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## ***Bill Analysis***

*Legislative Service Commission*

### **H.B. 486**

123rd General Assembly  
(As Introduced)

**Reps. Ford, Sutton, Bender, R. Miller, Metelsky, Sullivan, Hartnett, Roberts, Sulzer, Barrett, Boyd, Allen, Ogg, D. Miller, Pringle, Redfern, Wilson, Beatty, Jones, Patton, Barnes, Smith, Logan, Britton, Sykes, Distel, Verich, Gooding, Hartley**

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#### **BILL SUMMARY**

- Adds requirements for the operation and management of public community schools (popularly called "charter" schools).
- Adds requirements for the operation and management of private schools that enroll students under the Pilot Project Scholarship Program operating in Cleveland (popularly called the "voucher" program).
- Disqualifies for-profit and single-gender private schools from participating in the pilot scholarship program.
- Requires private schools participating in the pilot scholarship program to meet the standards for chartered nonpublic schools.
- Eliminates the ability of private schools participating in the pilot scholarship program to deny admission to "separately educated handicapped students."
- Limits sponsorship of start-up community schools to either the board of the school district where the school is located or the State Board of Education.
- Requires start-up schools to first seek sponsorship from the district board, and permits a district board to appeal to a court when the State Board sponsors a school that the district had declined as educationally or fiscally unsound.

- Makes permanent the cap on state-sponsored "start-up" community schools outside Lucas County until the General Assembly reviews two LOEO studies and decides to lift the cap.
- Makes "conversion" community schools eligible for state community school grants currently available only for "start-up" community schools.

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**CONTENT AND OPERATION**

The bill proposes changes in the laws governing (1) public community schools and (2) private schools that admit scholarship students under the Pilot Project Scholarship Program. Specifically, it adds new requirements for both community schools and registered private schools that are similar to some requirements that currently apply to regular public schools.

**Background**

**Community schools**

Established under Revised Code Chapter 3314., "community schools" (popularly called "charter schools") are public schools that operate independently of any school district. As public schools, they by law must be nonprofit and nonsectarian. They often serve a limited number of grades or a particular educational purpose, and they are exempt from many state laws that apply to school districts, including curriculum requirements. In exchange for this statutory regulatory relief, community schools are regulated through a contract with a "sponsor." The sponsor is a public entity that negotiates a set of performance standards the community school is to meet and oversees the compliance of the

school.<sup>1</sup> Community schools can be closed by a sponsor for failing to meet academic or fiscal standards specified in the law or contract. Moreover, they are not altogether statutorily unregulated, as certain provisions of law do apply to community schools, including the state proficiency tests. These specific laws are enumerated in the **COMMENT** section at the end of this analysis.

There are two possible types of community schools: "start-up" schools, and "conversion" schools. Regardless of type, each community school is governed by its own "governing authority," which enters into a contract with its public "sponsor." A conversion school is an existing public school converted to a community school with the consent of the board of the school district in which it is located. Conversion schools may be established anywhere in the state. A start-up school, on the other hand, is a new school and may be established only in a "challenged school district," which is any of the following:

(1) The "Big-8" school districts, which are the Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo, and Youngstown city school districts;

(2) The other 13 major urban school districts, which are the Cleveland Heights, East Cleveland, Elyria, Euclid, Hamilton, Lima, Lorain, Mansfield, Middletown, Parma, South-Western, Springfield, and Warren city school districts;

(3) The seven school districts in Lucas County other than Toledo (which is already eligible because it is a Big-8 district) that were part of the former Lucas County community school pilot project;<sup>2</sup> and

(4) Any school district that is declared by the Department of Education to be in a state of academic emergency because it failed to meet at least nine (33%) of the 27 state education performance standards.<sup>3</sup>

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<sup>1</sup> *The sponsor of a conversion school can only be the board of the school district where the school is to be located. The sponsor of a start-up school may be the board of the school district where the school is to be located, the board of another school district in the same county, or the State Board of Education. In Lucas County, where the former pilot project operated, start-up schools also may be sponsored by the Lucas County Educational Service Center or an authority designated by the University of Toledo's Board of Trustees.*

<sup>2</sup> *Am. Sub. H.B. 215 of the 122nd General Assembly, the 1997-1999 biennial budget act, created a temporary community school pilot project in Lucas County that allowed start-up and conversion schools. The 1999-2001 biennial education budget act, Am. Sub. H.B. 282 of the 123rd General Assembly, eliminated the Lucas County pilot project, placed all of its community schools under R.C. Chapter 3314., and permanently allowed establishment of new start-up community schools in the school districts in Lucas County.*

Although originally established to serve students who are entitled to attend school in the districts where they are located, current law permits community schools to admit students from other school districts. The schools are primarily funded from money that is deducted from the state aid paid to the school districts where their students otherwise would be attending school. Funding transferred by the state consists of base-cost funding, special education funding, and a share of the district's per pupil DPIA funds.

