



# Ohio Legislative Service Commission

## Bill Analysis

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### Sub. S.B. 335

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(As Passed by the Senate)

**Sens.** Turner and Lehner, Jones, LaRose, Eklund, Obhof, Wagoner, Bacon, Hite, Niehaus

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## BILL SUMMARY

### Teacher contracts

- Requires a teacher who is employed by a municipal school district and who meets the tenure requirements in current law to provide notice of the teacher's eligibility by September 15 of the year the teacher becomes eligible.
- Lowers from five years to two years the maximum length of an initial limited contract for employment entered into between a municipal school district and a teacher on or after the bill's effective date.
- Revises the procedures for a municipal school district to grant an extended limited contract to a teacher who is eligible for tenure.
- Exempts municipal school districts from the requirement to enter into supplemental contracts with teachers who teach courses for high school credit outside the normal school day.

### Assigning teachers to school buildings

- Prescribes procedures for assigning teachers to school buildings of a municipal school district, whereby the decisions of the district CEO or designee are guided by the recommendations of building-level interview teams.
- Prescribes credential factors that a building-level interview team must consider in making its recommendations to the CEO or designee.

## Teacher evaluations

- Requires a municipal school district to include review of a teacher's work samples as part of the teacher evaluations mandated by current law and specifies that (1) the required observations may be announced or unannounced and (2) "multiple measures" must be used in determining student academic growth.
- Requires a municipal school district to conduct one annual evaluation (instead of two, as in current law) for a teacher whom the district is considering not reemploying.
- Changes the deadline for a municipal school district to complete teacher evaluations from April 1 to June 1.
- Requires evaluators in a municipal school district to be trained in accordance with criteria developed by the district CEO and teachers' union.
- Requires a municipal school district to use evaluations in decisions about compensation and layoffs (in addition to promotion and retention decisions, as in current law).
- Specifies that teachers in a municipal school district may use the collective bargaining agreement's grievance procedure to challenge violations of the evaluation procedures, but limits the violations that may be corrected to those that cause "substantive harm" to the teacher.

## Teacher salaries

- Requires a municipal school district to adopt a performance-based salary schedule for teachers, in the same manner required by current law for school districts that receive federal Race to the Top funds.
- Requires a municipal school district to place newly hired teachers on the salary schedule based on years of experience, area of licensure, and other factors determined by the district.
- Requires a municipal school district to initially place veteran teachers on the salary schedule so that their salary is comparable to their pay under the previous salary schedule.
- Requires a municipal school district to consider specialized training and experience in the assigned position (in addition to the performance metrics in current law) when measuring a teacher's performance.

- Adds teaching in a school with an extended school day or school year to the duties for which a municipal school district may provide additional compensation.
- Allows a municipal school district to decrease a teacher's salary during the term of the employment contract if the teacher will perform fewer or different duties.

### **Nonrenewal of teacher contracts**

- Extends from April 30 to June 1 the deadline for a municipal school district to notify teachers that their contracts will not be renewed for the following school year.
- Revises the procedures for holding a hearing on the nonrenewal of a teacher's contract in a municipal school district.
- Exempts a municipal school district from most provisions requiring the automatic reemployment of a teacher when the district fails to comply with nonrenewal procedures.
- Specifies that the decision of a municipal school district to not renew a teacher's contract is not subject to appeal.
- Exempts a municipal school district from the requirement to notify employees by April 30 that their contracts will not be renewed in order for the employees to qualify for unemployment benefits.

### **Teacher terminations and disciplinary suspensions**

- Permits a municipal school district to place a teacher on an unpaid disciplinary suspension for a definite period of time for "good and just cause."
- Specifies that "good and just cause" for a municipal school district to terminate a teacher's contract includes receiving an evaluation rating of "ineffective" for two consecutive years.
- Establishes new due process procedures, including a fact-finding hearing, for teacher terminations and disciplinary suspensions in municipal school districts.
- Prohibits an arbitrator from overturning the termination or disciplinary suspension of a teacher by a municipal school district for failure of the district to comply with the procedures of the bill or a collective bargaining agreement, unless the failure results in "substantive harm" to the teacher.

