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Bill Analysis

Legislative Service Commission

H.B. 364

124th General Assembly
(As Introduced)

Reps. Husted, Clancy, Calvert, Raga, DeWine, Seitz, Setzer, White, Goodman, Gilb, Faber, Webster, Schaffer, Brinkman, Flowers, Callender, Schmidt, Williams, Grendell, Young, Widowfield, Schneider, Wolpert, Blasdel, Allen

BILL SUMMARY

- Creates the State Board of Community Schools as a new public entity that can sponsor community schools.
- Permits all of the 13 state-assisted universities to sponsor community schools anywhere in Ohio (including the University of Toledo which currently can sponsor community schools in Lucas County).
- Adds "academic watch" school districts to the list of areas where start-up community schools may be established.
- Permits a community school to be established as a for-profit entity provided the governing authority posts a specified bond.
- Exempts the governing authority (but not the sponsor) of a for-profit community school from the Public Records Law.
- Permits single-gender community schools.
- Permits certain unlicensed persons to teach in community schools provided they complete approved one-year mentoring programs.
- Requires school districts to permit community school students to participate in certain district extracurricular activities.
- Makes changes in the law regarding termination of a community school contract and the suspension of operation of a community school.

- Makes changes in the law regarding the transportation of community school students.
- Permits all community schools to participate in the Community School Classroom Facilities Loan Guarantee Program and permits loans guaranteed under the program to be used for new construction of school buildings.
- Creates the Community School Classroom Facilities Support Program.
- Makes other changes in the community school law.

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CONTENT AND OPERATION

The bill makes a number of changes to the law regarding the organization and operation of community schools, including the establishment of an additional state entity (known as the State Board of Community Schools) to sponsor and oversee individual schools and to report to the General Assembly on recommendations regarding community schools statewide. It also creates a Community School Classroom Facilities Support Program, which, if funded, would provide per-pupil state stipends to community schools for acquiring buildings.

Background

Community schools (often called "charter schools") are public, nonprofit, nonsectarian schools that operate independently of any school district but under contract with a public sponsor. They are exempt from many education laws and often serve a limited number of grades or a particular purpose. Conversion community schools may be sponsored by any school district in the state. Start-up community schools, on the other hand, are new schools that may be established only in "challenged school districts," which include all "Big-Eight" districts, the 13 other large urban districts, all Lucas County districts, and any district declared to be in a state of academic emergency.¹

A start-up school may be sponsored by any of the following:

¹ The "Big-Eight" districts are Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo, and Youngstown. The other 13 large urban districts (that together with the "Big-Eight" districts are sometimes referred to as the "Urban 21" districts) are Cleveland Heights, East Cleveland, Elyria, Euclid, Hamilton, Lima, Lorain, Mansfield, Middletown, Parma, South-Western, Springfield, and Warren.

An "academic emergency" district is one that does not meet more than five of 17 performance indicators to be adopted by the State Board of Education or the equivalent number of indicators if the State Board adopts more than 17 total indicators (see note 4 below).

(1) The board of education of the challenged school district in which the school will be located;

(2) The board of education of any other local, exempted village, city, or joint vocational school district with territory in the county in which the majority of territory of the challenged school district is located;

(3) The State Board of Education.

In Lucas County, it also may be sponsored by the Lucas County Educational Service Center and the University of Toledo Board of Trustees or its designee.

State Board of Community Schools

The bill establishes the State Board of Community Schools as a new additional entity permitted to sponsor community schools.² The board consists of seven members appointed by the Governor to staggered five-year terms. In addition, the Superintendent of Public Instruction (or the Superintendent's designee) is an ex officio nonvoting member of the board. The bill specifies that, of the seven voting members, one must have a background in business, one must have a background in finance, one must have a background in school design and administration, and one must have a background in school assessment and accountability. The members receive no compensation except for their actual and necessary expenses while conducting the board's business.

An initial executive director of the board must be appointed by the Governor but serves at the pleasure of the board. Subsequent directors are to be appointed directly by the board and to serve at the pleasure of the board. The bill specifies that the director must be "supportive of efforts to ensure a wide range of educational options."

The board's duties include:

(1) Sponsor community schools, including the monitoring of the performance of those schools;

(2) Employ and set the compensation of the executive director;

(3) Make legislative recommendations "to enhance the operation and performance of community schools and the innovative nature, effectiveness, accountability, and fiscal soundness of those schools";

² R.C. 3314.014.

(4) Establish a timetable for the Department of Education to make payments to community schools as provided for under state law. The Department may ask the board to alter the timetable for a particular school if it can show a good cause to not make a scheduled payment to the school.

