

BEFORE THE SENATE WORKFORCE & HIGHER EDUCATION COMMITTEE

**SENATOR TERRY JOHNSON
CHAIR**

**TESTIMONY
OF
BRUCE JOHNSON
PRESIDENT
INTER-UNIVERSITY COUNCIL OF OHIO**

June 2, 2021

The Public Universities of Ohio

The University of Akron
University of Cincinnati
Miami University
Ohio University
Wright State University

Bowling Green State University
Cleveland State University
Northeast Ohio Medical University
Shawnee State University
Youngstown State University

Central State University
Kent State University
The Ohio State University
The University of Toledo

Chair Johnson, Vice Chair Cirino, Ranking Minority Member Williams, and members of the Senate Workforce and Higher Education Committee, thank you for allowing me to provide interested party testimony today on Substitute Senate Bill 135 on behalf of the state's fourteen public universities, all of which are members of the Inter-University Council of Ohio (IUC). My name is Bruce Johnson, and I am the President of the IUC. The IUC was established in 1939 as a voluntary educational association of Ohio's public universities. It is committed to ensuring affordable opportunities for the more than 300,000 students attending our member institutions without sacrificing the quality of their education or experience.

I would like to begin by acknowledging how far we believe we have come in our work together with the sponsor, Senator Cirino, on this bill since its introduction. As introduced, Senate Bill 135 included at least twenty-five separate provisions affecting public universities – all major changes to law and state higher education policy – and any one of those, all of them, in fact, could have been a stand-alone, independent piece of legislation. Each new section being worthy of comprehensive, thoughtful analysis and deliberation over time in this committee.

Over the last several weeks, however, through our work with the sponsor and others, changes have been made to narrow the focus of the bill and several of the more, from our perspective, problematic and unworkable provisions have been removed. We thank Senator Cirino for his consideration of our concerns and willingness to address them. But, while we believe the bill is greatly improved, we still do have several major concerns – which is why we are testifying as an interested party. We are an interested party with significant, continuing concerns.

We also appreciate the Senator's intent, as we understand it, to improve access, affordability, and attainment. We support these concepts and always have. Even with the great progress we have made in those areas, we are up to the Senator's challenge and believe we can do more. We look forward to working with him to advance higher education in Ohio on behalf of our students.

I will summarize why we believe the bill is better.

Nonacademic Fees

There was a provision in the bill as introduced that would permit students to choose which nonacademic general fees to pay for each semester or the equivalent. Student fees support critical and necessary student services, including mental health services, the library, technology, career services, athletics, the student center, transportation services, student organizations, and they provide administrative support.

This provision is no longer in the substitute version of Senate Bill 135 and we appreciate the sponsor's consideration of our concerns.

Undergraduate Tuition Guarantee Program

A provision of the bill as introduced would have amended the time set for a cohort to pay a fixed rate for general and instructional fees from the current four years to six years under the Guarantee, in which all fourteen public universities are participating. Extending the period to six years would *not* have encouraged timely degree completion, removing a key incentive for students, and could have put students further in debt, slowing progress to a full-time job, significantly impacting Ohio's tax base.

We appreciate the removal of this language from the bill.

Second Chance Voucher Program

As introduced, the bill would have allowed students who dropped out of or were disenrolled from a four-year university for any reason to receive a voucher to cover the cost of general and instructional fees for a degree or certificate program at a two-year institution. The four-year university would have been responsible for paying for the voucher, splitting the cost with the Ohio Department of Higher Education. This provision did not apply to students disenrolling from two-year public institutions and disenrollment was not defined. The program would

have required the voucher to be made available to any disenrolled student regardless of reason: including academic failure, hazing, criminal activity, or expulsion.

Our primary concern with this provision was that it created a “pay to fail” incentive whereby students could disenroll in their last semester, apply for the voucher, immediately re-enroll in their university of origin, and have the institution and the state reward them with a discount.

The substitute bill, however, addressed many of the concerns that were raised, and we appreciate the sponsor’s willingness to work with us on this provision. Now, the bill more tightly defines eligible student and requires the student to have been disenrolled for at least three semesters before reenrolling in a qualifying institution. The program is a pilot with a set dollar amount for the voucher and a set number of students that may participate, and the state university is not paying for the voucher – as it will be funded through a state general revenue fund appropriation. This program is now more practical, functional, and better reflects the original intent. The IUC does recommend that the definition of “cost of attendance” be conformed to the definition in federal code for consistency purposes and that the program be open to community college students who may disenroll from a community college.

