



John Rau

Bill Analysis
Legislative Service Commission

H.B. 150

125th General Assembly
(As Introduced)

Reps. Fessler, Callender, Webster, Gilb, Reinhard, Reidelbach, McGregor, Jolivette

BILL SUMMARY

- Modifies the powers of the State Board of Education.
- Lists certain specifications to which the minimum education standards and associated assessments established by the State Board of Education must conform.
- Requires that the budgetary requests of the State Board of Education include every proposed expenditure of an amount greater than \$1,000 and that the requests not propose the expenditure of funds not reasonably forecasted to be available from expected revenues.
- Requires that each contract valued at \$10,000 or greater that the Department of Education proposes to enter into be subject to examination and approval by the State Board of Education.

CONTENT AND OPERATION

Powers of the State Board of Education

Background

Adopted in 1953, Ohio Constitution Article VI, Section 4, provides that "There shall be a State Board of Education," the powers, duties, selection, and terms of office of which are to be "prescribed by law." That section also specifies that the State Board is to appoint the Superintendent of Public Instruction, whose duties also are to be prescribed by law. Since the establishment of the State Board, the General Assembly has granted to the Board the general powers to form and evaluate education policy, provide leadership in improving the state's public schools, allocate and distribute education funds, and establish minimum education

standards for public and nonpublic schools. From time to time, the General Assembly has prescribed other specific functions for the Board.¹

General powers

Much of the State Board's general powers and duties are prescribed in R.C. section 3301.07. The bill modifies the powers and duties prescribed in that section and makes conforming changes in other sections.

First, the bill eliminates language giving the Board the authority to "Exercise policy forming, planning, and evaluative functions for the public schools of the state, and for adult education, . . . [and to] Exercise leadership in the improvement of public education in this state." It then appears to limit the Board to administering "the educational laws of this state relating to public schools," instead of administering educational "policies" as under current law. It also eliminates language giving the Board the authority to provide "Consultative and advisory services . . . to school districts and educational service centers" relating to instruction, materials, buildings, equipment, pupil transportation, and school administration and finance."²

The bill removes broad authority for the Board to "Cooperate with federal, state, and local agencies concerned with the health and welfare of children and youth of the state."³ It also removes a requirement that, as part of its annual report to the Governor and General Assembly, the State Board "report on the status, needs, and major problems of the public schools of the state, with recommendations for necessary legislative action."⁴ And it removes language authorizing the Board to "delegate to the Superintendent of Public Instruction the management and administration of any function imposed on [the Board] by law." Finally, the bill removes language authorizing the Board to "adopt rules necessary

¹ *The State Board consists of 19 voting members, 11 of whom are elected from separate electoral districts each comprising the territory of three contiguous state Senate districts, and eight of whom are appointed by the Governor. The Board also consists of two ex officio nonvoting members who are the respective chairpersons of the House and Senate Education Committees. (R.C. 3301.01, not in the bill.) The Superintendent of Public Instruction by statute is the "executive and administrative officer" of the State Board (R.C. 3301.11, not in the bill).*

² R.C. 3301.07(A).

³ R.C. 3301.07(H).

⁴ R.C. 3301.07(F).

for carrying out any function imposed on it by law, and . . . necessary for its government and the government of its employees."⁵

However, the bill retains the Board's authority under current law to develop a standard of financial reporting to be used by all school districts and educational service centers so that "their financial information [is] available to the public in a format understandable by the average citizen and [provides] year-to-year comparisons for at least five years."⁶ In addition, it requires the Board to administer and supervise the allocation and distribution of all state and federal funds for public school education as provided for under law and "to prescribe such systems of accounting as are necessary and proper to this function."⁷

Minimum education standards

Current law authorizes the State Board to "Formulate and prescribe minimum standards to be applied to all elementary and secondary schools in this state for the purpose of requiring a general education of high quality."⁸ The bill specifically removes the words "and prescribe" from this provision and many various references to this provision throughout the Revised Code. It is not clear whether this change will affect the power of the State Board to adopt rules for minimum education standards.⁹

The bill continues to require that the standards provide adequately for the following:

⁵ R.C. 3301.07 last paragraph.

