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Bill Analysis

Legislative Service Commission

Sub. H.B. 2*

127th General Assembly
(As Reported by S. Education)

Reps. Webster, Garrison, Luckie, Lundy, Dyer, Heard, Brady, Celeste, Adams, B. Williams, Sykes, Okey, Bacon, Beatty, Blessing, Bolon, Book, Boyd, Brown, Budish, Carano, Combs, DeBose, DeGeeter, Distel, Domenick, Driehaus, Fende, Flowers, Foley, Gibbs, R. Hagan, Harwood, Hughes, Koziura, Letson, Mallory, J. McGregor, Miller, Oelslager, Otterman, Sayre, Schindel, D. Stewart, Uecker, Ujvagi, White, S. Williams, Wolpert, Yates, Yuko

BILL SUMMARY

- Makes the Chancellor of the Ohio Board of Regents an appointee of the Governor, with the advice and consent of the Senate, with a five-year term.
- Makes the Board of Regents an advisory board to the Chancellor.
- Transfers the current powers and duties of the Board of Regents to the Chancellor.
- Assigns the following new duties to the Chancellor: (1) adopting rules prescribing procedures for the Chancellor to follow when taking actions associated with the Chancellor's duties and responsibilities, (2) adopting rules prescribing the advisory duties of the Board of Regents, (3) requesting the Board to hold a public hearing on whether to recommend the elimination of a graduate program at a public institution of higher education prior to the Chancellor issuing a final recommendation, and (4) responding to requests for information about higher education from the General Assembly.
- Shortens the terms of members of the Board of Regents to six years.

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

- Requires the Board of Regents to submit an annual report to the Governor and the General Assembly on the condition of higher education in Ohio and the performance of the Chancellor.
- Requires the Chancellor to make recommendations to the General Assembly and the Governor for improvements in higher education.
- Declares an emergency.

CONTENT AND OPERATION

Appointment of Chancellor

(R.C. 3333.03; Section 5)

The bill makes the Chancellor of the Ohio Board of Regents no longer subject to appointment by the Board. Instead, under the bill, the Chancellor is appointed by the Governor, with the advice and consent of the Senate, and is a member of the Governor's cabinet.¹ The Governor must appoint the Chancellor within 30 days after the bill's effective date. Although the Chancellor currently does not have a fixed term, the Chancellor serves a five-year term under the bill and may be reappointed. The five-year term begins on the day the Senate confirms the Governor's initial appointee.

The bill further specifies that the Governor prescribes the Chancellor's duties in addition to the Chancellor's duties prescribed by law, and fixes the Chancellor's compensation. However, the bill prohibits the Chancellor from assuming any duties prescribed by the Governor or law until the Senate has consented to the Chancellor's appointment. In the case of the initial gubernatorial appointment, the bill directs the Chancellor in office on the bill's effective date to remain in office and exercise all powers prescribed by law, including the Chancellor's new powers under the bill (see below), until the Senate confirms the Governor's appointee.²

¹ While not statutorily named the "Governor's cabinet," the group of executive officers appointed by the Governor (with the advice and consent of the Senate) traditionally functions as the Governor's cabinet (R.C. 121.03, not in the bill). However, there does not appear to be any law that prevents the Governor from including other officers in the cabinet.

² In the case of future appointments, the bill requires the Chancellor whose term is expiring to remain in office past the end of the term until a successor takes office or for 60 days, whichever occurs first (R.C. 3333.03(B)). Presumably, the Senate would have

Under the bill, the Governor may remove the Chancellor only for (1) inefficiency or dereliction of duty, (2) a violation of the Ethics Law, (3) failure to file a financial disclosure statement with the Ohio Ethics Commission or filing of a false one, or (4) corruption. Removal of the Chancellor does not require the advice and consent of the Senate.

Transfer of Board of Regents' powers and duties

(R.C. 3333.01 and 3333.031; Section 3)

The bill transfers the current powers and duties prescribed by statute for the Board of Regents to the Chancellor. It also specifies that the Board is an advisory board to the Chancellor.³ Thus, except when a separate statute prescribes a specific duty for the Board of Regents, its purpose is to provide advice to the Chancellor, presumably upon request of the Chancellor. Accordingly, the Chancellor, rather than the Board of Regents, is responsible for deciding how to guide and coordinate higher education policy within the parameters set by law.

