



Ohio Legislative Service Commission

Bill Analysis

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I. EDUCATION PROVISIONS

Third grade reading guarantee

- Revises the "third grade reading guarantee," under which a school district or community school generally must retain in third grade a student who scores in a certain range on the third grade English language arts achievement assessment, including all of the following:

- Raises the "cut" score by applying the guarantee to all students who do not receive at least a "proficient" (or passing) score on the assessment.
- Prohibits the promotion of a student who has been on a reading improvement and monitoring plan for two or more years.
- Exempts from retention limited English proficient students who have less than two years of instruction in an English as a second language program.
- Specifies that, in the case of a special education student whose individualized education program (IEP) requires the student to take the achievement assessments, the decision whether to retain the student must be based on the student's ability to meet the academic goals in the IEP.
- Requires the district or community school to administer the state-developed diagnostic assessments in English language arts, or a comparable tool approved by the Department of Education, to all students in grades K to 3 by October 31 of each school year to identify students reading below grade level.
- Requires the district or community school to develop a reading improvement and monitoring plan for each student in grades K to 3 who is identified as reading below grade level.
- Requires the district or community school to provide each student reading below grade level at the end of second grade with intense remediation services during the summer before third grade.
- Requires each district or community school to provide each student who does not receive a proficient score on the third grade English language arts achievement assessment with intense remediation services until the student is able to read at grade level, and requires the student to be promoted to fourth grade if the student demonstrates reading proficiency in accordance with standards adopted by the Department.
- Eliminates the requirement that the remediation provided to students who are reading below grade level include instruction in phonetics, and specifies instead that the remediation must be targeted at the student's reading deficiencies.
- Eliminates the requirement that summer remediation be provided in a school or community center and not on an at-home basis.
- Repeals the general prohibition on requiring school districts and community schools to report students' results on diagnostic assessments to the Department or State Board of Education or making the results available to the public.

- Requires districts and community schools to provide a student's complete diagnostic assessment and scores to the student's parent.
- Specifies that blank copies of diagnostic assessments are not public records.
- Requires community schools to adopt a promotion and retention policy that prohibits the promotion of a student who has been truant for more than 10% of the school year and has failed at least two of the required subjects, unless the principal and teachers in the failed subjects agree that the student is academically prepared for the next grade.

Academic performance measurement

- Beginning with the current 2011-2012 school year, replaces the academic performance rating system for school districts, individual buildings of districts, community schools, and STEM schools with a letter grade system.
- Requires the State Board of Education, in consultation with the Chancellor of the Board of Regents and the Governor's Office of Workforce Development, to develop a report card for joint vocational school districts separate from those for city, exempted village, and local school districts.
- Removes joint vocational school districts from the Department of Education's annual ranking of public schools.
- Removes from the criteria with which the Department ranks public schools performance measures related to career-technical education.
- Requires the State Board of Education, by March 31, 2013, to adopt academic performance indicators specifically for dropout prevention and recovery programs operated by school districts and community schools for use in rating them on the annual report cards.
- Eliminates the current exemption for community schools with approved dropout and recovery programs from permanent closure for failing to meet academic performance criteria.

Reports of district and school spending

- Moves to January 1, 2013 (rather than January 1, 2012, as under current law), the deadline for the Department of Education to present to the State Board of Education standards for determining and comparing district and school operating expenditures for classroom instructional purposes with those for nonclassroom purposes.

- Moves to July 1, 2013 (rather than July 1, 2012, as under current law), the deadline for the State Board to adopt the expenditure standards.
- Requires the Department, when developing the expenditure standards, to align them with the expenditure categories required for reporting to the U.S. Department of Education under federal law.
- Eliminates a requirement that the first report, ranking school districts and schools according to classroom and nonclassroom operating expenditures, cover fiscal years 2008 through 2012.
- Revises the terminology of a separate reporting requirement by specifying that the Department annually compare a school district's expenditures for "classroom instructional purposes" (instead of "instructional purposes" as under current law) with expenditures for "nonclassroom purposes" (instead of "administrative purposes" as under current law).

Academic content standards and model curricula

- Requires the Superintendent of Public Instruction to present updated academic standards and model curricula in English language arts, math, science, and social studies to the House and Senate education committees at least 45 days before their adoption by the State Board of Education.
- Directs the State Board of Education, by June 30, 2013, and in consultation with any office of the Governor dealing with workforce development, to adopt model curricula for grades K to 12 that embed "career connections learning strategies" into regular classroom instruction.

School restructuring

- Specifies that the provisions of the "parent trigger" restructuring petition prevail over the general restructuring provisions for low-performing schools, if a Columbus school district school becomes subject to both, unless the parent petition is rejected for certain reasons.
- Requires that a parent restructuring petition be filed by December 31 of any school year a school qualifies for restructuring under the Columbus parent restructuring petition pilot program.
- Specifies that if either the parent restructuring petition or the state's general restructuring plan for a public school conflicts with federal law, federal law prevails.

- Specifies that if a school is restructured under a parent restructuring petition, under the general restructuring plan, by a district academic distress commission, or under federal law, the school does not have to restructure again under state law for three years after implementation of the prior restructuring.

Teacher evaluations and testing

- Specifies that the public school teachers who are subject to the requirement in current law to undergo evaluation by their employers are those teachers who are employed under a teacher license and spend at least 50% of their time employed providing student instruction.
- Authorizes to conduct teacher evaluations (1) persons designated by an agreement entered into by the teacher's employer and (2) persons employed by an entity hired by the employer to conduct evaluations and who are licensed as a superintendent, assistant superintendent, principal, vocational director, or supervisor.
- Requires all authorized evaluators to obtain a credential established by the Department of Education before doing teacher evaluations.
- Permits an employer to require only one classroom observation (instead of two, as currently required) of a teacher rated as "accomplished" on the teacher's most recent evaluation, if the teacher completes a project approved by the employer to demonstrate continued growth and practice at the accomplished level.
- Specifies that the statutory requirements regarding teacher evaluations prevail over collective bargaining agreements entered into on or after September 29, 2011.
- Allows the State Board of Education to periodically update its state framework for evaluating public school teachers.
- Directs the State Board, by June 30, 2013, to develop a standards-based teacher evaluation framework for state agencies, and requires each state agency that employs teachers to adopt a teacher evaluation policy that conforms to the framework.
- Requires each school district's evaluation procedures for assistant principals (required under continuing law) to be based on principles comparable to the district's teacher evaluation policy, but tailored to the duties and responsibilities of assistant principals.
- Revises the circumstances triggering the requirement that certain teachers of core subject areas take exams to prove their knowledge, so that it applies to teachers employed by school districts when the teacher has been rated "ineffective" on

evaluations for two of the three most recent years. (Retains the law applying the requirement to teachers employed by community schools and STEM schools when the teacher's building is ranked by performance index score in the lowest 10% of all public schools.)

- Applies the exam requirement to teachers who are *currently* teaching a core subject when they become subject to the provision.
- Specifies that the exams that teachers must take are content knowledge exams selected by the Department of Education to determine expertise to teach the teacher's subject area and grade level (rather than content knowledge and pedagogy exams needed for licensure in that subject area and grade level, as in current law).
- Requires the Chancellor of the Board of Regents annually to report the number and percentage of graduates of each Ohio teacher preparation program who were rated at each of the four performance levels on evaluations conducted by their employers in the previous school year.
- Requires each school district, community school, and STEM school conducting evaluations annually to report to the Department of Education the name and evaluation of each teacher it employs for the Chancellor's report.

Assignment of district business manager functions

- Authorizes a school district board that elects not to appoint a business manager to assign the statutory duties of a business manager to other employees or officers, and to give them any title that reflects the assignment of those duties.
- Specifies that the officers who may be assigned business manager duties include the district treasurer, notwithstanding current law prohibiting the business manager from having possession of district money, and notwithstanding the current law that the treasurer may not be otherwise regularly employed by the board.
- Expresses the General Assembly's intent to supersede a recent appellate court decision that current law prohibits the assignment of a business manager's duties to the district treasurer.

Digital and blended learning programs

- Requires the State Board of Education to adopt standards for the operation of blended learning classrooms by school districts, community schools, STEM schools, and public college-preparatory boarding schools.

- Requires school districts, community schools, STEM schools, and public college-preparatory boarding schools that operate a blended learning school, or that plan to cease operating one, to notify the Department by July 1 of the school year for which the change is effective.
- Permits a school already operating a blended learning program to notify the Department of Education within 90 days after the bill's effective date and request classification as a blended learning school.
- Specifies that an "e-school" is not a blended learning school.
- Requires the Department of Education, whenever the State Board adopts new state academic standards or model curricula, to provide information on the use of blended or digital learning in the delivery of the standards or curricula to students.

Scholarship programs

- Specifies that, in the case of a child placed in the custody of either a government agency or a person other than the child's parent, the school district that includes the child in its average daily membership, for funding purposes, is the district from which Educational Choice scholarship payments must be deducted.
- Requires the Department of Education, when publishing achievement assessment data for students participating in the Educational Choice Scholarship Program or the Cleveland Scholarship Program, to disaggregate that data by grade (instead of age, as in current law).

Calamity days

- Includes "law enforcement emergencies" within the description of "calamity day" for which a school may be closed.

Community school sponsorship

- Requires the Department of Education to create separate rankings, one for sponsors of conversion community schools and one for sponsors of start-up community schools, for the purpose of the annual ranking of community school sponsors by their composite performance index scores.
- Specifies that the prohibition on sponsoring additional community schools when a sponsor is ranked in the lowest 20% applies only to sponsoring additional schools of the type (conversion or start-up) covered by the ranking on which the sponsor is ranked so low.

- Makes permanent the exclusion from the ranking calculations community schools that primarily serve students with disabilities.
- Requires the Department to publish the rankings between October 1 and October 15.
- Designates the Department of Education's Office of Ohio School Sponsorship as the entity within the Department that may assume sponsorship of a community school whose sponsor is found not to be in compliance with state rules or its contract with the community school.

Community school access to school district property

- Permits, but does not require, a school district when it offers unused real property for sale or lease to community schools located in the district, as required under current law, also to make that offer to (1) existing community schools with plans to relocate operations to the district, and (2) persons or groups proposing to establish new community schools to be located in the district.
- Specifies that if the district conducts an auction or lottery to select a community school to purchase or lease the property, because more than one eligible party notifies the district of its interest, the auction or lottery must be conducted only among the parties that notified the district of their interest, instead of among all eligible parties as required under current law.

Educational service center agreements

- Eliminates the annual July 1 deadline by which a fee-for-service agreement between an educational service center and a school district must be filed with the Department of Education.

Admission of transferring students

- Prohibits a school district from denying a transferring student admission, based on the student's age, if the student had been admitted to kindergarten by another school district or a chartered nonpublic school.

Licensing of preschool and latchkey programs

- Eliminates the requirement that a school district, county DD board, or chartered nonpublic school operating a preschool or latchkey program renew its license every two years.
- Specifies that a preschool or latchkey program's license remains valid until revoked by the Department of Education or the program ceases operations.

- Extends the length of the provisional license issued to a new preschool or latchkey program from six months to one year.
- Requires the Department of Education to inspect each preschool or latchkey program annually to determine if it is in compliance with applicable laws and rules, and to notify the program of the inspection results.
- Eliminates the requirement that a preschool or latchkey program's license contain the name of the program's administrator, the program's address of operation, and the toll-free number to report suspected violations of the law by the program.

Reporting data of young children

- Requires the director of any state agency that administers programs for children who are younger than compulsory school age (i.e., younger than age six and not in kindergarten) to obtain for each child receiving those services a student data verification code (also called a "Statewide Student Identifier" or "SSID") issued under the Department of Education's "Education Management Information System" (EMIS).
- Requires the EMIS contractor to submit to the Department of Education the SSID code of a child younger than compulsory school age receiving services from another state agency.
- Requires state agencies to submit to the Department of Education personally identifiable information of children younger than compulsory school age receiving services from the agency using their SSID codes.
- Provides that personally identifiable information of children younger than compulsory school age maintained in EMIS or an agency's files is not a public record.

State education aid definition

- Specifies that a school district's "state education aid" for fiscal years 2012 and 2013 includes both its supplemental guarantee payment and its payment for high academic performance, if either is paid to the district.

School facilities programs

- Requires that each segment of a school district's project under the Classroom Facilities Assistance Program (CFAP) be of such size that the district's portion of the cost of that segment is at least 2% of its tax valuation, instead of 4% as under current law.

- Removes conditions of land-area size (300 square miles) and wealth (75th percentile or lower) for participation in the Exceptional Needs School Facilities Assistance Program.
- Authorizes the School Facilities Commission to offer early CFAP funding to Expedited Local Partnership school districts.

Miscellaneous education provisions

- Directs the Department of Education, by June 20, 2013, to conduct a study of the licensure requirements for media specialists and to use the study to make necessary revisions to those requirements.
- Acknowledges the Governor's veto from H.B. 153 of the repeal of the body mass index screening program.
- Removes the requirement that at least 50% of beverages available for sale from school food service programs, vending machines, or school stores consist of water or other beverages that contain no more than 10 calories per 8 ounces.

Third grade reading guarantee

(R.C. 3301.0715 and 3313.608; Section 267.10.90 of H.B. 153 of the 129th General Assembly; and Section 265.20.15 of H.B. 1 of the 128th General Assembly (repealed))

The bill makes several changes to the third grade reading guarantee beginning with the 2012-2013 school year. Under current law, the third grade reading guarantee requires school districts and community schools to retain in third grade a student who scores in the "limited" range on the third grade English language arts assessment, unless the student's principal and reading teacher agree that the student is academically prepared for fourth grade or the student will receive intervention services in fourth grade. The bill changes the "cut" score and applies the guarantee to all students who do not receive at least a "proficient" (or passing) score on the assessment. The "limited" score, which currently triggers the guarantee, is the lowest of five scoring ranges and two levels below "proficient." Further, while the bill preserves the current law allowing the student to be promoted if the principal or reading teacher consent, or if the student will be provided intervention services in fourth grade, it stipulates that the student may not be promoted if the student has been on a reading improvement and monitoring plan (see below) for two or more years.