### **Pilot Project Scholarship Program**

The Pilot Project Scholarship Program, codified in Revised Code sections 3313.974 to 3313.979, provides scholarships and tutorial assistance grants to students residing in any school district that is or has been subject to a federal court order requiring the state Superintendent to supervise and manage the district. Currently, the Cleveland City School District is the only such school district in the state.

The scholarships (popularly called "vouchers") are to be used to pay tuition for selected students to attend either a "registered private school" or a public school in an adjacent school district. A "registered private school" is a nonpublic school located within the boundaries of the pilot school district that has registered with the state Superintendent for participation in the program. Under continuing law, a registered private school must meet state minimum standards for chartered nonpublic schools, but current law, which is changed by the bill, also *permits* the state Superintendent to register "*nonchartered nonpublic schools*."<sup>4</sup> Preference for scholarships must be given to students who are from low-income families, although there is no maximum income limit. In addition, scholarship amounts are partially based on family income.<sup>5</sup>

Recently, the General Assembly repealed and reenacted the program in response to the Ohio Supreme Court's 1999 decision in *Simmons-Harris v. Goff*.<sup>6</sup> In that decision, the Court invalidated the program on the grounds that its enactment in Am. Sub. H.B. 117 of the 121st General Assembly, the 1995-1997

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<sup>3</sup> R.C. 3314.02(A)(3), (4), and (6) and (C)(1).

<sup>4</sup> R.C. 3313.976(A)(3).

<sup>5</sup> See R.C. 3313.978, not in the bill.

<sup>6</sup> 86 Ohio St.3d 1.

biennial budget act, violated the "one-subject rule" of the Ohio Constitution.<sup>7</sup> On December 20, 1999, in a new suit, the U.S. District Court for the Northern District of Ohio issued a summary judgment order invalidating the program on federal constitutional grounds, declaring that the program impermissibly results in governmental advancement of religion because most registered private schools participating in it are parochial schools. The district court, however, permitted continued operation of the program pending the state's appeal to the U.S. Sixth Circuit Court of Appeals.<sup>8</sup> In the 1999-2000 school year, the program awarded scholarships to students in grades K to 6. If permitted to continue, the program eventually will serve students in grades K to 8.

**Requirement that all registered private schools be nonprofit entities**

(R.C. 3313.976(A)(1))

Current law permits private, for-profit schools to participate in the pilot scholarship program. The bill specifies that a registered private school must be "a nonprofit entity."

**Requirement that all registered private schools meet standards for chartered nonpublic schools**

(R.C. 3313.976(A)(3))

Current law requires that a registered private school meet all the minimum standards for chartered nonpublic schools that were established by the State Board of Education by July 1, 1992. But current law also allows the state Superintendent to make exceptions to this requirement and register *non*chartered nonpublic schools. The bill (1) makes registered private schools subject to all *current* minimum standards for chartered nonpublic schools (that is, not merely those in effect on July 1, 1992) and (2) eliminates the Superintendent's discretion to

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<sup>7</sup> Sections 3313.975 to 3313.979 were repealed and reenacted in Am. Sub. H.B. 282 of the 123rd General Assembly, the 1999-2001 biennial budget act for education.

<sup>8</sup> *Simmons-Harris, et al., v. Zelman*, Case No. 1:99 CV 1740. Neither the state nor the federal legal challenges address the tutorial assistance portion of the program. Nor does the bill make any changes in that provision, which essentially requires the state Superintendent to provide grants to students who stay in the pilot project school district's schools to pay for tutors. The Superintendent must provide the same number of tutorial grants as scholarships in a given school year. Consequently, if the scholarship portion of the law remains invalid, the tutorial assistance could automatically cease also. (R.C. 3313.975, not in the bill.)

register *non*chartered nonpublic schools. As under current law, a private school need not actually accept a state charter, just meet the minimum standards for one.<sup>9</sup>

### **Procedures for establishing start-up community schools**

(R.C. 3314.02)

#### **Current law**

Unlike conversion community schools, which can be established anywhere in the state, start-up community schools can be established only in a limited number of "challenged" school districts: the "Big-8" districts, the 13 other major urban districts, districts in a state of academic emergency, and districts in Lucas County. (See above, under "**Background.**") Current law allows any of the following public bodies to sponsor a start-up community school:

(1) The board of education of the school district where the school will be located;

(2) The board of education of a joint vocational school district that has territory in the same county where the district in which the school will be located has most of its territory;

(3) The board of education of any other city, local, or exempted village school district that has territory in the same county where the district in which the school will be located has most of its territory; or

(4) The State Board of Education.

