

WEDNESDAY, MARCH 17, 2021

# SCSBA VIRTUAL ADVOCACY DAY



|                                      |    |
|--------------------------------------|----|
| K12 funding bills .....              | 1  |
| Private school voucher bills .....   | 4  |
| Increasing state control bills ..... | 8  |
| Bills to advocate for .....          | 11 |

**inside**



# Top legislative priorities, position statements and talking points

## Agenda

**9 a.m.**

**Welcome**

*Cheryl Burgess, SCSBA President, Lexington Three*

**9:05 – 10:15 a.m.**

**Legislative update and issues briefing**

**Tune in live** to hear the latest on the proposed state budget and key education issues from SCSBA staff. Bring your questions or submit them in advance to [rbean@scsba.org](mailto:rbean@scsba.org).

*Debbie Elmore, SCSBA Director of Governmental Relations and Advocacy*

*Scott Price, SCSBA Executive Director*

**10:15 a.m. – Noon**

**Time to take action**

Now is the time to make an impact by using the advocacy tools provided by SCSBA to make contact with your legislators via telephone, email, social media, etc. SCSBA will also provide a list of education-related committee meetings that may be scheduled for the day.

## K12 funding bills

### K12 state appropriations for 2021-2022

#### House bill 4100

The House budget writing committee began its work at the start of the 2021 legislative session with more than expected revenue estimates but far below the record-breaking amounts the state was experiencing before the Coronavirus pandemic. The Ways and Means Committee adopted revenue estimates set by the Board of Economic Advisors (BEA) in December that include about \$200 million in new recurring dollars and about \$1 billion in nonrecurring (one-time) funding as the foundation for the budget. The penny sales tax dedicated to the Education Improvement Act (EIA) was projected by the BEA to increase by \$44.7 million in FY 2021-2022, which was lower than the pre-COVID projection of \$50 million. After weeks of receiving budget requests from state agencies, schools and others, and considering changes to budget provisos, the Ways and Means Committee

took only three meetings the week of March 2, to finalize its proposed \$9.6 billion spending plan. The plan now heads to the floor of the House the week of March 22, where it will be debated by the 124 members. The proposed budget is similar to the governor's executive budget for K12 education.

- ***\$11 increase in Base Student Cost (BSC)***

A total of \$50 million was added to maintain and increase the Base Student Cost (BSC) in the Education Finance Act (EFA). This is estimated to increase the current year's BSC of \$2,489 to \$2,500, or an \$11 increase. In addition, the proposal allocates \$23 million currently in an EFA reserve fund at the S.C. Department of Education (SCDE) to the EFA. This is funding that was allocated in this year's budget that was not distributed to school districts because of lower student enrollment statewide. Much of the BSC increase will likely be used to pay for the teacher step increase.

- ***Teacher pay raises***

No funding has been allocated so far in the budget for a pay raise for all teachers. Under the budget proposal, districts will still be required to provide the state-mandated teacher step pay increase for eligible teachers, which averages to about a two percent increase. In comparison, last year's pre-COVID spending plan passed by the House, which ultimately did not pass the General Assembly, included a \$3,000 pay increase. This would have been an average seven percent pay raise at a cost of \$213 million and would have placed South Carolina in the top 25 states for average teacher pay.

- ***4K expansion statewide***

The budget plan includes \$10.2 million in EIA recurring funding to expand full-day, four-year-old kindergarten programs for an estimated 600 children in the SC Early Reading Development and Education Program (SCERDEP) program. The per pupil reimbursement rate increases from \$4,600 to \$4,800 and increases funding for private providers transporting children to and from school from \$574 to \$587 for eligible children. The 4K programs would be expanded to include child care centers, military child care facilities or private schools. The SCDE is to develop policies that give parents or guardians the option for their eligible child to attend a participating out-of-district school; allow

First Steps to spend up to \$2 million on a pilot program to provide higher reimbursement rates to high-quality child care centers; and allow First Steps to spend up to \$1 million to address building renovations and designs to comply with licensing regulations for public-private partnerships.

