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S.B. 358*
133rd General Assembly

Bill Analysis

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Version: As Reported by Senate Education

Primary Sponsors: Sens. Fedor and Manning

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SUMMARY

Assessment related provisions

State assessments

- Requires the Superintendent of Public Instruction to consult with specified stakeholders regarding whether to seek a waiver from federal testing requirements if one becomes available.
- Authorizes the state Superintendent to submit a waiver request to the U.S. Secretary of Education after consulting with specified stakeholders.
- Exempts all public and chartered nonpublic schools from administering state assessments, other than the nationally standardized assessments (ACT or SAT), for the 2020-2021 school year if a waiver is granted by the Secretary of Education.

State aid to districts

- Extends to the 2021-2022 school year the prohibition for the Department of Education from subtracting from a district or school's student count for state funding any students to whom a district or school did not administer assessments in the 2020-2021 school year.

* This analysis was prepared before the report of the Senate Education Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

E-school students

- Extends to the 2020-2021 school year the prohibition for an internet- or computer-based school from withdrawing students who were unable to complete assessments.

Scholarship students

- Extends to the 2021-2022 school year the provision that specifies that students participating in certain state scholarship programs may apply to renew their scholarships regardless of whether they took the state assessments in the 2020-2021 school year.

Homeschooled students

- Extends to the 2021-2022 school year the waiver of the administrative requirement that the parents of a homeschooled student must submit assessment data to the resident school district as a condition of the district allowing the student to continue to receive home instruction.

Reports

- Extends the provision that permits the state Superintendent to waive the requirement to complete any report based on data from assessments that would have been but were not administered in the 2020-2021 school year.

Third-grade reading guarantee

- Extends the exemption for schools from retaining a student under the third-grade reading guarantee based solely on the student's academic performance in reading in the 2020-2021 school year, unless the student's principal and reading teacher determine the student is not reading at grade level and is not prepared for fourth grade.

High school graduation

- Extends to the 2020-2021 school year the authority for public and nonpublic schools to grant a diploma to any student on track to graduate and for whom the principal, in consultation with teachers and counselors, determines has successfully completed the high school curriculum or individualized education program.
- Extends the permission for a student who was scheduled to take or re-take an end-of-course exam in the 2020-2021 school year, but did not do so because the exam was cancelled, to use the student's final course grade in lieu of an exam score to satisfy conditions for a high school diploma.
- Specifies that a student also may use a final course grade in lieu of an exam score if the student meets conditions related to being quarantined, medically compromised, or subject to a stay-at-home order, or if the student is receiving instruction through a remote learning model.
- Extends the provision that specifies that a student who was scheduled to take an end-of-course exam for the first time in the 2020-2021 school year may use a final grade for

a course completed in that year, while a student who was scheduled to re-take an exam that was cancelled may use a grade for a course completed in that year or a prior year.

Report cards; sanctions and penalties

- Extends the prohibition on the Department of Education from publishing and issuing ratings for overall grades, components, and individual measures on the state report cards and submitting preliminary data for report cards for school districts and buildings for the 2020-2021 school year.
- Extends the safe harbor from penalties and sanctions for districts and schools based on the absence of state report card grades for the 2020-2021 school year.

Ed Choice performance-based scholarship amounts

- Specifies that performance-based Educational Choice (Ed Choice) scholarship amounts for the 2021-2022 school year must be reduced by the same percentage as the community school per pupil opportunity grant if the Governor issues an executive order reducing state expenditures for that year.

Community school sponsor evaluations

- Extends the prohibition against the use of certain components for community school sponsor ratings for the 2020-2021 school year.

Academic distress commissions

- Requires the Department of Education, not later than 60 days after the bill's effective date, to establish a process under which a school district board of education may submit a proposal to transition its district out of control of an academic distress commission (ADC).
- Establishes a committee to review the submitted proposals at a public hearing and to vote on whether to recommend that the Superintendent of Public Instruction approve the proposal.
- Dissolves on May 30, 2021, the existing ADC of a school district that received an overall grade of "D" or higher on the state report card for the 2018-2019 school year.