Price Setting for Online Courses

The original version of the bill would have enacted a new section of the Revised Code requiring a state university to charge less in general and instructional fees for an online course than for a course taught in an in-person, classroom setting. And then, at the same time, it would have required the general and instructional fees charged for an online course to be based on the actual cost incurred by the state university to provide those courses. This language was problematic because it would have precluded universities from recovering costs associated with online instruction, including added expenses for technology support, system maintenance and infrastructure necessary to run online programs.

For online courses, actual costs will vary widely, and could change significantly based on, for example, which faculty are teaching courses. An online English course will be less expensive than an online engineering or chemistry course. These variations mean that tuition rates would be fluid and could change from year to year or term to term – and could conflict with the required tuition guarantee program.

The substitute bill, however, was amended to require that special fees charged for an online course at a state institution of higher education, if applicable, be based on the actual demonstrated cost incurred by the institution to provide those courses and revised for uniform applicability. That is a more workable solution if the concern was the cost of online courses.

Campus Free Speech

The section on campus free speech also has been improved, from our perspective. As introduced, this section included a significant amount of language that was repetitive of language passed by Senate Bill 40 from the 133rd General Assembly, enacted in December of 2020. In fact, the first report for that body of new law has not yet been filed so there is no data yet to suggest whether those changes have affected current behavior or even if there is a problem. We believe that new language should be given a chance to work before making any additional changes. That said, the substitute version of Senate Bill 135 does pare back much of the duplicative language.

The bill as introduced required the Board of Trustees to adopt a speech policy as expressed in 3345.0215. The aspirational statements in that section are simply restatements of existing jurisprudence and, as mentioned, the current law. That language is still in the bill, but it has been simplified. While we do not believe that any of that language is necessary, we do hear the sponsor’s concern that there be a clearly delineated process available to students, staff, or faculty who feel that they have been aggrieved in some way, particularly in the classroom, and that there be some method or recourse available to them. The ACLU has articulated some significant concerns with the language in this bill, and we support their suggestions to delete the entire section. We also support the

removal of much of the duplicative language in the substitute version of Senate Bill 135 and the narrowing of its focus to require each board of trustees to establish a process under which a student, student group, or faculty member may submit a complaint about an alleged violation by an employee of the state institution of higher education of the free speech policy established under the law.

Suspension/Limitation of Enrollment in any Bachelor's Degree Program

The bill as introduced proposed to enact a new section of the Revised Code requiring the chancellor to suspend or limit enrollment in any bachelor's degree program offered by a state university, as defined in section 3345.011 of the Revised Code, if the chancellor determines that the degree program has a low completion rate.

This provision was a concern to the IUC because programs can have relatively low completion rates for many reasons, including because they are extraordinarily rigorous. It probably comes as no surprise to you that pre-med students frequently change their major after experiencing an organic chemistry class.

The substitute bill, however, changed this section to make it applicable to any state institution of higher education as defined in section 3345.011 of the Revised Code and was amended to permit rather than require the chancellor to suspend or limit enrollment in any degree program if the program has a low completion rate. It was further amended to apply to any degree program with a low completion rate rather than just a bachelor's degree program. We believe those changes are a fairer application of this provision and allow for some discretion. We continue to believe that these decisions are best made at the local level.

More Work to be Done

While we appreciate the changes made to all the sections listed above and the sponsor's willingness to work with us, there are still many sections of the bill that we believe need further consideration. We have shared those sections requiring additional work with the sponsor so I do not believe these will come as a surprise. The first, and what I would consider to be one of the more significant, is the change to existing law governing approval of bachelor's degrees at community colleges.

Bachelor's Degrees at Community Colleges

The bill as introduced, and as it currently stands in the substitute bill, removes the word "applied" when describing the type of bachelor's degree programs that community colleges may establish, thereby allowing for any bachelor's degree program at a community college. It further removes language requiring the absence of a similar four-year degree at a neighboring institution – the criteria in current law that determines, importantly so, whether the degree to be offered is duplicative; it eliminates the public comment period; and *requires* the chancellor to approve Nursing bachelor's degree programs at community colleges under the criteria set forth in the bill.

It is important to note that community colleges already can and do – under certain circumstances – offer applied bachelor's degrees. And the fact that those are "applied" degrees is a significant distinction. Applied degrees are what community colleges do very well. Those are the hands-on, experiential, training-oriented programs that community colleges can stand up quickly because they build upon the work being done to complete an applied associates degree. Frequently, they can be started cost-effectively and in response to the needs of local employers. We believe those degrees and that focus to be an important niche for community colleges to fill. In some cases, they deliver that type of education better than we do.

