



Am. Sub. H.B. 106
125th General Assembly
(As Passed by the General Assembly)

Reps. Williams, Otterman, McGregor, Hartnett, Hagan, Perry, Gilb, Koziura, Widowfield, Young, Boccieri, Willamowski, Aslanides, Carano, Chandler, Cirelli, Clancy, Collier, DeBose, Domenick, C. Evans, Flowers, Gibbs, Grendell, Harwood, Kilbane, Latta, Martin, Niehaus, T. Patton, Peterson, Schlichter, Schmidt, Setzer, Sferra, J. Stewart, Taylor

Sens. Coughlin, Padgett, Zurz, Robert Gardner, Harris, Spada

Effective date: *

ACT SUMMARY

- Requires that upon a child's discharge or release from the custody of the Department of Youth Services (DYS), specified records pertaining to the child be provided to the juvenile court that committed the child to DYS custody and to the superintendent of the child's resident school district.
- Prohibits the admission of a child discharged or released from DYS custody to a school in the child's resident school district until the superintendent receives the required records from DYS.
- Specifies that a school district's policy on criteria for assignment of students to an alternative school may include assignment to such a school of any child released from the custody of DYS.
- Makes DYS eligible for grants and services from the Ohio SchoolNet Commission.
- Requires the State Board of Education to request a criminal records check of a first-time applicant prior to issuing an educator license.

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

- Requires public children services agencies to notify specified school authorities of investigations into alleged child abuse or neglect involving a school or educational service center (ESC).
- Requires the county probate court (instead of the ESC governing board as under prior law) to perform the duties of the board of education of a local school district if the school board fails to carry out those duties or to fill a vacancy.
- Exempts limited English proficient students who have been enrolled in U.S. schools for less than one full school year from certain testing and accountability requirements.
- Eliminates the deadline for the State Board of Education to issue one-year conditional teaching permits in the area of intervention specialist, thereby allowing the State Board to continue issuing them indefinitely.
- Clarifies the procedures for awarding stipends to teachers certified by the National Board for Professional Teaching Standards.
- Requires the Department of Education to use an existing FY 2005 appropriation to contract for the operation of a safe school help line at a rate of \$1.80 per participating student, unless insufficient funds require a lower per student rate.
- Clarifies the method for calculating the transitional aid subsidy to school districts in FY 2005.
- Explicitly authorizes any political subdivision to purchase services or supplies through a reverse auction and specifies that a reverse auction satisfies competitive bidding requirements.
- Permits any county with a population of 500,000 or more to use an alternative procedure in continuing law to establish a regional arts and cultural district.

TABLE OF CONTENTS

| | |
|---|---|
| Provision of records upon release of a child from DYS custody | 3 |
| Background | 3 |
| Records provided by DYS | 4 |
| Privacy of DYS records provided to school district superintendent | 5 |



| | |
|---|----|
| Admission to school upon child's release from DYS | 5 |
| Assignment of children released from DYS custody to alternative schools..... | 6 |
| Background | 6 |
| Eligibility of DYS for SchoolNet grants and services..... | 6 |
| Background | 7 |
| Criminal records checks of first-time applicants for educator licenses..... | 7 |
| Background | 8 |
| Notification of school authorities regarding allegations of child abuse or neglect involving a school..... | 9 |
| Assumption of duties when local school district board of education fails to act..... | 10 |
| Exemptions for limited English proficient students from testing and accountability requirements | 10 |
| Background | 10 |
| Testing of LEP students..... | 11 |
| Inclusion of LEP students in accountability measures | 12 |
| One-year conditional teaching permits for intervention specialists..... | 13 |
| Background | 13 |
| Stipend for National Board certified teachers..... | 14 |
| Background | 15 |
| Safe school help line | 15 |
| Clarification of FY 2005 transitional aid payment to school districts..... | 15 |
| Reverse auctions for competitive bidding..... | 16 |
| Background | 16 |
| Changes made by the act..... | 17 |
| Alternative procedure for creating regional arts and cultural district..... | 17 |

