



Jim Kelly

Bill Analysis

Legislative Service Commission

Sub. H.B. 768*

123rd General Assembly
(As Reported by S. Education)

Reps. Gardner, Tiberi, Buchy, Peterson, Goodman, Willamowski, Corbin, Jordan, Netzley, Van Vyven, Young, DePiero, Calvert, Robinson, Jerse, Hartnett, Evans, Carey, Schuler, Krupinski, Olman, Jacobson, Luebbers, Mead, Jolivette, D. Miller, Buehrer, Logan, Schuck, Williams, Kilbane, Coughlin, Trakas, Perry, Mettler, Allen, Taylor, Terwilleger, Salerno, Bender, Clancy, Barrett, Cates, O'Brien, Vesper, Sullivan, Roberts, Callender, Schuring, Brading, Roman, Winkler, Widener, Gerberry, Flannery, Hughes, Sulzer, A. Core, Redfern, Austria, Womer Benjamin, Hoops, Aslanides, Damschroder, Boyd, Householder, Collier, Amstutz, Mottley

BILL SUMMARY

- Expands the types and permitted uses of instructional equipment, including computers, that may be purchased with state Auxiliary Services funds by a school district for use by students attending chartered nonpublic schools within the district.
- Permits state-funded auxiliary services provided to nonpublic school students to be provided through contracts with educational service centers.
- Eliminates the requirement for Controlling Board approval prior to payment of Auxiliary Services funds to school districts and mandated cost reimbursements to chartered nonpublic schools.
- Requires the State Board of Education to make available licenses for substitute teachers that are valid for one year, as well as the five years under current rules, and for any other length of time considered appropriate by the Board, but not to exceed five years.

* *This analysis was prepared before the report of the Senate Education Committee appeared in the Senate Journal. Note that the list of co-sponsors and legislative history may be incomplete.*

- Requires the State Board of Education to issue provisional licenses in school speech-language pathology to certain master's degree students, and qualifies recipients of the licenses for waivers of certain prerequisites for licenses from the Board of Speech-Language Pathology and Audiology.
- Revises conditions under which a school district may apply recently voted bond issues or tax levies toward its local share under the Expedited Local Partnership Program administered by the Ohio School Facilities Commission.
- Declares an emergency.

CONTENT AND OPERATION

State Auxiliary Services funds

Background

Current law requires the Department of Education to annually pay each school district funds, known as Auxiliary Services funds, that the school district must use to purchase various secular items and services for the benefit of students attending chartered nonpublic schools within the district (sec. 3317.024(L), not in the bill). Each district may use the money only for the following (sec. 3317.06):

(1) To purchase and lend to chartered nonpublic school students secular textbooks or electronic textbooks approved by the state Superintendent of Public Instruction for use in the public schools;

(2) To provide those students with various health, counseling, and remedial services and to purchase instructional equipment, including computer hardware, for use in conjunction with these services;

(3) To provide programs for disabled or gifted students;

(4) To purchase mobile units that are used for the provision of the health, counseling, remedial, and disability services;

(5) To supply the students with standardized tests and scoring services;

(6) To purchase and lend to them "instructional materials," including computer software (including site-licensing), prerecorded video laserdiscs, digital video on demand (DVD), compact discs, video cassette cartridges, wide area connectivity and affiliated technology as it relates to internet access, math or

science equipment and materials, school library materials, and resources and services of the Ohio SchoolNet Commission, all of which must be (a) secular, neutral, and nonideological, (b) in general use in the state's public schools, (c) incapable of diversion to religious use, (d) susceptible of loan to individual students, and (e) furnished for the use of individual students; and

(7) To hire supervisory and clerical personnel to administer the district's provision of services and materials to nonpublic school students.

