



# Ohio Legislative Service Commission

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## Bill Analysis

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### **Sub. S.B. 21\***

130th General Assembly  
(As Reported by H. Education)

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

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## **BILL SUMMARY**

### **Third-grade reading guarantee**

- Unless a student is exempt from taking the assessment under current law, provides for the retention of a third-grade student who does not attain on the third-grade reading achievement assessment at least the "equivalent level of achievement" as determined by the Department of Education.
- Exempts from the annual diagnostic assessment students with significant cognitive disabilities or other disabilities as authorized by the Department of Education on a case-by-case basis.
- Exempts from the third-grade reading guarantee limited English proficient students who have been enrolled in United States schools for less than three years (instead of two years as under current law) and who have had less than three years (instead of two years as under current law) of instruction in an English as a second language program.
- Replaces the 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 provision that requires reading teachers to have one year teaching experience, with exceptions.

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\* This analysis was prepared before the report of the House Education Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Makes other changes in the criteria for qualifying as a teacher to provide services under the third-grade reading guarantee.
- Makes changes to the waiver from the third-grade reading guarantee teacher qualification criteria, including the addition of a staffing plan.
- 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 of Education, 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.

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

- Requires the Department of Education to designate one or more staff members to provide guidance and assistance to districts and schools in regard to the third-grade guarantee and reading instruction and achievement.
- 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 consecutive report cards, to submit to the Department of Education a reading achievement improvement plan and to continue to operate under such a plan until achievement levels improve to a specified level.
- Requires the Department of Education annually (1) to collect, analyze, and publish data in regard to 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 and of districts and community schools in regard to reading achievement.
- Beginning on 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.
- 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.

### **College-preparatory boarding school facilities**

- Requires a project agreement between the School Facilities Commission (SFC) and a 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 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 college-preparatory boarding school must be established as a public benefit corporation.

### Emergency clause

- Declares an emergency.

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## CONTENT AND OPERATION

### THIRD-GRADE READING 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, current 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 guarantee

As noted above, a school district or community school that has a third-grade student who attains a score in the range designated by the State Board on the English language arts assessment is generally retained in third grade.<sup>1</sup> The bill modifies that benchmark by triggering retention for any student who does not attain at least the "equivalent level of achievement" as determined by the Department of Education.<sup>2</sup>

The bill also expressly excludes a student who is already excused from taking the assessment under separate law from this requirement.<sup>3</sup> This excuse generally applies to

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

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

<sup>3</sup> R.C. 3313.608(A)(1) and (2).



students with disabilities whose individualized education programs (IEP) or rehabilitation plans excuse them from the test 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 within nine days of the scheduled date. It might also apply to limited English proficient students who have been in the United States for less than one year.<sup>4</sup>

Provisions of the current third-grade guarantee law also specifically exclude certain children with disabilities and limited English proficient children who have been in the United States for less than *two* years. The bill, on the other hand, exempts from the third-grade reading guarantee limited English proficient students who have been enrolled in United States schools for less than *three* years (instead of two years as under current law) and who have had less than *three* years (instead of two years as under current law) of instruction in an English as a second language program.<sup>5</sup>

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

The bill 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 on a case-by-case basis.<sup>6</sup>

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

#### **Teaching experience**

Under current law, a student who is retained or who has a reading improvement monitoring plan must be assigned a teacher who has been actively engaged in the reading instruction of students for the previous three years and who meets one or more other criteria. The bill 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 current law and the bill) 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>7</sup>

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<sup>4</sup> R.C. 3301.0711(C), not in the bill.

<sup>5</sup> R.C. 3313.608(A)(2)(a) and (b).

<sup>6</sup> R.C. 3313.608(B)(1).

<sup>7</sup> R.C. 3313.608(H)(1) and (H)(2).

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

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

The bill removes the qualification under current law that a teacher who shows evidence of a credential earned from a list of scientifically research-based reading instruction programs approved by the Department may provide reading guarantee services.<sup>8</sup>

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

Under current law, a teacher may 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 bill 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>9</sup>

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

The bill qualifies for providing 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>10</sup>

### **Educator license aligned with reading competencies added**

The bill also qualifies to provide reading guarantee services teachers who hold an educator license to teach grades pre-kindergarten through three and grades four through nine issued on or after July 1, 2017.<sup>11</sup> 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).

