



# Ohio Legislative Service Commission

## Bill Analysis

Hannah K. Wann

### H.B. 221

129th General Assembly  
(As Introduced)

**Reps.** Mecklenborg and Driehaus, Batchelder, Amstutz, Stebelton, Mallory, Reece, Stautberg, Blessing, Gardner, Maag, Grossman, J. Adams, Sears, Bulp, Beck, Heard, Murray, Sykes, Wachtmann, Patmon, Derickson, Dovilla, Thompson, Pillich

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## BILL SUMMARY

### Creation

- Permits the establishment of public college-preparatory boarding schools operated by private nonprofit entities for the benefit of qualifying at-risk middle or high school students.
- Requires the State Board of Education to issue a request for proposals from nonprofit organizations interested in operating a college-preparatory boarding school and to enter into a contract with each approved operator.
- Requires nonprofit organizations that submit a proposal to operate a college-preparatory boarding school to demonstrate experience operating a similar school or program, success in improving student academic performance, and the capacity to secure private funds for the development of the school.
- Provides that each college-preparatory boarding school issued a charter by the State Board is considered a public school and a part of the state's program of education.

### School governance

- Provides for the governance of a college-preparatory boarding school by a board of trustees consisting of up to 25 members, with five members appointed by the Governor, with the advice and consent of the Senate, and the remaining members appointed pursuant to the school's bylaws.

## **Student enrollment**

- Provides that a student qualifies to attend a college-preparatory boarding school if the student is at risk of academic failure, is from a family whose income is below 200% of the federal poverty guidelines, and meets at least two other criteria involving the student's academic performance, behavior history, disability status, or family status.
- Further limits enrollment to residents of the school district in which the school is located, and residents of any other school district that agrees to be a participating school district.
- Provides that a college-preparatory boarding school may only admit up to 80 students and offer grade 6 in its first year of operation.
- Allows a college-preparatory boarding school to offer additional grades in the years following its first year of operation, provided that the total number of students attending the school never exceeds 400.

## **School operations**

- Permits boarding school employees to collectively bargain under the Public Employees Collective Bargaining Law.
- Applies state laws regarding achievement assessments, diploma requirements, special education, and educator misconduct to each boarding school.
- Requires each participating school district to provide weekly transportation to and from the college-preparatory boarding school for its resident students enrolled in the school.

## **State oversight**

- Requires the Department of Education to issue an annual report card for each college-preparatory boarding school that includes data regarding the academic performance of the school's students.
- Allows the State Board to close a college-preparatory boarding school if the school violates a provision of the authorizing law or a provision of the contract between the school and the State Board.

## Funding

- Requires the Department of Education to deduct, from the state education aid of the school district in which a college-preparatory boarding school student is entitled to attend school, an amount equal to 85% of the operating expenditure per pupil of that district (including both state and local revenues).
- Requires the Department to pay to each college-preparatory boarding school the amount deducted from a school district's state education aid for each pupil attending the boarding school, plus a state payment of a "per-pupil boarding amount."
- Sets the "per-pupil boarding amount" at \$25,000 per pupil during a college-preparatory boarding school's first fiscal year of operation, with adjustments for inflation in following fiscal years.
- Allows for reductions to the "per-pupil boarding amount" if, in any fiscal year, the college-preparatory boarding school receives funds from the federal government or other outside funding sources.

## College-Preparatory Boarding School Facilities Program

- Establishes the College-Preparatory Boarding School Facilities Program, under which the Ohio School Facilities Commission is to provide assistance for the acquisition of classroom facilities to the boards of trustees of college-preparatory boarding schools.
- Specifies that, to be eligible for the assistance, a board of trustees must secure at least \$20 million of private money to satisfy its share of facilities acquisition, and that the acquisition of residential boarding facilities and any other non-classroom facilities must be funded through private means.