⁶ *Current law, not changed by the bill, also requires the financial reporting format to show "revenue by source; expenditures for salaries, wages, and benefits of employees, showing such amounts separately for classroom teachers, other employees required to hold licenses issued [by the State Board] and all other employees; expenditures other than for personnel, by category, including utilities, textbooks and other educational materials, equipment, permanent improvements, pupil transportation, extracurricular athletics, and other extracurricular activities; and per pupil expenditures."* (R.C. 3301.07(A).)

⁷ R.C. 3301.07(B).

⁸ R.C. 3301.07(C).

⁹ *In addition, elsewhere in R.C. Title 33, the State Board is granted rulemaking authority relative to specific aspects of the state's system of common schools. For example, the Board is empowered to adopt rules establishing the standards and requirements for educator licenses (R.C. 3319.22), for the statewide achievement testing system (R.C. 3301.0710), and for the Education Management Information System (R.C. 3301.0714).*

- Licensing of teachers, administrators, and other professional personnel and their assignment according to training and qualifications;
- Library facilities;
- Proper organization, administration, and supervision of each school.

However, it removes the following language relative to other subjects that may be covered by the State Board's minimum education standards:

- "efficient and effective instructional materials and equipment";
- "the preparation of a statement of policies and objectives for each school"; and
- "such other factors as the Board finds necessary."

Also, current law specifies that the standards are to establish "such requirements for [students'] promotion from grade to grade as will assure that they are capable and prepared for the level of study to which they are certified; requirements for graduation." The bill removes the words "the level of study to which they are certified; requirements for." The resultant statutory language if enacted would read "requirements for [students'] promotion from grade to grade as will assure that they are capable and prepared for graduation."¹⁰

The bill adds language requiring the minimum standards and "associated assessments and applicable rules" formulated by the Board to meet all of the following specifications:

"(1) Be strictly academic and based upon objective, verifiable knowledge in traditional subject areas including reading, mathematics, history, and science;

(2) Be consistent with and supportive of basic fundamental American principles as stated in the Declaration of Independence and the Constitution of the United States, and promote such American values as national sovereignty, patriotism, and free-market enterprise;

¹⁰ *Statutory language elsewhere prescribes requirements for graduation. Generally, to receive a high school diploma, a student must complete the school's curriculum and pass all five areas of the Ohio Graduation Test (or in some cases the 9th grade proficiency test). (See R.C. 3313.61, 3313.612, 3313.614, and 3313.615, none in the bill.) In addition, a separate statutory provision prescribes a minimum high school curriculum of 20 units of study for all high schools (R.C. 3313.603, not in the bill).*

(3) Not mandate any specific teaching methodology, nor promote any subjective, ideological, partisan, or attitudinal content matter such as is promoted by the Council for Civic Education, the National Council for Teachers of Mathematics, or other such organizations promoting content and standards inconsistent with [the above] criteria . . . ;

(4) Not be based upon the Secretary's Commission on Achieving Necessary Skills (SCANS), the National Skills Standards Board (NSSB), nor any other work-based or work-training standards or curriculum such as those required under the [federal] "School-to-Work Opportunities Act of 1994," 20 U.S.C. 6101, et seq. and the "Goals 2000: Educate America Act of 1994," Pub. L. No. 103-227, 108 Stat. 187."

The bill also requires that the associated state assessments must consist of "machine-scored questions with one correct answer for each question." The assessments and answer keys are to be open and available to the general public annually, as prescribed in R.C. section 3301.0711.¹¹ Individual student scores are to be made available to the parents of each student in compliance with the state student privacy law, codified in R.C. section 3319.321.¹²

Finally, the bill removes language that requires the State Board in developing standards for nonpublic schools "to consider the particular needs, methods and objectives of those schools, provided they do not conflict with the provision of a general education of a high quality and provided that regular procedures shall be followed for promotion from grade to grade of pupils who have met the educational requirements prescribed." Even without this statutory language, it is likely that the Board is required to consider the particular needs of nonpublic schools in developing minimum education standards in conformance with the 1976 instruction of the Supreme Court of Ohio in *State v. Whisner*. In that case, the Court held that minimum standards promulgated by the State Board

¹¹ Under R.C. 3301.0711(N) (not in the bill), state proficiency and achievement tests become public records under the state Public Records Law on the first day of July following the school year in which the test was given. It also permits the Department of Education to field test questions, which are not used to compute scores for individual students and are not public records.