The bill exempts from retention limited English proficient students who have had less than two years of instruction in an English as a second language (ESL)

program. In addition, the bill specifies that, in the case of a special education student whose individualized education program (IEP) requires the student to take the achievement assessments, the decision whether to retain the student must be based on the student's ability to meet the academic goals in the IEP. The student's school district or community school must make the determination.

Annual diagnostic assessments

(R.C. 3301.0715 and 3313.608(B)(1))

In order to identify students who may be unable to meet the third grade guarantee, current law requires each school district and community school to adopt policies and procedures to assess annually the reading skills of each student. Whereas current law requires the assessments be conducted at the end of first and second grades, the bill requires that each district and school assess each student enrolled in kindergarten to third grade by October 31 of each school year. Under the bill, the district or school may assess each student using only the state diagnostic assessment adopted by the State Board of Education for English language arts or a comparable tool approved by the Department of Education. Students reading below grade level must be identified by the end of each school year. As under current law, the student's classroom teachers must be involved in the assessment and identification of students reading below grade level, and the district or school must notify the student's parent or guardian of the student's reading deficiency.

Reading improvement and monitoring plan

(R.C. 3301.0715(C) and 3313.608(C))

The bill also requires a school district or community school to develop a reading improvement and monitoring plan for each student in grades K to 3 who is identified as reading below grade level. The district or school must develop the plan within 60 days after receiving the student's diagnostic results, and must involve the student's parent or guardian and classroom teacher in developing the plan. The plan must do all of the following:

(1) Identify the student's specific reading deficiencies, and include all documents and information related to the student's diagnostic assessment;

(2) Describe the additional instructional services and support that will be provided to the student to remediate the identified reading deficiencies;

(3) Include opportunities for the student's parent or guardian to be involved in the instructional services and support that will be provided to remediate the student's deficiencies;

(4) Specify a process for monitoring the student's receipt of the services and support; and

(5) State that the student may be retained in third grade for failure to pass the third grade English language arts achievement assessment.

The bill requires the district or school to report any information about the reading improvement and monitoring plans developed by the district or school to the Department of Education, in the manner the Department requires.

Remediation services

(R.C. 3313.608(B)(1) and (2) and (D)(4))

Each district and school must provide intervention services to each student in grades K to 3 identified as reading below grade level. The bill requires that the intervention services be targeted at the student's identified reading deficiencies, instead of instruction in "intensive, systematic phonetics" as under current law.

For each student who enters second grade after July 1, 2012, the bill requires the district or school to provide intense remediation services during the summer before third grade, if the student is reading below grade level by the end of second grade. The bill eliminates the current requirement that summer remediation be provided in a school or a community center and not on an at-home basis.

Each district and school must also provide intense remediation services to each student who enters third grade after July 1, 2012, and who does not attain, by the end of third grade, at least a proficient score on the English language arts achievement assessment, until the student is able to read at grade level. Remediation services must include instruction targeted at the student's identified reading deficiencies and must include service options from one or more providers outside the district. If a student participates in the remediation services and demonstrates reading proficiency at the state-adopted standard prior to the start of fourth grade, the district or school must promote the student.

Diagnostic assessments – reporting results; blank copies

(R.C. 3301.079(D)(1) and 3301.0715(C))

The bill repeals the current law that generally prohibits the Department and State Board of Education from requiring school districts and community schools to report students' diagnostic assessment results to the Department or State Board or making the results available in any form to the public. However, the bill retains the current stipulation that no district or school is required to report to the Department the results

of any diagnostic assessment administered to a kindergarten student if the parent requests the district not to report those results.¹ It likewise retains current law generally prohibiting the release of information that would personally identify a student.²

The bill also requires each district and school to provide each student's complete diagnostic assessment and assessment scores to the student's parent, instead of only at the parent's request under current law.

Finally, the bill specifies that blank copies of the diagnostic assessments adopted by the State Board to measure student comprehension of academic content and mastery of related skills are not public records. Under current law, such copies *are* public records.

Promotion and retention policy

(R.C. 3313.609 and 3314.03(A)(11)(d))

The bill requires community schools to comply with an existing law requiring school districts to adopt a promotion and retention policy that prohibits the promotion of a student who has been truant for more than 10% of the school year and has failed at least two required subjects, unless the principal and teachers in the failed subjects agree that the student is academically prepared for the next grade. The bill also specifies that each district's and community school's grade retention and promotion policy must comply with the third grade reading guarantee.

District and building academic performance ratings

(R.C. 3302.03; conforming changes in R.C. 3301.0711, 3301.0714(Q), 3302.01, 3302.04, 3302.05, 3302.10, 3302.12, 3310.03, 3310.06, 3313.473, 3314.012, 3314.015, 3314.02, 3314.028, 3314.05, 3314.35, 3314.37, and 3333.391; Sections 267.30.56 and 733.10 of H.B. 153 of the 129th General Assembly)

The bill replaces the current academic performance rating system for school districts, individual buildings of districts, community schools, and STEM schools with a system under which districts and schools are assigned letter grades of "A," "B," "C," "D," or "F" depending upon on how they are measured in the aggregate on a multi-point scale of values. The new ratings are to apply first to academic performance for the 2011-2012 school year.

¹ R.C. 3301.0714(B)(1)(n).

² R.C. 3319.321, not in the bill.

The new system continues to use four metrics to measure performance: (1) performance indicators prescribed by the State Board of Education (currently, scores on state achievement assessments, attendance rate, and four-year graduation rate), (2) performance index score based on state achievement assessments, (3) meeting "adequate yearly progress" as measured under federal law using scores on state achievement assessments, and (4) value-added student growth in state achievement assessment scores from year to year. However, it requires the Department of Education to assign a letter grade for certain prescribed levels of attainment on each of those metrics, and then to aggregate those grades and average them for an overall letter grade.

Overall grade

The grade for overall performance of a district or school is to be assigned by the Department based on its aggregate performance on the four metrics. The bill assigns the following meanings to each of the letter grades:

- A – making excellent progress
- B – making above-average progress
- C – making satisfactory progress
- D – making less than satisfactory progress
- F – failing to make satisfactory progress

Grades on the individual metrics

Grades are to be assigned for a district's or school's performance on the State Board's **performance indicators** as follows:

- A – meeting 90% to 100% of the indicators that apply to the district or school
- B – meeting 80% to 89.9% of the applicable indicators
- C – meeting 70% to 79.9% of the applicable indicators
- D – meeting 60% to 69.9% of the applicable indicators
- F – meeting less than 60% of the applicable indicators

Grades are to be assigned for a district's or school's **performance index score** as follows:

- A – achieving 90% to 100% of the maximum score (currently, 120)

B – achieving 80% to 89.9% of the maximum score

C – achieving 70% to 79.9% of the maximum score

D – achieving 60% to 69.9% of the maximum score

F – achieving less than 60% of the maximum score

The Department must prescribe a method for assigning grades for **adequate yearly progress (AYP)** and **value-added student growth**. In doing so for AYP, the Department must take into consideration the number of student subgroups assessed for adequate yearly progress and the manner in which the school or district achieves its adequate yearly progress goal for each subgroup. (Adequate yearly progress subgroups include: economically disadvantaged, major racial/ethnic groups (African American, Asian, Hispanic, multi-racial, Native American, and White), students with disabilities, and English language learners.) Further, the Department must determine a method for assigning grades for a value-added progress dimension. (The "value-added progress dimension" is a measure of academic gain for a student or group of students over a specific period of time that is calculated using data from student achievement assessments.) The method for grading value-added must take into consideration at least two years of data for each school or district.

Background

Current law prescribes five ratings based on prescribed independent attainment (not averaged attainment) of the four metrics (performance indicators, performance index score, AYP, and value-added) described above. The ratings under current law are "excellent," "effective," "in need of continuous improvement," "academic watch," and "academic emergency." The Department also has added a rating of "excellent with distinction."

Joint vocational school district rankings and report cards

Report cards

(R.C. 3302.03, 3302.033, and 3302.20(D))

The bill requires the State Board of Education to approve a separate report card for joint vocational school districts not later than December 31, 2012. In approving a new report card for joint vocational school districts, the State Board must consult with the Chancellor of the Board of Regents and any office within the Governor's office that deals with workforce development. The State Board must also submit, by December 31, 2012, details of the report card to the Governor, the Speaker of the House, the Senate President, and the chairpersons of the House and Senate Education committees. The

Department of Education must begin issuing annual report cards for each joint vocational school district for the 2012-2013 school year, to be published not later than September 1, 2013.

Annual rankings of public schools

(R.C. 3302.21)

The bill also removes joint vocational school districts from the annual ranking of all school districts, community schools, and STEM schools required under current law. Further, it removes from the criteria for ranking districts and schools performance measures related to career-technical education.

Performance indicators for dropout prevention and recovery programs

(R.C. 3302.022; Section 610.20)

The bill requires the State Board of Education to adopt academic performance indicators specifically for dropout prevention and recovery programs operated by school districts and community schools by March 31, 2013. Once adopted, these indicators would be used to rate such schools on the annual report cards for school districts, district buildings, community schools, and STEM schools issued by the Department of Education. The bill requires that the performance indicators for these programs measure all of the following:

- (1) The extent to which the district's or school's program meets each of the applicable performance indicators established by the State Board and the number of applicable indicators that have been achieved;
- (2) The performance index score of the district's or school's program;
- (3) Student academic growth in English language arts, math, science, and social studies, measured using nationally normed tests, state achievement assessments, or other assessment approved by the Department; and
- (4) A five-year and six-year graduation rate.

The bill also repeals uncodified law, enacted in 2011 by H.B. 153, that requires the State Board, by July 1, 2012, to review its legislative recommendations for performance standards for community schools that operate dropout prevention and recovery programs, previously issued in March, 2008, and to issue new recommendations regarding performance standards for those schools.

Permanent closure of drop out prevention and recovery schools for poor academic performance

(R.C. 3314.35 and 3314.36 (repealed); conforming changes in R.C. 3301.0712 and 3314.016)

The bill eliminates the current exemption for community schools with approved dropout prevention and recovery programs from required permanent closure of poorly performing community schools under current law. (However, it does not affect the current exemption for community schools in which a majority of the enrolled students are children with disabilities receiving special education and related services.)

Under current law, community schools that do not meet certain academic criteria must close permanently. The criteria for permanent closure are as follows:

(1) For a school that does not offer a grade higher than 3, the school has been declared to be in a state of academic emergency for two of the three most recent school years;

(2) For a school that offers any of grades 4 to 8 but no grade higher than 9, the school has been declared to be in a state of academic emergency for two of the three most recent school years and showed less than one standard year of academic growth in either reading or math for at least two of the three most recent school years;

(3) For a school that offers any of grades 10 to 12, the school has been declared to be in a state of academic emergency for two of the three most recent school years.

It might not be clear whether the exemption's elimination is intended to apply prospectively only to performance in future school years, as measured by the State Board's new performance standards for dropout recovery programs (see above), or triggers a look-back to preceding school years to determine if the once exempted schools might have to close at the conclusion of the 2012-2013 school year.

Reports of district and school spending

(R.C. 3302.20, 3302.21, and 3302.25)

Law enacted in 2011 by H.B. 153 requires the Department of Education to develop and adopt standards for determining, from the existing data reported under the Education Management Information System (EMIS), the amount of annual operating expenditures for classroom instructional purposes and for nonclassroom purposes for each school district, community school, and STEM school. Those standards, then, and the existing EMIS data are to be used by the Department to rank order districts and schools by classroom and nonclassroom expenditures and to

implement other programs and reports. The bill delays development and implementation of the standards and makes other changes regarding the programs that will use them.

Delay of development and implementation

First, under current law, the Department must present the standards to the State Board of Education by January 1, 2012, and the State Board must adopt a final set of standards by July 1, 2012. The bill delays both those dates for one year. Thus, the Department has until January 1, 2013, to present the standards to the State Board and the Board has until July 1, 2013, to adopt the final standards.³

Alignment of standards with federal law

The bill requires the Department in developing the expenditure standards to align them with the expenditure categories required for reporting to the U.S. Department of Education under federal law.⁴

Content of the first report

Current law requires that the first expenditure report based on the new standards include each district's and school's classroom and nonclassroom spending for fiscal years 2008 through 2012. The bill eliminates the requirement that the first report cover multiple prior fiscal years.⁵

Other changes

Finally, separate law, also enacted by H.B. 153, requires an additional annual report comparing a school district's instructional expenditures to its administrative expenditures. The bill changes this provision to align it with the other provision so that the comparison is of expenditures for "classroom instructional purposes" (instead of just "instructional purposes" as under current law) with expenditures for "nonclassroom purposes" (instead of "administrative purposes" as under current law).⁶

³ R.C. 3302.20(A).

⁴ R.C. 3302.20(A).

⁵ R.C. 3302.20(C).

⁶ R.C. 3302.25.

Legislative presentation of academic content standards and model curricula

(R.C. 3301.079(I); conforming change in R.C. 3301.0712)

Under the bill, whenever the State Board of Education updates its academic content standards or model curricula for grades K to 12 in English language arts, math, science, and social studies, the Superintendent of Public Instruction must present the updated version to the House and Senate education committees. The presentation must occur at least 45 days before the State Board's formal adoption of the standards or curricula.

Model curricula for "career connection learning strategies"

(R.C. 3301.079(B)(2))

The bill directs the State Board of Education, by June 30, 2013, to adopt model curricula for grades K to 12 that embed "career connection learning strategies" into regular classroom instruction. In developing the curricula, the State Board must consult with any office housed within the Governor's Office that deals with workforce development.

