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S.B. 1*
135th General Assembly

Bill Analysis

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Version: As Reported by Senate Education

Primary Sponsor: Sen. Reineke

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SUMMARY

Transfer of State K-12 Governance

- Renames the Department of Education as the Department of Education and Workforce (DEW).
- Creates the position of the Director of Education and Workforce, who is appointed by the Governor, with the advice and consent of the Senate, and is the head of DEW.
- Establishes within DEW the Division of Primary and Secondary Education and the Division of Career-Technical Education, each of which is headed by a Deputy Director appointed by the Director with the advice and consent of the Senate.
- Transfers most of the powers and duties of the State Board of Education and the Superintendent of Public Instruction to DEW.
- Retains the State Board's and state Superintendent's powers and duties regarding educator licensure, licensee disciplinary actions, school district territory transfers, and certain other areas.

Workforce Development

- Requires DEW to develop informational materials for seventh and eighth graders about available career opportunities.
- Requires DEW to participate in the process to identify in-demand jobs.
- Requires the Governor to appoint the Deputy Directors to the Governor's Executive Workforce Board.

* 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.

March 1, 2023

Nonchartered nonpublic schools

- Codifies an administrative rule that sets minimum requirements for nonchartered nonpublic schools, including hours of instruction, educational requirements for teachers and administrators, curriculum, promotion, and safety requirements.
- Requires the Director of Education and Workforce to update existing rules to conform to the changes and prohibits the adoption of any additional rules for nonchartered nonpublic schools.

Home education and school attendance

- Excuses a child from attending school if the child is receiving home education in core subject areas supervised and directed by the child’s parent, instead of if the child is receiving education from a “qualified” person.
- In the event of cessation of proper home instruction, removes the district superintendent’s explicit power to recall previously excused absences and pursue truancy charges, but subjects home-educated students to the truancy law.
- Requires the Director of Education and Workforce to update existing rules to conform to the changes and prohibits the adoption of any additional rules regarding home education.

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DETAILED ANALYSIS

TRANSFER OF STATE K-12 GOVERNANCE

Department of Education and Workforce

The bill renames the Department of Education as the Department of Education and Workforce (DEW). It also creates the position of Director of Education and Workforce, who is appointed by the Governor with the advice and consent of the Senate, to oversee DEW and primary and secondary education in Ohio. To that end, the bill transfers to DEW, or where applicable the Director, most of the powers and duties assigned to the State Board of Education and the Superintendent of Public Instruction.

Examples of the powers and duties transferred include:

1. Adopting minimum education standards for elementary and secondary schools, and minimum operating standards for school districts;
2. Issuing and revoking state charters to school districts, school buildings operated by districts, and nonpublic schools that elect to seek a charter;
3. Developing state academic standards and model curricula;
4. Establishing the statewide program for assessing student achievement through standardized assessments;

5. Establishing the state report card system for school districts, community schools, STEM schools, and college-preparatory boarding schools;
6. Administering state scholarship programs;
7. Performing prescribed functions regarding the creation and operation joint vocational school districts;
8. Providing oversight to, and performing functions regarding, community schools, community school sponsors, and STEM schools; and
9. Calculating and distributing all foundation funding payments.

The State Board and the state Superintendent retain duties and broad powers regarding educator licensure, licensee disciplinary actions, school district territory transfers, and certain other areas. The bill transfers from the Department to the State Board any employees and assets necessary for the State Board to perform its retained powers and duties.¹

For more information about the role of the State Board and the state Superintendent under the bill, see “**State Board of Education**,” below.

Organization of the Department

Under the bill, DEW consists of the Division of Primary and Secondary Education and the Division of Career-Technical Education. Each division is headed by a Deputy Director appointed by the Director with the advice and consent of the Senate. However, the bill does not prescribe specific functions for either division.

Rather, except for those duties and powers retained by the State Board and state Superintendent, the bill vests responsibility for primary, secondary, special, and career-technical education in the Director. The Director may delegate duties and powers to either division as the Director determines appropriate. The Director also is responsible for employing personnel to carry out the Department’s powers and duties. However, the Director does not adopt rules regarding the State Board’s and state Superintendent’s retained powers.

The bill expressly states that DEW is subject to all provisions of law pertaining to departments, offices, or institutions established for the exercise of any function of state government. It also subjects DEW to the Administrative Procedure Act.²

Appointment of Director and Deputy Directors

Limits on interim officeholders

The bill expressly prohibits any individual from holding the office of, or serving on an interim basis for more than 45 days as, Director or Deputy Director without being appointed with the advice and consent of the Senate.³

¹ R.C. 3301.07 and 3301.13, and Section 7; conforming changes in numerous R.C. sections.

