



# Ohio Legislative Service Commission

## Bill Analysis

Hannah K. Wann

### Am. H.B. 290

128th General Assembly  
(As Passed by the House)

**Reps.** Bubp and Pryor, J. Adams, R. Adams, Balderson, Blair, Burke, Daniels, Derickson, Domenick, Fende, Gardner, Grossman, Hackett, Huffman, Jordan, Lehner, Letson, Luckie, Maag, Martin, McGregor, Mecklenborg, Morgan, Murray, Okey, Pillich, Ruhl, Sears, Snitchler, Stebelton, Uecker, Wagner, B. Williams, Yuko, Driehaus, Garland, Gerberry, Harris, Lundy, Moran, Phillips, Weddington, Evans, Hite, Bacon, Boose, Brown, Carney, Combs, DeBose, Dyer, Goyal, Harwood, Mandel, McClain, Patten, Skindell, Slesnick, Winburn, Zehringer

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## BILL SUMMARY

- Adds Junior ROTC as a permitted elective within the Ohio Core curriculum.
- Permits school districts, STEM schools, and chartered nonpublic schools to excuse students participating in Junior ROTC for at least two school years from high school physical education.
- Directs the Department of Education to reevaluate each community school that was ordered to close at the end of the 2009-2010 school year for poor academic performance to determine whether the school still meets the closure criteria when the report card ratings for its first two years of operation are excluded, and permits each community school that no longer meets the criteria to remain open after that school year.
- Extends by six months the deadline for certain school districts that have been approved to issue federally "qualified" (interest-free) school construction bonds for their state-assisted classroom facilities projects to secure voter approval for their projects.
- Declares an emergency.

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## CONTENT AND OPERATION

### Junior ROTC as an elective for Ohio Core

(R.C. 3313.603(C))

The bill adds to the list of permitted electives, within the Ohio Core curriculum, a Junior Reserve Officer Training Corps (ROTC) program approved by the United States Congress under federal law.<sup>1</sup>

#### Background

To earn a high school diploma, students of public and nonpublic schools must complete their high school's curriculum, which must satisfy at least the minimum high school curriculum prescribed in state law. A new state minimum curriculum called the "Ohio Core," consisting of 20 units of study distributed differently from the previous minimum curriculum, first applies to members of the Class of 2014 enrolled in school districts, community schools, STEM schools, and chartered nonpublic schools.<sup>2</sup> The Ohio Core allows five units (600 hours) of electives, but restricts the electives to one or a combination of foreign language, fine arts, business, career-technical education, family and consumer sciences, technology, agricultural education, or English language arts, math, science, or social studies courses not otherwise required under the Ohio Core. The previous state minimum curriculum did not restrict electives to certain subjects.

### Junior ROTC students excused from physical education

(R.C. 3313.603(L))

Both the minimum high school curriculum that applies until 2014 and the Ohio Core curriculum require students to take one-half unit (120 hours) of physical education to earn a diploma. But a school district, STEM school or chartered nonpublic school may adopt a policy that excuses from high school physical education students who have participated in interscholastic athletics, marching band, or cheerleading for at least two full seasons.<sup>3</sup> If the district or school adopts such a policy, it may not require the student to complete any physical education course as a condition to graduate from high

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<sup>1</sup> See 10 U.S.C. 2031.

<sup>2</sup> The Ohio Core minimum is applied to community schools and STEM schools by R.C. 3314.03(A)(11)(f) and 3326.15, respectively. Neither section appears in the bill.

<sup>3</sup> This authority is granted to STEM schools by R.C. 3326.15, which does not appear in the bill. It is unclear whether this authority is granted to community schools (see R.C. 3314.03(A)(11)(f), not in the bill).

school. However, the student must complete one-half unit of at least 60 hours of instruction in another course of study.

The bill allows districts and schools also to excuse from physical education students who participate in Junior ROTC for at least two full school years. If they elect to excuse Junior ROTC students from physical education, the bill states that the academic credit the students receive from Junior ROTC "may be used to satisfy the requirement" that the students complete one-half unit in another course.

