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Bill Analysis

Legislative Service Commission

H.B. 446

124th General Assembly
(As Introduced)

Reps. Seitz, Hartnett, D. Miller, Lendrum, S. Smith, Raga, Sullivan, Krupinski, Redfern, Cirelli, Reidelbach, Otterman, Fedor, Perry, Oakar, Britton, Rhine, Flannery, Seaver, Webster, Gilb, Sykes, Collier, Brinkman, Carano, Sulzer, Roman, Beatty, Barrett, R. Miller, Patton, Woodard, Sferra, Strahorn, Distel, Driehaus, Coates, Allen

BILL SUMMARY

- Changes the voting membership of the State Board of Education to consist of members elected from electoral districts that coincide with the state's Congressional districts.
- Requires the Governor to appoint an additional member to the State Board of Education to be the president, but only if there is an even number of electoral districts.
- Permits a State Board of Education president appointed by the Governor to vote on Board matters only in the case of a tie among the elected voting members.
- Specifies that by a majority vote the elected members of the State Board of Education present at a Board meeting may alter the meeting agenda prescribed by the Board president.
- Prohibits the State Board of Education from conducting any rulemaking or adjudicatory hearing under the Administrative Procedure Act if a quorum of the Board is not present.
- Requires a fixed term of office for the Superintendent of Public Instruction.

CONTENT AND OPERATION

Background

The Ohio Constitution provides that there must be a State Board of Education, whose powers, duties, selection, and terms of office must be "prescribed by law." The Constitution also provides that there must be a Superintendent of Public Instruction who must be appointed by the State Board but whose powers and duties must be "prescribed by law."¹ Since the adoption of these provisions, the General Assembly has enacted laws establishing and empowering both the State Board and the Superintendent. (See **COMMENT 1.**)

Composition of the State Board

Current law

Under current law, the State Board of Education consists of 19 voting members, of whom 11 are elected from specified electoral districts and 8 are appointed by the Governor. Each of the 11 electoral districts is made up of the territory of three contiguous state Senate districts; thus, the elected membership of the Board is reconstituted every ten years following the apportionment of legislative districts. The territory of each State Board district is determined by the General Assembly, or by the Governor if the General Assembly does not make the district territory determinations in the year of the legislative apportionment.² The elected members serve staggered four-year terms of office. In order to stagger the terms of office of the members elected just after the decennial reconstitution of the Board, these initial terms are determined by lot with six members serving four-year terms and five serving two-year terms.³

Of the eight members appointed by the Governor, four must represent rural school districts. Such representative status is to be evidenced by the member's current place of residence and at least one of the following conditions:

¹ *Ohio Constitution, Article VI, Section 4.*

² *If the General Assembly does not make the State Board district territory determinations in the year of the legislative apportionment, the Governor must make those district determinations by January 31 of the following year.*

³ *The current law regarding the terms of office of elected and appointed members of the State Board is contained in R.C. 3301.02. That section is repealed by this bill and reenacted containing the new language pertaining to members' terms of office. The text of the current law is, therefore, not in the bill.*

- The member's children attend, or at one time attended, school in a rural district;
- The member's past or present occupation is associated with rural areas of the state;
- The member possesses other credentials or experience demonstrating knowledge and familiarity with rural school districts.

The appointed members serve staggered four-year terms of office.

Both elected and appointed members are limited to two consecutive four-year terms of office. The law also provides that terms are considered successive unless they are separated by a period of four or more years.⁴

The State Board also consists of two *nonvoting* ex officio members who are the respective chairpersons of the Senate and House committees that deal primarily with education matters.

Changes made by the bill

State Board districts to coincide with Congressional districts (R.C. 3301.01, 3301.02, 3301.03, 3301.06, and 3513.259). Under the bill, the State Board consists of a number of members elected from districts the territories of which coincide with the territories of the state's Congressional districts. Consequently, just as under current law, the Board is reconstituted every ten years after the determination of Congressional districts is made by the General Assembly. Unlike under current law, however, the number of State Board districts under the bill can change every ten years if there is a change in the number of the state's Congressional districts. As a result of the most recent federal census, there will be 18 Congressional districts; therefore, under the bill, beginning with the general election on November 5, 2002, there will also be 18 State Board electoral districts. (See **COMMENT 2**.)

Elected members continue to serve four-year staggered terms. (See "**Staggering of initial elective terms**" below.) The bill does not provide any limit on the number of terms that an elected member may serve.

The respective chairpersons of the Senate and House Education committees continue to be ex officio nonvoting members of the Board.

⁴ Current R.C. 3301.02(D), not in the bill. See note 3 above.

