SFA BILL ANALYSIS

Senate Fiscal Agency • Lansing, Michigan 48909 • (517) 373-5383

Senate Bill 175
Sponsor: Senator Dan L. DeGrow
Committee: Education and Mental Health

Date Completed: 4-18-89

SUMMARY OF SENATE BILL 175 as introduced 2-28-89:

The bill would repeal the Local Government Fiscal Responsibility Act (Public Act 101 of 1988) and re-enact it under the same name, containing virtually identical language for local units of government but adding similar provisions for school districts. The new provisions for school districts would do the following:

-- Require the Superintendent of Public Instruction to inform the Governor that there could be a financial emergency in a school district if certain conditions existed.
-- Authorize the Governor to declare that a financial emergency existed in a district and appoint an emergency financial manager for the district.
-- Describe the responsibilities of the manager, including the authority to adopt a three-year financial plan for the district aimed at liquidating all outstanding debt, recommend that the district be reorganized with other districts, order a school millage election, and file for bankruptcy.
-- Provide for the revocation of the declaration of a financial emergency.

The bill also provides that a review team and an emergency financial manager appointed for a local unit under the current Act and serving on the bill's effective date would continue to fulfill their powers and duties. The new provisions for school districts are described in more detail below.

Appointment of Emergency Financial Manager

The position of emergency financial manager would be created for the purpose of managing a financial emergency that could exist in a primary school district or a first, second, third, or fourth class school district. Except as otherwise provided in the bill, the manager would exercise his or her powers and duties independently of the State Board of Education and the Superintendent of Public Instruction, although the manager's budgeting, procurement, and related functions would have to be performed under the direction and supervision of the State Board.

An emergency financial manager would have to be chosen solely on the basis of his or her competence in fiscal matters, and could not have held an elected or appointed position in, or been an employee of, the school district within five years before the appointment. The manager could not be the Superintendent of Public Instruction, and would not have to be a resident of the school district for which he or she was appointed. The manager would receive compensation and reimbursement for expenses from the school district as approved by the Superintendent.

Declaration of Financial Emergency

The Superintendent of Public Instruction would have to inform the Governor that a financial emergency could exist in a school district if one or more of the following conditions existed:

- -- A school district ended the most recently completed school fiscal year with an accumulated deficit in excess of 5% of its approved budget.
- -- A district's expenditures exceeded its revenue for three consecutive school fiscal years.
- -- A district failed to pay its employees within five days of any regularly scheduled payday.
- -- A district was notified that it was in default on the interest and/or principal payment on any public financial instrument.
- -- The Superintendent received a petition containing specific allegations of school district financial distress signed by a number of registered electors residing in the district that equaled at least 10% of the total vote cast for all gubernatorial candidates within the district at the last election at which a governor was elected. Petitions could not be filed within 60 days before any election in the district.
- -- A district's school board, by a majority vote of all authorized board members, adopted a resolution declaring that the district was in a financial emergency.
- -- A district's revised budget was not in balance.

Within 30 days after receiving the notice, the Governor could declare a financial emergency in the district and appoint an emergency financial manager by and with the consent of the Senate. Unless the declaration were judicially set aside, the manager would have to serve until the Governor certified that a financial emergency no longer existed because the district adopted a balanced budget, including the elimination of an accumulated deficit, that was approved by the manager and the Superintendent of Public Instruction.

A school district could appeal the determination of a financial emergency in the Ingham County Circuit Court or the circuit court for the county in which the district was located. The court could not set aside a determination unless it found that the determination was either a) not supported by competent, material, and substantial evidence on the whole record, or b) arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.

The Governor would be required to determine and certify that the conditions for revoking the declaration of a financial emergency had been met after receiving a notice from the emergency financial manager and the Superintendent of Public Instruction that the district had adopted a balanced budget, including the elimination of any accumulated deficit.

Emergency Financial Manager Responsibilities

Immediately upon his or her appointment, an emergency financial manager would have to assume control over all fiscal matters of, and make all fiscal decisions for, the district. A manager would have to do all of the following:

- -- Examine the books and records of the district.
- -- Review payrolls or other claims against the district before payment.

-- Enter into contracts on behalf of the district.
-- Receive and disburse on the district's behalf all Federal, State, and local funds earmarked for the district, including funds for specific programs and debt retirement.
-- Adopt a final budget for the next school fiscal year and a three-year financial plan for the district aimed at liquidating all outstanding debt of the district.
-- Act as an agent of the district in collective bargaining and, to the extent possible under Federal and State labor law, renegotiate existing and negotiate new labor agreements.
-- Analyze factors contributing to the district's financial condition and recommend to the Legislature steps necessary to improve it.
-- Require compliance with his or her orders, by court action if necessary.
-- Take any other action that he or she considered necessary or proper to implement the Act and eliminate the financial emergency.

An emergency financial manager also could do the following:

-- Require the attendance of witnesses and the production of documents relevant to an analysis of the district's financial condition.
-- Recommend to the Governor, the Legislature, and the State Board of Education that the district be reorganized with one or more contiguous districts.
-- Consolidate divisions or transfer functions from one division to another within the district and appoint, supervise, and, at his or her discretion, remove heads of divisions of the district.
-- Create a new position or approve or disapprove the creation of any new position or the filling of any vacancy in a permanent position by any appointing authority.
-- Seek approval from the State Board for a reduced class schedule in accordance with administrative rules governing the distribution of State school aid.
-- Employ or contract for, at the district's expense and with the approval of the Superintendent of Public Instruction, auditors and other technical personnel considered necessary to implement the Act.
-- Reduce expenditures in the district's budget.
-- Borrow money on behalf of the district.
-- Approve or disapprove the issuance of obligations of the district.
-- Order a school millage election for the district.
-- Except as restricted by charter or otherwise, sell or otherwise use the assets of the district to meet past or current obligations, provided this use did not impair education in the district.
-- File for bankruptcy under Chapter 9 of Title 11 of the United States Code.

The Superintendent of Public Instruction, the Department of Education, and the school board, employees, and administrators of the district that was in a financial emergency would have to provide the assistance and information considered necessary and properly requested by the emergency financial manager in effectuating his or her powers and duties under the Act.

The State and an emergency financial manager would not be liable for any obligation of or claim against a school district resulting from actions taken according to the Act. This provision would not apply, however, to any contract entered into by the manager on the district's behalf.

Legislative Analyst: S. Margules

FISCAL IMPACT

There would be no new costs from Articles 1 and 2 of the bill as these articles would re-enact existing law. Article 3 of this bill would result in costs to the State of about $400,000 within three years. The costs would be reimbursement for State-mandated costs for the appointment of emergency financial managers in financially distressed school districts. This estimate is based upon a report prepared by the Department of Education of those school districts experiencing financial difficulty for the fiscal year ending June 30, 1988. The report lists 25 school districts and one intermediate school district. Of these school districts it would seem that four would be likely targets for assistance under this bill. This analysis assumes costs of $100,000 for each appointed manager for one year (4 X $100,000 X 1).

It is presumed that there would be cost savings to local and intermediate school districts where a manager was appointed. An appointed manager could eliminate costs of school boards and operating programs as well as implement efficiency measures. The amount to be saved would be indeterminate and based upon whatever reductions the manager determined were necessary to make the school district solvent.

Fiscal Analyst: A. Rich

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