



# OHIO LEGISLATIVE SERVICE COMMISSION

## Final Analysis

Carol Napp

### Sub. H.B. 438

131st General Assembly  
(As Passed by the General Assembly)

- Reps.** Patterson, Boyd, M. O'Brien, Phillips, K. Smith, Lepore-Hagan, Ramos, Bocchieri, Leland, Howse, Slaby, Brenner, Fedor, Cupp, Schaffer, R. Smith, Anielski, Antonio, Barnes, Bishoff, Boggs, Boyce, Brown, Craig, Dovilla, Duffey, Grossman, Hambley, Hayes, G. Johnson, Kuhns, Kunze, Manning, S. O'Brien, Reece, Rezabek, Roegner, Rogers, Ruhl, Ryan, Sheehy, Sweeney, Sykes, Thompson, Young
- Sens.** Bacon, Balderson, Beagle, Brown, Burke, Coley, Eklund, Faber, Gardner, Gentile, Hackett, Hite, Hottinger, Hughes, Jones, Jordan, LaRose, Lehner, Manning, Obhof, Oelslager, Patton, Peterson, Sawyer, Schiavoni, Seitz, Skindell, Tavares, Thomas, Uecker, Williams

**Effective date:** April 6, 2017

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## ACT SUMMARY

### "Ohio Public Education Appreciation Week"

- Designates the week prior to the week of Thanksgiving Day as "Ohio Public Education Appreciation Week."

### School counselor evaluations

- Permits a district or school, beginning with the 2017-2018 school year, to choose not to evaluate certain school counselors.

### Anatomical gift instruction

- Requires each school district to include instruction in the process of making an anatomical gift in the district's health curriculum.

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\* This version updates the effective date and reflects a R.C. number change from R.C. 5.235 to R.C. 5.2311. See <https://www.legislature.ohio.gov/download?key=6434&format=pdf>.

- Requires the Second Chance Trust Fund Advisory Committee to submit recommendations for the instruction to the Department of Education by July 1, 2017.
- Requires the Department, upon receiving the recommendations, to publish them on its website.

### **Disposal of property by school districts**

- Modifies the timelines for the sale or lease of real property or unused facilities by a school district by requiring only one 60-day offer period to all start-up community schools and college-preparatory boarding schools within the district but retaining the priority status afforded to high-performing community schools.
- Requires the Department of Education to post in a prominent location on its website a list of schools that qualify as high-performing community schools.

### **Facilities funding for certain consolidating school districts**

- Requires the School Facilities Commission to give a school district first priority for funding for a project under the Classroom Facilities Assistance Program if that district (1) results from a transfer, merger, consolidation, or creation of a new local district that becomes effective between July 1, 2013, and June 30, 2018 and (2) has demonstrated to the Commission an efficient use of facility space.
- Specifies that, if an eligible school district results from a transfer, merger, consolidation, or creation of a new local district that takes place prior to the act's effective date, the district's portion of the total project cost must be the required percentage of the basic project cost based on the percentile ranking of the lowest wealth district that was transferred, merged, consolidated, or existed prior to the creation of the new district.
- Permits the Commission to reduce an eligible school district's portion of the total cost of the project by 25 percentage points, provided the district's portion is at least 5%.
- Permits the Commission to reduce an eligible school district's portion of the total project cost by an additional 10 percentage points, provided the district's portion is at least 5%, if the district's project involves construction of a building on land owned by a state institution of higher education that is participating in the College Credit Plus Program and certain criteria are satisfied.

## **Guidelines for prioritizing facility funding for joint facilities projects**

- Repeals law that requires the School Facilities Commission to adopt rules providing guidelines for prioritizing facility funding for districts that voluntarily develop joint use agreements and permits the Commission to advance the funding priority for projects of districts that are parties to such agreements.

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## **CONTENT AND OPERATION**

### **"Ohio Public Education Appreciation Week"**

The act designates the week prior to the week of Thanksgiving Day as "Ohio Public Education Appreciation Week."<sup>1</sup>

### **School counselor evaluations**

Under continuing law, all school counselors must be evaluated annually, unless the counselor is "high-performing." Under the act, beginning with the 2017-2018 school year, a district or school also may choose not to evaluate a school counselor who either:

(1) Was on leave from the school district for 50% or more of the school year; or

(2) Has submitted a notice of retirement, if the notice has been accepted by December 1 of the school year in which the evaluation is otherwise scheduled to be conducted.<sup>2</sup>

Separate continuing law provides the same exemptions for teacher evaluations.<sup>3</sup>

### **Instruction in the process of making an anatomical gift**

The act requires each school district to include instruction in the process of making an anatomical gift in the district's health curriculum. This instruction must emphasize the life-saving and life-enhancing effects of organ and tissue donation.<sup>4</sup>

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<sup>1</sup> R.C. 5.2311.