As with athletics, marching band, and cheerleading under current law, this new authority is permissive. Schools are not required to excuse Junior ROTC students from physical education. Moreover, the requirement that students participate in Junior ROTC for "at least" two full school years might be interpreted as granting schools the option to require more than two years' participation in Junior ROTC to be excused from physical education.<sup>4</sup>

Finally, as with athletics, marching band, and cheerleading under current law, it is not clear that the bill's authority to excuse Junior ROTC students from physical education is granted to community schools, in the event that a community school were to provide a Junior ROTC program.

## **Closure of poorly performing community schools**

(R.C. 3314.35)

### **Background**

Under continuing law, community schools that meet statutory criteria for poor academic performance must permanently close.<sup>5</sup> Am. Sub. H.B. 1 of the 128th General Assembly (the main operating budget for the 2010-2011 biennium) replaced the former closure criteria with new, more stringent criteria, beginning July 1, 2009. The first schools subject to the new performance criteria will close at the end of the 2009-2010 school year. The table below shows the new criteria.

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<sup>4</sup> In fact, the Department of Education has advised that current law's use of the phrase "at least two full seasons," with respect to athletics, marching band, and cheerleading, authorizes schools to require *more than* two seasons of participation to be excused from physical education. See "Frequently Asked Questions about the Physical Education Requirements," <http://education.ohio.gov/GD/Templates/Pages/ODE/ODEDetail.aspx?Page=3&TopicRelationID=1702&Content=74108>, visited 12/07/09.

<sup>5</sup> A community school is exempt from the closure requirement if (1) it operates a dropout prevention and recovery program and has a waiver from the Department of Education or (2) primarily serves disabled children (R.C. 3314.35(A)(3)).

Type of school	Closure criteria
A school that does not offer a grade higher than 3	Has been in academic emergency for three of the four most recent school years
A school that offers any of grades 4 to 8 but no grade higher than 9	(1) Has been in academic emergency for two of the three most recent school years and (2) showed less than one standard year of academic growth in reading or math for at least two of the three most recent school years
A school that offers any of grades 10 to 12	Has been in academic emergency for three of the four most recent school years

H.B. 1 also required the Department of Education to begin issuing report cards and performance ratings for a community school after its first year of operation (rather than after its second year of operation, as under prior law). But it excluded consideration of a school's first two performance ratings in any matter in which those ratings are a factor, including whether the school meets the criteria for closure.<sup>6</sup>

While the new closure criteria took effect July 17, 2009, the changes regarding the report card ratings did not become effective until October 16, 2009. The most recent report cards were published in August 2009. Since the new report card provisions were not yet effective then, it may not have been clear which performance ratings were to be used to determine whether a community school met the closure criteria.

### **The bill**

The bill clarifies this situation by prohibiting the Department of Education from considering a community school's performance ratings for its first two years of operation when determining whether the school meets the new closure criteria enacted by H.B. 1. Furthermore, it directs the Department to reevaluate each community school that was ordered to close at the end of the 2009-2010 school year to determine if the school still meets the closure criteria when those first two performance ratings are excluded. If the school no longer meets the closure criteria, it may remain open after the 2009-2010 school year.

### **School facilities bonds**

(Sections 3 and 4)

The bill extends by six months the deadline for certain school districts to secure voter approval for bonds to pay the district shares of their state-assisted classroom facilities projects before the state funds encumbered to pay the state's shares of those

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<sup>6</sup> R.C. 3314.012, not in the bill.

projects are released. Ordinarily, a district's voters must approve the issuance of bonds and accompanying tax levies to pay the district's share of its project within one year after the School Facilities Commission conditionally approves the district's project.<sup>7</sup> If the voters do not approve the bonds by that date, the state funds set aside for the project will be released, but the district has first priority for future funding, as it becomes available, subject again to voter approval within one year of the Commission's conditional approval.<sup>8</sup> Under the bill, some districts have extra time to secure voter approval before the state funds will be released.

The extension applies to any school district that (1) is undertaking a project under the Classroom Facilities Assistance Program that was approved by the Commission between July 1, 2008, and July 31, 2009, (2) has been approved by the Commission to issue "qualified school construction bonds," which are interest-free bonds issued under the federal American Recovery and Reinvestment Act of 2009 (see "**Background**" below), and (3) requested approval of the project from its voters at the general election on November 3, 2009, and the voters rejected the proposal by less than 3% of the total number of votes cast on that question.

