CHAPTER 20

Education Finance Act of 1977

**SECTION 59‑20‑10.** Short title.

 This chapter shall be known and may be cited as the “South Carolina Education Finance Act of 1977”.

HISTORY: 1977 Act No. 163, Section 1.

Attorney General’s Opinions

School districts cannot reduce teachers’ salaries below the minimum schedule established according to the Education Finance Act. 1983 Op Atty Gen, No. 83‑12, p. 25; 1983 Op Atty Gen, No. 83‑15, p. 28.

NOTES OF DECISIONS

In general 1

1. In general

The Education Finance Act (EFA), under which public funds are distributed to school districts using a wealth‑sensitive formula, was not created for the special benefit of a private party and, thus, did not create a private cause of action for violation of its provisions. Abbeville County School Dist. v. State (S.C. 1999) 335 S.C. 58, 515 S.E.2d 535. Education 219

Framers of constitution left legislature free to change means of funding state schools to meet modern needs, and General Assembly chose valid means of providing for education in state through use of shared funding plans in South Carolina Education Finance Act and related laws. Acts in question are valid legislative enactments and do not contravene Article XI Section 3 of South Carolina Constitution on additional ground that when validity of legislative act is questioned, courts will presume legislative act to be constitutionally valid and every intendment will be indulged in favor of act’s validity. Richland County v. Campbell (S.C. 1988) 294 S.C. 346, 364 S.E.2d 470.

Shared funding plan implemented by General Assembly is rational and constitutional means by which to equalize educational standards of public school system and educational opportunities of all students; argument was rejected that shared funding plan denied students equal educational opportunities because formula considered each school district’s wealth; South Carolina Education Finance Act provides for shared funding formula plan that takes into account individual wealth of each school district, but school districts which lack sufficient tax base receive proportionally more state funds and are required to pay proportionately less local revenue for public school operation. Richland County v. Campbell (S.C. 1988) 294 S.C. 346, 364 S.E.2d 470.

**SECTION 59‑20‑20.** Definitions.

 As used in this chapter:

 (1) “Foundation program” means the program proposed to establish substantially equitable current operation funding levels for programs for South Carolina’s public school students, regardless of their geographic location, after the students are transported to school and housed in school plants.

 (2) “Educational programs or elements of programs not included in the foundation program” means:

 (a) “Transportation”, which shall mean transportation to and from public schools for the students of South Carolina’s public schools provided by state, local or federal funds, or a combination thereof.

 (b) “Capital outlay”, which shall mean those funds used for the construction, improving, equipping, renovating or major repairing of school buildings or other school facilities, or the cost of acquisition of land whereon to construct or establish such school facilities in accordance with the definition provided in Section 59‑21‑310.

 (c) “Pilot programs”, which shall mean programs of a pilot or experimental nature usually designed for special purposes and for a specified period of time other than those included in the foundation program.

 (d) “Adult education”, which shall mean public education dealing primarily with students above eighteen years of age not enrolled as full time public school students and not classified as students of technical schools, colleges or universities of the State.

 (e) “Text books”, which shall mean books distributed under that system of rental and free text books now operated by the Department of Education.

 (f) “Food service programs”, which shall mean those programs dealing directly with the nutritional welfare of the student, such as the school lunch and school breakfast programs.

 (g) “Employee benefits”, which shall mean those benefits received by employees of the state public school systems and paid at least in part by the State, such as retirement, social security and health insurance.

 (3) “Index of taxpaying ability” means an index of a local district’s relative fiscal capacity in relation to that of all other districts of the State based on the full market value of all taxable property of the district assessed on the basis of property classification assessment ratios set forth in Article 3, Chapter 43 of Title 12 for the second completed taxable year preceding the fiscal year in which the index is used and these assessments must be the audited assessments by school district contained in the annual report submitted yearly to the Comptroller General’s office. The county auditor shall provide fiscal year‑end audited assessments of real and personal property to the Property Division of the Department of Revenue for each of the school districts of the county for the second completed taxable year preceding the fiscal year in which the index is used not later than October first of each year. The index must be used to calculate each district’s share of the revenue to be raised locally for the foundation program. The index must include an imputed value for the property tax base implicitly generating impact aid revenue. The property tax base must be imputed at two‑thirds the average ratio of all true value assessed property value statewide to prior year local revenue statewide in the foundation program, the resulting product multiplied times the average impact aid receipts during the prior three years. If impact aid receipts during the federal fiscal year are less than the average receipts for the prior three years, then state aid to the impact aid districts must be adjusted in the final payment for the state fiscal year. If the State Department of Education determines from fiscal simulations that the school finance system does not meet requirements of Section 5(D) of P. L. 81‑874, the Department of Revenue shall exclude an imputed value of impact aid receipts from the index of taxpaying ability.

 The index must be determined annually by the Department of Revenue from sales ratio data based on the most recent studies made which correspond with the base year assessments used to compute the current index pursuant to Section 12‑43‑250 for assessed property within a school district. The base year is the second completed taxable year preceding the fiscal year in which the index is used. The Department of Revenue shall provide a preliminary index by December first of each year end and a final index by February first of each year to the State Department of Education and to the auditor of each county who shall provide the index to any governmental entity responsible for approving or levying of millages for school purposes. Changes and corrections may be made to the index before February first but no change is allowed after that date. When the assessment of property is under appeal and the appeal extends beyond the year in which the assessment made pursuant to Section 12‑43‑305 is applied, the Department of Revenue shall adjust the index of taxpaying ability in the year in which the appeal is resolved by the amount of any difference between the assessments. Any school district is entitled to a hearing before the Department of Revenue to review its designated index of taxpaying ability within thirty days of filing a request for the hearing. The data gathered by the Department of Revenue for the purpose of determining an annual index must be preserved as public records in the offices of the Department of Revenue for four years. The raw information gathered from the various county officers reflecting the representative sales within the school districts, the consideration, and the reported market value or assessed value for each sale are a part of the public records so preserved. The Department of Revenue shall file a statement stating the methodology employed in making the annual determination of the index and refer to all sources of factual information used in making the determination. All work sheets, computer printouts, and the actual calculation must be included as the public records to be preserved by the Department of Revenue. In determining sales to assessment ratio, the Department of Revenue shall use only reported consideration on sales for which deeds have been placed on public record. Where sufficient sales data is not available, the Department of Revenue shall make appraisals in lieu of sales in order to determine the index. The appraisals, including all working papers, must be included as the public records to be preserved by the Department of Revenue. With respect to school districts within counties where abstracts of duplicates reflecting the assessed value have been filed pursuant to Section 12‑39‑290, the same having been adopted by the auditors under Article 3, Chapter 43 of Title 12, the index must be on the basis of the value of the property as stated in the abstracts as adjusted by sales ratio studies up to full assessments based on full fair market value.

 The index of taxpaying ability for a particular current year shall not include the assessed value of property in a school district which is classified under Section 12‑43‑220(a) and Section 12‑43‑220(e), which is at least fifteen percent of the total assessed value of real property in the school district, which on February first of the year has been in bankruptcy status for a minimum of thirty consecutive months, and on which no local school property taxes have been collected for at least two consecutive fiscal years. It is the responsibility of the county auditor to report such exclusions from the index to the Department of Revenue and to immediately notify the Department of Revenue of any change in the bankruptcy status of such real property or any collection of school property taxes from such real property.

 For purposes of disbursing EFA funding and for purposes of the index of taxpaying ability, the value of a fee in lieu of taxes shall be computed by the Department of Revenue by basing the computation on the net fee received and retained by the school district. The value thus computed shall not be inflated by any portion of the fee shared with or used by any other local taxing authority. Provided, however, any revenue received by a taxing entity as a result of this section must be considered taxable property for purposes of bonded indebtedness pursuant to Sections 14 and 15 of Article X of the Constitution of this State, and for purposes of computing the “index of taxpaying ability” pursuant to item (3) of this section.

 (4) “Defined minimum program (DMP)” means the program established annually by the State Board of Education that is necessary to provide public school students in the State with minimum educational programs designed to meet their needs. The State Board of Education shall transmit a per‑weighted pupil estimate of the full implementation of the defined minimum program to the Revenue and Fiscal Affairs Office and the General Assembly for each proposed budgetary year. The State Board of Education shall transmit any suggested changes in the basic programs and their weightings as evidenced by changing requirements and practices.

 (5) “Weightings” means those cost figures assigned to student classifications in Section 59‑20‑40(1)(c) which are based on different relative cost of their educational programs in relation to that of the base student which is given the weighting of 1.00.

