



# Ohio Legislative Service Commission

## Final Analysis

Hannah K. Wann

### **Am. Sub. H.B. 290** 128th General Assembly (As Passed by the General Assembly)

- Reps.** Bulp and Pryor, J. Adams, R. Adams, Balderson, Blair, Burke, Daniels, Derickson, Domenick, Fende, Gardner, Grossman, Hackett, Huffman, Jordan, Lehner, Letson, Luckie, Maag, Martin, McGregor, Mecklenborg, Morgan, Murray, Okey, Pillich, Ruhl, Sears, Snitchler, Stebelton, Uecker, Wagner, B. Williams, Yuko, Driehaus, Garland, Gerberry, Harris, Lundy, Moran, Phillips, Weddington, Evans, Hite, Bacon, Boose, Brown, Carney, Combs, DeBose, Dyer, Goyal, Harwood, Mandel, McClain, Patten, Skindell, Slesnick, Winburn, Zehringer
- Sens.** Cates, Schuring, Fedor, Buehrer, Cafaro, Carey, Coughlin, Gibbs, Gillmor, Grendell, Harris, Hughes, Morano, Niehaus, Patton, Sawyer, Schaffer, Schiavoni, Seitz, Stewart, Strahorn, Turner, Wagoner, Widener, Wilson, Husted, Jones, R. Miller, Faber, Kearney, Goodman, Smith

**Effective date:** Emergency, December 28, 2009

---

## ACT SUMMARY

- Adds Junior ROTC as a permitted elective within the Ohio Core curriculum.
- Permits school districts, STEM schools, and chartered nonpublic schools to excuse students participating in Junior ROTC for at least two school years from high school physical education.
- Directs the Department of Education to reevaluate each community school that was ordered to close at the end of the 2009-2010 school year for poor academic performance to determine whether the school still meets the closure criteria when the report card ratings for its first two years of operation are excluded, and permits each community school that no longer meets the criteria to remain open.
- Permits a community school that is not sponsored by the school district in which the school is located to operate as a conversion school and, under certain conditions, to obtain a new sponsor, if the school (1) has been in its current facility for at least three years prior to the 2009-2010 school year, (2) is sponsored by a school district adjacent to the district in which the school is located, (3) emphasizes serving gifted students, and (4) has been rated continuous improvement or higher for the three years prior to the 2009-2010 school year.

- Authorizes the Department of Education and the Chancellor of the Board of Regents to establish a longitudinal data system for students in public elementary and secondary schools and public institutions of higher education by combining their student data, using the Department's existing system for giving each student a unique identifier number.
- Extends the deadline for certain school districts that have been allocated a share of federally "qualified" (interest-free) school construction bonds for their state-assisted classroom facilities projects to secure voter approval for their projects.
- Makes the performance of the Harmon Commission's duties to designate certain classrooms as "creative learning environments" and to award grants for such classrooms contingent on available funds.
- Declares an emergency.

---

## TABLE OF CONTENTS

Junior ROTC as an elective for Ohio Core .....	2
Background .....	3
Junior ROTC students excused from physical education .....	3
Closure of poorly performing community schools .....	4
Background .....	4
The act .....	5
Sponsorship of certain conversion schools .....	5
Longitudinal data system .....	6
Background .....	6
The act .....	7
School facilities bonds .....	8
Background .....	9
Harmon Commission .....	10

---

## CONTENT AND OPERATION

### Junior ROTC as an elective for Ohio Core

(R.C. 3313.603(C))

The act adds to the list of permitted electives, within the Ohio Core curriculum, a Junior Reserve Officer Training Corps (ROTC) program approved by the United States Congress under federal law.<sup>1</sup>

---

<sup>1</sup> See 10 U.S.C. 2031.

## Background

To earn a high school diploma, students of public and nonpublic schools must complete their high school's curriculum, which must satisfy at least the minimum high school curriculum prescribed in state law. A new state minimum curriculum called the "Ohio Core" first applies to members of the Class of 2014 enrolled in school districts, community schools, STEM schools, and chartered nonpublic schools.<sup>2</sup> The Ohio Core restricts electives to one or a combination of foreign language, fine arts, business, career-technical education, family and consumer sciences, technology, agricultural education, English language arts, math, science, or social studies. The previous state minimum curriculum did not restrict electives to certain subjects.

