

Committees:

Vice-Chair, Primary & Secondary Education
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Sponsor Testimony
House Bill 298
Before the House Committee on Government Oversight

May 20, 2021

Chair Wilkin, Vice Chair White, Ranking Member Sweeney, and Members of the House Government Oversight Committee:

Good morning, and thank you for the opportunity to provide testimony in support of H.B. 298, which will return the Ohio State Board of Education to an all-elected panel of 11 voting members. The bill does this by ending the Governor's appointments. The appointed members's seats will be abolished once their current 4-year terms have expired. I'd like to thank my joint sponsor Representative Joe Miller for partnering with me on this bill, as well as our 41 bipartisan co-sponsors. The strong show of support we have received for this bill, from both sides of the aisle, demonstrates very clearly that this issue is a matter of principle, and not of politics or partisanship. I am grateful for your attention and consideration today.

The State Board of Education is an important body and the members of its Board should be accountable to the voters. But right now, 8 members of the Board of Education – 42% of the total voting membership – are not elected and not accountable to anyone. They are appointed to a four-year term by the Governor and are eligible for reappointment once. There is no standard for accountability here. There are no voters back home they have to answer to. As a result, the presence of these appointees makes the Board less transparent as a whole.

Consider it this way: Imagine that, in addition to the 99 elected members here in the House, we had an additional 42 colleagues voting among us who were appointed by the Governor, elected by nobody, answering to nobody, and accountable to nobody.

To have almost half the board unelected and unaccountable does not reflect the transparency and responsiveness that Ohioans need and deserve.

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Provisions for gubernatorial appointees to the Board were first made in 1995. Let me take just a moment to give a brief overview of the legislature's role in the history of the Board.

The State Board of Education was created by a constitutional amendment in 1953, which states that the members "shall be selected in such manner and for such terms as shall be provided by law." It was therefore the job of the 101st General Assembly in 1955 to decide how many members should make up the Board, how long they should serve for, and how they should be chosen. After much deliberation, it was decided that the Board should be composed of 23 voting members, each representing one of Ohio's, at-the-time, 23 federal congressional districts. It was also decided that all 23 should be elected by the voters in those districts.

Now, there was some pushback against an all-elected Board. During the floor debates in 1955, there were at least three proposed amendments, in both chambers, to have either some or all of the Board members be appointed by the Governor. Each time, the amendment was defeated. Even a provision to let the Governor fill a vacancy on the Board with an appointee was removed from the final version of the bill. It was replaced with a provision calling for a special election to fill the vacancy instead.

The push for appointed members did not die in 1955, however. Between 1957 and 1991, there were no less than 12 bills introduced in the General Assembly to do away with the direct election of State Board of Education members and create either a partially- or totally-appointed Board. Three of those bills came in 1957 alone, during the 102nd General Assembly. (Keep in mind that this was right on the heels of the legislature first setting up the Board as an all-elected body.) Each time, the bill either died in committee, was rejected outright by the committee, or was simply not referred to committee at all. In fact, only once between 1957 and 1991 was anything even remotely related to Board appointments adopted by the legislature: in 1959, the 103rd General Assembly agreed that the Governor should be allowed to appoint somebody to fill a vacancy on the Board after all – but only until the next regular election. Outside of that one small legislative adjustment, no attempt to place appointed members on the Board in any capacity came anywhere close to the Governor's desk for nearly 40 years.

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The first serious attempt at giving the Governor the authority to appoint members of the State Board of Education came during the 119th General Assembly, in 1991. That was the year that Senate Bill 162 was introduced to link the size of the Board to Ohio's State Senate districts – one Board district for every three Senate districts – rather than the federal congressional districts. By that time, Ohio's congressional delegation had shrunk to 19 members – and as a result, so did the Board of Education.

S.B. 162 called for an 11-member State Board to be appointed *entirely* by the Governor. Then-Governor George Voinovich justified this proposal by arguing that the Board of Education needed reform, and that the Governor needed to have a say in its membership so as to better direct the course of education policy in Ohio.

While the bill did pass out of the Senate in this form, it did not stay that way. Rather than reducing the Board to an all-appointed panel of 11, the House instead amended the bill to reduce the Board to an *all-elected* panel of 11. The Senate ultimately concurred in those amendments, and from 1992 to 1995 Ohio had a State Board of Education composed of 11 elected members.

