflict with the state's maintenance-of-effort or use-of-funds obligations under the federal economic stimulus act. Under the bill, the Department must project for each of fiscal years 2010 and 2011 whether the reduction of payments to community schools and the transfer of those reductions into the Auxiliary Services and Administrative Cost Supplement Fund, as described above, may cause the state to be out of compliance with the state's obligations under the federal act.⁷ If the Department determines that the bill's operation will not cause the state to be out of compliance, it must make the reductions and pay the aggregate amount into the Auxiliary Services and Administrative Cost Supplement Fund, as required by the bill. But if the Department determines that the bill's operation may cause the state to be out of compliance, the Department must seek a

⁵ R.C. 3317.063, not in the bill.

⁶ Section 265.10 of Am. Sub. H.B. 1 of the 128th General Assembly, appropriation item 200551 Foundation Funding - Federal Stimulus.

⁷ The Department must make its projection for fiscal year 2010 immediately upon the bill's (immediate) effective date, and its projection for fiscal year 2011 at the same time that it issues school report cards for the prior school year (August of 2010).

waiver of these requirements, to the extent necessary for the bill's operation, from the U.S. Secretary of Education, so long as the Department also reasonably determines that such a waiver is possible.

If the Department determines that a waiver is not possible, the bill requires the Department to make full periodic payments to community schools for the entire fiscal year.⁸ If the Department determines that a waiver is possible, while it waits for the Secretary of Education's decision on that matter, the Department also must make full pay periodic payments to community schools. Upon receipt of the Secretary's decision, if the Secretary grants the waiver, the Department must begin to reduce the periodic payments for the balance of the fiscal year in proportion to the number of months remaining in the fiscal year. Accordingly, the Department also must begin to pay the aggregate amount of the proportionate reductions into the Auxiliary Services and Administrative Cost Supplement Fund and make payments from the fund to school districts for auxiliary services to nonpublic school students and to nonpublic schools for administrative cost reimbursements. On the other hand, if the Secretary denies the waiver, the Department must continue to make full payments to the community schools for the balance of the fiscal year.

COMMENT

The bill applies to fiscal years 2010 and 2011. But at the present time, upon the report of the House Education Committee, less than two months remain in fiscal year 2010. Thus, it may not be feasible for the Department of Education to implement the bill for any part of fiscal year 2010 by the time this bill could be enacted into law.

HISTORY

| ACTION | DATE |
|--|----------|
| Introduced | 08-18-09 |
| Reported, H. Education | 05-19-10 |
| Re-referred to H. Finance & Appropriations | 05-20-10 |

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⁸ The Department pays each community school on a monthly basis the appropriate portion of the school's estimated payment for the full school year and reconciles each payment, and the final payment at the end of the fiscal year, based on cumulative enrollment data.