The bill amends several sections in R.C. Chapter 3333. that pertain to the current powers of the Board. It also states that "whenever the term 'Ohio Board of Regents' is used, referred to, or designated in any statute, rule, contract, grant, or other document, the use, reference, or designation shall be construed to mean the 'Chancellor of the Ohio Board of Regents'" unless it relates to the Board's advisory duties or unless another section of law expressly provides otherwise. See **APPENDIX 1** for a list of many of the current statutory powers and duties of the Board of Regents.

The bill does not affect the current powers and duties prescribed by separate statutes for the Chancellor. See **APPENDIX 2** for a list of many of the current statutory powers and duties of the Chancellor.

New duties

(R.C. 3333.04(W) and (X))

Besides transferring the existing duties of the Board of Regents to the Chancellor, the bill establishes two new ones. First, the Chancellor must adopt rules establishing advisory duties and responsibilities of the Board of Regents that are not otherwise prescribed by law. Second, the Chancellor must respond to

to confirm the Governor's next appointee prior to the end of that 60-day period to avoid a situation in which no one is authorized to exercise the powers of the office.

³ Section 3 of the bill transfers to the Chancellor the assets and liabilities currently held in the name of the Board of Regents.

requests for information about higher education from members of the General Assembly and direct staff to conduct necessary research or analysis for this purpose.

Procedures for actions by Chancellor

(R.C. 3333.04(O))

Along with the Board of Regents' duties and responsibilities, the Chancellor assumes existing authority to adopt rules to carry them out. However, the bill further requires the rules to prescribe procedures for the Chancellor to follow when taking actions associated with those duties and responsibilities. The rules must indicate which types of actions are subject to the procedures. The Chancellor must follow the new procedures in addition to any other procedures required by statute or administrative rule that are applicable to a particular action, but those other procedures prevail in the case of a conflict. The new procedures must include the following:

- (1) Provision for public notice of the proposed action;
- (2) An opportunity for public comment on the proposed action, which may involve a public hearing on the action by the Board of Regents;
- (3) Methods for parties that may be affected by the proposed action to submit feedback during the public comment period;
- (4) Submission of recommendations from the Board of Regents regarding the proposed action, at the Chancellor's request;
- (5) Written publication of the final action taken by the Chancellor and the Chancellor's rationale for the action; and
- (6) A timeline for the process described in (1) to (5) above.

Recommendations for elimination of graduate programs

(R.C. 3333.04(F))

One of the Chancellor's responsibilities under the bill (assigned to the Board of Regents by current law) is to recommend graduate or professional programs maintained by public institutions of higher education that could be eliminated because they are unnecessarily duplicative or for other sufficient cause. The bill further specifies that, prior to recommending a program for elimination, the Chancellor must request the Board of Regents to hold at least one public hearing on the matter and advise the Chancellor on whether the program should be recommended for elimination. After the hearing, the Board must make a

recommendation to the Chancellor, but the Chancellor is not required to follow the Board's recommendation in making a final recommendation about eliminating a program. As the Board of Regents may do under current law, the Chancellor may exclude students enrolled in a program the Chancellor has recommended for elimination when determining the amount of state instructional subsidies paid to an institution of higher education.

Organization of Board of Regents

Terms

(R.C. 3333.01)

The Board of Regents consists of nine members appointed by the Governor with the advice and consent of the Senate.⁴ Under current law, the terms of the Board members are nine years. No member may serve more than one full term. The bill shortens the terms to six years and allows members to serve two full six-year terms. It also changes the appointment schedule so that the Governor appoints three regents once every two years, instead of once every three years as under current law.

To make the transition to the shorter terms, the bill restructures the terms of six of the nine sitting members of the Board, as shown in the table below. Since those six members (the groups whose terms are currently set to expire in 2011 or 2014) would not complete a full nine-year term due to the restructuring, they presumably would be eligible for reappointment to a new six-year term.

