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To: The Honorable Scott Wiggam
Ohio House of Representatives

From: Carol Napp, Research Analyst *CN*

Date: June 22, 2021

Subject: Comparison of H.B. 327 As Introduced, Sub. H.B. 327 (I_134_1448-4), and H.B. 322 As Introduced

You asked for a comparison of H.B. 327 As Introduced, Sub. H.B. 327 (I_134_1448-4) which is currently pending in the House State and Local Government Committee, and H.B. 322 As Introduced, all of the 134th General Assembly. These bills place similar and sometimes identical requirements and prohibitions on certain public entities related to the teaching of what is often referred to as critical race theory.

If you have any questions about the content of this memorandum, please feel free to contact me at (614) 466-5707 or carol.napp@lsc.ohio.gov.

H.B. 327 (As Introduced)	Sub. H.B. 327 (I_134_1448-4)	H.B. 322 (As Introduced)
Protected characteristics and title		
Addresses discrimination and other unfair treatment on the basis of: (1) nationality, (2) color, (3) ethnicity, (4) race, and (5) sex (hereinafter "race, etc."). No provision.	Addresses discrimination and other unfair treatment on the basis of: (1) nationality, (2) race, (3) color, (4) ethnicity, (5) <u>religion</u> , or (6) sex (hereinafter "race, religion, etc."). Entitles the bill "The Promoting Education Not Indoctrination Act" (<i>Section 3</i>).	Addresses discrimination and other unfair treatment on the basis of: (1) race or (2) sex. No provision.

H.B. 327 (As Introduced)	Sub. H.B. 327 (I_134_1448-4)	H.B. 322 (As Introduced)
Application – entities subject to bill		
School districts, community schools, and STEM schools (<i>R.C. 3313.6027(B)(1), 3314.03, and 3326.11</i>).	Same, but adds a school building operated by a school district, community school, or STEM school (<i>R.C. 3313.6027(B)(1), 3314.03, and 3326.11</i>).	Same as Sub. H.B. 327 (I_134_1448-4).
Specifies that “state agency” includes a state institution of higher education and places responsibilities for a state institution’s compliance on the Department of Administrative Services (<i>R.C. 4113.35(A)(2) and (A)(3)</i>).	Removes state institution of higher education from the definition of state agency, but separately continues to apply to them, and places responsibilities for monitoring compliance by state institutions of higher education on the Department of Higher Education (<i>R.C. 4113.35(A)(2) and 3345.0215</i>).	No provision.
No provision.	Adds political subdivisions to the list of entities to which the bill applies (<i>R.C. 4113.35(A)(3)</i>).	No provision.
No provision.	Adds any nonpublic school that enrolls students who are participating in a state scholarship program to the list of entities to which the bill applies (<i>R.C. 3313.6027(B)(1)</i>).	No provision.
Divisive concepts – that must be prohibited by agencies, schools, and state institutions of higher education		
One race, etc. is inherently superior to another race, etc. (<i>R.C. 3313.6028(A)(1)(a)</i>).	Same as previous version.	Same, only race and sex (<i>R.C. 3313.6028(A)(1)</i>).
The United States is fundamentally racist or sexist (<i>R.C. 3313.6028(A)(1)(b)</i>).	Same as previous version.	No provision.

H.B. 327 (As Introduced)	Sub. H.B. 327 (I_134_1448-4)	H.B. 322 (As Introduced)
An individual, by virtue of the individual's race, etc., is inherently racist, sexist, or oppressive, whether consciously or unconsciously <i>(R.C. 3313.6028(A)(1)(c))</i> .	Same as previous version.	Same, only race and sex <i>(R.C. 3313.6028(A)(2))</i> .
An individual should be discriminated against or receive adverse treatment because of the individual's race, etc. <i>(R.C. 3313.6028(A)(1)(d))</i> .	Same as previous version.	Same, only race <i>(R.C. 3313.6028(A)(3))</i> .
Members of one nationality, color, ethnicity, race, or sex cannot and should not attempt to treat others without respect to nationality, color, ethnicity, race, or sex <i>(R.C. 3313.6027(A)(1)(e))</i> .	Members of one nationality, race, color, ethnicity, religion, or sex cannot and should not attempt to treat others disrespectfully based upon nationality, race, color, ethnicity, religion, or sex <i>(R.C. 3313.6027(A)(1)(e))</i> .	Same, only race <i>(R.C. 3313.6028(A)(4))</i> .
An individual's moral character is determined by the individual's race, etc. <i>(R.C. 3313.602(A)(1)(f))</i> .	Same as previous version.	Same, except (1) standing or worth instead of character and (2) only race and sex <i>(R.C. 3313.6028(A)(5))</i> .
By virtue of an individual's race, etc., an individual bears responsibility for actions committed in the past by other members of the same race, etc. <i>(R.C. 3313.6028(A)(1)(g))</i> .	Same as previous version.	Same, only race and sex <i>(R.C. 3313.6028(A)(6))</i> .
No provision.	No provision.	Advent of slavery in the United States constituted the true founding of the United States <i>(R.C. 3313.6028(A)(10))</i> .
No provision.	No provision.	Slavery and racism are anything other than deviations from, betrayals of, or failures to live up to the authentic founding principles of the United States, which include liberty and

