

## HB 491 ~ Summary of Treasurer Liability Provisions

HB 491 provides exceptions to strict liability for treasurers of a school district or ESC when performing official duties generally, when relying on various nonfinancial information or data, and/or with respect to payment of a teacher. These exceptions include the following.

### Generally and When Relying on Various Nonfinancial Information or Data:

The bill provides an exception to the rule of strict liability for loss of public funds for a treasurer (1) generally when the treasurer performs all official duties with reasonable care, or (2) when the loss results from the treasurer's reliance on the accuracy of various nonfinancial information or data, limiting liability (in either case) to losses resulting from the treasurer's negligence or other wrongful act.

- Thus, a treasurer will not be held liable unless the funds are lost as a result of the treasurer's own negligence\* or other wrongful act.

The bill also prohibits the Ohio Department of Education (ODE) from considering the loss of public funds not resulting from the treasurer's negligence or other wrongful act as a violation of the treasurer's professional duties, provided that the treasurer has performed all official duties required of the treasurer with reasonable care.

- This provision may marginally reduce the number of professional conduct cases investigated by ODE's Office of Professional Conduct, which administers the educator disciplinary process.

### Payment of Teachers:

The bill also protects a school treasurer and superintendent from liability for any losses of public funds specifically stemming from the payment of a teacher who does not have the proper paperwork (for example, a valid educator license) on file provided the treasurer and superintendent follow the required procedure for payment (described below), unless the loss results from the treasurer's or superintendent's negligence or wrongful act.

- Thus, a treasurer will not be held liable unless the treasurer fails to follow the required procedure, or unless the funds are lost as a result of the treasurer's own negligence or other wrongful act.

The bill also makes changes to the procedure a school treasurer must follow in order to pay a teacher for services.

- Before making payment to a teacher, current law requires a treasurer to have received certain documentation from the teacher, including any required reports and

a written statement from the superintendent that the teacher has filed with the treasurer a valid educator license.

- Instead, the bill requires a treasurer to receive written statements from the superintendent (or superintendent's designee) that the teacher has filed with the superintendent (or designee) (1) the required reports and (2) a valid license to teach the subjects or grades taught, with the dates of validity. **Treasurers need to implement this procedure prior to the effective date of the bill (March 19, 2019).**

Miscellaneous:

- These provisions of the bill regarding liability for loss of public funds take effect on March 19, 2019, and also will apply to any professional conduct investigations or cases that are pending on this effective date.
- The bill's limits on school treasurer and superintendent liability likely prevent the Auditor from issuing a finding for recovery against those individuals when a loss is not due to the individual's negligence or wrongful act.
- If so, the school district or ESC will be unable to recover from the bonding company any amounts improperly paid.

\*Negligence is generally defined as a failure to exercise the degree of care required by a reasonable and prudent person, which results in a loss. As an example, if treasurers would normally take some action and a specific treasurer failed to do so, with that failure leading to a loss, then the treasurer arguably was negligent; or if treasurers normally would do something in a certain way, and a specific treasurer does it in a different way, with that deviation leading to a loss, then the treasurer arguably was negligent. In "typical" litigation over negligence, expert testimony might be used to establish a reasonable standard of care (i.e., what would a reasonable and prudent treasurer do?).

Example: As an aside, with respect to paying teachers, the statute requires a treasurer to comply with the statutory procedure, and if a treasurer does not, then the treasurer can be held liable without proving negligence (... although it arguably may be negligent not to follow the procedure). As always, the time around license renewal will be significant. If the treasurer does not receive a new written statement from the superintendent as a license expires, then the treasurer is not authorized to pay the teacher. Thus, it may be prudent for a treasurer to implement a "tickler" system to ensure that new superintendent "statements" are received as licenses expire.

As far as proof, the law does not specify who is responsible for proving negligence, but generally negligence is considered an element to be proved by the complainant (here, the State). Thus, it would seem that the Auditor will need to make a determination of negligence before issuing a finding for recovery.