 (6) “Base student” means that student classification that represents the most economically educated pupil in the school system, those in grades four through eight in regular classroom settings. “Base student cost” is the funding level necessary for providing a minimum foundation program which includes the funding level necessary for supporting the defined minimum program and to meet, as funds are available, needs identified by each district board of trustees’ annual report, which reflects the needs identified in the annual school reports of the district and other assessments, and which is calculated in 1976 dollars to be six hundred sixty‑five.

 Provided, however, by July 1, 1983, that of the state and local monies generated by the base student cost above the cost of the defined minimum program, not more than fifty percent shall be used by the local school districts to meet the needs identified by the board of trustees’ annual report. Monies generated by weightings above 1.00 shall not be used for revisions of the defined minimum program.

HISTORY: 1977 Act No. 163, Section 3; 1978 Act No. 644, Part II, Section 22; 1980 Act No. 507; 1988 Act No. 655, Section 1; 1989 Act No. 189, Part II, Section 17A; 1993 Act No. 181, Section 1570; 1994 Act No. 497, Part II, Section 15F; 1994 Act No. 497, Part II, Section 50; 1997 Act No. 151, Section 12; 2002 Act No. 334, Section 10.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

Editor’s Note

2006 Act No. 386, Section 59, provides as follows:

“Notwithstanding any other provision of law, implementation of values in a countywide assessment and equalization plan scheduled for the current tax year may not be implemented until property tax year 2007, provided, however, that a county council may adopt an ordinance affirmatively implementing the values during the current property tax year. The provisions of this section do not alter the index of taxpaying ability as defined in Section 59‑20‑20(3).”

2006 Act No. 386, Section 60.A, provides as follows:

“Notwithstanding any other provision of law, a county that postponed the implementation of values determined in a countywide assessment and equalization program, conducted in 2004, may not implement the values until property tax year 2007, unless the county’s county council adopts an ordinance affirmatively implementing the values.”

CROSS REFERENCES

Aid distributed to kindergarten programs, see Section 59‑35‑10.

Computation of index of taxpaying ability for school district when property is under appeal, see S.C. Code of Regulations R. 117‑1720.

Joint development of industrial or business park, see Section 4‑1‑170.

Projects to which fee agreements are applicable are considered taxable property at level of negotiated payments for purposes of computing index of taxpaying ability, see Section 12‑44‑150.

Requirement that leases and lease purchase agreements for certain industrial development projects contain a provision for a fee in lieu of taxes, see Section 4‑29‑67.

Attorney General’s Opinions

Discussion of the effect of a merger of Daniel Island with Charleston County. S.C. Op.Atty.Gen. (Feb. 28, 2014) 2014 WL 1398585.

Under the 1978 amendment to the South Carolina Education Finance Act of 1977, a school district’s local effort toward full implementation of the defined minimum program must be: (1) Equal to the percentage of effort by the General Assembly in implementing the State effort toward full funding of the defined minimum program in terms of real dollars or (2) equal to an increase of five percent in real dollars over the local effort of the previous fiscal year or (3) equal to the revenue generated by an increase in the millage for the local share of expenditures under the foundation program by at least two and one‑half mills. 1978 Op Atty Gen, No 78‑188, p 213.

The term “impact aid revenue” includes only those receipts received pursuant to 20 U.S.C.A. 236 (Public Law 81‑874); it does not include receipts received by virtue of 20 U.S.C.A. 631 through 645 (Public Law 81‑815), (construction), 16 U.S.C.A. 500 (federal forests) or Section 48‑23‑260 of the South Carolina Code (state forests). 1978 Op Atty Gen, No 78‑118, p 151.

NOTES OF DECISIONS

In general 1

1. In general

Since the lower court had exceeded the scope of its authority in issuing writs of mandamus to school board to submit budget to the county council and compelling the county council to impose a tax levy sufficient to meet minimum requirements of Education Finance Act of 1977, the Supreme Court granted petitions of both bodies for writs of supersedeas, but, in the circumstances, the Supreme Court issued a writ of mandamus ordering the county council to consider all submitted budgets for one week, at which time it was it would either adopt or reject them, and, in any case, to approve and adopt a budget by a fixed date. Dorchester County School Dist. Three v. Dorchester County Council (S.C. 1986) 289 S.C. 475, 347 S.E.2d 93.

The trial judge properly determined as a matter of law that a school district had complied with Section 59‑20‑50(4)(a), and that a school teacher was not being paid a lower total salary, including normal incremental increases, for the 1979‑80 school year than he had received for the base year of 1977‑1978, since a legislated statewide teachers’ pay raise was not “normal incremental increase” for purposes of determining total salary under the provisions of the Education Finance Act. Price v. Watt (S.C.App. 1984) 280 S.C. 510, 313 S.E.2d 58.

**SECTION 59‑20‑23.** Index of taxpaying ability calculation.

 When an appeal of the assessed value of property assessed pursuant to Section 12‑43‑220(a) extends for more than two years and the amount in dispute is more than thirty percent of the total of assessed value of property in the school district in which the property under appeal is located, the index of taxpaying ability for the school district must be calculated using the value asserted by the taxpayer in the appeal.

 If the final settlement of the appeal provides for an assessed value greater than the value asserted in the taxpayer’s appeal, the local school district, within twelve months, must remit to the general fund of the State any additional funds received from the State Department of Education due to the utilization of the value of the facility asserted in the taxpayer’s appeal.

 Any funds remitted to the general fund of the State pursuant to this section are considered current fiscal year funds appropriated under the Education Finance Act and must be included in the next distribution of such funds to school districts.

HISTORY: 1993 Act No. 13, Section 1.

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

**SECTION 59‑20‑25.** Index of taxpaying ability as applied to area in which a tax increment financing plan is in effect.

 For the purposes of computing the ‘index of taxpaying ability’ pursuant to item (3) of Section 3 of Act 163 of 1977 (South Carolina Education Finance Act) for any area in which tax increment financing plan is in effect the value to be used shall be the original assessed value plus any portion of the captured assessed value which is distributed among taxing authorities pursuant to Section 31‑8‑120.

HISTORY: 1981 Act No. 164, Section 3.

**SECTION 59‑20‑30.** Declaration of legislative purpose.

 It is the purpose of the General Assembly in this chapter:

 (1) To guarantee to each student in the public schools of South Carolina the availability of at least minimum educational programs and services appropriate to his needs, and which are substantially equal to those available to other students with similar needs and reasonably comparable from a program standpoint to those students of all other classifications, notwithstanding geographic differences and varying local economic factors.

 (2) To encourage school district initiative in seeking more effective and efficient means of achieving the goals of the various programs.

 (3) To establish a procedure for the distribution of a specified portion of the state education funds so as to ensure that the funds are provided on the basis of need to the extent set forth by this chapter in order to guarantee a minimum level of funding for each weighted pupil unit in the State.

 (4) To make it possible for each school district to provide the defined minimum program within approximately five years from July 2, 1978, and to do so with an equal local tax effort.

 (5) To establish a reasonable balance between the portion of the funds to be paid by the State and the portion of the funds to be paid by the districts collectively in support of the foundation program. For the initial stage of this program the proportionate state share of the funds for this program shall be approximately seventy percent statewide and the remainder of the program shall be financed from local revenue sources.

 (6) To require each local school district to contribute its fair share to the required local effort, which is to be in direct proportion to its relative taxpaying ability.

 (7) To ensure that tax dollars spent in public schools are utilized effectively and to ensure that adequate programs serve all children of the State.

HISTORY: 1977 Act No. 163, Section 2.

CROSS REFERENCES

The power of a board of education to prohibit or limit the attendance of a student who is suffering from a contagious or infectious disease, see Section 44‑29‑200.

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

LAW REVIEW AND JOURNAL COMMENTARIES

Abbeyville County School District v. State: The Right to a Minimally Adequate Education in South Carolina. 51 S.C. L. Rev. 420 (Summer 2000).

NOTES OF DECISIONS

Validity 1

1. Validity

Authority of county board of education to review and approve school district budgets and to set tax millage rates for each school district did not violate provision of State Constitution guaranteeing uniform taxation within a jurisdiction; legislature envisioned that county board would set different millage rates for the individual school districts, such that school taxes fell within the “special levies” exception to the general rule requiring uniform taxation. Burriss v. Anderson County Bd. of Educ. (S.C. 2006) 369 S.C. 443, 633 S.E.2d 482, rehearing denied. Education 249; Education 286

**SECTION 59‑20‑40.** Determination of annual allocations.

 The annual allocation to each school district for the operation of the foundation program as it relates to the school district shall be determined as follows:

 (1) Computation of the basic amount to be included for current operation in the foundation program:

 (a) Each school district shall maintain a program membership of each school by compiling the student membership of each classification. The cumulative one hundred thirty‑five day average daily membership of each school district by program classification will determine its monetary entitlement. The district’s average daily membership (ADM) will be computed, currently maintained, and reported in accordance with the regulations of the State Board of Education. Funds for the state’s portion of the per‑pupil cost of the foundation program shall be disbursed monthly to the various school districts. End‑of‑year adjustments in state funds shall be made based on the one hundred thirty‑five day student average daily membership in each classification.

