



John Rau

Bill Analysis
Legislative Service Commission

H.B. 561

124th General Assembly
(As Introduced)

Reps. Williams, Evans, Gilb, Husted, Brinkman, Collier, Webster, DeWine

BILL SUMMARY

- Permits school district boards of education to contract with other public entities and with nonsectarian nonpublic entities for management services.

CONTENT AND OPERATION

Background

School district boards of education have broad powers to manage and control the schools within their respective districts. In addition, they have the power to contract for necessary services.¹ Nevertheless, they have only as much authority as granted or implied by statute, and an Attorney General's opinion has stated that a school district board's power to contract is limited to those instances where the board has specific or implied authority to participate in the activity that is the subject of the contract.² Subsequent to the issuance of that opinion, the General Assembly granted school district boards specific authority to contract for consultant services for purposes related to the *business management* of their respective districts.³ While district boards also have specific authority to employ teachers, administrators, and nonteaching support staff, the law does not prescribe to what extent they may contract for the services of independent agents to manage *educational programs*.⁴

¹ R.C. 3313.17 and 3313.47, neither section in the bill.

² 1962 Ohio Attorney General Op. No. 2837, p. 130.

³ R.C. 3313.171, not in the bill.

⁴ Specific provisions authorizing a board of education to hire teaching and nonteaching employees and controlling performance reviews, renewal, suspension, and termination of

The bill

The bill authorizes the board of education of any city, exempted village, or local school district to enter into a contract with another public entity or with a nonprofit or for-profit nonpublic entity, that is not a church or other sectarian organization, for *management* of any or all of the educational programs in any school in the district.⁵ According to the bill, the purpose of such authority is to provide for "innovative and cost-effective programs." It also specifically lists certain management services for which a board may contract as long as they are not precluded from doing so by a collective bargaining agreement between the board and district employees. However, the bill also states that its provisions are not limited to the listed services, which are the following:

- (1) Design, implementation, and supervision of an instructional or extracurricular program;
- (2) Curriculum development;
- (3) Staff training and professional development;
- (4) Selection, assignment, and supervision of staff;⁶
- (5) Facilities management; and
- (6) Business management.

Any individual who provides business management services under a contract authorized under the bill must hold a valid business manager's license issued by the State Board of Education.⁷

The bill provides that any teaching or nonteaching employees hired by the board who are under the management of the entity with whom the board has

such employees are codified in R.C. 3319.01 to 3319.21 (none in the bill). Pursuant to statute, all local school districts and many city and exempted village school districts do receive curriculum development, administrative, and other educational services from educational service centers. In addition, districts are specifically authorized to contract with each other for the provision of some educational services.

⁵ R.C. 3313.175(A)(1).

⁶ Current law, not changed by the bill, generally empowers the superintendent of a school district to assign staff to the schools of the district (R.C. 3319.01, not in the bill).

⁷ R.C. 3313.175(A)(3).

contracted remain employees of the board. In addition, the bill states that it is the intent of the General Assembly that the district board retains the "right to control" those employees and is their public employer for purposes of collective bargaining.⁸ (See **COMMENT**.)

The bill requires that any management contract entered into by a district board include the following items:

- (1) A fixed term which cannot exceed five consecutive school years;
- (2) Criteria and standards that the district board must use to evaluate the entity's performance;
- (3) Procedures and deadlines for the board's periodic evaluation of the entity's performance which must take place at least once each fiscal year; and
- (4) Procedures for the board's termination of the contract if the entity's performance does not meet the contractually stated criteria and standards.⁹

In addition, the contract must stipulate that it is not effective unless filed with and approved by the Superintendent of Public Instruction. The bill permits the Superintendent to reject a contract only if it does not contain the specific provisions that the bill requires. Furthermore, the bill provides that if the Superintendent does not send a written approval or rejection of a contract within 30 days after it is filed with the Superintendent, then the contract is deemed to have been approved by the Superintendent.¹⁰

COMMENT

The bill states that its provisions preserving the status of employees hired by the board who are under the management of the contracted entity as school district employees and stating the intent that the district board remains the bargaining public employer of those employees are intended to comply with a decision of the Ohio Supreme Court. In *City of Hamilton v. State Employment Relations Board* (1994), 70 Ohio St.3d 210, the Court held that a company contracted by the city to manage the public transit system was an agent of the city and that the city was the employer of the transit workers for purposes of collective bargaining. The Court's majority in that case applied the "right to control" test and

⁸ R.C. 3313.175(A)(2) and Section 2.

⁹ R.C. 3313.175(B)(1) and (2).

¹⁰ R.C. 3313.175(B)(3).

found that although the management company was responsible for the daily personnel matters of the transit system, the city retained authority over enough matters that it was the city that actually controlled the transit workers' employment. Specifically, the majority found that the city set the fares, owned all the buses, and arranged for all funding for the program. Furthermore, the majority found that the management company could not carry out operation of the transit system on its own.

Similarly, an entity contracted under the bill's provisions to manage certain aspects of a district's educational programs probably could not operate such programs on its own. Accordingly, the employees of the board who are under the management of the contracted entity, applying both the "right to control" test as stated by the Court and the bill's own provisions, remain employees of the board. Still, the contracted entity likely could hire its own employees, who would not be employees of the district board, to provide the management services required under the contract.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-22-02	p. 1657

h0561-i.124/kl