### **Junior ROTC students excused from physical education**

(R.C. 3313.603(L))

Both the minimum high school curriculum that applies until 2014 and the Ohio Core curriculum require students to take  $\frac{1}{2}$  unit (120 hours) of physical education. But a school district, STEM school or chartered nonpublic school may adopt a policy that excuses from high school physical education students who have participated in interscholastic athletics, marching band, or cheerleading for at least two full seasons.<sup>3</sup> If the district or school adopts such a policy, it may not require the student to complete any physical education course as a condition to graduate from high school. However, the student must complete  $\frac{1}{2}$  unit of at least 60 hours of instruction in another course of study.

The act allows districts and schools also to excuse from physical education students who participate in Junior ROTC for at least two full school years. If they elect to excuse Junior ROTC students from physical education, the act states that the academic credit the students receive from Junior ROTC "may be used to satisfy the requirement" that the students complete  $\frac{1}{2}$  unit in another course.

As with athletics, marching band, and cheerleading under continuing law, this new authority is permissive. Schools are not required to excuse Junior ROTC students from physical education. Moreover, the requirement that students participate in Junior ROTC for "at least" two full school years might be interpreted as granting schools the

---

<sup>2</sup> The Ohio Core minimum is applied to community schools and STEM schools by R.C. 3314.03(A)(11)(f) and 3326.15, respectively. Neither section appears in the act.

<sup>3</sup> This authority is granted to STEM schools by R.C. 3326.15, which does not appear in the act. It is unclear whether this authority is granted to community schools (see R.C. 3314.03(A)(11)(f), not in the act).

option to require more than two years' participation in Junior ROTC to be excused from physical education.<sup>4</sup>

Finally, as with athletics, marching band, and cheerleading under continuing law, it is not clear that the act's authority to excuse Junior ROTC students from physical education is granted to community schools, in the event that a community school were to provide a Junior ROTC program.

## Closure of poorly performing community schools

(R.C. 3314.35)

### Background

Under continuing law, community schools that meet statutory criteria for poor academic performance must permanently close.<sup>5</sup> Am. Sub. H.B. 1 of the 128th General Assembly (the main operating budget for the 2010-2011 biennium) replaced the former closure criteria with new, more stringent criteria, beginning July 1, 2009. The first schools subject to the new performance criteria will close at the end of the 2009-2010 school year. The table below shows the new criteria.

Type of school	Closure criteria
A school that does not offer a grade higher than 3	Has been in academic emergency for three of the four most recent school years
A school that offers any of grades 4 to 8 but no grade higher than 9	(1) Has been in academic emergency for two of the three most recent school years and (2) showed less than one standard year of academic growth in reading or math for at least two of the three most recent school years
A school that offers any of grades 10 to 12	Has been in academic emergency for three of the four most recent school years

H.B. 1 also required the Department of Education to begin issuing report cards and performance ratings for a community school after its first year of operation (rather than after its second year of operation, as under prior law). But it excluded

---

<sup>4</sup> In fact, the Department of Education has advised that the preexisting law's use of the phrase "at least two full seasons," with respect to athletics, marching band, and cheerleading, authorizes schools to require *more than* two seasons of participation to be excused from physical education. See "Frequently Asked Questions about the Physical Education Requirements," <http://education.ohio.gov/GD/Templates/Pages/ODE/ODEDetail.aspx?Page=3&TopicRelationID=1702&Content=74108>, visited 01/15/10.

<sup>5</sup> A community school is exempt from the closure requirement if (1) it operates a dropout prevention and recovery program and has a waiver from the Department of Education or (2) primarily serves disabled children (R.C. 3314.35(A)(3)).

consideration of a school's first two performance ratings in any matter in which those ratings are a factor, including whether the school meets the criteria for closure.<sup>6</sup>

While the new closure criteria took effect July 17, 2009, the changes regarding the report card ratings did not become effective until October 16, 2009. The most recent report cards were published in August 2009. Since the new report card provisions were not yet effective then, it may not have been clear which performance ratings were to be used to determine whether a community school met the closure criteria.