CONTENT AND OPERATION

Provision of records upon release of a child from DYS custody

Background

Under continuing law, each child residing in the state who is between 6 and 18 years old is "of compulsory school age" and must attend a public or nonpublic school that meets the minimum education standards set by the State Board of Education. In addition, each child who is at least 5 but under 22 years old may attend school in at least one school district in the state free of tuition to either the child or the child's parent. Generally, a child is entitled to attend school in the

school district in which the child's parent resides, but in some cases the child may be entitled to attend school in the district in which the child resides.¹

If a minor child commits any offense that would be a criminal offense if committed by an adult, the child may be adjudicated a delinquent child, and if that offense would be a felony if committed by an adult, the child might be placed under the custody of the Department of Youth Services (DYS).² A child placed under the custody of DHS may be held in a residential institution operated by or for DHS and, in such case, will be required to attend a primary or secondary school operated by DHS. That department, then, is responsible for educating the child in accordance with rules adopted by the State Board of Education until the child is discharged or released from its custody. If the child is still of compulsory school age when discharged or released, the child must continue to attend a school that meets the minimum education standards.

Records provided by DHS

(R.C. 2152.18(D)(4))

Under law retained in part by the act, when a child is released from DHS custody, DHS must provide certain documents to the juvenile court that committed the child to its custody and to the school the child attended prior to commitment. The required documents are an updated copy of the child's school transcript³ and a summary of the child's institutional record.⁴ DHS has 14 days from the date of the child's release to forward these documents to the appropriate entities.

The act makes several changes to this provision. First, it directs DHS, upon discharging or releasing a child from its custody, to send all required documents to the superintendent of the school district in which the child is entitled to attend school, rather than to the school the child previously attended. Presumably, the superintendent would consider the information provided by DHS in determining

¹ See R.C. 3313.64, 3313.65, and 3321.01, none in the act. Note, a child might be excused from attendance at school for certain statutorily prescribed reasons including (among others) physical or mental incapacity or home instruction (R.C. 3321.04, not in the act).

² See generally R.C. Chapter 2152.

³ When a child is committed to DHS custody, the school which the child attended prior to being committed must submit the child's school transcript to DHS (R.C. 2152.18(D)(3)).

⁴ In addition, continuing law requires DHS to provide the juvenile court with a copy of any other part of the child's institutional record the court requests (R.C. 2152.18(D)(4)).

an appropriate assignment for the child upon return to the district's schools. All documents must continue to be sent to the juvenile court as well. The act retains the 14-day deadline for sending the documents.

Second, the act specifies that the summary of the child's institutional record provided by DYS must be a summary of the institutional record of the child's *behavior*.

Finally, the act requires DYS to provide the juvenile court and district superintendent with two additional documents. Thus, under the act, the documents required to be forwarded by DYS are the following:

- (1) An updated copy of the child's school transcript;
- (2) A report of the child's behavior in school while in DYS custody;
- (3) The child's current individualized education program (IEP), if an IEP has been developed for the child;⁵ and
- (4) A summary of the institutional record of the child's behavior.

Privacy of DYS records provided to school district superintendent

(R.C. 5139.05(D)(2))

The act specifies that a school district superintendent who is the recipient of records regarding a child discharged or released from DYS custody must keep the records confidential and may release them only as provided in state and federal law regarding the privacy of a student's educational records. The act further specifies that the records are not public records for purposes of compelled disclosure under the Public Records Law.⁶

Admission to school upon child's release from DYS

(R.C. 3313.672(A))

Under continuing law, at the time a child seeks admission to a public or nonpublic school, the child or the child's parent or legal custodian must submit to the school's admission officials certain prescribed documents to prove the child's birth date. In addition, school officials are required to request transmission of the

⁵ *An IEP is a written plan prepared for each special education student. It is designed to meet the student's unique educational needs. (R.C. 3323.01(E), not in the act.)*

⁶ *The Public Records Law is codified in R.C. 149.43, not in the act.*

child's school records from the school the child most recently attended within 24 hours of admission to the school. The act adds a requirement that if a child requesting admission to a school in the child's resident school district has been discharged or released from the custody of DYS just prior to requesting admission, the school may not admit that child until the records required to be released by DYS to the district superintendent have been received by the superintendent.

