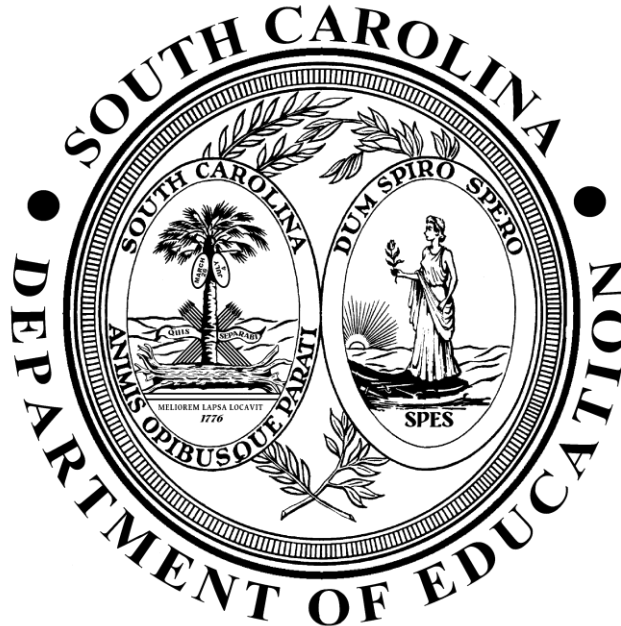


STATE OF SOUTH CAROLINA

DEPARTMENT OF EDUCATION

MOLLY M. SPEARMAN
STATE SUPERINTENDENT OF EDUCATION



**Statewide Program on District Fiscal Practices
and Budgetary Conditions**

Act 23 of 2017, S.C. Code Ann. § 59-20-90

May 2018

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The Legislative Mandate

On May 9, 2017, amended May 2018, Governor McMaster approved the Act 23, which directs the South Carolina Department of Education (SCDE) to develop and adopt a statewide program on fiscal practices and budgetary conditions.

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.

Section 59-20-90(A). The complete statute as adopted in Appendix A.

The SCDE convened a task force of district superintendents, financial officers, school district auditors, and staff from the state auditor to develop the statewide program. The task force was representative of districts in terms of size and geographic area of the state. The draft guidelines were posted on the SCDE's website, and the public was invited to offer questions, comments, and suggestions. These guidelines incorporate that feedback for the statewide program.

The State Board of Education (SBE) is directed to promulgate regulations on the statute. Section 59-20-90(B).

Section 59-20-90 applies to all South Carolina school districts, including the South Carolina Public Charter School District.

Section 59-20-95 applies to state agencies that are also a local education agency (LEA). The State Auditor is charged with issuing warnings of fiscal concern with these entities. State agencies that are also LEAs include:

- Governor's School for Science and Math
- Governor's School for Arts and Humanities
- John de la Howe
- S.C. Department of Corrections (Palmetto Unified)
- S.C. Department of Juvenile Justice
- S.C. School for the Deaf and Blind
- Any institution of higher education that registers to become a charter sponsor.

Escalating Levels of Concern

The statute identifies three "escalating levels of fiscal and budgetary concern" that must be defined in the statewide program:

- (1) Fiscal Watch, the lowest level of concern;
- (2) Fiscal Caution, an intermediate level of concern; and
- (3) Fiscal Emergency, the most severe level of concern.

Each level has some similarities.

- (a) Each has conditions under which the State Superintendent “shall” or “may” declare a level of concern.
- (b) Each requires the district to develop and submit a financial recovery plan to the SCDE.

The following describes each level, the procedures, and the conditions under which the State Superintendent “shall” or “may” declare that level of concern.

Fiscal Watch

Fiscal watch is the lowest level of fiscal and budgetary concern.

*The Superintendent **shall** declare a fiscal watch.*

The statute describes when the State Superintendent shall declare a fiscal watch:

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

- (i) upon review of the district's annual audit, the department determines financial practices occurring outside of acceptable accounting standards exist;
- (ii) the district submits an annual audit more than sixty days after the December first deadline provided in Section 59-17-100;
- (iii) there is any type of ongoing, related investigation by any state or federal law enforcement agency or any other investigatory agency of the State;
- (iv) an outside, independent auditing firm declares that a school district's financial records are unauditable; or
- (v) 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, or could have, a significant effect on the financial condition of the district.

Section 59-20-90(C)(1).