 (b) The base student cost shall be established annually by the General Assembly. The base student cost shall be established in such a manner that five years after July 2, 1978, the funding level shall approximate the cost of the defined minimum program as set forth by the State Board of Education.

 Each year the Office of Research and Statistics of the Revenue and Fiscal Affairs Office shall submit to the Legislature an estimate of the projected rate of inflation for the fiscal year to be budgeted, and the base student cost shall be adjusted to incorporate the inflated cost of providing the Defined Minimum Program.

 (c) Weightings, used to provide for relative cost differences, between programs for different students are established in order that funds may be equitably distributed on the basis of pupil needs. The criteria for qualifications for each special classification must be established by the State Board of Education according to definitions established in this article and in accordance with Sections 59‑21‑510, 59‑35‑10, 59‑53‑1860, and 59‑53‑1900. Cost factors enumerated in this section must be used to fund programs approved by the State Board of Education. Pupil data received by the Department of Education is subject to audit by the department. Cost factors or weightings are as follows:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
| Pupil Classification | Weightings |
|   | (1) | Kindergarten pupils | 1.30 |
|   | (2) | Primary pupils (grades 1 through 3) | 1.24 |
|   | (3) | Elementary pupils (grades 4 through 8) |   |
|   |   | base students | 1.00 |
|   | (4) | High school pupils (grades 9 through 12) | 1.25 |
| Special Programs for Exceptional Students | Weightings |
|   | (5) | Handicapped | 1.74 |
|   |   | a. | Educable mentally handicapped pupils |   |
|   |   | b. | Learning disabilities pupils |   |
|   | (6) | Handicapped | 2.04 |
|   |   | a. | Trainable mentally handicapped pupils |   |
|   |   | b. | Emotionally handicapped pupils |   |
|   |   | c. | Orthopedically handicapped pupils |   |
|   | (7) | Handicapped | 2.57 |
|   |   | a. | Visually handicapped pupils |   |
|   |   | b. | Hearing handicapped pupils |   |
|   |   | c. | Pupils with autism |   |
|   | (8) | Speech handicapped pupils | 1.90 |
|   | (9) | Homebound pupils | 2.10 |
|   |   | a. | pupils who are homebound |   |
|   |   | b. | pupils who reside in emergency shelters |   |
| Career and Technology Technical Programs | Weightings |
|   | (10) | Pre‑career and technology | 1.20 |
|   | (11) | Career and technology | 1.29 |
| Add‑on Weights for Early Childhood | Weightings |
| Development and Academic Assistance |   |
|   | (12) | Early childhood assistance | 0.26 |
|   | (13) | Grades 4‑12 academic assistance | 0.114 |
| Adult Education |   |
|   | (14) | Adult Education | 0.15 |

 No local match is required for adult education and the number of weighted pupil units funded depends on funding available from the general fund of the State and the Education Improvement Act of 1984 Fund.

 Each student in the State must be counted in only one of the first eleven pupil classifications. Students shall generate funds for early childhood assistance and grades 4‑12 academic assistance in accordance with Section 59‑139‑20. The State Board of Education must determine the qualifications for each classification in accordance with Sections 59‑21‑510, 59‑35‑10, 59‑53‑1860, 59‑53‑1900, and Chapter 30 of this title. The program for each classification must meet specifications approved by the State Board of Education.

 School districts may count each student who is instructed at home under the provisions of Section 59‑65‑40 in the district’s weighted pupil units at a weighting of .25 for supervising, overseeing, or reviewing the student’s program of home instruction. No local match is required for students instructed at home under the provisions of Section 59‑65‑40.”

 (d) The basic amount for the foundation program for each district shall be computed as follows:

 (1) The calculated average daily membership in each student classification shall be multiplied by the weighting factor for that respective classification.

 (2) The subtotals (totals in each student classification) in all classifications shall be added to get the district’s total weighted pupil units.

 (3) The district’s weighted pupil units shall be multiplied by the base student cost figure as established annually by the General Assembly.

 (e) Computation of the required local revenue in support of the foundation program.

 The amount that each school district shall provide toward the cost of the South Carolina foundation program shall be computed by determining the total statewide collective local share (approximately thirty percent) of the total cost of the foundation program, and multiplying this by the index of taxpaying ability of each district as defined in Section 59‑20‑20.

 (f) Computation of the required state effort.

 The amount that the State shall provide to each school district toward the cost of the foundation program shall be the difference between the district’s basic amount as computed in subsection (d) minus the required amount raised locally as computed in subsection (e).

 Notwithstanding the provisions of this section, state aid to any school district shall be reduced in proportion to the ratio that its local school tax effort falls below that required by subsection (2) of Section 59‑20‑50.

 (2) Reserved.

 (3) Provisions for a phase‑in plan of implementation

 (a) As a result of the cost of implementing the foundation program at both state and local level as calculated in this section, there will be a phase‑in implementation period of five years to assist in implementing the education finance program.

 (b) Each year of the phase‑in period the General Assembly shall specify the base student cost and the percentage of the difference between current funding and full funding of the defined minimum program which shall be achieved each year. It is the intent of this chapter that the full implementation of the foundation program from present funding level in present financing plans, in terms of real dollars, be achieved in substantially equal annual intervals over a period of five years; provided, that if a district increases its local effort annually by at least five percent in real dollars, the period of time for full implementation may be extended five years. However, it is recognized that, during periods of abnormally low growth in state revenue, appropriations may necessarily have to be reduced below the anticipated trend and that during periods of abnormally high revenue growth an effort would be made to restore progress in funding to achieve full implementation during the five year phase period. It is recognized further that, should the trend of growth in state revenue diverge substantially from historical experience, then the length of the phase period might be increased or decreased accordingly. Each local school district shall progress annually in eliminating the difference between its current funding and full funding of the defined minimum program at the same percentage as mandated by the General Assembly for statewide progress toward full funding; provided, that each district shall increase its local effort annually by at least the amount required in this section or by five percent in real dollar terms, or shall increase its millage for the local share of expenditures under the foundation program by at least two and one‑half mills. Any district failing to make either the required local effort or the five percent increase in real dollars terms or the two and one‑half mill increase will have its entitled increase in state aid reduced by the proportion that its actual increase in local effort falls below its required increase of five percent in real dollars, or two and one‑half mills, whichever is less.

 (4) Impact aid revenue shall be counted as local effort for purposes of computing actual local effort, in order to meet requirements of Section 59‑20‑40(3) (b). Provided, however, that should the degree of equality achieved under this chapter prove insufficient to qualify South Carolina for utilizing impact aid in the school finance equalization plan, then impact aid would not be counted as local revenue.

 (5) To qualify for funds provided in this chapter, each district must attain an average pupil‑teacher ratio based on average daily membership in the basic skills of reading and mathematics in grades one through three of 21:1.

 Provided, That any local district may apply to the State Board of Education for approval of a waiver to this subsection by submitting and justifying an alternative educational program to serve the basic skill needs of average daily membership in grades one through three.

 The State Board of Education shall approve or disapprove of such waiver forty‑five days after receipt of such application. Provided, Further, That beginning with Fiscal Year 1978‑79, if a school district violates the provisions of this subsection, the state aid for the ensuing fiscal year to such school district shall be reduced by the percentage variance that the actual pupil‑teacher ratios in such school district has to the required pupil‑teacher ratios mandated in this Subsection.

 Provided, That notwithstanding the provisions of this Section, the State Board of Education is authorized to waive the pupil‑teacher requirements specified herein upon a finding that a good faith effort is being made by the school district concerned to comply with the ratio provisions but that for lack of classroom space which was beyond its control it is physically impossible for the district to comply for the Fiscal Years 1978‑1979 and 1979‑1980 and the cost of temporary classroom space cannot be justified.

 It is the intent of the General Assembly that the average daily membership pupil‑teacher ratio for grades 1 through 3 stipulated in the chapter be implemented to the extent possible on an individual class basis and that the pupil enrollment in these grades should not exceed twenty‑eight pupils in each class.

 (6) No district shall be required to increase local revenue if combined state and local revenue exceeds the amount necessary to meet the base student cost of the minimum foundation program at full implementation.