Other budget highlights are as follows:

- \$3 million increase in EIA funding for industry certifications/credentials
- \$5.5 million increase in EIA funding to place a nurse in every school
- \$4 million increase for the one percent increase for the employer retirement contribution
- \$1 million increase in EIA funding for the Teaching Fellows Scholarships
- \$2 million increase in EIA funding to hire school resource officers
- \$8.4 million increase in EIA funding and \$10 million in non-recurring funding for instructional materials
- \$30 million in lottery funding for instructional materials
- \$15 million in EIA funding for state charter schools
- \$7.8 million in Volkswagen Environmental Mitigation Trust (lawsuit settlement) and unclaimed lottery prize funding for school bus purchase/lease

New budget provisos of note include the following:

- A Formative Assessment Data proviso requires districts to provide to the SCDE all interim and formative assessment scores by grade and school for 2020-2021 and 2021-2022, or have 10 percent of its EFA funding withheld for failing to do so. The SCDE is to compile the information into a report on performance and submit it to the General Assembly by January 31.
- A School District Employees Data proviso requires districts to provide a report detailing school, district administration and career centers employees' job duties and indicate the number of individuals whose primary job is to provide classroom instruction to the SCDE by October 1, 2021. The SCDE is directed to compile the information into a comprehensive report that is submitted to the General Assembly.
- An SCDE Reserve Fund proviso allocates \$23 million in carry forward funds in the Education Finance Act Reserve Fund for FY 2021-2022 to State Aid to Classrooms (also known as the Base Student Cost).
- A Return to Covered Employment proviso directs that the earnings limitation for state retirees does not apply if they are hired by the SCDE to provide services to support underperforming schools and districts. The proviso limits the number of retired

hires to a maximum of 20 during the fiscal year and directs the SCDE to report on the number of employees hired under the provision to the General Assembly by June 30.

- A Kindergarten Start Date proviso allows a district superintendent or charter school authorizer to submit a request to waive the minimum 180-day attendance requirement for kindergarten students for scheduling assessments and provide timelines for the assessments.
- A Report Card Date proviso directs the SCDE to produce school report cards by November 1.
- A Praxis Core proviso directs that a college or university educator preparation program may develop a plan for ensuring teacher candidates' proficiency in reading, writing and mathematics, and submit the plan to the State Board of Education (SBE) for approval. The SBE is to establish proposal criteria and must approve the plan before it can be implemented and direct that if a teacher candidate does demonstrate proficiency in the required basic skills, the university or college may only admit the teacher candidate by requiring that the candidate complete the appropriate remedial coursework before completion of the educator preparation program.

Other budget provisos of note are as follows:

- The School Safety Program proviso, which directs the school safety program and school resource officers (SROs), was amended to direct that the funds also be used to hire SROs in the public charter school districts and to delete the directive that no more than four certified SROs be awarded per district.
- The Digital Learning Plan proviso, which directs the Education Oversight Committee (EOC) to implement a pilot program for alternative methods of instruction for make-up days, was amended to delete pilot program and instead direct the EOC to evaluate the impact of alternative methods of instruction on student learning and to work with other agencies to expand access to remote instruction. Finally, the EOC is to report annually to the governor, General Assembly, Department of Education and State Board of Education.
- The School Districts and Special Schools Flexibility proviso, which grants certain financial flexibility of state funds for operations of school districts, was amended to direct that districts report the student teacher ratio to the SCDE at the 45th and 135th day rather than the 90th and 180th day.
- The Technology Technical Assistance proviso, which directs technology funding, was amended to allow the SCDE to withhold up to \$350,000 to provide

technical assistance to school districts.

- The EIA: Bridge Program proviso, which directs funding for Rural Teacher Recruitment, was amended to transfer \$1.4 million to South Carolina State University to implement and enhance a BRIDGE program to recruit minority high school students along the I-95 corridor into the teaching profession by offering them access to counseling, mentoring, on campus summer enrichment programs and opportunities for dual enrollment credits.
- The Interscholastic Athletic Association Dues proviso was amended to direct that the eligibility requirements for new students to participate in interscholastic athletics is to be no more restrictive than the rules or policies of the association, body or entity that were in effect on January 1, 2020.

### Position statements

1. SCSBA believes that the General Assembly must meet its commitment to fully fund state-mandated educational programs for public schools. SCSBA believes that the South Carolina Constitution should be amended to prohibit state mandates on local units of government unless they are fully funded by the state.
2. SCSBA supports legislation to reform the state's education funding structure. Any revision should be based upon specific analysis and recommendations on: (1) the current tax structure and the state's taxing policy; (2) the current education funding formulas and their ability to equalize educational opportunities statewide; and, (3) a realistic means of computing a per pupil funding amount, which is aligned with state-imposed student performance standards and expectations.