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## TABLE OF CONTENTS

Public college-preparatory boarding schools for at-risk students .....	4
Creation of college-preparatory boarding schools .....	4
School operator selection .....	4
Contract with operator .....	5
Termination of contract .....	6
Option for additional boarding schools .....	6
Public boarding school governance .....	6
Adoption of school bylaws .....	6
Board of trustees .....	7
Student enrollment .....	7
Eligibility requirements .....	7

Maximum enrollment.....	8
School operations .....	8
Compliance with certain education laws .....	8
Special education.....	9
Curriculum requirements .....	10
Employee collective bargaining rights .....	10
Student transportation.....	11
Annual report card .....	11
Time limit on state funding obligation .....	11
Funding.....	11
Use of federal funds to offset boarding amount .....	12
Title I funds .....	13
Other funds .....	13
College-Preparatory Boarding School Facilities Program.....	14

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## **CONTENT AND OPERATION**

### **Public college-preparatory boarding schools for at-risk students**

The bill permits the establishment of at least one college-preparatory boarding school serving at-risk middle and high school students. The boarding school may be operated only by a nonprofit organization approved by the State Board of Education. Once a boarding school receives a charter from the State Board, the school is considered a public school and a part of the state's program of education. In its initial year of operation, the school may offer only grade 6, but it may add higher grades, through grade 12, in subsequent years. The bill limits enrollment in the boarding school to students who belong to a family with an income at or below 200% of the federal poverty guidelines and who are at risk of academic failure.

### **Creation of college-preparatory boarding schools**

#### **School operator selection**

A boarding school established under the bill must be operated by a private nonprofit entity selected by the State Board of Education. For this purpose, within 60 days after the bill's (90-day) effective date, the State Board must issue a request for proposals from nonprofit corporations interested in operating the school. Each proposal must include (1) the proposed location of the school, which may differ from any location recommended by the State Board, (2) a plan for offering grade 6 in the school's first year of operation and a plan for increasing the grade levels over time, and (3) any other information about the proposed educational program, facilities, or operations of the school considered necessary by the State Board.

The State Board must choose the school's operator from among the qualified responders. To be considered qualified, a private nonprofit corporation must (1) have

experience operating a school or program similar to the school authorized by the bill and demonstrate to the State Board's satisfaction that the existing school or program has been successful in improving students' academic performance and (2) demonstrate to the State Board's satisfaction that the corporation has the capacity to secure private funds for the school's development.

If there are no responders with the required qualifications, the State Board may issue another request for proposals. Selection of a qualified operator must occur within 180 days after the issuance of the most recent request.<sup>1</sup>

### **Contract with operator**

After selecting an operator for the boarding school, the State Board of Education must enter into a contract with that entity prescribing the terms of the school's operation. The contract must stipulate the following:

(1) That the school may operate only if and to the extent it holds a valid charter issued by the State Board. Under continuing law, the State Board issues charters to school districts and individual schools within each district and may revoke a charter for failure to meet the State Board's minimum standards for elementary and secondary schools. These minimum standards cover such areas as the licensure and assignment of teachers and other staff, instructional materials and equipment, the organization and administration of schools, school facilities and grounds, student admissions, grade promotion policies, and graduation requirements.<sup>2</sup>

(2) That the operator will oversee the acquisition of a facility for the school (see "**College-Preparatory Boarding School Facilities Program**" below).

(3) That the operator will manage the school in accordance with the terms of the proposal accepted by the State Board during the selection process, including the plan for increasing the grade levels offered by the school.

(4) That the school will comply with the bill's provisions, any other provisions of law specified in the contract, State Board rules pertaining to the school,<sup>3</sup> the school's charter, and the school's bylaws (see "**Adoption of bylaws**" below).

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<sup>1</sup> R.C. 3328.11.

<sup>2</sup> R.C. 3301.07(D)(2) and 3301.16, neither in the bill.

<sup>3</sup> The bill requires the State Board to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) to implement the bill's provisions (R.C. 3328.50).

(5) That the school will meet the academic goals and other performance standards outlined in the contract.

(6) That the State Board or the operator may terminate the contract in accordance with procedures described in the contract. Those procedures must include a requirement that the party seeking termination give prior notice of the intent to terminate the contract. The other party must also be given an opportunity to redress any grievances cited in the notice prior to the termination.