### **The act**

The act clarifies this situation by prohibiting the Department of Education from considering a community school's performance ratings for its first two years of operation when determining whether the school meets the new closure criteria enacted by H.B. 1. Furthermore, it directs the Department to reevaluate each community school that was ordered to close at the end of the 2009-2010 school year to determine if the school still meets the closure criteria when those first two performance ratings are excluded. If the school no longer meets the closure criteria, it may remain open after the 2009-2010 school year.<sup>7</sup>

### **Sponsorship of certain conversion schools**

(R.C. 3314.028)

Under continuing law, a conversion community school is one that is created by converting an existing school district-owned school or an educational service center (ESC) building into a community school. The conversion school must be sponsored by the district or ESC whose building is converted.<sup>8</sup>

The act permits a community school that is not sponsored by the school district in which the school is located to operate as a conversion school, if it meets the following conditions:

(1) It has been located in its current facility for at least three school years prior to the 2009-2010 school year;

(2) It is sponsored by a school district adjacent to the district in which the school is located;

---

<sup>6</sup> R.C. 3314.012, not in the act.

<sup>7</sup> An identical provision was also enacted by Sub. H.B. 19, effective March 29, 2010.

<sup>8</sup> R.C. 3314.02(B), not in the act.

(3) Its education program emphasizes serving gifted students; and

(4) It has been rated continuous improvement or higher for the three school years prior to the 2009-2010 school year.

Additionally, the act authorizes the school to obtain a new sponsor beginning in the 2010-2011 school year, if the school was rated continuous improvement or higher for the 2008-2009 school year and the school's current sponsor approves the change. The new sponsor must be (1) a school district (including a joint vocational school district), (2) an ESC, (3) a state university, or (4) a sponsoring authority designated by a state university.

The precise legal meaning and effects of designating as a conversion community school a school that is not sponsored by the school district in which it is located are unclear.

## **Longitudinal data system**

(R.C. 3301.0714, 3301.94, and 3333.0410)

### **Background**

The Department of Education operates the Education Management Information System (EMIS), which is a statewide electronic database on elementary and secondary students, staff, and schools, including statistical, demographic, attendance and enrollment, fiscal, licensure, and student achievement information. As part of that system, the Department engages an independent contractor to assign each student enrolled in a public school a unique identifier number (often called the student's "SSID" number). Schools must use that number to report student data to the Department through EMIS. Each school also must include a student's number on records reported to another public school, and the other school must continue to use the same number when reporting data to the Department for that student. The number is used by the Department to ensure that students are properly counted for funding and state achievement testing purposes. However, with a few exceptions, the Department may not have access to other information that would permit it to match a particular student's number to the student's personal information.<sup>9</sup>

The Chancellor of the Board of Regents also collects student data from institutions of higher education for use in compiling statistical reports for the General Assembly and the federal government and for tracking student eligibility for state

---

<sup>9</sup> Those exceptions permit the Department to match student names with numbers for students participating in the Educational Choice, Autism, and Cleveland Scholarship (voucher) programs and for students enrolled in programs operated by county boards of developmental disabilities.

scholarships and other assistance. On the other hand, the Chancellor does not have a system for assigning each student a unique identifier number like the Department has for EMIS reporting. Currently, therefore, it may be difficult to match EMIS and the Chancellor's data for longitudinal studies of student achievement and mobility beyond high school.

### **The act**

The act permits the Department of Education and the Chancellor, upon the approval of the State Board of Education, to establish a longitudinal student data system for students in public elementary and secondary schools and public institutions of higher education (that is, a P-16 student data system) by combining their data, using the Department's existing system for assigning each student a unique identifier number. Accordingly, the act permits the Superintendent of Public Instruction and the Chancellor to enter into a memorandum of understanding, under which the Department will receive and maintain copies of student data that are reported to the Chancellor and will combine that data with the data reported by elementary and secondary schools through EMIS. The act states that the data in the combined repository submitted by the Department remains under the direct control of the Department, and the data submitted by the Chancellor remains under the direct control of the Chancellor. Prior to establishing the data system, the state Superintendent and Chancellor must develop a strategic plan that outlines goals for the system's implementation and use.<sup>10</sup>

To facilitate the combined data system, the act requires public elementary and secondary schools to include a student's SSID number on records they submit on behalf of their students to public institutions of higher education. The Chancellor must require each public higher education institution to use that same number when reporting data for that student to the Chancellor. The EMIS contractor that assigns student identifier numbers must receive data from the Chancellor and match each student's data to that student's SSID number. If a number has not been previously assigned to that student, the contractor must assign one. The contractor then must remove from the student's record any information that would enable the SSID number to be matched to personally identifiable student data and submit the record to the Department for inclusion in EMIS.