 (7) [Deleted]

 (8) The General Assembly shall annually provide the portion of the local required support of the foundation program required by the South Carolina Education Improvement Act of 1984 on the basis of the district’s taxpaying ability in the annual general appropriation act.

HISTORY: 1977 Act No. 163 Section 4; 1978 Act No. 644 Part II Sections 14, 22, 28; 1979 Act No. 199 Section 30; 1983 Act No. 151 Part II Section 2; 1984 Act No. 512, Part II, Section 9, Division II, Subdivision B, SubPart 3, Sections 2, 3; Subdivision C, SubPart 3, Section 6; 1985 Act No. 201, Part II, Section 9(I); 1987 Act No. 170, Part II, Sections 24 and 28; 1988 Act No. 522; 1988 Act No. 593, Section 2; 1988 Act No. 658, Part II, Section 10; 1989 Act No. 194, Section 4; 1993 Act No. 135, Sections 9, 10; 1994 Act No. 497, Part II, Section 15G; 1996 Act No. 429, Section 1; 2003 Act No. 92, Section 9, eff January 1, 2004; 2005 Act No. 49, Section 8, eff May 3, 2005.

Code Commissioner’s Note

In the 2005 amendment of paragraph (1)(c), subparagraphs a. and b., added in 2003 dealing with homebound pupils, were inadvertently deleted from item (9) of the weightings table. They have been restored at the direction of the Code Commissioner.

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

Effect of Amendment

The 2003 amendment, in subsection (1)(c)(9), added items a and b.

The 2005 amendment, in subsection (1)(c), substituted “Career and Technology” for “Vocational” in the heading preceding item (10); in item (10), substituted “Pre‑career and technology” for “Pre‑vocational”, and in item (11) substituted “Career and Technology” for “Vocational”.

CROSS REFERENCES

Funds, see Section 59‑40‑140.

Pro rata matching of weighted pupil units for early childhood development and academic assistance programs, regulations to implement, see Section 59‑139‑20.

LIBRARY REFERENCES

Schools 19(3).

Westlaw Key Number Search: 345k19(3).

C.J.S. Schools and School Districts Section 13.

Attorney General’s Opinions

An inflation factor must be applied to the previous year’s effort in order to calculate the minimum local financial effort for noncapital programs for each year after 1985‑86. No exception appears to exist as to these local funding requirements, absent a waiver by the State Board of Education or a reduction in State EFA funding, in which case a proportionate reduction in local EFA funding may be made. The phrase “financial effort per pupil for non‑capital programs” includes teachers’ salaries. School districts must continue to maintain local teacher salary supplements in subsequent school years at a level no less than their 1983‑84 level. Inflationary adjustments in these salary supplements are not required. References to the local financial effort for EIA funding and teachers’ salary supplements appear to apply to dollar amounts rather than to percentages of total funding. 1986 Op Atty Gen, No. 86‑53, p 153.

The increase in the State minimum salary schedule for teachers for FY 1979‑80 will be determined by multiplying the previous 1.000 figure ($8,750) times the lesser of (a) the inflation figure determined by the Division of Research and Statistics of the Budget and Control Board pursuant to Section 50‑20‑40(1)(b) [Section 59‑20‑40(1)(b)] or (b) the percentage increase in the base student cost actually appropriated by the General Assembly for the ensuing fiscal year; Section 59‑20‑40(5) requires that each school district attain specified pupil‑teacher ratios in grades one through three, counted as a whole, to qualify for funds under the South Carolina Education Finance Act of 1977; the incentive proviso of Section 59‑20‑40(2) is based upon the number of instructional staff members who have received Master’s or higher level degrees. Vocational teachers who have Master’s or higher level degrees may be included in such computation. 1979 Op Atty Gen, No 79‑4, p 6.

The pupil‑teacher ratio requirements of Section 59‑20‑40(5) cannot be proportionately reduced for the reason alone that EFA funding has been proportionately reduced. 1987 Op Atty Gen, No. 87‑14, p 52.

The incentive bonus to school districts for employing instructional staff members with advanced degrees is based on the number of such employees in excess of twenty‑five percent of the total instructional staff and is not based on the total number of instructional staff members with advanced degrees. 1978 Op Atty Gen, No 78‑95, p 124.

The pupil‑teacher requirement of the Educational Finance Act is based on the ratio of students to teachers in the district and not on the ratio in any one school. 1978 Op Atty Gen, No 78‑97, p 128.

Teacher aides may be counted as .5 in computing the pupil‑teacher ratio as required in Section 4(5) of the Finance Act. 1978 Op Atty Gen, No 78‑101, p 129.

The term “real dollars” means the cost of certain goods and services at a fixed point in time plus the inflationary adjustment since that time. 1978 Op Atty Gen, No 78‑103, p 131.

The term “instructional staff” refers primarily to classroom teachers. 1978 Op Atty Gen, No 78‑115, p 148.

Greenville School District may count students who are patients of the Shriner’s Hospital in their pupil attendance figures as a basis for State aid. 1976‑77 Op Atty Gen, No 77‑89, p 81.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

Statutes governing county’s allocation of fees that landowners pay to county in lieu of taxes on exempt property in multi‑county business park (MCBP) do not violate school district’s rights under constitutional prohibition against laws that set aside general law provisions applicable to bonded indebtedness of governmental units and the structure and the administration of any governmental service or function, responsibility for which rests with the state government or which requires statewide uniformity; the statutes are consistent with the Education Finance Act which specifically contemplates that schools might receive less money from fees in lieu of taxes than from taxable property. Horry County School Dist. v. Horry County (S.C. 2001) 346 S.C. 621, 552 S.E.2d 737. Education 214

Shared funding plan implemented by General Assembly is rational and constitutional means by which to equalize educational standards of public school system and educational opportunities of all students; argument was rejected that shared funding plan denied students equal educational opportunities because formula considered each school district’s wealth; South Carolina Education Finance Act provides for shared funding formula plan that takes into account individual wealth of each school district, but school districts which lack sufficient tax base receive proportionally more state funds and are required to pay proportionately less local revenue for public school operation. Richland County v. Campbell (S.C. 1988) 294 S.C. 346, 364 S.E.2d 470.

2. Constitutional issues

State’s educational funding scheme, as a whole, denied students in plaintiffs’ school districts the constitutionally required opportunity to receive a minimally adequate education, as guaranteed by the education clause of the state constitution; districts’s students received instruction in many cases from corps of unprepared teachers, were grouped by economic class into what amounted to no more than educational ghettos, rated by Department of Education’s guidelines as substandard, and large percentages of students, over half in some instances, were unable to meet minimal benchmarks on standardized tests, but were nonetheless pushed through the system to “graduate.” Abbeville County School Dist. v. State (S.C. 2014) 410 S.C. 619, 767 S.E.2d 157, rehearing denied, amended 414 S.C. 166, 777 S.E.2d 547, superseded 415 S.C. 19, 780 S.E.2d 609. Education 219

**SECTION 59‑20‑41.** Inclusion of children admitted to residential institutions of the Department of Mental Health.

 Notwithstanding any other provision of law:

 All school districts providing educational services to children admitted or committed to residential institutions of the Department of Mental Health are authorized to count children admitted or committed to residential institutions of the Department of Mental Health from the first day of residency in such institutions, provided, that the first day is within the particular district’s school year. The inclusion of these children is for the purpose of participation in the districts’ educational programs for handicapped children supported under the Education Finance Act of South Carolina.

HISTORY: 1980 Act No. 482, Section 2A.

CROSS REFERENCES

Placement of handicapped children in alternative programs, see Section 59‑33‑90.

LIBRARY REFERENCES

Schools 19(3).

Westlaw Key Number Search: 345k19(3).

C.J.S. Schools and School Districts Section 13.

**SECTION 59‑20‑50.** Certain requirements shall be met; salary schedules.

 (1) Notwithstanding the computations prescribed in Section 59‑20‑40, the level of state contributions to each district shall not be reduced to a per‑pupil level of foundation program funds below that per‑pupil level of state funding of programs for the fiscal years prior to implementation of this chapter which will be incorporated in the foundation program.

 Provided, no district shall receive annually an increase in state funds less than the full rate of the inflationary adjustment in the base student cost specified in Section 59‑20‑40(1)(b). This increase shall be computed annually over and above the amount actually received from the State for the foundation program in the prior fiscal year.

 Provided, further, after the fiscal year 1982‑83 no district shall receive annually an increase in state funds less than four‑fifths of the inflationary adjustment in the base student cost specified in Section 59‑20‑40(1)(b). This increase shall be computed annually over and above the amount actually received from the State for the foundation program in the prior fiscal year.