Recommendations for reforming the method of fully funding public education in South Carolina must do the following:

- expand local district revenue-raising options;
- generate revenue that is adequate, stable and recurring;
- ensure equitable and timely distribution, to include direct distribution from the state to a district;
- provide adequate funding for other operational needs such as transportation and fringe;
- include state-driven initiatives to ensure that every public school student has the opportunity to learn in permanent school facilities that are safe, structurally sound and conducive to a good learning environment;
- ensure that districts are held harmless from

receiving less money through a new funding plan; and,

- grant all elected school boards full fiscal autonomy.

### Talking points

- Public schools are at critical juncture of the teacher shortage crisis that will greatly impact the future competitiveness of our students and our state. We appreciate the General Assembly's funding in the current school year to provide teachers with a step pay increase. And while another step pay increase is being mandated for 2021-2022, we support State Superintendent Molly Spearman's budget request for additional funding to provide a two percent teacher pay raise to keep our state teacher salaries from dropping further behind our neighboring states. *(Note: discuss how much it will cost your school districts to pay for step increases and how much it would cost to provide a similar pay increase for all other school district personnel.)*
- The COVID-19 pandemic has disrupted traditional forms of education and continues to create challenges for public schools and the students they serve. The public health, education and economic damages inflicted by COVID-19 have exacerbated long-standing inequities disproportionately affecting minority students, English language learners and students with disabilities. When schools can fully reopen, our focus will be on addressing the student learning gaps. We must do everything to ensure students can regain any lost knowledge and skills so that they can succeed. Resources will be required to provide extended learning opportunities that may require additional personnel, transportation and instructional materials. If recurring revenue projections are increased when the BEA meets again in May, we ask for increased EFA funding to increase the Base Student Cost (BSC) to assist districts with increased costs to address the learning gap. While we are grateful for the \$50 million increase in EFA funding, the estimated \$11 increase in the BSC from \$2,489 to \$2,500 is well below the \$3,140 BSC required under law.
- While it is critical for the General Assembly to reform the K12 funding system, of equal importance is for the state to fully fund the system it has in place. When state funds are not adequate to meet the true cost of a required program, the fiscal burden falls to local taxpayers to cover the deficit, or districts must sacrifice in other areas such as classroom size and personnel. The heart of the Education Finance Act (EFA) is the Base Student Cost (BSC), a per-pupil amount set annually to fund the basic educational program. For the current school year, the BSC is set

at \$2,489, which is well below the statutorily required amount of \$3,164. And the \$11 increase proposed for next year would be well below the projected BSC of \$3,140. While the EFA's BSC is not the only state funding allocated to public schools, it provides the clearest example of the state not meeting its commitment to public education. The issue of unfunded and underfunded mandates arises each legislative session as programs and directives are proposed at the state level with the knowledge that state funds are not available and that in most instances local taxpayers will feel the fiscal impact.

## Teacher Step Pay Increase

### House bill 3609

Governor Henry McMaster signed into law a joint resolution allocating up to \$50 million for school districts to retroactively provide a teacher step pay increase for the current school year.

The day before, the House unanimously concurred with the changes in the resolution made by the Senate that were supported by SCSBA and other education organizations. The changes corrected language in the House version to ensure the allocations to districts would be based on actual costs rather than an average of costs. Fringe benefits (insurance increase, retirement contributions, etc.) will also be included in the actual cost amount, and districts will have some flexibility in providing the one-time lump sum payment of the entire step increase. Finally, the changes include language making the payments conform to reporting requirements for the state retirement system.

#### Position statement

SCSBA believes in raising teacher pay to the national average for teacher salaries and establishing a salary structure that would be appropriate considering differentiated responsibilities so as to compensate teacher leaders in relation to skills and performance.

#### Talking points

- Thank you to House members for concurring with the Senate amendment in House bill 3609 to retroactively provide teacher step pay increases for the current school year. By concurring with the amendments, districts will be provided funding to pay for the actual cost of the state-mandated raises, to include fringe benefits. Also, by concurring, it avoided further delays in the bill being sent to the governor.
- Thank you to the Senate for approving amendments to the bill that corrected language in the House-passed version to ensure districts would be funded for the actual cost of the pay increase rather than an average of the cost.

## Private school voucher bills

### Education Scholarship Accounts

#### House bill 3976

With more than 60 sponsors, a bill to enact the Education Scholarship Account (ESA) Act was introduced February 24 in the House and was assigned to the Ways and Means Committee – not the Education and Public Works Committee.