A Bachelor of Science or a Bachelor of Arts four-year degree that is not an applied degree is a different mission and responsibility entirely. It is what we, as public universities, do well. We give a student an opportunity to earn a degree that provides the foundation to continue a course of study that may lead to a graduate degree, that may lead to research opportunities, an invention, or patent. Our business model is designed specifically for that

purpose. It is not a model that can be replicated on the turn of a dime. It takes investment in faculty, academic preparation in the development of a high-quality program, and a financial commitment on behalf of the institution to ensure accreditation and, ultimately, success.

Further, when it comes to the “applied” bachelor’s program at community colleges, it is still relatively new. There is not a lot of data to demonstrate success – such as whether students are graduating on time, what is the graduation rate, and are costs truly more affordable. The state should take the time to allow for the accumulation, of this data, and then review and understand it, before further expanding into other areas and programs.

The way this bill changes the law could lead to significant duplication of degree programs. The requirement for the chancellor to consider duplication has been removed under the section governing any four-year degree that the chancellor may authorize. It also is not included in the section addressing four-year nursing programs that, under this bill, would be automatically authorized at any two-year institution if the amended criteria are met. Creating the potential for mass duplication appears to conflict with current law (ORC 3345.59) requiring public institutions of higher education in Ohio, both community colleges and universities, to join Regional Compacts – the primary purpose of which is to eliminate unnecessary duplication of academic programming among the consortia.

My concern is that once the state has decided to allow community colleges, formerly focused on technical and applied degrees, to expand into English, history, art, psychology, sociology, and nutrition, then it is only a matter of time before it allows Advanced Practice Nurses, Physician assistants, and Pharmacists. We need those professionals in rural counties too. Why not a new dental school in every county? We only have one in the state right now, and dentists are hard to find in rural Ohio.

I know you think I am exaggerating, but there has been no comprehensive, professional evaluation of this monumental shift in policy that completely changes the mission of an entire sector of publicly funded higher education. We have heard a few people say it would be nice. What are the financial implications for the colleges and the state? Before you vote for these provisions you should know the answer to that question. Are we expanding the higher education system in this state to include not only 14 public universities with 24 regional campuses, but now 23 new universities? Why should the legislature substitute its judgment for that of the chancellor and mandate the approval of nursing degrees? To my knowledge, this has never happened in this state – at least in the last fifteen years. Does the Legislature understand the approval process? Has it evaluated degree applications before? Has it evaluated other more cost-effective alternatives for increasing the number of nursing students who graduate with a BSN? In my opinion, the state should focus on finding the best way to increase the number of nurses in the state, not the more costly process of increasing the number of programs.

Prioritization of In-State vs Out-of-State Applicants

Another provision that was included in the bill as introduced would prohibit a state university from prioritizing the admission of an applicant who is not an Ohio resident over an applicant who is an Ohio resident if both applicants have substantially similar qualifications that satisfy the university's admissions. The substitute bill did not make any changes to this section in the substitute bill, and we continue to discuss the issue with the sponsor.

The concern with this provision is that it would be problematic for universities whose regional service area extends beyond Ohio’s border. It would compromise university strategies for the recruitment of the best and brightest talent not only from border states, but across the country, and around the world. The importing of talent from wherever we can find it is as much a workforce and economic development issue for the state as it is an academic issue for our institutions. Limiting our ability in this respect would lead not only to a shortage of workers for in-demand jobs, but also hinder our efforts to increase diversity among student populations resulting in a less robust educational experience. We believe that our institutions need to be able to achieve diversity within their class cohorts, including geographic diversity. Ohio is a net importer of college students, bringing in 34,000 more students from across the country than what we send to other states. These students spend money in Ohio and help subsidize the education of students from Ohio.

The IUC would respectfully request this section of the bill be removed or amended in such a way as to not impose on institutions a prohibition on our ability to recruit talent from any location.

Regional University Partnership with Community Colleges

The bill as introduced proposed to enact a new section of the Revised Code requiring each regional university, as created in that section, to enter a partnership with at least one community college located in the enrollment region in which the university's main campus is located. It further required that an undergraduate student only be required to pay the community college's general, special, and instructional fees for those credits. It also required the university to provide the student with a summary of any financial savings available to the student by completing college credits at the community college.

That last requirement is especially challenging because it effectively requires us to provide our current customers with information about our competitors so that they can then shop elsewhere for the product they agreed to purchase from us. Not something Ford would do for Chevy. Perhaps we also should be required to provide information to our customers about the quality and value of that lower-cost product because, inevitably, we would. This provision would create a hostile relationship rather than a collaborative one.

