



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: H.B. 2 of the 131st G.A.

Date: October 7, 2015

Status: As Recommended by Conference Committee

Sponsor: Reps. Dovilla and Roegner

Local Impact Statement Procedure Required: No

Contents: Management and sponsorship of community schools

State Fiscal Highlights

- The Department of Education and the State Board of Education are required to provide certain types of administrative review and reporting for community schools, which will result in minimal administrative costs.

Local Fiscal Highlights

- The bill makes adjustments to contracts between community schools, sponsors, and governing authorities. It also increases the responsibility of community school sponsors to report on oversight of certain community school operations. The bill's requirements may result in minimal costs to community schools, their governing boards, and their sponsoring entities.
- The bill states that furniture, computers, software, equipment, or other personal property purchased by an operator with state funds that were paid to the community school is the property of the community school, not the operator. This provision may lead to a reduction in expenditures for community schools that, upon termination of a contract with an operator, wish to retain the property and otherwise would have been required by the contract to buy it back from the operator.

Detailed Fiscal Analysis

The bill modifies the laws governing the management and sponsorship of community schools. These modifications may affect the administrative burden of community schools and the Ohio Department of Education (ODE).

Switching sponsors

The bill prohibits low-performing community schools, based on student growth measures and graduation rates of dropout prevention and recovery programs or the performance index and value-added progress dimension scores of all other community schools, from switching sponsors unless certain conditions are met, which include a determination by ODE on the school's request for a new sponsor. The bill also establishes a process by which a school whose request to switch sponsors has been denied by ODE may appeal to the State Board of Education. Based on the report card for the 2013-2014 school year, there are 56 regular community schools and five drop out recovery community schools that qualify as low-performing under this provision. This provision may minimally increase ODE's administrative burden.

Reporting requirements

The bill includes a number of reporting requirements for community schools and their sponsors. These requirements may increase the administrative burden of the schools and their sponsors, but will not increase costs substantially. The bill's reporting requirements for community schools include: an addendum to the school's contract with its sponsor detailing the school's facilities, including associated costs; monthly financial and enrollment records to be furnished to the sponsor, members of the governing board, and fiscal officer; policies and procedures for internal financial controls to be filed with the sponsor; criteria for early termination, notification procedures, and a stipulation of facilities and property ownership to be included in contracts with an operator; a report of students residing in a children's residential center to be submitted to ODE and the Auditor of State; attendance and participation policies to be available for public inspection; attendance and participation records to be available to ODE, the Auditor of State, and the school's sponsor to the extent permitted under federal law; the name of each member of the school's governing authority to be posted on the school's website; the name and address of each member to be provided, upon request, to ODE and the sponsor; and annual verification that there are no findings for recovery against any member of the governing authority, community school employee, operator, or community school creator.

The bill's reporting requirements for ODE require the following information for each year since the 2001-2002 school year to be posted on its website: (1) the name of each community school that closed and reason for closure, (2) sponsor evaluation data, (3) designation of approval or denial for all sponsor applications, including all documentation used for determination, (4) sponsor ratings, and (5) a list of all sponsors

that are prohibited from sponsoring new schools or that have sponsored a school that was or is subject to closure. ODE's administrative burden will increase minimally to comply with the bill's reporting requirements.

Governing authority members

Under the bill, a person engaging in an act that would otherwise disqualify them from receiving a license to teach, being charged with or pleading guilty to theft in office, or not submitting to a criminal record check would be prohibited from serving as a member of a governing authority. The bill also prohibits employees of school districts or educational service centers (ESC), as well as school district board members from serving on the governing authority of any community school sponsored by that district or ESC, and likewise prohibits community school governing authority members from serving as a member of a school district board of education.