(7) That, if the school closes for any reason, the school's board of trustees will execute the closing in the manner specified in the contract.<sup>4</sup>

### **Termination of contract**

The bill authorizes the State Board to terminate a contract with a boarding school's operator for failure of the school to comply with the bill's provisions or the terms of the contract, or for failure to meet the academic goals or performance standards specified in the contract. Upon termination of the contract, the school must close. No termination may take effect before the end of a school year.<sup>5</sup>

### **Option for additional boarding schools**

The bill permits the State Board to authorize one or more additional public boarding schools after the establishment of the first boarding school. If the State Board determines that additional schools are advisable, it must select and contract with qualified operators for those schools by following the same process used for selecting the first school's operator (see "**School operator selection**" above). Presumably, the operator of the first school could submit a proposal to run any additional school authorized in the future, but the bill does not grant that operator preference in the selection process.<sup>6</sup>

## **Public boarding school governance**

### **Adoption of school bylaws**

The operator of a boarding school established under the bill must adopt bylaws for the oversight and operation of the school. The bylaws, which are subject to the approval of the State Board of Education, must include standards for the admission and

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<sup>4</sup> R.C. 3328.12.

<sup>5</sup> R.C. 3328.45.

<sup>6</sup> R.C. 3328.11(B)(1).

dismissal of students and procedures for the appointment of members of the school's board of trustees. The bylaws must conform to all applicable statutes and administrative rules, contract terms, and the school's charter.<sup>7</sup>

### **Board of trustees**

A board of trustees consisting of up to 25 members must govern each boarding school established under the bill. The Governor must appoint five of the trustees, with the advice and consent of the Senate. The Superintendent of Public Instruction may recommend appointees to the Governor, but those recommendations are not binding. All other trustees must be appointed in accordance with the school's bylaws.

Under the bill, trustee terms of office are three years, after an initial period in which the terms are staggered in length. Trustees may be reappointed, but no trustee may serve for more than three consecutive three-year terms. If the school's bylaws provide for compensation, trustees may be paid for their service on the board.<sup>8</sup>

### **Student enrollment**

#### **Eligibility requirements**

A student is eligible to attend a boarding school established under the bill if the student (1) is entitled to attend school in a "participating school district," which is the district where the school is located or any other district that has agreed to allow its resident students to enroll in the school, (2) is at risk of academic failure, (3) is from a family with an income below 200% of the federal poverty guidelines, and (4) meets at least two of the following other risk indicators:

(a) The student has a record of in-school disciplinary actions, suspensions, expulsions, or truancy;

(b) The student failed to attain a proficient score on a state achievement assessment in English language arts, reading, or math at least once, or failed to attain a minimum score designated by the boarding school's board of trustees on an end-of-course exam in English language arts or math administered under the new high school assessment system that will eventually replace the Ohio Graduation Tests (OGT);

(c) The student has a disability;

(d) The student has been referred for academic intervention services;

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<sup>7</sup> R.C. 3328.13.

<sup>8</sup> R.C. 3328.15.

- (e) The student's head of household is a single parent;
- (f) The student's head of household is not the student's custodial parent; or
- (g) The student has a family member who has been imprisoned.

A student must also meet any additional criteria specified in the agreement between the State Board of Education and the boarding school's operator.<sup>9</sup>

The bill requires the State Board to adopt procedures for school districts to follow in becoming participating school districts.<sup>10</sup> In addition, the boarding school's operator must create an outreach program to inform school districts about the school, its admission procedures, and the process for becoming a participating district.<sup>11</sup>

### **Maximum enrollment**

The maximum enrollment for a boarding school established under the bill is 400 students. However, the school is limited to 80 students in its first year of operation, in which it may offer only grade 6. If the number of applicants exceeds the school's capacity, admission must be by lottery.<sup>12</sup>

### **School operations**

#### **Compliance with certain education laws**

A boarding school established under the bill, its operator, and its board of trustees are subject to the following education laws in the same manner as a school district:<sup>13</sup>

- Administration of the state achievement assessments and the new high school assessment system that will replace the OGTs; provision of intervention services to students who do not attain a proficient score on an achievement assessment (R.C. 3301.0710, 3301.0711, and 3301.0712);
- High school diploma requirements (R.C. 3313.61 and 3328.25);

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<sup>9</sup> R.C. 3328.01(B).