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

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

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

<sup>11</sup> R.C. 3313.608(H)(1)(f).

## **Alternative credentials added**

The bill 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 be aligned with the reading competencies adopted by the State Board (see "**Reading competencies**," below).<sup>12</sup>

Under the bill, 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 United States for three years or less or a student who has an individualized education program (IEP) may do so under the alternative credential or training regardless of years of experience and may continue to do so indefinitely. Beginning on July 1, 2014, those alternative credentials and training must be aligned with the State Board-adopted reading competencies.<sup>13</sup>

## **Teacher of record**

Under the bill, 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 bill defines a "teacher of record" as the classroom teacher to whom a student is assigned.)<sup>14</sup>

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

Under current 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 bill retains this criterion but removes a current requirement that this test be selected through a competitive bidding process and, instead, requires the test to be approved by the State Board.<sup>15</sup>

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<sup>12</sup> R.C. 3313.608(H)(3).

<sup>13</sup> R.C. 3313.603(I).

<sup>14</sup> R.C. 3313.603(H)(5).

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



## **Reading endorsement criterion**

Current law permits a teacher to provide reading guarantee services if the teacher holds a reading endorsement and has attained a passing score on the corresponding assessment. The bill specifies that the teacher only needs 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 who received a reading endorsement but were not required at that time to take an assessment as a condition for the endorsement.<sup>16</sup>

## **Speech-language pathologist criterion**

The bill qualifies speech-language pathologists who hold a license from the Board of Speech-language Pathology and Audiology<sup>17</sup> and a professional pupil services license as a school speech-language pathologist from the State Board<sup>18</sup> to provide reading guarantee services.<sup>19</sup>

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

Current law permits a teacher to provide reading guarantee services if the teacher has obtained a master's degree with a major in reading.<sup>20</sup> This provision is not changed by the bill.

## **Staffing plans**

Current law prescribes that for the 2013-2014 school year, a district or community school that cannot furnish the number of teachers needed who satisfy one or more of the criteria (as described above) must develop and submit to the Department a plan, by June 30, 2013, indicating the criteria that will be used to determine those teachers who will teach during that year. A district or school that submits a plan must indicate how the school will find teachers who meet one or more of the criteria in the 2014-2015 school year and beyond.

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<sup>16</sup> R.C. 3313.608(H)(1)(a).

<sup>17</sup> R.C. Chapter 4753., not in the bill.

<sup>18</sup> Ohio Administrative Code 3301-24-05(C)(1)(e), not in the bill.

<sup>19</sup> R.C. 3313.608(H)(4).

<sup>20</sup> R.C. 3313.608(H)(1)(b).

The bill makes several changes to the requirement for such plans.<sup>21</sup> First, it relieves the Department of its current duty to approve or disapprove a district's or school's plan by August 15, 2013, causing the plan to be effective upon submission.

Second, it calls the plan a "staffing plan" and changes entirely the required content of the plan (see "**Background**" below). Under the bill, each staffing plan must 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 bill 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.

The 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.

The bill 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.

## **Background**

Under current law, if a school district or community school cannot provide the number of teachers needed who satisfy one or more of the criteria that qualify teachers to provide reading guarantee services, the district or community school must develop and submit a plan by June 30, 2013, in a manner determined by the Department indicating the criteria that will be used to determine those teachers in the school district or community school who will teach and how the school district or community school will meet the criteria for subsequent school years. Within that plan, a district or community school may 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. If the Department does not approve the plan by August 15, 2013, the district or community school must use a private contractor from a list approved by

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<sup>21</sup> R.C. 3313.608(J).

the Department or contract with another district to provide services under the reading guarantee.<sup>22</sup>

As noted above, while the bill maintains the requirement for a plan it removes the provisions of Departmental approval and substantially changes the required content of the plan.

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

Under the bill, the Department of Education is required to designate one or more staff members to provide guidance, assistance, and support to districts and schools in regard to reading instruction and achievement in schools.<sup>23</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.

### **Reading competencies**

The bill 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>24</sup>

The bill 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>25</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>26</sup> and

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<sup>22</sup> R.C. 3313.608(H)(3), under current law.