In addition, start-up community schools to be located in Lucas County may seek sponsorship from the Lucas County Educational Service Center or the board of trustees of the University of Toledo or a sponsoring authority designated by the University board.

#### **The bill limits the sponsoring bodies to the district and state boards**

(R.C. 3314.02(A)(1) and (C)(1))

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<sup>9</sup> *Most eligible schools presumably would accept their charters because doing so would qualify their students to also benefit from goods and services purchased with state Auxiliary Services funds and qualify the schools themselves for state reimbursement for some state mandated administrative costs.*

The bill disqualifies all potential sponsors of start-up community schools except for the board of the "school district" where the school is to be located and the State Board of Education. "School district" presumably means the city, local, or exempted village school district where the school is located, and not an overlapping joint vocational school district.

The bill is not clear about what would happen to the contracts of start-up schools currently sponsored by other public bodies, such as the Lucas County Educational Service Center. Presumably they would continue until their expiration dates.

**The bill gives the district boards right of first refusal**

(R.C. 3314.02(C)(1) and (E))

The bill requires the proposers of a start-up school to first seek sponsorship from the district board. After receiving a proposal for a start-up school, a district board has 60 days to either:

- (1) Enter into a preliminary agreement to negotiate a contract with the proposers;
- (2) Notify the proposers that it waives its option to sponsor the school; or
- (3) Notify the proposers that it rejects the proposal as “fiscally or educationally unsound” and does not believe that the community school should be established.

**Proposers may seek State Board sponsorship if district takes no action in 60 days or waives sponsorship**

(R.C. 3314.02(F))

If the district board either fails to act on a proposal within 60 days, decides to waive its sponsorship, or outright rejects the proposal as fiscally or educationally unsound, the proposers of a community school then may seek the State Board's sponsorship. In the case of a district's failure to act or waiver of its sponsorship, a proposer simply makes the proposal to the State Board, which then may decide whether or not to sponsor the school.

**Proposers may appeal to State Board if district outright rejects proposal, and district board may appeal State Board's decision to common pleas court**

(R.C. 3314.02(G))

But when the district board rejects a proposal as “unsound,” the bill characterizes the proposers’ subsequent proposal to the State Board as an appeal of the district board’s finding. In that case, the bill permits the State Board to sponsor the school only if it “finds the district board was erroneous in deciding that the community school should not be established.”

If the State Board makes this finding and elects to sponsor the school, however, the district board may appeal to the common pleas court of the county in which the school is to be located. The district board may appeal on the grounds that the school is not fiscally or educationally sound, and if the court agrees with the district board, the State Board may not sponsor the school. The bill declares the decision of the common pleas court as final, apparently precluding any further appeal by the proposing parties, the district board, or the State Board. The district board must file its appeal within ten days of the State Board’s decision to enter into a preliminary agreement to negotiate a contract with the school.

**Cap on number of start-up community schools sponsored by the State Board**

(R.C. 3314.013)

Am. Sub. H.B. 282 of the 123rd General Assembly, the 1999-2001 biennial budget act for education, limits the total number of contracts that the State Board of Education may have in effect as a sponsor for “start-up” community schools to 75 in FY 2000 and 125 in FY 2001. Although it lifts the caps after FY 2001, the law states the General Assembly’s intention “to consider whether to provide limitations on the number of start-up community schools after July 1, 2001, following its examination of results of studies by the Legislative Office of Education Oversight” (LOEO).<sup>10</sup> The caps do not apply to conversion schools, to start-up schools sponsored by school districts, or to start-up schools in Lucas County.

The bill makes the cap of 125 schools permanent until the General Assembly has reviewed the two LOEO studies (the last of which is due June 1, 2003) and has decided to lift the cap. It revises the statement of the General Assembly’s intent, which becomes “not to permit additional schools unless the results of the studies indicate an overall positive effect on the state’s system of

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<sup>10</sup> *In 1997, the General Assembly directed LOEO to conduct (1) “an evaluation of the assets and liabilities to the state’s system of educational options that result from the establishment of community schools,” and (2) an overall evaluation of community schools. The first is to be completed by December 31, 2002. The second is to be completed by June 1, 2003, with a preliminary report due by June 30, 2001. (Sections 50.39 and 50.52.2 of Am. Sub. H.B. 215 of the 122nd General Assembly.)*

education and beneficial academic results for the individual students enrolled in these schools."