H.B. 327 (As Introduced)	Sub. H.B. 327 (I_134_1448-4)	H.B. 322 (As Introduced)
No provision.	No provision.	equality (<i>R.C. 3313.6028(A)(11)</i>).
Meritocracy and hard work ethic are racist or sexist or were created by a particular race, etc. to oppress another race, etc. (<i>R.C. 3313.6028(A)(1)(h)</i>).	Same as previous version.	An individual should feel psychological distress on account of the individual's race or sex (<i>R.C. 3313.6028(A)(7)</i>).
No provision.	No provision.	Same, only race and sex (<i>R.C. 3313.6028(A)(8)</i>).
No provision.	No provision.	Fault, blame, or bias should be assigned to a race or sex or members of that race or sex because of their race or sex (<i>R.C. 3313.6028(A)(9)</i>).
Race or sex stereotyping – ascribing character, traits, values, moral and ethical codes, privileges, status, or beliefs to a race, etc., or to an individual because of the individual's race, etc. (<i>R.C. 3313.6028(A)(2)</i>).	Same as previous version.	No provision.
Race or sex scapegoating – assigning fault, blame, or bias to a race, etc. or to members of a race, etc. because of that characteristic (including claims that one is inherently racist, sexist, or inclined to oppress others (<i>R.C. 3313.6028(A)(3)</i>).	Same as previous version.	No provision.

H.B. 327 (As Introduced)	Sub. H.B. 327 (I_134_1448-4)	H.B. 322 (As Introduced)
Concepts that are not divisive		
Teaching divisive concepts in an objective manner without endorsement <i>(R.C. 3313.6027(D) and 4113.35(E)).</i>	Same as previous version.	No provision.
Discussing the history of an ethnic group as described in textbooks and instructional materials adopted in accordance with continuing law <i>(R.C. 3313.6027(D)(1) and 4113.35(E)(1)).</i>	Same, but also prohibits a school district board of education from selecting any textbook, instructional material, or academic curriculum that promotes any divisive concepts <i>(R.C. 3313.6027(F)(1) and 3313.21(D)).</i>	No provision.
The impartial discussion of controversial aspects of history <i>(R.C. 3313.6027(D)(2) and 4113.35(E)(2)).</i>	Same as previous version.	No provision.
The impartial discussion on historical expression of a group based on race, etc., religion, or geographic region <i>(R.C. 3313.6027(D)(3) and 4113.35(E)(3)).</i>	Same as previous version.	No provision.
Permitted historical documents such as the national motto, national anthem, the Ohio Constitution, the U.S. Constitution, the Revised Code, federal law, and the U.S. Supreme Court decisions <i>(R.C. 3313.6027(D)(4) and 4113.35(E)(4)).</i>	Same as previous version.	No provision.
No provision.	In a course on public speaking, formal debate, or substantially similar subject matter in a public school or a state institution of higher education, the assignment of research or	No provision.

