



# Ohio Legislative Service Commission

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## Final Analysis

Hannah K. Wann

### Sub. S.B. 21

130th General Assembly  
(As Passed by the General Assembly)

**Sens.** Lehner, Sawyer, Gardner, Bacon, Beagle, Brown, Coley, Eklund, Faber, Hite, Jones, Manning, Obhof, Peterson, Seitz, Turner, Uecker

**Reps.** Brenner, Amstutz, Anielski, Baker, Bishoff, Burkley, Driehaus, Duffey, Grossman, Hackett, Hayes, Henne, Kunze, McClain, McGregor, O'Brien, Patterson, Phillips, Pillich, Reece, Rogers, Smith, Sprague, Stautberg, Stebelton, Terhar, Young, Batchelder

**Effective date:** Emergency, June 4, 2013

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## ACT SUMMARY

### Third-grade reading guarantee

- Modifies the benchmark for retaining a student under the third-grade reading guarantee to specify that a student who is not excused from the third-grade reading assessment must be retained if the student does not attain at least the "equivalent level of achievement" as determined by the Department of Education, instead of the designated score.
- Exempts from the annual diagnostic assessment students with significant cognitive disabilities or other disabilities as authorized by the Department on a case-by-case basis.
- Exempts from the third-grade reading guarantee limited English proficient students who have been enrolled in U.S. schools for less than three years (instead of two years under prior law) and who have had less than three years of instruction in an English as a second language program (instead of two years of instruction under prior law).
- Replaces the prior requirement that reading teachers under the third-grade reading guarantee must have been actively engaged in the reading instruction of students for the previous three years with a requirement that reading teachers have one year teaching experience, with prescribed exceptions.

- Revises the law pertaining to waivers for districts and schools from the third-grade reading guarantee teacher qualification criteria.
- Requires the Department to designate one or more staff members to provide guidance and assistance to districts and schools in regard to the third-grade reading guarantee and reading instruction and achievement.

### **Other provisions related to reading improvement**

- Requires the State Board of Education to adopt reading competencies with which all reading educator licenses, alternative credentials and training, and reading endorsement programs eventually must be aligned.
- Requires the Department not later than March 31, 2014, to conduct and submit a study of diagnostic assessments to the State Board, the Governor, and the General Assembly.
- Requires school districts and community schools that fail to meet a specified level of achievement on reading-related measures, as reported on the past two report cards, to submit to the Department a reading achievement improvement plan and to operate under the plan until achievement levels improve to a specified level.
- Requires the Department annually (1) to collect, analyze, and publish data regarding reading achievement in schools, and (2) to report to the Governor, the General Assembly, and the State Board of Education on the progress of public school students, districts, and community schools in reading achievement.
- Beginning July 1, 2017, requires all new applicants seeking an educator license for either (1) grades pre-kindergarten through three or (2) grades four through nine, to pass an examination aligned with reading competencies adopted by the State Board of Education.
- Not later than July 1, 2016, requires the Chancellor of the Board of Regents to revise the requirements for reading endorsement programs offered by institutions of higher education to align with reading competencies adopted by the State Board of Education.

### **Public college-preparatory boarding schools**

- Requires a project agreement between the School Facilities Commission (SFC) and a public college-preparatory boarding school to specify that if a boarding school ceases operations, the classroom facilities may be used for an alternative public purpose, including primary, secondary, vocational, or higher education services.



- Specifies that the agreement stipulate that if the school ceases operations due to a failure to comply with its contract with the State Board of Education or a default on a mortgage or leasehold, the state facility assistance funds must be returned to SFC, unless, within 24 months after ceasing operations, the school is used for an alternative public purpose as described above.
- Specifies that no officer or trustee of a public college-preparatory boarding school or member of its board of trustees incurs any personal liability by virtue of entering into any contract on behalf of the boarding school.
- Specifies that a public college-preparatory boarding school must be established as a public benefit corporation.