**State high school curriculum**

**Current law: 21 units needed to graduate after 2001 from school district or chartered nonpublic school**

Revised Code section 3313.603 (not in the bill) requires that, beginning with the graduating class of 2002, "every high school" require 21 specific units of coursework in order to graduate.<sup>11</sup> The 21 units required for graduation must be distributed in the following manner: English (4 units); health (1/2 unit); mathematics (3 units); physical education (1/2 unit); science (2 units, 3 units after September 15, 2003); social studies (3 units); and electives (8 units, 7 units after September 15, 2003).<sup>12</sup>

This requirement has been construed by the Department of Education to apply to school districts and chartered nonpublic schools. Currently, neither community schools nor nonchartered nonpublic schools are subject to it. They may develop their own curricula which, in the case of community schools, are subject to their sponsors' approval.

**The bill requires community schools to use the statutory curriculum**

(R.C. 3314.03(A)(11)(d) and (f))

The bill adds section 3313.603 to the list of specific statutes with which community schools must comply and eliminates the law allowing community school students to complete the community school's curriculum, instead of the state curriculum, toward earning their diplomas. (Current law, unchanged by the bill, also requires community school students to pass the ninth grade proficiency tests before receiving their diplomas.)

**Registered private schools subject to state high school curriculum only if they offer high school and are not already chartered**

(R.C. 3313.976(A)(3))

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<sup>11</sup> Students graduating prior to November 15, 2001, need complete only 18 units. (See Ohio Administrative Code § 3301-35-02.)

<sup>12</sup> In addition, the law requires that each student's electives also include at least one unit or two half units from among the areas of business/technology, fine arts, and foreign language.

The bill requires the private schools participating in the pilot scholarship program to comply with all state standards for chartered nonpublic schools. Use of the state high school curriculum is such a standard. But the pilot scholarship program serves only *elementary* school students (grades K to 8). So the only registered private schools that the bill would require to adopt the state high school curriculum would be those that offer both elementary and high school, such as a school that offers all grades, K through 12 (if there are any such private schools). Moreover, any such school would have to change its current curriculum only if it were not yet chartered, as the Department's construction of current law already mandates chartered nonpublic high schools to use the state curriculum.

**Proficiency test administration by registered private schools**

(R.C. 3313.976(A)(3) and (9))

Current law requires community schools to administer the state proficiency tests in the same manner as school districts.<sup>13</sup> For private schools, including those participating in the pilot scholarship program, administration of the tests is mostly optional.<sup>14</sup> But currently students of chartered nonpublic *high* schools must pass the ninth grade proficiency tests to receive their diplomas, so chartered nonpublic high schools must administer the ninth grade tests.<sup>15</sup>

The bill requires registered private schools to administer all proficiency tests to the grade levels they serve and to report the results to the Department of Education. This would include not only the fourth and sixth grade tests in schools that offer those grade levels, but apparently also the twelfth grade tests in any registered private schools that offer high school in addition to elementary grades (if there are any such schools).

**School report cards for registered private schools**

(R.C. 3314.012)

In 1999, the General Assembly enacted a "report card" provision for community schools, under which the Department is required to issue an annual

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<sup>13</sup> R.C. 3314.03(A)(3) and (11)(d).

<sup>14</sup> See R.C. 3301.0711(K), not in the bill.

<sup>15</sup> See R.C. 3313.612, not in the bill. Beginning with the graduating class of 2005, the ninth grade tests will be replaced with tenth grade tests as a diploma requirement. See R.C. 3301.0710(B) and Section 4 of Am. Sub. S.B. 55 of the 122nd General Assembly, neither in the bill.

"report card" for each community school beginning after the school has operated for two full school years. The report card is to be based on the school's academic and financial performance. A committee appointed by the state Superintendent of Public Instruction and the Director of the Legislative Office of Education Oversight must design model report cards for community schools. These models must be appropriate for the various types of community schools, reflecting the variety of grade levels served and the missions of the schools. Initial report card models must be developed by March 31, 2000. The Department must use the models developed by the committee. Report cards must be distributed to the parents of the community school's students, to the board of education of the school district in which the school is located, and to any person who requests one from the Department.

The bill requires the committee to develop appropriate report card models for private registered schools that accept scholarship payments from parents under the pilot scholarship program (called "scholarship schools" in this provision of the bill). These report cards are to be designed and issued in the same manner as those for community schools, but may cover only the grade levels in which scholarship students are enrolled. The first reports cards are not to be issued until a scholarship school has enrolled scholarship students "for two full school years." (Most schools currently admitting scholarship students will have already met this two-year qualification when the bill takes effect.)

**Performance standards and monitoring of community school performance; community school "academic emergency"**

(R.C. 3314.03(A)(3), (4), (11)(g), and (20))

Current law requires that each community school's contract negotiated with its sponsor specify, among other things, (1) the academic goals to be achieved, (2) the method by which progress toward them will be measured, which must include the state proficiency tests, (3) performance standards with which the sponsor will evaluate the school's success, and (4) that the school will make an annual report on its activities, its progress in meeting its goals and standards, and its financial status. The annual report must be made to the sponsor, the parents of its students, and LOEO.

