STATE OF NEW YORK

7312

IN SENATE

January 17, 2020

Introduced by Sen. BROOKS -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to repeal a chapter of the laws of 2019, authorizing the commissioner of education, in consultation with the comptroller to appoint a monitor to oversee the Wyandanch union free school district and establishing the powers and duties of the monitor, as proposed in legislative bills numbers S.6588-A and A.8422-A; authorizing the commissioner of education to appoint a monitor to oversee the Wyandanch union free school district and establishing the powers and duties of such monitor; authorizing deficit financing and an advance of aid payments for the Wyandanch union free school district; and providing for the repeal of certain provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. A chapter of the laws of 2019, authorizing the commissioner of education, in consultation with the comptroller to appoint a monitor to oversee the Wyandanch union free school district and establishing the powers and duties of the monitor, as proposed in legislative bills numbers S.6588-A and A.8422-A is REPEALED.

§ 2. Definitions. As used in this act:

(a) "Commissioner" shall mean the commissioner of education;

(b) "Department" shall mean the state education department;

(c) "Board of education" or "board" shall mean the board of education of the Wyandanch union free school district;

(d) "School district" or "district" shall mean the Wyandanch union free school district;

(e) "Superintendent" shall mean the superintendent of the Wyandanch union free school district; and

(f) "Relatives" shall mean a Wyandanch union free school district board member's spouse, domestic partner, child, stepchild, stepparent, or any person who is a direct descendant of the grandparents of a current board member or a board member's spouse or domestic partner.

§ 3. Appointment of a monitor. The commissioner shall appoint one monitor to provide oversight, guidance and technical assistance related

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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to the fiscal policies, practices, programs and decisions of the school district, the board of education and the superintendent.

1. The monitor, to the extent practicable, shall have experience in school district finances and one or more of the following areas:

(a) elementary and secondary education;

(b) the operation of school districts in New York;

(c) educating students with disabilities; and

(d) educating English language learners.

2. The monitor shall be a non-voting ex-officio member of the board of education. The monitor shall be an individual who is not a resident, employee of the school district or relative of a board member of the school district at the time of his or her appointment.

3. The reasonable and necessary expenses incurred by the monitor while performing his or her official duties shall be paid by the school district. Notwithstanding any other provision of law, the monitor shall be entitled to defense and indemnification by the school district to the same extent as a school district employee.

§ 4. Meetings. 1. The monitor shall be entitled to attend all meetings of the board, including executive sessions; provided however, such monitor shall not be considered for purposes of establishing a quorum of the board. The school district shall fully cooperate with the monitor including, but not limited to, providing such monitor with access to any necessary documents and records of the district including access to electronic information systems, databases and planning documents, consistent with all applicable state and federal statutes including, but not limited to, Family Education Rights and Privacy Act (FERPA) (20 U.S.C. §1232g) and section 2-d of the education law.

2. The board, in consultation with the monitor, shall adopt a conflict of interest policy that complies with all existing applicable laws, rules and regulations that ensures its board members and administration act in the school district's best interest and comply with applicable legal requirements. The conflict of interest policy shall include, but not be limited to:

(a) a definition of the circumstances that constitute a conflict of interest;

(b) procedures for disclosing a conflict of interest to the board;

(c) a requirement that the person with the conflict of interest not be present at or participate in board deliberations or votes on the matter giving rise to such conflict, provided that nothing in this subdivision shall prohibit the board from requesting that the person with the conflict of interest present information as background or answer questions at a board meeting prior to the commencement of deliberations or voting relating thereto;

(d) a prohibition against any attempt by the person with the conflict to influence improperly the deliberation or voting on the matter giving rise to such conflict; and

(e) a requirement that the existence and resolution of the conflict be documented in the board's records, including in the minutes of any meeting at which the conflict was discussed or voted upon.

§ 5. Public hearings. 1. The monitor shall schedule two public hearings to be held within sixty days of his or her appointment, which shall allow public comment from the district's residents, students, employees, parents, board members and administration.

(a) The first hearing shall take public comment on existing statutory and regulatory authority of the commissioner, the department and the board of regents regarding school district governance and intervention

under applicable state law and regulations, including but not limited to, section 306 of the education law.

(b) The second hearing shall take public comment on the fiscal performance of the district.

2. The board of education and the monitor shall consider these public comments when developing the financial plan under this act.

§ 6. Financial plan. 1. No later than November first, two thousand twenty, the board of education and the monitor shall develop a proposed financial plan for the two thousand twenty--two thousand twenty-one school year and the four subsequent school years. The financial plan shall ensure that annual aggregate operating expenses shall not exceed annual aggregate operating revenues for such school year and that the major operating funds of the district be balanced in accordance with generally accepted accounting principles. The financial plan shall include statements of all estimated revenues, expenditures, and cash flow projections of the district.

