COMMITTEE REPORT

April 19, 2016

**H. 4941**

Introduced by Education and Public Works Committee

S. Printed 4/19/16--S.

Read the first time March 8, 2016.

**THE COMMITTEE ON EDUCATION**

To whom was referred a Bill (H. 4941) to amend the Code of Laws of South Carolina, 1976, by adding Section 59‑20‑90 so as to require the State Department of Education to develop and adopt, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking SECTION 1 in its entirety and inserting:

/ SECTION 1. A. Chapter 20, Title 59 of the 1976 Code is amended by adding:

“Section 59‑20‑90. (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 anytime 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.

(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 expenditues in its general fund reserve;

(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.”

B. The State Board of Education shall promulgate regulations to carry out the provisions of this section. /

Amend the bill further, page 6, beginning on line 37, by striking SECTION 2. B. in its entirety and inserting:

/ B. The State Auditor shall promulgate regulations to carry out the provisions of this section. /

Renumber sections to conform.

Amend title to conform.

JOHN E. COURSON for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Fiscal Impact Summary**

This bill would have a $600,000 expenditure impact to the general fund. There is no expenditure impact to federal funds and other funds.

**Explanation of Fiscal Impact**

**State Expenditure**

The bill adds Section 59-20-90 to require the State Department of Education (SDE) to develop and implement a program for identifying fiscal practices and budgetary conditions at the local school districts that could compromise the fiscal integrity of a district and to promulgate emergency regulations to carry out the provisions of this section. SDE should further advise the district on the appropriate corrective actions. It further adds Section 59-20-95 to require the State Auditor to adopt the same statewide program created by SDE to identify fiscal practices and budgetary conditions that could compromise the fiscal integrity of a state agency that is also a local education agency (LEA). In a declaration of fiscal caution or fiscal emergency, the State Auditor will direct SDE to assume emergency management of the LEA until the State Auditor releases the LEA from the declaration of fiscal caution or fiscal emergency.

**State Department of Education.** The department indicates that it currently does not have the capacity to perform fiscal operations of a school district and could contract with retired school business officials to perform these duties. Assuming an average salary of $100,000 per district, the impact will vary based on the number of districts requiring corrective actions. Based on the current knowledge of districts in South Carolina, there are five districts who may require fiscal intervention.

**Office of State Auditor.** The agency indicates monitoring the five agencies, Governor’s School for Science and Math, Governor’s School for Arts and Humanities, Will Lou Gray, John de la Howe, and School for Deaf and Blind, could be absorbed within current appropriation. However, if an outside independent audit is needed for each state agency that is also a LEA, then the agency estimates an expenditure of $20,000 per agency for a total of $100,000 per year.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 59‑20‑90 SO AS TO REQUIRE THE STATE DEPARTMENT OF EDUCATION TO DEVELOP AND ADOPT A STATEWIDE PROGRAM FOR IDENTIFYING FISCAL PRACTICES AND BUDGETARY CONDITIONS THAT, IF UNCORRECTED, COULD COMPROMISE THE FISCAL INTEGRITY OF A SCHOOL DISTRICT AND FOR ADVISING THE DISTRICT ON HOW TO TAKE APPROPRIATE CORRECTIVE ACTIONS, AND TO DIRECT THE DEPARTMENT TO PROMULGATE EMERGENCY REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SECTION; AND BY ADDING SECTION 59‑20‑95 SO AS TO REQUIRE THE STATE AUDITOR TO ADOPT THE STATEWIDE PROGRAM CREATED BY THE DEPARTMENT OF EDUCATION IN SECTION 59‑20‑90 AND USE IT TO IDENTIFY FISCAL PRACTICES AND BUDGETARY CONDITIONS THAT, IF UNCORRECTED, COULD COMPROMISE THE FISCAL INTEGRITY OF A STATE AGENCY THAT IS ALSO A LOCAL EDUCATION AGENCY AND TO ADVISE THE STATE AGENCY THAT IS ALSO A LOCAL EDUCATION AGENCY ON HOW TO TAKE APPROPRIATE CORRECTIVE ACTIONS, AND TO PROVIDE EXCEPTIONS TO ENABLE THE STATE AUDITOR TO DIRECT THE DEPARTMENT TO IMMEDIATELY ASSUME EMERGENCY MANAGEMENT OF THE STATE AGENCY THAT IS ALSO A LOCAL EDUCATION AGENCY FOR WHICH IT HAS MADE A DECLARATION OF FISCAL CAUTION OR FISCAL EMERGENCY, TO CONTINUE THIS EMERGENCY MANAGEMENT OF THE LOCAL EDUCATION AGENCY UNTIL THE STATE AUDITOR RELEASES THE STATE AGENCY THAT IS ALSO A LOCAL EDUCATION AGENCY FROM THE DECLARATION OF FISCAL CAUTION OR FISCAL EMERGENCY, AS APPLICABLE, AND TO DIRECT THE STATE AUDITOR TO PROMULGATE EMERGENCY REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SECTION.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. A. Chapter 20, Title 59 of the 1976 Code is amended by adding:

“Section 59‑20‑90. (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 two percent of the general fund revenue of the latest completed fiscal year.

(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 anytime with the State Superintendent’s approval.

(f) The district board shall submit an updated recovery plan annually.

(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.

(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 two percent general fund reserve;

(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 districts finance 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 Auditor 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.

(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.”

B. In the interest of public welfare, the State Department of Education shall promulgate emergency regulations to carry out the provisions of this section within thirty calendar days of the effective date of this act.

SECTION 2. A. Chapter 20, Title 59 of the 1976 Code is amended by adding:

“Section 59‑20‑95. (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 a 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.”

B. In the interest of public welfare, the State Auditor shall promulgate emergency regulations to carry out the provisions of this section within thirty calendar days of the effective date of this act.

SECTION 3. This act takes effect upon approval by the Governor.

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