Practices outside of acceptable accounting standards.

While all districts should operate within acceptable accounting standards, not every failure to do so warrants declaration of a fiscal caution. However, departures from generally acceptable accounting standards that result in a material misstatement will generally result in fiscal caution

Late annual audit.

By law districts must submit audited financial statements to the SCDE no later than December 1 of each year. In some situations, (e.g., catastrophic floods, hurricanes) districts have not been able to complete their audits by that date. Under Act 23, if the audits are not received by the SCDE by January 30, then the State Superintendent must declare a fiscal caution.

The district is under investigation.

A declaration of fiscal watch is required whenever a district is the subject of an “ongoing, related investigation” by a state law enforcement or investigatory agency, or a federal law enforcement agency.

What is an “ongoing, related investigation”?

The task force discussed the types of investigations that could be covered by the statute. The task force believes “ongoing” to mean the investigation has not concluded. The task force believes that “related” refers to the subject of Act 23, that is, “fiscal practices and budgetary concerns.” Examples of these types of investigations include, but are not limited to, those concerning allegations of:

- fraud
- unethical fiscal practices
- misappropriation of funds
- embezzlement or other financial irregularities
- Forgery, falsification, or alteration of documents and/or information (e.g., checks, bank drafts, deposit tickets, promissory notes, travel expense reports, contractor agreements, purchase orders, electronic files, etc.) with the intent to obtain an unauthorized financial benefit;
- Deviations from standard procedures in the handling or reporting of money, cash equivalents or financial transactions, including procurement card with the intent to obtain an unauthorized financial benefit;

What is a “law enforcement agency”?

Although the statute requires a fiscal watch for investigation by either a state law enforcement agency or other state investigatory agency, as to federal entities it refers only to law enforcement agencies. The task force reviewed the types of federal investigations that would warrant a fiscal watch. These may include investigations by:

- The Federal Bureau of Investigation
- The United States Treasury
- The United States Secret Service
- The Office of the Inspector General of any federal agency

The United States Department of Justice

Financial records not auditable.

In some instances, the SCDE has received December 1 audits from districts in which the auditing firm has indicated it is not issuing an opinion on the financials because of the state of the financial records. In the past, there was no clear directive on what action the State Superintendent or the SCDE should take. Proviso 1A.12 of 2016 and 2017 does provide a general directive that the State Superintendent could declare a state of emergency “if the district is classified as being in ‘high risk’ status financially, or for financial mismanagement resulting in a deficit.” Under Act 23, this statement in an audit report will require declaration of financial caution.

Aggregate reported issues significantly affects financial condition.

If the SCDE identifies any of the following, which, in its opinion, in the aggregate have a significant effect on the financial condition of the district, then the State Superintendent shall declare a fiscal watch.

- significant deficiencies,
- material weaknesses,
- direct and material legal noncompliance or
- management letter comments

Examples:

- Conditions leading to a declaration of “high risk” under the SCDE’s Uniform Grant Guidance federal process.

If a district meets the criteria in subsection above, the State Superintendent shall declare a fiscal watch only after prior notification with the district board chairman and district superintendent, who must begin immediate consultation with the chief financial officer of the district. The watch notification must include steps the district may take to avoid the declaration

*The Superintendent **may** declare a fiscal watch.*

By statute, after prior written notification with the district board chairman and superintendent, 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, or has not made progress in increasing the general reserve fund balance in accordance with department guidelines to meet at least one month of general fund operating expenditures within the previous two completed fiscal years.

Not operating under GAAP

While all districts should operate under generally accepted accounting principles (GAAP), not every failure to do so warrants declaration of a fiscal watch.

Maintaining general reserve funds

The legislature was concerned that school districts plan for variations in cash flow and state funding. To that end, the statute includes the requirement quoted above that a district maintain a “general reserve fund of at least one month of general fund operating expenditures of the previous two completed fiscal years or has not made progress in increasing the general reserve fund balance in accordance with department guidelines to meet at least one month of general fund operating expenditures within the previous two completed fiscal years.”