<sup>10</sup> R.C. 3328.04.

<sup>11</sup> R.C. 3328.14.

<sup>12</sup> R.C. 3328.21.

<sup>13</sup> R.C. 3328.18, 3328.19, 3328.191, 3328.192, 3328.193, 3328.20, 3328.24, 3328.25, 3328.26(C), and 3328.99.

- Sanctions for failure to meet the federal standard of "adequate yearly progress" for two or more consecutive school years (R.C. 3302.04 and 3302.041). (Adequate yearly progress (AYP) is a measure of performance used to determine whether a school district or building is meeting the goals of the federal No Child Left Behind Act. Under an existing federal pilot project, the Ohio Department of Education is implementing a Model of Differentiated Accountability that prescribes a series of graduated sanctions based on the length of time a district or school has failed to make AYP and the degree to which it has failed.)
- Reporting requirements for the Education Management Information System (EMIS), which is a database of fiscal, personnel, enrollment, and academic performance information about school districts and buildings (R.C. 3301.0714);
- Requirement to conduct criminal records checks of applicants for employment and to periodically update those checks for nonlicensed employees other than bus drivers; prohibition on employing a person with a disqualifying criminal offense (R.C. 3319.39 and 3319.391);
- Suspension of employees from duties involving the care, custody, or control of a child upon arrest or indictment for a disqualifying offense (R.C. 3328.18(B));
- Reporting of misconduct by licensed educators to the Department of Education; immunity from civil liability for good-faith reports; and penalties for failure to make required reports or for making false reports (R.C. 3319.31, 3319.311, 3328.18(C), 3328.19, 3328.191, 3328.192, 3328.193, and 3328.99); and
- Requirement that private contractor employees that provide "essential school services" and work in a school in a position that requires routine interaction with a child must be supervised by a school employee or provide a recent criminal records check with no disqualifying offenses (R.C. 109.57 and 3328.20).

### **Special education**

Similarly, in the same manner as a school district, each boarding school and its operator must comply with state and federal law regarding the provision of special education and related services to students with disabilities.<sup>14</sup> The bill specifies that a

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<sup>14</sup> See R.C. Chapter 3323. and 20 United States Code (U.S.C.) 1400 *et seq.*

disabled student's resident school district is not obligated to provide the student with a "free appropriate public education" for as long as the student attends the boarding school. Therefore, the boarding school must assume the responsibility of providing the student with all necessary special education and related services. For each disabled student enrolled in the school, the school and its operator must verify to the Department of Education that the school is providing the services required by the individualized education program, or IEP, developed for the student.<sup>15</sup>

### **Curriculum requirements**

The school's educational program must include a remedial curriculum for all grades it offers below grade 9, and a college-preparatory curriculum for grades 9 to 12 that complies with the Ohio Core curriculum, which is the 20-unit state minimum high school curriculum. Currently, students through the graduating class of 2017 may opt out of the Ohio Core curriculum with parental permission, so long as they meet other specified conditions, but they still must complete the minimum high school curriculum in effect for students who entered ninth grade prior to July 1, 2010. This opt-out would be available to students in the eligible classes who are enrolled in a boarding school established under the bill.<sup>16</sup>

The school's educational program also must provide (1) extracurricular activities, including athletic and cultural activities, (2) college admission counseling, (3) physical and mental health services, (4) tutoring, (5) community service opportunities, and (6) a residential student life program.<sup>17</sup>

### **Employee collective bargaining rights**

The bill explicitly grants teaching and nonteaching employees of a boarding school established under the bill the right to collectively bargain under the Public Employees Collective Bargaining Law.<sup>18</sup> Although that Law prohibits the State Employment Relations Board from placing professional and nonprofessional employees in the same bargaining unit without approval by a majority vote of both groups,<sup>19</sup> the

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<sup>15</sup> R.C. 3328.23.

<sup>16</sup> See R.C. 3313.603(C) and (D), not in the bill.