The bill adds further specifications to these current requirements. It requires that the contract list *specific* academic goals *and standards* and indicate the *specific* method for measuring whether the school *has met* them, rather than is "making progress" toward them. It further adds that other methods in addition to the state proficiency tests must be used as a measure of whether the school has met its goals and standards.

The bill further adds a new provision explicitly requiring the sponsor of a community school to monitor the school's rate of success in meeting its contractually prescribed goals and standards of performance. If at the end of a school year, the school does not meet more than 33% of those goals and standards, the school will be considered "to be in a state of academic emergency." The bill does not specify what either the school or the sponsor are to do when this determination is made.<sup>16</sup>

### **Other community school reporting requirements**

(R.C. 3314.014)

Current law requires community schools to participate in the state's education data collection efforts through the Education Management Information System (EMIS) as if it were a school district.<sup>17</sup> Also, as part of the community school funding procedures, each community school must annually report to the Department of Education its number of students, including the number of its students with disabilities who are receiving special education and related services and the category of each student's disability.<sup>18</sup> Community schools must also provide any data that LOEO requires as part of its community school studies.<sup>19</sup>

The bill adds a requirement that each community school annually submit to the Department the following information for the preceding school year:

- (1) Number of students enrolled in each grade level, the percentage of new enrollees, and the percentage of returning students;
- (2) Number of students who withdrew from the school;
- (3) Number of teachers employed to teach in each grade level and the percentage of those employed the previous year;
- (4) Teacher turnover rate; and

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<sup>16</sup> Section 5 of the bill refers to the "contract cancellation" requirement of this provision not applying to contracts already in force. But the provision contains no such requirement.

<sup>17</sup> R.C. 3314.03(A)(11)(d). See R.C. 3301.0714, not in the bill.

<sup>18</sup> See R.C. 3314.08(B), not in the bill.

<sup>19</sup> R.C. 3314.03(A)(11)(g).

- (5) Average daily attendance rate of students in each grade level.

### **Admission provisions**

#### **Community schools**

(R.C. 3314.06)

To the extent space is available, all community schools are required to be open to any students who are in the grade levels they offer and reside in the attendance area they serve. They may not limit admission on the basis of intellectual ability, measures of achievement or aptitude, or athletic ability, but they may limit admission to students who meet a definition of "at risk" spelled out in the contracts with their sponsors or who reside in certain geographic areas. They must comply with all federal and state laws regulating the education of students with disabilities.

In addition to the requirement to be generally open in its admission policies, the law also contains a specific statement that community schools may not discriminate in the admission of students on the basis of race, creed, color, handicapping condition, or sex. The bill adds that community schools also may not discriminate in the *treatment* of students on the basis of all of these classes (except "color" which is eliminated from the list of classes). It also adds the following classes to the nondiscrimination list:

- (1) National origin or ancestry;
- (2) Mental, physical, or emotional handicapping condition;
- (3) Marital status;
- (4) Pregnancy; and
- (5) Sexual orientation.

#### **Registered private schools; disqualification of single-gender schools**

(R.C. 3313.976(A)(4) and 3313.977(B))

Current law provides that registered private schools accepting scholarship students may "not discriminate on the basis of race, religion, or ethnic background." The bill adds the following protected classes:

- (1) Gender;

- (2) Marital status;
- (3) Pregnancy;
- (4) Sexual orientation; and
- (5) "Physical, emotional, or mental handicap or learning disability."

The bill specifically disqualifies single-gender private schools from participating in the program by eliminating current law authorizing them.

**Elimination of registered private schools' ability to deny admission to "separately educated handicapped students"**

(R.C. 3313.977(B))

The bill also eliminates the authorization for registered private schools to deny admission to "separately educated handicapped students." A "separately educated handicapped student" is defined in current law as "a handicapped child who has an individualized education program ["IEP"] providing for the student to spend at least half of each school day in a class or setting separated from nonhandicapped students."<sup>20</sup>

**Licensure of teachers in registered private schools**

**Current law: option for private schools**

Current law already requires teachers employed by community schools to have the same kind of licenses as must teachers in school districts.<sup>21</sup> The same is not necessarily required of private schools participating in the pilot scholarship program. As private schools, they have the option of hiring teachers with the same licenses as public school teachers or teachers holding certificates designated for teachers of nonpublic schools that are issued by the State Board of Education. These certificates for teachers in nonpublic schools (the statute actually refers to "nontax-supported" schools) must be awarded to anyone who has a bachelor's degree from a college or university accredited by a U.S. national or regional accrediting association, and the State Board may elect to award them to teachers holding "an equivalent degree from a foreign college or university of comparable

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<sup>20</sup> See R.C. 3313.974(C), not in the bill.