Assignment of children released from DYS custody to alternative schools

(R.C. 3313.533(A))

The act adds to the list of students whom school districts may assign to an alternative school those who have been discharged or released from the custody of DYS.

Background

School district boards of education are authorized under continuing law to establish alternative schools to serve students in grades K through 12 who are on suspension, are having truancy problems, are experiencing academic failure, have a history of class disruption, or "are exhibiting other academic or behavioral problems." In addition, the boards of the Big-Eight school districts and the board of any school district with a "significantly substandard graduation rate" are *required* to establish at least one such alternative school for their districts.⁷ Each board that establishes an alternative school must develop and implement a plan for the school. The plan must include, among other things, the qualifications for assignment of students to the school, the criteria and procedures that will be used to return students to their regular schools, and procedures for evaluating the alternative school program and for reporting the results of the evaluation to the public.

Eligibility of DYS for SchoolNet grants and services

(Sections 3, 4, and 6)

The act includes DYS as an eligible recipient of the grants and services provided by SchoolNet.

⁷ R.C. 3313.534, not in the act. *The Big-Eight school districts are Akron, Canton, Cincinnati, Columbus, Cleveland, Dayton, Toledo, and Youngstown. The Department of Education is required to define "significantly substandard graduation rate."*

Background

Am. Sub. H.B. 95 of the 125th General Assembly (the operating budget for the 2003-2005 biennium) appropriated \$7,691,831 in each fiscal year for the provision of grants or services by the Ohio SchoolNet Commission. These funds are earmarked for supporting educational uses of technology in the classroom. Grant recipients may acquire computer hardware or software, telecommunications services, or professional development with the funds.⁸

Criminal records checks of first-time applicants for educator licenses

(R.C. 3319.291; conforming change in R.C. 109.57)

Under continuing law, when a person initially applies for an educator license, the person must submit two sets of fingerprints and written permission for the Superintendent of Public Instruction to forward the fingerprints to the Bureau of Criminal Identification and Investigation (BCII) and the Federal Bureau of Investigation (FBI). Prior law authorized the State Board, or the Superintendent on the Board's behalf, to request BCII or the FBI, or both, to conduct a criminal records check of a first-time applicant prior to issuing a license.⁹ Information revealed by a records check could be grounds for denying a license or otherwise limiting its application.

The act makes it mandatory for the State Board or the Superintendent to request a criminal records check from BCII of all first-time applicants for educator licenses. This requirement applies to all positions for which the State Board issues licenses, including teachers, administrators, counselors, school nurses, school psychologists, educational aides and paraprofessionals, superintendents, and school district treasurers and business managers.¹⁰ Additionally, the act requires that if a first-time applicant for any of these licenses cannot prove Ohio residency for the five years prior to the date the BCII check is requested, or provide evidence that the applicant has been the subject of an FBI criminal records check during that

⁸ Section 98.01 of Am. Sub. H.B. 95 of the 125th General Assembly.

⁹ A BCII criminal records check will show Ohio convictions for felonies and certain misdemeanors that are considered escalating misdemeanors (typically, crimes that are a misdemeanor on the first offense and a felony on subsequent offenses or when committed in certain contexts). (R.C. 109.57(A)(1).) An FBI check will report all convictions, both felony and misdemeanor, in all states.

¹⁰ See Ohio Administrative Code Chapter 3301-24. The State Board also issues educator licenses for persons working in chartered nonpublic schools (R.C. 3301.071, not in the act).

time, the State Board or Superintendent must also request an FBI check of the applicant. If an applicant has resided in Ohio for the five-year period prior to application, an FBI check is optional.