Additionally, the bill limits compensation per meeting to \$125 for governing authority members, rather than \$425 as under current law. This lower amount is the same as that prescribed in current law for district and ESC governing board members. Further, the bill limits the amount of annual compensation for service on district and ESC governing boards to \$5,000 per member, as is prescribed in current law for community school governing board members. The bill also provides for governing authority members to receive compensation for attendance at approved training programs, similar to school district board member compensation. The bill requires governing authority members to annually file a disclosure statement that includes the names of any immediate relative or business associate employed by the sponsor or operator of the community school, school district or ESC in contract with the school, or vendor engaged in business with the school in the previous three years. Governing authority members will receive less compensation as a result of the bill, in addition to a minimal administrative burden.

Annual budget

The bill requires the governing authority of each community school, with the assistance of the school's fiscal officer, to set an annual budget by October 31 of each year, beginning with the 2016-2017 school year, and include the costs of various components, including administrative costs, instructional services, and support services. The bill requires ODE to develop a format for annual community school budgets. These provisions may increase the administrative burden of the community school governing authorities and ODE.

Sponsor oversight

The bill requires the community school sponsor to provide monitoring, oversight, and technical assistance to each school. Specifically, this involves monitoring compliance with laws, evaluation of academic and fiscal performance, reporting on an annual basis the results of the sponsor evaluation to ODE and to the parents of enrolled students, providing technical assistance to the school to comply with applicable laws,

taking steps to intervene and correct problems in the school's overall performance, and making a plan of action in the case of financial difficulties or early closure of a school.

Beginning with the 2016-2017 school year, community school sponsors must submit, no later than August 15 of each year, a report to ODE describing the amount and type of expenditures made to provide monitoring, oversight, and technical assistance to the schools it sponsors. The report must also be submitted to the governing board of each such community school. Furthermore, the report is considered a factor in evaluating a sponsor's compliance with applicable laws and administrative rules and a sponsor's adherence to quality practices. ODE is required to establish requirements and a reporting procedure for the report. Both sponsors and ODE will experience an increase in costs due to this requirement; however, this increase is not expected to exceed minimal.

Under the bill, community school sponsors are required to include certain information related to blended learning models in the contract with a governing authority of a school, if that school operates using a blended learning method. They must also provide an annual assurance to ODE that they have reviewed certain information submitted by the school with respect to the model to be used. Sponsors are also required to communicate with the Auditor of State regarding audits and financial and enrollment records. The bill requires the Auditor to provide written notice to the sponsor regarding any action taken against or upcoming audits of a community school. The above provisions may increase costs minimally for community school sponsors.

Sponsor evaluation system

Under the bill, ODE is required to annually rate and assign an overall rating to all sponsors with regards to school performance and compliance with applicable laws and rules.¹ Sponsors rated "effective" or "exemplary" may be evaluated by ODE for adherence to quality practices once over a period of three years. The bill further requires ODE to provide annual training on the evaluation system. Since ODE currently evaluates community schools based on adherence to these criteria and publishes reports annually, costs are likely to be minimal, at most. Note that the bill repeals a provision from H.B. 64 of the 131st General Assembly that requires ODE to submit recommendations regarding a ratings rubric for sponsor evaluation.

Community school sponsors with exemplary ratings, under the bill, may take advantage of certain incentives, which may result in some administrative cost savings. These incentives include: (1) contract extension (between the sponsor and governing

¹ For the 2015-2016 school year only, the bill permits ODE to not assign an overall rating to certain community school sponsors. The sponsor must be a school district, at least one of the schools the district sponsors must be a conversion community school that primarily serves students enrolled in a dropout prevention and recovery program, and, for the 2013-2014 school year, at least one of the sponsor's schools received a rating of at least "meets standards" in the four- or five-year cohort graduation rate on its dropout prevention and recovery school report card. If ODE foregoes overall ratings in this circumstance, it must instead evaluate sponsors using academic performance and compliance components.

authority), (2) exemption from preliminary agreement and execution deadline requirements, (3) exemption from the automatic contract expiration requirement, (4) exemption from limitation on the number of schools the entity may sponsor, (5) removal of territorial restrictions on sponsorship, and (6) additional incentives that ODE may offer.