School restructuring

(R.C. 3302.042 and 3302.12)

The bill adds several specifications to two provisions enacted in 2011 by H.B. 153 to restructure low-performing public schools: (1) a pilot program allowing parents of students enrolled in a Columbus City School District building that has been ranked in the bottom 5% of all public school buildings for three consecutive years to petition the district for reforms, and (2) a general restructuring requirement that applies if a district school is ranked for three consecutive years in the lowest 5% of all public school buildings according to performance index score, and the school also has a performance rating of academic watch or academic emergency.

The bill clarifies that if a Columbus School District school is required to restructure under both provisions, the provisions of the petition filed by parents and verified by the school district treasurer prevail over the general restructuring requirements. This is the case unless the petition is denied because one of the following applies: (1) the district board determines that the petitioners' request is for reasons other than improving student achievement or safety, (2) the Superintendent of Public Instruction determines that the reform would not comply with the Department of Education's Model of Differentiated Accountability, which establishes sanctions for chronically underperforming districts and schools as required by the federal No Child

Left Behind Act, or (3) the petition requests the Department of Education to take over the school and the Department has not agreed to do so. In such cases, the school must be restructured under the general restructuring provision.

The bill also clarifies that federal law prevails over both restructuring programs in the case of any conflict with federal requirements, and that if a school is restructured under the Columbus School District pilot project, the general low-performing school provision, a school district's academic distress commission,⁷ or federal law, that school is not required to restructure again for three consecutive years after the implementation of the prior restructuring.

Finally, the bill requires that a parent petition to restructure a Columbus School District-run school be filed by December 31 of any school year in which the school qualifies for restructuring.

Background – Columbus "parent trigger" pilot program

The pilot project for the Columbus School District authorizes parents to petition the district to make reforms in poorly performing schools. Parents may petition for reforms in a school building that, for three or more consecutive years, has been ranked in the lowest 5% of all public school buildings statewide based on its performance index score. The pilot project must commence after the Department of Education, in consultation with the District, establishes implementation guidelines.

Parents may file a petition requesting the district to do one of the following: (1) reopen the school as a community school, (2) replace at least 70% of the school's personnel who are related to the school's poor academic performance, or retain no more than 30% of the staff members, (3) contract with another school district or a nonprofit or for-profit entity with a record of effectiveness to operate the school, (4) turn operation of the school over to the Department of Education, or (5) any other major restructuring that makes fundamental reforms in the school's staffing or governance.

To compel the district to make the requested reform, the parents of at least 50% of the school's students must sign the petition. Alternatively, a petition may be submitted by the parents of at least 50% of the total number of students enrolled in the underperforming school and the feeder schools whose students typically matriculate into that school.

The district must implement the requested reform in the next school year, unless any of the following apply to the reform requested by the petitioners:

⁷ R.C. 3302.10.

(1) The district board determines that the petitioners' request is for reasons other than improving student achievement or safety;

(2) The state Superintendent determines that the reform would not comply with the Department of Education's Model of Differentiated Accountability;

(3) The requested reform is to have the Department take over the school's operation and the Department has not agreed to do so; or

(4) The district board has (a) held a public hearing on the matter and issued a statement explaining why it cannot implement the reform and agreeing to implement another of the reforms described above, (b) submitted evidence to the state showing how the alternative reform will improve the school's performance, and (c) had the alternative reform approved by the state Superintendent and the State Board of Education.

Parent petitions must be filed with the school district treasurer. Within 30 days after receipt of a petition, the treasurer must verify that the signatures are valid and sufficient in number to require implementation of the requested reform. If the treasurer finds that there are not enough valid signatures, any person who signed the petition, within ten days, may appeal the treasurer's finding to the county auditor. The county auditor then has 30 days to conduct an independent verification of the signatures.

Background – restructuring low-performing schools

Under current law, if a school district school is ranked for three consecutive years in the lowest 5% of all public school buildings according to performance index score, and the school also has a performance rating of academic watch or academic emergency, the school district must restructure the school. The district must choose one of the following restructuring actions:

(1) Close the school and reassign the school's students to other schools with higher academic achievement;

(2) Contract with another school district or a nonprofit or for-profit entity with a record of effectiveness to operate the school;

(3) Replace the school's principal and teaching staff, exempt the school from any specified district regulations regarding curriculum and instruction at the request of the new principal, and allocate at least the per-pupil amount of state and local (that is, nonfederal) revenues to the school for each of its students; or

(4) Reopen the school as a conversion community school.

Teacher evaluations

(R.C. 3319.111 and 3319.112)

The bill makes several changes to the procedures for doing performance evaluations of public school teachers. Under continuing law, enacted in 2011 by H.B. 153, all school districts and educational service centers, and all community schools and STEM schools that receive federal Race to the Top grant funds, must adopt a standards-based teacher evaluation policy that conforms with a framework developed by the State Board of Education.⁸ Teachers generally must be evaluated annually and 50% of each evaluation must be based on student academic growth. Each employer's policy must include procedures for using evaluation results for retention and promotion decisions and for removal of poorly performing teachers.

Who is subject to evaluations

(R.C. 3319.111)

Under the bill, a teacher is subject to evaluation if the teacher is employed under a teacher license (or a teaching certificate issued under former law) and spends at least 50% of the time employed providing student instruction. Current law requires all teachers, except for substitute teachers employed for fewer than 120 days during the school year, to be evaluated. By exempting teachers who spend less than half their time engaged in teaching, the bill appears to narrow the applicability of the evaluation requirement to only those employees whose primary responsibility is teaching.

Who conducts evaluations

(R.C. 3319.111(D))

The bill revises the list of persons who are authorized to conduct teacher evaluations. Under current law, each evaluation must be conducted by (1) a school district superintendent or assistant superintendent, (2) a school principal, (3) a person licensed by the State Board of Education to be a supervisor or a vocational director, or (4) a person designated to conduct evaluations under a peer review agreement entered into by the employer and the teachers' union.

First, the bill eliminates the specific authority for persons designated by a peer review agreement to conduct evaluations. However, it replaces that specific authority with a general authority for evaluations to be done by persons designated by *any* agreement entered into by the employer. Presumably, then, the bill would still allow

⁸ The requirement for community schools and STEM schools to adopt teacher evaluation policies is in R.C. 3314.03(A)(11)(i) and 3326.111, respectively (latter section not in the bill).

the employer and teachers' union to designate evaluators through a peer review agreement. But it also would make it possible for the employer to designate evaluators through agreements with other parties.

Second, the bill enables an employer to contract with an entity, such as an educational service center, to do teacher evaluations. Under the bill, an employee of the hired entity may conduct evaluations so long as the employee is licensed by the State Board as a superintendent, assistant superintendent, principal, vocational director, or supervisor.

Finally, under the bill, all authorized evaluators must obtain a credential established by the Department of Education before they can conduct evaluations. This credential is in addition to any licensure requirements that a person must meet to be an evaluator. Although the bill does not provide any guidelines for the Department to use in creating the credential, the provision is likely intended to ensure that evaluators are adequately prepared to perform the particular tasks involved in evaluations.

Observations of "accomplished" teachers

(R.C. 3319.111(E))

The bill permits an employer, by adoption of a resolution, to require only one classroom observation of a teacher rated as "accomplished" on the teacher's most recent evaluation, if the teacher completes a project approved by the employer to demonstrate continued growth and practice at the accomplished level. Under current law, when doing an evaluation, the evaluator must observe the teacher on at least two occasions for a minimum of 30 minutes each time.⁹ It appears that the 30-minute minimum continues to apply to the single observation permitted by the bill.

Collective bargaining

(R.C. 3319.111(A) and (H))

The bill specifies that the statutory requirements regarding teacher evaluations, including the frequency of evaluations, the procedures for doing them, and how they are used for employment decisions, prevail over collective bargaining agreements entered into on or after September 29, 2011 (the effective date of H.B. 153's evaluation provisions). Current law states that each employer's teacher evaluation policy becomes operative at the expiration of the teachers' collective bargaining agreement in effect on September 29, 2011, and that the policy must be included in any renewal or extension of

⁹ R.C. 3319.112(A)(3).

that agreement. The bill's change does not appear to affect when an employer's teachers become subject to the evaluation policy.

Updates of state evaluation framework

(R.C. 3319.112(A))

The bill explicitly allows the State Board of Education to periodically update its teacher evaluation framework. It is likely that each employer would have to make corresponding updates to its teacher evaluation policy to ensure that the policy continues to conform to the state framework.

Evaluations by state agencies

(R.C. 3319.112(E))

Under the bill, all state agencies that employ teachers must conduct teacher evaluations. For this purpose, the State Board of Education, in consultation with the agencies, must develop a standards-based evaluation framework by June 30, 2013. Each agency then must adopt its own teacher evaluation policy that conforms to the framework. The bill specifies that each agency's policy becomes operative at the expiration of any collective bargaining agreement covering the agency's teachers that is in effect on the bill's effective date, and that the policy must be included in any renewal or extension of that agreement. Under continuing law, a collective bargaining agreement has a maximum term of three years.¹⁰

Assistant principal evaluations

(R.C. 3319.02(D))

Although each school district is currently required to evaluate assistant principals annually in accordance with evaluation procedures adopted by the district, the bill further requires those evaluation procedures to be based on principles comparable to the district's teacher evaluation policy (see above), but tailored to the duties and responsibilities of assistant principals and the environment in which they work. Continuing law contains the same requirement with respect to districts' evaluation procedures for principals. As with principals under continuing law, districts must consider evaluations when deciding whether to renew an assistant principal's contract.

¹⁰ R.C. 4117.09(E), not in the bill.

Testing teachers

(R.C. 3319.58)

The bill makes several changes to the provision, enacted in 2011 by H.B. 153, requiring public school teachers of core subject areas, when certain circumstances apply, to take exams to prove their knowledge of the subject. First, it revises the circumstances that trigger the requirement for teachers employed by school districts. Under the bill, a school district teacher is subject to the exam requirement when the teacher has received an evaluation rating of "ineffective," the lowest of four possible ratings, for two of the three most recent school years.¹¹ However, for teachers employed by community schools and STEM schools, the bill retains current law making a teacher subject to the requirement when the teacher's building is ranked by performance index score in the lowest 10% of all public schools statewide. Consequently, under the bill, the requirement applies to all school district buildings, but only to teachers of core subjects in each building who have low evaluation ratings. The requirement applies only to poorly performing community school and STEM school buildings, but to all teachers of core subjects in each of those buildings.

Second, the bill applies the exam requirement to teachers who are *currently* teaching core subjects at the time their evaluation ratings or building ranking makes them subject to the provision. Therefore, teachers who are licensed to teach a core subject, but are not actively teaching it when the requirement is triggered, need not take any exams.

Finally, the bill specifies that the exams a teacher must take are content knowledge exams selected by the Department of Education as appropriate to determine expertise to teach the teacher's subject area and grade level. Current law requires the teacher to retake all exams necessary for licensure in that subject area and grade level, which includes both content knowledge and pedagogy exams. As in current law, employers may use the exam results as a factor in employment and professional development decisions.

Background – current law

Under current law, in any year in which a building of a school district, community school, or STEM school is ranked in the lowest 10% of all public school buildings based on its performance index score, the building's classroom teachers must retake all exams required by the State Board of Education for licensure to teach the subject area and grade level taught by the teacher. This requirement applies to all teachers of reading and English language arts, math, science, foreign language,

¹¹ See R.C. 3319.112.

government, economics, fine arts, history, or geography. While the law states that the teacher is not responsible for the cost of retaking an exam, it does not specify who is. Presumably, that cost must be paid by the employer.

The school district, community school, or STEM school may use the exam results in deciding whether to continue to employ a teacher and in creating professional development plans for the teacher. However, an employer is prohibited from using the results as the sole factor in employment decisions, unless the teacher has failed to pass the same licensure exam three consecutive times. Once a teacher provides proof of passing an exam to the teacher's employer, the teacher is exempt from having to take the test again for three years, regardless of the ranking of the building to which the teacher is assigned.

Teacher evaluation data

(R.C. 3319.111(G) and 3333.0411)

The bill requires the Chancellor of the Board of Regents annually to report the number and percentage of graduates of each teacher preparation program who were rated at each of the performance levels (accomplished, proficient, developing, and ineffective) on evaluations conducted during the previous school year. The Chancellor's initial report must be submitted not later than December 31, 2012, and annually thereafter. In no case may the report identify any individual.

To implement this report, the bill requires each school district board of education, and the governing authority or body of each community or STEM school receiving federal Race to the Top money, to annually submit to the Department of Education the following: (1) the name of each teacher evaluated and (2) the teacher's assigned evaluation rating. The Department must provide the data to the Chancellor.

Assignment of business manager functions

(R.C. 3319.031; Section 733.20)

The bill authorizes a school district board of education that chooses not to employ a business manager to assign the statutorily prescribed powers and duties of a business manager to one or more other district employees or officers, and to give them any title that reflects the assignment of those duties. The bill also specifies that one of the district officers that may be given the powers and duties of a business manager is the district treasurer. Moreover, it states that the current prohibition against a business manager having possession of district moneys does not prevent the district board from assigning the business manager's powers and duties to the treasurer and does not prevent the treasurer who is assigned those powers and duties from exercising the powers and duties of a treasurer.

The bill also contains an uncodified provision expressing the General Assembly's intent to supersede the effect of a recent appellate district court decision, to the extent it conflicts with the bill's provisions permitting a district board, in its "sole discretion," to assign the roles and functions of a business manager to one or more other employees or officers of the board, including the treasurer. In 2007, in *OAPSE/AFSCME Local 4 v. Berdine*,¹² the Eighth Appellate District Court of Appeals (Cuyahoga County), held that a school district board could not hire the same person as the treasurer and as the "director of support services," the latter of which had job duties very similar, but not identical, to the statutory duties of a district business manager. The court held that, by statute, a treasurer could not be "otherwise regularly employed" by the district board and the director of support services (functionally the equivalent of a business manager) could not have custody of the district's moneys. Thus, the same person could not be employed in both positions.