Background

In exercising its power to license educators, the State Board of Education may refuse to issue a license to an applicant, limit a license it issues to an applicant, or suspend, revoke, or limit a license it has previously issued for any of several statutorily specified reasons. Specifically, the State Board may take one of these actions if it determines the applicant or license holder has done any of the following:

(1) Engaged in an immoral act, incompetence, negligence, or conduct unbecoming to the person's position; or

(2) Pled guilty to, been found guilty by a jury or court of, or been convicted of any of the following:

(a) A felony;

(b) Unlawful sexual conduct with a minor, sexual imposition, or sexual importuning;

(c) An offense of violence;

(d) Any of several prescribed theft offenses;

(e) A drug abuse offense that is not a minor misdemeanor; or

(f) A violation of a municipal ordinance substantively comparable to an offense listed in (a) through (e) above.¹¹

The State Board, or the Superintendent of Public Instruction on its behalf, may investigate any information that reasonably appears to be a basis for denying, revoking, or limiting a license. The Superintendent must review the results of each investigation to determine whether the results warrant initiating an action against the applicant or licensee.¹² If the Superintendent recommends action, the

¹¹ R.C. 3319.31.

¹² All information obtained during an investigation is confidential and is not a public record. If no action is taken against the person within two years of the completion of the investigation, all records of the investigation must be expunged. (R.C. 3319.311(A), not in the act.)

State Board must provide written notice of the charges and an opportunity for a hearing in accordance with the Administrative Procedure Act.¹³

Notification of school authorities regarding allegations of child abuse or neglect involving a school

(R.C. 2151.011 and 2151.421(M); conforming change in R.C. 3313.662)

Under continuing law, when a public children services agency receives a report of child abuse or neglect, the agency must investigate the report within 24 hours to determine the circumstances surrounding the alleged incident and the persons responsible.¹⁴ If the child abuse or neglect allegedly occurred in or involved an out-of-home care entity, such as a day care center, group home, or residential care facility, the agency must provide written notification of the allegations and the name of the alleged perpetrator to the administrator, director, or other chief administrative officer of the entity (unless that person is the alleged perpetrator, in which case the agency must notify the owner or governing board of the out-of-home care entity of the allegations). This notification must occur by the end of the day following the day the agency receives the report. Within three days after the disposition of the agency's investigation, the agency must send written notice of the disposition to the administrator, director, or other chief administrative officer of the out-of-home care entity and to the entity's owner or governing board. No witness statements, police reports, or other investigative reports may be released by the agency as part of the notification process.

The act specifies that public schools (including community schools), chartered nonpublic schools, and educational service centers (ESCs) are out-of-home care entities. Consequently, the notification requirements described above apply to investigations of child abuse or neglect occurring in or otherwise involving a public school, chartered nonpublic school, or ESC.¹⁵ Under the act,

¹³ R.C. 3319.311, not in the act. The Administrative Procedure Act is codified in R.C. Chapter 119.

¹⁴ R.C. 2151.421(F)(1).

¹⁵ R.C. 2151.011(B)(27). The act specifies that out-of-home care child abuse or neglect may be committed by an administrator or employee of a school district, community school, chartered nonpublic school, or ESC as well as by a person who supervises or coaches children as part of an extracurricular activity sponsored by a district, public school, or chartered nonpublic school (R.C. 2151.011(B)(32)). Under continuing law, individuals who would be responsible for the care, custody, or control of a child must undergo a criminal records check prior to employment with a public school, chartered nonpublic school, or ESC (R.C. 3319.39, not in the act). Therefore, under the act, they are not subject to the requirements regarding criminal records checks for persons

these requirements also apply to investigations of child abuse or neglect involving a *nonchartered* nonpublic school if the alleged perpetrator of the abuse or neglect is an individual licensed by the State Board of Education. In all cases, the act requires a public children services agency to notify school authorities of any allegations of child abuse or neglect reported to the agency involving the school or ESC and of the disposition of the agency's investigation in the same manner as it does for reports involving other out-of-home care entities. In the case of a public school operated by a school district, notification must be provided to the district superintendent rather than to the school administrator.