The task force discussed the meaning of this language and determined that the following will be calculated:

- A) Determine the district’s unrestricted fund balance for prior fiscal year 1.
- B) Calculate the general fund operating expenditures from prior fiscal year 1 and also calculate the general fund operating expenditures from prior fiscal year 2. General fund operating expenditures include instructional, support services, and community services expenditures. General fund operating expenditures do not consist of debt service and capital fund expenditures. General fund operating expenditures also do not include interfund transfers. Average the general fund operating expenditures for prior fiscal year 1 and prior fiscal year 2.
- C) Multiply the prior fiscal year 1 and prior fiscal year 2 average general fund operating expenditures by 8.33% (1 month).
- D) If the unrestricted fund balance in Part A is greater than the amount calculated in Part C, the District meets the requirement. If the unrestricted fund balance in Part A is less than the amount calculated in part 2, the District does not meet the requirement and a finding should be noted.
- E) A district demonstrates progress if the district shows an incremental increase in fund balance from the previous year as it relates to the increase in revenue received.

The SCDE has added to its guide for auditors beginning in fiscal year 2016-17 a requirement that the auditors perform this test to determine whether the district dropped below the required general reserve fund minimum at the end of the audit period.

Fiscal Caution

The second, intermediate level of concern is a “fiscal caution.”

The State Superintendent may declare a fiscal caution.

The State Superintendent may declare a “fiscal caution” whenever conditions are observed or reported “that could result in a declaration of fiscal emergency.” The statute contemplates two

methods by which this could occur: (a) from review of the district's auditors; or (b) from reports by the district's auditors. This provision does require consultation with the local school board prior to declaration of the fiscal caution:

- (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 sub item (a).
- (c) The notice must be sent to the board chairman and district superintendent who must begin immediate consultation with the district Chief Financial Officer. The notice must include, but not be limited to, an explanation of the circumstances that led to the decision and if the school district may take any steps to avoid the declaration.

Section 59-20-90(D)(1)

Conditions That Could Result in a Fiscal Caution being elevated to a Fiscal Emergency

The task force determined that the following are examples of conditions or practices that could result in a fiscal emergency, and therefore might warrant declaration of a fiscal caution:

Lack of relevant, reliable, and consistent financial information
Identification of weak internal controls
Repeated control deficiencies or compliance findings
Opinion other than unmodified on the financial statements
Unbudgeted multi-year deficit spending

The State Superintendent shall declare a fiscal caution.

Act 23 requires that the State Superintendent declare a fiscal caution in these circumstances:

- (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 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 or has not made progress in increasing the

general reserve fund balance in accordance with department guidelines to meet at least one month of general fund operating expenditures within the previous two completed fiscal years;

- (d) an outside, independent auditing firm declares that a school district's financial records are unauditable;
 - (e) 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
 - (f) there is an ongoing investigation being conducted by any federal or state agency, law enforcement or otherwise, related to the district's finances or local board of trustees.
- (3) The State Superintendent shall declare a school district to be in a state of fiscal caution if 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.

Section 59-20-90(D)(2)(3).

Practices outside of acceptable accounting standards.

While all districts should operate within acceptable accounting standards, not every failure to do so warrants declaration of a fiscal caution. However, departures from generally acceptable accounting standards that result in a material misstatement will generally result in fiscal caution.

Late annual audit.

By law districts must submit audited financial statements to the SCDE no later than December 1 of each year. In some situations, (e.g., catastrophic floods, hurricanes) districts have not been able to complete their audits by that date. Under Act 23, if the audits are not received by the SCDE by January 30, then the State Superintendent must declare a fiscal caution.

Conditions That Could Result in a Fiscal Caution being elevated to a Fiscal Emergency

Lack of relevant, reliable, and consistent financial information
Identification of weak internal controls
Repeated control deficiencies or compliance findings
Opinion other than unmodified on the financial statements
Unbudgeted multi-year deficit spending

Insufficient general reserve fund.

As noted above, the State Superintendent may declare a fiscal watch if the district does not maintain a one month general reserve fund or has not made progress in increasing the general reserve fund balance in accordance with department guidelines to meet at least one month of general fund operating expenditures within the previous two completed fiscal years; In this

section the State Superintendent must declare a fiscal caution if the SCDE's review of the audit leads to the conclusion that the reserve fund is not being maintained.