Other education provisions

- Extends the authority for the state Superintendent to adjust deadlines for certain annual requirements for the 2020-2021 school year.
- Extends for the 2020-2021 school year the authority for the state Superintendent to waive or extend deadlines and to grant providers and students flexibility for completion of adult education program requirements.
- Extends for the 2020-2021 school year the authority for the Department, on behalf of the State Board of Education, to issue one-year, nonrenewable, provisional licenses to

educators that have met all other requirements for the requested license except for the requirement to pass a subject area exam.

- Eliminates the Columbus City School District Pilot Project.

Emergency clause

- Declares an emergency.

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DETAILED ANALYSIS

Assessment related provisions

State assessments

The bill requires the Superintendent of Public Instruction to consult with stakeholders regarding whether to seek a waiver from testing requirements prescribed under federal law for the 2020-2021 school year if one becomes available from the U.S. Secretary of Education. Specifically, the state Superintendent must consult with at least:

1. The Buckeye Association of School Administrators;
2. The Ohio School Boards Association;
3. The Ohio Association of School Business Officials;
4. The Ohio Education Association;
5. The Ohio Federation of Teachers;
6. The Ohio Parent Teacher Association;
7. The Ohio Chamber of Commerce; and
8. Ohio Excels.

After consulting with those stakeholders, the state Superintendent is authorized to submit to the Secretary of Education a waiver request. If a waiver request is granted, public and chartered nonpublic schools are not required to administer the elementary state achievement assessments and high school end-of-course exams. The provision also waives the Ohio English Language Proficiency Assessment administered to English learners, WebXams for career-technical education students, and the Alternate Assessment for Students with Significant Cognitive Disabilities. However, districts and schools must still administer the nationally standardized assessments (ACT or SAT) as required under continuing law¹

Federal law requires one assessment in reading and one assessment in mathematics for each of grades three through eight. Students in grades nine through twelve are required to take one assessment each in reading and math between grades ten and twelve. One science assessment is required between grades three and five, one between grades six and nine, and one between grades ten and twelve.

State aid to districts

The bill extends to the 2020-2021 school year a provision of H.B. 197 of the 133rd General Assembly to prohibit the Department of Education from subtracting from a district or

¹ Section 17(A)(1)(b) and (c) of H.B. 197 of the 133rd General Assembly, amended by Section 6 of the bill.

school's student count for state funding any students to whom a district or school did not administer assessments in the 2020-2021 school year.²

E-school students

The bill also extends a provision of H.B. 197 that prohibits an internet- or computer-based school from withdrawing students who were unable to complete assessments for the 2020-2021 school year.³

Scholarship students

The bill extends a provision of H.B. 197 that specifies that students participating in the Educational Choice Scholarship Program, the Jon Peterson Special Needs Scholarship Program, or the Pilot Project (Cleveland) Scholarship Program may apply to renew their scholarships for the 2021-2022 school year regardless of whether they took the state assessments in the 2020-2021 school year.⁴

Continuing law specifies that a student who receives a state scholarship will remain eligible for that scholarship and may continue to receive that scholarship in subsequent school years if the student meets certain eligibility requirements.⁵ One of those requirements is that the student take all required state assessments unless otherwise excused.

Homeschooled students

The bill extends to the 2020-2021 school year H.B. 197's waiver of the administrative requirement that the parents of a homeschooled student must submit assessment data to the resident school district as a condition of the district allowing the student to continue to receive home instruction.⁶

Reports

The bill extends the authority granted to the state Superintendent by H.B. 197 to waive the requirement to complete any report based on data from assessments that would have been but were not administered in the 2020-2021 school year.⁷

² Section 17(A)(3) of H.B. 197 of the 133rd General Assembly, amended by Section 6 of the bill. See also, R.C. 3314.08(L)(3), 3317.03(E)(3), and 3326.37, none in the bill.

³ Section 17(A)(4) of H.B. 197 of the 133rd General Assembly, amended by Section 6 of the bill.

⁴ Section 17(A)(5) of H.B. 197 of the 133rd General Assembly, amended by Section 6 of the bill.

⁵ R.C. 3301.0711(K), 3310.03(F), 3310.522, and 3313.976(A)(11), none in the bill.

⁶ Section 17(L) of H.B. 197 of the 133rd General Assembly, amended by Section 6 of the bill. See Ohio Administrative Code 3301-34-04.