<sup>23</sup> R.C. 3313.608(K).

<sup>24</sup> R.C. 3301.077.

<sup>25</sup> R.C. 3313.608(H)(3) and (I).

<sup>26</sup> R.C. 3319.233.



(3) By July 1, 2016, reading endorsement programs offered by institutions of higher education (see "**Reading endorsement program requirements**," below).<sup>27</sup>

### **Diagnostic assessment study**

The bill 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 for use under law. 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>28</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 specific recommendations on diagnostic assessments, including recommended legislative changes regarding the approval and use of such assessments.<sup>29</sup>

### **Reading achievement improvement plans**

The bill 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>30</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

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<sup>27</sup> R.C. 3333.049.

<sup>28</sup> Section 3.

<sup>29</sup> Section 3.

<sup>30</sup> R.C. 3302.13(A) and (B).

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 bill, the State Board is required to adopt rules prescribing the content of and deadlines for reading achievement improvement plans.<sup>31</sup> The bill 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 bill 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 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>32</sup>

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

Under the bill, 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>33</sup>

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

Beginning on July 1, 2017, the bill 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

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<sup>31</sup> R.C. 3302.13(C).

<sup>32</sup> R.C. 3302.13(D).

<sup>33</sup> R.C. 3302.13(E).

by the State Board of Education" (see "**Reading competencies**" above).<sup>34</sup> Furthermore, the bill 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>35</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 bill requires the Chancellor of the Board of Regents to revise the requirements for reading endorsement programs offered by institutions of higher education. Specifically, by July 1, 2016, the Chancellor must revise these requirements to align with the reading competencies adopted by the State Board of Education (see "**Reading competencies**" above).<sup>36</sup>

Currently, a reading endorsement is issued to a candidate who successfully completes a reading endorsement program at an institution of higher education. In order to complete such a program, a candidate must (1) meet all requirements for a generic endorsement, including the successful passage of an examination prescribed by the State Board, (2) successfully complete specific standards addressed in a 12-hour reading core, and (3) meet any standards delineated in the reading endorsement.<sup>37</sup> Upon completion of such a program, the reading endorsement may be added to any standard teaching certificate or teaching license.

## **Other data and reporting provisions**

Under the bill, the Department of Education is required annually to collect, analyze, and publish data on reading achievement in schools and the progress made in assisting all students to become proficient readers.<sup>38</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

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<sup>34</sup> R.C. 3319.233(A).

<sup>35</sup> R.C. 3319.233(B).

<sup>36</sup> R.C. 3333.049.

<sup>37</sup> "Reading Endorsement," Ohio Board of Regents and the Department of Education, updated July 2010. (Accessed via the Ohio Board of Regents' web site at [www.ohiohighered.org](http://www.ohiohighered.org)).

<sup>38</sup> R.C. 3302.14.

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>39</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.

## **COLLEGE-PREPARATORY BOARDING SCHOOL FACILITIES**

### **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 and the operator of the boarding school.<sup>40</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. Acquisition of residential facilities and any other facilities *other than* classroom facilities must be funded by the board of trustees through private means.<sup>41</sup> 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>42</sup>

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<sup>39</sup> R.C. 3302.14(A) and (B).

<sup>40</sup> See Chapter 3328. of the Revised Code, as enacted by Am. Sub. H.B. 153 of the 129th General Assembly.

<sup>41</sup> R.C. 3318.60, not in the bill.

<sup>42</sup> R.C. 3318.61, not in the bill.

## Stipulations in a facilities funding agreement

The bill 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>43</sup>

## Boarding schools as public benefit corporations

The bill also specifies that each college-preparatory boarding school must be established as a public benefit corporation.<sup>44</sup>

Current 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 United States, 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 corporation that is organized by one or more municipal corporations to further a public purpose that is not a charitable purpose.<sup>45</sup>

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<sup>43</sup> R.C. 3318.62.

<sup>44</sup> R.C. 3328.02.

<sup>45</sup> R.C. 1702.01(P), not in the bill.



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

The bill 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>46</sup>

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### HISTORY

ACTION	DATE
Introduced	02-12-13
Reported, S. Education	02-27-13
Passed Senate (30-1)	02-27-13
Reported, H. Education	---

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<sup>46</sup> R.C. 3328.15.