Background

Each school district board may (but is not required to) employ a district "business manager." If a board does employ a business manager, it may specify that the person either is responsible directly to the board or to the district superintendent. No one may be employed as a business manager without a business manager's license issued by the State Board of Education.¹³ A business manager's statutory duties include (1) care and custody of all district property *except moneys*, (2) supervision of the construction, maintenance, operation, and repairs of buildings, (3) advertisement for bids for, purchase of, and custody of all district supplies and equipment, and (4) assistance in the preparation of the district's annual appropriation resolution. The business manager also may be given the authority to employ and terminate (with board confirmation) "noneducational employees," except those employees directly engaged in day-to-day fiscal operations and who are, instead, under the supervision of the district treasurer.¹⁴

On the other hand, a district board *must* employ a district treasurer, who the statute specifies is the chief fiscal officer of the school district. Accordingly, the treasurer has custody of the district funds and is responsible for its financial affairs. The treasurer reports to and is subject to the direction of only the district board. And, as noted above, current law specifies that the treasurer may not be "otherwise regularly employed by the board."¹⁵ Similar to a business manager, the district treasurer generally must hold a valid treasurer's license issued by the State Board. However,

¹² 174 Ohio App.3d 46.

¹³ R.C. 3313.03, not in the bill.

¹⁴ R.C. 3313.04, not in the bill.

¹⁵ R.C. 3313.22 and 3313.31, neither in the bill.

unlike a business manager, the law permits a district board to temporarily employ as a treasurer a person who does not hold a current valid treasurer's license, if the board determines that the person (1) meets all of the qualifications for a treasurer's license (which would include any continuing education requirements specified by the State Board) and (2) has applied for issuance or renewal of the license but has not yet received it from the State Board.¹⁶

Digital learning and blended learning

(R.C. 3301.079 and 3302.41)

Definitions

(R.C. 3301.079(J))

The bill defines "blended learning" as "the delivery of instruction in a combination of time in a supervised physical location away from home and online delivery whereby the student has some element of control over time, place, path, or pace of learning." "Digital learning" is defined as "learning facilitated by technology that gives students some element of control over time, place, path, or pace of their learning."

Blended learning schools

(R.C. 3302.41(A) and (C))

The bill requires a school district, community school, STEM school, or public college-preparatory boarding school that elects either (1) to operate all or part of a school using a blended learning program, or (2) to cease operating using a blended learning program, to notify the Department of Education of that fact by July 1 of the school year for which the change to that model will be effective. The bill does not explicitly state whether establishing a blended learning program after the bill's effective date without providing the notice is prohibited, or whether there are any consequences for failing to provide the notice of the establishment or termination of a blended learning program. A school that is already using a blended learning program on the bill's effective date *may* notify the Department of that within 90 days after the bill's effective date and request classification as a blended learning school.

E-schools vs. blended learning schools

The bill also specifies that "internet- or computer-based community schools," commonly called "e-schools," are not blended learning schools, and that the bill does

¹⁶ R.C. 3313.24, not in the bill.

not affect any provision of current law regarding e-school operations and state payments. Under current law, an e-school is a community school

"in which the enrolled students work primarily from their residences on assignments in nonclassroom-based learning opportunities provided via an internet- or other computer-based instructional method that does not rely on regular classroom instruction or via comprehensive instructional methods that include internet-based, other computer-based, and noncomputer-based learning opportunities."¹⁷

Current law prescribes a lower rate of state payment to e-schools (compared to so-called "brick and mortar" community schools and, presumably, community schools that will operate blended learning programs),¹⁸ and imposes a number of unique mandates on them, including that they provide students with free computer hardware and software, including filtering software; that the student-teacher ratio cannot exceed 125:1; that students are limited to ten hours of learning opportunities per 24-hour period; and that the schools must withdraw students who fail to participate, without excuse, in the state achievement assessments for two consecutive years.¹⁹

State Board standards for blended learning schools

(R.C. 3302.41(B))

The bill requires the State Board of Education to adopt the following standards for the operation of blended learning "classrooms":

- (1) Student-to-teacher ratios whereby no blended learning classroom is required to have more than one teacher for every 125 students;
- (2) The extent to which the school is or is not obligated to provide students with access to digital learning tools;
- (3) The ability of students, at any grade level, to earn credits or advance grade levels upon demonstrating mastery of knowledge or skills through competency-based learning models. The bill outright prohibits basing credits or promotion on a minimum number of days or hours in a classroom.

¹⁷ R.C. 3314.02(A)(7).

¹⁸ R.C. 3314.08.

¹⁹ See R.C. 3314.21 to 3314.28, none in the bill.

(4) An exemption from the 182-day state minimum school year and state minimum school day, as they apply to school districts and STEM schools (but apparently community schools operating blended learning programs must remain subject to the requirement to offer at least 920 hours of learning opportunities per year); and

(5) "Adequate provisions" for: the licensing and assignment of teachers, administrators, and other professional personnel; efficient and effective instructional materials and equipment; the proper organization and administration of schools, including regulations for preparing all necessary records and reports and the preparation of a statement of policies and objectives for each school; buildings and health and sanitary facilities and services; admission of students and requirements for promotion; requirements for graduation; and "other factors as the Board finds necessary."

The bill's language describing the standards called for in (5) replicates language of current law detailing the State Board's mandate 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."²⁰

Information related to state academic standards and curricula

(R.C. 3301.079(G))

The bill requires the Department of Education, whenever the State Board adopts new state academic standards or model curricula, to provide schools with information on the use of blended learning or digital learning in delivering the standards or curricula to students. This information is to be provided at the time the Department notifies schools of the content of the new standards or curricula.

Educational Choice Scholarship eligibility

(R.C. 3310.08)

The bill specifies that, in the case of a child placed in the custody of a government agency or a person other than the child's parent, Educational Choice scholarship payments on behalf of the child must be deducted from the school district that actually includes that child in its average daily membership, as determined by the Department of Education.

²⁰ R.C. 3301.07(D)(2), not in the bill.

Background

The Educational Choice Scholarship Program (Ed Choice) operates statewide in every district except Cleveland to provide scholarships for students who are assigned or would be assigned to district schools that have persistently low academic achievement to pay their tuition to attend chartered nonpublic schools. Generally, a student is eligible to apply for an Ed Choice scholarship if the student is attending, or otherwise would be assigned to, a school building operated by the student's resident district that, in two of three report card rankings, either (1) has been declared to be in academic watch or academic emergency (or rated "D" or "F" as the ratings are changed under the bill (see "**District and building academic performance ratings**," above)), or (2) is ranked in the lowest 10% of all public school buildings according to performance index score, and, in either case, was not rated excellent or effective in the most recent ranking.²¹ The amount of each annual Ed Choice scholarship is the lesser of (1) the tuition charged by the chartered nonpublic school in which the student is enrolled or (2) a "maximum" amount, which is \$4,250, for grades K through 8, and \$5,000, for grades 9 through 12.²²

The scholarships are financed through a "deduct and transfer" method. Each student awarded an Ed Choice scholarship is counted in the average daily membership (student count) of the student's resident school district for school funding purposes. The Department of Education then deducts the amount of each student's scholarship from the district's state aid account.

In the case of child placed in custody of someone other than the child's parent, the bill directs the Department to deduct that amount from the school district that actually includes the child in its student count. Ordinarily, by statute, that district is the district in which the student's custodian is located. But in some cases, by practice at least, it may be the district in which the child's parent lives.

Assessment data for scholarship students

(R.C. 3310.15 and 3313.978(G))

The bill requires the Department of Education, when publishing achievement assessment data for scholarship (voucher) students, to disaggregate that data by grade level, instead of by age as currently required. Under continuing law, nonpublic schools that enroll students participating in the Educational Choice Scholarship Program or the Cleveland Scholarship Program must administer all grade-level state achievement

²¹ R.C. 3310.03.

²² R.C. 3310.09, not in the bill.

assessments to those students and report their scores to the Department. The Department publishes the test data on its web site and distributes it to parents of students eligible for the voucher programs.

Calamity days

(R.C. 3314.08(L) and 3317.01(B))

The bill includes "law enforcement emergencies" within the description of a public calamity for which a school (school district, STEM school, chartered nonpublic school, or community school) may be closed.

Current law requires a minimum school year for school districts, STEM schools, and nonpublic schools of 182 days, including a total of four days for teacher preparation and reporting and parent conferences. In addition, a school may be closed for up to up to five days for various specified public calamities. A community school must offer 920 hours of learning opportunities for each student each full school year. A community school, too, may close for public calamities without making up the time closed, as long as it was actually open for instruction for at least 920 hours. Currently, public calamities include: (1) disease epidemic, (2) hazardous weather conditions, (3) inoperability of school buses or other necessary equipment, (4) damage to a school building, or (5) other temporary circumstances because of a utility failure that renders a building unfit for use. (For a school district, STEM school, or a nonpublic school, a school day that is reduced by not more than two hours due to hazardous weather conditions does not count as a missed day.)

Restrictions on sponsoring additional community schools

(R.C. 3314.016)

The bill makes several changes to the provision of current law, enacted in 2011 by H.B. 153, that prohibits a community school sponsor from sponsoring additional schools if it is ranked in the lowest 20% on an annual ranking of sponsors by their composite performance index scores. The composite performance index score is a measure of the academic performance of students enrolled in community schools sponsored by the same entity.

Separate rankings for conversion and start-up schools

The bill directs the Department of Education to compile two separate sponsor rankings, one for entities that sponsor conversion community schools and one for entities that sponsor start-up community schools. Current law requires all sponsors to be ranked together, regardless of the type of school they sponsor. But, under the bill, sponsors will be compared only to other sponsors of the same type of school. If an

entity sponsors both types of schools, separate composite performance index scores must be calculated for the sponsor's portfolio of conversion schools and for its portfolio of start-up schools, and the sponsor will be placed on the appropriate ranking according to each score. The bill requires the Department to publish the rankings between October 1 and October 15 each year.

Under the bill, the prohibition on an entity sponsoring additional community schools applies only to sponsoring additional schools of the type covered by the ranking in which the entity is in the lowest 20%. For example, if a sponsor is in the lowest 20% on the start-up school ranking, but not on the conversion school ranking, it could only sponsor new conversion schools. It could not sponsor any new start-up schools until it raises its place on the start-up school ranking above the lowest 20%. As in current law, if a community school enters into a sponsorship contract with a sponsor and, before the school opens, the sponsor becomes subject to the prohibition, the contract is void. The school may still open, but only after contracting with another sponsor.

Exclusion of schools from rankings

Special education schools

The bill permanently excludes from the calculation of sponsor rankings all community schools that are exempt from closure for poor academic performance because a majority of the students are disabled students receiving special education.²³ Under current law, the exclusion of these schools from the rankings ends January 1, 2013, unless the General Assembly enacts performance standards for the schools by that date. In other words, the exclusion currently becomes permanent only if the General Assembly establishes performance standards, but the bill makes the exclusion permanent without any need for legislative action.

Dropout recovery schools

The bill, on the other hand, eliminates an exclusion of dropout recovery community schools from the ranking of community school sponsors. As a result, the academic performance index scores of dropout recovery community schools will be included in the calculation of the sponsor rankings. Currently, the performance of dropout recovery community schools is excluded from calculating the rankings until January 1, 2013, but can be permanently excluded if the General Assembly adopts performance standards for dropout recovery schools by that date.

²³ R.C. 3314.35(A)(3).

Community school sponsorship by the Department of Education

(R.C. 3314.015)

The bill specifies that the Department of Education's Office of Ohio School Sponsorship is the entity that will assume sponsorship of community schools whose sponsors have had their approval to sponsor community schools revoked. Under current law, the Department is responsible for the oversight of community school sponsors. If the Department finds that a sponsor is not complying with or no longer willing to comply with its contract with a community school or with the Department's sponsorship rules, the State Board (or its designee) must conduct a hearing on the matter. If the State Board or designee confirms that the sponsor is not in compliance with the contract or the Department's rules, the Department may revoke the sponsor's approval to sponsor community schools and assume sponsorship of any schools under contract with that sponsor for two years or until the governing authority of the school finds a new sponsor, whichever is earlier.

Community school access to school district property

(R.C. 3313.411)

Law enacted in 2011 by H.B. 153 requires a school district board to sell or lease to community schools located in the district any real property that has been used for "school operations, including, but not limited to, academic instruction or administration, since July 1, 1998, but has not been used in that capacity for two years." The bill revises this provision to permit, but not require, a district board, when making its required offer to those community schools already located in the district, to also include:

(1) The governing authorities of community schools with plans, stipulated in their contracts with the schools' sponsors, either to relocate their operations to the territory of the district or to add facilities to be located within the territory of the district. (Generally, a community school must be located in only one district but, in some limited circumstances, it may operate in more than one district at the same time.)²⁴

(2) Persons or groups of individuals holding valid preliminary agreements proposing the establishment of a new community school within the territory of the district.

Also, the bill specifies that, if a school district must conduct an auction (in the case of an offer to sell the property) or a lottery (in the case of an offer to lease the

²⁴ See R.C. 3314.05(B)(3) and (4).

property) because more than one eligible party accepted the district's offer, the district must conduct that auction or lottery only among those parties that expressed interest in the property. This is a change to current law that provides, instead, the auction or lottery must be among all of the eligible parties regardless of whether they express interest.

Background

Under the H.B. 153 provision, if one community school notifies the district treasurer, in writing within 60 days after the district board makes the offer to sell unused real property, of its intention to purchase the property, the district board must sell that property to the community school for the appraised fair market value of the property. However, if more than one community school notifies the district treasurer, in writing within the 60-day period, of their intention to purchase, the district board must conduct a public auction to sell the property. The district board is not required to accept any bid for the property that is lower than the appraised fair market value of the property.