Assumption of duties when local school district board of education fails to act

(R.C. 3313.85)

Under continuing law, if the board of education of a city or exempted village school district fails to perform its duties or fails to fill a vacancy within 30 days after it occurs, the county probate court must assume the duties of the school board. However, in the case of a *local* school district, prior law required the governing board of the educational service center (ESC) in whose territory the district was located to take over the duties of the school board if it failed to discharge its duties or fill a vacancy.

The act eliminates the requirement that the ESC board assume the powers of the school board of a local school district and instead assigns that responsibility to the county probate court. This change treats local school districts the same as city and exempted village districts for the purpose of designating an entity to carry out the school board's duties when the board fails to do so.

Exemptions for limited English proficient students from testing and accountability requirements

(R.C. 3301.0711, 3302.01, 3302.03, 3313.61, 3313.611, 3313.612, and 3317.03)

Background

A limited English proficient (LEP) student generally is an individual who: (1) is between the ages of 3 and 21, (2) is enrolled in an elementary or secondary school, (3) was not born in the United States or whose native language is not English, and (4) has such difficulty speaking, reading, writing, or understanding

responsible for a child's care in other types of out-of-home care entities (R.C. 2151.86(A)(1)).



English that the student may be unable to perform well enough in class or on state tests to meet expected state standards for achievement.¹⁶

Under the No Child Left Behind Act of 2001, LEP students are a recognized subgroup for accountability purposes.¹⁷ As such, school districts and individual schools must demonstrate that their LEP students are making "adequate yearly progress" (AYP) toward the goal of having all students proficient in reading and math by the end of the 2013-2014 school year. Two key components of making AYP are (1) having at least 95% of the district's or school's total student population and each recognized subgroup participate in grade-level state tests in reading and math and (2) having the district's or school's total student population and each subgroup meet the state's yearly targets for the percentage of students expected to be proficient in those subjects. Districts and schools that do not make AYP for two or more consecutive years are subject to sanctions.¹⁸

On February 19, 2004, the U.S. Department of Education announced a new policy regarding LEP students. This policy grants states some flexibility with respect to the testing of certain LEP students and their inclusion in AYP calculations for districts and schools. The act makes changes to state law to reflect the federal policy.

Testing of LEP students

(R.C. 3301.0711(C)(3))

State law largely retained by the act requires LEP students to take all proficiency or achievement tests administered to their grade level. School districts may permit an LEP student to take a test with appropriate accommodations, such as extra time or use of a dictionary. In addition, districts must annually assess each LEP student's progress in learning English.

The new federal policy regarding LEP students permits states to exempt LEP students who have been enrolled in U.S. schools for less than one year from taking a state test in reading and language arts. To accommodate this change in federal policy, the act exempts LEP students who have been enrolled in U.S. schools for less than one full school year from the requirement to take a reading or writing proficiency or achievement test administered to their grade level. A

¹⁶ 20 U.S.C. 7801.

¹⁷ 20 U.S.C. 6311(b)(2)(C)(v).

¹⁸ See generally 20 U.S.C. 6316.

district, however, cannot prohibit an LEP student from taking the reading or writing test if the student chooses to do so.¹⁹

As under former law, *all* LEP students, regardless of length of enrollment in U.S. schools, must take proficiency or achievement tests in math, science, and social studies and may be provided appropriate accommodations. Districts must also continue to assess each LEP student's mastery of English in each school year.

Graduation testing requirements (R.C. 3313.61, 3313.611, and 3313.612). Despite the exemptions from the reading and writing tests allowed for LEP students under the act, as required by continuing law, those students must pass all five Ohio Graduation Tests to qualify for a high school diploma from a school district, community school, or chartered nonpublic school or for a diploma of adult education.²⁰

Inclusion of LEP students in accountability measures

(R.C. 3302.01(I) and 3302.03(D)(2)(c))

The new federal policy on LEP students allows states to exclude the test scores of LEP students who have been enrolled in U.S. schools for less than one year from the component of AYP that deals with student proficiency rates on state reading and math tests. However, those students are included in calculating whether a district or school meets the 95% participation rate on those tests. Even though states may exempt LEP students in their first year of enrollment in U.S. schools from taking a state reading test for their grade level (see "**Testing of LEP students**" above), those students may be counted toward the 95% participation rate for that test if they complete an assessment of their progress in learning English in the school year in which they did not take the state reading test.