H.B. 327 (As Introduced)	Sub. H.B. 327 (I_134_1448-4)	H.B. 322 (As Introduced)
	other work, the assignment of a grade or score, unbiased and impartial questions posed by a teacher, respectful student to student debate, and student research and questions, all provided the teacher remains neutral and does not engage in promotion of divisive concepts (R.C. 3313.6027(F)(2) and 3345.0215(F)(2)).	
Prohibitions		
Prohibits teaching, instructing, or training any divisive concepts in public schools (R.C. 3313.6027(B)(1)).	Same, except also prohibits the promotion of professional development (which mirrors the provisions of the As Introduced version for state agencies) and includes a separate set of identical provisions for state institutions of higher education (R.C. 3313.6027(B)(1), 3345.0215, and 4113.35(B)(1)).	Prohibits teaching, instructing, or training an administrator, teacher, staff, member, or employee to adopt or believe any concept described in “ Divisive concepts ” above (R.C. 3313.6028(A)).
With respect to state agencies, prohibits penalizing or discriminating against an employee on account of refusing to support divisive concepts (R.C. 4113.35(B)(2)).	Same as previous version.	No provision.
No provision.	No provision.	Prohibits requiring a teacher, by policy, to affirm a belief in the systemic nature of racism, or like ideas, or in the multiplicity or fluidity of gender identities, or like ideas, against the teacher’s sincerely held religious or philosophical convictions (R.C. 3313.6029).

H.B. 327 (As Introduced)	Sub. H.B. 327 (I_134_1448-4)	H.B. 322 (As Introduced)
Prohibits requiring a student to advocate for or against a specific topic or point of view to receive credit for any coursework <i>(R.C. 3313.6027(B)(1))</i> .	Same, and specifies that the provision applies to all subject areas and includes a prohibition against receipt of graduation credit <i>(R.C. 3313.6027(B)(1)) and (D)(1))</i> .	Prohibits a district or school from making part of a course in history, civics, U.S. government, politics, social studies, or similar subject area, or awarding course grading or credit for (1) lobbying, (2) work, affiliation, or service in association with a lobbying organization, or (3) practicum, action project, or similar activity involving social or public policy advocacy <i>(R.C. 3313.6027(B))</i> .
No provision.	Prohibits awarding credit that counts toward high school graduation for a course that includes any of the prohibited divisive concepts <i>(R.C. 3313.6027(D)(1))</i> .	Same as Sub. H.B. 327 (I_134_1448-4) <i>(R.C. 3313.6028(C))</i> .
Prohibits accepting private funding to develop curriculum, purchase or select course materials, or provide training for a course promoting divisive concepts <i>(R.C. 3313.6027(B)(2) and 4113.35(B)(3))</i> .	Same, but adds selecting a curriculum to the list of prohibited activities in the case of schools <i>(R.C. 3313.6027(B)(2), 3345.0215(B)(2), and 4113.35(B)(3))</i> .	Same as H.B. 327 As Introduced, except limited to history, civics, U.S. government, politics, social studies, or similar subject areas <i>(R.C. 3313.6027(C))</i> .
With respect to state agencies, prohibits requiring an employee to complete a curriculum including divisive concepts as a condition or prerequisite of employment <i>(R.C. 4113.35(B)(2))</i> .	Same as previous version.	No provision.
No provision.	Prohibits applying for any federal grants to develop or select a curriculum, purchasing course materials, or provide teacher training for a course promoting divisive concepts <i>(R.C. 3313.6027(B)(2), 3345.0215(B)(2), and 4113.35(B)(3))</i> .	No provision.

H.B. 327 (As Introduced)	Sub. H.B. 327 (I_134_1448-4)	H.B. 322 (As Introduced)
No provision.	Specifies that “no moneys shall be expended in support of teaching divisive concepts” <i>(R.C. 3313.6027(B)(2), 3345.0215(B)(2), and 4113.35(B)(3)).</i>	No provision.
No provision.	Prohibits a school or state institution of higher education from (1) penalizing or discriminating against a teacher, administrator, or other school employee on account of the teacher’s, administrator’s, or other school employee’s refusal to support, believe, or otherwise assent to divisive concepts or (2) requiring the same to complete a curriculum including divisive concepts as a condition or prerequisite of employment <i>(R.C. 3313.6027(B)(3) and 3345.0215(B)(3)).</i>	No provision.
No provision.	Prohibits a state institution of higher education from including as part of new student or freshman orientation teaching, instruction, or training on divisive concepts <i>(R.C. 3345.0215(B)(4)).</i>	No provision.
No provision.	No provision.	Prohibits requiring a teacher of history, civics, U.S. government, politics, social studies, or similar subject areas to discuss current events or widely debated and currently controversial issues of public policy or social affairs <i>(R.C. 3313.6027(A)).</i>
No provision.	No provision.	Prohibits approving, using, or carrying out standards, curricula, etc., that serve to