<sup>17</sup> R.C. 3328.22.

<sup>18</sup> See R.C. Chapter 4117.

<sup>19</sup> R.C. 4117.06(D)(1), not in the bill.

bill specifies that a bargaining unit containing both teaching and nonteaching boarding school employees may be considered an appropriate unit, presumably without a vote.<sup>20</sup>

### **Student transportation**

The bill provides that a boarding school student's resident school district is responsible for the student's weekly transportation to and from the boarding school.<sup>21</sup>

### **Annual report card**

Under the bill, the Department of Education must issue an annual report card and performance rating for each boarding school in the same manner as required in continuing law for other public schools and school districts.<sup>22</sup> The bill also requires that the academic performance data of each boarding school student be used in calculating both the performance of the boarding school *and* the performance of the student's resident school district. For this purpose, the Department must include the student's achievement assessment scores in the resident district's data when determining the district's report card rating.<sup>23</sup>

### **Time limit on state funding obligation**

Under the Ohio Constitution, the maximum length of time for which a General Assembly may make an appropriation is two years.<sup>24</sup> In accordance with this constitutional provision, the bill prohibits any agreement or contract entered into under the bill's provisions, such as the contract between the State Board of Education and the operator of a boarding school, from creating a state funding obligation for more than two years. However, a financial obligation may be reauthorized every two years by a new General Assembly.<sup>25</sup>

### **Funding**

The bill requires each boarding school to report to the Department of Education (1) the total number of students enrolled, (2) the number of students enrolled in the school who are receiving special education and related services under an IEP, (3) the

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<sup>20</sup> R.C. 3328.17 and 4117.01.

<sup>21</sup> R.C. 3328.41.

<sup>22</sup> R.C. 3302.03, not in the bill.

<sup>23</sup> R.C. 3328.26(A) and (B).

<sup>24</sup> Article II, Section 22.

<sup>25</sup> R.C. 3328.03.

school district in which students enrolled in the boarding school are entitled to attend, and (4) any additional information the Department determines necessary to make payments to the school.<sup>26</sup>

For each student enrolled in a boarding school established under the bill, the Department of Education must pay the sum of the following to the school:

(1) An amount equal to **85% of the "operating expenditure per pupil"** of the student's resident school district. As defined by the bill, the "operating expenditure per pupil" is the "total amount of state payments and other nonfederal revenue spent by the district for operating expenses during the previous fiscal year," divided by the district's formula ADM (average daily membership) for that fiscal year. In other words, it is the per-pupil amount of state and district funds (and, probably, private funds, if any) spent for district operations in the prior fiscal year. This amount is deducted from the resident district's state aid account, after crediting the account with the amount of state funds generated by the student. However, the total amount of state funds deducted for the student may be more than the credited amount, since the deduction also accounts for per-pupil district funds spent on operating expenses.<sup>27</sup> (The school district must count students who are entitled to attend that district, but are enrolled in the boarding school, in the district's ADM and in the district's category one through six special education ADM. In turn, the Department of Education must count those students in the district's formula ADM.)<sup>28</sup>

(2) A "**per-pupil boarding amount**," which is set at \$25,000 for the first fiscal year a school could be established under the bill and is adjusted for inflation each subsequent fiscal year. This amount is not deducted from the resident district's state aid account, but instead is paid directly from the Department's appropriations.<sup>29</sup>

#### **Use of federal funds to offset boarding amount**

In any fiscal year in which the boarding school's operator receives federal funds to support the school's operations, the amount of those federal funds must be deducted from the total per-pupil boarding amount paid to the school by the Department of Education. Similarly, if the Department receives federal funds to support the school's operations, the Department must use those funds first to cover the total per-pupil boarding amount owed to the school in the applicable fiscal year. In both cases, any

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<sup>26</sup> R.C. 3328.31.

<sup>27</sup> R.C. 3328.33.

<sup>28</sup> R.C. 3328.32.

<sup>29</sup> R.C. 3328.34.

remaining boarding amount owed to the school after accounting for the federal funds must be paid from the Department's state appropriations. These provisions essentially lower the state's funding obligation in fiscal years when the Department or the school's operator acquires federal funds for support of the school.