Like traditional private school voucher programs, state tax dollars are provided in a government-established ESA account for parents of students who are not enrolled in public schools to pay for a range of educational options. Funds can be used for tuition, fees and other eligible expenses for “education service providers” such as private and religious schools and/or approved products and services, such as online courses, textbooks and tutoring related to educating their child to include home-based instruction. The home-based education, however, cannot be a homeschooling option that is approved by local district, a homeschool program that is under the auspices of the SC Association of Independent Home Schools or a homeschooling program under the auspices of a home school association with no fewer than 50 members.

#### • Eligible students

Students who are eligible to participate in the program must reside in any school district of the state and attain the age of five on or before September 1 of the school year and have at least one of the following criteria:

- an annual adjusted gross family income of 200 percent or less of the federal poverty guidelines as promulgated annually by the United States Department of Health and Human Services or a statement of Medicaid eligibility;
- participated in the South Carolina Early Reading Development and Education program; or,
- previously received an ESA scholarship or an Educational Credit for Exceptional Needs Children (ECENC) scholarship.

Once a student becomes eligible, his/her siblings are automatically eligible.

Parents of ESA students are directed to sign an agreement with the Department of Administration (DOA) to do the following:

- provide their child, at a minimum, a program of academic instruction in at least the subjects of English language arts, writing, mathematics, social studies and science;
- ensure their student takes a nationally norm-referenced test approved by the EOC (for students in grades 3-8) that measures learning gains in math and language arts and provides value-added assessment, provides high school graduation information or provides assessments in a similar manner through other means if their student does not receive full-time instruction from an education service provider;
- use program funds for qualifying expenses only for an approved provider to educate their child;
- not enroll their student in a public school as a full-time student;
- not participate in certain home instruction programs;
- release their child's resident school district from an obligation to educate their student while enrolled in the program (parental placement under Section 1414 of the Individuals with Disabilities Education Act (IDEA));
- relinquishes their student's numerous federal protections that children have in public schools under the IDEA; and,
- comply with the conditions and requirements of the program as established by the DOA or EOC.

- ***Public school districts fund scholarships***

The state treasurer is directed under the bill to transfer the per pupil state funding that is allocated to an ESA student's resident public school district to the South Carolina Education Scholarship Account Fund established under the bill that is administered and managed by the Department of Administration (DOA). From the fund, the DOA issues scholarships in an amount equal to the state average of state funding per pupil in public schools to an individual student's online ESA account. Payments to an ESA student's account are done on a quarterly basis with the first payment by July 31 of each year. The DOA is allowed to deduct up to four percent of funds in ESA students' accounts for costs to oversee and administer the accounts.

Payments to the ESA student's accounts must continue until a parent or ESA student is proven to have misused funds or participated in a prohibited activity, an ESA student returns to his resident or other public school district or his public charter school or an ESA student graduates from high

school or attains 22 years of age, whichever occurs first.

- ***Qualifying expenses***

The Education Oversight Committee is charged with approving "education service providers" and other educational related services that include:

- tuition and fees of an education service provider;
- textbooks, curriculum or other instructional materials, including, but not be limited to, any supplemental materials or associated online instruction required by either a curriculum or an education service provider;
- tutoring services;
- payment to an educational consultant who is an advisor in education curriculum, finance, scholarships or achievement, or who has experience necessary to provide guidance to parents of eligible ESA students;
- tuition and fees for a nonpublic online education service provider or course; and
- contracted teaching services and education classes.

The DOA is directed to approve vendors for eligible products including computer hardware or other technological devices that are used primarily for an ESA student's educational needs (may be approved by student's licensed physician) or for fees for an ESA account management by private financial management firms.

Other qualifying expenses are fees for the following:

- national norm-referenced examinations, advanced placement examinations or similar assessments;
- industry certification exams; or
- examinations related to college or university admission;
- educational services for pupils with disabilities from a licensed or accredited practitioner or provider including, but not limited to, occupational, behavioral, physical and speech-language therapies;
- tuition and fees at an eligible state postsecondary institution that is an accredited community college, technical college, university or independent postsecondary institution;
- textbooks required for instruction at an eligible postsecondary institution;
- approved contracted services from a public school district, including individual classes,

after school tutoring services, transportation or fees or costs associated with participation in extracurricular activities; and,

- transportation paid to a fee-for-service transportation provider for travel to and from an eligible provider but not to exceed \$750 for each school year.