Staggering of initial elective terms (R.C. 3301.02). Rather than determine the terms of members elected after the decennial reconstitution by lot as under current law, the bill prescribes a method to determine the length of the initial terms that will be known to candidates and electors prior to the election. At the time that the General Assembly determines the boundaries of the Congressional districts, it must also prescribe a whole number numerical designation for each State Board district simultaneously created. The initial members who are elected from districts designated with an odd number will serve four-year terms, while those elected from districts designated with an even number will serve two-year terms.⁵

Appointment of the Board president by the Governor if there is an even number of districts (R.C. 3301.021, 3301.03, 3301.04, and 3301.05). The bill provides that, when there is an even number of State Board electoral districts (such as will be the case beginning in 2003), the Governor must appoint, with the advice and consent of the Senate, an additional member who is a qualified elector residing in the state to be the president of the Board. That president is empowered to vote on Board matters only in the case of a tie among the other members. The term of office of the president appointed by the Governor is two years. The bill does not provide any limit on the number of two-year terms that such a president may serve.

If there is an odd number of districts, the Governor does not appoint the president. In such case, the president is instead selected by and from among the voting elected members of the Board. The president selected by the members serves a two-year term and would have the regular voting rights of any other member of the Board.

Effective date of the bill's changes (Section 3). Under the bill, the State Board as constituted under the law in effect just prior to the effective date of the bill must continue in office until new members are elected from the State Board districts prescribed in the bill and are qualified for office. These new members are to be elected at the general election to be held on November 5, 2002. They will take office in January of 2003.

⁵ As under current law, each elected member of the State Board must be a qualified elector residing in the district from which the member is elected (R.C. 3301.03).

State Board meeting agenda altered by a majority vote of the elected members present at a meeting

(R.C. 3301.04)

The bill specifies that the elected members present at a Board meeting by a majority vote may alter the agenda for that meeting that has been prescribed by the president.⁶

State Board rulemaking or adjudicatory hearing conducted only when a quorum is present

(R.C. 3301.051)

The bill prohibits the State Board from conducting any rulemaking or adjudicatory hearing under the Administrative Procedure Act, codified in R.C. Chapter 119., unless a quorum of the Board is present.

Fixed term of office for Superintendent of Public Instruction

(R.C. 3301.08; Section 4)

The Superintendent of Public Instruction is the head of the state Department of Education and the secretary and administrative officer of the State Board of Education.⁷ Current law requires that the State Board appoint the Superintendent who serves at the pleasure of the Board. The bill continues to provide for the Board to appoint the Superintendent (as required under the Ohio Constitution), but it also requires that the Board fix the Superintendent's term of appointment. That term must be for "at least one year but not more than five years." The bill also provides that the Board may not remove the Superintendent during that term except for "malfeasance, misfeasance, or nonfeasance of office [also] as determined by the board."⁸

The bill further specifically requires the reconstituted State Board that takes office in January of 2003 to appoint an individual to be the Superintendent of Public Instruction for a four-year term of office. Thereafter, the term of office of

⁶ Under continuing law, the Board must hold regular meetings once every three months. It also may hold special meetings called by the president. The president is additionally required to call a special meeting if at least a majority of the Board members sign a written request for such a meeting. (R.C. 3301.04.)

⁷ R.C. 3301.09, 3301.11, and 3301.12 (none in the bill).

⁸ R.C. 3301.08.

the Superintendent is to be determined by the State Board in the manner otherwise prescribed in the bill. It also specifically recognizes that the Board may appoint the incumbent Superintendent to the initial four-year term required by the bill.

COMMENT

1. The full text of Article VI, Section 4, Ohio Constitution (amended November 3, 1953) reads as follows:

There shall be a state board of education which shall be selected in such manner and for such terms as shall be provided by law. There shall be a superintendent of public instruction, who shall be appointed by the state board of education. The respective powers and duties of the board and of the superintendent shall be prescribed by law.

2. Prior to 1992, the State Board consisted of members elected from districts coinciding with the state's Congressional districts in a manner similar to that prescribed under the bill. In 1992, the General Assembly changed the composition of the Board to consist only of 11 voting members elected from districts made up of the territory of three contiguous state Senate districts and of 2 nonvoting ex officio members.⁹ In 1995, the General Assembly prescribed the current composition of the Board by adding authorization for the Governor to appoint eight members bringing the total number of voting members to 19.¹⁰ In 2000, the General Assembly reenacted the 1995 amendments in a single act in response to a lawsuit challenging the procedure used to enact those amendments.¹¹

⁹ *Sub. S.B. 162 of the 119th General Assembly. As under current law and the bill, these ex officio members were the respective chairpersons of the Senate and House Education committees.*

¹⁰ *Am. Sub. H.B. 117 of the 121st General Assembly.*

¹¹ *Am. H.B. 711 of the 123rd General Assembly. The lawsuit challenged the enactment of the 1995 amendments solely on the ground that it allegedly violated the single-subject rule prescribed in Ohio Constitution, Article II, Section 15(D). By its own terms, enactment of Am. H.B. 711 was intended to render moot the question posed in that suit.*

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	12-04-01	p. 1098

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