2. If the board of education and the monitor agree on all the elements of the proposed financial plan, the board of education shall conduct a public hearing on the plan and consider the input of the community. The proposed financial plan shall be made public on the district's website at least three business days before such public hearing. Once the proposed financial plan has been approved by the board of education, such plan shall be submitted by the monitor to the commissioner for approval and shall be deemed approved for the purposes of this act.

3. If the board of education and the monitor do not agree on all the elements of the proposed financial plan, the board of education shall conduct a public hearing on the proposed plan that details the elements of disagreement between the monitor and the board, including documented justification for such disagreements and any requested amendments from the monitor. The proposed financial plan, elements of disagreement, and requested amendments shall be made public on the district's website at least three business days before such public hearing. After considering the input of the community, the board may alter the proposed financial plan and the monitor may alter his or her requested amendments, and the monitor shall submit the proposed financial plan, his or her amendments to the plan, and documentation providing justification for such disagreements and amendments to the commissioner no later than December first, two thousand twenty. By January fifteenth, two thousand twenty-one, the commissioner shall approve the proposed plan with any of the monitor's proposed amendments, or make other modifications, he or she deems appropriate. The board of education shall provide the commissioner with any information he or she requests to approve such plan within three business days of such request. Upon the approval of the commissioner, the financial plan shall be deemed approved for purposes of this act.

§ 7. Fiscal and operational oversight. 1. The board of education shall annually submit the school district's proposed budget for the next succeeding school year to the monitor no later than March first prior to the school district's annual budget vote. The monitor shall review the proposed budget to ensure that it is balanced within the context of revenue and expenditure estimates and mandated programs. The monitor shall also review the proposed budget to ensure that it, to the greatest extent possible, is consistent with the district financial plan developed and approved pursuant to this act. The monitor shall present his or her findings to the board of education and the commissioner no later than forty-five days prior to the date scheduled for the school

district's annual budget vote. The commissioner shall require the board of education to make amendments to the proposed budget consistent with any recommendations made by the monitor if the commissioner determines such amendments are necessary to comply with the financial plan under this act. The school district shall make available on the district's website: the initial proposed budget, the monitor's findings, and the final proposed budget at least seven days prior to the date of the school district's budget hearing. In the event of a revote, the board of education, in conjunction with the monitor, shall develop and submit the school district's proposed budget for the next succeeding school year to the commissioner no later than seven days prior to the budget hearing. The board of education shall provide the commissioner with any information he or she requests in order to make a determination pursuant to this subdivision within three business days of such request.

2. The district shall provide quarterly reports to the monitor and annual reports to the commissioner and board of regents on the fiscal and operational status of the school district. In addition, the monitor shall provide semi-annual reports to the commissioner, board of regents, the governor, the temporary president of the senate, and the speaker of the assembly on the fiscal and operational status of the school district. Such semi-annual report shall include all the contracts that the district entered into throughout the year.

3. The monitor shall have the authority to disapprove travel outside the state paid for by the district.

4. The monitor shall work with the district's shared decision-making committee as defined in 8 NYCRR Part 100.11 in developing the financial plan, district goals, implementation of district priorities and budgetary recommendations.

5. The monitor shall assist in resolving any disputes and conflicts, including but not limited to, those between the superintendent and the board of education and among the members of the board of education.

6. The monitor may recommend, and the board shall consider by vote of a resolution at the next scheduled meeting of the board, cost saving measures including, but not limited to, shared service agreements.

§ 8. The commissioner may overrule any decision of the monitor, except for collective bargaining agreements negotiated in accordance with article 14 of the civil service law, if he or she deems that it is not aligned with the financial plan or the school district's budget.

§ 9. The monitor may notify the board and the commissioner in writing when he or she deems the district is violating an element of the financial plan in this act. Within twenty days, the commissioner shall determine whether the district is in violation of any of the elements of the plan highlighted by the monitor and shall order the district to comply immediately with the plan and remedy any such violation. The school district shall suspend all actions related to the potential violation of the financial plan until the commissioner issues a determination.

§ 10. Nothing herein shall be construed to abrogate the duties and responsibilities of the school district consistent with applicable state law and regulations.

§ 11. Deficit financing. (a) The school district is hereby authorized to issue serial bonds, subject to the provisions of section 10.10 of the local finance law, on or before June thirtieth, two thousand twenty, in an aggregate principal amount not to exceed three million one hundred thousand dollars ($3,100,000), for the specific object or purpose of liquidating actual deficits in its general fund at the close of the fiscal year ending June thirtieth, two thousand nineteen as certified by

the state comptroller. In anticipation of the issuance and sale of such serial bonds, bond anticipation notes are hereby authorized to be issued.