In 1995, Governor Voinovich once again fought for an all-appointed Board of Education in his executive version of that year's biennial state operating budget. The House pushed back on the Governor's proposal, removing the appointment provisions during the House Finance Committee hearings on the budget. A version of the Governor's appointment plan was later re-inserted by Senator Eugene Watts, expanding the Board to 19 voting members by adding 8 gubernatorial appointees to the existing panel of 11 elected members. That provision was included in the final version of the budget as signed into law, and so the Board grew to its current 19-seat hybrid model.

However, in July of 1999, a lawsuit was filed against the State of Ohio charging that expanding the Board of Education in the budget bill was a violation of the single-subject rule, that two unrelated items cannot be addressed in the same bill. Earlier that year the Ohio Supreme Court had already struck down another provision of the 1995 budget as unconstitutional on the

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grounds that it violated the single-subject rule. Newspaper clippings from around the same time suggest that both the legislature and the newly-elected Governor, Bob Taft, were legitimately concerned that the Board appointment provision would suffer the same fate.

In response to the lawsuit, Representative Chuck Brading introduced House Bill 602 on March 9, 2000. This bill sought to re-codify the language regarding the appointed Board members as a separate act and render the underlying legal challenge moot. Opposition to the bill was overwhelming, with OSBA, members of local boards of education, a former member of the State Board, parents of students, and representatives from various other organizations all coming out in force. The committee minutes from Tuesday, May 2, 2000 – the day that H.B. 602 was starred for a possible vote – show that 24 individuals showed up in person to speak out against the bill. The committee minutes also show that the vote was not called that evening. Nor was it ever called. The public opposition persuaded the House Education Committee against re-codifying an expanded, hybrid State Board of Education.

Two weeks later, on May 17, Representative Brading introduced House Bill 711, with text identical – ***identical to the letter*** – to the language of House Bill 602. H.B. 711 was instead referred to Finance & Appropriations. Six days later, on May 23, proponents and opponents alike were given just one hour of testimony collectively, followed by 30 minutes of the committee members asking questions of the group as a whole. H.B. 711 was voted out that same day, 17-13. It was brought to the House floor for a vote the next night, May 24, where it passed by an exact constitutional majority, 50-46.

H.B. 711 was introduced in the Senate that same day and referred to the Senate Education Committee the next. On the same day it was referred, the rules were suspended and the bill was pulled out of committee, without a committee report, and brought up for immediate consideration. It passed the Senate 18-15.

All in all, it took the bill 8 days from its introduction, from May 17 to May 25, to clear both chambers. Mr. Chairman and members of the committee, I think we can all recognize that that is a blazing fast speed for legislation to move. Especially one which had stalled out in the Education Committee because the public had swayed the members against the bill.

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Mr. Chairman, I initially introduced this bill with my co-sponsor because I believe an all-elected State Board of Education is more transparent, more accountable, and more representative of the democratic principles we cherish as Americans. I still do believe those things. But the more I have dug into the legislative history of how those 8 appointed seats came to be, the more convinced I have become that House Bill 298 also provides us an opportunity to right a 20-year-old wrong. House Bill 711 was passed only by the most razor-thin of majorities, and only after much political maneuvering.

I would argue to you today, my colleagues, that if not for the rushed passage of House Bill 711, it would not have been much longer before the Ohio Supreme Court would have struck down those 8 appointed seats as being created by unconstitutional means.

This bill is not about partisanship, it is not about politics, it is not personal – it is entirely about principle and upholding the people’s right to vote for fair representation when it comes to the Board that makes the decisions about Ohio’s education policy. This is about ensuring that the voice of our citizenry is heard, loud and clear.

Some might argue that the Governor should be allowed to make appointments to the State Board of Education in order to have a greater role in shaping public education policy. I would answer that he does not need appointments to do so. The Governor can and does already:

- 1) Propose funding for educational programs and resources through a shared role in crafting the state budget.
- 2) Work with the legislature to suggest and craft education policies.
- 3) Work with the State Board of Education to suggest and craft the same.
- 4) And finally, exert great influence over the public discussion by using the “bully pulpit” – using his role as the highest elected official in the State of Ohio as a megaphone to steer the larger conversation.

Members of the committee, thank you for the opportunity to share this important information with you this morning and speak to you about the goals we seek to accomplish through House Bill 298. I humbly ask for your support and we would be happy to answer any questions.