The board is authorized to adopt rules under R.C. 111.15 in order to carry out its duties. The bill specifies that the General Assembly must "provide funding for the operation of the board," but it also permits the board to accept moneys from nonstate sources.

Addition of "academic watch" districts to the list of districts where start-up community schools may be established

The bill adds school districts that are declared to be in a state of "academic watch" to the list of districts considered to be "challenged school districts," in which *start-up* community schools may be established.³ An academic watch district is one that meets more than five but not more than eight of the 17 performance indicators to be adopted by the Department of Education.⁴

Additional entities may sponsor start-up community schools

Under the bill, the new State Board of Community Schools (see above) and any of the 13 state universities are added to the list of public entities that may sponsor a start-up community school.⁵ Thus, in addition to the University of Toledo, which can currently sponsor such schools in Lucas County, this provision permits the University of Akron, Bowling Green State University, Central State University, the University of Cincinnati, Cleveland State University, Kent State University, Miami University, Ohio University, The Ohio State University, Shawnee State University, Wright State University, and Youngstown State University to sponsor start-up schools.

³ R.C. 3314.02(A)(3)(b) and (C)(3).

⁴ *The State Board of Education is required to adopt at least 17 performance indicators to measure the performance of school districts. The law sets a specified number of these indicators that a district must attain in each of five performance classifications. As noted, an "academic watch" district is one that meets more than five but not more than eight of the 17 indicators. The law also provides that if the State Board adopts more than 17 indicators, it must establish the number of these indicators a district must meet for each classification in a way that produces the ratio of required indicators that is similar to the ratio required when the number of total indicators is 17. (See R.C. 3302.02 and 3302.03.)*

⁵ R.C. 3314.(C)(1)(f) and (g).

Establishment of a community school by a for-profit entity

Under the bill, a community school may be established either as a nonprofit corporation (as currently required) or it may be established as a for-profit entity as long as the school's governing authority first posts a bond payable to the state in an amount equal to 1% of the entity's gross revenue for the tax year prior to the year the contract is signed. The bill provides that if the entity was not in business for an entire tax year just prior to entering into the community school contract, the bond must be in the amount of at least \$1 million. It also specifies that the bond must be used to cover any repayment of moneys that the school may owe to the state if the school closes prior to the end of any fiscal year.⁶

Nonapplication of Public Records Law to governing authority of a for-profit community school

The bill specifies that the state Public Records Law (requiring disclosure of most government records) does not apply to the governing authority of a for-profit community school; however, it does state that the sponsor of such a school is subject to that law and that any public records pertaining to that school maintained by the sponsor must be disclosed.⁷

Termination of community school contracts

Under continuing law, the sponsor of a community school is responsible for monitoring the activities of the school and for ensuring that the school complies with its contract. Currently, a sponsor may decide to terminate or not to renew the contract with a community school anytime during a school year for statutorily specified reasons with 90-days notice.⁸ The governing authority may request that the sponsor conduct an informal hearing on the matter of termination or

⁶ R.C. 3314.03(A)(1)(b).

⁷ R.C. 149.43(F).

⁸ *The statutory reasons for termination or nonrenewal of a community school contract are: (1) failure to meet student performance requirements stated in the contract, (2) failure to meet generally accepted standards of fiscal management, (3) violation of any provision of the contract or applicable state or federal law, and (4) other good cause.*

nonrenewal.⁹ The decision of the sponsor following the hearing may be appealed to the State Board of Education, whose decision on the matter is final.¹⁰

The bill requires 180-days (instead of 90 days) notice to the school of the sponsor's intent to terminate or not renew the contract. It also provides that a termination may not be effective until the conclusion of the school year.¹¹ (See **COMMENT 1.**)

Suspension of school operations

Continuing law also authorizes a sponsor to suspend immediately the operation of a school for health and safety violations and to suspend (rather than terminate) the operation of a school for other reasons, but only after it has issued a notice of intent to suspend operation of the school. The notice must provide the school's governing authority with five days to offer a remedy. The governing authority of a school under suspension must notify the parents of any students enrolled in the school and school employees of the suspension, citing the reasons for the suspension.