⁷ Section 17(G) of H.B. 197 of the 133rd General Assembly, amended by Section 6 of the bill.

Third-grade reading guarantee

The bill extends to the 2020-2021 school year provisions of H.B. 197 that exempt schools from retaining students in the third grade under the third-grade reading guarantee based solely on a student's academic performance in reading, unless the student's principal and reading teacher determine the student is not reading at grade level and is not prepared for fourth grade.⁸

High school graduation

High school diplomas

The bill extends up to September 30, 2021, the authority for public and nonpublic schools to grant a diploma to any student on track to graduate and for whom the principal, in consultation with teachers and counselors, determines that the student has successfully completed the high school curriculum or individualized education program.⁹

The bill also expressly extends the authority for a district or school that has previously adopted a resolution to exceed the state minimum high school curriculum requirements to elect to require only the minimum curriculum for the purpose of determining high school graduation for the 2020-2021 school year.¹⁰

High school diploma qualifications

Subsequent to the enactment of H.B. 197, H.B. 164 further addressed high school diploma qualifications. The bill extends to the 2020-2021 school year the authority for a student who was scheduled to take or re-take an end-of-course exam in the 2020-2021 school year, but did not do so because the exam was cancelled, to use the student's final course grade in lieu of an exam score to satisfy conditions for a high school diploma.

In addition to that extension of authority, it also specifies that a student may use a final course grade in lieu of an exam score if:

1. The student is being quarantined;
2. The student, or a member of the student's family, is medically compromised and the student cannot attend school, or another physical location outside of the home, for the testing;
3. The student resides in a geographic area that is subject to an order issued by the Governor, the Department of Health, or the board of health of a city or general health district that requires all persons in that area to remain in their residences; or

⁸ Section 17(C) of H.B. 197 of the 133rd General Assembly, amended by Section 6 of the bill.

⁹ Section 17(D)(2) of H.B. 197 of the 133rd General Assembly, amended by Section 6 of the bill.

¹⁰ Section 17(D)(3) of H.B. 197 of the 133rd General Assembly, amended by Section 6 of the bill. See also R.C. 3313.603(C) to (F), not in the bill.

4. The student is receiving instruction primarily through a remote learning model up through the deadline for the prescribed assessments and they cannot be administered remotely.

A student who was scheduled to take an end-of-course exam for the first time in the 2020-2021 school year may use the final grade the student received in that school year, while a student who was scheduled to re-take an exam may use a grade from that school year or a prior school year.¹¹

For the purposes of determining whether a student satisfies a condition for a high school diploma, the bill relies on competency score and end-of-course exam performance levels equivalencies established by H.B. 164. A table describing these equivalencies can be found on p. 11 of the H.B. 164 Final Analysis at <https://www.legislature.ohio.gov/download?key=14305&format=pdf>.

In addition, the bill extends a provision that specifies that a student who completes a course associated with an end-of-course exam for the 2020-2021 school year must be considered to have completed an administration of that exam for the purposes of determining whether the student may use an alternative demonstration competency in lieu of attaining a competency score.¹²

Finally, the bill extends permission to a student who completed a course associated with an end-of-course exam in the 2020-2021 school year to choose to take that exam in a subsequent school year.¹³

Report cards; sanctions and penalties

The bill extends for the 2020-2021 school year H.B. 197's prohibition on the Department of Education from publishing and issuing ratings for overall grades, components, and individual measures on the state report cards for any school districts or schools. It also relieves the Department from the requirement to submit preliminary data for report cards for school districts and buildings, extending the deadline of July 31, 2020, as required under current law, to the 2020-2021 school year.

However, the Department must report any data that it has regarding the performance of districts and buildings for the 2020-2021 school year by September 15, 2021.

The bill also extends a safe harbor from various penalties and sanctions established by H.B. 197 for districts and schools based on the absence of state report card grades for the 2020-2021 school year.

¹¹ Section 12(A) and (B) of H.B. 164 of the 133rd General Assembly, amended by Section 4 of the bill.

¹² Section 12(C) of H.B. 164 of the 133rd General Assembly, amended by Section 4 of the bill.

