



# Ohio Legislative Service Commission

## Final Analysis

Jennifer Stump

### Sub. H.B. 157

129th General Assembly  
(As Passed by the General Assembly)

**Reps.** Schuring and Letson, Derickson, Hall, Combs, Stebelton, Yuko, Hollington, Fende, Antonio, J. Adams, R. Adams, Anielski, Barnes, Beck, Boose, Brenner, Bubp, Buchy, Budish, Carney, Celeste, Dovilla, Driehaus, Fedor, Gardner, Garland, Gentile, Gerberry, Goyal, Hackett, C. Hagan, R. Hagan, Heard, Henne, Hottinger, Kozlowski, Luckie, Lundy, Mallory, McClain, Mecklenborg, Milkovich, Murray, Newbold, O'Brien, Okey, Patmon, Peterson, Pillich, Ramos, Reece, Roegner, Ruhl, Slaby, Slesnick, Stinziano, Weddington, Williams, Winburn, Young, Batchelder

**Sens.** Hite, Brown, Coley, Gentile, Hughes, Jones, Kearney, Obhof, Patton, Sawyer, Schiavoni, Seitz, Turner, Wagoner

**Effective date:** Emergency, December 21, 2011

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## ACT SUMMARY

### I. Educational Service Centers (ESCs)

- Permits an ESC to engage the services of a "dyslexia specialist" to provide training for K-4 teachers in school districts and other public schools that contract with the ESC for training services on (1) the indicators of dyslexia and (2) the types of instruction that children with dyslexia need.
- Permits groups of "local" school districts within an ESC's territory to engage the services of a dyslexia specialist if the ESC does not provide the training.
- Specifies that if a local school district elects to receive services from an ESC in whose territory the district is not located, the statutory per pupil payments for those services must be paid to the ESC from which the district actually receives the services.
- Requires service agreements between ESCs and local school districts for the 2012-2013 school year to be finalized by June 30, 2012.

- Requires a local school district that intends to obtain services from a different ESC in the 2012-2013 school year to notify the ESC from which it currently receives those services by March 1, 2012, of the intended change.
- Extends by two months to March 1, 2012, the deadline for a "city" or "exempted village" school district to notify an ESC that it intends to obtain services from a different ESC in the 2012-2013 school year, and specifies that failure to meet the deadline results in automatic renewal of the service agreement for one year.
- Requires an ESC to be dissolved when it no longer has any agreements to provide school districts with services for which per pupil payments are made.
- Specifies that when an ESC is dissolved, the territory of each of the local school districts that made up the ESC's territory is no longer part of the territory of any ESC.

## **II. Public College-Preparatory Boarding Schools**

- Requires the College-Preparatory Boarding School Facilities Program to comply with the main Classroom Facilities Assistance Program, except for provisions related to the issuance of bonds or the levying of taxes.
- Requires the Ohio School Facilities Commission to determine the cost of a public college-preparatory boarding school's project based on all campus facilities needed for the school's programs and operations, but limits the use of state funds to paying for classroom facilities that do not exceed the Commission's construction and design standards.
- Requires the Commission to initiate procedures for a public college-preparatory boarding school's project upon execution of the contract between the State Board of Education and the school's operator establishing the school.
- Specifies that the project agreement must provide for release of the state funds encumbered for the project, if the public college-preparatory boarding school fails to secure the \$20 million of private money required by continuing law for its share of the project.
- Authorizes the Commission and the board of trustees of a public college-preparatory boarding school to enter into an agreement to lease the school's site to a third party, who will develop facilities for the school and lease them back to the school in return for rental payments partially financed with state funds.