 Beginning July 1, 1994, no additional school district shall receive hold‑harmless funds under this subsection due to decreases in student numbers or upward adjustments in the index of taxpaying ability.

 (2) Notwithstanding any provisions of this chapter, any local school district may increase the local effort above the foundation program funding level as deemed necessary to meet the aspirations of the people of the district.

 (3) Eighty‑five percent of the funds appropriated through state and local effort for each weighted classification shall be spent in direct and indirect aid in the specific area of the program planned to serve those children who generated the funds. Districts expending less than the required eighty‑five percent of the appropriated amount shall be subject to a penalty the following fiscal year in the amount equal to the difference between the amount spent and the required eighty‑five percent figure.

 However, this requirement shall not apply to the funds generated by children in the pupil classification “Speech Handicapped Pupils”.

 (4)(a) Each school district shall pay each certified teacher or administrator an annual salary at least equal to the salary stated in the statewide minimum salary schedule for the person’s experience and class. No teacher or administrator employed in the same position, over the same time period, shall receive less total salary, including any normal incremental increase, than that teacher or administrator received for the fiscal year before the implementation of this article.

 (b) The state minimum salary schedule must be based on the state minimum salary schedule index in effect as of July 1, 1984. In Fiscal Year 1985, the 1.000 figure in the index is $14,172. (This figure is based on a 10.27% increase pursuant to the South Carolina Education Improvement Act of 1984.) Beginning with Fiscal Year 1986, the 1.000 figure in the index must be adjusted on a schedule to stay at the southeastern average as projected by the Office of Research and Statistic of the Revenue and Fiscal Affairs Office and provided to the General Assembly during their deliberations on the annual appropriations bill. The southeastern average teacher salary is the average of the average teachers’ salaries of the southeastern states. In projecting the southeastern average, the office shall include in the South Carolina base teacher salary all local teacher supplements and all incentive pay. Under this schedule, school districts are required to maintain local salary supplements per teacher no less than their prior fiscal level. In Fiscal Year 1986 and thereafter teacher pay raises through adjustments in the state’s minimum salary schedule may be provided only to teachers who demonstrate minimum knowledge proficiency by meeting one of the following criteria:

 (1) holding a valid professional certificate;

 (2) having a score of 425 or greater on the Commons Examination of the National Teachers Examinations;

 (3) meeting the minimum qualifying score on the appropriate area teaching examination; or

 (4) meeting the minimum standards on the basic skills examinations as prescribed by the State Board of Education provided in Section 59‑26‑20.

HISTORY: 1977 Act No. 163 Section 5; 1978 Act No. 644 Part II Section 28; 1980 Act No. 482, Section 3; 1980 Act No. 517 Part II, Section 25; 1984 Act No. 512, Part II, Section 9, Division II, Subdivision C, SubPart 2, Section 1; 1987 Act No. 170, Part II Section 4A; 1991 Act No. 171, Part II, Section 28B; 1994 Act No. 497, Part II, Section 15H.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

Attorney General’s Opinions

School teachers meeting the criteria for salary increases under Section 59‑20‑50 (4)(a) must be paid the State minimum salary schedule amount for their class and level of experience plus no less than the amount of the local salary supplement for that experience level for the previous school year. School district teachers at the eighteen and nineteen year levels who have received less than the sum of the State schedule amount and the prior year’s local supplement for those experience levels are entitled to have their salaries increased to that sum of money. 1987, Op Atty Gen, No. 87‑98, p 261.

An inflation factor must be applied to the previous year’s effort in order to calculate the minimum local financial effort for noncapital programs for each year after 1985‑86. No exception appears to exist as to these local funding requirements, absent a waiver by the State Board of Education or a reduction in State EFA funding, in which case a proportionate reduction in local EFA funding may be made. The phrase “financial effort per pupil for non‑capital programs” includes teachers’ salaries. School districts must continue to maintain local teacher salary supplements in subsequent school years at a level no less than their 1983‑84 level. Inflationary adjustments in these salary supplements are not required. References to the local financial effort for EIA funding and teachers’ salary supplements appear to apply to dollar amounts rather than to percentages of total funding. 1986 Op Atty Gen, No. 86‑53, p 153.

In the absence of express statutory authority, it is doubtful whether classified State employees could negotiate lower salaries with their employers except in certain situations, such as budget reductions, where appropriated funds may not be available. The General Assembly could, if it so desired, expressly authorize such salary reductions. Arguably, city and county employees can, under present law, negotiate lower salaries with their employers subject to certain limitations such as one found in Section 4‑9‑30(7). However, the more cautious approach would require express statutory authority with respect to these employees as well. With respect to school districts, again it is doubtful whether these entities can, under present law, negotiate lower salaries with their employees except in contemplation of loss by funding or other similar circumstances. Thus, if school districts desire to negotiate lower salaries with their employees, express statutory authorization is probably required. 1986 Op Atty Gen, No. 86‑57, p 170.

A plain reading of Section 59‑20‑50(4)(b) indicates that those teachers who fail to meet the statute’s criteria, bars only salary increases due to adjustments in the minimum salary schedule; and because inflationary increases in the EFA scheduled salaries adjust the amounts on the schedule, EFA inflationary increases are barred for affected teachers. Because local salary supplements are supplements to the schedule rather than components of the schedule, a school district would not be prohibited from choosing to increase its local supplement for teachers not meeting the criteria of Section 59‑20‑50(4)(b). Further, because increases in salaries for those teachers due to additional years of experience, completion of additional levels of educational work and the upgrading of the type of teacher certificate a teacher holds do not result from or include changes in the amounts on the salary schedule, those increases are permissible for affected teachers. 1986 Op Atty Gen, No. 86‑88, p 270.

Under State law, no increases in local funding for teachers’ salaries are required except that local funding must be provided in accordance with the Education Finance Act (EFA) formula for the EFA minimum salary schedule and local salary supplements cannot be decreased below the 1983‑84 level. 1986 Op Atty Gen, No. 86‑52, p 152.

Local supplements may not be used to fund increases in the State minimum salary schedule for teachers not meeting the statutory criteria for such increases. The usage of local supplements to pay affected teachers other supplements to that schedule would not be prohibited. 1986 Op Atty Gen, No. 86‑101, p 307.

The proviso in the “hold harmless” clause of Section 5(1) of the Finance Act sets an additional minimum or floor of state funding. 1978 Op Atty Gen, No 78‑111, p 143.

No teacher or administrator can be paid less total salary during the first year of implementation of the Finance Act than they received for the year prior to implementation of the Act plus the normal incremental increase the teacher would have been entitled to by virtue of his certification and experience. 1978 Op Atty Gen, No 78‑120, p 154.

Under the provisions of Section 5(4)(a) of the South Carolina Education Finance Act of 1977, the salary amount for teachers as designated in a school district’s salary schedule may exceed the amount prescribed in the Index used to determine the State minimum teachers salary schedule under the Education Finance Act. 1978 Op Atty Gen, No 78‑141, p 172.

Charleston County School District has no statutory authority to reduce salary increases implemented in the salary schedule included in permanent provisions of the 1977 General Appropriation Act for nonteaching principals who are eligible for State aid. 1976‑77 Op Atty Gen, No 77‑196, p 149.

Teachers are entitled to, at least, amount of local salary supplement paid to their experience level during previous year even though those teachers are new to school district. 1993 Op Atty Gen No. 93‑32.