If federal funds received by the operator or the Department are used to offset the state funds paid to cover the total per-pupil boarding amount, the bill directs the Department to comply with all requirements upon which acceptance of the federal funds is conditioned, including any requirements set forth in the funding application and, to the extent sufficient state funds are appropriated to the Department, any requirements related to "maintenance of effort" in expenditures. If the Department applies for the federal funds, it would already be subject to any requirements tied to the funds' acceptance under the federal law authorizing the grant. If the operator applies for the federal funds on its own behalf, it is likely that the related requirements would apply to the operator, as the recipient, rather than to the Department. Therefore, it is not clear whether the bill's language would impose any additional requirements on the Department.<sup>30</sup> (See **COMMENT.**)

### **Title I funds**

To the extent permitted by federal law, the Department of Education must include a boarding school established under the bill in its annual allocation of federal Title I funds.<sup>31</sup> Title I, which is the central program of the Elementary and Secondary Education Act of 1965, provides funds for the educational needs of low-income and other at-risk students.<sup>32</sup>

### **Other funds**

The bill specifies that a boarding school established under the bill is considered a school district for the purpose of applying for state or federal grants available to districts or public schools. The school or its operator also may apply to private entities for funding.<sup>33</sup>

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<sup>30</sup> R.C. 3328.34(D).

<sup>31</sup> R.C. 3328.35.

<sup>32</sup> See 20 U.S.C. 6301 *et seq.*

<sup>33</sup> R.C. 3328.36.

## College-Preparatory Boarding School Facilities Program

The bill creates the College-Preparatory Boarding School Facilities Program. Under this Program, the Ohio School Facilities Commission is to provide assistance for the acquisition of classroom facilities to the boards of trustees of schools authorized under the bill. To be eligible for the assistance, a board of trustees must secure 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 acquisition of classroom facilities with assistance provided by the Program is not subject to the Classroom Facilities Assistance Program requirements of current law.<sup>34</sup> The bill specifies that the lease payments made by the boarding schools are to be deposited into the existing Common Schools Capital Facilities Bond Service Fund. Money in this fund is used for payment of debt service on obligations issued by the Ohio School Facilities Commission to pay the costs of capital facilities for a system of common schools throughout the state.<sup>35</sup>

The Commission is to adopt rules necessary for the implementation and administration of the Program not later than 90 days after the effective date of this portion of the bill.<sup>36</sup>

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### COMMENT

1. Some federal grant programs require that the federal funds be used to supplement, rather than supplant, state funding. Under the bill, federal funds would be used to offset the total per-pupil boarding amount that must be paid from state appropriations to a boarding school established under the bill. Since the state's obligation to pay the boarding amount must be met wholly from state funds in any fiscal year that federal funds are not available, the use of federal funds to offset that amount in other fiscal years might violate a prohibition on supplanting state funds, if such a prohibition were part of the terms of the federal grant.

2. Within its provisions prescribing the state per-pupil boarding payment, the bill contains a series of statements:

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<sup>34</sup> R.C. 3318.01 to 3318.20.

<sup>35</sup> R.C. 151.03, not in the bill.

<sup>36</sup> R.C. 3318.60.

(a) Authorizing the State Board of Education to "accept funds from federal and state noneducation support services programs for the purpose of funding" the payment;

(b) Directing 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"; and

(c) Directing "applicable regulatory entities . . . to the maximum extent possible, [to] use independent reports and financial audits provided by the operator and coordinated by the Department of Education to eliminate or reduce contract and administrative reviews."<sup>37</sup>

The meaning and effect of these statements are not clear. A possible interpretation might be that the bill is directing state agencies to streamline noneducation programs and regulations in order to generate state savings that could be used to finance the state per-pupil boarding payment. A narrower interpretation might be that the bill is empowering the State Board of Education to coordinate the activities of other regulatory agencies that would have authority over the boarding school in order to facilitate the school's efficiency. But neither interpretation may be certain.

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## HISTORY

ACTION	DATE
Introduced	05-05-11

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<sup>37</sup> R.C. 3328.34(C).