



Am. Sub. S.B. 286

123rd General Assembly

(As Reported by H. Ethics and Standards)

Sens. Gardner, Oelslager, Spada, Fingerhut, Prentiss, Shoemaker, Horn, Kearns, Blessing, McLin, White, Watts, Mumper, Herington, Espy, Ray, Hagan

Reps. Mead, Jacobson, Amstutz, Jolivette, Goodman, J. Beatty, Buehrer, Ferderber, A. Core, Gooding, Bender

BILL SUMMARY

- Expands the ownership rights and interests of state colleges and universities over products of research or investigation to include (1) products of research or investigation conducted in any facility of the institution, and (2) products of research or investigation conducted by employees acting within the scope of their employment or with funding, equipment, or infrastructure provided by or through the institution.
- Allows the boards of trustees of state colleges and universities to adopt rules setting forth the circumstances under which employees may acquire financial interests in companies to which the colleges and universities have assigned, licensed, transferred, or sold rights to the products of the employees' research or investigation.
- Specifies that the Ohio Ethics Commission retains authority to assist state colleges and universities in adopting these rules and in matters outside the bill's scope or the scope of the rules.
- Requires a committee of representatives of state college and university presidents to develop model rules within 90 days after the bill's effective date.

CONTENT AND OPERATION

Background: current law

State colleges and universities own the products of research or investigation conducted in their research facilities. More specifically, current law declares that the rights to and interests in discoveries, inventions, and patents that result from research or investigation conducted in any experiment station, bureau, laboratory, or research facility of a state college or university are the sole property of the college or university. No one else, including any faculty member, student, governmental agency, or company that used a state college's or university's research facilities, has any right or interest in the discoveries, inventions, or patents (including any income produced from them) except as assigned, licensed, transferred, or paid by the board of trustees of the college or university. (Sec. 3345.14.)

Expanded state colleges' and universities' ownership rights

Research conducted in other facilities of the institution

The bill adds that products of research or investigation conducted in "any other facility" of a state college or university (besides an experiment station, bureau, laboratory, or research facility) also are the sole property of the college or university, unless they are assigned, licensed, transferred, or paid by the board of trustees of the college or university (sec. 3345.14(B) and (C)). (See **COMMENT.**) The bill appears to cover all research and investigation conducted *by anyone, not just employees*, in state college or university facilities.

Research conducted by certain employees outside of the institution's facilities

The bill adds that products of research or investigation by certain employees of a state college's or university's facilities are the sole property of the college or university, unless they are assigned, licensed, transferred, or paid by the board of trustees of the college or university. It covers all research or investigation by employees, regardless of where the research or investigation is conducted, if the research or investigation is conducted within the scope of their employment or with funding, equipment, or infrastructure provided by or through a state college or university. (Sec. 3345.14 (B) and (C).)

Employees' financial interests in certain companies

The bill establishes parameters under which state college or university employees whose research or investigation products are assigned, licensed,

transferred, or sold to a company may have a financial interest in that company. These arrangements are allowed notwithstanding any law to the contrary, including any contrary provisions of the Ohio Ethics Law and the criminal statutes prohibiting public officials from having unlawful interests in public contracts or soliciting improper compensation, which might be construed to technically prohibit them.¹ These arrangements, however, must conform with rules adopted by the boards of trustees of the individual state colleges and universities. (Sec. 3345.14 (B) and (D).)

The bill allows, but does not require, a board to adopt rules setting forth the circumstances under which an employee of the college or university may solicit or accept, or a person may give or promise to give the employee, a financial interest in any firm, corporation, or other association to which the board has assigned, licensed, transferred, or sold the college or university's interests in (a) discoveries or inventions made or created by that employee or (b) patents issued to that employee (sec. 3345.14(D)(1)).²

The rules may include any provisions in the board's discretion, but at a minimum *must include all of the following* (sec. 3345.14(D)(2) and (3)):

(1) A requirement that each college or university employee disclose to the board any financial interest that the employee holds in such a firm, corporation, or other association;

(2) A requirement that those disclosures be reviewed by officials who are designated by the board and who must determine the information that must be disclosed and safeguards that must be applied to manage, reduce, or eliminate any actual or potential conflict of interest;

(3) A requirement that, in implementing the rules, all members of the board are governed by the Ohio Ethics Law and the criminal statutes mentioned above;

(4) Guidelines to ensure that any financial interest held by an employee does not result in misuse of students, employees, or resources of the college or university for the benefit of the firm, corporation, or other association and does not otherwise interfere with the employee's duties and responsibilities.

¹ *The criminal statutes cited in the bill are R.C. 2921.42 and 2921.43.*

² *The rule-making procedure is set forth in R.C. 111.15, which does not require public hearings.*

Ohio Ethics Commission assistance

The bill states that the Ohio Ethics Commission retains authority to provide assistance to a college or university board of trustees in establishing the minimum requirements and guidelines in the rules mentioned above and to address any matter that is outside the bill's scope or the scope of the rules established by the board (sec. 3345.14(E)).

Model rules in 90 days

Within 90 days after the bill's effective date, a committee consisting of representatives of the presidents of state colleges and universities must develop a model set of rules for the boards of trustees of each state college and university to use in adopting their own rules under the bill. The committee must consult with the Ohio Ethics Commission in developing these model rules. The president of each state college and university may designate a representative, and the committee is to be coordinated by the Executive Director of the Inter-University Council. (Section 3 of the bill.)

COMMENT

The bill defines a "state college or university" to mean the following (sec. 3345.14(A), by cross-reference to sec. 3345.12--not in the bill):

(1) The University of Akron, Bowling Green State University, Central State University, University of Cincinnati, Cleveland State University, Kent State University, Miami University, Ohio University, Ohio State University, Shawnee State University, University of Toledo, Wright State University, Youngstown State University, Northeastern Ohio Universities College of Medicine, and Medical College of Ohio at Toledo;

(2) Any of the following "institutions of higher education"--a community college district, technical college district, university branch district, or state community college.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-26-00	pp. 1843-1844
Reported, S. Education	05-10-00	p. 1680
Passed Senate (33-0)	05-10-00	pp. 1682-1683
Reported, H. Ethics & Standards	05-17-00	p. 2003

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