- Eliminates the requirement that a public college-preparatory boarding school qualify for and obtain a charter from the State Board of Education.
- Transfers certain statutory duties from the operator of a public college-preparatory boarding school to the school's board of trustees, including the duty to adopt bylaws for the school.
- Revises the appointment of non-gubernatorial members of the board of trustees of a public college-preparatory boarding school.
- Requires each public college-preparatory boarding school to have a fiscal officer who meets standards established by the State Board of Education.
- Directs the Department of Education to monitor public college-preparatory boarding schools and to take action for a school's failure to comply with its bylaws or contract with the State Board of Education or with applicable laws or rules.
- Permits the resident school district of a student enrolled in a public college-preparatory boarding school to meet its responsibility to provide weekly transportation to and from the school by contracting with a third party or by paying an agreed-upon amount to the school for the school to assume the transportation duties.
- Requires student transportation to comply with all laws and rules regarding the construction, design, equipment, and operation of school buses and the qualifications of drivers and mechanics.
- Requires the Department of Education, when using federal funds to offset the per pupil boarding amount paid to a public college-preparatory boarding school, to retain any portion of those funds that may be used for administrative purposes.
- Requires regulatory agencies to use financial audits of a public college-preparatory boarding school provided by the Auditor of State (rather than by the school's operator, as in prior law) to monitor federal funds that are used to offset the per pupil boarding amount.

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## CONTENT AND OPERATION

### I. Educational Service Centers (ESCs)

#### Professional development on dyslexia

The act permits ESCs to provide teacher professional development on dyslexia. Though former law did not expressly prohibit this, the act expressly authorizes ESCs to engage the services of a dyslexia specialist to provide training for teachers of grades K to 4 on the indicators of dyslexia and the types of instruction that children with dyslexia need to learn, read, write, and spell. ESCs that provide this service must make the training available to "local" school districts within the ESC's service territory and to other school districts, community (charter) schools, and STEM schools that have contracted with the ESC for training.

The act specifies that if an ESC does not provide this service, groups of local school districts within that ESC's territory may engage the services of a dyslexia specialist to train teachers independently. Prior law did not expressly prohibit school districts from engaging the services of a dyslexia specialist to train teachers. However, under the act, it might be construed that local school districts may only engage these services independently if ESCs do not provide them.

Finally, the act permits a school district or school to require the dyslexia training for its teachers as part of its regular in-service training programs.<sup>1</sup>

## **Definitions**

The act defines "dyslexia" as a specific neurological learning disorder that is characterized by unexpected difficulties with accurate or fluent word recognition and by poor spelling and decoding abilities not consistent with the person's intelligence, motivation, and sensory capabilities, which typically result from a deficit in the phonological component of language. A "dyslexia specialist" is a person who is trained and certified in a multisensory structured language program that meets the level II specialist criteria set by the International Dyslexia Association's Knowledge and Practice Standards<sup>2</sup> or standards from any other nationally recognized organization that specializes in issues surrounding dyslexia.<sup>3</sup>

## **ESC agreements**

### **Background**

ESCs are statutorily required to provide some administrative oversight and other services to all "local" school districts within their service areas. In addition, ESCs provide similar services to school districts, known as "client" districts, that enter into agreements for those services. For these services, ESCs are eligible to receive per pupil payments from both the state and the school districts they serve.

### **Per pupil payments for local school districts**

#### **Background – H.B 153 changes**

Under continuing law enacted by H.B. 153 of the 129th General Assembly (the main operating budget for the 2012-2013 fiscal biennium), all school districts with a student count of 16,000 or less are required to enter into an agreement with an ESC for services for which the ESC may receive the statutory per pupil payments. This requirement applies to "city," "exempted village," and "local" school districts. Districts with more than 16,000 students may elect to enter into an agreement with an ESC for services.<sup>4</sup>

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<sup>1</sup> R.C. 3319.80(A).

<sup>2</sup> <http://www.interdys.org/ewebeditpro5/upload/KPS12-1-10.pdf>, last visited 12/22/11.

<sup>3</sup> R.C. 3319.80(B).

<sup>4</sup> R.C. 3313.843(B).