- ***Phase-in of participation***

The program would be implemented beginning with school year 2022-2023, and would be limited to 5,000 ESA students in K-3 grades. For three years thereafter, the program capacity increases as follows:

- 10,000 ESA students in K-5 grades in school year 2023-2024;
- 15,000 ESA students in K-8 grades in school year 2024-2025;
- 20,000 ESA students in K-12 grades in school year 2025-2026; and
- in all subsequent years, there may be no limit on the number of ESA students if the program remains in effect and contingent upon the amount of funds in the program.

- ***Fiscal impact***

The fiscal impact statement has not been released yet. However, a similar bill that was debated and passed out of a subcommittee in the Senate this past year was estimated to result in the loss of up to \$457 million to public schools by the third year of the phase-in participation and an unknown amount for the years when the program was open to students statewide. Per pupil state funding included Education Finance Act (EFA) funds, Education Improvement Act (EIA) funds, reimbursements for Act 388 of 2006 and other state resources the district would normally receive for the student. The per pupil state average was estimated to be about \$6,670 in year one and \$6,850 in year two.

- ***Other states with ESA programs***

Only six states have enacted education savings account programs: Arizona, Florida, Mississippi, Nevada, North Carolina and Tennessee. Nevada's ESA program remains unfunded and non-operational. Tennessee's program was ruled unconstitutional this past May 2020, halting the program from being launched. ESA programs in Florida, Mississippi and North Carolina are limited to students with special needs. Arizona's ESA is the most expansive to include students with special needs, foster children, children of active-duty

military personnel, students assigned to district schools rated D or F and children living on Native American reservations.

## **Position statement**

SCSBA strongly opposes state or federally mandated efforts to directly or indirectly subsidize elementary or secondary private, religious or home schools with public funds.

## **Talking points**

- On October 7, 2020, the State Supreme Court in *Adams v. McMaster*, struck down a similar program by ruling that, "No money shall be paid from public funds nor shall the credit of the State or any of its political subdivisions be used for the direct benefit of any religious or other private educational institution." The proposed ESA program would also likely be ruled unconstitutional because state funding allocated for public schools would be used to directly benefit private and religious schools in the form of tuition and fees, which are eligible expenses under the legislation.
- If the ESA student already attends a private school, how can the state treasurer transfer per pupil state funds from the student's resident public school district in which he is not enrolled?
- There is no evidence to confirm existing ESA programs in other states increase student achievement for students participating in the program or for students remaining in the public schools that would justify the loss of education funding to public schools that enroll a majority of the state's children.
- The loss of funding for public schools threatens academic programs and services for students who remain in public schools.
- The ESA proposal requires parents of special needs students to relinquish all of the protections provided to their child under the Individuals with Disabilities Education Act (IDEA). After a student enrolls in a private school, there is no guarantee that the school will provide the support outlined in the student's Individualized Education Plan (IEP) or that it will remain in place.
- There is no requirement for private schools to administer the same assessments administered in public schools. There would be no test score data to determine whether students in the program have improved, remained the same or declined. Not requiring the same assessments makes it very difficult to compare the quality of schools or to verify what is being taught and what services and accommodations are being offered.

- The state is not funding public schools at the level required by law, yet lawmakers continue to consider expanding publicly-funded, private school voucher programs that do not hold participating private schools to the same academic and financial accountability laws mandated for public schools.
- Proponents claim to be empowering parents by providing choices; however, it is the private schools that choose which students they will accept.
- ESA programs help fund separate and unequal education.

## Exceptional Needs Tax Credit Program Changes

### House bill 3899

The House Ways and Means General Government Legislative Subcommittee is considering a bill to make changes to the state's private school voucher program for exceptional needs students.

The Educational Credit for Exceptional Needs Children fund, or ECENC, was created as a public charity in 2016 and is made up of tax credited donations that serve as scholarships for exceptional needs students to attend an approved private school. Individuals and corporations who pay South Carolina taxes can make a donation to the fund and claim a dollar-for-dollar tax credit against their overall state income tax liability. The amount of tax credits is capped at \$12 million statewide. In addition, parents or guardians of exceptional needs students can apply for a tax credit toward their state income tax bill for up to \$11,000 or the cost of tuition, whichever is less. The amount of tax credits for this method is capped at \$2 million.

Under the bill, the Department of Revenue (DOR) would be eliminated from overseeing the fund including, but not limited to, the keeping of records, the management of accounts and disbursement of the grants awarded. Instead, proceeds of the fund would be administered as a program by a public charity incorporated to carry out the program instead of the fund's board of directors comprised of legislative appointees (ExceptionalSC).