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## **CONTENT AND OPERATION**

### **THIRD-GRADE READING GUARANTEE PROVISIONS**

#### **Background**

The third-grade reading guarantee requires each school district and community school to use diagnostic assessments adopted by the State Board of Education to assess a student's reading skills at the beginning of kindergarten and first, second, and third grade to identify students reading below grade level. Upon identification of a student as underperforming, the district or school must notify the student's parent and provide the student with intervention services. To that end, the district or school must develop a reading improvement and monitoring plan within 60 days after receiving the student's results on the diagnostic assessment. Also, continuing law generally prohibits school districts and community schools from promoting to fourth grade a student scoring in the range designated by the State Board on the third-grade English language arts (reading) achievement assessment, but makes exceptions for students in specific circumstances.

#### **Retention under the third-grade reading guarantee**

The act modifies the benchmark triggering retention under the third-grade reading guarantee by specifying that a student must be retained, subject to the prescribed exceptions, if the student does not attain at least the "equivalent level of achievement" on the third-grade achievement assessment as determined by the Department of Education.<sup>1</sup>

The act also expressly excludes a student who is already excused from taking the assessment under separate law from this requirement.<sup>2</sup> This excusal generally applies to students with disabilities whose individualized education programs (IEP) or rehabilitation plans excuse them from the assessment or provides for other accommodations such as an alternative assessment. A district board may also excuse a student from taking an assessment on the scheduled date for medical reasons or other good cause. However, students excused under this provision must take the assessment

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<sup>1</sup> R.C. 3313.608(A)(1) and (2). See R.C. 3301.0710, not in the act.

<sup>2</sup> R.C. 3313.608(A)(1) and (2).



within nine days of the scheduled date. It might also apply to limited English proficient students who have been enrolled in school in the U.S. for less than one year.<sup>3</sup>

Finally, the act exempts from retention under the third-grade reading guarantee limited English proficient students who have been enrolled in U.S. schools for less than *three* years (instead of two years as under prior law) and who have had less than *three* years of instruction in an English as a second language program (instead of two years as under prior law).<sup>4</sup>

### **Exemption from annual diagnostic assessment**

The act exempts from the requirement to take the annual diagnostic assessment of reading skills students with "significant cognitive disabilities" or other disabilities as authorized by the Department of Education on a case-by-case basis.<sup>5</sup>

### **Teacher qualifications for third-grade reading guarantee services**

#### **Teaching experience**

Under prior law, a student who is retained or who has a reading improvement monitoring plan had to be assigned a teacher who had been actively engaged in the reading instruction of students for the previous three years and who met one or more other specified criteria. The act replaces the three-year teaching requirement with a provision that generally requires that a teacher have at least one year of teaching experience. Nevertheless, a teacher with less than one year of experience may provide reading guarantee services, if that teacher meets any of the other requirements (under continuing law and the act) to provide such services, *and* if that teacher is assigned a teacher mentor who has at least one year of experience and who meets the qualifications to provide reading guarantee services.<sup>6</sup>

As described below, the act also retains, modifies, removes, and adds to some of the other teacher qualification criteria.

#### **"Credential" criterion removed**

The act removes the qualification prescribed under prior law that a teacher who showed evidence of a credential earned from a list of scientifically research-based

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<sup>3</sup> R.C. 3301.0711(C), not in the act.

<sup>4</sup> R.C. 3313.608(A)(2)(a).

<sup>5</sup> R.C. 3313.608(B)(1).

<sup>6</sup> R.C. 3313.608(H)(1) and (H)(2).



reading instruction programs approved by the Department could provide reading guarantee services.<sup>7</sup>

### **"Above value added" criterion modified**

Under prior law, a teacher could provide reading guarantee services for only the 2013-2014 school year, if that teacher was rated "above value added," which means most effective in reading, as determined by the Department for the last two school years. The act modifies this provision so that a teacher who was rated "above expected value added" in reading instruction, as determined by criteria established by the Department, for the most recent, consecutive two years may provide reading guarantee services.<sup>8</sup> The act does not limit this criterion to the 2013-2014 school year.

