



Jim Kelly

Bill Analysis
Legislative Service Commission

Sub. S.B. 286*
123rd General Assembly
(As Reported by S. Education)

Sens. Gardner, Oelslager, Spada, Fingerhut, Prentiss, Shoemaker, Horn, Kearns, Blessing, McLin, White

BILL SUMMARY

- Expands the ownership rights of public colleges and universities over the products of research to include (1) products of research conducted in any facility of the institution and (2) products of research conducted by any employee, whether on or off the institution's premises.
- Allows the boards of public 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 transferred rights to the products of the employees' research.
- Specifies that the Ohio Ethics Commission retains authority to assist public 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 public college and university presidents to develop model rules within 90 days of the bill's effective date.

* *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 the legislative history may be incomplete.*

CONTENT AND OPERATION

Background: current law

(R.C. 3345.14(B) and (C))

State colleges and universities own the products of research conducted in their research facilities. More specifically, current law declares that the rights 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 or student or company that used the facilities, has any right or interest in them (including to any income produced by them) except as assigned, licensed, transferred, or paid by the board of trustees of the college or university.

The bill expands the ownership rights to research products of colleges and universities. It also would permit a third party who received or purchased an interest in research products from a college or university to in turn assign an interest in that property to an employee of the college or university.

The bill specifically applies the law to all public institutions of higher education

(R.C. 3345.14(A))

The bill specifies that the law (and the bill's new provisions) apply to all public institutions of higher education: state universities, the Northeastern Ohio Universities College of Medicine, the Medical College of Ohio at Toledo, community colleges, state community colleges, technical colleges, and university branches.

The bill expands public colleges' and universities' ownership rights

(R.C. 3345.14(B) and (C))

Research conducted in other facilities of the institution

The bill adds that products of research conducted in "any other facility" of a public college or university (besides an experiment station, bureau, laboratory, or research facility) also are the sole property of the college or university, unless assigned, licensed, transferred, or paid by the board of the college or university.

Research conducted by employees outside of the institution's facilities

The bill adds that products of research by employees of a public college's or university's facilities are the sole property of the college or university, unless assigned, licensed, transferred, or paid by the board of the college or university. It appears to cover all research by all employees, regardless of whether conducted in the institution's facilities, with its funds, or by non-faculty or non-students. (See COMMENT.)

The bill allows for employees to have financial interests in companies to which colleges or universities have assigned interests in research products

(R.C. 3345.14(D))

The bill establishes parameters under which public college or university employees whose research products are assigned, licensed, transferred, or sold to a company may have a financial interest in that company. These arrangements will be allowed notwithstanding any law to the contrary, including any provisions of the Ohio Ethics Law and the criminal statutes against public officials 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 colleges and universities.

The bill allows, but does not require, the boards of public colleges and universities 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.

The rules may include any provisions at the discretion of the college or university board, but at a minimum must include all of the following:

(1) A requirement that each college or university employee disclose to the board of trustees 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 of trustees and who must determine the information that

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

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 of trustees are governed by the Ohio Ethics Law (R.C. Chapter 102.) and criminal statutes against public officials having an unlawful interest in a public contract (R.C. 2921.42) or seeking improper compensation (R.C. 2921.43); and

(4) Guidelines to ensure that any financial interests 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 or does not otherwise interfere with the employee's duties and responsibilities.

Ohio Ethics Commission may assist college and university boards of trustees

(R.C. 3345.14(E))

The bill states that the Ohio Ethics Commission retains authority to provide assistance to a college or university board of trustees in meeting the bill's minimum standards for the rules and to address any matter that is outside the bill's scope or the scope of the rules established by the board.

Model rules in 90 days

(Section 3)

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

COMMENT

The expansion of public college and university ownership rights to cover products of *any employee* resulting from *activities outside the institution's facilities* appears to be unlimited. It is conceivable that the plain language could be construed to cover not only products of the off-premises work of faculty and research associates, but also the hobbies and pastimes of nonprofessional employees. For example, it might apply to a groundskeeper who invents a new computer game or internet service at home.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-06-00	p. 1568
Reported, S. Education	---	---

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