(b) The specific object or purpose of this issuance is hereby declared to be a public purpose which the school district is hereby authorized to accomplish and the period of probable usefulness thereof is hereby authorized to be ten years.

(c) Notwithstanding the provisions of any other law, general, special or local, the board of education is hereby authorized to levy a tax to be collected in annual installments sufficient to pay the principal of and interest on said bonds and bond anticipation notes and to adopt a bond resolution authorizing the serial bonds authorized to be issued pursuant to this section.

(d) Amounts provided from the proceeds of obligations issued pursuant to this section in excess of the amount of the deficit as confirmed by the state comptroller shall be accounted for in the same manner as prescribed by the state comptroller pursuant to section 36 of the general municipal law for real property taxes levied for a planned balance pursuant to subdivision 21 of section 2021 of the education law.

§ 12. Lottery advance. (a) Notwithstanding any other provisions of law, for aid payable in the school years two thousand nineteen--two thousand twenty through two thousand forty-eight--two thousand forty-nine upon application to the commissioner submitted not sooner than the second Monday in June of the school year in which such aid is payable and not later than the Friday following the third Monday in June of the school year in which such aid is payable, or ten days after the effective date of this act, whichever shall be later, the school district shall be eligible to receive an apportionment pursuant to this act in an amount equal to the product of up to one million dollars ($1,000,000) and the quotient of the positive difference of thirty minus the number of school years elapsed since the two thousand nineteen--two thousand twenty school year divided by thirty. Funds apportioned pursuant to this subdivision shall be used for services and expenses of the school district and shall be applied to support of its educational programs and any liability incurred by such school district in carrying out its functions and responsibilities under the education law.

(b) The claim for an apportionment to be paid to the school district pursuant to subdivision (a) of this section shall be submitted to the commissioner on a form prescribed for such purpose, and shall be payable upon determination by such commissioner that the form has been submitted as prescribed and that the school district has complied with the reporting requirements of this act. For each school year in which application is made pursuant to subdivision (a) of this section, such approved amount shall be payable on or before June thirtieth of such school year upon the audit and warrant of the state comptroller on vouchers certified or approved by the commissioner in the manner prescribed by law from moneys in the state lottery fund appropriated for general support of public schools and from the general fund to the extent that the amount paid to the school district pursuant to this subdivision and subdivision (a) of this section exceeds the amount of the lottery apportionment, if any, due such school district pursuant to subparagraph (2) of paragraph a of subdivision 1 of section 3609-a of the education law on or before September first of such school year.

(c) Notwithstanding the provisions of section 3609-a of the education law, an amount equal to the amount paid to the school district during the base year pursuant to subdivisions (a) and (b) of this section shall

first be deducted from payments due during the current school year pursuant to subparagraphs (1), (2), (3), (4) and (5) of paragraph a of subdivision 1 of section 3609-a of the education law in the following order: the lottery apportionment payable pursuant to subparagraph (2) of such paragraph followed by the fixed fall payments payable pursuant to subparagraph (4) of such paragraph, and any remainder to be deducted from the individualized payments due to the district pursuant to paragraph b of such subdivision shall be deducted on a chronological basis starting with the earliest payment due to the district.

(d) Notwithstanding any other provisions of law, the sum of payments made to the school district during the base year pursuant to subdivisions (a) and (b) of this section plus payments made to such school district during the current year pursuant to section 3609-a of the education law shall be deemed to truly represent all aids paid to such school district during the current school year pursuant to such section 3609-a for the purposes of computing any adjustments to such aids that may occur in a subsequent school year.

§ 13. This act shall take effect immediately, provided however:

Section one of this act shall take effect on the same date as a chapter of the laws of 2019, authorizing the commissioner of education, in consultation with the comptroller to appoint a monitor to oversee the Wyandanch union free school district and establishing the powers and duties of the monitor, as proposed in legislative bills numbers S.6588-A and A.8422-A, takes effect.

Sections three through ten of this act shall expire and be deemed repealed June 30, 2025.

Section eleven shall expire and be deemed repealed June 30 of the last fiscal year during which serial bonds or bonds issued to refund such serial bonds that are outstanding pursuant to such section of this act, provided that the superintendent of the Wyandanch union free school district shall notify the legislative bill drafting commission upon such occurrence in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law.

Sections two and twelve of this act shall expire and be deemed repealed June 30, 2049.