### **"Most effective" criterion added**

The act qualifies to provide reading guarantee services teachers who were rated "most effective" for reading instruction consecutively for the most recent two years based on assessments of student growth measures developed by a vendor and that is on the list of student assessment approved by the State Board for teacher evaluations.<sup>9</sup>

### **License aligned with reading competencies criterion added**

The act also qualifies to provide reading guarantee services teachers who hold an educator license to teach grades pre-kindergarten through three or grades four through nine issued on or after July 1, 2017.<sup>10</sup> Under the act, educator licenses that are issued on or after that date must be aligned with reading competencies adopted by the State Board (see "**Reading competencies**" below).

### **Alternative credentials added**

The act allows a teacher to provide reading guarantee services between July 1, 2013, and July 1, 2016, if that teacher holds an alternative credential approved by the Department or has successfully completed training that is based on principles of scientifically research-based reading instruction that has been approved by the Department. Beginning on July 1, 2014, those alternative credentials and training must

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<sup>7</sup> R.C. 3313.608(H)(1)(c).

<sup>8</sup> R.C. 3313.608(H)(1)(d).

<sup>9</sup> R.C. 3313.608(H)(1)(c).

<sup>10</sup> R.C. 3313.608(H)(1)(f).



be aligned with the reading competencies adopted by the State Board (see "**Reading competencies**" below).<sup>11</sup>

Under the act, teachers who teach reading to any student, whether under the reading guarantee or otherwise, who is an English language learner who has been in the U.S. for three years or less or a student who has an IEP may do so under the alternative credential or training regardless of years of experience and may continue to do so indefinitely. Beginning July 1, 2014, those alternative credentials and training must be aligned with the State Board-adopted reading competencies.<sup>12</sup>

### **Teacher of record**

Under the act, a teacher other than a student's "teacher of record" may provide reading guarantee services, so long as that other teacher meets the reading guarantee qualifications and the teacher of record and the school principal agree to the assignment. This must be documented in the student's reading improvement and monitoring plan. The act defines a "teacher of record" as the classroom teacher to whom a student is assigned.<sup>13</sup>

### **Scientifically research-based reading instruction test criterion**

Under continuing law, a teacher may provide reading guarantee services if the teacher has earned a passing score on a rigorous test of principles of scientifically research-based reading instruction. The act retains this criterion but removes a requirement that this test be selected through a competitive bidding process and, instead, requires the test to be approved by the State Board.<sup>14</sup>

### **Reading endorsement criterion**

Prior law specified that a teacher who has a reading endorsement on the teacher's educator license and who attained a passing score on the corresponding assessment for that endorsement was qualified to provide reading guarantee services. The act specifies, instead, that a teacher with a reading endorsement need only to have passed the State Board-required assessment for that endorsement "as applicable." In other words, the teacher must have a passing score on the assessment if the teacher was required to take an assessment for the reading endorsement. This addresses teachers

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<sup>11</sup> R.C. 3313.608(H)(3).

<sup>12</sup> R.C. 3313.603(I).

<sup>13</sup> R.C. 3313.603(H)(5).

<sup>14</sup> R.C. 3313.608(H)(1)(e).

who received a reading endorsement but were not required at that time to take an assessment as a condition for the endorsement.<sup>15</sup> For those teachers who were required to pass an assessment for the reading endorsement, the act maintains the requirement that they must have attained the prescribed passing score on that assessment.

### **Speech-language pathologist criterion**

The act qualifies speech-language pathologists who hold a license from the Board of Speech-Language Pathology and Audiology and a professional pupil services license as a school speech-language pathologist from the State Board of Education to provide reading guarantee services.<sup>16</sup>

### **Master's degree criterion not affected by the act**

Continuing law permits a teacher to provide reading guarantee services if the teacher has obtained a master's degree with a major in reading.<sup>17</sup> This provision is not affected at all by the act.

### **Staffing plans**

Prior law prescribed that for the 2013-2014 school year, a district or community school that could not furnish the number of teachers needed who satisfy one or more of the criteria must develop and submit to the Department of Education a plan, by June 30, 2013, indicating the criteria that will be used to determine those teachers who will teach during that year. The plan had to indicate how the school would find teachers who meet one or more of the criteria in the 2014-2015 school year and beyond.