The bill eliminates language specifying that it is the sponsor that may determine if a school is not in compliance with health and safety standards. The change would seem to leave such a determination to local inspectors, whose report the sponsor presumably can rely on to make the decision whether or not to suspend the operation of the school.¹²

Single-gender community schools

Generally, the governing authority of a community school must adopt procedures that do not discriminate in the admission of students on the basis of "race, creed, color, handicapping condition, or sex." The bill, however, permits the establishment of a single-gender school as long as the school's purpose is to "take advantage of the academic benefits some students realize from single-gender

⁹ *Current law requires such an informal hearing to be held within 70 days of its request. The bill repeals this deadline.*

¹⁰ *Continuing law provides that if the State Board is the sponsor of the school, there can be no further appeal after the informal hearing.*

¹¹ *R.C. 3314.07.*

¹² *R.C. 3314.072.*

instruction and facilities and to offer students and parents . . . the option of a single-gender education."¹³

Teacher qualifications

Under current law, teachers at community schools must be licensed in the same manner as school district teachers, which may also include a permit for generally unlicensed persons with other qualifications to teach for only up to 12 hours per week. The bill permits community schools to employ as teachers persons who hold bachelor's degrees and for whom the employing schools provide State Board of Education-approved one-year mentoring programs. If a person is employed under this new third option for one year, the person may thereafter be employed as a teacher by any community school without any further licensing requirements. The Department of Education is required to maintain a registry of persons employed under the new provision.¹⁴

Changes to the law regarding the counting of community school students for funding purposes

Background

Each community school receives funding on a per pupil basis, which the Department of Education deducts from the amounts that would otherwise be paid to the school districts where the students enrolled in the community school are entitled to attend school. For each student enrolled, the school receives the "formula amount," which is the recognized minimum base cost that must be spent on each student in a school year, times the cost-of-doing-business factor for the county in which the student's resident school district is located, plus an applicable weight for any special education or vocational education student. The school also receives some disadvantaged pupil impact aid for each student.

Adjustments to district formula ADMs when community school students omitted

For state funding purposes, each school district's enrollment (formally called the "formula ADM") is measured as the average daily number of students attending school during the first full school week in October. To this count is added (among other categories of students) those students who are legally entitled to attend school in the district but who instead enroll in community schools. This arrangement allows the school district (in most cases) to be credited with the state

¹³ R.C. 3314.06(D) and (G).

¹⁴ R.C. 3314.03(A)(10), 3314.031, and 3319.30.

funding generated by those students before the money is transferred to the community schools. But if a community school opens after the first full week of October, the students presumably are not counted in any school district's formula ADM, while the community school's funding nevertheless is deducted from school districts.¹⁵ In such a scenario, school districts would experience a net loss of state funds because their formula ADMs do not include the community school students, and the districts are never credited with the state funds generated by those students to offset the transfer.

The bill addresses this scenario by directing the Department of Education to adjust the formula ADM of any school district whenever a community school student has been excluded from the appropriate school district's formula ADM by adding the student. After adjusting the formula ADM to include the student, the Department then must recalculate the district's state funds for the entire fiscal year based on that adjustment. The bill specifies that this requirement applies regardless of whether the student was enrolled in the community school during the first full week of October, when the district's formula ADM was counted.¹⁶

Community school students must be counted in district formula ADMs for the same proportion of the school year

The bill further specifies that a community school student is to be counted in the formula ADM of a school district "for the same proportion of the school year that the student is counted in the enrollment of the community school."¹⁷

Current law, not changed by the bill, requires the Department of Education to prorate state funding to a community school when a student is enrolled for less than a full school year.¹⁸

Technical change to provision of law regarding counting of all-day kindergarten students

Under continuing law, certain school districts may be eligible for state disadvantaged pupil impact aid (DPIA) payments for the provision of all-day, every-day kindergarten. For every community school student who is enrolled in

¹⁵ Specifically, R.C. 3317.03(E) allows a school district to count only those students who are actually "enrolled" in a school. If a community school delays its opening until after the first full week of October, the student technically is not "enrolled" during that week.

¹⁶ R.C. 3317.03(F)(3).

¹⁷ R.C. 3317.03(C)(2).

¹⁸ R.C. 3314.08(L), not in the bill.

all-day kindergarten and is from a district eligible for DPIA all-day kindergarten payments, the Department of Education must pay the community school one-half the formula amount. That payment is generally deducted from the payments credited to the community school student's home school district. The bill does not change this law, but it does make a technical correction by eliminating an inaccurate division reference in the current law.¹⁹

Title I allocations

The bill requires the Department of Education to include community schools in its annual allocation of federal moneys under Title I of the Elementary and Secondary Education Act of 1965.²⁰

Community school compliance with EMIS

Under the Education Management Information System (EMIS), school districts and community schools are required to report specified student, building, personnel, and fiscal data electronically to the Department of Education.