In the case of such a district whose project was approved by the Commission in July 2008, the bill specifies that the state funds will not be released until June 30, 2010, thereby giving the district another opportunity to seek voter approval in May 2010. Earlier, Am. Sub. H.B. 1 of the 128th General Assembly extended the deadline for all districts approved in July 2008 (regardless of whether they were also approved to issue qualified school construction bonds) until December 31, 2009, giving those districts another opportunity to seek voter approval at the November 2009 general election.<sup>9</sup> The bill, thus, would give some of those districts another additional six months to secure voter approval.

In the case of a district that meets conditions (1) through (3) above and whose project was approved by the Commission between August 1, 2008, and July 31, 2009, the bill specifies that the state funds will not be released until December 31, 2010.

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<sup>7</sup> Subsequent to the Commission's conditional approval, the project also must be submitted to the Controlling Board for its approval. If approved by the Controlling Board, state funds necessary for the state's share of the project are encumbered for one year.

<sup>8</sup> R.C. 3318.05, not in the bill.

<sup>9</sup> Section 385.70 of H.B. 1.

## **Background**

### **State-assisted classroom facilities projects**

The School Facilities Commission administers several programs that provide state assistance to school districts and community schools in building classroom facilities. The main program, the Classroom Facilities Assistance Program (CFAP), is designed to provide each school district with partial funding to address all of the district's classroom facilities needs. It is a graduated, cost-sharing program where a district's share of the total cost of the project, and its priority for funding, are based on the district's relative wealth, as indicated on an annual percentile ranking of all districts known as the "equity list." The lowest wealth districts are served first and receive a greater amount of state assistance than wealthier districts will receive when it is their turn to be served. For most districts, the portion of the project cost paid by the district is equal to its percentile ranking.<sup>10</sup> The Commission also operates a number of other similar programs designed to meet the immediate or special needs of particular types of districts. The bill's provisions, however, apply only to CFAP projects approved between July 1, 2008, and July 31, 2009.

### **Qualified school construction bonds**

"Qualified school construction bonds" are authorized by the federal American Recovery and Reinvestment Act of 2009 (ARRA). Instead of paying interest, the bonds provide bondholders with federal tax credits. This reduces the bond issuers' cost of borrowing for school construction projects. Under ARRA, each state is allocated an amount of bonds that may be issued by its school districts, as approved by the state. In addition, ARRA authorizes the U.S. Secretary of Education to allocate separate amounts directly to "large local educational agencies," which are defined under ARRA, in part, as the 100 school districts in the U.S. with the largest populations of students living in poverty.<sup>11</sup> The allocation of the bonds in Ohio is administered by the School Facilities Commission, in consultation with the Director of Budget and Management.<sup>12</sup>

Ohio's allocation is \$267,112,000 in calendar year 2009 and should be about the same in calendar year 2010. In addition, under ARRA, Akron, Cincinnati, Cleveland,

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<sup>10</sup> Besides raising its share of the cost of its project, generally through issuing bonds, each district must levy at least ½ mill for 23 years (or its equivalent, generated and set aside through other means) to pay for maintenance of the new facilities.

<sup>11</sup> Division B, Title I, Subtitle F, Part III, Section 1521 of the American Recovery and Reinvestment Act of 2009 (Codified at 26 United States Code (U.S.C.) 54F).

<sup>12</sup> R.C. 133.022, not in the bill. The Director of Budget and Management is also a member of the School Facilities Commission and is currently the Commission's chair.

Columbus, and Toledo were directly allocated \$151,671,000 for 2009 as large local educational agencies. Those districts may release any of their unused allocations for reallocation to other districts.<sup>13</sup> In administering the federal bond program, the Commission grouped districts that applied for approval to issue the bonds into three "pools." Pool A is for districts with projects that are fully planned and ready for construction. Pool B is for districts in various stages of project planning. And Pool C is for energy conservation projects. Some of the districts approved for qualified school construction bonds are also approved for other state assistance for their projects.<sup>14</sup> The bill pertains to certain districts approved under Pool B and separately approved for state assistance under CFAP (see above).

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## HISTORY

ACTION	DATE
Introduced	09-29-09
Reported, H. Education	11-05-09
Passed House (96-0)	11-18-09

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<sup>13</sup> 26 U.S.C. 54F(d)(2)(D).

<sup>14</sup><http://www.osfc.state.oh.us/Programs/QualifiedSchoolConstructionBondsQSCB/tabid/156/Default.aspx>, visited 12/07/09.