While the act maintains the requirement that districts and schools that cannot furnish qualified reading guarantee teachers submit a plan, it substantially revises the requirement.<sup>18</sup> First, it relieves the Department of the duty to approve or disapprove a district's or school's plan, causing the plan to be effective upon submission. Prior law had required the Department to approve a district or school's plan by August 15, 2013, or the district or school would have been required to contract for reading guarantee services from a list of Department-approved providers.

Second, it calls the plan a "staffing plan" and changes entirely the required content of the plan.

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<sup>15</sup> R.C. 3313.608(H)(1)(a).

<sup>16</sup> R.C. 3313.608(H)(4).

<sup>17</sup> R.C. 3313.608(H)(1)(b).

<sup>18</sup> R.C. 3313.608(J).

Under prior law, in a manner prescribed by the Department, the plan had to indicate the criteria that would be used to determine those teachers in the school district or community school who would provide reading guarantee services and how the school district or community school would meet the criteria for subsequent school years. The plan also could include the option to contract with another school district or private provider that has been screened and approved by the Department to provide intervention services. The act, on the other hand, requires that the plan include criteria that a district or community school will use to assign students with reading improvement monitoring plans to a teacher, credentials or training held by teachers currently teaching at the school, and how the district or school will meet the requirements of the reading guarantee.

The act also allows a school district or community school to request an extension of a staffing plan beyond the 2013-2014 school year. Such requests must be submitted not later than April 30 of the prior school year. The Department may grant extensions that are valid through the 2015-2016 school year.

A district or school must post the staffing plan on its web site for every year it submits a staffing plan. The district or school must also submit a detailed report of the progress the district or school has made in meeting the staffing requirements under the reading guarantee to the Department. This report must be submitted not later than March 1 each year a school submits a staffing plan.

Finally, the act requires the Department annually to review all staffing plans and report to the State Board the progress districts and schools are making in meeting the staffing requirements under the reading guarantee by June 30 of each year until June 30, 2015.

### **Department of Education staff to support reading and literacy initiatives**

The act requires the Department of Education to designate one or more staff members to provide guidance, assistance, and support to districts and schools in regard to the third-grade reading guarantee and reading instruction and achievement in schools.<sup>19</sup> Specifically, these staff members must provide assistance in the implementation of the third-grade reading guarantee, including any related standards or requirements that are subsequently adopted to support the guarantee.

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<sup>19</sup> R.C. 3313.608(K).



## OTHER READING IMPROVEMENT PROVISIONS

### Reading competencies

The act requires the State Board of Education, not later than January 31, 2014, to adopt reading competencies for all reading credentials and training. The competencies must include an understanding of phonemic awareness, phonics, fluency, vocabulary, comprehension, appropriate use of assessments, differentiated instruction, and selection of appropriate instructional materials and application of research-based instructional practices.<sup>20</sup>

The act also requires all the following to be aligned with these competencies:

(1) By July 1, 2014, alternative credentials and training (see "**Alternative credentials added**" above);<sup>21</sup>

(2) By July 1, 2017, an assessment for educator licenses issued to teach grades pre-kindergarten through three and grades four through nine (see "**Testing requirement for educator licensing**" below);<sup>22</sup> and

(3) By July 1, 2016, reading endorsement programs offered by institutions of higher education (see "**Reading endorsement program requirements**" below).<sup>23</sup>

### Diagnostic assessment study

The act requires the Department of Education to conduct a study of diagnostic assessments for reading and writing for grades kindergarten through three that may be considered for approval by the State Board of Education. The study must include an examination of various diagnostic assessments to determine which are reliable and valid in indicating a student's ability and progress toward reading at grade level. The study must also include methods for normalizing scores across assessments into equivalent performance levels.<sup>24</sup>

The Department must submit a report of the study to the State Board, Governor, and the General Assembly not later than March 31, 2014. The report must include

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<sup>20</sup> R.C. 3301.077.

<sup>21</sup> R.C. 3313.608(H)(3) and (I).

<sup>22</sup> R.C. 3319.233.

<sup>23</sup> R.C. 3333.049.