The bill retains the requirement that community schools comply with EMIS, but it specifies how community schools are to comply and permits the State Board of Education to tailor the system to community schools' circumstances.²¹ First, it permits the State Board of Education to distinguish methods and timelines for community schools to annually report their data. These methods and timelines must be appropriate to the academic schedules and financing of community schools. They cannot, however, modify the actual data that is to be reported under EMIS.

Second, the bill designates the financial officer of each community school as the individual responsible for reporting the school's data through EMIS.²² It makes that officer liable to a \$100 civil penalty for:

¹⁹ R.C. 3314.13. There is a reference to reporting of students under division (B)(3) of R.C. 3314.08 (not in the bill). There is no such division in that section.

²⁰ R.C. 3314.081. Title I (20 U.S.C. 6301 et. seq.) is the largest federal education funding program. It provides moneys to local education agencies through the states for educational services for disadvantaged students. The moneys also may be spent on schoolwide programs in any school where a substantial specified proportion of the school's students come from low-income families.

²¹ R.C. 3314.03(A)(11)(d) and 3314.17.

²² R.C. 3314.011, which the bill rennumbers as R.C. 3314.16, requires each community school to designate a financial officer. The Auditor of State may require each financial

- (1) Willfully failing to report data in any one year;
- (2) Willfully reporting erroneous, inaccurate, or incomplete data in any one year; or
- (3) Negligently reporting erroneous, inaccurate, or incomplete data in the current *and* a previous year.

The penalty may be imposed by the state Superintendent of Public Instruction, but only after affording the officer with notice and an opportunity for a hearing under the state Administrative Procedure Act (*i.e.*, R.C. Chapter 119.). The bill specifies that this new authority to impose a civil penalty does not preclude the State Board of Education from also exercising its pre-existing authority to suspend or revoke the license of a community school employee who willfully reports erroneous, inaccurate, or incomplete data to EMIS.²³

Contracting for service to disabled students

The bill specifically permits the governing authority of a community school to contract with the governing authority of another community school, a school district board of education, or a nonpublic school administrative authority for the provision of services to disabled students who are enrolled at the school. It also requires that any school district board negotiate with a community school governing authority for those services in the same manner as it would negotiate with another school district board.²⁴

Participation in extracurricular activities

The bill requires school districts to permit any student enrolled in a community school to participate in any extracurricular activity of the school district, including interscholastic athletics, if the same activity is not offered at the community school.²⁵

officer to post a bond conditioned on the faithful performance of all duties required of the officer.

²³ R.C. 3301.0714(N), not in the bill.

²⁴ R.C. 3314.022.

²⁵ R.C. 3313.537.

Transportation of community school students

Background

Under continuing law, the school district in which a student who is enrolled in a community school is entitled to attend school is required to provide transportation for that student in the same manner as it provides transportation for students attending the district's own schools.²⁶ However, a school district is not required to provide transportation for any students attending a community school with which the district has entered into a contract providing for the community school to transport its students. If a community school enters into such a contract, it currently must transport each of its students in grades kindergarten through eight who live more than two miles from the school and all handicapped students. In addition, the school is eligible beginning in fiscal year 2002 for a payment of \$450 for each transported student who lives more than *one* mile from the school.²⁷ The payment is deducted from the transportation moneys the state credits to the school district in which the community school students reside. The \$450 amount is adjusted in subsequent fiscal years by the annual change in the Consumer Price Index for urban transportation.

Changes in contract provisions

Under current law, the contract under which a community school accepts the responsibility to transport its own students is effective only if the Superintendent of Public Instruction certifies that the contract has been submitted to the Department of Education by a deadline set by the Department and that the contract specifies qualifications for student transportation. The bill provides that the sponsor, instead of the state superintendent, certify that the contract has been submitted to the sponsor by the sponsor's deadline and that it specifies qualifications.²⁸

Currently, the law permits a community school to make a payment in lieu of transporting a student if the drive time is more than 30 minutes. The bill retains

²⁶ *Generally, a school district board must transport all community school students in grades kindergarten through eight residing in the district who live more than two miles from the school. A district board is not required to transport nonhandicapped students to and from a community school located in another district if the drive time is more than 30 minutes. In addition, a district board may make a payment in lieu of transportation to the parent of any student for whom it is impractical to provide transportation.*

²⁷ *The school may receive the payment also for any student for whom it makes a payment in lieu of transporting.*

²⁸ *R.C. 3314.091(A).*

this provision but it also permits the community school to alternatively charge a fee to the student's parent, guardian, or person in charge of the student, which must not exceed the actual cost of transporting the student less any per pupil transportation payments the school receives from the state for that student.²⁹

School district responsibility to provide on-time transportation

The bill requires any school district that does provide transportation for students enrolled in a community school to provide such transportation in accordance with daily and annual instructional schedules of the school. The stated purpose of this provision is to ensure that students may be present on time and at all times the community school is open for instruction. The bill also states that it is the "sole responsibility" of a school's governing authority to set these schedules as long as they conform to state law and the community school contract.³⁰ (See COMMENT 2.)