The bill expands the types and permitted uses of instructional equipment purchased with Auxiliary Services funds

(sec. 3317.06(L))

Under current law, one class of items that school districts may purchase with state Auxiliary Services funds is instructional equipment, including computer hardware. The use of such computers, however, is restricted to the provision of the secular remedial, diagnostic, or therapeutic services that school districts supply to students of chartered nonpublic schools.

The bill expands this authority in several ways. First, it makes explicit that the possible equipment that may be purchased includes not only computers but also "related equipment in general use in the public schools of the state." Second, it removes entirely the restriction that the computers be used only in connection with remedial, diagnostic, or therapeutic services provided by the district to nonpublic school students. Third, in place of this restriction it stipulates that the computers and other instructional equipment are to be loaned to the students or their parents, like current law provides for textbooks. (It also permits districts to use Auxiliary Services funds to hire clerical personnel to administer the lending program, as current law provides for textbooks.) These changes expand the range of educational purposes for which nonpublic school students may utilize computers and related instructional equipment purchased with state funds. Under the bill, for example, students could use the computers for research or classroom assignments.

The bill also specifies that, as required by current law for state-funded materials, equipment, textbooks, services, and computer software, computer *hardware* must be provided for the benefit of nonpublic school students without distinction as to the race, creed, color, or national origin of the students or their teachers (in the fifth paragraph following division (M) of sec. 3317.06).

Change in wording concerning prohibition against state-funded materials and services for religious activities

(sec. 3317.06, sixth paragraph following division (M))

Current law stipulates that no school district may provide services for use in religious courses, devotional exercises, religious training, or any other religious activity. The bill revises this provision to specify that school districts may not provide for use in religious courses, devotional exercises, religious training, or any other religious activity "services, materials, or equipment that contain religious content." However, the bill maintains current law provisions requiring textbooks and instructional materials to be secular and, in the case of instructional *materials*, such as computer *software*, to be incapable of diversion to religious use. Such a stipulation does not exist in current law or the bill for instructional *equipment* such as computer *hardware*.

Provision of auxiliary services by educational service centers

(sec. 3317.06, second paragraph following division (M))

Currently, school districts may contract with the Department of Health, city or general health districts, or properly licensed private agencies for the provision of health services that school districts may furnish to chartered nonpublic schools. The bill permits school districts to contract out for *any* of the auxiliary services provided to nonpublic schools, and adds educational service centers to the list of potential contractors.

Exemption of payments from Controlling Board approval

(secs. 3317.06, eighth paragraph following division (M), and 3317.063)

Current law stipulates that the Department of Education's distribution of state education funds is subject to the approval of the Controlling Board.¹ The bill eliminates the requirement for Controlling Board approval of two state payments:

(1) Payments of Auxiliary Services funds to school districts for the benefit of students attending chartered nonpublic schools; and

(2) Payments directly to chartered nonpublic schools to reimburse them for the costs of certain state administrative mandates.

¹ Sec. 3317.01, not in the bill.

Term of educator licenses for substitute teachers

(sec. 3319.226)

Currently, a rule adopted by the State Board of Education permits substitute teaching licenses to be issued only for periods of five years.² The bill requires the State Board to issue teaching licenses for substitute teachers that are valid for periods of one year, five years, and any other length of time deemed appropriate by the Board, but not to exceed five years.

Three-year provisional licenses for school speech-language pathologists

(Section 5 of the bill)

Background: transition to dual licensing of school speech-language pathologists

Beginning January 1, 2002, pursuant to law enacted in 1996, speech-language pathologists working in schools must be dual-licensed by the State Board of Education and the Ohio Board of Speech-Language Pathology and Audiology.³ Until then, a speech-language pathologist working in a school need be licensed only by the State Board of Education.

The 1996 legislation provided a "grandparenting" opportunity during 2001 for professionals licensed by the State Board of Education to earn their licenses from the Speech-Language Pathology Board without having to take the latter Board's examination or meet its academic requirements. To qualify for this "waiver" of examination and academic requirements, the professional must apply between January 1, 2001, and January 1, 2002, and must show that he or she held a license from the State Board of Education on January 1, 2001.