<sup>24</sup> Section 3.



specific recommendations on diagnostic assessments, including recommended legislative changes regarding the approval and use of such assessments.<sup>25</sup>

## **Reading achievement improvement plans**

The act requires that, by December 31, 2016, a school district or a community school that failed to meet a specified level of achievement on reading-related measures, as reported on the past two consecutive report cards, must submit a reading achievement improvement plan to the Department of Education. Specifically, any district or school that meets *both* of the following criteria must fulfill this requirement:

(1) The district or school received a grade of "D" or "F" on the K-3 literacy progress measure; *and*

(2) Less than 60% of the district's or school's students that took the third-grade English language arts assessment (during the most recent fall and spring administrations of the test) attained at least a proficient score on that assessment.<sup>26</sup>

For each subsequent year following 2016, any district or school that meets the above criteria is required annually to submit such an improvement plan until that district or school no longer qualifies under this requirement (see "**Operating under reading achievement improvement plans**" below).

### **Content of reading achievement improvement plans**

Under the act, the State Board is required to adopt rules prescribing the content of and deadlines for reading achievement improvement plans.<sup>27</sup> The act specifies that these rules must be adopted by December 31, 2014, and must require each plan to include, at a minimum, (1) an analysis of relevant student performance data, (2) measurable student performance goals, (3) strategies to meet specific student needs, (4) a staffing and professional development plan, and (5) instructional strategies for improving literacy.

### **Operating under reading achievement improvement plans**

The act specifies that once a district or school is required to operate under an improvement plan, that district or school will continue to operate under such a plan until specified achievement levels are met on the most recent report card. Specifically, a

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<sup>25</sup> Section 3.

<sup>26</sup> R.C. 3302.13(A) and (B).

<sup>27</sup> R.C. 3302.13(C).



district or school is no longer required to operate under such a plan when *at least one* of the following criteria has been met:

(1) The district or school received a grade of "C" or higher on the K-3 literacy progress measure; *or*

(2) At least 60% of the district's or school's students who took the third grade English language arts assessment (during the most recent fall and spring administrations of the test) attained a proficient score or better on that assessment.<sup>28</sup>

### **Posting of reading achievement improvement plans**

Under the act, the Department of Education is required to post all improvement plans that it receives from districts or schools in a prominent location on its web site.<sup>29</sup>

### **Testing requirement for educator licensing**

Beginning July 1, 2017, the act requires all new applicants seeking an educator license for either (1) grades pre-kindergarten through three, or (2) grades four through nine, to pass "a rigorous examination of principles of scientifically research-based reading instruction that must be aligned with the reading competencies adopted by the State Board of Education" (see "**Reading competencies**" above).<sup>30</sup> Furthermore, the act requires the State Board to adopt rules prescribing criteria for this test, as well as any requirements necessary to implement the test by the prescribed deadline.<sup>31</sup> Applicants seeking license renewals for any grade or a new educator license for grades seven through twelve are not required to pass this test in order to renew or obtain such a license.

### **Reading endorsement program requirements**

The act requires the Chancellor of the Board of Regents, by July 1, 2016, to revise the requirements for reading endorsement programs offered by institutions of higher education so that they are aligned with the reading competencies adopted by the State Board of Education (see "**Reading competencies**" above).<sup>32</sup>

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<sup>28</sup> R.C. 3302.13(D).

<sup>29</sup> R.C. 3302.13(E).

<sup>30</sup> R.C. 3319.233(A).

<sup>31</sup> R.C. 3319.233(B).

<sup>32</sup> R.C. 3333.049.

## Other data and reporting provisions

Under the act, the Department of Education must annually collect, analyze, and publish data on reading achievement in schools and the progress made in assisting all students to become proficient readers.<sup>33</sup> Also, on January 31, beginning in 2015, the Department must annually submit these findings in a report to the Governor, the General Assembly, and the State Board of Education.

