

Michigan Governor Signs Early Warning Legislation for Financially Distressed School Districts with Immediate Effect

July 9, 2015

On July 7, Michigan Governor Snyder signed into law a package of bills, all with immediate effect and most with a tie bar to at least one of the other bills in the package, creating an early warning system to identify the potential for financial distress in local school districts, intermediate school districts (ISDs) and public school academies (PSAs). The legislation provides an option for ISD oversight of local district and PSA finances and supplements the process that currently exists in Public Act 436 of 2012 to address existing distress and under which emergency managers may be appointed.

PA 109 of 2015 amends the Revised School Code to require any district without a positive general fund balance of at least 5% for the two most recent school fiscal years to report annually by July 7 the budgetary assumptions used when adopting its annual budget to the Center for Educational Performance and Information (CEPI). The budgetary assumptions must include the district's projected foundation allowance, projected membership, estimated expenditures per pupil for the immediately preceding fiscal year and the projected expenditures per pupil for the current fiscal year. Based on the report, the State Treasurer may determine if the potential for fiscal stress exists within the district.

If the State Treasurer declares the potential for fiscal stress within a local school district or PSA, the local school district or PSA may choose to enter into a contract with an ISD (or the PSA with its authorizing body) to review the local district or PSA's financial data and practices and make recommendations to avoid a deficit. The ISD must complete the review and provide recommendations to the local district or PSA within 90 days of entering into the contract, and is then required to submit quarterly reports to Treasury on the implementation of its recommendations.

The State Treasurer may require a district declared to have the potential for distress to submit periodic financial reports to the Department of Treasury if all of the following criteria are met:

- More than 60 days have passed since the district was notified of its potential for distress.
- For a local school district or PSA, the district has not entered into a contract with an ISD (or authorizing body for a PSA), or a contract has been rescinded.
- The district has not had a positive general fund balance of at least 5% for each of the two most recent school fiscal years.
- The district has had a declining general fund balance in one or both of the two most recent school fiscal years.
- The district is not required to submit a deficit elimination plan or enhanced deficit elimination plan.

A district that has entered into a contract with an ISD (or PSA authorizing body) does not have to begin submitting these reports until two years following notification of the district of the finding of potential fiscal distress unless the State Treasurer finds that the district is not implementing the recommendations in the contract. Further, a district that fails to submit a report may be required to submit an enhanced deficit elimination plan. PA 111 allows the State Treasurer to require as a condition of approving an enhanced deficit elimination plan that a district enter into a financial recovery agreement which could include the appointment of a local auditor, inspector or other consultants and other remedial measures.

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PA 112 and 114 amend the State School Aid Act to allow the State to withhold certain payments from districts, including state school aid payments from a district that fails to submit a required deficit elimination plan or for whom a deficit elimination plan is not approved. PA 115 amends the Emergency Municipal Loan Act, increasing the aggregate cap on emergency loans made to school districts from \$50 million to \$70 million through September 30, 2018 (while retaining the \$20 million cap for a single district), and allowing loans to school districts that will help to resolve fiscal stress. PA 116 amends Public Act 105 of 1855, which governs surplus funds in Treasury, to allow loans up to the amounts authorized under the Emergency Municipal Loan Act rather than limit loans to amounts formerly provided by Public Act 105.

Finally, PA 110 and 113 amend Public Act 436 to allow the State Treasurer (as opposed to the State Superintendent of Public Instruction) to recommend appointment of an emergency manager for a district that fails to submit or comply with a required enhanced deficit elimination plan.

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