Former Ohio law generally required the inclusion of all LEP students in determining whether a district or school made AYP. The act makes two changes in light of the new federal policy. First, it excludes the test scores of LEP students

¹⁹ *The act specifies that a school district's option to retain a student for failure to take a proficiency or achievement test does not apply to LEP students who are exempt from taking the test (R.C. 3301.0711(E)). Also, an LEP student who does not take a grade-level reading or writing test due to the exemption allowed by the act is eligible to be counted in a school's membership for the purpose of state foundation payments to school districts (R.C. 3317.03(E)).*

²⁰ *Alternative graduation testing requirements exist for students who must take the tests to graduate from high school, but who fail one of the tests by ten points or less (R.C. 3313.615, not in the act).*

enrolled in U.S. schools for less than one full school year from calculations of the percentage of students proficient in reading and math. The score of an LEP student who voluntarily takes a reading test must be excluded as well. Second, the act requires LEP students with less than one full school year in U.S. schools to be counted in the 95% test participation rate on reading and math proficiency or achievement tests. In accordance with the federal policy, however, an LEP student in his or her first year of enrollment who does not take a reading test cannot be counted toward meeting the 95% participation rate on that test if the student did not complete an assessment of English language proficiency in the same school year.

The act also excludes LEP students in their first year of enrollment in U.S. schools from *state* accountability measures. These measures include rates of achievement on performance indicators established by the State Board of Education and a performance index score. Both measures are largely based on student performance on proficiency and achievement tests in all five subject areas.²¹ Thus, under the act, the scores of LEP students who have been enrolled in U.S. schools for less than one full school year are not used in calculating how a district or school performs on these measures in any subject area.

One-year conditional teaching permits for intervention specialists

(R.C. 3319.304; conforming changes in R.C. 3313.53, 3319.29, 3319.291, 3319.303, 3319.31, and 3319.51)

The act eliminates the November 20, 2004, deadline for issuing one-year conditional teaching permits in the area of intervention specialist. Thus, under the act, the State Board of Education may issue conditional teaching permits in the area of intervention specialist indefinitely.

Background

Continuing law authorizes the State Board to issue one-year conditional teaching permits, which are a possible step in the alternative path to teacher

²¹ *The State Board's 18 performance indicators for the 2003-2004 school year include passage rates on proficiency and achievement tests, attendance rate, and graduation rate (see R.C. 3302.02, not in the act, for the State Board's authority to establish performance indicators). The performance index score is a measure designed to show improved performance on the proficiency and achievement tests by students scoring at all levels. In contrast to the performance indicators, which only measure the percentage of students scoring at or above the proficient level on such tests, the performance index score takes into account the percentage of students scoring at each of the five possible levels--limited, basic, proficient, accelerated, and advanced. (R.C. 3302.01(E).)*

licensure. Applicants for the conditional teaching permit must agree to seek an alternative educator license in the same subject area upon expiration of the permit.²² Conditional teaching permits in the area of "intervention specialist" are valid for teaching students with special needs. According to licensure rules of the State Board, an intervention specialist is a person qualified to teach students of any grade who are gifted, who have "mild to moderate" or "moderate to intensive" educational needs, or who are visually or hearing impaired.²³

To qualify for a conditional teaching permit in the area of intervention specialist, a person must:

- (1) Hold a bachelor's degree;
- (2) Have successfully completed a basic skills test prescribed by the State Board;
- (3) Have completed, either as part of the applicant's degree program or separate from it, the equivalent of at least 15 semester hours of coursework in the principles and practices of teaching exceptional children;
- (4) Have entered into a written agreement with the Department of Education and the applicant's prospective employer under which the employer will provide a structured mentoring program in the teaching of exceptional children;
- (5) Agree to complete the equivalent of three semester hours of coursework in the content and methods of teaching reading while employed under the conditional teaching permit; and
- (6) Pay an application fee.