The bill would increase the amount the public charity can expend for administration and related costs from two percent to eight percent of the fund. Also, up to \$5 million may be carried forward into the next year to provide credits in the next year, but the carryforward amount does not in any way increase the cumulative tax credit for any one year.

Finally, the bill removes the provision that participating schools provide certain individual student test scores.

### Position statement

SCSBA strongly opposes state or federally mandated efforts to directly or indirectly subsidize elementary or secondary private, religious or home schools with public funds.

### Talking points

- Why is the DOR being eliminated to oversee the program when it was the DOR in 2014 that discovered questionable actions by scholarship granting organizations that were incorporated as charity organizations to raise contributions and award scholarships? This bill seems to revert back to that set up.
- Why would the charitable organization, ExceptionalSC, need to expend three times more for administrative purposes rather than give those funds to students? This change is concerning in light of a DOR memo dated July 30, 2020, to the ExceptionalSC Board of Directors notifying them that they had exceeded the two percent cap for administrative expenses allowed by law and requesting the board take immediate corrective actions.
- While proponents claim private donations provide the scholarships, the fact is the tax credit allows donors to give money instead of paying their taxes and results in less revenues for services, including public education. Taxpayers are paying for the scholarships.

# Increasing state control bills

## Accountability changes, school board removal

### Senate bill 201

### House bill 3610

Two similar bills filed in the Senate and House that, among other things, make changes to the state education accountability system to include dissolving school boards in districts declared to be in a state-of-education emergency have passed their respective chambers.

The Senate-passed bill (S.201) crossed over to the House on February 16, and was assigned to the Education and Public Works Committee. The House-passed bill (H.3610) crossed over to the Senate on February 24, and resides in the Education Committee. To become law, either the House or Senate, or both,

needs to take up the other chamber's bill and concur with their changes to the bill, non-concur with their changes and insert their changes to the bill, or make further changes to the bill and send the bill back to the other chamber. If the bill that is sent back is changed, then a conference committee would need to be appointed to work out the differences, which would have to be approved by both bodies.

There are some major differences between the House-passed bill and the Senate-passed bill. The differences are as follows:

| Senate bill 201  | House bill 3610  |
|--|--|
| Defines 'Underperforming district' as having 65 percent or more of its schools rated unsatisfactory or below average on their annual school report cards.  | Defines 'Underperforming district' as having 65 percent or more of its schools considered to be 'Underperforming.'   |
| Defines 'Underperforming school' as a school that receives an overall rating of unsatisfactory or below average on its annual school report card.  | Defines 'Underperforming school' as: <ul style="list-style-type: none"><li>• For an elementary school or middle school where fewer than 25 percent of its students are at 'meets' or 'exceeds expectations' on the English language arts and mathematics SC READY assessment or its successor; or</li><li>• For a high school where fewer than 25 percent of its students receive a grade of 'D' or better on the End of Course assessments in English and mathematics, or fewer than 25 percent of its students fail to achieve at least a 'bronze' level on the career readiness assessment.</li></ul> |
| Defines 'Chronically underperforming school' as receiving an overall rating of unsatisfactory for three consecutive years on its annual school report card.  | Defines 'Chronically underperforming school' as: <ul style="list-style-type: none"><li>• for an elementary school or middle school that has been 'underperforming' for at least three consecutive years; or</li><li>• for a high school that has been 'underperforming' for three consecutive years.</li></ul>   |
| Authorizes the state superintendent to seek a state-of-education emergency declaration in a school for the following factors: <ul style="list-style-type: none"><li>• the school is chronically underperforming;</li><li>• the school's accreditation is denied; or</li><li>• determines that a school's turnaround plan results are insufficient.</li></ul> | Added another factor for the state superintendent to seek a state-of-education emergency declaration in a school as, "the district refuses to submit a turnaround plan."   |