Current Expiration Date	Bill's Expiration Date	Expiration of Successor's Term
September 20, 2008	September 20, 2008	September 20, 2014
September 20, 2011	September 20, 2010	September 20, 2016
September 20, 2014	September 20, 2012	September 20, 2018

* Three members' terms expire in each year.

Meetings

(R.C. 3333.02)

Current law requires the Board of Regents to meet at least four times each year. The bill specifies that the Board must meet at least quarterly, which ensures

⁴ In addition, the chairpersons of the House and Senate education committees are ex officio, nonvoting members of the Board.

that the meetings occur on a regular schedule. Also, to reflect the Board's role as an advisory body, the bill eliminates the Board's authority to adopt administrative rules for conducting its meetings and directs the Board to adopt "standards" instead.

Annual report by Board

(R.C. 3333.032)

The bill assigns one new duty to the Board of Regents, which is to submit to the Governor and the General Assembly an annual report on the condition of higher education in Ohio and the performance of the Chancellor. This report is the Board's only responsibility under the bill other than acting as an advisory body to the Chancellor.

Chancellor recommendations

(Section 4)

The bill requires the Chancellor, by September 28, 2007, to report to the General Assembly and the Governor with recommendations for improvements in higher education. Specifically, the Chancellor's recommendations must address (1) making college more affordable and accessible, (2) encouraging graduates to remain in the state after earning their degrees, and (3) maximizing higher education as a driver of the state's economy. In addition, the report must include a plan as to how to appropriately utilize the Board of Regents to enhance higher education in Ohio.

Background

Board of Regents

Currently, the Board of Regents guides the development of higher education policy and coordinates policy implementation, but it does not exercise direct managerial control over institutions of higher education. Management of the institutions is left to their separate boards of trustees, which generally have the power to make all decisions necessary to carry out their respective educational missions.

Among the Board's primary responsibilities are making policy recommendations, collecting data, providing fiscal oversight of public institutions of higher education, approving changes to institutional programs, and administering student financial aid programs. In distributing state funds to institutions of higher education, the Board of Regents establishes procedures for calculating the key components of the State Share of Instruction, based on a

formula that is enacted by the General Assembly in each biennial budget act. See **APPENDIX 1** for a list of many of the current statutory powers and duties of the Board of Regents.

Chancellor

The Board of Regents currently is required to appoint and prescribe the duties for a Chancellor who, as the administrative officer of the Board, serves at the Board's pleasure.⁵ Current law also states that the Chancellor is responsible for hiring and fixing the compensation of all professional, administrative, and clerical employees and staff necessary to assist the Board and the Chancellor in the performance of their duties.⁶ Law not changed by the bill specifies that the Chancellor must be a person qualified by training and experience to understand the problems and needs of the state in the field of higher education and to devise programs, plans, and methods of solving the problems and meeting the needs. It also specifies that neither the Chancellor nor any staff member or employee simultaneously may be a trustee, officer, or employee of any public or private college or university.⁷

See **APPENDIX 2** for a list of many of the current statutory powers and duties of the Chancellor.

HISTORY

ACTION	DATE
Introduced	02-20-07
Reported, H. Education	03-21-07
Passed House (96-2)	03-21-07
Reported, S. Education	---

⁵ The bill removes statutory language that currently designates the Chancellor as the administrative officer of the Board of Regents.

⁶ Under the bill, the Chancellor continues to be responsible for hiring and fixing the compensation of all necessary employees and staff.

⁷ R.C. 3333.03.