Stipend for National Board certified teachers

(R.C. 3319.55)

The act changes from August 1 to April 1 the deadline for nationally certified teachers to submit proof of eligibility for the state stipend. As a result, teachers must show that they have been employed full-time by a school district in the *current* school year rather than in the preceding school year.

²² *An alternative educator license is valid for two years, after which time it may be upgraded to a provisional educator license if the license holder meets certain continuing education and assessment requirements (R.C. 3319.26, not in the act).*

²³ *Ohio Administrative Code 3301-24-05(C)(5).*

Background

Under continuing law, public school teachers who hold valid teaching certificates issued by the National Board for Professional Teaching Standards are eligible for annual state-funded stipends. The National Board is an independent organization that awards certificates to teachers whose instructional practices, as demonstrated by evaluations of content knowledge and classroom performance, meet rigorous standards of teaching quality. Certificates are valid for ten years. The annual state stipend is \$2,500 for teachers who entered the certification program prior to June 2003 and received their certificates by December 31, 2004. For teachers admitted into the program after May 2003 or who received their certificates after 2004, the annual state stipend is \$1,000. The stipends are reduced in any year in which insufficient funds are available to pay the full amounts.

Safe school help line

(Sections 5 and 6)

Am. Sub. H.B. 95 of the 125th General Assembly (the operating budget for the 2003-2005 biennium) appropriated \$1.8 million in each of FY 2004 and FY 2005 for a safe school help line.²⁴ This help line enables people to report threats to the safety of students and school personnel. The act requires the Department of Education to use the funds in FY 2005 to contract for the operation of the help line at a rate of \$1.80 per participating student. If the appropriated funds are insufficient to maintain that rate for all participants, the per student rate must be reduced accordingly. The act specifies that the contractor operating the help line must accept any reduced rate as full payment and may not bill a school district or other participating entity for any portion of the cost of the service.

Clarification of FY 2005 transitional aid payment to school districts

(Sections 3, 4, and 6)

Am. Sub. H.B. 95 of the 125th General Assembly established a two-year "transitional aid" subsidy to ensure that no school district's general state operating payments decline by more than 5% in FY 2004 or FY 2005 from the previous fiscal year. If any district's calculated state payments decrease by more than 5% in either year, the Department of Education must pay the district additional state funds to restrict the decrease to 5%. The state payments that, in the aggregate, are subject to this "floor" comprise most of the state subsidies paid to school districts, including base-cost, special education, vocational education, transportation,

²⁴ Section 41.16 of Am. Sub. H.B. 95 of the 125th General Assembly.

Disadvantaged Pupil Impact Aid (DPIA), gifted education units, parity aid, and the charge-off supplement.²⁵

The act clarifies the method of calculating each district's aggregate state payments for FY 2004 to determine eligibility for transitional aid in FY 2005. Specifically, it directs that any transitional aid paid in FY 2004 be included in the FY 2004 base amount upon which FY 2005 transitional aid is calculated. In other words, if a district received a transitional aid payment in FY 2004, that payment must be included in the FY 2004 base amount that is compared to the FY 2005 base amount. Including transitional aid payments in the FY 2004 base amount has the effect of raising the "floor" for districts in FY 2005.

Reverse auctions for competitive bidding

(R.C. 9.314)

Background

Under law largely retained by the act, any political subdivision, including a school district, that is required by law to purchase services or supplies by competitive bidding may use a "reverse auction" procedure to acquire certain services and supplies if the political subdivision determines that it is advantageous to do so. A "reverse auction" is defined by statute as a "purchasing process in which offerors submit proposals in competing to sell services or supplies in an open environment via the Internet." A reverse auction generally works in the same way as a regular auction except that the object is to bid lower than previous bidders.

