



John Rau

## *Bill Analysis*

Legislative Service Commission

### **H.B. 423**

127th General Assembly  
(As Introduced)

Rep. Setzer

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#### **BILL SUMMARY**

- Limits eligibility for stipends that are awarded to National Board certified teachers for the first time after July 1, 2008, to teachers who either (1) are employed in academic watch or academic emergency buildings or (2) teach science, technology, engineering, or math in any of grades 9 through 12.
- Permits National Board certified teachers who were awarded stipends before July 1, 2008, to continue receiving the stipends, but disqualifies them from future increases in the stipend amount unless they meet one of the criteria in (1) or (2) above.
- Permits school districts, educational service centers, and county MR/DD boards to pay wage rate differentials above their regular salary schedules for teachers who teach in high-demand or priority grade levels or subject areas.
- Declares that teacher wage rate differentials, the length of a school's instructional year, and the length of a school's instructional day are not subjects for collective bargaining.

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#### **CONTENT AND OPERATION**

##### **Stipends for National Board certified teachers**

(R.C. 3319.55)

##### **Current law**

Current law provides for a state stipend to be paid, upon application, to a teacher who is certified by the National Board for Professional Teaching

Standards. That certification is valid for ten years and is renewable. The state stipend, which currently is a maximum of \$2,500 per year, may be paid to a qualified teacher in a public or chartered nonpublic school for each of the first ten years the teacher holds National Board certification.

### **The bill**

The bill limits stipends awarded for the first time after July 1, 2008, to teachers who either (1) teach in a school building that is in academic watch or academic emergency or (2) teach in any of grades 9 through 12 in a subject that the Superintendent of Public Instruction determines is in the field of science, technology, engineering, or math. While the bill permits teachers who were awarded stipends before July 1, 2008, to continue to receive their stipends regardless of where they teach, it specifies that in order to receive any increases in the maximum stipend amount that might be authorized after that date, they must meet one of the bill's criteria for new awards. (See **COMMENT 1** and **2**.)

### **Wage rate differentials for high-demand or priority areas**

(R.C. 3317.141 and 5126.241)

### **Current law**

State law requires the board of education of each school district, the governing board of each educational service center (ESC), and each county board of mental retardation and developmental disabilities (MR/DD) to adopt an annual teachers' salary schedule that bases each teacher's salary on the teacher's education and years of service.<sup>1</sup> The law also prescribes a schedule of minimum salaries that must be paid to teachers at each "step" of education and years of service. The base salary under that statutory minimum schedule is \$20,000 for a teacher with zero years of service and a bachelor's degree. All of the other salaries on the schedule are increments upward (or downward in some cases, if a teacher does not have a bachelor's degree) as a teacher gains experience and education.<sup>2</sup>

Thus, school district, ESC, and county MR/DD boards currently must pay their teachers only according to the uniform schedule adopted by the board. They are not authorized by statute to pay different amounts to similarly situated

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<sup>1</sup> R.C. 3317.14 and 5126.24, neither section in the bill.

<sup>2</sup> R.C. 3317.13, not in the bill. School district compliance with the minimum schedule is a condition of receiving state operations funding (R.C. 3317.01, not in the bill).

teachers. Nevertheless, a board could do so if it bargained collectively for a wage rate differential policy with the union representing the board's teachers.<sup>3</sup>

### **The bill**

The bill authorizes school district, ESC, and county MR/DD boards to adopt wage rate differential policies. Under such a policy, a board may pay an additional amount to an individual teacher on top of the teacher's scheduled salary, if that teacher is teaching a grade level or subject that the board determines is in high demand or a priority. A board would still have to pay regular salaries to all its teachers according to the adopted schedule, but could pay the additional differential wage rates authorized by the bill to its qualified teachers. Presumably, a board must pay the same additional wage rate to all teachers who teach a particular grade level or subject that qualifies for the additional payment, but likely could pay different additional rates for different qualifying grade levels and subjects.