APPENDICES

APPENDIX 1

CURRENT POWERS AND DUTIES OF THE OHIO BOARD OF REGENTS	
Citation	Power or Duty
R.C. 122.33	Operate (in conjunction with the Director of Development) the Industrial Technology and Enterprise Resources Program
R.C. 154.21	Lease capital facilities from the Ohio Public Facilities Commission for the use of institutions of higher education and make agreements for the use, sale, or sublease of those facilities
R.C. 307.091	Approve the lease, sale, or transfer of a county health care facility to a state-supported medical school
R.C. 1713.02, 1713.03, and 1713.04	Establish standards for, issue, and revoke certificates of authorization for private, nonprofit institutions of higher education specifying the degrees, diplomas, and courses that the institutions are allowed to offer
R.C. 2950.11	Maintain list of contact information for institutions of higher education for county sheriffs to use in providing notice of sexual offender residing in area
R.C. 3301.42	(1) Consult in developing the Partnership for Continued Learning's recommended legislative changes to improve the Post-Secondary Enrollment Options program and other dual enrollment programs (2) Consult in developing the Partnership's recommendations for waivers of the requirement to complete the Ohio Core curriculum to be admitted to a state university without further coursework
R.C. 3301.43	Collaborate with the State Board of Education and the Partnership for Continued Learning in recommending a means of assessing high school students' college and work readiness
R.C. 3301.46	Propose, in cooperation with the Department of Education, by April 30, 2009, a standard method and form for documenting high school credit on high school transcripts
R.C. 3302.032	Consult with the State Board of Education in the State Board's selection of a measure, to be placed on school district report cards, of high school graduates' preparedness for higher education and the workforce
R.C. 3313.603	(1) Develop policies, in cooperation with the State Board of Education and the Partnership for Continued Learning, to ensure that only in rare instances will students who complete the Ohio Core curriculum require academic remediation after high school;

CURRENT POWERS AND DUTIES OF THE OHIO BOARD OF REGENTS	
Citation	Power or Duty
	<p>(2) Collaborate with the Partnership for Continued Learning and the State Board of Education in analyzing data to determine if mitigating circumstances warrant extending the Ohio Core opt-out procedure beyond the Class of 2017; and</p> <p>(3) Consult with the State Board and the Partnership to develop a statewide plan for awarding high school credit based on demonstrations of subject area competencies instead of or in combination with hours of classroom instruction</p>
R.C. 3319.112	Consult with the State Board of Education in establishing guidelines for the evaluation of elementary and secondary teachers and principals
R.C. 3319.233	Consult in the State Board of Education's annual report on the quality of colleges and universities that prepare teachers
R.C. 3319.61	Consult with the Educator Standards Board in developing standards for educator licensure and professional development
R.C. 3333.04	<p>(1) Make studies of state policy in higher education;</p> <p>(2) Formulate a master plan for higher education for the state;</p> <p>(3) Report annually to the Governor and General Assembly on study findings and the master plan;</p> <p>(4) Report semiannually to the Governor and General Assembly on enrollment figures at state-assisted institutions of higher education;</p> <p>(5) Approve the establishment of state institutions of higher education;</p> <p>(6) Approve the establishment of new branches or academic centers of state colleges and universities;</p> <p>(7) Approve new degrees and degree programs at state-assisted institutions of higher education;</p> <p>(8) Recommend programs, research, and public services to be offered by state-assisted institutions of higher education in order to best utilize their facilities and personnel;</p> <p>(9) Recommend to state-assisted institutions of higher education graduate or professional programs that could be eliminated because of duplication or other cause and recommend programs that should be added to existing offerings;</p> <p>(10) Exclude students enrolled in programs recommended for elimination when determining instructional subsidies for state-assisted institutions of higher education;</p> <p>(11) Conduct studies for state-assisted institutions of higher education to assist them in making efficient use of their facilities and personnel;</p>

CURRENT POWERS AND DUTIES OF THE OHIO BOARD OF REGENTS	
Citation	Power or Duty
	<p>(12) Make recommendations to the Governor and General Assembly about (a) the development of state-funded capital plans for higher education, (b) the establishment of new state-assisted institutions of higher education and new programs at existing institutions, and (c) the design and funding of student financial aid programs;</p> <p>(13) Review appropriation requests of state colleges and universities, community colleges, and technical colleges and submit budget recommendations to the Office of Budget and Management;</p> <p>(14) Define "full-time equivalent student" for state subsidy purposes;</p> <p>(15) Appoint advisory committees to assist the Board in its duties;</p> <p>(16) Establish goals and timetables for programs under the Board's supervision that deal with increased access to higher education, job training, adult literacy, research, excellence in higher education, or reductions in similar graduate programs and submit the goals, timetables, and regular progress reports to the Governor and General Assembly;</p> <p>(17) Administer student financial aid programs;</p> <p>(18) Conduct enrollment audits of state-assisted institutions of higher education; and</p> <p>(19) Appoint consortiums of higher education personnel to participate in the development and operation of statewide collaborative efforts and appoint a fiscal agent for each consortium</p>
R.C. 3333.041	Report annually to the General Assembly, State Board of Education, and school districts on the status of district graduates at state-assisted institutions of higher education, including the number who take remedial courses
R.C. 3333.042	Operate a grant program for aerospace research, education, and technology
R.C. 3333.043	Encourage the development of community service programs at institutions of higher education
R.C. 3333.044	Contract with consultants and purchase liability insurance for consultants or advisory committee members
R.C. 3333.045	Work with specified state officials to develop a model for training boards of trustees of public institutions of higher education and members of the Board regarding their duties, fiscal issues, and ethics
R.C. 3333.047	Conduct audits of student financial aid programs