<sup>2</sup> R.C. 3319.113.

<sup>3</sup> R.C. 3319.111(C)(2)(d), not in the act.

<sup>4</sup> R.C. 3313.60(A)(5)(g). See R.C. Chapter 2108., not in the act.



Law not affected by the act authorizes the State Board of Education to require the inclusion of information promoting the donation of anatomical gifts as part of a district's health curriculum.<sup>5</sup>

### **Recommendations for the instruction**

The act requires the Second Chance Trust Fund Advisory Committee to submit recommendations for the instruction in the process of making an anatomical gift to the Department of Education by July 1, 2017. Under continuing law, the Advisory Committee makes recommendations regarding the Second Chance Trust Fund, which is used to raise awareness about the donation of anatomical gifts in Ohio.<sup>6</sup>

Upon receiving the recommendations, the Department must publish them in a prominent location on its website for use by school districts in developing their health curricula.<sup>7</sup>

### **Disposal of property by school districts**

The act streamlines the process by which a school district board of education must offer real property and unused facilities for sale or lease to the governing authorities of community schools.

Under prior law, a school district board, when it decided to sell real property or unused facilities, was required to first offer that property or facilities for sale to the governing authorities of "high-performing" community schools and newly established community schools with a community school model that had a track record of high quality academic performance, as determined by the Department of Education, for a period of 60 days. Next, the board was required to offer the property for sale or lease to the governing authorities of the start-up community schools and the board of trustees of any college-preparatory boarding schools that were located within the school district's territory for an additional 60 days.<sup>8</sup> If no high-performing community school, start-up community school, or college-preparatory boarding school accepted the offer the board was permitted to sell or lease the property or facilities pursuant to continuing law.<sup>9</sup>

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<sup>5</sup> R.C. 3301.07(E), not in the act.

<sup>6</sup> See R.C. 2108.34 and 2108.35, neither in the act.

<sup>7</sup> Section 3.

<sup>8</sup> R.C. 3313.41(G) (division removed by the act) and 3313.413(B).

<sup>9</sup> R.C. 3313.41(G). See also divisions (A) through (F).



Under the act, start-up high-performing community schools within the district retain first priority, but the school district must offer the property to all community schools and college-preparatory boarding schools for only one period of 60 days.

### **Sale of real property**

Under the act, when a school district board of education offers to sell property or unused facilities, it must offer it to the governing authorities of all start-up community schools and the boards of trustees of any college-preparatory boarding schools that are located within the district, but the board must give first priority to high-performing start-up community schools. If more than one high-performing start-up community school notifies the district treasurer of its intention to purchase the property, the board must conduct a public auction. Only the high-performing start-up community schools that notified the district treasurer are eligible to bid at the auction.<sup>10</sup>

If no high-performing start-up community school notifies the treasurer of its intention to purchase the property, the board must then proceed with the offers from all other start-up community schools and college-preparatory boarding schools. If more than one notifies the treasurer, the board must conduct a public auction among them.

Only if no start-up community school or college-preparatory boarding school notifies the district treasurer of its intention to purchase the property may the district offer the property for sale in the manner prescribed under continuing law.<sup>11</sup> Generally, that law requires sale by public auction, but also permits private sale in specified circumstances.<sup>12</sup>

### **Lease of unused facilities**

Under the act, if more than one high-performing community school notifies the district treasurer of its intention to *lease* unused facilities, the board must conduct a lottery to select from among them the one qualified high-performing community school to which the district must lease the property. If no high-performing community school wishes to lease the property, the board must proceed with the offers from all other start-up community schools and college-preparatory boarding schools that are located within the district. If more than one start-up community school or college-preparatory boarding school notifies the district of its intention to lease the property, the board must

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<sup>10</sup> R.C. 3313.411(C)(2) and 3313.413(B)(1).

<sup>11</sup> R.C. 3313.411(C)(3) and 3313.413(B)(2).