School districts may use state moneys to acquire buses for transporting community school students

The bill permits a school district to use transportation moneys paid to it by the state for the "acquisition" of school buses to transport community school students.³¹

Transporting Post Secondary Enrollment Options students

Under the Post Secondary Enrollment Options Program, high school students may attend a public or nonpublic college or university or a private career school part- or full-time and the state will pay a proportional amount of the base cost otherwise credited to the student's home district to the institution the student attends for instructional costs. Community school students are entitled to participate in this program. Under the bill, if a community school provides or arranges transportation for its students in grades nine through 12, the parents of certain of its Post Secondary Enrollment Options students may apply to the school's governing authority for a full or partial reimbursement of the cost of transporting the student to the higher education institution.³²

²⁹ R.C. 3314.091(B).

³⁰ R.C. 3314.09(D).

³¹ R.C. 3317.024, 3317.07, and 3327.08.

³² R.C. 3365.08(D).

Changes to the Community School Classroom Facilities Loan Guarantee Program

Generally, start-up community schools must arrange for their own building in which to operate. To aid in that effort, the General Assembly recently created a loan guarantee program to be administered by the Ohio School Facilities Commission (SFC). Under that program, start-up schools may apply for loan guarantees for up to 15 years on 85% of the principal and interest on loans to acquire buildings.³³

Currently, that program applies only to start-up schools. The bill permits conversion community schools to also apply for loan guarantees under the program.³⁴

The bill repeals the current definition of "classroom facilities" for purposes of the loan guarantee program and instead defines "classroom facilities" as "buildings, land, grounds, equipment, and furnishings used by a community school in furtherance of its mission and contract."³⁵

The bill further specifies that loans that are guaranteed under the program may be used for "improving or replacing" in addition to "acquiring" classroom facilities (as under current law). Also, the law currently excludes new construction of facilities, but the bill specifically permits the guaranteed loans to be used for new construction.

Finally, current law requires that the facilities meet SFC specifications, but the bill requires only that the facilities acquired, improved, or replaced meet applicable health and safety standards established for school buildings.³⁶

³³ *Am. Sub. H.B. 94 of the 124th General Assembly.*

³⁴ *R.C. 3318.50(A).*

³⁵ *R.C. 3318.50(A)(2). The loan guarantee program law currently defines "classroom facilities" as having the same meaning as defined in R.C. 3318.01 (the definition section of the Classroom Facilities Assistance Program). That section defines "classroom facilities" as "rooms in which pupils regularly assemble in public school buildings to receive instruction and education and such facilities and building improvements for the operation and use of such rooms as may be needed in order to provide a complete educational program, and may include space within which a child day-care facility or a community resource center is housed." In addition, the section specifies that "'classroom facilities' includes any space necessary for the operation of a vocational education program in any school district that operates such a program."*

³⁶ *R.C. 3318.50(B).*

Creation of Community School Classroom Facilities Support Program

The bill creates a new program called the Community School Classroom Facilities Support Program. Under that program, in any fiscal year in which the General Assembly appropriates moneys specifically for that purpose, SFC must pay a stipend to each start-up community school. The stipend, which must be equal to \$450 per pupil enrolled in the school, may be used to defray any rental or loan payments a school's governing authority makes for facilities used by the school.³⁷

COMMENT

1. The bill's provisions requiring 180-days notice of termination or nonrenewal of a community school contract, prescribing that a contract cannot be terminated prior to the end of a school year, and repealing the deadline for the informal hearing essentially returns the law on this matter to the way it was structured just prior to enactment of Am. Sub. H.B. 94 of the 124th General Assembly (effective June 6, 2001). That act permitted termination of contracts during the course of a school year and prescribed the 90-day notice prior to termination (and the timeframes for the informal hearing to coincide with that notice requirement).

2. The language requiring a school district to comply with community school instructional schedules as set by a school's governing authority for purposes of providing on-time transportation to students was enacted in Am. Sub. H.B. 94 of the 124th General Assembly (2001-2003 biennial state operations budget act). However, the Governor vetoed that provision.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	09-13-01	pp. 829-830

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³⁷ R.C. 3318.53.