NOTES OF DECISIONS

In general 1

Computations 2

1. In general

In enacting a State Appropriations Act proviso requiring school districts to “maintain local salary supplements per teacher for no less than their prior fiscal year level,” the legislature intended to prevent school districts from using Education Improvement Act funds, rather than local funds, in payment of existing local salary supplements. Jackson v. Charleston County School Dist. (S.C. 1994) 316 S.C. 177, 447 S.E.2d 859. Education 526; Public Employment 369

A school district’s longevity bonus/supplement was not embraced by the Education Improvement Act (EIA) proviso requiring counties to maintain local supplements at “no less than their prior fiscal year level” where there was no compelling reason to overturn the Department of Education’s (DOE) interpretation of the EIA that a longevity bonus is not impacted by the proviso so long as it is annually renewable and separately accounted, and where the school district complied with DOE’s interpretation. Jackson v. Charleston County School Dist. (S.C. 1994) 316 S.C. 177, 447 S.E.2d 859. Education 525; Public Employment 361

2. Computations

Appropriations act proviso precluded the school district from decreasing a particular teacher’s local salary supplement from the amount received in the prior fiscal year, but permitted freezing that teacher’s local salary supplement amount; the act did not require district to pay teachers during the 1991‑92 year the same local salary supplement paid to teachers with the same years of experience during the 1990‑91 year. Richland County School Dist. Two v. South Carolina Dept. of Educ. (S.C.App. 1999) 335 S.C. 491, 517 S.E.2d 444. Education 525; Public Employment 361

A teacher’s salary is computed by adding the Education Finance Act (EFA) base salary amount, the local salary supplements, and then using the Education Improvement Act (EIA) funds as a plug to ensure the total teacher’s salary equates with the southeastern average. Richland County School Dist. Two v. South Carolina Dept. of Educ. (S.C.App. 1999) 335 S.C. 491, 517 S.E.2d 444. Education 522; Public Employment 354

**SECTION 59‑20‑55.** Proficiency requirements as to employment as teacher.

 Beginning July 1, 1986, and thereafter, employment may be provided only to teachers who demonstrate minimum knowledge proficiency by meeting one of the criteria outlined in Section 59‑20‑50(4)(b). The criteria do not have to be met by teachers having twenty‑five years or more of teaching service as of the effective date of the South Carolina Education Improvement Act of 1984 in order for them to be employed.

HISTORY: 1984 Act No. 512, Part II, Section 9, Division II, Subdivision C, SubPart 2, Section 1A.

LIBRARY REFERENCES

Schools 127.

Westlaw Key Number Search: 345k127.

C.J.S. Schools and School Districts Sections 191 to 195.

Attorney General’s Opinions

A school district may not terminate teachers for the reason alone that the teachers hold “B” and “C” grade teaching certificates. 1987 Op Atty Gen, No. 87‑30, P 88.

Teachers are entitled to, at least, amount of local salary supplement paid to their experience level during previous year even though those teachers are new to school district. 1993 Op Atty Gen No. 93‑32.

**SECTION 59‑20‑60.** Spending priority; audits; evaluations and reports; statewide testing programs; Innovation Initiative; improvement councils; Education Finance Review Committee.

 (1) School districts shall give first spending priority of funds allocated under this chapter to full implementation of the defined minimum program.

 (2) The State Board of Education shall audit the programmatic and fiscal aspects of this chapter, including the degree to which a school meets all prescribed standards of the defined minimum program and shall report the results in the Annual Report of the State Superintendent of Education. Schools which have been classified as ‘dropped’ by the defined minimum program accreditation procedures are not eligible for funding in the following fiscal year until an acceptable plan to eliminate the deficiencies is submitted and approved by the State Board of Education.

 (3) Each school district board of trustees shall cause the district and each school in the district to develop comprehensive five‑year plans with annual updates to outline the District and School Improvement Plans. Districts which have not begun a strategic planning cycle must do so and develop a plan no later than the 1994‑95 school year. Districts which have undertaken such a planning process may continue in their planning cycle as long as the process meets the intent of this section and the long‑range plans developed or under development can be amended to encompass the requirements of this section. For school year 1993‑94, districts may submit either the improvement plan consistent with State Department guidelines or their five‑year comprehensive plan.

 The State Board of Education shall recommend a format for the plans which will be flexible and adaptable to local planning needs while encompassing certain state mandates, including the early childhood and academic assistance initiative plans pursuant to Section 59‑139‑10. All district and school plans must be reviewed and approved by the board of trustees. The District Plan should integrate the needs, goals, objectives, strategies, and evaluation methods outlined in the School Plans. Measures of effectiveness must include outcome and process indicators of improvement and must provide data regarding what difference the strategies have made. Staff professional development must be a priority in the development and implementation of the plans and must be based on an assessment of needs. Long and short‑range goals, objectives, strategies, and time lines need to be included.

 (4) Each plan shall provide for an Innovation Initiative, designed to encourage innovative and comprehensive approaches based on strategies identified in the research literature to be effective. The Innovation Initiative must be utilized by school districts to implement innovative approaches designed to improve student learning and accelerate the performance of all students. Funds may be expended on strategies in one or more of the following four categories:

 (a) new approaches to what and how students learn by changing schooling in ways that provide a creative, flexible, and challenging education for all students, especially for those at risk. Performance‑based outcomes which support a pedagogy of thinking and active approaches for learning must be supported;

 (b) applying different teaching methods permitting professional educators at every level to focus on educational success for all students and on critical thinking skills and providing the necessary support for educational successes are encouraged;

 (c) redefining how schools operate resulting in the decentralization of authority to the school site and allowing those closest to the students the flexibility to design the most appropriate education location and practice;

 (d) creating appropriate relationships between schools and other social service agencies by improving relationships between the school and community agencies (health, social, mental health), parents and the business community, and by establishing procedures that cooperatively focus the resources of the greater community upon barriers to success in school, particularly in the areas of early childhood and parenting programs, after‑school programs, and adolescent services.

 Funds for the Innovation Initiative must be allocated to districts based upon a fifty percent average daily membership and fifty percent pursuant to the Education Finance Act formula. At least seventy percent of the funds must be allocated on a per school basis for school based innovation in accord with the District‑School Improvement Plan. Up to thirty percent may be spent for district‑wide projects with direct services to schools. District and school administrators must work together to determine the allocation of funds.

 For 1993‑94, districts and schools may use these funds for designing their Innovation Initiatives to be submitted to the peer review process established in Section 59‑139‑10 prior to implementation of the innovations in 1994‑95. Notwithstanding any other provisions of law, districts may carry over all unexpended funds in 1993‑94, and up to twenty‑five percent of allocated funds each year thereafter in order to build funds for an approved program initiative.

 (5) An annual district programmatic report to the parents and constituents of the school district must be developed by the local school board. Each report shall include the goals and objectives of the school district, the strategies implemented to meet the goals and objectives, and an evaluation of the outcomes. An annual school report to the parents and constituents of the school must be developed by the School Improvement Council and shall provide information on the school’s progress on meeting the school and district goals and objectives. These reports shall be provided by November fifteenth of each year.

 (6) Each school board of trustees shall establish an improvement council at each school in the district and this council is to be involved in improvement and innovation efforts at the school. The council shall be composed of at least two parents, elected by the parents of the children enrolled in the school; at least two teachers, elected by the faculty; at least two students in schools with grades nine and above elected by the students; other representatives of the community and persons appointed by the principal. The elected members of the council shall comprise at least a two‑thirds majority of the elected and appointed membership of the council. The council should also include ex‑officio members such as the principal and others holding positions of leadership in the school or school organizations, such as parent‑teacher groups, booster clubs, and federal program advisory groups. Each council shall assist in the preparation of the five‑year plan and annual updates required in this section, assist with the development and monitoring of school improvement and innovation, provide advice on the use of school incentive grant awards, and provide assistance as the principal may request as well as carrying out any other duties prescribed by the local school board. The local school board shall make provisions to allow any council to file a separate report to the local school board if the council considers it necessary. However, no council has any of the powers and duties reserved by law or regulation to the local school board. Notwithstanding any other provisions of this subsection, an area vocational center’s school improvement council must be composed as defined exclusively by federal law. The council shall perform all duties and responsibilities provided for in any state or federal law which applies to these councils.

 In order to provide additional accountability for funds expended under statutory requirements, the elected members of the school improvement council shall serve a minimum term of two years. Parents of students or students in their last year of enrollment at an individual school may serve terms of one year only. The terms must be staggered and initially determined by lot. Elections of members to school improvement councils shall occur no later than October fifteenth of the school year. The elections must be organized to ensure that every parent and faculty member has an opportunity to vote each year. Within thirty days following the election, the names, addresses, terms of service, and status of all council members as a parent, teacher, student, or representative of the community must be provided to the School Improvement Council Assistance at the University of South Carolina for the purpose of sharing information. The district board of trustees shall include in its annual district report a summary of the training opportunities provided or to be provided for school improvement council members and professional educators in regard to council‑related tasks and a summary of programs and activities involving parents and citizens in the school.

 (7) Each school district board of trustees shall:

 (a) review each school improvement plan and the annual updates for integration with district plans and objectives and school progress in meeting those goals and objectives;

 (b) cause to be prepared an annual written report to account for funds expended in each pupil classification as prescribed by the State Board of Education;

 (c) participate in the statewide testing program as prescribed by the State Board of Education;

 (d) maintain an ongoing systematic evaluation of the educational program needs in the district and shall develop a comprehensive annual and long‑range plan for meeting these program needs. These plans shall include an assessment of needs. At minimum, the process of assessing needs and establishing goals and objectives must be carried out for each of the program classifications specified in Section 59‑20‑40(1)(c). Each school district board of trustees shall develop and execute a method of evaluating the extent to which the goals and objectives specified in its comprehensive plan are being achieved and shall annually report the results of its evaluation to the people of the school district and to the State Board of Education.