If two or more community schools located within the district notify the district treasurer, in writing, of their intention to lease the property, the district board must conduct a lottery to select the community school to which the district board must lease the property. The lease price offered by a district board cannot be higher than the fair market value of the leasehold.

If no community school governing authority accepts the offer to purchase or lease the property within 60 days after the offer is made, the district board may offer the property to any other entity.

Educational Service Center agreements

(R.C. 3313.845)

The bill eliminates the annual July 1 deadline by which a fee-for-service agreement between an educational service center (ESC) and a school district must be filed with the Department of Education, thereby allowing the agreement to be filed at any time during the school year. Under continuing law, the Department deducts the fees contained in the agreement from the school district's state aid payments and pays those fees to the ESC on the district's behalf. The bill's change only affects fee-for-service agreements. Agreements for which the district owes statutory per-pupil payments to the ESC must still be filed by July 1 each year, as in current law.²⁵

²⁵ R.C. 3313.843, not in the bill.

Admission of transferring students

(R.C. 3321.01)

The bill prohibits a school district from denying admission, "based on age," to a student seeking to transfer into a district school, if the student was previously admitted to kindergarten by another school district or a chartered nonpublic school. This prohibition appears to address situations in which a student who has a birthday between August 1 and September 30 was admitted to kindergarten in a district or chartered nonpublic school, and then transfers to a school district that has an earlier age cut-off date for admission to kindergarten and first grade. The bill would prohibit the new district from denying admission based on its earlier cut-off date.

Under current law, the statewide standard is that a child must be five or six years old by September 30 to enroll in kindergarten or first grade, respectively. But the law also provides each school district board of education the option of adopting August 1, instead of the statewide standard of September 30, as the day by which a child must be five or six years old, respectively.

Licensing of preschool and latchkey programs

(R.C. 3301.58)

The bill eliminates the requirement under current law that a preschool or latchkey program operated by a school district, county DD board, or chartered nonpublic school renew its license every two years and, instead, specifies that the program's license remains valid until it is revoked by the Department of Education or the program ceases operations. The bill also extends, from six months to one year, the length of the provisional license issued to a new preschool or latchkey program.

Current law requires the Department to investigate and inspect each preschool or latchkey program when a program applies for a renewal of a license; the bill eliminates this requirement. With the elimination of the renewal process, the bill requires the Department instead to investigate and inspect a program annually, and to notify the program of the results.

Finally, the bill removes the requirement that a preschool or latchkey program's license contain (1) the name of the program's administrator, (2) the address where the program is operating, and (3) the toll-free number to call to report suspected violations of the law by the program. But the bill retains a requirement that the State Board of Education's rules for preschool or latchkey programs must be "consistent with and meet or exceed" statutory requirements for child day-care centers under R.C. Chapter 5104.²⁶

²⁶ R.C. 3301.53(B) and (C).

Since those statutory requirements include a requirement for this information to be shown on licenses for child day-care centers, the licenses of preschool or latchkey programs may still have to contain the information.

Reporting data of young children

(R.C. 3301.0714, 3301.0723, 3301.941, and 3314.17)

The Department of Education maintains the Education Management Information System (EMIS), which is an electronic database of district, school, personnel, and student information used by the Department and schools to administer their programs.²⁷ Among other things, EMIS includes data about student scores on state achievement assessments and other personally identifiable information. To maintain a child's privacy, the Department generally may not have access to a child's name but, instead, has access to a unique student data verification code, assigned to each student by a school district, a community school, or an independent contractor of the Department. The code is used to track a student's progress over time and to ensure that each student is properly counted for school funding and testing purposes.²⁸ It is often referred to as the "SSID," which is an acronym for "Statewide Student Identifier." Also, as authorized by statute, the Department and the Chancellor of the Board of Regents have created a longitudinal data network by adding to EMIS data for students in state colleges and universities. Thus, the achievement of students in public elementary and secondary schools can be tracked beyond high school.²⁹ Moreover, to assist the Director of Health and school districts in transitioning young children with developmental disabilities from the "Help Me Grow" program to district services, the Director is authorized to receive SSIDs for those children so their progress can be tracked as required by federal law.³⁰

The bill further expands EMIS to include data for other young children, who are not yet of compulsory school age (i.e., younger than age six and not in kindergarten), and who receive services from other publicly funded programs.³¹ First, it requires the director of any state agency that administers programs for such children to obtain an

²⁷ R.C. 3301.0714.

²⁸ R.C. 3301.0714(D). The Department does have access to names of students participating in state scholarship (voucher) programs to ensure that the students maintain eligibility by taking state achievement assessments and by complying with other program requirements.

²⁹ R.C. 3301.94, not in the bill.

³⁰ R.C. 3701.62, not in the bill. "Help Me Grow" is a federally funded program to assist young children with developmental disabilities before they enter school.

³¹ "Compulsory school age" (6 to 18 years old or enrolled in kindergarten) is defined in R.C. 3321.01.

SSID code for each of those children. The bill specifically names the Directors of Health, Job and Family Services, Mental Health, and Developmental Disabilities, but it also states that its provisions apply to "the director of any state agency that administers a publicly funded program providing services to children younger than compulsory school age." In addition, it specifically directs the EMIS contractor to transmit those codes to the Department of Education. The bill also requires state agencies to submit to the Department other personally identifiable information of those children using their unique SSID codes. Finally, the bill directs public schools, in which those children eventually enroll when they reach school age, to use those same codes to report data to the Department.

Handling and use of student data

The bill specifies that the personally identifiable information about a child younger than compulsory school age maintained in EMIS or in the files of another agency is not a public record under state Public Records Law.³² Rather, it states that release of that data is subject to the federal Family Educational Rights and Privacy Act.³³ Under that law, any entity that receives any federal funding generally may not release a student's personally identifiable information without prior consent. However, the federal law also provides some very specific exceptions under which student data may be released. One of those exceptions permits release to a research entity on behalf of an agency to evaluate the agency's programs. Accordingly, the bill specifically authorizes a state agency that administers an early childhood program to use student data contained in the combined EMIS data repository to conduct research and analysis designed to evaluate the effectiveness of and investments in that program, but only in a manner that complies with federal law.³⁴

State education aid definition

(R.C. 5751.20)

The bill specifies that a school district's "state education aid" for fiscal years 2012 and 2013 includes both its supplemental guarantee payment and its payment for high academic performance, if either is paid to the district.

³² The current EMIS statute also states that any data collected or maintained through EMIS that identifies an individual student is not a public record (R.C. 3301.0714(I)).

³³ 20 United States Code 1232g.

³⁴ R.C. 3301.941.

Background

"State education aid," as defined in R.C. 5751.20, refers to the gross amount of state aid computed for a district, before the deductions for certain resident students educated elsewhere such as community school, open enrollment, or scholarship (voucher) students. State education aid is used in computing transfer payments to community schools and STEM schools and a district's tangible personal property tax loss reimbursements. For fiscal years 2012 and 2013, most of a district's state operating funding is computed under a temporary "bridge formula," in lieu of a permanent school funding formula. Under the temporary formula, each district's computed amount is based on its per pupil amount of funding paid for fiscal year 2011 (under the former Evidence-Based Model repealed by H.B. 153), adjusted by its share of a statewide per pupil adjustment amount that is indexed by the district's relative tax valuation per pupil.³⁵ Essentially, under current law, the amount computed for a district under the bridge formula is its "state education aid" for fiscal years 2012 and 2013.

But for each of those two fiscal years, a district also may receive an additional guarantee subsidy and a subsidy for high performing school districts and community schools. Under the guarantee subsidy provision, a district is paid an extra amount, if necessary, to guarantee its operating funding that is equal to at least the amount of state operating funding, less federal stimulus funding, the district received for fiscal year 2011.³⁶ Under the other subsidy, a district (or community school) may receive an extra \$17 per student, if its current state report card rating is "excellent with distinction" or "excellent" (or rated "A" as the ratings are changed under the bill (see "**District and building academic performance ratings**" below).³⁷ As noted above, the bill adds those two payments (if they are paid) to a district's state education aid for fiscal years 2012 and 2013.

School facilities programs

Background

The Ohio School Facilities Commission administers several programs that provide state assistance to school districts and community schools in constructing classroom facilities. The main program, the Classroom Facilities Assistance Program (CFAP), is designed to provide each city, exempted village, and local 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 portion of the total cost of the project

³⁵ Section 267.30.50 of H.B. 153 of the 129th General Assembly.

³⁶ Section 267.30.53 of H.B. 153 of the 129th General Assembly.

³⁷ Section 267.30.56 of H.B. 153 of the 129th General Assembly.

and priority for funding are based on the district's relative wealth. Districts are ranked by wealth into percentiles. The poorest 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 based on their respective wealth percentile. Joint vocational school districts are served by the Vocational School Facilities Assistance Program, which is similar to CFAP. Other smaller programs address the particular needs of certain types of districts.

Project segments

(R.C. 3318.034)

A school district is permitted to divide its CFAP project into segments and to proceed with only one or more separate segments of the total project at a time. Thus, a district need not seek voter approval for a bond issue for the complete project all at once. Generally, (1) each segment must consist of new construction or complete renovation of one or more entire buildings, (2) the district's share of the cost of each segment must equal at least 4% of the district's tax valuation, and (3) a segment may not leave a building uncompleted.³⁸

The bill reduces the required minimum size of each segment from 4% of a district's tax valuation (as described in (2) above) to 2% of its tax valuation. The bill does not affect the other requirements relating to segment size.

Exceptional Needs Program

(R.C. 3318.37 and 3318.371)

The Exceptional Needs School Facilities Assistance Program provides funding for districts in the 1st through 75th wealth percentiles, and districts with territories of more than 300 square miles, in advance of their districtwide CFAP projects to construct single buildings in order to address acute health and safety issues. There is also a sub-program to provide funding to a district in any wealth percentile for the relocation or replacement of classroom facilities required as a result of air, soil, or water contamination.

The bill removes both the land-area size and wealth conditions for participation in the program, thus, permitting any district that has an acute need for assistance to receive funding.

³⁸ Certain "1990 look-back districts" (those partially served under former law prior to creation of the School Facilities Commission in 1997) may opt to segment their new projects in such a way that a single segment might address only a *part* of a facility in order to renovate or replace work done under its prior project, if the renovation or replacement is necessary to protect the facility.

Expedited Local Partnership Program

(R.C. 3318.364; conforming changes in R.C. 3318.023 and 3318.36)

The Expedited Local Partnership Program permits most school districts that have not been served under CFAP to apply the advance expenditure of district money on approved parts of their districtwide needs toward their shares of their CFAP projects when they become eligible for that program. The local share of the CFAP project and a district's priority for CFAP funding generally are based on the district's percentile ranking at the time it entered into an agreement under the Expedited Program. In other words, the district "locks in" its project share (its percentage of the total CFAP amount) and priority at that time.³⁹

The bill authorizes the School Facilities Commission to offer state funding under CFAP to Expedited Local Partnership school districts earlier than they would otherwise be eligible for state funds based on their wealth percentiles. It does not change a district's share, however. This advance priority may be offered only to districts that (1) have actually spent local resources on a portion of their districtwide projects, (2) are ready to undertake further segments or to complete their projects, and (3) have levied a tax or set aside other moneys for maintenance of the facilities acquired under the project. (Continuing law generally requires each district participating in a state classroom facilities program to levy an additional tax of one-half mill for 23 years or generate the equivalent of that amount by some other means.)

The bill specifies that an Expedited Local Partnership district may *not* be offered early CFAP funding over the following:

(1) Other districts for which earlier funding offers lapsed and which are now ready to undertake projects. (A district has 13 months to secure voter approval of local funds to pay its share of a project once approved by the Commission before the funding offer lapses. If it does lapse, however, the district has first priority in future years, subject to a new scope and estimated cost approved by the Commission.)⁴⁰

(2) Districts funded under former law ("1990 districts") that are eligible for additional facilities;

³⁹ For example, a district ranked at the 63rd wealth percentile when it enters the Expedited Program will be served under CFAP when the 63rd percentile becomes eligible and it will pay roughly 63% of the project total (unless an alternative formula is required), even if the district moves to the 65th percentile in the intervening period. This provision works the other way, too. If a district moves into a lower percentile after entering the Expedited Program, it will not be eligible for CFAP until CFAP serves its original, higher percentile and it will pay the higher percentage of the total CFAP project cost.

⁴⁰ R.C. 3318.05 and 3318.054, neither in the bill.

(3) Districts receiving funding under the Exceptional Needs Program (as described above); or

(4) Urban districts in the midst of their projects under the Accelerated Urban Program.⁴¹

Expedited Local Partnership districts otherwise may receive funding before any other districts, including the so-called "next ten" districts. (Each fiscal year, the Commission must determine which districts are likely the next ten districts to be offered CFAP funding, after all of the priority districts have been funded.)⁴²

The bill specifies that the Commission may offer funding to eligible Expedited Local Partnership districts in the order of their percentile rankings at the time they entered into their agreements, from lowest to highest percentile. In the event that more than one eligible district has the same percentile ranking, those districts must be offered assistance in the order of the date they entered into their agreements, from earliest to latest date.

Study of licensure requirements for media specialists

(Section 733.10)

The bill directs the Department of Education, by June 20, 2013, to conduct a study of the licensure requirements for educational staff responsible for developing informational sources to support curriculum and literacy development in schools. These staff are probably media specialists, who typically locate and access resources to enhance teachers' lesson plans and assist student learning. The Department and the State Board of Education must use the study to determine any necessary updates or revisions to the licensing of these staff.

⁴¹ The Accelerated Urban School Building Assistance Program allows six of the "Big-Eight" school districts to receive early CFAP assistance to complete their relatively large districtwide projects in a number of segments. The program applies to Akron, Cincinnati, Cleveland, Columbus, Dayton, and Toledo, all of which are either in the midst of or have completed their projects. The other two Big-Eight districts, Canton and Youngstown, were eligible for and began receiving CFAP funding prior to July 1, 2002, the eligibility date for funding offers under the Accelerated Urban Program. (See R.C. 3318.38, not in the bill.)