² R.C. 3301.13.

³ R.C. 3301.13(H).

Deputy Director qualifications

The bill requires the Director to appoint an individual with appropriate educational, professional, or managerial experience, as determined by the Director, to be a Deputy Director.⁴

Confirmation hearing

The bill requires the Senate Education Committee to hold at least one in-person hearing on the nomination of an individual to serve as Director or as a Deputy Director before the full Senate holds a confirmation vote on that nomination.⁵

Director's rulemaking authority

Under the bill, the Director is responsible for adopting DEW's administrative rules. However, it expressly limits the Director's rulemaking authority to the Director's or DEW's statutorily prescribed powers and duties. It also permits the General Assembly, in accordance with continuing law, to adopt a concurrent resolution to rescind or invalidate any administrative rule adopted by the Director.⁶ The Director is not authorized to adopt rules regarding the State Board's or state Superintendent's retained powers.

(The bill also addresses providing information about rulemaking in "**Public presentation requirement**" below.)

Rules regarding minimum education standards

Under current law, when the State Board adopts rules to prescribe minimum education standards, the State Board may include in those standards any factor it determines necessary. The bill eliminates that authority and, instead, specifies that the Director, when adopting minimum education standards, is limited to the powers and duties that are expressly prescribed and authorized in statute.⁷

Stakeholder outreach and rulemaking

The bill requires DEW to establish a stakeholder outreach process for use when it engages in rulemaking. DEW must establish a method under which stakeholders may elect to participate in the process. The process must include both a notice and an opportunity for stakeholder feedback prior to DEW initiating rulemaking and submitting a proposed rule to the Joint Committee on Agency Rule Review (JCARR). The process also may include stakeholders meetings, questionnaires for stakeholders, or stakeholder advisory groups.⁸

⁴ R.C. 3301.13(B)(2).

⁵ R.C. 3301.13(I).

⁶ R.C. 3301.13(E) and R.C. 106.042, not in the bill.

⁷ R.C. 3301.07(D)(2).

⁸ R.C. 3301.138.

The bill expressly states that a notice under the process is a not a public notice, but rather it is a courtesy for stakeholders. DEW also is not required to send draft rules out to, nor negotiate draft rule language with, stakeholders.⁹

Prior to initiating rulemaking

Prior to conducting a five-year review,¹⁰ adopting a new rule, or amending or rescinding an existing rule, DEW must notify stakeholders of its intent to initiate rulemaking and provide an explanation of the rationale for doing so. The notice must include:

1. For a five-year review in which DEW decides not to make any changes to an existing rule, a statement that the rule is not being changed;
2. For a new rule or an amendment or rescission of an existing rule, information explaining the rationale for the new rule or rule change, including any state or federal law changes that make it necessary; and
3. A link to a webpage on DEW's website that provides an opportunity to:
 - a. Review the existing rule, if one exists;
 - b. Submit public comments for a period of time established by DEW; and
 - c. Provide, as part of the public comment system, a chance to submit information that might aid DEW in preparing a business impact analysis, if one is required.

DEW must consider each submitted comment provided during the public comment period. However, it is not required to respond to them.¹¹

Prior to submitting a proposed rule to JCARR

Prior to submitting a proposed rule to JCARR, DEW must post the draft rule and a completed business impact analysis, if one is required, on DEW's website and notify stakeholders that they have been posted. The notice must include a link to a webpage on DEW's website that provides the opportunity to review the draft rule, and the business impact analysis if required, and submit public comments for a period established by DEW. DEW must consider each comment it receives and may revise the draft based on them.¹² If the Department determines further outreach is necessary, it must hold stakeholder meetings, send questions to stakeholders, or create stakeholder advisory groups.¹³

⁹ R.C. 3301.138(C) and (D).

¹⁰ R.C. 106.03 and 119.04, not in the bill.

¹¹ R.C. 3301.138(B)(1).

¹² R.C. 3301.138(B)(2).

¹³ R.C. 3301.138(B)(3).

Public presentation requirement

The bill requires the Director, or the Director's designee, to convene a public meeting at least every other month. DEW employees must conduct a presentation at each meeting that addresses any new information DEW has about:

1. Any of its significant new or existing initiatives, policies, or guidelines;
2. Any change to state or federal law that affects DEW or education stakeholders; and
3. Any rule the Director intends to adopt, amend, or rescind.