<sup>12</sup> R.C. 3313.41(A) to (F).



conduct a lottery to select from among those parties the one qualified party to which the district board must lease the property.<sup>13</sup>

### **List of high-performing schools**

The act requires the Department of Education, by each October 1, to post in a prominent location on its website a list of schools that qualify as high-performing community schools.<sup>14</sup>

For purposes of priority for acquiring school district property, continuing law defines a "high-performing" community school as follow:

(1) The school received a grade of "A," "B," or "C" for the performance index score or has increased its performance index score for the previous three years, and it received a grade of "A" or "B" for the value-added progress dimension on its most recent report card rating;

(2) If the school serves only grades K through 3, the school received a grade of "A" or "B" for making progress in literacy on its most recent report card;

(3) If the school is a dropout recovery school, the school received a rating of "exceeds standards" on its most recent report card.

Law retained by the act also gives priority to newly established community schools that are implementing school models that have a track record of high-quality academic performance as determined by the Department.<sup>15</sup>

### **Classroom facilities assistance for certain consolidating districts**

The act requires the School Facilities Commission, if it determines that a city, local, or exempted village school district is an eligible school district, to give that district first priority for funding for a project under the Classroom Facilities Assistance Program as funds become available, regardless of the district's percentile ranking for that program.<sup>16</sup>

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<sup>13</sup> R.C. 3313.411(C)(3).

<sup>14</sup> R.C. 3313.413(D).

<sup>15</sup> R.C. 3313.413(A).

<sup>16</sup> R.C. 3318.036(B)(1).

## **Eligible school district**

For this purpose, an "eligible school district" is a city, local, or exempted village school district that satisfies both of the following:

(1) The district resulted from a specified merger, consolidation, or transfer that became effective between July 1, 2013, and June 30, 2018.

(2) The district has demonstrated to the Commission an efficient use of facility space, including a reduction in the number of buildings used by students and administrative staff.<sup>17</sup>

## **District's portion of the project cost**

### **Initial determination**

The act specifies that, if an eligible school district results from a transfer, merger, consolidation, or creation of a new local district that takes effect prior to the act's effective date, the district's portion of the total cost of the project must be the "required percentage of the basic project cost" (1% times a district's wealth percentile)<sup>18</sup> based on the percentile ranking of the lowest wealth district that was transferred, merged, consolidated, or existed prior to the creation of the new district.<sup>19</sup>

However, if an eligible school district results from a transfer, merger, consolidation, or creation of a new local district that takes effect on or after the act's effective date, the district's portion of the total cost of the project must be the "required percentage of the basic project cost" based on the wealth percentile ranking of the newly formed district.<sup>20</sup>

### **Reductions of the initial determination of a district's portion**

The Commission may reduce an eligible school district's portion of the total cost of the project by 25 percentage points, provided that the district's portion is at least 5%.<sup>21</sup>

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<sup>17</sup> R.C. 3318.036(A)(1).

<sup>18</sup> See R.C. 3318.01, not in the act.

<sup>19</sup> R.C. 3318.036(B)(1).

<sup>20</sup> See R.C. 3318.032, not in the act.

<sup>21</sup> R.C. 3318.036(B)(2).



Additionally, the Commission may reduce an eligible school district's portion of the total cost by an additional 10 percentage points if the district's project satisfies all of the following conditions, provided the district's portion is at least 5%:

(1) It involves construction of a building on land owned by a state institution of higher education, and the Commission approves the project.

(2) The district and the institution enter into a written agreement regarding the continued use of the institution's land by the district, and the Commission approves the agreement.

(3) On the date the district and institution enter into the written agreement, the institution is participating in the College Credit Plus Program.<sup>22</sup>

### **Guidelines for prioritizing facility funding for joint facilities projects**

The act repeals law that:

(1) Requires the School Facilities Commission to adopt rules providing guidelines for prioritizing facility funding for districts that voluntarily develop joint use or other cooperative agreements that significantly improve the efficiency of the use of facility space within or between districts; and

(2) Permits the Commission to advance the funding priority for projects of districts that are parties to such agreements if the Commission determines that the agreements comply with the guidelines.<sup>23</sup>

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	01-27-16
Reported, H. Education	05-04-16
Passed House (95-1)	05-18-16
Reported, S. Education	12-07-16
Passed Senate (31-0)	12-08-16
House concurred in Senate amendments (85-8)	12-08-16

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<sup>22</sup> R.C. 3318.036(B)(3).

<sup>23</sup> Repealed R.C. 3318.32; conforming changes in R.C. 3318.02, 3318.024, and 3318.30.