⁴² R.C. 3318.023.

Body mass index screening program

(R.C. 3301.921, 3301.922, 3302.032, 3313.674, and 3326.11, all presented in Section 815.10; Section 815.11)

The bill acknowledges the Governor's item veto, from H.B. 153, of the proposed repeal of the body mass index (BMI) screening program. It does so by (1) presenting the sections of law that H.B. 153 had proposed to repeal or amend, in connection with the proposed repeal of the BMI program, with the requirements of and references to the program intact, and (2) stating a legislative finding that the sections as presented are law.

This presentation appears intended to address confusion over the status of the BMI program following the veto. The Governor executed the veto through the official veto message. But not all of the related text in H.B. 153 itself was marked to correspond to the veto, which may have prompted the confusion. (In fact, several legal publishers still indicate that the BMI program has been repealed.) Although it has been customary for Governors to mark item vetoes on the actual budget acts by placing boxes around the disapproved text, there is no constitutional or statutory requirement that the Governor do so. The Ohio Constitution requires only that a Governor submit written objections explaining a veto.⁴³ Therefore, the veto message is authoritative.

The BMI program, which the Governor's veto preserved, generally requires each school district, community school (other than an e-school), STEM school, and chartered nonpublic school annually to administer a screening for BMI and weight status category for each student enrolled in grades K, 3, 5, and 9. The parent of a student may opt out of the requirement by submitting a signed statement indicating that the parent does not wish to have the student undergo the screening. A district or school also may obtain a waiver of the screening requirements from the Superintendent of Public Instruction. To obtain the waiver, the district or school must submit an affidavit stating that it is unable to comply with the requirements. The state Superintendent must grant the waiver upon receipt of the affidavit.

Sale of beverages in schools

(R.C. 3313.816)

The bill eliminates the requirement that public and chartered nonpublic school food service programs, school vending machines, and school-affiliated stores must make at least 50% of available beverages consist of water or other beverages that contain less than 10 calories per 8 ounces. This appears intended to align Ohio law with

⁴³ Ohio Constitution, Article II, Section 16.

federal regulations promulgated under the National School Lunch Act, which prohibit schools participating in the federal school lunch program from "directly or indirectly" restricting the sale of milk "at any time or in any place on school premises or at any school-sponsored event."⁴⁴

Nonsubstantive changes

The bill includes the following nonsubstantive changes:

(1) Repeals an obsolete law that required boards of county commissioners, until fiscal year 2007, to provide and equip offices for the use of educational service centers (R.C. 3313.37 and repealed R.C. 3319.19);

(2) Removes an obsolete reference to the Center for Early Childhood Development, which no longer exists (R.C. 3301.90); and

(3) Corrects a misspelling with respect to dual enrollment programs (R.C. 3313.6013).

II. CHILD CARE PROVISIONS

- Renames the voluntary child day-care center rating program (known as Step Up to Quality) as the tiered quality rating and improvement system and extends the system to all child day-care providers.
- Requires that all publicly funded child care providers participate in the tiered quality rating and improvement system by July 1, 2020.
- Modifies the requirements that a person must meet to be a child day-care center administrator.
- Requires that, beginning January 1, 2014, type B family day-care homes that seek to provide publicly funded child care be licensed by the ODJFS Director rather than certified by the CDJFS.
- Beginning January 1, 2014, eliminates type B family day-care homes with limited certification and in-home aides with limited certification.
- Beginning January 1, 2014, requires that an in-home aide undergo a background check as part of the certification process.

⁴⁴ 7 Code of Federal Regulations 210.10(m)(4).

- Eliminates obsolete statutory references to type C family day-care homes.
- Relocates, but does not substantively change, various provisions of the law governing child day-care.

Regulation of child care centers, family childcare homes, and in-home aides

(R.C. 109.57, 2151.011, 2919.227, 2923.124, 2923.126, 2923.1212, 2950.11, 2950.13, 3109.051, 3701.63, 3737.22, 3742.01, 3797.06, 4511.81, 5101.29, 5103.03, 5104.01, 5104.012, 5104.013, 5104.014, 5104.015, 5104.016, 5104.017, 5104.018, 5104.019, 5104.0110, 5104.0111, 5104.0112, 5104.022, 5104.03, 5104.032, 5104.033, 5104.034, 5104.035, 5104.036, 5104.037, 5104.038, 5104.039, 5104.04, 5104.041, 5104.052, 5104.053, 5104.054, 5104.06, 5104.08, 5104.09, 5104.11, 5104.13, 5104.14, 5104.25, 5104.30, 5104.31, 5104.32, 5104.35, 5104.36, 5107.60, and 5153.175; Section 751.20)

Background

With certain exceptions, the Ohio Department of Job and Family Services (ODJFS) and the county departments of job and family services (CDJFSs) are responsible for regulation of child-care providers that are required to be licensed or certified. A person or entity engages in child care when administering to the needs of infants, toddlers, preschool children, and school children outside of school hours for any part of the 24-hour day in a place or residence other than a child's own home.⁴⁵ There are different types of providers of child care. Differences among providers include where the child care is provided and the number of children to whom child care is provided at one time. Child care can be provided in a facility, the home of the provider, or the child's home.

Generally, facility-based child care is provided in a child day-care center. A child day-care center is any place in which child care or publicly funded child care is provided for 13 or more children at one time or any place that is not the permanent residence of the licensee or administrator in which child care or publicly funded child care is provided for 7 to 12 children at one time.⁴⁶

⁴⁵ Some activities that meet the definition of "child care" are not regulated by ODJFS or CDJFSs. For example, a program of child care that operates for two or fewer consecutive weeks is not subject to regulation. Another example is that the Ohio Department of Education, rather than ODJFS, licenses preschool programs and school child programs. (R.C. 5104.02(B).)

⁴⁶ R.C. 5104.01(M).

There are two types of providers who provide child care at the provider's home: type A family day-care homes (type A homes) and type B family day-care homes (type B homes). The difference between a type A home and type B home is the number of children who receive child care at the provider's home at one time. A type A home is the permanent residence of an administrator in which child care is provided for 7 to 12 children at one time or the permanent residence of an administrator in which child care is provided for 4 to 12 children at one time if four or more of the children at one time are under age two.⁴⁷ A type B home is the permanent residence of a provider in which child care is provided for 1 to 6 children at one time and in which no more than three children at one time are under age two.⁴⁸

For purposes of the child day-care law, a provider of child care who provides the care in the child's home is known as an in-home aide. An in-home aide is a person who does not reside with the child but provides care in the child's home and is certified by a CDJFS to provide publicly funded child care to a child in a child's own home.⁴⁹

Tiered Quality Rating and Improvement System

(R.C. 5104.30 and 5104.31)

In accordance with an existing law requirement to establish a voluntary child day-care center quality-rating program, ODJFS has implemented a program known as Step Up to Quality. Participation in the program may allow a child day-care center to be eligible for grants, technical assistance, training, or other assistance and become eligible for unrestricted monetary awards for maintaining a quality rating.

The bill renames the voluntary child day-care center quality-rating program the "tiered quality rating and improvement system" and expands the system to all child day-care providers. The bill requires that all publicly funded child care providers participate in the tiered quality rating and improvement system by July 1, 2020.

Enhanced reimbursement

In establishing reimbursement ceilings for publicly funded child care, ODJFS is required by current law to establish enhanced reimbursement ceilings for child day-care centers that participate in and maintain quality ratings under the voluntary child day-care center quality-rating program. Additionally, ODJFS must weigh any reduction in reimbursement ceilings more heavily against child day-care centers that do not

⁴⁷ R.C. 5104.01(TT).

⁴⁸ R.C. 5104.01(UU).

⁴⁹ R.C. 5104.01(Y).

participate in Step Up to Quality or do not maintain quality ratings. The bill expands these requirements to apply to all child day-care providers, not just child day-care centers, with respect to the tiered quality rating and improvement system.

Child day-care center administrator qualifications

(R.C. 5104.031 (primary), 5104.01, 5104.011, 5104.032, 5104.033, and 5104.38; Section 751.10)

Under current law, a person seeking to be a child day-care center administrator must meet certain educational requirements. The applicant must show the ODJFS Director both (1) evidence of at least high school graduation or certification of high school equivalency, and (2) evidence of having completed at least two years of training in an accredited college, university, or technical college, including courses in child development or early childhood education; at least two years of experience in supervising and giving daily care to children attending an organized group program; or the equivalent based on a designation as an "early childhood professional level three" under ODJFS's Step Up to Quality program's career pathways model.⁵⁰

In addition, any administrator employed or designated as such on or after September 29, 2011 must show evidence of at least one of the following not later than one year after the date of employment or designation:

(1) Two years of experience working as a child-care staff member in a center and at least four courses in child development or early childhood education from an accredited college, university, or technical college, except that a person who has two years of experience working as a child-care staff member in a particular center and who has been promoted to or designated as administrator of that center may have one year from the time the person was promoted to or designated as administrator to complete the required four courses;

(2) Two years of training, including at least four courses in child development or early childhood education from an accredited college, university, or technical college;

(3) A child development associate credential issued by the National Child Development Associate Credentialing Commission;

⁵⁰ The Step Up to Quality program is established by rule (O.A.C. Chapter 5101:2-17). The career pathways model is an alternative pathway to meeting the requirements for a child care staff member or administrator that uses one framework to integrate the pathways of formal education, training, experience, and specialized credentials, and certifications, and that allows the member or administrator to achieve a designation as an early childhood professional level one, two, three, four, five, or six (R.C. 5104.01(E)).

(4) An associate or higher degree in child development or early childhood education from an accredited college, technical college, or university, or a license designated for teaching in an associate teaching position in a preschool setting issued by the State Board of Education;

(5) An administrator's credential as approved by ODJFS.

Any administrator employed or designated as such before September 29, 2011, may show evidence of an administrator's credential as approved by ODJFS in lieu of, or in addition to, the educational requirements that otherwise apply. The evidence of an administrator's credential must be shown to the ODJFS Director no later than one year after the date of employment or designation.

The bill

Under the bill, a person seeking to be a child day-care center administrator must provide the ODJFS Director with evidence of at least high school graduation or certification of high school equivalency and one of the following:

(1) An associate, bachelor's, master's, doctoral, or other postgraduate degree in child development or early childhood education, or in a related field approved by the Director, from an accredited college, university, or technical college;

(2) A license designated as appropriate for teaching in an associate teaching position in a preschool setting issued by the State Board of Education;

(3) Designation under the career pathways model as an early childhood professional level three;

(4) Two years of experience working as a child-care staff member in a licensed child care program, designation under the career pathways model as an early childhood professional level one, and, not later than one year after being named as administrator, designation under the career pathways model as an early childhood professional level two;

(5) Two years of experience working as a child-care staff member in a licensed child care program and at least four courses in child development or early childhood education from an accredited college, university, or technical college;

(6) Two years of experience working as a child-care staff member in a licensed child care program and a Child Development Associate credential issued by the Council for Professional Recognition;

(7) Two years of training, including at least four courses in child development or early childhood education from an accredited college, university, or technical college;

(8) An infant and toddler or early childhood credential from a program accredited by the Montessori Accreditation Council for Teacher Education.

A person who has two years of experience working as a child-care staff member in a child day-care center and is promoted to or designated as administrator of that center has one year from the date of the promotion or designation to complete the educational requirements described above.

Licensure of type B family day-care homes

ODJFS licenses child day-care centers and type A homes; however, CDJFSs certify type B homes that provide publicly funded child care. A type B home that does not provide publicly funded child care is not required to be certified. Under the bill, beginning on January 1, 2014, a type B home that seeks to provide publicly funded child care must be licensed by ODJFS rather than certified by a CDJFS. Other type B homes are not required to be licensed, but the bill does not preclude them from seeking licensure voluntarily. The bill removes the statutory term "authorized provider," which refers to a person authorized by a CDJFS to operate a certified type B home, and instead provides that a person responsible for the daily operation of a type B home is called an administrator.

Any person seeking to operate a licensed type B home must apply to the ODJFS Director.⁵¹ The application must be made on a form prescribed by the Director. The Director must provide at no charge to each applicant a copy of the applicable child care license requirements of the child day-care law and of the rules adopted under that law. The Director is required to set fees, which must be paid at the time of the license application. Required fees are to be deposited into the General Revenue Fund.

When an application for a license is filed, the ODJFS Director must investigate and inspect the type B home to determine the license capacity for each age category of children of the type B home and to determine whether the type B home complies with the child day-care law and rules adopted under that law. When, after investigation and inspection, the Director is satisfied that the laws and rules are complied with, a license must be issued in such form and manner as the Director prescribes. The initial license is designated as provisional and is valid for 12 months unless revoked. The bill permits the Director to contract with a government or private nonprofit entity to inspect and license type B homes. The Director or entity must conduct the inspection before a type

⁵¹ R.C. 5104.03.

B home license is issued and, as part of the inspection, must ensure that the type B home is safe and sanitary.

The bill maintains the existing requirement that the uniform statewide automated child welfare system (SACWIS) be searched for any information concerning any abuse or neglect report that pertains to the applicant, another adult, or a person designated as an emergency or substitute caregiver for the applicant, but transfers that duty to ODJFS from the CDJFS. It continues to require that any information received from SACWIS or a public children services agency be considered. If the information, when viewed within the totality of the circumstances, reasonably leads to the conclusion that the applicant may directly or indirectly endanger the health, safety, or welfare of children, ODJFS is required to deny the application or revoke the type B home license.⁵²

The ODJFS Director is required to investigate and inspect the type B home at least once during operation under the provisional license. If after the investigation and inspection the Director determines that the requirements of the child day-care law and the rules adopted under that law are met, the Director must issue a new license.⁵³

Each license must state the name of the licensee, the address of the type B home, and the license capacity for each category of children. A license must include the toll-free telephone number to be used by persons suspecting that the type B home has violated a provision of the child day-care law or rule. A license is valid only for the licensee, address, and license capacity for each age category of child specified on the license.