At the conclusion of a presentation, the Director, or designee, must provide an opportunity for public discussion on the information in the presentation or other appropriate topics, as determined by the Director or designee. DEW must make available via the internet an audio recording of each meeting within five days after its conclusion.

Under the bill, any nonemergency rule adopted after the bill's effective date is void unless the rule was included in a presentation conducted in one of these presentations.¹⁴

In addition, the bill requires the Director to schedule meetings for FY 2024 in a timely manner.¹⁵

Limits on DEW policies and guidance

The bill establishes that any policy adopted or guidance issued by the Director or DEW that is not expressly authorized or required by state or federal statute is advisory in nature. Furthermore, it also establishes that they are nonbinding on schools and educators and do not have the force and effect of law.¹⁶

State Board of Education

Duties and powers

As noted above, the State Board and the state Superintendent retain their duties and broad powers under continuing law regarding:

1. Educator licensure and licensee disciplinary actions;¹⁷
2. School district territory transfer determinations;¹⁸
3. The teacher and school counselor evaluation systems;¹⁹

¹⁴ R.C. 3301.137.

¹⁵ Section 7(H).

¹⁶ R.C. 3301.13(F).

¹⁷ R.C. 3301.071, 3301.074, 3301.28(C)(6), 3302.151(B)(3), 3319.22 to 3319.317, 3319.361, and 3319.51, most of which are not in the bill.

¹⁸ R.C. Chapter 3311, most of which is not in the bill.

¹⁹ R.C. 3319.111 to 3319.113.

4. The annual teacher recognition program;²⁰ and
5. The Educator Standards Board (ESB).²¹

However, the bill designates the Director of Education and Workforce, or the Director's designee, as a nonvoting, ex officio member of the ESB and its subcommittees.²²

The bill expressly reserves responsibility for the adoption of requirements for educator licensure and licensee disciplinary actions with the State Board, and largely excludes the Director and DEW from that process. The bill requires the State Board to adopt those requirements as rules in accordance with the Administrative Procedure Act.

Finally, the bill requires the State Board to make recommendations to the Director regarding priorities for primary and secondary education. It also permits the state Superintendent to serve as an adviser to the Director.²³

Administration

Under current law, the Department of Education is the organizational unit through which the state Superintendent administers the policies and statutorily prescribed powers and duties of the State Board and the state Superintendent.²⁴ With the transfer of control over the Department from the State Board to the Director, the bill establishes a separate administrative structure for the State Board and state Superintendent's powers and duties. That structure is similar to current law.

Specifically, the bill expressly states that, in accordance with the Ohio Constitution, the state Superintendent remains an appointee of the State Board. It further states that, in accordance with continuing law, the state Superintendent remains the State Board's secretary and executive officer.

The State Board remains subject to all provisions of law regarding state departments, offices, or institutions. The State Board must employ personnel to carry out its duties and powers. Subject to the State Board's policies, rules, and regulations, the state Superintendent exercises general supervision of those employees and may appoint them, fix their salary, and terminate their employment.

Finally, the State Board may request DEW's assistance in exercising the State Board's powers and duties. To the extent the Director determines that assistance necessary and practicable, DEW must provide the requested assistance.²⁵

²⁰ R.C. 3319.67, not in the bill.

²¹ R.C. 3319.60 to 3319.613.

²² R.C. 3319.60 to 3319.613.

²³ R.C. 3301.111(A) and (B).

²⁴ R.C. 3301.13, repealed.

²⁵ R.C. 3301.111.

Implementation deadline

The bill requires the Director, Department, State Board, and state Superintendent to complete any action necessary to implement the transfer of powers within 90 days of the bill's effective date.²⁶

Background – State Board of Education

The Ohio Constitution provides that there must be a State Board of Education and a Superintendent of Public Instruction appointed by the State Board. The selection and terms of members of the State Board, as well as the powers and duties of the State Board and the Superintendent, must be prescribed by law.²⁷

Under law unaffected by the bill, the voting membership of the State Board is 19 members, 11 of whom are elected from specified electoral districts (each consisting of three state Senate districts) and 8 of whom are appointed by the Governor. The chairpersons of the Senate and House Education committees serve as nonvoting ex officio members.²⁸

WORKFORCE DEVELOPMENT

Career opportunity informational materials

The bill requires DEW to develop and make available informational materials for seventh and eighth graders about career opportunities available to them, including in-demand jobs. The materials also must address how a career-technical education may help those students satisfy state high school graduation requirements.²⁹