This H.B. 153 change may have been intended to allow local districts to receive services from *any* ESC in the state, thereby permitting local districts to shop around for a preferable service plan. That is, H.B. 153 may have made it possible for local districts to become "client" districts in the same way that city and exempted village districts already could. Nevertheless, with respect to ESC payments, H.B. 153 retained the requirement that per pupil payments from each local district be made to the ESC in whose territory it was located, regardless of whether it actually received services from that ESC.<sup>5</sup> Moreover, H.B. 153 temporarily replaced per pupil payments from the state with a payment, for fiscal year 2012, of 90% of each ESC's previous year's state payment and, for fiscal year 2013, of 85% of its previous year's state payment.<sup>6</sup>

### **The act**

Beginning July 1, 2012, the act makes changes to the statutory provisions regarding per pupil payments to coincide with the H.B. 153 changes. Specifically, the act requires that the per pupil payments be paid to the ESC from which a local school district actually obtains services, instead of automatically making payments to the ESC in whose territory the district is located. In other words, if a local district decides to receive services from a different ESC, the per pupil payments will follow the district to the new ESC. While the district will remain part of the territory of the old ESC, under the act, the district will not be paying that ESC for services it has elected to receive elsewhere.<sup>7</sup> The act does not appear to affect H.B. 153's temporary replacement of state per pupil payments for fiscal years 2012 and 2013 with amounts based on each ESC's previous year's state payment.

### **Formalization of agreements**

Under the act, if a local school district is required to enter into a service agreement with an ESC because of the size of its student population or voluntarily decides to have an agreement, the district must finalize an agreement with the ESC of its choice by June 30, 2012. This requirement applies even if the district has received services from that ESC in the past without an agreement.<sup>8</sup> The purpose of this provision is to formalize agreements between local school districts and ESCs. Since the local districts in an ESC's territory are entitled by statute to certain services from that ESC, there may never have been formal agreements in place. But since the act acknowledges

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<sup>5</sup> R.C. 3317.11, as amended by H.B. 153 of the 129th General Assembly.

<sup>6</sup> Section 267.40.70 of H.B. 153 of the 129th General Assembly.

<sup>7</sup> R.C. 3317.11 and Section 4 of the act; conforming changes in R.C. 3313.376, 3319.07, and 3326.45.

<sup>8</sup> Division (A) of Section 3 of the act.

that local districts may choose an ESC for services, it also requires the service relationship to be made explicit.

### **Termination of agreements**

As part of the process of formalizing service agreements with local school districts, the act requires a local district seeking to obtain services from a new ESC in the 2012-2013 school year to notify the ESC from which it currently receives those services by March 1, 2012, of the intended change. The district must notify the ESC even if it did not have a formal agreement for the services it received in the 2011-2012 school year. The effective date of the service termination is June 30, 2012.<sup>9</sup>

In the case of city and exempted village school districts, the act grants those districts an additional two months to notify their current ESCs that they intend to obtain services from another ESC in the 2012-2013 school year, by changing the notification deadline from January 1, 2012, to March 1, 2012. As in former law, the termination is effective June 30, 2012. Under the act, if a district fails to notify the ESC of the termination by March 1, 2012, the service agreement is automatically renewed for one school year.

The act retains law specifying that, in the future, a city, exempted village, or local school district may terminate a service agreement only biennially and only if the notice of termination occurs by January 1 of the odd-numbered year.<sup>10</sup>

### **Dissolution of ESCs**

Under the act, an ESC must be dissolved by the Superintendent of Public Instruction when it ceases to have service agreements with any client school districts. In other words, the ESC is dissolved, and the ESC governing board is abolished, when all service agreements with school districts have been terminated by the districts. The dissolution is effective on the latest effective date of the terminations. All assets, property, and debts of the ESC must be divided equitably between the school districts that had service agreements with the ESC in its final year of operation. Additionally, any cost incurred by the Department of Education in dissolving the ESC that is not covered by the ESC's assets must be shared by those districts.

When an ESC is dissolved, any public records in its possession regarding services provided to client school districts must be transferred to those districts. Public records regarding services provided to the local school districts that were ever part of

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<sup>9</sup> Division (B) of Section 3 of the act.

<sup>10</sup> R.C. 3313.843(D).

the ESC's territory must be transferred to the local districts.<sup>11</sup> Finally, if the ESC in which a local school district is located is dissolved, the act specifies that the territory of the local district ceases to be part of the territory of any ESC.<sup>12</sup>

Under prior law, the provisions for dissolving an ESC applied only if all of the local school districts located within the ESC's territory had severed themselves from the ESC, although prior law provided no procedure for a local district to do so.