## **Teacher layoffs**

- Modifies the reasons for which a municipal school district may lay off teachers by (1) omitting suspension of schools as a reason and (2) allowing layoffs for academic reasons resulting in the consolidation of teaching positions, duties, or functions or in changes in educational programs.
- Requires a municipal school district to lay off teachers in order of their evaluation ratings, starting with teachers with the lowest rating, and to lay off nontenured teachers before tenured teachers within each group of teachers with the same rating.
- Requires a municipal school district to make decisions regarding the recall of laid-off teachers in the reverse order of the tenure status and composite evaluation rating categories used in the layoff decisions.
- Specifies that the municipal district board and the teachers' union "shall negotiate" how specialized training and experience will be factored into layoff and recall decisions.
- Specifies that laid-off tenured and nontenured teachers of a municipal school district have the right of restoration only to positions for which they qualify within three years after the date their contracts were suspended.
- Requires a municipal school district to give teachers preference in contract renewals, layoffs, or rehiring based on seniority or tenure, only when deciding between teachers with the same evaluation rating and tenure status.

## **Collective bargaining**

- Specifies that the bill's requirements regarding teacher employment in municipal school districts, including requirements related to (1) contracts, (2) building assignments, (3) evaluations, (4) salaries, (5) contract nonrenewals, (6) terminations and disciplinary suspensions, and (7) layoffs, generally prevail over collective bargaining agreements entered into on or after the bill's effective date.

## **Employment of principals**

- Requires a municipal school district to pay principals based on performance, generally in the same manner required by the bill for the district's teachers.
- Makes procedural changes to the requirement for a municipal school district to notify a principal before taking action to renew or not renew the principal's contract.

- Exempts a municipal school district from the requirement to automatically reemploy a principal for a specified period of time when the district fails to comply with nonrenewal procedures.
- Specifies that, in a municipal school district, the failure of a principal's building to meet academic performance standards established by the district CEO is grounds for termination.
- Requires the CEO of a municipal school district to give a principal a copy of the principal's evaluation at least five days before the CEO recommends the principal's termination to the school board.

### **Academic performance plan**

- Requires that the district CEO's academic performance plan include provisions requiring parents or guardians of students in the district's schools to attend, prior to December 15 each year, at least one parent-teacher conference or similar event.
- Adds adjustment of the length of the school year or school day to the items that may be included in the corrective actions specified in the plan.
- Prescribes procedures for development of the CEO's "corrective plan" for a particular school, whereby the CEO and labor union presiding officer must appoint corrective action teams to make recommendations regarding implementation of the plan.
- Specifies that the content and implementation of a corrective plan and any actions taken to implement the plan prevail over collective bargaining agreements entered into on or after the bill's effective date.

### **Additional accountability measures**

- Requires the board of education of an existing municipal school district to develop, subject to approval by the Superintendent of Public Instruction, an array of measures to evaluate the academic performance of the district, and to use those measures to report annually to the General Assembly, Governor, and state Superintendent.
- Requires the state Superintendent, by November 15, 2017, to evaluate the district's performance based on the district board's approved array of measures and to issue a report to the General Assembly and Governor.

## **Student advisory committees**

- Requires a municipal school district and each of its partnering community schools to establish a student advisory committee at each of their schools offering grades 9 to 12 to make regular (at least semiannual) recommendations for improving the academic performance of the school.

## **School calendars**

- Declares that the board of a municipal school district "has final authority" to establish a school calendar for the district's school buildings that provides for additional student days or hours beyond the state minimum.
- Specifies that the school calendar adopted by the board prevails over collective bargaining agreements entered into on or after the bill's effective date, but requires the board and the teachers' union to negotiate regarding any additional compensation for working an extended school day or school year.

## **Municipal School District Transformation Alliance**

- Allows the mayor of the city containing the greatest portion of a municipal school district to initiate the establishment of and appoint the board of directors of a Municipal School District Transformation Alliance as a nonprofit corporation under R.C. Chapter 1702.
- Requires the Alliance, if created, to (1) confirm and monitor a "transformation alliance education plan" prepared by the mayor, (2) suggest national education models for and provide input in the development of new district schools and partnering community schools, (3) report annually on the performance of all municipal school district schools and all community schools located in the district, and (4) make recommendations to the Department on the approval of sponsors of new community schools located in the district.
- Sunsets the authority to create an Alliance on January 1, 2018, and terminates any Alliance created under the bill on that date.
- Exempts the Alliance and its directors, officers, and employees, from the state Public Ethics Law, Open Meetings Act, Public Records Law, Civil Service Law, Public Employees Retirement System Law, and Public Employee Collective Bargaining Law, but stipulates that board meetings must be open to the public, that records must be maintained as though they were public records, and that the board must establish a conflicts of interest policy.