Additionally, the bill establishes a new sponsor rating of "poor" and requires the revocation of sponsorship authority for a sponsor receiving that rating, subject to a hearing by an officer appointed by the Superintendent of Public Instruction. The same process applies to a sponsor rated "ineffective" for the three most recent years. The bill also prohibits a sponsor with an overall rating of "ineffective" from sponsoring any new or additional community schools. The number of sponsors these provisions are likely to affect is unknown but may increase the administrative costs of the Office of School Sponsorship in the event that it assumes sponsorship of an affected school. The bill allows the Office to take over sponsorship for a school having a sponsor rated as "poor" or "ineffective" for three consecutive years and also exempts the Office from counting such a school for the purposes of the current limit on directly authorized community schools.

Fiscal officers and attorneys

The bill requires community school fiscal officers to be employed by or engaged under a contract with the governing authority of the community school, but also provides authorization for the governing authority to waive responsibility for employing or contracting with the designated fiscal officer, so long as the school's sponsor approves such a waiver. Current law already requires fiscal officers for all community schools; therefore, this provision will likely not cause any additional costs.

Under the bill, the Auditor of State must require the school's fiscal officer to execute a bond conditioned on the faithful performance of all official duties. In the event of a fiscal officer failing to perform their duties, the school's sponsor has the right of action to compel delivery of all financial and enrollment records and must, if necessary, seek recovery of any funds owed as a result of a finding for recovery against the fiscal officer. Fiscal officers not currently covered by a public officers' bond may experience an increase in costs related to obtaining it.

The bill also requires the governing authority of a community school to employ an attorney, independent from the school's sponsor or operator, for services related to the negotiation of the school's contract with the sponsor or operator. It also requires each contract between a sponsor and governing authority to contain a provision requiring, if the governing authority contracts with an attorney, accountant, or entity specializing in audits, the attorney, accountant, or entity to be independent from the operator. This may increase costs minimally for community schools.

Training on Public Records and Open Meetings Laws

Governing authority members, as well as the designated fiscal officer, the chief administrative officer, and other school administrative employees or individuals performing administrative services under contract with the school's operator must complete an annual training on the Public Records and Open Meetings Laws. The three-hour training is offered through the Ohio Attorney General's Office throughout the year at various locations in Ohio at no cost.

School operators

The bill eliminates a procedure in current law by which an operator may appeal when a community school notifies it of its intent to terminate or not renew the operator's contract. This may give the school more flexibility in determining how to operate the school and negotiate any contracts with operators.

The bill also requires an operator or management company that receives more than 20% of the gross annual revenues of a community school (rather than provides services to a community school that amounts to more than 20% of the gross annual revenues of the school) to provide a detailed accounting including the nature and costs of the goods and services it provides to the school, according to specified categories. Since this is similar to current law, the provision creates only a minimal increase in administrative burden.

Property

The bill states that furniture, computers, software, equipment, or other personal property purchased by an operator with state funds that were paid to the community school is the property of the community school, not the operator. Presumably, this provision is in response to *Hope Academy Broadway Campus v. White Hat Management, LLC* (2015), in which the Ohio Supreme Court ruled that a for-profit management company may enforce a provision in its contract with a school that, upon termination of the contract, requires the school to buy back personal property that the operator bought with public funds to operate the school. The fiscal effect of this provision may be a reduction in expenditures should a community school terminate an agreement with an operator that otherwise would have enforced such a contract provision.

Additional provisions affecting school sponsors

The bill prohibits sponsors from selling goods or services to any community school they sponsor, with the exception of services or goods under contracts existing prior to the bill's effective date. This provision may decrease revenues for certain sponsors that provide goods and services to schools. Under the bill, school districts and state universities that sponsor a community school are permitted to sell goods or services to that school at no profit to the sponsor.