H.B. 327 (As Introduced)	Sub. H.B. 327 (I_134_1448-4)	H.B. 322 (As Introduced)
		inculcate any of the concepts by teacher, administrator, or state employee (<i>R.C. 3313.6028(B)</i>).
Responsibilities – Chancellor of Higher Education		
No provision.	If the Chancellor determines through a confirmed report that a state institution of higher education violates the bill’s provisions, the Department of Higher Education must withhold state share of instruction funds until such time as the institution complies in the following amounts: (1) for a first offense, 25%, (2) for a second offense, 50%, and (3) for a third offense, 100% (<i>R.C. 3345.0215(C)(1)</i>).	No provision.
No provision.	Develop a policy that complies with the bill’s provisions and, to the extent appropriate, make it substantially similar to the policy developed by the Department of Administrative Services (<i>R.C. 3345.0215(E)(1)</i>).	No provision.
No provision.	Establish rules for the implementation and enforcement of the policy (<i>R.C. 3345.0215(E)(2)</i>).	No provision.
No provision.	Prepare a biennial report that provides detailed information on any confirmed report of a violation and submit it to the General Assembly by November 30 of each even-numbered year, beginning in 2022 (<i>R.C. 3345.0215(E)(3)</i>).	No provision.

H.B. 327 (As Introduced)	Sub. H.B. 327 (I_134_1448-4)	H.B. 322 (As Introduced)
Responsibilities – Board of Trustees of each state institution of higher education		
No provision.	Update policy on faculty tenure to reflect the bill’s principles and consider as a negative factor in employment and tenure decisions any confirmed reports that a faculty member or other employee knowingly or recklessly violates the bill’s provisions <i>(R.C. 3345.0215(C)(2)).</i>	No provision.
No provision.	Review grant programs and identify any that may require certification that a recipient will not use funds to promote divisive concepts <i>(R.C. 3345.0215(D)(1)).</i>	No provision.
No provision.	Review employee training programs relating to diversity or inclusion to ensure compliance with the bill’s provisions <i>(R.C. 3345.0215(D)(2)).</i>	No provision.
No provision.	Ensure compliance with the bill’s provisions by political subdivision and employees during work hours, and contractors <i>(R.C. 3345.0215(D)(3)).</i>	No provision.
No provision.	Encourage employees not to judge each other based on their color, race, ethnicity, sex, or any other characteristic protected by federal or state law <i>(R.C. 3345.0215(D)(4)).</i>	No provision.
No provision.	If a contracted entity promotes divisive concepts and violates a public contract, evaluate whether to pursue debarment of	No provision.

H.B. 327 (As Introduced)	Sub. H.B. 327 (I_134_1448-4)	H.B. 322 (As Introduced)
No provision.	contractor (R.C. 4113.35(D)(2)). Issue to all employees the policy developed by the Chancellor, annually review and assess compliance, and submit a report to the Department of Higher Education regarding that compliance (R.C. 4113.35(D)(4)).	No provision.
Responsibilities – Superintendent of Public Instruction		
In the event that a district or school knowingly violates the bill’s provisions, withhold state funding from the district or school until the Department of Education determines the district or school is compliant (R.C. 3313.6027(C)).	Similar, but: (1) requires a confirmed report from a student, parent, teacher, or community member, (2) reduces standard from knowing to reckless, (3) reduces funding by 25% for a first offense, 50% for a second offense, and 100% for a third offense, and (4) makes the state Superintendent also responsible for determining when a district or school is compliant (R.C. 3313.6027(C)(1)).	No provision.
Responsibilities – State Board of Education		
No provision.	In the event the State Board determines through a confirmed report that a teacher, principal, or school district superintendent knowingly or recklessly violates the bill’s provisions: (1) for a first offense issue an official licensure admonishment, (2) for a second offense suspend licensure for a period of time determined by the State Board based on severity and circumstances, or (3) for a third offense, revoke licensure for a period of time determined by the State Board based on	No provision.