- Specifies that membership on the Alliance board does not constitute an incompatible holding of public office.
- Expands the offense of bribery, a third degree felony, to include (1) promising, offering, or giving any valuable thing or valuable benefit, with purpose to corrupt or improperly influence, to a director, officer, or employee of the Alliance, or (2) knowingly soliciting or accepting for self or another, by a director, officer, or employee of the Alliance, any valuable thing or valuable benefit to corrupt or improperly influence the discharge of duties.

### **Framework to assess district and community schools**

- Requires the Department of Education, the Transformation Alliance, if created, and a statewide nonprofit community school sponsor organization, by April 30, 2013, jointly to establish a framework to assess the efficacy of district schools and community schools located in the municipal school district.

### **Criteria for community school sponsorship in a municipal school district**

- Requires the Department of Education, the Transformation Alliance, if created, and a statewide nonprofit community school sponsor organization, by December 31, 2012, jointly to establish criteria for both (1) sponsors to use to determine if they will sponsor new community schools in the municipal school district, and (2) the Department and the Alliance to use in assessing the ability of a sponsor to successfully sponsor schools in the district.

### **Use of standards by community school sponsors**

- Beginning with any community school that opens after July 1, 2013, requires each sponsor to use the criteria developed jointly by the Alliance, Department, and statewide sponsor organization to determine whether it will sponsor a new community school in the municipal school district.

### **Combining community school and district report card data**

- Authorizes a municipal school district, with the approval of the community school governing authority, to elect to have the student performance data of a community school located in the district combined with the district's data on the district's annual state report card, if the district either sponsors the community school or has entered into an agreement with the school to endorse each other's programs.
- Authorizes a municipal school district, at its own discretion, to elect to have the number of students enrolled in a community school located in the district noted separately on the district's report card, if the district either sponsors the community

school or has entered into an agreement with the school to endorse each other's programs.

- Requires the district, by October 1 each year, to submit documentation to the Department of Education indicating eligibility for the election to include a community school's data on its report card.

**Deposit of proceeds from the sale of real property**

- Permits a municipal school district that sells any parcel of real property to deposit the proceeds into the district's general fund, as long as (1) the district has owned property for at least ten years, (2) any securities or other obligations issued to pay for the real property or improvements to it are no longer outstanding at the time of the sale, and (3) the deposit is not prohibited by any agreements the district has with the School Facilities Commission (rather than deposit those proceeds into the sinking fund, the bond retirement fund, or a special fund for the construction or acquisition of permanent improvements as otherwise required under current law).

**Tax levy**

- Authorizes the school board of a municipal school district to propose a levy for current operating expenses, a portion of which would be allocated to "partnering" community schools and distributed among those schools on a per-pupil basis.

**Other**

- Specifically authorizes the board of education of a municipal school district to request exemptions from education-related statutes and administrative rules through an existing law that permits any district to request such exemptions for an innovative education pilot program.

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## CONTENT AND OPERATION

### Overview

The bill makes numerous changes regarding the management of municipal school districts. Under continuing law, a municipal school district is "a school district that is or has ever been under a federal court order requiring supervision and operational, fiscal, and personnel management of the district by the state

Superintendent of Public Instruction."<sup>1</sup> Cleveland Metropolitan School District is currently the only municipal school district and, therefore, the only district affected by the bill. (For a brief synopsis of the history behind the federal court's order that the state take control of the Cleveland district in the 1990s, and the legislation authorizing the mayor of Cleveland to appoint the district board, see "**Background**" at the end of this analysis.)

The bill's changes address teacher and principal employment procedures, collective bargaining, the length of the school year, corrective action plans to improve student achievement, district relationships with community (charter) schools and their sponsors, and the creation of a Municipal School District Transformation Alliance.

### **Teacher employment contracts**

(R.C. 3311.77 and 3311.81; conforming changes in R.C. 2903.13, 3307.01, 3319.02, 3319.071, 3319.141, and 3319.143)

#### **Tenure eligibility**

(R.C. 3311.77(E))

Under the bill, a teacher employed by a municipal school district who meets the existing, statewide statutory requirements for tenure (see below), must provide notice of the teacher's tenure eligibility by September 15 of the year the teacher becomes eligible. The bill does not indicate to whom the notice must be given. This provision appears to disqualify for tenure a teacher who fails to provide notice by the required deadline, even if the teacher has the necessary licensure, continuing education, and length of service to otherwise qualify for tenure.