Further, it is unclear whether this provision is built from existing articulation agreements universities currently have with community colleges and if agreements are intended for specific or multiple degree programs offered by a university. If community colleges have partnerships with regional universities plus multiple state universities not considered regional universities, there is potentially great duplication of effort with multiple counselors from multiple universities and confusion for students and families.

We believe that the intent of the sponsor could be accomplished by requiring public universities and the chancellor to do several things instead of what is in the bill.

First, require all state universities to participate in the Ohio Guaranteed Pathways initiative and give students the ability to transfer credits from a community college to a state university to take advantage of this pathway, regardless of geographic proximity between the community college and state university.

Second, require each state university to collaborate with multiple community colleges in establishing joint academic programming or dual enrollment opportunities to assist students in completing their degrees in a timely and cost-effective manner.

Third, require the chancellor to adopt rules to implement these changes, which could include a requirement that each community college and state university annually report to the Chancellor's Ohio Articulation and Transfer Network Oversight Board the number of Ohio Guaranteed Pathways and joint academic programming or dual enrollment opportunities offered.

Finally, give the Oversight Board authority to compile the information reported and provide a summary to the Chancellor, including any recommendations necessary to enhance and strengthen the opportunities.

This approach would be preferable to the language currently in the bill and we have discussed these possible changes with the sponsor. We appreciate your consideration of this request.

Donor Gifts

SB135 proposed to enact a new section of the Revised Code requiring that any agreement relating to the intent of a donor expressed in a gift instrument to a state institution of higher education shall also specify a person or persons authorized to oversee the agreement and gift instrument and to ensure that the institution is following the

donor's intent as expressed in the gift instrument. The substitute bill made further changes to two sections of current law – ORC 1715.51 and 1715.53.

On this very technical section, I would simply reiterate what Ohio State University Provost Bruce McPherson stated in his testimony which was that, under the substitute bill, the donor intent language now applies to all charitable institutions in Ohio, not just public colleges and universities. The intent of this language seems to be a broad policy whereby donor intent is met for all endowments, and donors have a clear understanding of how their gifts will be used. The IUC strongly supports those policy goals, which are already codified in existing law. As written, however, the bill undermines a donor's ability to fully control how his or her donation is used by giving the donor's family members and professional administrators the right to reinterpret the donor's intent after he or she has passed away.

I also would note that the Attorney General currently has the power to enforce restrictions, gift agreements, and approve changes in use – as we heard in testimony. The Attorney General knows this, understands this, and is perfectly capable of deciding when it should act. We should rely on their expertise. Ultimately, gift agreements are contracts in the eyes of the law. If the institution and the donor agree on alternate use language, that should be sufficient and is enforceable under contract law.

As I mentioned at the beginning of this testimony, there are many other provisions in this bill that deserve thoughtful consideration and discussion. Up to this point, I have spoken briefly about only ten of the issues most important to the IUC. I have not spoken about the provision in the bill requiring the chancellor, when considering approval of a new degree or degree program for a state institution of higher education, to consider the extent to which the degree or degree program aligns with in-demand jobs, as defined in section 3333.94 of the Revised Code. As originally introduced, this section applied only to state universities. It now applies to all state institutions of higher education.

Neither have I gone into detail on the section that requires a board of trustees of a state institution of higher education to provide an eligible student with an accommodation if that student was unable to register for a requisite course in one of the student's final two academic years.

Mr. Chairman and members of the committee, I could go on. Given enough time, we could prepare testimony and speak to each one of these issues individually, over a series of committee hearings devoted solely to any one issue. That is just how comprehensive this legislation is. I commend the sponsor for his desire to effect change. It truly is aspirational. As he knows, we have questioned his comprehensive approach and whether the solutions for that desired change will succeed as intended and accomplish the desired outcome. If it sounds like we still have a lot of concerns, it is because we do.

We have shared with Senator Cirino our perspective and opinion on what would not work at all and what might work better. I sincerely appreciate the relationship we have formed with the sponsor over the last two months. And we have worked together to make the bill a better bill. It is still not yet where it needs to be, in our opinion, and we still have much work to do. But we are committed, just as I know the sponsor is, to improving access, reducing costs, and graduating more students. We all agree that is in Ohio's best interest. I look forward to continuing our work together on this bill.

Thank you, Mr. Chairman, too, for your leadership on this bill. And to the rest of the committee members for your consideration of my testimony today. I am happy to answer any questions.