If the ODJFS Director revokes a license or denies an application for a license, the Director is prohibited from issuing a license to or accepting another application from the owner of the type B home within five years from the date of the license revocation or application denial.⁵⁴ If the Director determines, during the application process, that the license of the owner has been revoked, the investigation of the type B home must cease, and does not constitute denial of the application.⁵⁵ All actions of the Director with respect to licensing type B homes, refusal to issue a license, and license revocations must be conducted in accordance with the Administrative Procedure Act.⁵⁶

⁵² R.C. 5104.03(C).

⁵³ R.C. 5104.03(D).

⁵⁴ R.C. 5104.03(F).

⁵⁵ R.C. 5104.03(G).

⁵⁶ R.C. 5104.03(H).

The bill provides that in no case is the ODJFS Director permitted to issue a license if the Director, based on documentation provided by the appropriate CDJFS, determines all of the following apply:

--The applicant previously had been certified as a type B home;

--The CDJFS revoked the applicant's previous certification;

--The revocation was based on the applicant's refusal or inability to comply with the certification criteria;

--The refusal or inability to comply with the certification criteria resulted in a risk to the health or safety of children.⁵⁷

Inspection of licensed type B homes

The bill requires ODJFS to inspect licensed type B homes at least twice during every 12-month period of operation. ODJFS must provide a written inspection report to the licensee within a reasonable time after each inspection. The licensee must display all written reports of inspections in a conspicuous place in the licensed type B home.⁵⁸ Inspections may be unannounced. No person is permitted to interfere with the inspection of a type B home, including reviewing records or interviewing licensees, employees, children, or caretaker parents.

Standards for licensed type B homes

Provisions of law that currently apply to all type B homes continue to apply, under the bill, to the new licensed type B homes. For example, type B homes are not required to be licensed as food service operations.⁵⁹ Since this exemption applies to all type B homes, it applies, under the bill, to both unlicensed type B homes and licensed type B homes.

In addition to the provisions that apply to all type B homes, the bill applies to licensed type B homes provisions that currently apply to certified type B homes as follows:

⁵⁷ R.C. 5104.03(I).

⁵⁸ R.C. 5104.04.

⁵⁹ R.C. 3717.42(B)(8).

Child abuse and neglect

--Includes licensed type B homes in the definitions used in the juvenile court law in relation to a child's out-of-home care and out-of-home care child abuse;⁶⁰

--Requires a public children services agency to promptly provide information to a CDJFS regarding an applicant to become an administrator of a licensed type B home for the purpose of evaluating the person's fitness for licensure, notwithstanding confidentiality laws.⁶¹

Sex-offender registration notification

--Requires the sheriff to notify the administrator of the licensed type B home if a person who has been convicted of or pleaded guilty to a specified sex-related offense (or has committed specified childhood sexual abuse) registers a residence or an intent to reside in the specified geographical notification area in which the type B home is located;⁶²

--Requires the Attorney General to adopt rules regarding the proper use and administration of information received by a licensed type B home about offenders who are subject to community notification under the sex offender and child-victim offender registration and notification law who are residing in the specified geographic area.⁶³

Health and safety

--Requires the Fire Marshal to cooperate with the ODJFS Director when the Director adopts fire prevention and fire safety rules;⁶⁴

--Includes licensed type B homes as home-based child care in which smoking generally is prohibited during the hours of operation, unless the smoking is in an indoor area that is separately ventilated from the rest of the home or in an outdoor area so far removed from the children that they cannot inhale any smoke.⁶⁵

⁶⁰ R.C. 2151.011(B).

⁶¹ R.C. 5153.175.

⁶² R.C. 2950.11(A)(6) and 3797.06(A)(6).

⁶³ R.C. 2950.13(A)(9).

⁶⁴ R.C. 3737.22.

⁶⁵ R.C. 5104.25.

Zoning

--Specifies that licensed type B homes must be considered to be a residential use of property for the purposes of municipal, county, and township zoning regulations.⁶⁶

Child Care Advisory Council

--Includes licensed type B homes among the child care facilities from which representatives are to be appointed to the Child Care Advisory Council, which advises the ODJFS Director on child care licensing.⁶⁷

Provision of publicly funded child care

--Includes licensed type B homes as child care providers that may provide publicly funded child care;⁶⁸

--Includes licensed type B homes as child care providers required to keep a record of each child eligible for publicly funded child care that must be made available to ODJFS or the CDJFS on request.⁶⁹

Recruiting and training providers

--Includes licensed type B homes as child care providers in relation to which each CDJFS is required to recruit individuals and groups interested in developing and operating child care;⁷⁰

--Includes licensed type B homes as child care providers for which the CDJFSs must establish and administer on-the-job training activities for persons who wish to become administrators of licensed type B homes.⁷¹

Employment status of type B home administrator

--Provides that a type B home administrator is an independent contractor and not an employee of ODJFS.⁷²

⁶⁶ R.C. 5104.054.

⁶⁷ R.C. 5104.08.

⁶⁸ R.C. 5104.31.

⁶⁹ R.C. 5104.36.

⁷⁰ R.C. 5104.35.

⁷¹ R.C. 5107.60.

⁷² R.C. 5104.03(J).

Extension of type A home standards to type B homes

The bill applies to licensed type B homes a few provisions generally applicable to licensed type A homes. These provisions are applied by the bill to licensed type B homes by doing all of the following:

--Including licensed type B homes as child care providers to which the ODJFS Director must provide consultation, technical assistance, and training to improve programs and facilities providing child care;⁷³

--Conforming the new type B home license to existing requirements governing child day-care centers and type A homes, which are not subject to a licensure renewal process;⁷⁴

--Eliminating corresponding provisions related to the existing renewal process for type B home certificates.⁷⁵

Type B homes with limited certification

The bill eliminates the requirement that the ODJFS Director adopt rules establishing procedures, standards, and other necessary provisions for granting limited certification to type B homes. Under the bill, if these providers want to provide publicly funded child care, they must be licensed by ODJFS as a type B home.

Under current law, limited certification may be granted by a CDJFS to type B homes operated by adult providers who provide child day-care for eligible children who are great-grandchildren, grandchildren, nieces, nephews, or siblings of the provider or for eligible children whose caretaker parent is a grandchild, child, niece, nephew, or sibling of the provider. Limited certification also may be granted to type B homes operated by adult providers who provide child day-care for eligible children all of whom are the children of the same caretaker parent.⁷⁶

Background checks for type B homes

As part of the transfer of licensing responsibilities for type B homes from CDJFSs to ODJFS, the bill transfers the duties concerning background checks for type B homes and adults residing in type B homes from the CDJFS director to the ODJFS Director.

⁷³ R.C. 5104.06.

⁷⁴ R.C. 5104.03.

⁷⁵ R.C. 5104.11(repealed).

⁷⁶ R.C. 5104.011(G)(a) (repealed).

Background checks for in-home aides

The bill requires that a CDJFS director as part of the certification process for an in-home aide, request that the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) conduct a criminal records check. The bill generally prohibits a CDJFS in-home aide who has been convicted of or pleaded guilty to certain offenses.

Current law requires the administrator of a child day-care center or a type A home to request that the Superintendent of BCII conduct a criminal records check with respect to any applicant who has applied to the center or home for employment as a person responsible for the care, custody, or control of a child.⁷⁷ An in-home aide is included in the definition of "applicant."⁷⁸ Because in-home aides provide child care only in the child's home, there does not appear to be any situation in which an in-home aide would be applying for employment with a center or type A home. Therefore, the bill deletes this reference.

In-home aides with limited certification

Under current law, the ODJFS Director must adopt rules establishing procedures, standards, and other necessary provisions for granting limited certification to in-home aides who provide child day-care for eligible children who are great-grandchildren, grandchildren, nieces, nephews, or siblings of the provider or for eligible children whose caretaker parent is a grandchild, child, niece, nephew, or sibling of the in-home aide. The law also requires ODJFS to adopt rules for granting limited certification in-home aides who provide child day-care for eligible children all of whom are the children of the same caretaker parent. The rules must include procedures for the Director to ensure that in-home aides that receive a limited certification provide child care to children in a safe and sanitary manner. The bill eliminates the category of in-home aides eligible to receive limited certification. If an in-home aide wishes to provide publicly funded child care, the in-home aide would have to be certified by the CDJFS.

Reimbursement ceiling for in-home aides

ODJFS is required by current law to adopt rules establishing a reimbursement ceiling that is either (1) if the provider is a relative, 75% of the reimbursement ceiling that applies to a type B home certified by the same CDJFS, or (2) if the provider is providing care for children of the same caretaker parent, 60% of the reimbursement ceiling that applies to a type B home certified by the same CDJFS.⁷⁹ The bill requires

⁷⁷ R.C. 5104.012(A).

⁷⁸ R.C. 5104.012(G)(1).

⁷⁹ R.C. 5104.30(E)(1)(c).

instead that ODJFS adopt rules establishing a reimbursement ceiling for in-home aides that is 75% of the reimbursement ceiling that applies to licensed type B homes.

Elimination of obsolete references to type C family day-care homes

(R.C. 109.57, 2923.124, 2923.126, 2923.1212, and 3742.01)

One additional type of child-care home, a type C home, was previously established in uncodified law as part of a time-limited pilot program.⁸⁰ Law establishing type C homes has expired; however, references to type C homes remain in certain provisions of the Revised Code. The bill eliminates these obsolete statutory references.

School-age and preschool age child care centers and homes

(R.C. 3301.52, 3301.53, 5104.01, 5104.011, 5104.21, and 5104.31)

Instead of referring to "school children" and "preschool children" in the ODJFS child care law, the bill refers to "school-age children" and "preschool-age children." Under law unchanged by the bill, the Department of Education remains responsible for licensing programs referred to as "school child programs" and "preschool child programs."

Statutory authority for adoption of ODJFS rules

(Sections 751.10 and 751.20)

The bill specifies that Revised Code sections cited as the authority for rules adopted under the child care law are deemed to be the sections as renumbered by the bill. The bill provides that the ODJFS Director is not required to amend any rule previously adopted under that law for the sole purpose of changing the citation of the Revised Code section that authorizes the rule.

Table of renumbered sections

The bill relocates, but does not substantively change, a number of provisions of the Revised Code governing child day-care. The table below describes these sections and identifies where they are relocated by the bill.

⁸⁰ Type C family day-care homes were authorized under a two-year pilot program created by Sub. H.B. 62 of the 121st General Assembly. Am. Sub. S.B. 160 of the 121st General Assembly lengthened the pilot program to three years. Sub. H.B. 407 of the 123rd General Assembly extended the pilot program an additional three years, through March 28, 2003.

Subject	Current section	New section
Rules governing child day-care centers	5104.011(A), 5104.014	5104.015
Rules establishing minimum requirements for child day-care centers	5104.011(D)	5104.016
Rules governing type A homes	5104.011(F)	5104.017
Rules governing type B homes	5104.011(G)	5104.018
Rules governing in-home aides	5104.011(H)	5104.019
Examinations by health professionals	5104.011(I)	5104.0110
Notice and copies of rules	5104.011(J) and (K)	5104.0111
Nondiscrimination	5104.011(L)	5104.0112
Physical requirements for child day-care centers	5104.011(B)(1) and (2)	5104.032
Staffing requirements for child day-care centers	5104.011(B)(3) and (E)	5104.033
Specialized staffing requirements for child day-care centers	5104.011(C)(1)	5104.034
Educational requirements for administrators of child day-care centers	5104.011(B)(4)	5104.031 (until 1/1/14) 5104.035 (after 1/1/14)
Educational requirements for staff of child day-care centers	5104.011(B)(5)	5104.032 (until 1/1/14) 5104.036 (after 1/1/14)
Continuing education requirements	5104.011(B)(6)	5104.033 (until 1/1/14) 5104.037 (after 1/1/14)
Child day-care center records	5104.011(C)(2)	5104.038
Parental access to child day-care centers	5104.011(C)(3)	5104.039
Smoking prohibition	5104.015	5104.25
Type B home certification	5104.11	repealed and substantive provisions consolidated with 5104.03 or in the two new sections below
Type B home fire inspections	5104.11(D)	5104.052
Readability of materials provided by ODJFS	5104.11(E)	5104.14

III. EMPLOYMENT OF PERSONS WITH DEVELOPMENTAL DISABILITIES

- Declares it to be the state's policy that employment services for individuals with developmental disabilities be directed at placement in the community in positions in which these individuals are integrated with other workers.
- Requires state agencies that provide employment services to individuals with developmental disabilities to implement the employment policy and the Department of Developmental Disabilities to coordinate implementation.
- Requires that starting at age 14 the individualized education program (IEP) for a child with a disability include goals related to employment in a competitive environment in which workers are integrated regardless of disability.

Employment services

(R.C. 5123.022)

The bill declares it to be the state's policy that employment services for individuals with developmentally disabilities be directed at placement whenever possible of each individual in a position in the community in which the individual is integrated with the employer's other workers who are not developmentally disabled. The policy must be implemented by the Departments of Developmental Disabilities, Education, Mental Health, and Job and Family Services; the Rehabilitation Services Commission; and each other state agency that provides employment services to individuals with developmental disabilities. These agencies may adopt rules to implement the policy.

The Department of Developmental Disabilities is to coordinate the actions taken by state agencies to comply with the state's policy, track progress toward full implementation of the policy, and submit an annual report to the Governor.

Agencies must collaborate within their divisions and with each other to ensure that state programs, policies, procedures, and funding support competitive and integrated employment of individuals with developmental disabilities.

The bill states that the policy is intended to promote the right of each individual with a developmental disability to informed choice, but nothing in this provision requires any employer to give preference in hiring to an individual because the individual has a disability.