The task force discussed the meaning of this language and determined that the following will be tested to determine if the reserve fund is not being maintained:

- A) Determine the district's unrestricted fund balance for prior fiscal year 1.
- B) Calculate the general fund operating expenditures for prior fiscal year 1. General fund operating expenditures include instructional, support services, and community services expenditures. General fund operating expenditures do not consist of debt service and capital fund expenditures. General fund operating expenditures also do not include interfund transfers.
- C) Multiply the general fund operating expenditures for prior fiscal year 1 by 8.33% (1 month)
- D) If the unrestricted fund balance in part A is greater than the amount calculated in Part 2, the District meets the requirement based on this test. If the unrestricted fund balance in Part A is less than the amount calculated in part 2, the District does not meet the requirement and a finding should be noted.
- E) A district demonstrates progress if the district shows an incremental increase in fund balance from the previous year as it relates to the increase in revenue received.

The SCDE has added to its guide for auditors beginning in fiscal year 2016-17 a requirement that the auditors perform this test to determine whether the district dropped below the required general reserve fund minimum at the end of the audit period.

Financial records not auditable.

In some instances, the SCDE has received December 1 audits from districts in which the auditing firm has indicated it is not issuing an opinion on the financials because of the state of the financial records. In the past, there was no clear directive on what action the State Superintendent or the SCDE should take. Proviso 1A.12 of 2016 and 2017 does provide a general directive that the State Superintendent could declare a state of emergency "if the district is classified as being in 'high risk' status financially, or for financial mismanagement resulting in a deficit." Under Act 23, this statement in an audit report will require declaration of financial caution.

Aggregate reported issues significantly affects financial condition.

If the SCDE identifies any of the following, which, in its opinion, in the aggregate have a significant effect on the financial condition of the district, then the State Superintendent shall declare a fiscal caution.

- significant deficiencies,
- material weaknesses,
- direct and material legal noncompliance or
- management letter comments

Examples:

- Conditions leading to a declaration of “high risk” under the SCDE’s Uniform Grant Guidance federal process.

The district is under investigation.

A declaration of fiscal caution is required whenever 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.

Ongoing investigation into district finances or its board of trustees

This provision is similar to the one above concerning declaration of a fiscal watch; however, it is an investigation by any state or federal agency (not just law enforcement) and it is specific to the district’s finances or board (not just “related”).

What is an “ongoing, related investigation”?

The task force discussed the types of investigations that could be covered by the statute. The task force believes “ongoing” to mean the investigation has not concluded. The task force believes that “related” refers to the subject of Act 23, that is, “fiscal practices and budgetary concerns.” Examples of these types of investigations include, but are not limited to, those concerning allegations of:

- fraud
- unethical fiscal practices
- misappropriation of funds
- embezzlement or other financial irregularities
- Forgery, falsification, or alteration of documents and/or information (e.g., checks, bank drafts, deposit tickets, promissory notes, travel expense reports, contractor agreements, purchase orders, electronic files, etc.) with the intent to obtain an unauthorized financial benefit;
- Deviations from standard procedures in the handling or reporting of money, cash equivalents or financial transactions, including procurement card with the intent to obtain an unauthorized financial benefit;

What is a “law enforcement agency”?

The statute requires a fiscal caution for investigation by either federal or state agency, law enforcement or otherwise. The task force reviewed the types of investigations that would warrant a fiscal caution. These may include investigations by:

- The Federal Bureau of Investigation
- The United States Treasury

- The United States Secret Service
- The Office of the Inspector General of any federal agency
- The South Carolina Office of Inspector General

Fiscal Emergency

The fiscal emergency is the “third and most severe” type of fiscal declaration. Section 59-20-90(E).

The State Superintendent shall declare a fiscal emergency.

The State Superintendent is required to declare a fiscal emergency in five situations.

Failure to submit an acceptable fiscal caution recovery plan.

- (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;

Failure to comply with a fiscal caution recovery plan.

- (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;

Risk of debt default.

- (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;

Three fiscal years of fiscal watch or caution.

- (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

Necessary to correct fiscal problems.

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

The State Superintendent may recommend taking over the district's financial operations.

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.

Section 59-20-90(E)(7)

Procedure Before Declaration

The “fiscal emergency” provision does not require the State Superintendent to take any actions before issuing the declaration.ⁱ

Prior Written Notice

The “fiscal watch” provisions require prior written notice that the State Superintendent shall declare a fiscal watch only after prior notification with the district board chairman and district superintendent, who must begin immediate consultation with the chief financial officer of the district. The watch notification must include steps the district may take to avoid the declaration.