In addition to data on reading achievement and progress, the report must specifically include (1) the progress of public school students who were on a reading intervention plan at any time in grades kindergarten through four, and (2) the progress of districts and community schools that are operating under a reading achievement improvement plan.<sup>34</sup> However, because the first reading achievement plans are not required until December 31, 2016, the second progress measure is not required to be included in the annual report until a sufficient amount of data is made available.

## PUBLIC COLLEGE-PREPARATORY BOARDING SCHOOLS

### Background on college-preparatory boarding schools

In 2011, the 129th General Assembly authorized the creation of public college-preparatory boarding schools to serve at-risk middle and high school students beginning not earlier than the 2013-2014 school year. A boarding school may be operated only by a nonprofit organization that is approved by the State Board of Education. Currently, only one such school has been approved for operation in Cincinnati, but it is not yet in operation. In its initial year of operation, a school may offer only grade six, but it may add higher grades, through grade 12, in subsequent years. Enrollment in a boarding school is limited to students who belong to a family with an income at or below 200% of the federal poverty guidelines, are at risk of academic failure, and meet any additional criteria prescribed by agreement between the State Board of Education and the operator of the boarding school.<sup>35</sup>

The General Assembly also created the College-Preparatory Boarding School Facilities Program, under which the School Facilities Commission (SFC) must provide public college-preparatory boarding schools with assistance for the acquisition of classroom facilities. To be eligible for the assistance, a school's board of trustees must raise at least \$20 million of private money to satisfy its share of facilities acquisition.

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<sup>33</sup> R.C. 3302.14.

<sup>34</sup> R.C. 3302.14(A) and (B).

<sup>35</sup> See Chapter 3328. of the Revised Code, as enacted by Am. Sub. H.B. 153 of the 129th General Assembly.



Acquisition of residential facilities and any other facilities *other than* classroom facilities must be funded by the board of trustees through private means. It also authorized a public college-preparatory boarding school to finance its facilities with state assistance through a lease-leaseback venture with a third party, in lieu of direct state funding.<sup>36</sup>

### **Stipulations in a facilities funding agreement**

The act specifies that any agreement to provide facilities assistance between SFC and a boarding school's board of trustees, whether one for direct state funding or one for an alternative lease-leaseback arrangement, must include the following stipulations:

(1) If a boarding school ceases its operations, the school's board of trustees may permit the classroom facilities to be used for only an alternative public purpose, including primary, secondary, vocational, or higher education services; and

(2) If a boarding school ceases its operations due to either (a) failure of the school's operator to comply with requirements specified in the contract with the State Board, or (b) default by the school's board of trustees on an underlying leasehold or mortgage agreement, the school's board of trustees must return to the SFC the unamortized portion of the state facilities funds it received, based on a straight-line depreciation over the first 18 years of occupancy. However, if, within 24 months after the school ceases its operations, the school's classroom facilities are used for any of the alternative public purposes described above, the board is not required to return the state facilities funds.<sup>37</sup>

### **Boarding schools as public benefit corporations**

The act specifies that each college-preparatory boarding school must be established as a public benefit corporation.<sup>38</sup>

Continuing law defines a "public benefit corporation" as a private nonprofit corporation that is exempt from federal income taxation, or is organized for a public or charitable purpose and that upon dissolution must distribute its assets to a public benefit corporation, the U.S., a state or any political subdivision of a state, or a person that is exempt from federal income taxation. The term does not include a nonprofit

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<sup>36</sup> R.C. 3318.60 and 3318.61, neither in the act.

<sup>37</sup> R.C. 3318.62.

<sup>38</sup> R.C. 3328.02.



corporation that is organized by one or more municipal corporations to further a public purpose that is not a charitable purpose.<sup>39</sup>

### **No personal liability for officers, trustees, and board members**

The act adds a provision specifying that no officer or trustee of a college-preparatory boarding school or member of its board of trustees incurs any personal liability by virtue of entering into any contract on behalf of the boarding school.<sup>40</sup>

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	02-12-13
Reported, S. Education	02-27-13
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Passed House (98-0)	05-15-13
Senate Concurred in House amendments (33-0)	05-22-13

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<sup>39</sup> R.C. 1702.01(P), not in the act.

<sup>40</sup> R.C. 3328.15(G).