<sup>21</sup> R.C. 3314.03(A)(10).

standing." Moreover, teachers in *nonchartered nonpublic schools* are entitled to a certificate if they have a diploma from a bible college or bible institute.<sup>22</sup>

**The bill requires teachers of scholarship students in registered private schools to have same licenses as public school teachers**

(R.C. 3313.976(A)(10))

The bill specifies that *in any class or course in which a scholarship student is enrolled*, registered private schools must hire a classroom teacher holding the same license or certificate that would be required of a public school teacher.

**Unclear effect on teachers (other than teachers of scholarship students) of requirement to meet state standards**

Under current law, a private school that is not chartered by the state may have its teachers certified if they hold a diploma from a bible college or bible institute; the teachers need not have earned a bachelor's degree from an accredited college or university. The bill does not actually require the private schools participating in the pilot scholarship program to have a state charter, but it does require them to meet the standards for a charter. It is unclear whether this requirement to meet the charter standards would therefore disqualify a school whose teachers have bible college diplomas instead of bachelor's degrees from an accredited college or university.

**Teacher tenure, evaluation, and termination**

**Background: current law for school districts and ESCs**

Continuing law prescribes specific procedures that school district boards and educational service center (ESC) boards must follow regarding employment contracts with individual teachers. These boards must employ each teacher under a "limited" or "extended" contract for a finite period of time and eventually under a "continuing" contract (popularly called "tenure"), which remains in effect until the teacher resigns, retires, or is terminated or suspended. A teacher is entitled to tenure once he or she has taught in the district or ESC for three of the prior five years, so long as the teacher either:

- (1) Holds a professional, permanent, or life teacher's certificate issued under the former teacher certification law; or
- (2) Holds an educator license issued under the current licensing law and:

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<sup>22</sup> See R.C. 3301.071, not in the bill.

(a) If the teacher did not have a master's degree when the license was initially issued, has since completed 30 semester hours of coursework in the area of licensure or in an area related to the teaching field; or

(b) If the teacher held a master's degree when the license was initially issued, has since completed six semester hours of graduate coursework in the area of licensure, or in an area related to the teaching field.<sup>23</sup>

A school district or ESC may deny tenure to a teacher who becomes eligible for it only by electing to not reemploy the teacher when his or her final limited or extended contract expires. And whenever a district or ESC wishes not to reemploy a teacher whose limited or extended contract expires, whether or not the teacher is subsequently eligible for tenure, it first must evaluate the teacher twice during the year and provide the teacher notice by April 30. If a board fails to conduct the required evaluations or to notify the teacher by April 30, the teacher is "deemed" reemployed for one year at the same salary plus any increment provided by the district or ESC salary schedule. The teacher must have an opportunity for a hearing on the matter of the board's decision not to reemploy that teacher. Finally, a teacher's contract may not be prematurely terminated except for gross inefficiency, immorality, willful and persistent violations of reasonable regulations of the board; or "other good and just cause," and then only after following prescribed due process procedures. Upon request of a terminated teacher or the terminating board, the state Superintendent must provide a list of potential referees and in some cases must appoint a referee to hear the contract termination case.<sup>24</sup>

**The bill requires community schools to comply with these procedures**

(R.C. 3314.03(A)(11)(d))

The bill adds the Revised Code sections that contain these teacher tenure, evaluation, and termination procedures to the list of statutes with which community schools must comply.

**The bill adds similar requirements for registered private schools**

(R.C. 3313.976(A)(11))

The bill also prohibits registered private schools from prematurely terminating a teacher's contract except for the reasons specified by law in the case of public school teachers and only after following the due process procedures

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<sup>23</sup> See R.C. 3319.08 and 3319.11(B), not in the bill.

<sup>24</sup> See R.C. 3319.11, 3319.111, 3319.16, and 3319.161, not in the bill.

applicable to public school teachers. The bill permits the state Superintendent to appoint a referee in the case of such a contract termination in the same manner as in the case of a public school teacher.

**Employee sick leave policies**

(R.C. 3314.03(A)(11)(d))

Revised Code section 3319.141 entitles an employee of a school district or ESC to 15 days sick leave with pay every year. That employee may accrue up to 120 days of unused sick leave, unless more than 120 days are approved by the employing board.

The bill adds that section to the list of statutes with which community schools must comply.

It does not make any sick leave provision for employees of registered private schools.

**Employee conflicts of interest**

**Community schools**

(R.C. 3314.03(A)(11)(d) and (e))

Revised Code Chapter 102. generally prohibits public employees from using their position to leverage special privileges or benefits and from having an interest in any public contract under their control. These provisions largely apply to employees of community schools, but current law specifies that a member of a community school's governing board also may be an employee of the school. In addition, current law permits a member of a community school governing board to have an interest in a contract entered into by the board.