¹² Both R.C. section 3319.321 (not in the bill) and the federal Family Educational Rights and Privacy Act, 20 U.S.C. 1232g, generally prohibit the unconsented release of a child's educational records to anyone other than school administrators and teachers and law enforcement officials for certain specified educational and law enforcement purposes. Directory information (such as name and address of a student) may be released to most persons for any purpose. State law, however, prohibits the release of even directory information for use in a profit-making plan or activity (R.C. 3319.321(A)).

must not be "so comprehensive in scope and effect as to eradicate the distinction between public and non-public education."¹³

Other changes

The bill removes a reference in section 3301.07 to the State Board's power to require instruction promoting the donation of anatomical gifts as part of the health curriculum.¹⁴

It relocates a provision requiring school districts and educational service centers and their officers and employees to report to the State Board information related to state funding of schools.¹⁵

It removes a reference to special education "guidelines" and retains current language referring to special education "procedures and standards" to be adopted by the State Board by rule.¹⁶

It removes language authorizing the State Board to encourage "the development of special programs of education for academically gifted children, [by employing] competent persons to analyze and publish data, promote research, advise and counsel with boards of education, and encourage the training of teachers in the special instruction of gifted children." But it does retain current

¹³ 47 Ohio St.2d 181. That decision also cites to the Supreme Court of the United States in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), in which the Court held that a state may impose reasonable regulations on nonpublic schools as long as they do not unduly impact upon the exercise of a person's religious beliefs.

The bill retains current law regarding the licensing of teachers who are employed by nonpublic schools that appears to be in keeping with these instructions. R.C. 3301.071 provides that the State Board must provide for certification of any administrator, supervisor, or teacher at a "nontax-supported school" who has attended and received a bachelor's degree from an accredited college or university without any further educational requirements. In the case of "nonchartered, nontax-supported schools," the standards for teacher certification must provide for certification, without further educational requirements, of any administrator, supervisor, or teacher who has attended and received a diploma from a "Bible college" or "Bible institute."

¹⁴ R.C. 3301.07(E).

¹⁵ R.C. 3319.32, relocated from R.C. 3301.07(I).

¹⁶ R.C. 3301.07(E).

authorization to provide financial assistance to school district and educational service center boards for developing and conducting gifted education programs.¹⁷

It removes authorization for the Board to "Require that all public schools emphasize and encourage, within existing units of study, the teaching of energy and resource conservation as recommended to each district board of education by leading business persons involved in energy production and conservation, beginning in the primary grades."¹⁸

The bill retains authorization for the Board to formulate standards requiring the use of phonics in the teaching of reading in grades kindergarten through three and to provide in-service training programs for teachers in teaching phonics. But it also specifies that the standards and program must be for "systematic" phonics.¹⁹

While it retains authorization for the Board to develop a state plan for technology to encourage and promote the use of technological advancements in educational settings, the bill also removes specific authority to "modify [that plan] as necessary."²⁰

State Board budgetary requests

The bill requires that the State Board's budgetary requests for its agencies and the public schools "include every proposed expenditure of an amount greater than one thousand dollars and the reason for such expenditure. . . ." It further states that "No budgetary request shall propose the expenditure of funds not reasonably forecasted to be available from expected revenues."²¹

State Board examination and approval of Department of Education contracts

The bill requires the State Board to examine each contract with a consideration valued at \$10,000 or greater that the Department of Education proposes entering into and, if the Board determines that the contract is appropriate, to approve that contract. The Department is prohibited under the bill from

¹⁷ R.C. 3301.07(F).

¹⁸ R.C. 3301.07(L).

¹⁹ R.C. 3301.07(G).

²⁰ R.C. 3301.07(H). *It is possible that the authority to develop a plan also includes the authority to modify the plan.*

²¹ R.C. 3301.07(D).

entering into any contract subject to this provision unless it is first approved by the State Board.²²

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-27-03	p. 304

h0150-i-125.doc/kl

²² R.C. 3301.0723.