In-demand jobs list

The bill requires DEW to participate in the process established under continuing law to identify and publicize in-demand jobs. Specifically, the bill:

1. Adds DEW to the entities required to develop a methodology to identify in-demand jobs and use that methodology to create an in-demand jobs list;
2. Requires DEW to post the in-demand jobs list on its website;
3. Adds DEW to the entities required to conduct a survey of employers about in-demand jobs and use the survey's results to update the in-demand jobs list; and
4. Adds DEW to the entities required to establish the OhioMeansJobs website.³⁰

Continuing law requires the Governor's Executive Workforce Board, in connection with the Department of Job and Family Services and higher education institutions, to develop a

²⁶ Section 7(G).

²⁷ Article VI, Section 4, Ohio Constitution.

²⁸ R.C. 3301.01.

²⁹ R.C. 3313.6020(D)(3).

³⁰ R.C. 6301.11, 6301.111, and 6301.112.

methodology for identifying in-demand jobs. The Department of Job and Family Services and higher education institutions, in consultation with the Board, must use that methodology to create a list of in-demand jobs, which the Department must post that list on its website.³¹

In addition, the Governor's Office of Workforce Transformation, in conjunction with the Department of Job and Family Services, must conduct a survey of employers regarding in-demand jobs every two years and update the in-demand jobs list with the survey's results. The Office of Workforce Transformation, in collaboration with the Department of Job and Family Services and the Department of Higher Education, also must create and publish an OhioMeansJobs website that includes the in-demand jobs list.³²

Governor's Executive Workforce Board

The bill requires the Governor to appoint the Deputy Director of Primary and Secondary Education and the Deputy Director of Career-Technical Education to the Governor's Executive Workforce Board.³³

The federal Workforce Innovation and Opportunity Act (WIOA) requires the Governor to establish a state workforce development board to carry out prescribed functions. WIOA prescribes specific requirements for the board's composition, but it permits the Governor to appoint state agency officials responsible for education programs to it.³⁴

NONCHARTERED NONPUBLIC SCHOOLS

As discussed above, the bill transfers the responsibility for adopting minimum education standards from the State Board of Education to the Director of Education and Workforce. However, the bill also codifies the State Board's administrative rule establishing standards for nonchartered nonpublic schools and expressly requires the Director to comply with it. Furthermore, the bill requires the Director, within 90 days of the bill's effective date, to amend or rescind any rules necessary to conform to those changes. Thereafter, it prohibits the Director and DEW from adopting any additional rules for nonchartered nonpublic schools.³⁵

Nonchartered nonpublic schools, which are also referred to as nonchartered nontax-supported schools, are private schools that choose not to not seek a state charter because of truly held religious belief. They do not receive any state funds. Students enrolled in them though may participate in extracurricular activities offered by their resident school district and the College Credit Plus Program.³⁶

³¹ R.C. 6301.11.

³² R.C. 6301.111 and 6301.112.

³³ R.C. 6301.04(A)(5).

³⁴ See 29 United States Code 3111(b)(1)(C)(iii)(II)(dd), not in the bill.

³⁵ R.C. 3301.07(D)(2), 3301.0731, and 3301.132. See also Ohio Administrative Code Rule 3301-35-08.

³⁶ R.C. 3365.03. See also R.C. 3313.5311, not in the bill.

Minimum education standards compliance report

The bill requires each nonchartered nonpublic school to annually certify in a report to the parents of its students that the school meets the minimum education standards for nonchartered nonpublic schools. The school must file a copy of that report with DEW by September 30 of each year.³⁷

Hours of instruction

A nonchartered nonpublic school must be open for instruction the same number of hours as schools operated by a school district, with students in attendance for:

1. 455 hours for students in half-day kindergarten;
2. 910 hours for students in full-day kindergarten through grade 6;
3. 1,001 hours for students in grades 7-12.³⁸

Attendance report

The bill requires the parent of a student to report to the student's resident school district the student's enrollment or withdrawal from a nonchartered nonpublic school. The bill permits but does not require the nonchartered nonpublic school, as a matter of convenience, to report to the treasurer on behalf of the parents.