The “fiscal caution” provisions require prior written notice of ten business days. The notice must be sent to the board chairman and district superintendent who must begin immediate consultation with the district Chief Financial Officer. The notice must include, but not be limited to, an explanation of the circumstances that led to the decision and if the school district may take any steps to avoid the declaration.

Written Proposal Before Declaration

The “fiscal watch” and “fiscal caution” sections require the State Superintendent to request a written proposal from the district before the declaration. The written proposal is due within ten business days of the proposed declaration effective date. The proposal must address correcting the conditions that are leading to the declaration, and preventing further fiscal difficulties.

Procedure After Declaration

Whenever the State Superintendent declares a level of fiscal concern, the district has deadlines within which to act.

Financial Recovery Plan

Fiscal Watch. The district board must submit a financial recovery plan to the SCDE within sixty days. The State Superintendent then has thirty days from receipt to evaluate the plan, and either accept it or reject it with recommended modifications.

Fiscal Caution. After the declaration, the district has sixty days to provide a written proposal to discontinue or correct the conditions that led declaration of fiscal caution. At the district's request, the SCDE may extend that deadline one time for an additional thirty days only.

Fiscal Emergency. The district has sixty days to provide a written proposal to discontinue or correct the conditions that led to declaration of fiscal emergency. At the district's request, the SCDE may extend that deadline one time for an additional thirty days only.

Appeal to the State Board

Fiscal Watch. The district board may appeal to the SBE within ten days of when a fiscal watch is declared; however, the district must continue working with the SCDE pending the appeal. The SBE must hold a hearing on the appeal within thirty days after the filing of the appeal.

Fiscal Caution. The district board may appeal to the SBE within ten days of when a fiscal caution is declared; however, the district must continue working with the SCDE pending the appeal. The SBE must hold a hearing on the appeal within thirty days after the filing of the appeal.

Fiscal Emergency. The district board may appeal to the SBE within ten days of when a fiscal emergency is declared; however, the district must continue working with the SCDE pending the appeal. The SBE must hold a hearing on the appeal within thirty days after the filing of the appeal.

Technical Assistance

The SCDE is to provide technical assistance after a declaration of a level of fiscal concern.

- Fiscal watch: "The department shall provide technical assistance."
- Fiscal caution and emergency: The department shall "provide technical assistance in implementing proposals and make recommendations concerning" the board's recovery plan.

Inspect the District

The SCDE is required to visit and inspect districts under fiscal caution and fiscal emergency.

Performance Audit

The SCDE may require a performance audit of a district under fiscal caution. The audit is initially conducted at the SCDE's expense, but the SCDE may demand full reimbursement from

the district. The district shall provide the reimbursement within sixty days after the request is made.

Annual Updates

The district board must submit an updated plan annually until released from a fiscal watch. Section 59-20-90(C)(3)(f).

The fiscal caution subsections do not reference an annual update. Section 59-20-90(D). However, one of the conditions for declaration of a fiscal emergency is failure “to submit an updated recovery plan when required.” Section 59-20-90(E)(1).

Take Over District Financial Operations

If the State Superintendent finds a district [in fiscal emergency] 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.

Section 59-20-90(E)(7).

Release from Fiscal Concern Status

The district cannot be released in the fiscal year in which the declaration was made. The earliest a district may be released from a level of declaration is the following fiscal year. Section 59-20-90(C)(4) (fiscal watch); -(D)(7) (fiscal caution); -(E)(8) (fiscal emergency). “The State Superintendent shall notify the local board chairman, district superintendent, and chief financial officer of the release” from the declaration. *Id.*

The district may only be released if the SCDE determines that corrective actions “have been or are being successfully implemented.” *Id.*

Note that even if a district is released, three fiscal years of fiscal concern declaration out of five fiscal years require a fiscal emergency status.

State Agencies that are also LEAs

Act 23 requires the State Auditor to adopt the program developed by the SCDE, and to apply it to state agencies that are also local education agencies, with certain exceptions. Section 59-20-95. The State Auditor is to promulgate regulations related to these provisions.

Appendix A

School district fiscal practices of concern, actions authorized

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

(i) upon review of the district's annual audit, the department determines financial practices occurring outside of acceptable accounting standards exist;

(ii) the district submits an annual audit more than sixty days after the December first deadline provided in Section 59-17-100;

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

(iv) an outside, independent auditing firm declares that a school district's financial records are unauditable; or

(v) 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, or could have, a significant effect on the financial condition of the district.