¹³ Section 12(D) of H.B. 164 of the 133rd General Assembly, amended by Section 4 of the bill.

This provision may conflict with the recently enacted S.B. 89 of the 133rd General Assembly, which modifies student eligibility criteria for first-time performance-based Ed Choice scholarships beginning with the 2021-2022 school year. The result is uncertain.

Ed Choice performance-based scholarship amounts

The bill specifies that performance-based Educational Choice (Ed Choice) scholarship amounts for the 2021-2022 school year must be reduced by the same percentage as the per pupil opportunity grant for community schools for that year is reduced under any executive order issued by the Governor after the bill's effective date. The Department is required to make any necessary adjustments to payments and deductions for performance-based scholarships to reflect those reductions.¹⁴

This provision may conflict with the recently enacted S.B. 89 of the 133rd General Assembly, which modifies student eligibility criteria for first-time performance-based Ed Choice scholarships beginning with the 2021-2022 school year. The result is uncertain.

Background – Ed Choice Scholarship Program

The Ed Choice Scholarship Program operates statewide in every school district except Cleveland to provide scholarships for students who are (1) assigned or would be assigned to district schools that have persistently low academic achievement (known as “traditional” or “performance-based” Ed Choice) or (2) from low-income families (known as “income-based” Ed Choice Expansion).

An Ed Choice scholarship amount be the lesser of: (1) the tuition charged by the chartered nonpublic school, minus qualifying discounts not related to the student's family income, athletic ability, or academic ability, or (2) the maximum scholarship award. The maximum scholarship award is \$4,650 for students in grades K-8 and \$6,000 for students in grades 9-12. Performance-based scholarship amounts are deducted from the state aid accounts of scholarship recipients resident school districts.¹⁵

Background – Governor's authority to reduce state expenditures

Statutory law gives the Governor broad authority to determine how to reduce state expenditures when necessary to maintain a balanced budget during a revenue shortfall.¹⁶ On May 7, 2020, Governor DeWine issued an executive order reducing state expenditures in FY 2020, including state funding to school districts, community schools, and STEM schools, in response to the COVID-19 pandemic.

¹⁴ Section 14.

¹⁵ R.C. 3310.01 to 3310.17, none in the bill.

¹⁶ R.C. 126.05, not in the bill.

Community school sponsor evaluations

The bill extends, for the 2020-2021 school year, the prohibition against community school sponsor ratings established under H.B. 197. It specifically prohibits the Department from (1) issuing a rating for the academic performance component, (2) using that rating for the overall rating, and (3) finding a sponsor out of compliance with laws and rules for any requirement for an action that should have occurred but did not due to implications of COVID-19.¹⁷

Academic distress commissions

Process for school districts to propose to transition out of an academic distress commission

The bill requires the Department of Education, not later than 60 days after the bill's effective date, to establish a process under which a school district board of education may submit a proposal to transition its district out of control of an academic distress commission (ADC).¹⁸

Additionally, it requires each proposal to include (1) a description of the academic progress the district is making, (2) a rationale for transitioning the district from out of ADC control, and (3) any other information or data that the district board considers relevant.

Review committee established

The bill establishes a committee composed of the Governor or designee, the Senate Education Committee Chairperson, and the House Primary and Secondary Education Committee Chairperson to review the submitted proposals at a public hearing and to vote on whether to recommend that the Superintendent of Public Instruction approve the proposal.¹⁹

The bill specifies that the committee may consider the district's report card data for the 2019-2020 school year, that the Department must provide any necessary support to the committee, and that a proposal that receives a majority vote in favor of recommending approval must be considered to have the committee's favorable recommendation.²⁰

The bill requires the state Superintendent to:²¹

1. Consider a proposal after the committee completes a public hearing and vote on it;
2. Consider whether the committee provides a favorable recommendation for its approval;

¹⁷ Section 17(F) of H.B. 197 of the 133rd General Assembly, amended by Section 6 of the bill.

¹⁸ R.C. 3302.037(B).

¹⁹ R.C. 3302.037(C).

²⁰ R.C. 3302.037(D).

²¹ R.C. 3302.037(E).

3. Approve a proposal only if the state superintendent determines that the district included in the proposal is making enough academic progress to transition out of ADC control.