Each attendance report must include the name, age, and place of residence of each student below 18 years of age. The report must be made within the first two weeks of the beginning of each school year. When a student withdraws or enrolls during the school year, that notice must be given within the first week of the next school month.³⁹

Teachers and administrators – educational requirements

The bill requires teachers and administrators at nonchartered nonpublic schools to hold at least a bachelor's degree, or the equivalent, from a recognized college or university.⁴⁰

Continuing law, unchanged by the bill, requires teachers, supervisors, and administrators in nonchartered nonpublic schools to receive a certificate from the State Board. The State Board must issue a certificate to any individual who has received:

1. A bachelor's degree from an accredited college or university in the United States;
2. At the State Board's discretion, a degree from a foreign college or university that is equivalent to a bachelor's degree from an accredited U.S. college or university;
3. A diploma from a bible college or bible institute.⁴¹

³⁷ R.C. 3301.0731(A).

³⁸ R.C. 3301.0731(B)

³⁹ R.C. 3301.0731(C).

⁴⁰ R.C. 3301.0731(D).

⁴¹ R.C. 3301.071(A)(1) and (2).

Curriculum requirements

Each nonchartered nonpublic school must include in its curriculum the study of:

1. Language Arts;
2. Geography, U.S. history, and national, state, and local government;
3. Mathematics;
4. Science;
5. Health;
6. Physical Education;
7. The fine arts, including music;
8. First aid, safety, and fire prevention;
9. Other subjects as determined by the school.⁴²

Grade promotion

Each chartered nonpublic school must also follow regular procedures for promotion from grade to grade for students who have met the school's educational requirements.⁴³

Health and safety

The bill specifies that each nonchartered nonpublic school must comply with all applicable health, fire, and safety laws.⁴⁴

Transportation, auxiliary services, and administrative cost reimbursement

Finally, the bill clarifies that students attending nonchartered nonpublic schools are not entitled to transportation or auxiliary services, and that nonchartered nonpublic schools are not entitled to reimbursement for administrative costs.⁴⁵

HOME EDUCATION AND SCHOOL ATTENDANCE

Home education

Current law refers to students who are home schooled as receiving "home instruction." The bill changes those references to receiving "home education."⁴⁶

⁴² R.C. 3301.0731(E).

⁴³ R.C. 3301.0731(F).

⁴⁴ R.C. 3301.0731(G).

⁴⁵ R.C. 3301.0731(G).

⁴⁶ R.C. 3310.70, 3313.5312, 3313.5314, 3313.618, 3313.6114, 3365.01, 3365.02, 3365.03, 3365.033, 5709.07, and 5747.72.

Home educator qualification

Current law authorizes a school district superintendent to excuse a child from attendance upon a satisfactory showing that the child is being instructed at home by a person qualified to teach. It also requires the filing of papers with the superintendent that show how the qualifications of the child's home educator were determined.⁴⁷

The bill removes those requirements and the exempting authority of the school district superintendent, and instead directly exempts from school attendance students who receive home education under the supervision and direction of a parent on requisite subject areas. Under the bill, the school district superintendent is not required to receive any proof of qualification for home educators. Rather, parents annually must notify the superintendent within five days of the start of school in the district. The notice must include the parent's name and address, the child's name, and an assurance that the child will receive instruction in required subjects. The superintendent must send a letter of acknowledgement upon receipt of notification.

Finally, the bill requires students that enroll in a public school following any period of home education be placed in the appropriate grade level based on the policies of the student's resident school district.⁴⁸

Home instruction cessation

Current law voids a child's excused absences for home education and allows the superintendent to recall the excuse and proceed against a child or child's parents for such absences in the event of the cessation of "proper" home education.

The bill no longer explicitly subjects home educated students to that provision. Thus, the bill does not directly address whether excused absences can be voided and subject to recall if proper home education ceases. However, the bill does subject a student receiving home education to the state's truancy law.⁴⁹

Administrative rules

The bill requires the Director, within 90 days of the bill's effective date, to amend or rescind any rules regarding home education to conform to the bill's changes. Thereafter, it prohibits the Director and DEW from adopting any additional rules regarding home education.⁵⁰

⁴⁷ R.C. 3321.04(A)(2).

⁴⁸ R.C. 3321.042; conforming changes in R.C. 2151.011, 3301.0712, 3310.70, 3310.70, 3313.5312, 3313.6110, 3321.03, 3321.13, 3331.02, 3331.08, 3333.31, 3333.86, 3345.06, 3365.01, 3365.02, 3365.03, 3365.033, 5103.55, 5107.281, 5709.07, and 5747.72.

⁴⁹ R.C. 3321.04(A)(2) and 3321.042(C).

⁵⁰ R.C. 3301.132.

HISTORY

Action	Date
Introduced	01-11-23
Reported, S. Education	---