#### **Background – tenure requirements**

Under current law, as amended in 2009, a teacher who is initially licensed in 2011 or later must hold an educator license for at least seven years before the teacher becomes eligible for a continuing contract. In addition to seven years of licensed experience, the teacher must (1) hold a professional, senior professional, or lead professional educator license, (2) have completed either (a) 30 semester hours of coursework in the area of licensure since initial issuance of an educator license, if the teacher did not have a master's degree when the initial license was issued, or (b) 6 semester hours of graduate coursework in the area of licensure since initial issuance of an educator license, if the teacher had a master's degree at that time, and (3) have taught in the employing school district for at least three of the past five years or, if the teacher

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<sup>1</sup> R.C. 3311.71(A).

attained continuing contract status elsewhere, have taught there for the last two years. A teacher initially licensed before 2011 is not subject to the seven years' licensure requirement, and is eligible for a continuing contract by meeting the criteria in (1), (2), and (3).<sup>2</sup>

### **Length of limited contracts**

(R.C. 3311.77(C) and (D) and 3311.81(B))

As in other school districts, teachers in a municipal school district who are not eligible for tenure must be employed under a limited contract for a fixed length of time. Under the bill, for contracts entered into between a teacher and a municipal school district on or after the bill's effective date, the term of an initial limited contract may be up to two years. But the bill contains conflicting provisions about the length of subsequent limited contracts with the teacher. Under one provision, subsequent limited contracts may be up to five years in length. However, another provision specifies that when the teacher's contract expires, the teacher is considered reemployed under a one-year limited contract unless the district takes action to not renew the contract. It may not be clear, then, what the maximum term of subsequent limited contracts is under the bill. Under current law, all limited contracts for teachers may have a term up to five years.<sup>3</sup>

### **Extended limited contracts for tenure-eligible teachers**

(R.C. 3311.81(D)(2) and (3))

Under current law, in certain circumstances, a teacher who qualifies for tenure may be given an extended limited contract instead of a continuing contract. The bill retains the option of extended limited contracts for tenure-eligible teachers in municipal school districts, but it makes changes to the procedures for granting the contracts, as shown in the table below.

<b>Topic</b>	<b>Current law (applicable to all school districts)</b>	<b>The bill (applicable only to municipal school districts)</b>
<b>Circumstances for granting the contract</b>	Specifies that if the district board of education rejects the superintendent's recommendation to reemploy a teacher eligible for tenure and the teacher has not previously	Specifies that if the district's CEO does not recommend to the board that a teacher eligible for tenure receive a continuing contract, the CEO may recommend that the teacher be given an extended

<sup>2</sup> R.C. 3319.08(D), not in the bill.

<sup>3</sup> R.C. 3319.08(C), not in the bill.

Topic	Current law (applicable to all school districts)	The bill (applicable only to municipal school districts)
	attained tenure elsewhere, the superintendent may recommend that the teacher be reemployed under an extended limited contract. In that case, the superintendent must give the teacher notice of the recommendation by April 30, along with reasons directed at the teacher's professional improvement.	limited contract. In that case, the CEO must give the teacher notice of the recommendation at least five business days before the board takes action on it, along with reasons directed at the teacher's professional development. The board must formally act on the recommendation by June 1.
<b>Vote to reject recommendation</b>	Requires a vote of three-fourths of the district board's membership to reject the superintendent's recommendation for an extended limited contract.	No provision. It appears, then, that the board could reject the recommendation by a simple majority vote.
<b>Term of contract</b>	Limits the maximum term of the extended limited contract to two years.	Limits the maximum term of the extended limited contract to the following:  (1) "One-year increments or for multiple years, in no event to exceed a total of four years," if the teacher is newly eligible for tenure; or  (2) "One-year increments or for multiple years, in no event to exceed a total of two years," if the teacher was granted tenure in another school district and has served in the municipal school district for two years.  The maximum of four or two years appears to be a cap on the total number of years the teacher may be employed under an extended limited contract, rather than a cap on the number of years in a multi-year contract.
<b>Subsequent reemployment</b>	Specifies that if the district board reemploys the teacher after the extended limited contract expires, the board must give the teacher a continuing contract.	Specifies that if the board reemploys the teacher after the extended limited contract <i>or contracts</i> expires, the board must give the teacher a continuing contract.