H.B. 327 (As Introduced)	Sub. H.B. 327 (I_134_1448-4)	H.B. 322 (As Introduced)
<p>Permits the State Board to adopt rules regarding implementation of and monitoring compliance with the bill's provisions (R.C. 3313.6027(E)).</p> <p>No provision.</p> <p>No provision.</p>	<p>severity and circumstances (R.C. 3313.6027(C)(2)).</p> <p>Makes mandatory the adoption of rules (R.C. 3313.6027(E)(1)).</p> <p>Prohibits the State Board from adopting any model curriculum, standards, professional development resources, etc., regarding concepts that are divisive (R.C. 3313.6027(E)(2)).</p> <p>Requires the State Board to prepare an annual report with detailed information on confirmed reports and a copy of each complaint filed and submit the report to the General Assembly by June 30 of each year, beginning in 2022 (R.C. 3313.6027(E)(3)).</p>	<p>No provision.</p> <p>Prohibits the State Board from adopting any model curriculum regarding concepts that are divisive (R.C. 3301.079(B)(1), last paragraph).</p> <p>No provision.</p>
Responsibilities – the legislative authority of each political subdivision		
<p>No provision.</p> <p>No provision.</p>	<p>Review grant programs and identify any that may require certification that a recipient will not use funds to promote divisive concepts (R.C. 4113.35(D)(1)).</p> <p>Review employee training programs relating to diversity or inclusion to ensure compliance with the bill's provisions (R.C. 4113.35(D)(2)).</p>	<p>No provision.</p> <p>No provision.</p>

H.B. 327 (As Introduced)	Sub. H.B. 327 (I_134_1448-4)	H.B. 322 (As Introduced)
No provision.	Ensure compliance with the bill’s provisions by political subdivision and employees during work hours, and contractors <i>(R.C. 4113.35(D)(3))</i> .	No provision.
No provision.	Encourage employees not to judge each other based on their color, race, ethnicity, sex, or any other characteristic protected by federal or state law <i>(R.C. 4113.35(D)(4))</i> .	No provision.
No provision.	If a contracted entity promotes divisive concepts and violates a public contract, evaluate whether to pursue debarment of contractor <i>(R.C. 4113.35(D)(2))</i> .	No provision.
No provision.	Issue to all employees the policy developed by the Department of Administrative Services, annually review and assess compliance, and submit a report to the Department of Administrative Services regarding that compliance <i>(R.C. 4113.35(D)(4))</i> .	No provision.
Responsibilities—heads of state agencies		
Review grant programs and identify any that may require certification that a recipient will not use funds to promote divisive concepts (see below) <i>(R.C. 4113.35(C)(1))</i> .	Same as previous version.	No provision.
Review employee training programs relating to diversity or inclusion to ensure compliance with the bill’s provisions <i>(R.C. 4113.35(C)(2))</i> .	Same as previous version.	No provision.

H.B. 327 (As Introduced)	Sub. H.B. 327 (I_134_1448-4)	H.B. 322 (As Introduced)
Ensure compliance with the bill’s provisions by agencies, employees during work hours, and contractors <i>(R.C. 4113.35(C)(3))</i> .	Same as previous version.	No provision.
Encourage agency employees not to judge each other based on their color, race, ethnicity, sex, or any other characteristic protected by federal or state law <i>(R.C. 4113.35(C)(4))</i> .	Same as previous version.	No provision.
If a contracted entity promotes divisive concepts and violates a public contract, evaluate whether to pursue debarment of contractor <i>(R.C. 4113.35(C)(2))</i> .	Same as previous version.	No provision.
Responsibilities – Department of Administrative Services		
Develop a policy that (1) complies with the bill’s provisions (specifically those described in “ Prohibitions ” and “ Divisive concepts ” above), (2) incorporates the requirements of diversity and inclusion efforts, and (3) encourages employees not to judge each other based on race, etc. <i>(R.C. 4113.35(D))</i> .	Same as previous version.	No provision.
Establish rules for the implementation and enforcement of the policy <i>(R.C. 4113.35(D))</i> .	Same as previous version.	No provision.
No specific provision.	Include political subdivision employees in its policy <i>(R.C. 4113.35(E)(1))</i> .	No provision.

H.B. 327 (As Introduced)	Sub. H.B. 327 (I_134_1448-4)	H.B. 322 (As Introduced)
No provision.	Prepare a biennial report regarding compliance by state and political subdivision employees and submit it to the General Assembly by November 30 of each even-numbered year, beginning in 2022 (R.C. 4113.35(E)(3)).	No provision.
Private cause of action against public schools		
No provision.	Permits the parent, guardian, or custodian of any student who, by way of a violation of this section, is subjected to indoctrination of divisive concepts in order to receive a class grade or graduation credit to bring a civil action against the school, district, or school employee responsible for the violation (R.C. 3313.6027(D)(2) and (3)).	No provision.