CURRENT POWERS AND DUTIES OF THE OHIO BOARD OF REGENTS	
Citation	Power or Duty
R.C. 3333.05, 3354.07, 3357.021, 3357.07, 3357.18, 3358.02, and 3358.07	(1) Approve plans drawn up by the board of trustees for the establishment of a community college, technical college, or state community college; and (2) Issue a charter for the institution's operation and approve charter amendments
R.C. 3333.06	Prepare a state plan for participation in federal programs that provide funds for higher education capital facilities and prioritize eligible projects
R.C. 3333.07	Prescribe procedures for institutions of higher education to account for their expenditure of state funds
R.C. 3333.071	Approve (in conjunction with the Controlling Board) expenditures for land by public institutions of higher education
R.C. 3333.072	Adopt rules governing allocation of state capital appropriations to state colleges and universities
R.C. 3333.08	Approve applications from private institutions of higher education to appropriate property for educational purposes through eminent domain
R.C. 3333.09	(1) Accept land conveyances from a public college or university and lease the land and its buildings to the college or university for use as an educational facility; (2) Construct, equip, or remodel buildings on the land; and (3) Consent to the sale of the land to the lessee
R.C. 3333.10	Enter into agreements with private colleges or universities for the operation of state-subsidized medical or dental schools
R.C. 3333.15	Undertake construction of a university branch if the board of trustees of a state university fails to do so within one year after a state appropriation for the construction
R.C. 3333.16	Develop an articulation and transfer policy and a universal course equivalency classification system for state colleges and universities
R.C. 3333.161	Establish a statewide system for articulation agreements among state institutions of higher education for transfer students pursuing teacher education programs
R.C. 3333.162	Develop an articulation and transfer policy for technical courses
R.C. 3333.163	Adopt standard scores on Advanced Placement exams that qualify for college credit from all public institutions of higher education

CURRENT POWERS AND DUTIES OF THE OHIO BOARD OF REGENTS	
Citation	Power or Duty
R.C. 3333.17, 3333.18, and 3333.19	Enter into reciprocity contracts with states/countries to permit students to attend state-assisted institutions of higher education in either state/country at in-state/country tuition rates and approve similar contracts entered into by individual institutions
R.C. 3333.20	Adopt educational service standards that address range of programs, course delivery, fees, and student access for state community colleges, community colleges, technical colleges, and university branches
R.C. 3333.31	Define Ohio residency for state subsidy and tuition purposes
R.C. 3333.33	Publish, in collaboration with the State Board, an annual report describing dual enrollment programs offered by school districts, community schools, and chartered nonpublic schools. ⁸
R.C. 3333.34	Create, in cooperation with the Department of Education, a system of pre-college stackable certificates to provide clear and accessible paths for adults seeking to advance their education. ⁹
R.C. 3345.32	Specify the form of statements of selective service status
R.C. 3345.45	Develop standards for instructional workloads for faculty
R.C. 3345.50 and 3345.51	Adopt rules establishing criteria for the local administration by a state university or state community college of a capital facilities project requiring state funds and approve requests to locally administer projects
R.C. 3345.72 and 3345.74	(1) Establish a financial tracking system to monitor public institutions of higher education; (2) Declare an institution to be in a state of fiscal watch and terminate a fiscal watch upon satisfactory performance; and (3) Determine when the fiscal problems of an institution in fiscal watch warrant appointing a conservator
R.C. 3349.29	Approve agreements transferring educational functions and/or assets of a municipal university to a state university
R.C. 3354.02, 3357.02, and 3357.18	Undertake or contract for studies relative to the establishment of a community college or technical college

⁸ This provision was enacted as R.C. 3333.34 by Am. Sub. S.B. 311 of the 126th General Assembly, and was recodified as R.C. 3333.33 by the Director of LSC pursuant to the Director's authority under R.C. 103.131.