The state Superintendent and the Chancellor jointly must develop procedures for the maintenance of the combined data repository and designate the types of research that may be conducted using the data. Permitted uses of the data must include (1) assisting the Department in compiling statistical reports, making state payments to

---

<sup>10</sup> The strategic plan must be provided to the Governor, President of the Senate, and Speaker of the House.



schools, and evaluating and reporting district and school academic performance and (2) assisting the Chancellor in compiling statistical reports and tracking eligibility for state assistance. The Superintendent and the Chancellor may use the data for other purposes, including research and analysis to evaluate programs or services or to measure progress against strategic planning goals.<sup>11</sup>

Nevertheless, the act states that all uses of student data must conform to the federal Family Educational Rights and Privacy Act of 1974 (20 United States Code 1232g). That federal act controls the release of student data by any public or private school or educational institution that receives federal funding. Under it, subject to specific exceptions, schools and institutions may not release a student's personally identifiable information, which is not simply directory information, without the student's or parent's consent.<sup>12</sup>

Finally, all costs for the establishment and maintenance of the data system must be paid solely from (1) Race to the Top grants awarded under the federal American Recovery and Reinvestment Act of 2009,<sup>13</sup> (2) other federal grant programs, or (3) existing appropriations of the Department or Chancellor that are designated for a similar purpose. The Department must annually report to the State Board of Education and Chancellor those costs and all requests for access to the data in the repository.

## **School facilities bonds**

(Sections 3 and 4)

The act extends the deadline for certain school districts to secure voter approval for bonds to pay the district shares of their state-assisted classroom facilities projects before the state funds encumbered for those projects lapse. Ordinarily, a district's voters must approve the issuance of bonds and accompanying tax levies to pay the district's share of its project within one year after the School Facilities Commission

---

<sup>11</sup> If the state Superintendent and Chancellor enter into an agreement with a third party to conduct the research or analysis, the State Board of Education must be notified of the agreement.

<sup>12</sup> A state statute, R.C. 3319.321 (not in the act), generally implements the federal act with respect to elementary and secondary schools.

<sup>13</sup> The Race to the Top program will provide competitive grants in fiscal year 2010 to states that make "significant progress" in achieving certain objectives, such as addressing inequities in the distribution of highly qualified teachers, improving the collection and use of student data, improving academic standards and assessments, and supporting underperforming schools (Division (A), Title XIV, Sections 14005 and 14006 of Public Law 111-5).



conditionally approves the district's project.<sup>14</sup> If the voters do not approve the bonds by that date, the state funds set aside for the project lapse and are released for other districts to use, but the district has first priority for future funding as it becomes available, subject again to voter approval within one year of the Commission's conditional approval.<sup>15</sup>

Under the act, some districts have extra time to secure voter approval before the state funds will lapse. The extension applies to any school district that (1) is undertaking a project under the Classroom Facilities Assistance Program that was approved by the Commission between July 1, 2008, and July 31, 2009, (2) has been allocated a share of "qualified school construction bonds," which are interest-free bonds authorized by the federal American Recovery and Reinvestment Act of 2009 (see "**Background**" below), and (3) requested approval of the project from its voters at the November 3, 2009, general election and the voters rejected the proposal by less than 3% of the total number of votes cast on that question.

In the case of such a district whose project was approved by the Commission in July 2008, the act specifies that the state funds will not lapse until June 30, 2010, thereby giving the district another opportunity to seek voter approval in May 2010. Earlier, Am. Sub. H.B. 1 of the 128th General Assembly extended the deadline for all districts approved in July 2008 (regardless of whether they were also allocated qualified school construction bonds) until December 31, 2009, giving those districts another opportunity to seek voter approval at the November 2009 general election.<sup>16</sup> The act, thus, gives some of those districts another additional six months to secure voter approval.