The bill removes the latter exception permitting a community school employee to have an interest in a contract with a school. It also adds Revised Code section 3329.10 (not in the bill) to the list of statutes with which community schools must comply. That section prohibits a teacher or school administrator from acting as a "sales agent" for any seller of textbooks, instructional materials, or school apparatus and equipment used in the public schools. Governing board members may continue to be community school employees.

**Registered private schools**

(R.C. 3313.976(A)(13))

The bill also prohibits any registered private school from allowing any teacher in a classroom where scholarship students are enrolled from acting as a sales agent for or to be an employee of any company that "sells textbooks, school materials, electronic hardware or software, or consultation services to chartered public or nonpublic schools."

**Competitive bidding for community school purchases**

(R.C. 3314.03(A)(11)(d))

Revised Code section 3313.46 (not in the bill) requires school district and ESC boards to seek competitive bids when the board decides to "build, repair, enlarge, improve, or demolish" any school building, the cost of which will exceed \$25,000, except in cases of urgent necessity, or for the security and protection of school property, or if it is participating in a group purchase with the Department of Administrative Services.

The bill adds section 3313.46 to the list of statutes with which community schools must comply.

**Health and safety regulations**

(R.C. 3313.976(A)(12))

Buildings used by public schools, including community schools, must meet all current health and safety regulations that apply at the time the buildings are constructed. The bill enacts a statement that buildings used by registered private schools must meet all the health and safety standards that would apply to a public school building.

**Public meetings and public records requirements for registered private schools**

(R.C. 3313.976(A)(15))

The bill requires registered private schools to conduct any meetings that "affect scholarship students" as public meetings in the same manner as school district boards conduct their meetings. In addition, the bill requires all records of a registered private school that pertain to the education of scholarship students or the expenditure of funds received as tuition from scholarship students to be open to the public to the same extent as school district records.

Under continuing law, community schools are already subject to the state open meetings law and public records law.

### **Textbook and instructional accounts and expenditures**

(R.C. 3313.976(A)(14) and 3314.03(A)(11)(d))

Revised Code section 3315.17 (not in the bill) requires each school district to establish a textbook and instructional materials fund. Under this law, each district generally must deposit into the fund 4% of operating revenues in every fiscal year. Once in the fund, the money may be used only for textbooks, instructional software, and other instructional materials, unless the district board, superintendent, business advisory council, and teachers union unanimously agree that the district has sufficient textbooks and materials to "ensure a thorough and efficient education." A district that deposits more than the minimum amount required for any fiscal year may deduct the excess amount of money from the amount it is required to deposit in succeeding fiscal years.

The bill adds section 3315.17 to the list of statutes with which community schools must comply.

It also requires registered private schools to spend at least 4% of the tuition it receives from scholarship students on textbooks and instructional materials for use in classrooms where scholarship students are enrolled.

### **Community school "rainy day" funds**

(R.C. 3314.03(A)(11)(h))

Beginning in fiscal year 1999, school districts are required to accumulate a reserve balance, or "rainy day" account, that eventually equals 5% of the district's previous year's revenues for current expenses. Each year in which a district's revenue for current expenses grows by 3% or more over the previous year, the district must credit an amount equal to at least 1% of the previous year's revenue to the reserve balance account, unless exempted by rules adopted by the Auditor of State. These deposits must continue each year until the account reaches the required 5% amount. However, school districts may use excess deposits they place in their reserve balance account (that is, deposits above the required incremental 1%) to offset amounts they must deposit in ensuing years. The law also specifies that in no year must a district deposit more than 1% of its prior year's operating revenues. Thus, if a district withdraws money from the account in an emergency, it is not obligated to deposit more than 1% annually in the years in which it is replenishing the account. Finally, the state Superintendent may grant a waiver for all or part of the deposit requirement for the year of the application or the next fiscal year, but only if the Superintendent and the Auditor of State both agree that meeting the requirement in the year of the waiver would cause the school district to significantly reduce or eliminate "important educational

services." This waiver is valid for only one fiscal year, and a school district may receive only one waiver ever.<sup>25</sup>

The bill requires community schools to maintain a "rainy day" fund "in the same manner as school districts maintain [such an account]."

### **Maintenance of financial records**

(R.C. 3313.976(A)(16))

Continuing law requires community schools to maintain financial records in the same manner as school districts records are maintained and subjects community schools to the audit authority of the Auditor of State.<sup>26</sup> The bill requires registered private schools to maintain their financial records "in a form similar to the form prescribed for school districts by the Auditor of State."

### **Community school start-up grants**

(Section 4.08 of Am. Sub. H.B. 282 of the 123rd G.A., amended in Section 3.)