(b) If a district meets the criteria in subsection (A), the State Superintendent shall declare a fiscal watch only after prior notification with the district board chairman and district superintendent, who must begin immediate consultation with the chief financial officer of the district. The watch notification must include steps the district may take to avoid the declaration.

(2) After prior written notification with the district board chairman and superintendent, the State Superintendent of Education may declare fiscal watch if:

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(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, or has not made progress in increasing the general reserve fund balance in accordance with department guidelines to meet at least one month of general fund operating expenditures within 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 after the declaration and the state board must hold a hearing on the appeal within thirty days after the filing of the appeal or at the next regularly scheduled State Board of Education meeting, whichever is later. 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 consultation with the local board chairman and superintendent, the State

Superintendent may declare fiscal caution if the district was previously on fiscal watch and 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 between the department and the school district constitutes the consultation with the local board chairman required in sub item (a).

(c) The notice must be sent to the board chairman and district superintendent who must begin immediate consultation with the district Chief Financial Officer. The notice must include, but not be limited to, an explanation of the circumstances that led to the decision and if the school district may take any steps to avoid the declaration.

(2) The State Superintendent shall declare a school district to be in a state of fiscal caution if the district previously was on fiscal watch and if:

(a) upon review of the district's annual audit or otherwise with notice from an independent, outside accounting firm, 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 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 or has not made progress in increasing the general reserve fund balance in accordance with department guidelines to meet at least one month of general fund operating expenditures within the previous two completed fiscal years;

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

(e) 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

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

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

(4) The State Superintendent shall notify the district in writing that a declaration of fiscal caution for the district is pending, the conditions leading to the declaration, and shall request a written recovery plan for correcting the conditions that led to fiscal caution and for preventing further fiscal difficulties that could lead to fiscal caution. This notification must be given within at least ten business days, excluding district holidays that are five days or more, 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.

(5) 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 the board's recovery plan; and

(iii) make recommendations concerning the board's recovery plan;

(b) the department may order a performance audit of the district at the department's expense and later may 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 recovery plans 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 recovery plan, 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.

(6) If the State Superintendent finds a district has not made reasonable recovery plans 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.

(7) 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.

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

(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 a total of three fiscal years within the previous five fiscal years; 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 the board's recovery plans; and

(iii) make recommendations concerning the board recovery plans.

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

(i) be required to provide written recovery plans 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 recovery plan, 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 recovery plans 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.

(9) The district board of trustees may appeal a declaration of a fiscal emergency to the State Board of Education within ten days after the declaration, and the state board shall hold a hearing on the appeal within thirty days after the filing of the appeal or at the next regularly scheduled state board meeting, whichever is later. However, the district shall continue to work with the department in the manner provided by this subsection when a fiscal emergency is declared pending determination of the appeal.

(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, any institution of higher education that authorizes charter schools, or any entity that registers to become a charter school sponsor.

(H) The requirements to place a district on fiscal watch, caution, or emergency must be suspended for the two fiscal years following any state-implemented midyear budget cut, if:

(1) the district fails to maintain a general reserve fund of at least one month of general fund operating expenditures;

(2) the State continues to fund at the current base student cost;

(3) the State reduces the base student cost below the appropriation provided in the previous fiscal year; or

(4) the State increases the base student cost appropriation provided in the previous fiscal year but the increase is less than the previous fiscal year's appropriation as adjusted by the Consumer Price Index.

(I) A school district or charter sponsor involved in restructuring or the transfer of a school under its governance to another district or charter sponsor shall:

(1) deliver complete replicas of the student information system to the State Department of Education no later than June thirtieth of the year of transfer; and

(2) maintain updated assessment records and deliver these updated assessments records to the department, or the district or charter sponsor where students are currently assigned, no later than July thirtieth of the year of transfer.

HISTORY: 2017 Act No. 23 (H.3221), Section 1.A, eff May 9, 2017; 2018 Act No. 230 (H.5042), Section 1, eff May 18, 2018.

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."

Effect of Amendment

2018 Act No. 230, Section 1, rewrote the section, revising the conditions which prompt declarations of various escalating levels of fiscal and budgetary concern, providing appeals processes from such declarations, applying the provisions to institutions of higher education that authorize charter schools, and revising related definitions.

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."