Topic	Current law (applicable to all school districts)	The bill (applicable only to municipal school districts)
<b>Automatic reemployment for procedural violations</b>	<p>Specifies that the failure of the district board to give the teacher notice of the board's acceptance of the extended limited contract by April 30 results in automatic reemployment of the teacher under a continuing contract.</p> <p>Requires a teacher to notify the board by June 1 if the teacher declines automatic reemployment.</p>	<p>Specifies that the failure of the CEO to make any recommendation regarding a contract for the teacher results in automatic reemployment of the teacher under a one-year extended limited contract. That contract may be later extended for another one to three years to correspond to the maximum number of years the teacher may be employed under an extended limited contract.</p> <p>Extends the deadline for notification of the decline to July 10.</p>

### **Contracts for teaching high school courses outside the school day**

(R.C. 3311.77, first paragraph)

The bill exempts municipal school districts from an existing restriction on the type of employment contract entered into with a teacher who teaches courses for high school credit outside the normal school day. Under current law, if a school district offers students of compulsory school age courses for high school credit that are taught at times outside the normal school day, the district must enter into supplemental contracts with the teachers assigned to those courses and may not include those assignments as part of the teachers' regular employment contracts.<sup>4</sup> Supplemental contracts specify the duties to be performed by a teacher that are in addition to regular teaching duties and the salary to be paid for those additional duties.<sup>5</sup> The bill's exemption allows a municipal school district to include the teaching of high school courses outside of the normal school day among a teacher's duties under the teacher's regular employment contract, thereby possibly eliminating the mandate to pay the teacher extra compensation for that work.

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<sup>4</sup> R.C. 3319.0811, not in the bill.

<sup>5</sup> R.C. 3319.08(A), not in the bill.

## Assigning teachers to school buildings

(R.C. 3311.79)

The bill prescribes procedures for a municipal school district to follow when assigning teachers to the schools of the district. Similar to other districts, the ultimate authority to assign teachers rests with the district CEO (superintendent in other districts) or a designee,<sup>6</sup> subject to the negotiated provisions of a collective bargaining agreement. But that decision in a municipal district, under the bill, is guided by the recommendations of a building-level interview team. The bill states that its provisions regarding teacher assignment prevail over any conflicting provisions of a collective bargaining agreement entered into on or after the bill's effective date. However, it also states that the district board and the teachers' union must negotiate regarding the implementation of the bill's procedures, including the processes by which each building-level team conducts its interviews and makes its recommendations.

First of all, the bill requires that all applicants for open positions be considered. It then states that applicants "may" be interviewed by a building-level team, selected jointly by the building principal and a teachers' union representative. The team must consist of the principal, the union representative, a parent, a staff member in the same job classification as the posted position, and any other members mutually agreed upon by the principal and union representative. The bill also specifies that interviews may not be delayed due to the unavailability of "duly notified" team members.

The building-level team must make its recommendations regarding the assignment of a teacher based on how suitably the teacher's credentials fulfill the needs of that particular school. For this purpose, the team must consider the following credentials:

- (1) The level of teacher's license;
- (2) The number of subject areas the teacher is licensed to teach;
- (3) Whether the teacher is a "highly qualified teacher" under the federal No Child Left Behind Act;<sup>7</sup>
- (4) The results of the teacher's performance evaluations;
- (5) Whether the teacher recently has taught and has been evaluated in the subject areas the teacher would teach at the school;

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<sup>6</sup> R.C. 3319.01, not in the bill.

<sup>7</sup> See R.C. 3319.074, not in the bill.

(6) Any relevant specialized training or experience the teacher possesses; and

(7) Any other credentials established by the CEO or the building-level team. However, the bill states that neither the team nor the CEO may use seniority or tenure "as the primary factor" in determining any teacher's assignment.

If there are unfilled positions remaining within ten days prior to the first teacher work day of a school year, after having gone through the team interview process, the CEO (or designee) must assign teachers to those open positions based on the best interests of the district. Nevertheless, in making such an assignment, the CEO or designee must "take into consideration all input from the building level team members." If a position opens after the first student day of the school year, the building-level team interview process likewise must be used. But if the position remains open after a "reasonable time," the CEO (or designee) must assign a teacher to the position based on the best interests of the district, but again in consideration of the team's input. The length of that reasonable period of time is left to the discretion of the CEO or designee.

Finally, if it is necessary to assign, reassign, or transfer a teacher, whether voluntarily or involuntarily on the part of the teacher, "for the purpose of promoting the best interests of the district," the CEO or designee must first meet with the teacher, the principals of the affected buildings, and a union representative. Still, the bill also states that the assignment, reassignment, or transfer may not be delayed due to the unavailability of the duly notified meeting participants.