Individualized education programs

(R.C. 3323.011)

The bill requires that starting at age 14 the individualized education program (IEP) for a child with a disability include goals related to employment in a competitive environment in which workers are integrated regardless of disability. State and federal law both require a school district to ensure that an IEP is developed and in effect for each child enrolled in the district who is identified as having a disability. It prescribes the services the child needs and is entitled to under federal law.⁸¹

Current law requires that the first IEP in effect when a child is 16 include a statement describing appropriate measurable post-secondary goals based on age-appropriate transition assessments related to training, education, employment, and independent living skills. The bill reduces the age to 14 and replaces the goal related to employment with a requirement that the statement describe appropriate measurable post-secondary goals based on age-appropriate transition assessments related to employment in a competitive environment in which workers are integrated regardless of disability.

IV. WORKFORCE DEVELOPMENT PROVISIONS

State Workforce Policy Board

- Changes the composition and structure of the State Workforce Policy Board.
- Transfers supervision and administration of the state workforce development system from the Director of Job and Family Services to the State Workforce Policy Board.
- Transfers the authority to allocate and pay funds to local administration of workforce development activities from the Director of Job and Family Services to the State Workforce Policy Board.
- Allows the State Workforce Policy Board to assess fees for specialized services requested by an employer.
- Requires every state agency, board, or commission to provide the State Workforce Policy Board with any information or assistance the board requests in furtherance of workforce development activities.

⁸¹ 20 U.S.C. 1414.

- Requires local workforce development plans to be approved by the State Workforce Policy Board.
- Eliminates certain requirements of the workforce development system regarding locally designed family services systems and counties and municipalities.
- Permits boards of county commissioners to provide electronically workforce development activities in a local area (One-stop System).
- Eliminates the requirement that at least one representative from a county department of job and family services staff a One-stop System for workforce development.
- Eliminates certain state law limits on the Governor's allocation of money received under the federal "Workforce Investment Act of 1998."

Registered apprenticeship

- Increases the minimum age at which an individual may be an apprentice to include an individual above 16 years of age when a higher minimum age standard is otherwise fixed by law.
- Permits the Ohio Apprenticeship Council to recommend, rather than establish as under current law, minimum standards for apprenticeship programs and rules as may be necessary to carry out the Ohio Apprenticeship Law.
- Eliminates the Council's authority to terminate registered apprenticeship agreements that are not in compliance with the applicable standards and instead requires the Council to consult with the Executive Secretary regarding that termination.
- Separates the Executive Secretary from the Council by placing the Executive Secretary in the Council Office, and modifies the Executive Secretary's duties to reflect that separation.
- Eliminates the Executive Secretary's duty to issue certificates of completion of apprenticeship in accordance with the Council's standards.

Workers' compensation and learn to earn

- Prescribes the circumstances in which an individual who is injured or contracts an occupational disease in the course of and arising out of participation in a learn to earn program receives compensation and benefits under the Workers' Compensation Law or under Unemployment Compensation Law.

- Exempts from liability for an injury suffered or occupational disease contracted, except with respect to intentional torts, the Department of Job and Family Services, any established learn to earn program, or any entity conducting the training under that program.
- Permits the Department of Job and Family Services to establish a separate workers' compensation coverage policy for learn to earn participants.
- Permits the Department of Job and Family Services to enter into a contract of indemnity for loss as a result of any workers' compensation claim arising out of participation in a learn to earn program.

Office of Workforce Transformation web site

- Authorizes the Office of Workforce Transformation to create a web site to help link energy companies with trained workers and to provide information on industry compatible curriculum and training.
- Authorizes the Office of Workforce Transformation to work with veterans to match training and skills to needed jobs in industries, including to the oil and gas industry.

State Workforce Policy Board

Composition of the State Workforce Policy Board

(R.C. 6301.04)

Current law requires the Governor to establish the State Workforce Policy Board (State Board) and to appoint members to the board. There is no designated minimum or maximum number of members on the State Board. The bill requires the Governor to designate nine members of the State Board to be voting members. The voting members must be chosen in such a way that a majority of the voting members represent business interests. The Governor may appoint more members, but they will be ex-officio members.

Authority to establish, administer, and supervise workforce development

(R.C. 6301.02, 6301.03, and 6301.04)

The bill transfers from the Director of Job and Family Services to the State Workforce Policy Board the duty to establish and administer a workforce development system and requires the Director of Job and Family Services to assist the State Board in this duty.

The bill also eliminates the requirement that the workforce development system be designed to provide leadership, support, and oversight to locally designed family services systems. The bill retains this requirement with respect to locally designed workforce development systems. The bill also removes the requirement that the workforce development system be designed to provide the maximum amount of flexibility and authority to counties and municipal corporations.

While the Director of Job and Family Services retains authority to adopt rules to establish a program or pilot program for providing workforce development activities, the bill gives the State Board final approval of any such program.

Enumerated powers

(R.C. 6301.04)

The bill gives the State Workforce Policy Board the power to do all of the following:

- Coordinate state workforce development activities through oversight and policy direction;
- Adopt rules necessary to administer state workforce development activities;
- Adopt rules necessary to audit and monitor subrecipients of the workforce development system grant funds;
- Designate local workforce investment areas;
- Develop a unified budget for state and federal workforce funds;
- Establish a statewide employment and data collection system;
- Develop statewide performance measures for workforce development and investment;
- Develop a state workforce development plan;
- Prepare the annual report to the U.S. Secretary of Labor as required by the federal "Workforce Investment Act" (WIA);
- Carry out any additional functions, duties, or responsibilities assigned by the Governor.

Authority to direct payments for local workforce development activities

(R.C. 6301.03)

Under the bill, the Director of Job and Family Services may, at the direction of the State Workforce Policy Board, allocate and pay funds received pursuant to WIA, the federal "Wagner-Peyser Act" and the workforce development system for local workforce development activities. Current law allows the Director to allocate those funds without direction by the State Board.

The bill eliminates certain state law limits on the Governor's allocation of money received under WIA. The state receives funds under Title I of WIA for adults, dislocated workers, and youth. Current state law, which matches provisions in WIA, prohibits the Governor from allocating more than 15% of those funds for statewide activities and prohibits the Governor from allocating more than 25% of the funds received for dislocated workers, for rapid response activities. The bill eliminates these restrictions from state law, though they remain in WIA at 29 U.S.C. 2853 and 2863.

The bill also allows the State Board to assess fees for specialized services requested by an employer. The Director of Job and Family Services, local areas,⁸² counties, and municipal corporations are already allowed to assess such fees under current law.

Assisting the Board

(R.C. 6301.02 and 6301.04)

The bill requires state agencies to provide assistance and information to the State Workforce Policy Board when that information or assistance is requested in furtherance of workforce development activities. Continuing law requires state agencies to provide such assistance and information to the Director of Job and Family Services.

The bill also requires all state agencies engaged in workforce development activities to assist the Board in the performance of its duties. Continuing law requires the Director of Job and Family Services to assist the State Board.

⁸² For purposes of the state workforce development system, a "local area" is a municipal corporation authorized to administer WIA, a county, or a consortium of counties and municipal corporations (possibly some in another state but sharing a labor market (R.C. 6301.01(A))).

Preparation of local workforce development plans

(R.C. 6301.07)

Current law requires every local workforce policy board to prepare a workforce development plan with the agreement of the chief elected official of the local area served by the local board and after holding hearings that allow public comment and testimony. The bill further requires that the local board prepare the workforce development plan under the direction and approval of the State Workforce Policy Board.

One-stop System

(R.C. 6301.08)

The bill modifies the current One-stop System requirement that municipal corporation officials and boards of county commissioners ensure that a physical location is available in the local area for workforce development activities by allowing for an alternative: officials or boards can instead choose to ensure those activities are available through electronic means. Any activities provided by electronic means must be approved by the State Workforce Policy Board.

The bill also eliminates the current requirement that at least one representative from a county department of job and family services staff a One-stop System to represent all of the county family service agencies within the local area.

State of Ohio's workforce report

(R.C. 6301.10)

The bill transfers from the Director of Job and Family Services to the State Workforce Policy Board the duty to prepare and distribute a state workforce report. The bill also requires the reports once a year rather than quarterly as under current law, and adds the Commission on Hispanic-Latino Affairs to the list of recipients of the report, starting January 1, 2013. Finally, the bill requires all state agencies engaged in workforce development activities to assist the State Board in preparing the report.

Administration of Ohio's registered apprenticeship system

(R.C. 4139.01, 4139.03, 4139.04, and 4139.05)

Apprentices

The bill increases the minimum age at which an individual may be an apprentice for purposes of having a registered apprenticeship program to include an individual

above 16 years of age when a higher minimum age standard is otherwise fixed by law. Additionally, under the bill an individual must participate in a registered apprenticeship program to learn a skilled occupation, pursuant to a registered apprenticeship agreement, rather than being covered by an agreement under current law, to be considered an apprentice.

Ohio Apprenticeship Council duties

The bill permits the Ohio Apprenticeship Council to recommend, rather than establish as under current law, minimum standards for apprenticeship programs and recommend, rather than issue, rules as may be necessary to carry out the Ohio Apprenticeship Law. The Executive Secretary of the Council, under the bill, must register programs that meet the minimum standards established in federal regulations and state rules rather than the Council's minimum standards.

Additionally, the bill eliminates the Council's authority to order the Executive Secretary to terminate registered apprenticeship agreements that are not in compliance with the applicable standards. Instead, the Executive Secretary may make such terminations in consultation with the Council.

Executive Secretary of the Council

The bill separates the Executive Secretary from the Council. Under continuing law the Director of Job and Family Services appoints the Executive Secretary, and that appointment is subject to confirmation by a majority of the Council. The bill places the Executive Secretary within the Council Office, which is the unit within the Department of Job and Family Services that staffs the Council and performs the administrative and oversight functions concerning Ohio's registered apprenticeship system, rather than the Council.

The bill also modifies the Executive Secretary's duties. The bill eliminates the Executive Secretary's duty to issue certificates of completion of apprenticeship in accordance with the Council's standards. In addition to continuing law duties, under the bill the Executive Secretary must implement administrative rules adopted by the Director as necessary for the administration of the registered apprenticeship system. Additionally, the bill expands the Executive Secretary's duties with respect to procedures, requiring the Executive Secretary to devise and implement all procedures and minimum standards as are necessary for the administration of the registered apprenticeship system, rather than devising only all necessary procedures and records under current law. Under the bill the Executive Secretary must perform other duties as appropriate under the applicable rules and regulations rather than as the Council directs.

Workers' compensation and learn to earn program participants

(R.C. 4123.391)

Under the bill, a participant in a learn to earn program is entitled to compensation and benefits under the Workers' Compensation Law under certain circumstances. A "learn to earn program" is any program established by the Department of Job and Family Services that is designed to increase an individual's opportunity to move to permanent employment through a short-term work experience placement with an eligible employer.

If a learn to earn program participant suffers an injury or contracts an occupational disease that produces a disability arising out of and in the course of participating in the program and remains eligible for unemployment compensation benefits, the participant will receive unemployment compensation benefits while otherwise eligible for those benefits. If that disability causes the participant to become ineligible for unemployment compensation benefits or the participant is unable to work after the expiration of eligibility for unemployment compensation benefits, the participant must receive compensation and benefits under the Workers' Compensation Law.

The bill makes a participant in a learn to earn program an employee of the Department of Job and Family Services and not an employee of the entity conducting training. The Department can either include a learn to earn participant in its own workers' compensation policy, or establish a separate policy with the Bureau of Workers' Compensation (BWC) upon the terms and conditions for insurance to be established by BWC consistent with insurance principles, as is equitable in the view of degree and hazard. Notwithstanding the continuing law prohibition against indemnifying workers' compensation claims, the bill also permits the Department to enter into a contract to indemnify the Department against all or part of the Department's loss as a result of liability of the Department that is attributable to any claims for compensation or benefits under the Workers' Compensation Law arising from participation in any learn to earn program.

The bill exempts from liability, except for intentional torts, the entity conducting the training, the Department, and any learn to earn program established by the Department. Accordingly, a participant in a learn to earn program is considered to have accepted the terms and conditions of the Workers' Compensation Law and waives on behalf of the participant or the participant's personal or legal representatives all rights of action on account of the participant's injury or occupational disease arising from participation in the program whether at common law, by statute, or under the laws of any other state. The bill also proscribes any direct causes of action by a

participant's dependents for damages on account of the participant's personal injury or death.

Office of Workforce Transformation web site

(Section 763.10)

The bill authorizes the Office of Workforce Transformation to create a web site to help link energy companies with trained workers and to provide information on industry compatible curriculum and training. The bill also authorizes the Office of Workforce Transformation to work with veterans to match training and skills to needed jobs in industries, including to the oil and gas industry.

NOTE ON EFFECTIVE DATES

The effective date of most of the amendments, enactments, and repeals of law in this bill are subject to the referendum and therefore become effective on the 91st day after the bill, if enacted, is filed with the Secretary of State, in the absence of a referendum. (However, many of the child care provisions, while subject to the referendum, take effect January 1, 2014.)

The following provisions of the bill are declared not to be subject to the referendum and they take effect immediately if they become law:

- Section 267.30.56 of Am. Sub. H.B. 153 of the 129th General Assembly, as amended by Section 610.10 of the bill. Pertains to the payment of the subsidy for high performing school districts and community schools. Amended by the bill to conform to the new academic performance rating system established by the bill's amendments to R.C. 3302.03.
- Section 763.10 of the bill. Office of Workforce Transformation web site.

Under the Ohio Constitution, Article II, Section 1d, the following laws are not subject to the referendum and take immediate effect: (1) laws providing for tax levies, (2) appropriations for current expenses of the state government and state institutions, and (3) emergency laws. The bill does not levy a tax, appropriate money for current expenses, or declare an emergency.

HISTORY

ACTION

DATE

Introduced

03-22-12

S0316-I-129.docx/jc:ks