## **II. Public College-Preparatory Boarding Schools**

H.B. 153 of the 129th General Assembly authorized the establishment of public college-preparatory boarding schools to serve at-risk students in grades 6 to 12, beginning in the 2013-2014 school year. Each boarding school must be operated by a private nonprofit organization selected by the State Board of Education. The schools are considered public schools and part of the state's program of education.<sup>13</sup>

### **College-Preparatory Boarding School Facilities Program**

#### **Background**

H.B. 153 created the College-Preparatory Boarding School Facilities Program, under which the Ohio School Facilities Commission must provide public college-preparatory boarding schools with assistance for the acquisition of classroom facilities. To be eligible for the assistance, a school's board of trustees must raise at least \$20 million of private money to satisfy its share of facilities acquisition. Acquisition of residential facilities and any other facilities *other than* classroom facilities must be funded by the board of trustees through private means.

#### **The act**

The act makes several changes to the program. First, it specifies that the program must comply with the Classroom Facilities Assistance Program (CFAP), which is the main classroom facilities assistance program for school districts. However, because public college-preparatory boarding schools have no taxing authority, no requirement of CFAP related to the issuance of bonds or securities or the levying of taxes applies to the schools. Also, under CFAP, priority for funding is based on a school district's

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<sup>11</sup> R.C. 3311.0510.

<sup>12</sup> R.C. 3311.05.

<sup>13</sup> For a more detailed description of the H.B. 153 provisions authorizing these schools, see pp. 184-186 and 226-237 of the LSC final analysis for that act, which is available online at [www.lsc.state.oh.us/analyses129/11-hb153-129.pdf](http://www.lsc.state.oh.us/analyses129/11-hb153-129.pdf).

relative wealth as determined by tax valuations, with poorer districts being served before wealthier districts. Since it is not possible to rank the boarding schools in terms of tax valuations for the purpose of determining when they are eligible for assistance, the act simply requires the School Facilities Commission to initiate procedures for a school's project upon execution of the contract between the State Board of Education and the school's operator establishing the school.

Second, the act requires the Commission, in consultation with the school's board of trustees, to determine the cost of the school's project based on all campus facilities needed for the school's programs and operations, rather than just the classroom facilities needed by the school. In determining the basic project cost, the Commission must take into account unique spaces or square footages the school might require. Regardless of the inclusion of nonclassroom facilities in calculating the project cost, the act prohibits the use of state funds for facilities that are not classroom facilities. It also limits the use of state funds to classroom facilities that do not exceed construction and design standards outlined in the Commission's Design Manual. The private funds secured by the school's board of trustees may be used for any type of facility, presumably including classroom facilities that exceed the Commission's standards.

Third, the act requires the project agreement entered into by the Commission and the school's board of trustees to provide for termination of the agreement and release of the state funds encumbered for the project, if the board of trustees fails to secure the required \$20 million of private money within the time period designated by the Commission.

Finally, the act repeals a H.B. 153 requirement that lease payments made by a school participating in the College-Preparatory Boarding School Facilities Program be deposited into the Common Schools Capital Facilities Bond Service Fund.<sup>14</sup>

### **Alternative lease-leaseback agreement to finance facilities**

In lieu of direct state funding under the College-Preparatory Boarding School Facilities Program, the act provides an alternative way for a public college-preparatory boarding school to finance its facilities with state assistance through a lease-leaseback venture with a third party. Under the act, if the board of trustees of the school has leased, purchased, or otherwise acquired a site for the school, with approval of the School Facilities Commission, the board and the Commission may enter into an agreement with a third party to lease the site and any existing improvements on the site to the third party. That party, then, will develop the site with new or renovated facilities and lease the site and facilities back to the school's board in return for rental

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<sup>14</sup> R.C. 3318.60.

payments. Those payments will be financed, at least in part, by state funds paid by the Commission to the school's board of trustees. As agreed to by the Commission and the board of trustees, the Commission may pay the state funds either in periodic installments or as one lump sum equal to the outstanding balance on the lease for classroom facilities.<sup>15</sup>

The act does not specify how the school's board of trustees is to deposit the state facilities funds it receives and whether it may earn interest on the funds until they are paid in rent to the third-party developer. Moreover, the act is silent as to whether any fourth party who may own the site, if the school's board has only leased that site, also needs to be party to the agreement. It seems likely that, at the very least, the consent to the lease-leaseback agreement of such a fourth party must be obtained before any of the other parties could enter into it.