To use this authority, a political subdivision must solicit proposals through a request for proposals, which must state the relative importance of price and other evaluation factors. In addition, a political subdivision may conduct discussions with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award of the contract. These discussions are intended to ensure full understanding of and responsiveness to solicitation requirements. Political subdivisions are required to treat offerors fairly and equally in regard to clarification, correction, or revision of their proposals.

A political subdivision may award a contract to the offeror whose proposal the political subdivision determines to be the most advantageous to it, taking into consideration factors such as price and the evaluation criteria set forth in the request for proposals. The contract file must contain the basis on which the award is made.

²⁵ Section 41.37 of Am. Sub. H.B. 95 of the 125th General Assembly.

Services to which this authority apply are limited to "the furnishing of labor, time, or effort by a person, *not involving the delivery of a specific end product* other than a report which, if provided, is merely incidental to the required performance." "Services" specifically does not include services furnished pursuant to employment agreements or collective bargaining agreements. In addition, for purposes of this authority, the term "supplies" is defined as "all property, including, but not limited to, equipment, materials, other tangible assets, and insurance, but excluding real property or interests in real property." Thus, it does not appear that reverse auction procedures may be used to acquire labor for the construction or renovation of buildings but might be used to acquire specific materials to be used in a construction or renovation project.

Changes made by the act

The act makes two changes. First, it removes the restriction in prior law on the types of political subdivisions that may use reverse auctions. Under the act, *any* political subdivision, rather than a political subdivision that is required to use competitive bidding processes, is explicitly authorized to use reverse auctions for the purchase of services or supplies. It is possible, however, that political subdivisions not bound by competitive bidding requirements may already use reverse auctions since there does not appear to be a prohibition against their use. Therefore, this change may not be substantive.

Second, the act specifies that if a political subdivision is required to purchase services or supplies by competitive bidding, a purchase made by reverse auction satisfies that requirement. Apparently, this provision clarifies that an "open environment" reverse auction may be substituted for "sealed" bidding when the latter otherwise is required.

In either case, however, reverse auction procedures may be used only to acquire "services" and "supplies" as those terms are defined in continuing law for purposes of those procedures.

Alternative procedure for creating regional arts and cultural district

(R.C. 3381.04)

Generally, a regional arts and cultural district is created by the adoption of a resolution or ordinance approving the district's creation by the appropriate authorities of all counties, municipal corporations, and townships within the territory of the proposed district.²⁶ Continuing law, however, establishes an alternative procedure by which a board of county commissioners may create a

²⁶ *R.C. 3381.03, not in the act.*

county-wide regional arts and cultural district if the county is not already part of a regional arts and cultural district formed under the standard procedures. Under the alternative procedure, the board of county commissioners must adopt a resolution stating (1) the purposes for the creation of the arts and cultural district, (2) that the district's territory will be coextensive with the territory of the county, (3) the district's official name, and (4) the location of the district's main office or the manner in which that location will be determined. Formerly, this alternative procedure was only available to counties that contained a city with a population of 500,000 or more.

The act maintains the minimum population requirement of 500,000 residents, but eliminates the requirement that those residents live within the boundaries of a single city. Consequently, under the act, any county with at least 500,000 residents may use the alternative procedure to establish a county-wide regional arts and cultural district.

HISTORY

| ACTION | DATE | JOURNAL ENTRY |
|---|----------|---------------|
| Introduced | 03-04-03 | p. 206 |
| Reported, H. Juvenile & Family Law | 01-13-04 | p. 1402 |
| Passed House (94-3) | 01-21-04 | pp. 1508-1509 |
| Reported, S. Education | 05-26-04 | p. 2005 |
| Passed Senate (33-0) | 05-26-04 | pp. 2015-2023 |
| House concurred in Senate amendments (73-25) | 05-26-04 | pp. 2060-2062 |

04-hb106-125.doc/kl