 (e) provide a program for staff development for all educational personnel. A portion of the funds in the foundation program must be used for this staff development that may include, but not be limited to:

 (1) college courses in education, subject area of certification or management;

 (2) teaching center offerings;

 (3) State Department of Education workshops; and

 (4) district‑wide or in‑school training for the purpose of fostering professional growth or improving the competency of all educational personnel.

 (f) in accordance with the format approved by the State Board of Education, annually submit to the State Board of Education and to the people of the district that district’s fiscal report.

 (8) The State Department of Education shall:

 (a) develop, by September, 1993, a plan for offering help to districts and schools in designing and implementing the district and school comprehensive improvement plan;

 (b) develop, by December, 1993, with approval by the State Board of Education, criteria for monitoring the district and school plans;

 (c) review each district’s annual fiscal report;

 (d) provide assistance to school districts in improving the programs, correcting the deficiencies, and in carrying out its staff development program;

 (e) develop or select and field test a competency‑based student assessment program;

 (f) prepare an annual fiscal and programmatic report to the Governor and the General Assembly each year to assess compliance with this chapter and to make recommendations concerning necessary changes in this chapter;

 (g) in compliance with the intent of the chapter, waive the prescribed reporting practices if considered necessary by the State Board of Education and authorize the substitution of alternate reporting practices which accomplish the objectives implied in this section. This waiver may not be utilized to avoid full accountability and implementation of this chapter.

 (9) The Legislative Audit Council shall audit to assess compliance with this chapter as requested by the General Assembly. On the basis of these audits, the Legislative Audit Council shall make recommendations to the General Assembly concerning necessary changes in this chapter.

 (10) A twelve‑member Education Finance Review Committee must be established to advise the General Assembly and review its implementation of this chapter. This advice and review may include, but not be limited to:

 (a) the cost of the defined minimum program;

 (b) provisions included in the defined minimum program;

 (c) the pupil classification weights in Section 59‑20‑40;

 (d) the formula for computing required local effort;

 (e) the ongoing evaluation of the education program needs of the school districts.

 The committee must be made up of three representatives from each of the following committees of the General Assembly ‑ Senate Education, Senate Finance, House Education and Public Works, and House Ways and Means ‑ appointed by each respective chairman. The committee shall seek the advice of professional educators and all other interested persons when formulating its recommendations.

HISTORY: 1977 Act No. 163 Section 6; 1978 Act No. 644 Part II Section 28; 1979 Act No. 199, Part II Section 18; 1980 Act No. 482, Section 1; 1980 Act No. 517 Part II, Section 14; 1981 Act No. 172 Sections 1, 2; 1983 Act No. 9 Section 1; 1984 Act No. 512, Part II, Section 9, Division II, Subdivision E, SubPart 2, Sections 1, 2; 1985 Act No. 201, Part II, Section 9(L); 1988 Act No. 535, Section 2; 1989 Act No. 194, Section 29; 1993 Act No. 135, Section 11.

CROSS REFERENCES

Exemption from statutory provisions relating to fiscal accountability, see Section 59‑20‑70.

Student and school safety, see S.C. Code of Regulations R. 43‑166.

Review of career and technology agriculture education needs and programs, see Section 59‑53‑1870.

School improvement council established hereunder to assist in developing school plan for early child development and academic assistance, see Section 59‑139‑10.

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

Attorney General’s Opinions

Under the South Carolina Education Finance Act of 1977, the provisions of Section 6(3)(b) regarding the establishment of school advisory councils are construed: (1) to require that the advisory councils be constituted at each school by the board of trustees prior to July 2, 1978, the effective date of the Act; (2) to allow the school board of trustees to establish written regulations governing the period of time for which members of advisory councils may serve; (3) to require that schools with grades 10 through 12 provide student representatives on the advisory councils; (4) to restrict students serving on advisory councils to those in grades nine and above; (5) to utilize the general definition of teacher found in S.C. Code Ann. Section 59‑1‑130 (1976); (6) to require that elected teacher representatives serve only on an advisory council for the school where the teachers are employed, and that the elected parent representatives must have children in the school on whose advisory council they serve; (7) to permit principals to appoint at least two members to the advisory council; (8) to allow the school boards to establish some written criteria concerning age, residence, citizenship, etc. for those appointed to the advisory council; (9) to require only one advisory council at each school, even though a school may have separate “campuses”; (10) to apply to an area vocational center only if it is under the jurisdiction of a “local school board” and can be considered a “school” within the meaning of the Act; (11) to allow an individual to serve on more than one advisory council, subject to certain restrictions; membership on more than one advisory council would not constitute dual office holding. 1978 Op Atty Gen, No 78‑77, p. 107.

**SECTION 59‑20‑65.** Furnishing by State Board of Education of services and training activities to support school improvement councils.

 The State Board of Education, acting through the existing School Council Assistance Project at the University of South Carolina, shall provide services and training activities to support school improvement councils and their efforts in preparing an annual school improvement report as required in this section.

HISTORY: 1984 Act No. 512, Part II, Section 9, Division II, Subdivision E, SubPart 2, Section 3.

**SECTION 59‑20‑70.** Exemption from statutory provisions relating to fiscal accountability of state agencies, departments and institutions.

 Notwithstanding any other provisions of law, any school district which complies with the provisions of Section 59‑20‑60 is exempted from the provisions of Article 15 of Chapter 1 of Title 1 relating to the fiscal accountability of state agencies, departments and institutions.

HISTORY: 1977 Act No. 163, Section 7.

LIBRARY REFERENCES

Schools 19(1).

Westlaw Key Number Search: 345k19(1).

C.J.S. Schools and School Districts Sections 7, 13.

**SECTION 59‑20‑80.** School budgets shall be made public; itemization of salaries.

 Notwithstanding any other provision of law, each school board of trustees in this State shall annually make available to the general public its budget for that year, which budget shall include an itemized list of the average salaries paid to the superintendents, supervisors, administrators, principals, consultants, counselors and teachers employed by the district. No state aid shall be given to any school district whose board of trustees fails to comply with the provisions of this chapter.

HISTORY: 1977 Act No. 163, Section 7A.

LIBRARY REFERENCES

Schools 92(3).

Westlaw Key Number Search: 345k92(3).

C.J.S. Schools and School Districts Sections 502, 511.

Attorney General’s Opinions

School districts are mandated to maintain local supplements to teachers salaries at no less than the 1986‑87 level, and no authority is given to the State Board of Education or the State Department of Education to exempt school districts from that requirement. Districts failing to comply with this requirement are subject to the cut‑off of State EFA funds under Section 59‑20‑80 of the Code and are also subject to judicial enforcement of these requirements by teachers entitled to the supplements. Districts failing to comply with these requirements should be allowed a reasonable period of time to bring themselves into compliance before the fund cut‑off provisions are applied. 1987, Op Atty Gen, No. 87‑99, p 263.

**SECTION 59‑20‑90.** School district fiscal practices of concern, actions authorized.

 (A) The State Department of Education shall work with district superintendents and finance officers to develop and adopt a statewide program with guidelines for:

 (1) identifying fiscal practices and budgetary conditions that, if uncorrected, could compromise the fiscal integrity of a school district; and

 (2) advising a district identified under item (1) to take appropriate corrective actions.

 (B) The program must include a series of criteria that the department shall use to establish three escalating levels of fiscal and budgetary concern, which must be “fiscal watch”, “fiscal caution”, and “fiscal emergency”.

 (C) “Fiscal watch” is the first level and lowest level of concern.

 (1) The State Superintendent of Education shall declare fiscal watch if:

 (a) he determines, within his discretion, that a district declared to be in fiscal watch has not acted reasonably to eliminate or correct practices or conditions that prompted the declaration and has determined that a state of fiscal watch is necessary to prevent further decline; and

 (b) there is any type of ongoing, related investigation by any state or federal law enforcement agency or any other investigatory agency of the State.

 (2) The State Superintendent of Education may declare fiscal watch if:

 (a) an independent, outside auditing firm notifies the department that the district is not operating under generally accepted accounting principles; or

 (b) the district does not maintain a general reserve fund of at least one month of general fund operating expenditures of the previous two completed fiscal years.

 (3)(a) Within sixty days after the State Superintendent of Education declares a fiscal watch for a district, the district board shall submit a financial recovery plan to the department.

 (b) The State Superintendent shall evaluate and accept or reject the plan within thirty days after receipt of the financial recovery plan. If he disapproves the plan, he shall recommend modifications that would make the plan acceptable.