### **Conditions for approval of the agreement**

The act specifies conditions that must be in place before the Commission may approve a lease-leaseback agreement. First, the third-party developer must submit a plan for the site that includes all of the following:

- (1) Installation of utilities that comply with all applicable laws;
- (2) A description of the facilities that will be constructed, reconstructed, repaired, or added to and their total square footage;
- (3) A description of how the facilities will enable the school to provide its educational program;
- (4) Provision for property and liability insurance for the facilities;
- (5) A description of how the development of the site will be financed by the third party;
- (6) The length of the lease term, which may not exceed 40 years; and
- (7) The monthly rent payment due to the third party.

Second, in order to approve the agreement, the Commission must determine that the developer's plan is satisfactory, meets the needs of the school's prospective students, and that the classroom facilities described in the plan do not exceed the Commission's construction and design standards.

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<sup>15</sup> R.C. 3318.61(A).

Third, the Commission must be satisfied with the third-party developer's demonstration of financial responsibility.

Finally, the Commission, in consultation with the school's board of trustees, must determine that the lease-leaseback agreement is in the best interest of the school.<sup>16</sup>

### **Agreement content**

The act specifies stipulations that must be in the lease-leaseback agreement, if approved by the Commission. First, it must require that development of the site begin no later than 18 months after the agreement is executed and that it proceed according to a specified schedule. The agreement also must stipulate that failure of the third-party developer to comply with the schedule is grounds for termination of the agreement. It also must specify which party to the agreement owns the facilities located on the site if the school closes prior to the expiration of the agreement. Finally, the agreement must indicate the period of time after the school's closure, if any, during which rent payments will continue to be paid to the developer.<sup>17</sup>

### **State charter**

The act eliminates the requirement that a public college-preparatory boarding school qualify for and obtain a charter from the State Board of Education.<sup>18</sup> Continuing law requires that school districts and schools operated by school districts have a state charter, as well as nonpublic schools that wish to qualify for state Auxiliary Services funds for their students.<sup>19</sup> On the other hand, public community (charter) schools are not required to have a state charter.

### **Board of trustees**

#### **Duties of board vs. operator**

The act transfers several duties and responsibilities from the operator of a public college-preparatory boarding school to the school's board of trustees. Under continuing law, the operator of the school is a private nonprofit organization that submitted a proposal for the school to the State Board of Education and with which the State Board contracts to establish and operate the school. The board of trustees of the school is its

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<sup>16</sup> R.C. 3318.61(B).

<sup>17</sup> R.C. 3318.61(C).

<sup>18</sup> R.C. 3328.02(A), 3328.12(A) and (D), and 3328.13.

<sup>19</sup> R.C. 3301.16 and 3317.06, neither in the act.

governing body. The act transfers the following statutory duties from the operator to the board of trustees:

- (1) Overseeing the acquisition of a facility for the school;
- (2) Adopting the school's bylaws;
- (3) Adopting an outreach program to inform school districts about the school and how to become a participating school district whose residents may enroll in the school; and
- (4) Determining, in conjunction with the Department of Education, whether federal funds received by the school will offset the state's obligation to pay the school a per pupil boarding amount.<sup>20</sup>

### **Appointment of board members**

The act revises the method of appointing a public college-preparatory boarding school's board of trustees. It retains the requirement that the board consist of up to 25 members serving staggered, three-year terms, five of whom are appointed by the Governor with the advice and consent of the Senate. But it slightly revises the appointment of the remaining, non-gubernatorial members, because former law required that they be appointed according to the bylaws adopted by the school's operator, while the act transfers the adoption of bylaws from the operator to the board of trustees. Under the act, therefore, the *initial* non-gubernatorial members are to be appointed by the operator, and their successors are to be appointed pursuant to the board's bylaws. The term of office remains three years, with the starting and ending dates of all members' terms determined by the operator, unless subsequently modified by the bylaws.<sup>21</sup>