The education budget act for the 1999-2001 biennium authorizes the Department of Education (or the Lucas County ESC in the case of Lucas County schools) to grant up to \$50,000 to each proposing person or group that enters into a preliminary agreement for the establishment of a start-up community school to pay "initial start-up costs." That act also authorizes the Department or the Lucas County ESC to grant up to \$100,000 to the governing authority of each community school in its first year of operation to pay "additional start-up costs."

The bill permits these grants also to be awarded to the proposing parties and the governing authorities of *conversion* community schools to pay initial and additional "conversion" costs.

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## **COMMENT**

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<sup>25</sup> R.C. 5705.29(H) to (I), not in the bill.

<sup>26</sup> R.C. 3314.03(A)(8).

**State laws that specifically apply to community schools**

The community school law exempts community schools from most state laws and rules that pertain to schools, school districts, and boards of education, except for the following:<sup>27</sup>

- (1) Any laws and rules that "grant certain rights to parents;"<sup>28</sup>
- (2) All health and safety standards established by law for school buildings;<sup>29</sup>
- (3) Any laws specified in the contract that the community school has negotiated with its sponsor; and<sup>30</sup>
- (4) The following provisions of the Revised Code:<sup>31</sup>

<b>Revised Code Reference:</b>	<b>Description:</b>
Chapter 102.	Ohio Ethics Law (except that a member of a community school governing board may also be an employee of the board and may have an interest in a board-executed contract)
109.65, 3313.672, and 3313.96	Requirements for missing children reporting, information, and student fingerprinting
Chapter 117.	State fiscal auditing requirements
121.22	The Public Meetings ("Sunshine") Law
149.43	The Public Records Law
Chapter 1347.	Ohio Privacy Law

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<sup>27</sup> See R.C. 3314.04, not in the bill.

<sup>28</sup> See R.C. 3314.04, not in the bill.

<sup>29</sup> See R.C. 3314.05, not in the bill.

<sup>30</sup> See R.C. 3314.04, not in the bill.

<sup>31</sup> R.C. 3314.03(A)(10) and (A)(11)(d), (e), and (f), 3314.06(D). See R.C. 3313.602(D), 3314.10(A)(2) to (6), and 3323.012, not in the bill.

<b>Revised Code Reference:</b>	<b>Description:</b>
2151.358	Procedures pertaining to school records of adjudicated delinquents after their court records are expunged
2151.421	Child abuse reporting requirements
2313.18	Employment protection for employees on jury duty
Chapter 2744.	The Sovereign Immunity Law for public employees
3301.0710 and 3301.0711	State proficiency tests
3301.0714	Education Management Information System (EMIS) requirements
Chapter 3307.	State Teachers Retirement System
Chapter 3309.	School Employees Retirement System
3313.50	Record requirements relating to student hearing and vision testing
3313.602(D)	Requirement that each school devote one hour to the observance of Veterans' Day
3313.61 and 3313.611	Requirement to award diplomas only to students passing the ninth grade proficiency tests and completing the high school curriculum (Community schools are not subject to the Revised Code's curriculum requirements. They set their own curricula.)
3313.643	Requirement that students and teachers wear industrial eye protection in certain industrial courses or activities
3313.66, 3313.661, and 3313.662	Student suspension, expulsion, and permanent exclusion requirements, including due process rights
3313.67	Requirement to keep records of student immunizations
3313.672	Requirement to request records from a

<b>Revised Code Reference:</b>	<b>Description:</b>
	child's previous school
3313.673	Screening of new kindergartners and first graders in hearing, vision, speech and communication, and health
3313.69	Requirement to include hearing and vision screening if school opts to have any dental and medical screening
3313.71	Tuberculin testing requirements
3313.761	Requirement that public schools permit students to self-administer asthma medication
3313.80	Requirement to display the U.S. flag
3319.22 to 3319.31	Teacher licensing
3319.321	Requirements for confidentiality of student information
3319.39	Requirements for criminal records checks of job applicants
3321.01	Requirements relating to admittance of children to kindergarten and first grade
Chapter 3323.	Requirement related to special education of handicapped students
3327.10	School bus driver qualifications
Chapter 3365.	Requirements to participate in Post Secondary Enrollment Options Program
4111.17	Ohio Equal Pay Law (anti-discrimination related to wages)
Chapter 4112.	Ohio Civil Rights Act
4113.52	Ohio Whistleblower Law
Chapter 4117.	The state Collective Bargaining Law
Chapter 4123.	Workers' Compensation Law
Chapter 4141.	Unemployment Compensation Law
Chapter 4167.	State Occupational Safety and Health

**Revised Code**

**Description:**

Law

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ACTION

DATE

Introduced

10-21-99

1317-1318

H0486-I.123