⁹ This provision was enacted by Am. Sub. H.B. 699 of the 126th General Assembly.

CURRENT POWERS AND DUTIES OF THE OHIO BOARD OF REGENTS	
Citation	Power or Duty
R.C. 3354.18	Determine whether a municipal university is eligible for state aid because it offers instructional programs equivalent to those of a community college
R.C. 3354.23	Evaluate pilot programs for displaced homemakers
R.C. 3355.091	Approve a resolution of a university branch board of trustees providing for borrowing money and issuing bonds for auxiliary or education facilities
R.C. 3357.09	Approve the offering of technical college programs outside of the technical college district
R.C. 3357.19	(1) Adopt rules regarding instructional content and the qualifications of teaching personnel at technical colleges; and (2) Revoke or suspend the charter of a technical college for violations of law or its approved plan
R.C. 3702.74, 3702.75, 3702.85, and 3702.91	Repay student loans for physicians and dentists that practice in shortage areas under the Physician Loan Repayment Program and the Dentist Loan Repayment Program
R.C. 4757.01, 4758.01, 4760.031, and 4763.01	Recognize accrediting organizations for purposes of state licensing boards
Section 3 of Am. Sub. S.B. 311 of the 126th General Assembly	Consult with the State Board of Education in the State Board's appointments to the Foreign Language Advisory Council

APPENDIX 2

CURRENT POWERS AND DUTIES OF THE CHANCELLOR OF THE OHIO BOARD OF REGENTS	
Citation	Power or Duty
R.C. 121.40	Serve, or appoint a designee, as a member of the Community Service Council
R.C. 184.01	Serve as a member of the Third Frontier Commission
R.C. 3301.41	Serve as a member of the Partnership for Continued Learning



CURRENT POWERS AND DUTIES OF THE CHANCELLOR OF THE OHIO BOARD OF REGENTS	
Citation	Power or Duty
R.C. 3319.60	(1) Submit two slates of nominees for appointments to the Educator Standards Board of representatives of colleges and universities that prepare teachers; and (2) Serve as a nonvoting member of the Educator Standards Board
R.C. 3332.03	Serve, or appoint a vice-chancellor, as a member of the State Board of Career Colleges and Schools
R.C. 3333.03	Serve as administrative officer of the Ohio Board of Regents; appoint and fix the compensation of all employees necessary to assist the Board
R.C. 3333.36	Allocate up to \$70,000 each fiscal year to make payments to the Columbus Program in Intergovernmental Issues (an Ohio internship program at Kent State University) for scholarships
R.C. 3333.373	Serve, or appoint a designee, as a member of the Rules Advisory Committee (for the Outstanding Scholarship and Priority Needs Fellowship programs)
R.C. 3334.03	Serve as a member of the Ohio Tuition Trust Authority
R.C. 3345.28	Report to the chairpersons of the Education committees of the House and Senate on the status of faculty improvement programs
R.C. 3353.02	Serve, or appoint a designee, as a member of the eTech Ohio Commission
R.C. 3354.16, 3355.12, and 3357.16	Biennially adjust the dollar threshold in excess of which contracts for capital improvements at community colleges, university branches, and technical colleges must be competitively bid
R.C. 3377.03	Serve, or appoint a designee, as a member of the Ohio Higher Educational Facility Commission
R.C. 4112.12	Serve, or appoint a designee, as a member of the Commission on African-American Males
R.C. 5910.02	Serve, or appoint a designee, as a member of the War Orphans Scholarship Board
R.C. 5919.34	Adopt rules, along with the Adjutant General, governing the administration and fiscal management of the Ohio National Guard Scholarship Program

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