The bill appears to acknowledge that the wage rate differentials may not be based on characteristics that would violate an individual teacher's statutory or constitutional civil rights. It defines "wage rate differential" as "paying wages to one teacher at a rate different from that at which the board pays another teacher for the performance of equal work under similar conditions on jobs requiring equal skill, effort, and responsibility, the payment of which is not based on the race, color, religion, sex, age, national origin, or ancestry of the teacher."

The bill specifies that a board and its employees may not collectively bargain on the payment of additional wage rate differentials (see below).

### **Certain subjects excluded from collective bargaining**

(R.C. 4117.08 and 4117.09; Section 3)

### **Current law**

Most nonmanagement public employees have the right under state law to collectively bargain with their employers regarding their wages, hours, and terms and conditions of employment. Once selected, the employees' "exclusive representative" (or "union") may negotiate a contract with the employer on behalf of all the employees, even those who choose not to join the union. The contract, which may not exceed three years in duration, may govern any matter regarding

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<sup>3</sup> The provisions of a valid collective bargaining agreement between a public employer and its employees prevail over most statutory provisions regarding wages, hours, and terms or conditions of employment (R.C. 4117.10, not in the bill).

wages, hours, and terms and conditions of employment that is not specifically excluded from collective bargaining by statute. In addition, regarding subjects not excluded from collective bargaining, the agreement will prevail over conflicting statutory law.<sup>4</sup> Teachers and nonteaching employees of all public schools who are not in management or supervisory positions may collectively bargain.<sup>5</sup>

### **The bill**

The bill declares that, if the public employer is a school district board of education, an ESC governing board, or a county MR/DD board, none of the following matters are appropriate subjects for collective bargaining:

- (1) The decision whether to adopt a policy to pay additional wage rate differentials (authorized by the bill) and the provisions of that policy;
- (2) The length of the school's instructional year; and
- (3) The length of the school's instructional day.<sup>6</sup>

Therefore, neither the employer nor employee could offer to bargain on those subjects. Those decisions would be left to the discretion of the employer. The bill's prohibition on collectively bargaining those subjects does not apply to contracts entered into before the bill's effective date, nor to community schools or the recently authorized science, technology, engineering, and mathematics (STEM) schools.<sup>7</sup>

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<sup>4</sup> See generally R.C. Chapter 4117.

<sup>5</sup> R.C. 3314.10, 3326.18, and 4117.01, none in the bill. The employees of both community schools and the recently authorized science, technology, engineering, and mathematics (STEM) schools have the right to collectively bargain.

<sup>6</sup> School districts are subject to the state minimum school year of 182 days (minus specified days for public calamities, staff professional development, and parent-teacher conferences) (R.C. 3313.48, not in the bill) and a minimum school day of 5 hours for grades 1 through 6, and 5 1/2 hours for grades 7 through 12 (R.C. 3313.62, not in the bill, and Ohio Administrative Code 3301-35-06(D), (E), and (F)).

<sup>7</sup> Community schools are not subject to the minimum teacher salary schedule, the 182-day minimum school year, or the minimum school day. Community schools, however, must offer at least 920 hours of instruction each year. STEM schools are subject to the 182-day minimum school year but not the minimum teacher salary schedule or the minimum school day.

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## COMMENT

1. The Department of Education is required to annually rate the academic performance of each school district and building based largely on the state achievement test scores of the district's or building's students. The ratings are "excellent," "effective," "continuous improvement," "academic watch," or "academic emergency."<sup>8</sup> It may be possible that the building to which a teacher is assigned in one year is rated as either an academic watch or an academic emergency building and the next year is rated in a higher category because the building's performance improves. Therefore, a teacher who was eligible for a National Board stipend one year may not be eligible the next year unless the teacher changes buildings. Since the Department issues the ratings in August each year (in order to comply with federal law), both the teacher and the employing school likely will have already decided the teacher's assignment before the school's rating for the current year is official.

2. Since the academic performance ratings do not apply to nonpublic schools, it appears that the only way a teacher in a chartered nonpublic school may qualify for the stipend for the first time after July 1, 2008, is to teach science, technology, engineering, or math in any of grades 9 through 12.

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## HISTORY

ACTION	DATE
Introduced	01-08-08

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<sup>8</sup> R.C. 3302.02 and 3302.03, neither section in the bill.