| Senate bill 201  | House bill 3610  |
|--|--|
| Adds a provision that after a school has been in a state-of-education emergency for three consecutive years, the state superintendent may extend the declaration for an additional three-year period only upon the approval of the State Board of Education (SBE). The state superintendent may make requests every three years, which must be approved or disapproved by the board. If the request for additional time is not made, or if the State Board of Education disapproves a request, then the school returns to the control of the local school board. | No SBE approval provision.   |
| Lists as one of the factors that the state superintendent can declare a state-of-education emergency if a district is identified as underperforming for three consecutive years.   | Lists as one of the factors that the state superintendent can declare a state-of-education emergency if a district is identified as underperforming for three consecutive years or for five out of the last seven years.   |
| Adds a requirement for the state superintendent to provide to the SBE the circumstances justifying how the district has failed to satisfactorily address circumstances to request a state-of-education emergency.  | No justification requirement.  |
| Adds a requirement that "upon a majority vote of the board" the board can appeal the decision of the SBE's approval of a state-of-education emergency.   | States the district superintendent and members of the local district board may appeal the decision of the SBE's approval of a state-of-education emergency.  |
| Clarifies that the local school board is dissolved upon the SBE's approval of the state-of-education emergency declaration and upon the expiration of the 10-business day appeal window.   | States the local district board of trustees is dissolved upon the SBE's approval of the state-of-education emergency declaration only.   |
| <p>Changed the appointments of the interim school board that is appointed once the state superintendent starts to return the district back to local control as follows:</p> <ul style="list-style-type: none"> <li>• one member appointed by the governor;</li> <li>• three members appointed by the local legislative delegation; and</li> <li>• one member appointed by the state superintendent in consultation with the local legislative delegation.</li> </ul>   | <p>Appointments of the interim school board are as follows:</p> <ul style="list-style-type: none"> <li>• one member appointed by the governor;</li> <li>• one member appointed by the local legislative delegation; and</li> <li>• three members appointed by the state superintendent in consultation with the local legislative delegation.</li> </ul> |
| Added the criteria for consideration when making appointments to consider knowledge and experience in the field of education.  | No education experience criteria.  |
| Law takes effect on July 1, 2022.  | Law takes effect upon signature of the governor.   |

### Position statement

SCSBA opposes the takeover of schools, school districts and locally raised revenues and opposes legislative efforts to remove, diminish or interfere with the authority of local governing school district boards.

### Talking points

- We are opposed to the local school boards removal provision in the House and Senate bill and urge you to support removing the provision from the bill. If the provision is unable to be removed, then we support the Senate version of the bill because it includes safeguards for school boards.

- The dissolution provision, in its application, could result in the violation of the Voting Rights Act of 1965, both in its change of voting procedures and its racially disparate impact, according to a S.C. School Boards Association legal opinion. Our vote is our voice, guaranteeing that we are stewards of our communities and our state and our nation. It is the essential expression of what it means to be American.
- The automatic dissolution of duly-elected school boards creates an unfair and higher state-imposed standard than for any other elected body at the local or state level.
- The school board dissolution provision is unnecessary. In current state law, the state superintendent, under a declaration of state-of-education emergency, takes over the management of a school district, which includes, among other things, all budgetary and personnel decisions. This leaves the sitting school board powerless.
- Dissolving democratically-elected school boards is not the solution to addressing the myriad of socioeconomic challenges that are present in many communities in our state. The dissolution, however, does create animosity, division and a stigma that stays in the community for many years after the state leaves. Instead, the legislation should direct the state to work with elected leaders during a takeover to instill ownership in any improvements that may occur. Doing so would ensure improvement efforts are sustained long after the state leaves.

## School districts under the State Inspector General Senate bill 202

A bill that is before the full Senate adds public school districts, public schools, public charter schools and public charter school authorizers to the current definition of 'agency' and removes school districts from the definition of 'political subdivision' to apply to investigations that can be conducted by the Office of the Inspector General (OIG).

The OIG investigates and addresses allegations of fraud, waste, abuse, mismanagement, misconduct and wrongdoing within the state's executive branch of state government, including state agencies, boards, commissions, colleges and universities. The office consists of the inspector general appointed by the governor, five investigators and an administrative coordinator.

Under the current bill, the authorities that can call for an OIG investigation are the governor,

state superintendent, local legislative delegation, district superintendent if approved by the state superintendent and local school board upon a majority vote. The bill does not specify the criteria that an approved authority must use for making a request to investigate.

According to the fiscal impact statement, the bill would require an increase of nearly \$800,000 for additional personnel and equipment to accommodate the anticipated increase in investigation requests. "The Office of the Inspector General indicates that the change in the definition of 'agency' will expand its jurisdiction beyond the current 106 statewide executive branch agencies to include the 79 regular public school districts and the two charter school districts. This will open the opportunity for additional investigations at the local school district level. The agency anticipates the potential new investigations could have a significant impact on its caseload."

### SCSBA Position

SCSBA is opposed to the bill. It is unnecessary, and while the change in definition of a local school district as a state agency would apply to this provision of law only, it would conflict with other provisions in state law that define school districts as political subdivisions of the state. This may cause confusion and concerns. Also, school districts are already subject to several state-level agencies for financial or operational oversight.