Additionally, it specifies that, for an approved proposal, the ADC established for the district must transition operational, managerial, and instructional control from the ADC and the chief executive officer (CEO) to the district board of education not later than June 30, 2021, and that, upon completion of that transition, the CEO must relinquish all operational, managerial, and instructional control of the district to the district board and district superintendent and the ADC must cease to exist.²²

Finally, it specifies that a district for which an ADC is dissolved under the provision must not have an ADC established again based on report card ratings issued prior to the bill's effective date, but that an ADC must be established in accordance with continuing law based on any report card ratings issued after that date.

Dissolution of certain ADCs

The bill does the following with regard to school districts that received an overall grade of "D" or higher on the state report card for the 2018-2019 school year for which an ADC was established prior to the bill's effective date:²³

1. Dissolves the ADC on May 30, 2021;
2. Requires the district to continue operating under its ADC as prescribed by current law until that date, at which point the CEO must relinquish all control of the district to the district board and district superintendent and the ADC must cease to exist; and
3. Requires the Department to pay the remainder of each CEO's contract upon dissolution of the ADC dissolved under the bill.

The only school district to which this provision currently applies is the Lorain City School District.

Background reference

For a detailed background on the current law on academic distress commissions, see pp. 10-23 of the LSC Final Analysis for H.B. 70 of the 131st General Assembly at <https://www.legislature.ohio.gov/download?key=2653&format=pdf>.

²² R.C. 3302.037(F).

²³ R.C. 3302.103.

Other education provisions

Authority to adjust various deadlines

The bill extends to the 2020-2021 school year the authority for the state Superintendent under H.B. 197 to adjust deadlines for the following:²⁴

1. District teacher evaluations;
2. District intent to reemploy notifications;
3. School safety drills;
4. Emergency management tests;
5. Requirements to fill a vacancy on a district board of education;
6. Updating teacher evaluation policies; and
7. Gifted screening requirements.

College Credit Plus

The bill extends to the 2020-2021 school year the authority for the Chancellor of Higher Education, in consultation with the state Superintendent, to extend, waive, or otherwise modify requirements of the College Credit Plus Program.²⁵

However, H.B. 404 of the 133rd General Assembly, effective November 22, 2020, already expressly extended this authority to both the 2020-2021 and 2021-2022 school years.²⁶

Adult education

The bill extends to the 2020-2021 school year the authority for the state Superintendent to waive or extend deadlines, or otherwise grant providers and students flexibility, for completion of adult education program requirements otherwise interrupted due to the COVID-19 outbreak.²⁷

Provisional teacher licensure

For the 2020-2021 school year, the bill extends the authority for the Department of Education, on behalf of the State Board of Education, to issue one-year, nonrenewable, provisional licenses to educators who have met all other requirements for the requested license except for the requirement to pass a subject area exam prescribed by the State Board.

²⁴ Section 17(I) of H.B. 197 of the 133rd General Assembly, amended by Section 6 of the bill.

²⁵ Section 17(J) of H.B. 197 of the 133rd General Assembly, amended by Section 6 of the bill.

²⁶ Section 17(J) of H.B. 197 of the 133rd General Assembly, as amended by H.B. 404 of the 133rd General Assembly.

²⁷ Section 17(K) of H.B. 197 of the 133rd General Assembly, amended by Section 6 of the bill.

However, an educator who is issued a provisional license must take and pass the appropriate subject area exam before the license expires as a condition of advancing the license.²⁸

Columbus City Pilot Project

The bill eliminates the Columbus City School District Pilot Project.²⁹ Under current law, the Pilot Project is a program through which parents may petition the district to make reforms in certain poorly performing schools.

HISTORY

Action	Date
Introduced	08-27-20
Reported, S. Education	---

S0358-RS-133/ts

²⁸ Section 17(H) of H.B. 197 of the 133rd General Assembly, amended by Section 6 of the bill.

²⁹ Repealed R.C. 3302.042; conforming changes in R.C. 3302.036, 3302.12, and 3302.17 and Section 17(B)(2)(b) of H.B. 197 of the 133rd General Assembly, as amended in Sections 6 and 7 of the bill.