Sponsors of Internet or computer-based community schools are required to monitor and ensure compliance with online learning standards. Currently, there are 24 Internet or computer-based schools sponsored by 19 school districts, educational

service centers (ESCs), and other entities. The bill's requirement creates a minimal additional administrative burden for the school sponsors.

Sponsor approval

In general, the bill requires that community school sponsors (including ESCs), other than those grandfathered by continuing law, receive approval from or enter into a written agreement with ODE, or both, by July 1, 2017 to continue to sponsor community schools. It also requires previously grandfathered sponsors to enter into a written agreement with ODE, if that entity receives a sponsor rating below "effective" for two or more consecutive years. Agreements must contain parameters under which ODE can intervene or revoke sponsorship authority, provide for an annual evaluation process, set forth any territorial restrictions and limits on the number of schools the entity may sponsor, and permit modification in instances of low academic progress or poor fiscal management. Additionally, the initial term of a sponsor's agreement with ODE is reduced under the bill from seven to five years. The bill also removes a provision in current law allowing a continuous one-year extension of a sponsor's agreement for sponsors that are not in the lowest 20% of sponsors statewide or are rated "exemplary" or "effective." Instead, it establishes a renewal process, up to ten years, based on the academic performance of students, the sponsor's adherence to quality practices, and the sponsor's compliance with all applicable laws and rules. Sponsors rated "exemplary" for two consecutive years may exceed the limitations on schools and territorial restrictions stipulated in the contract. The bill permits ODE to renew or extend an agreement between a sponsor and the Department that expires in June 2016, one time only, for a period of up to two years, in the event that ODE has not yet issued a rating for the sponsor by January 1, 2015.

These requirements minimally increase the administrative burden of both ODE and community schools to provide these approvals.

Internet- or computer-based schools

Under the bill, Internet- or computer-based community schools are required to do the following: (1) keep a record of each student's participation in learning opportunities on a daily basis, and make it available, upon request, to ODE and the Auditor of State, (2) conduct a student orientation course as a condition of enrollment, and (3) communicate, with a student's parents, guardians, or custodians regarding the academic performance and progress of each student and provide opportunities for parent-teacher conferences. The bill also creates the option for such a school, at the time of a student's enrollment, to ask the student's parent or guardian to estimate the length of time the student will attend the school. If the school collects this information, it must be reported in the school's annual report. The bill's requirements create a minimal additional administrative burden for these schools.

Dropout recovery school committee

The bill creates a committee consisting of members of the General Assembly, a business leader, designees from a community college and university, representatives from the Board of Regents and the Department of Education, and superintendents from a dropout recovery school, career-technical school, and "Big Eight" school district to make recommendations regarding the definition of "quality" for dropout recovery community schools and to study the efficacy of completion or competency-based funding structures for those schools. A report of recommendations must be submitted not later than six months after the effective date of the bill. This provision creates a negligible administrative burden for the institutions of appointed committee members.

Student counts

For purposes of the student counts used for funding, the bill permits (rather than requires as under current law) a student in any of grades nine through twelve to be considered a full-time equivalent student if the student is enrolled in at least five units of instruction per school year. Depending on ODE's policies, this may affect school ADM for funding purposes.

Additional ODE requirements

The bill requires that the State Board of Education make two recommendations to the General Assembly and Governor regarding community schools in which a majority of enrolled students are children with disabilities who receive special education and related services. The recommendations pertain to school performance standards and the feasibility of removal of the exemption from permanent closure. The recommendations, due by June 30, 2016, create a minimal administrative burden for ODE.

The bill requires that ODE develop and publish an annual report on operator performance of community schools in the state, based on their performance for the previous school year, no later than November 15 of each year starting in 2016. ODE must also, beginning March 31, 2016, maintain records and information regarding all community school operators, post each operator contract on its website, and publish a directory of names. Additionally, ODE must provide guidance to Internet- or computer-based community schools for developing and delivering the orientation course required above.