### Talking points

- The ramifications of such a change could be numerous. There are many references, in both statute and case law, referring to school districts as political subdivisions. Changing the definition of school districts from political subdivisions to a state agency could impact many areas of law and practice including procurement, employment and tort reform.
- This legislation is unnecessary. It is important to note that school districts are already subjected to more accountability and oversight than any other governmental entity. They must, by law, procure annual outside audits of their budgets. Both the S.C. Department of Education (SCDE) and the US Department of Education (USDE) conduct regular audits of district program expenditures. Districts are required to keep online checkbook records and post monthly credit card statements. They must report categorical spending through In\$ite, which is published and available to the public. Additionally, they are required to post administrative costs on their websites.

- In addition to the state Education Accountability Act that establishes requirements for schools and districts to increase student achievement, the General Assembly in recent years enacted the Financial Accountability Act that directed the SCDE to identify fiscal practices and budgetary conditions that, if uncorrected, could compromise the fiscal integrity of a school district, and advise districts to take appropriate corrective actions. The comprehensive accountability program includes three escalating levels for school districts to address weaknesses and correct problems.
- School districts are accountable to several sets of authorities at the state level including the SCDE led by the elected State Superintendent of Education; the State Board of Education (SBE) whose members represent the State's judicial circuits and are elected by legislative delegations, along with one gubernatorial appointee, and the South Carolina General Assembly; the Education Oversight Committee (EOC), which monitors and makes recommendations for the education accountability system; and by locally-elected school boards, which are accountable to the voters, parents, students, etc.

## Bills to advocate for

### Bills that support SCSBA legislative resolutions

**Senate bill 325** by Sen. Fanning would eliminate the S.C. Education Oversight Committee and create a joint committee to determine which roles and responsibilities would be given to the S.C. Department of Education.

SCSBA believes that the Education Oversight Committee should be dissolved and that its responsibilities and duties, where necessary, be moved to the South Carolina Department of Education (SCDE).

**Rationale:** The appointed 18-member EOC was created in 1998 to advise elected officials on student performance, educational programs, and public school funding in accordance with the Education Accountability Act (EAA). The EOC has served a useful purpose in overseeing implementation of the EAA, as well as issuing critical reports on topics such as school governance and fiscal efficiency. However, in the last 20 years the EOC's role has expanded dramatically. Its members and staff no longer serve in an oversight capacity but as a governing body, establishing critical public education policy and appropriating millions of taxpayer dollars with no

direct accountability to citizens. The EOC is often in conflict with the duly elected State Superintendent of Education, who has no vote on the EOC, but is accountable to the people of South Carolina and charged with providing the leadership and services to ensure a public education system that enables all students to become educated, responsible and contributing citizens.

*History: adopted 2017*

**House bill 3993** by Rep. Govan would call for a constitutional referendum to add "high quality education" for all students.

SCSBA believes the South Carolina Constitution should be amended to require the General Assembly to provide a high quality system of free public schools open to all children and allowing each student to reach his highest potential.

**Rationale:** The adequacy of education funding is the issue in a lawsuit originally filed in 1993 by 40 South Carolina school districts. In 1999, the Supreme Court set a new baseline standard for the public education clause of the state's constitution. The Court said that the constitution broadly outlines the parameters of a "minimally adequate education" in South Carolina. In its final ruling in 2015, the court affirmed its earlier finding in favor of the districts, citing, among others, that the State was not meeting its constitutional duty. SCSBA does not believe that the General Assembly should be satisfied with or proud of a state constitution that only requires a "minimally adequate education."

*History: adopted 1999; revised 2002, 2004, 2008, 2013, 2016*

**House bill 3128** by Rep. Newton would allow school board members to join other locally elected officials who can opt in to participation on the state health insurance program.

SCSBA believes the General Assembly should enact legislation to allow local school districts to opt in to the state Public Employee Benefits Authority (PEBA) Health Insurance coverage for school board members, ensuring equal benefits across the board for all local government leaders in South Carolina.

**Rationale:** Effective governance of local school districts is the cornerstone of sound local government. PEBA Health Insurance coverage, which is granted to all other local elected officials, including city and county council members, fire and police departments, and various governmental boards, commissions and public service districts, does not extend to members of local school district boards of trustees. Access to health care and

retirement benefits would be a fair and appropriate incentive to attract and retain committed, passionate citizens to serve on local school boards, given many school districts' difficulty in providing otherwise just compensation.

*History: adopted 2019*