But not all licenses from the State Board of Education qualify a school speech-language pathologist for this waiver. Temporary licenses, which the State Board of Education may grant to master's degree candidates, are specifically disqualified.⁴

² Ohio Administrative Code § 3301-23-44.

³ Section 9 of Am. Sub. S.B. 230 of the 121st General Assembly.

⁴ Sec. 4753.08(D), not in the bill. The State Board's authority to issue temporary licenses to master's degree candidates is found in sec. 3319.223, also not in the bill. The authority to issue these temporary licenses expires on January 1, 2002. After that, the State Board's rules allow only holders of master's degrees, not degree candidates, to receive licenses. See O.A.C. § 3301-24-05(E)(1)(e).

The bill qualifies some master's degree candidates for the waiver

The bill establishes a procedure whereby some school speech-language pathologists who do not yet possess permanent licenses from the State Board of Education could qualify for the waiver from the Speech-Language Pathology Board. Specifically, it requires the State Board of Education to issue a three-year, nonrenewable "provisional" license to any person who *both* (1) has previously held a temporary certificate or license from the State Board of Education in school speech-language pathology and (2) is enrolled, on the bill's effective date, in a speech-language pathology program administered by the Ohio Master's Network Initiatives in Education.

The bill qualifies individuals issued such a provisional license for the waiver if they submit an application, and a true and unaltered copy of the provisional license, to the Speech-Language Pathology Board between January 1, 2001, and January 1, 2002. And although the bill does not specifically express this, it presumably has the effect of allowing these students to continue working in schools after January 1, 2002, while they earn their master's degrees and qualify for a renewable professional license from the State Board of Education.

Expedited Local Partnership Program

(Sections 3 and 4 of the bill)

Under the state's "Expedited Local Partnership Program," a school district that is not yet eligible for state school facilities funding may apply current expenditures of local resources on classroom facilities toward its eventual local share when it becomes eligible for state funding. A provision of Am. Sub. S.B. 272 of the 123rd General Assembly permitted school districts to apply some *previously* approved bond or tax measures to their "Expedited" projects. Specifically, it provided that if a school district's voters approved, within 18 months prior to the effective date of this provision (September 14, 2000), a bond issue or tax levy for the construction, additions, or major repair of any classroom facility, the district could apply that expenditure toward its eventual share under the "Expedited" program, *but only if* (1) the actual construction or repair work had not commenced prior to execution of the "Expedited" program agreement with the Ohio School Facilities Commission and (2) the design of the project complies with specifications of the Commission.

The bill eliminates the condition that the construction not commence prior to the execution of the district's agreement with the Commission. It further directs the Commission to conduct a needs assessment of the district at the district's request, to determine whether the project meets all or a portion of the district's assessed needs, and to determine whether the district's project complies with the

Commission's design specifications. Finally, it stipulates that the Commission must approve as a district's eventual local share only that portion of the project that the Commission determined to meet the district's assessed needs and to comply with the Commission's design specifications.

COMMENT

On June 28, 2000, the U.S. Supreme Court upheld the federal Title VI program that provides government aid to private schools, including religious schools, in the form of computers and library books. The 6-3 decision overturned precedents from the 1970s that prohibited government provision of maps, slide projectors, and other instructional *equipment* to religious schools. In the lead opinion, a plurality of the Court argued that government aid to religious schools is constitutionally permissible if the program allocates aid on the basis of neutral, secular criteria and the aid itself lacks any religious content. The dissenting opinion maintained that the neutrality doctrine proposed by the plurality was not an adequate guarantee that government funds would not be diverted to support a school's religious mission. (*Mitchell v. Helms*, 2000 U.S. LEXIS 4485.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	08-31-00	p. 2214
Reported, H. Education	09-20-00	p. 2273
Passed House (95-0)	09-20-00	pp. 2273-2275
Reported, S. Education	---	---

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