Student academic progress study

The bill requires ODE to evaluate the validity and usefulness of using the "similar students measure" to calculate student academic progress and submit a report on its findings and recommendations to the State Board of Education and the General Assembly by December 1, 2016. This requirement poses no more than a minimal cost for ODE.

Direct authorization

The bill eliminates current law requiring ODE to approve each direct authorization application from a community school that satisfies the initial requirements of sponsorship and instead gives ODE discretion to approve or deny applications based on standards for quality authorization, capacity requirements, financial constraints, and other necessary and appropriate criteria. Under continuing law, ODE is permitted to approve up to 20 applications each school year, of which only five may be establishing new schools. The bill permits ODE to establish a guide and deadlines for application for direct authorization of community schools and requires ODE to annually publish on its website the criteria it uses to approve or deny an application. Also, the bill prohibits ODE from approving applications for direct authorization of community schools in an alliance municipal school district (Cleveland) unless the applicant has requested and received a recommendation from the Cleveland Transformation Alliance, in addition to the other criteria and requirements that must be met for direct authorization of applications in general. These provisions create a minimal administrative burden for ODE, but may lead to fewer schools receiving direct authorization, which will decrease ODE's expenditures. In light of the legislation, the bill repeals a provision from H.B. 64 of the 131st General Assembly that requires ODE to submit recommendations regarding a plan to expand ODE's authority to directly authorize community schools.

Conversion school report card data

The bill prohibits the Department from combining data from any conversion community school that a district sponsors if a majority of the students enrolled in the conversion community school are enrolled in a dropout prevention and recovery program that is operated by the school and instead requires the Department to include as an addendum to the district's report card the ratings and performance measures of that community school. The addendum must include, at a minimum, data regarding graduation rates, passage rates on high school assessments, and progress toward annual measurable objectives. This provision creates an additional minimal administrative burden for ODE. In FY 2014, 33 conversion community schools were granted waivers from rolling the academic accountability data into the authorizing district's report card.

Community school employees and retirement system memberships

School Employees Retirement System

The bill generally excludes from School Employees Retirement System (SERS) membership individuals who (1) were initially employed by a community school on or after July 1, 2016 if their community school operator withholds and pays Social Security taxes for them or (2) were formerly employed by a community school, are reemployed by the school operator after July 1, 2016, and the operator withholds and pays Social Security taxes. The bill provides two exceptions to the second general rule, specifying that the following rehired individuals are included in SERS membership: (1) any person

who was employed by the same operator at any time during the period between July 1, 2015 and June 30, 2016, and whose date of reemployment is before July 1, 2017, and (2) any person who was employed by the same operator at any time during the 12-month period preceding the date the operator for the first time withholds and pays employee and employer Social Security taxes on behalf of its employees, had previously only contributed to SERS, and the person's date of reemployment is not more than 12 months after the date the operator for the first time withholds and pays employee and employer Social Security taxes.

State Teachers Retirement System

Similarly, the bill generally excludes from State Teachers Retirement System (STRS) membership teachers who (1) are employed by a community school if their community school operator withholds and pays Social Security taxes for them or (2) would otherwise be a teacher but terminated employment with such a community school operator for a period of at least one year. The bill provides an exception to the first type of exclusion, for teachers who had contributing service with STRS in a community school in the state within one year prior to the later of July 1, 2016, or the date on which the operator for the first time withholds and pays the taxes. The bill also provides that a faculty member who is employed by a community school or a science, technology, engineering, and mathematics (STEM) school is included in STRS membership.

Fiscal effect

The provisions related to SERS and STRS memberships would decrease community school operators' costs associated with retirement contributions from certain employees, for those school operators that opt to shift employees to Social Security. Currently, employers are required to contribute 14% of an employee's payroll into STRS or SERS, a higher rate than the Social Security contribution rate of 6.2%.