 (c) A district shall not implement a recovery plan unless approved by the State Superintendent.

 (d) The department shall provide technical assistance.

 (e) The district board may amend the plan at any time with the State Superintendent’s approval.

 (f) The district board shall submit an updated recovery plan annually until the district is released from the fiscal watch.

 (g) The State Superintendent shall accept or reject an updated plan no later than the anniversary of the date on which the first plan was approved.

 (4) A district under a declaration of fiscal watch must not be released from fiscal watch in the same fiscal year in which the declaration was made, but may be released the following fiscal year if the department determines that the corrective actions have been or are being successfully implemented. The State Superintendent shall notify the local board chairman, district superintendent, and chief financial officer of the release of the district from fiscal watch.

 (5) The district board of trustees may appeal a declaration of a fiscal watch to the State Board of Education within ten days of the declaration and the state board must hold a hearing on the appeal within thirty days after the filing of the appeal. However, the district shall continue to work with the department in the manner provided by this subsection when a fiscal watch is declared pending determination of the appeal.

 (D) “Fiscal caution” is the second level of concern, and is the intermediate level of concern.

 (1)(a) After consulting with the local board of education, the State Superintendent may declare fiscal caution if:

 (i) the district’s audits have been reviewed and there are conditions observed that could result in a declaration of fiscal emergency; or

 (ii) the outside, independent auditing firm conducting the district’s audit reports to the State Superintendent that any conditions or practices exist that could result in a declaration of fiscal emergency.

 (b) The written communication, verbal communication, or both, between the department and the school district constitutes the consultation with the local board of education required in subitem (a).

 (2) The State Superintendent shall declare a school district to be in a state of fiscal caution if:

 (a) upon review of the district’s annual audit, the department determines financial practices occurring that are outside of acceptable accounting standards exist;

 (b) a district submits an annual audit more than sixty days after the December first deadline as provided in Section 59‑17‑100;

 (c) the department discovers any other fiscal practices or conditions that could lead to a declaration of fiscal emergency through the examination of a school district’s past two years’ audits;

 (d) the department reviews a district’s annual audit and determines the district is not maintaining the mandatory minimum of one month of general fund operating expenditures in its general reserve fund;

 (e) an outside, independent auditing firm declares that a school district’s financial records are unauditable;

 (f) the department identifies significant deficiencies, material weaknesses, direct and material legal noncompliance or management letter comments which, in the opinion of the department, the aggregate effect of the reported issues has a significant effect on the financial condition of the district; or

 (g) there is an ongoing investigation being conducted by any federal or state agency, law enforcement or otherwise, with regard to the district’s finances or local board of trustees.

 (3) The State Superintendent shall notify the district in writing that a declaration of fiscal caution for the district is pending and request a written proposal for correcting the conditions that led to fiscal caution and for preventing further fiscal difficulties that could lead to fiscal caution within at least ten business days before the effective date of the declaration. The notice must be sent to the board chairman, district superintendent, and chief financial officer, and must include, but not be limited to, an explanation of the circumstances that led to the decision and if there are any steps the school district could take to avoid the declaration.

 (4) While a district is under a declaration of fiscal caution:

 (a) the department shall:

 (i) visit and inspect the district;

 (ii) provide technical assistance in implementing proposals; and

 (iii) make recommendations concerning the board’s proposals;

 (b) the department may order a performance audit of the district at the department’s expense and later require full reimbursement from the district, which the district shall provide within sixty days after the request is made; and

 (c) the district must:

 (i) be required to provide written proposals for discontinuing or correcting the practices and conditions that led to the declaration of fiscal caution to the department; and

 (ii) be given approximately sixty days to provide a written proposal, which the department may extend an additional thirty days at the request of the district, provided that no additional extension may be granted under any circumstances.

 (5) If the State Superintendent finds a district has not made reasonable proposals or taken action to correct the practices or conditions that led to the declaration, he may report to the State Board of Education that a declaration of fiscal emergency is necessary to prevent further fiscal decline.

 (6) A district under a declaration of fiscal caution must not be released from fiscal caution in the same fiscal year in which the declaration was made, but may be released the following fiscal year if the department determines that the corrective actions have been or are being successfully implemented. The State Superintendent shall notify the local board chairman, district superintendent, and chief financial officer of the release of the district from fiscal caution.

 (E) The third and most severe level of concern is “fiscal emergency”. The State Superintendent of Education shall declare fiscal emergency if:

 (1) a district under fiscal caution fails to submit an acceptable recovery plan within one hundred twenty days or fails to submit an updated recovery plan when required;

 (2) the department finds that a district under fiscal caution is not complying with an original or updated recovery plan and determines that fiscal emergency is necessary to prevent further decline;

 (3) a district is at risk of defaulting on any type of debt, to include, but not be limited to, tax anticipation notes, general obligation bonds, or lease‑purchase installment agreements;

 (4) a district has previously been under fiscal watch, fiscal caution, or any combination of fiscal watch and fiscal caution for three fiscal years collectively, regardless of whether these three years are continuous; or

 (5) he determines that a declaration of fiscal emergency is necessary to correct the district’s fiscal problems and to prevent further fiscal decline.

 (6)(a) While a district is under a declaration of fiscal emergency, the department shall:

 (i) visit and inspect the district;

 (ii) provide technical assistance in implementing proposals; and

 (iii) make recommendations concerning the district recovery plans.

 (b) In addition to the provisions of subitem (a), while a district is under a declaration of fiscal emergency, the district must:

 (i) be required to provide written proposals for discontinuing or correcting the practices and conditions that led to the declaration of fiscal emergency to the department; and

 (ii) be given approximately sixty days to provide a written proposal, which the department may extend for an additional thirty days at the request of the district, provided that no additional extension may be granted under any circumstances.

 (7) If the State Superintendent finds a district has not made reasonable proposals or taken action to correct the practices or conditions that led to the declaration, the Superintendent may make a recommendation to the State Board of Education that the department take over financial operations of the district for the fiscal year in which a fiscal emergency is declared as part of the technical assistance offered to the district. Upon approval of the recommendation by the State Board of Education, the department may maintain financial operations until the district is released from a fiscal emergency.

 (8) A district under a declaration of fiscal emergency must not be released from fiscal emergency in the same fiscal year in which the declaration was made, but may be released the following fiscal year if the department determines that the corrective actions have been or are being successfully implemented. The State Superintendent shall notify the local board chairman, district superintendent, and chief financial officer of the release of the district from fiscal emergency.

 (F) The provisions of this section are supplemental to other provisions of law, but to the extent the provisions of this section conflict with another provision of law, the provisions of this section must prevail.

 (G) The provisions of this section also apply to the statewide charter school district.

HISTORY: 2017 Act No. 23 (H.3221), Section 1.A, eff May 9, 2017.

Editor’s Note

2017 Act No. 23, Section 1.B, provides as follows:

“(B) The State Board of Education shall promulgate regulations to carry out the provisions of this section.”

CROSS REFERENCES

Fiscal practices of local education agencies of concern, actions authorized, see Section 59‑20‑95.

**SECTION 59‑20‑95.** Fiscal practices of local education agencies of concern, actions authorized.

 (A) For purposes of this section, “LEA” means a state agency that is also a Local Education Agency.

 (B) The State Auditor shall adopt the statewide program created by the State Department of Education in Section 59‑20‑90, and shall use it to identify fiscal practices and budgetary conditions that, if uncorrected, could compromise the fiscal integrity of a state agency that is also an LEA, and advise the LEA to take appropriate corrective actions.

 (C)(1) This program must replicate the procedures of Section 59‑20‑90, except that:

 (a) the State Auditor shall act with respect to an LEA as the department acts toward a school district; and

 (b) in a declaration of fiscal caution, the State Auditor may waive the provisions of Section 59‑20‑90(D)(3), (4), (5), and (6) and immediately direct the department to assume emergency management of the LEA, which may continue until the State Auditor releases the LEA from the declaration of fiscal caution; and

 (c) in a declaration of fiscal emergency, the State Auditor immediately shall direct the department to assume emergency management of the LEA, which must continue until the State Auditor releases the LEA from the declaration of fiscal emergency.

 (2) The department assumes full management of an LEA at the moment that written notice is sent from the State Auditor to the LEA by certified mail, return receipt requested.

HISTORY: 2017 Act No. 23 (H.3221), Section 2.A, eff May 9, 2017.

Editor’s Note

2017 Act No. 23, Section 2.B, provides as follows:

“(B) The State Auditor shall promulgate regulations to carry out the provisions of this section.”