In the case of a district that meets conditions (1) through (3) above and whose project was approved by the Commission between August 1, 2008, and July 31, 2009, the act specifies that the state funds will not lapse until December 31, 2010.

## **Background**

"Qualified school construction bonds" are authorized by the federal American Recovery and Reinvestment Act of 2009 (ARRA). Instead of paying interest, the bonds provide bondholders with federal tax credits. This reduces the bond issuers' cost of borrowing for school construction projects. Under ARRA, each state is allocated an amount of bonds that may be issued by its school districts, as approved by the state. In

---

<sup>14</sup> Subsequent to the Commission's conditional approval, the project also must be submitted to the Controlling Board for its approval. If approved by the Controlling Board, state funds necessary for the state's share of the project are encumbered for one year.

<sup>15</sup> R.C. 3318.05, not in the act.

<sup>16</sup> Section 385.70 of H.B. 1.

addition, ARRA authorizes the U.S. Secretary of Education to allocate separate amounts directly to "large local educational agencies," which are defined, in part, as the 100 school districts in the U.S. with the largest populations of students living in poverty.<sup>17</sup> The allocation of the bonds in Ohio is administered by the School Facilities Commission, in consultation with the Director of Budget and Management.<sup>18</sup>

Ohio's allocation was \$267,112,000 in calendar year 2009 and should be about the same in calendar year 2010. In addition, Akron, Cincinnati, Cleveland, Columbus, and Toledo were directly allocated \$151,671,000 for 2009 as large local educational agencies. (Those districts may release any of their unused allocations for reallocation to other districts.<sup>19</sup>) In administering the federal bond program, the Commission grouped districts that applied to issue the bonds into three "pools": Pool A for districts with projects that are fully planned and ready for construction; Pool B for districts in various stages of project planning; and Pool C for energy conservation projects. Some districts that were allocated a share of the state's qualified school construction bonds were also approved for other state assistance for their projects.<sup>20</sup> The act pertains to certain districts allocated bonds under Pool B and separately approved for state assistance under the state's Classroom Facilities Assistance Program.

## **Harmon Commission**

(R.C. 3306.51, 3306.53, 3306.54, 3306.55, 3306.58, and 3306.59)

Am. Sub. H.B. 1 of the 128th General Assembly established the "Harmon Commission" to approve applications for designation of classrooms as "creative learning environments" and to award grants to school districts and community schools that operate such classrooms, if sufficient funds are available for those grants.<sup>21</sup> To qualify for that designation, a district or school must demonstrate to the Commission's satisfaction that the classroom supports and emphasizes innovation in instruction methods and lesson plans and operates in accordance with the State Board of Education's guidelines for such classrooms. H.B. 1 established specific deadlines and

---

<sup>17</sup> Division B, Title I, Subtitle F, Part III, Section 1521 of ARRA (codified at 26 U.S.C. 54F).

<sup>18</sup> R.C. 133.022, not in the act. The Director of Budget and Management is a member of the School Facilities Commission.

<sup>19</sup> 26 U.S.C. 54F(d)(2)(D).

<sup>20</sup> <http://www.osfc.state.oh.us/Programs/QualifiedSchoolConstructionBondsQSCB/tabid/156/Default.aspx>, visited 01/15/10.

<sup>21</sup> The Harmon Commission must consist of 21 members: six members appointed by the Speaker of the House, six appointed by the Senate President, and nine appointed by the Governor. (R.C. 3306.50, not in the act.)

timeframes for review of applications and procedures for review of whether a district or school continues to qualify for the designation.

The act eliminates the specific deadlines in current law and leaves it up to the Superintendent of Public Instruction to establish an application period. The act also states that the Harmon Commission and all of the procedures for designation of creative learning environments and the grant program must be implemented "unless the General Assembly does not appropriate funds . . . [for the Commission and its duties] or the Superintendent of Public Instruction determines that sufficient funds are not available for that purpose."<sup>22</sup>

---

## HISTORY

ACTION	DATE
Introduced	09-29-09
Reported, H. Education	11-05-09
Passed House (96-0)	11-18-09
Reported, S. Education	12-16-09
Passed Senate (33-0)	12-16-09
House concurred in Senate amendments (96-0)	12-17-09

09-hb290-128.docx/jc

---

<sup>22</sup> R.C. 3306.59.