### **General school authority**

The act adds a statement that a public college-preparatory boarding school, "acting through its board of trustees . . . may sue and be sued, acquire facilities as needed, contract for any services necessary for the operation of the school, and enter into contracts with the Department of Education." The board also "may carry out any act and ensure the performance of any function" that is in compliance with the Ohio

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<sup>20</sup> R.C. 3328.12(A) and (E), 3328.13, 3328.14, and 3328.34(D).

<sup>21</sup> R.C. 3328.15; conforming change in R.C. 3328.13.

Constitution, the laws governing the school, and its contract with the State Board of Education.<sup>22</sup>

### **Contract with operator**

The act mandates several new provisions of the contract required by continuing law to be executed between the State Board of Education and the operator of a public college-preparatory boarding school. First, the contract must require the school to have a fiscal officer who meets standards established by the State Board for this purpose. Second, the contract must stipulate that the Department of Education will monitor the school's operations and facilities, including conducting on-site visits of the school, and specify the procedures for the monitoring. Finally, the contract must authorize the Department to take actions, as specified in the contract, if the school fails to comply with the contract, applicable state laws and administrative rules, or the school's bylaws. In taking action, the Department must notify the school of the noncompliance and provide the school an opportunity to appeal the Department's decisions to the State Board.<sup>23</sup>

### **Student transportation**

Continuing law makes the resident school district of a student enrolled in a public college-preparatory boarding school responsible for transporting the student to and from the school on a weekly basis. The act further adds that the district may (1) provide the transportation itself, (2) contract with a third party to provide the transportation, or (3) enter into an agreement with the boarding school under which the school will transport the student and the school district will pay the school an agreed-upon amount for that transportation.

In addition, the act specifies that the transportation, regardless of which party provides it, is subject to all requirements in state law and administrative rules regarding the construction, design, equipment, and operation of school buses or other vehicles used for transporting students. Moreover, the vehicle drivers and mechanics must comply with all applicable laws and rules.<sup>24</sup>

### **Use of federal funds for boarding amount**

Under the act, if the Department of Education uses any federal funds to defray the per pupil boarding amount paid to a public college-preparatory boarding school,

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<sup>22</sup> R.C. 3328.02(B).

<sup>23</sup> R.C. 3328.12.

<sup>24</sup> R.C. 3328.41.

the Department must first subtract any portion of those funds that the federal government allows to be used for administrative purposes. The remainder after the deduction must be applied toward the total boarding amount owed to the school.

Under continuing law, in addition to per pupil operating funding, the Department must pay each public college-preparatory boarding school an annual boarding amount for each student. That amount is set at \$25,000 for the 2013-2014 school year, which is the first year a boarding school may open, and is adjusted for inflation each following year.<sup>25</sup>

### **Use of audits by the Auditor of State**

The act requires regulatory agencies to use financial audits of a public college-preparatory boarding school provided by the Auditor of State, rather than independent audits provided by the school's operator as in prior law, for the purpose of monitoring federal funds that are used to offset the per pupil boarding amount. Continuing law authorizes the State Board of Education to accept "funds from federal and state noneducation support services programs" for the boarding amount. With respect to that authority, continuing law directs the State Board, "notwithstanding any other provision of the Revised Code . . . [to] coordinate and streamline any noneducation program requirements in order to eliminate redundant or conflicting requirements, licensing provisions, and oversight by government programs or agencies."<sup>26</sup>

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	03-15-11
Reported, H. Education	06-09-11
Passed House (97-0)	06-22-11
Reported, S. Education	12-13-11
Passed Senate (33-0)	12-13-11
House concurred in Senate amendments (90-1)	12-14-11

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<sup>25</sup> R.C. 3328.34.

<sup>26</sup> R.C. 3328.34(C).