## Teacher evaluations

(R.C. 3311.80; conforming changes in R.C. 3302.04 and 3319.112)

Under current law, by July 1, 2013, each school district must adopt a "standards-based" policy for teacher evaluations that conforms with a framework developed by the State Board of Education.<sup>8</sup> The bill modifies the evaluation procedures for municipal school districts, as shown in the table below.

Topic	Current law (applicable to all school districts)	The bill (applicable only to municipal school districts)
<b>Establishment of evaluation procedures</b>	Requires the district, when developing its evaluation procedures, to consult with teachers it employs.	Requires the district and the teachers' union jointly to develop the district's evaluation procedures.

<sup>8</sup> R.C. 3319.111 (not in the bill) and 3319.112.

Topic	Current law (applicable to all school districts)	The bill (applicable only to municipal school districts)
<b>Content of evaluations</b>	<p>Requires 50% of each evaluation to be based on student academic growth, as measured by value-added data derived from the state achievement assessments when applicable and by other assessments identified by the State Board of Education when not applicable.</p> <p>Requires observation of the teacher being evaluated, including at least two formal observations by the evaluator for a minimum of 30 minutes each time and classroom walkthroughs.</p> <p>No provision. However, since each district must adopt its own evaluation policy, it is within the district's discretion to include examination of work samples, or any other factors it chooses, in its evaluations.</p>	<p>Same, but further requires evaluations to include "multiple measures" of student academic growth.</p> <p>Same, but specifies that the formal observations and walkthroughs may be announced or unannounced.</p> <p>Requires the examination of work samples, such as lesson plans or tests designed by the teacher, as part of the evaluation.</p>
<b>Frequency of evaluations</b>	<p>Requires teachers to be evaluated once each school year, except as follows:</p> <p>(1) A district must evaluate a teacher twice during the school year, if the teacher does not have a continuing contract and the district is considering not rehiring the teacher for the next school year; and</p> <p>(2) A district, upon passage of a resolution, may evaluate teachers who received a rating of "accomplished" on their most recent evaluations once every two school years.</p>	<p>Eliminates the requirement to evaluate a teacher twice during the school year if the district is considering not rehiring the teacher, thereby requiring the district to conduct only one evaluation of the teacher. The bill retains the option for a district to evaluate teachers rated as "accomplished" every two school years, but it requires an evaluation in any school year that the teacher's contract is due to expire. It also eliminates the requirement that the district pass a resolution to take advantage of this option.</p>
<b>Timing of evaluations</b>	<p>Requires the district to complete each evaluation by April 1 and to provide the teacher with the results by April 10. However, in the case of a teacher who must be</p>	<p>Requires the district to complete each evaluation by June 1 and to provide the teacher with the results by the earlier of ten days after the evaluation's completion</p>





Topic	Current law (applicable to all school districts)	The bill (applicable only to municipal school districts)
	evaluated twice because the district is considering not rehiring the teacher, the first evaluation must be completed by January 15, with results provided to the teacher by January 25, and the second evaluation must be completed between February 10 and April 1, with results provided to the teacher by April 10.	or the last teacher work day of the school year.
<b>Who conducts evaluations</b>	Requires each evaluation to be conducted by (1) a district superintendent or assistant superintendent, (2) a school principal, (3) a person licensed by the State Board of Education to be a supervisor or a vocational director, or (4) a person designated to conduct evaluations under a peer review agreement entered into by the district and the teachers' union.	Same, but replaces (1) with the district's CEO or a subordinate officer with responsibility for instruction or academic affairs. (This change reflects current law requiring a municipal school district to have a CEO rather than a superintendent. <sup>9</sup> ) In addition, all evaluators, prior to doing evaluations, must complete training that meets criteria to be jointly developed by the CEO and teachers' union.
<b>Use of evaluations</b>	Requires a district's evaluation policy to include procedures for using evaluation results for retention and promotion decisions and for removal of poorly performing teachers.  Prohibits a district from considering seniority when deciding whether to retain a teacher, except when deciding between teachers with comparable evaluations.	Same, but adds that the policy must include procedures for using evaluation results for decisions about compensation and layoffs.  No provision.
<b>Appeal procedures</b>	Permits a teacher who wishes to challenge an evaluation to seek final and binding arbitration through the grievance procedure specified in the teacher's collective bargaining agreement. <sup>10</sup>	Permits a teacher to challenge a violation of the district's evaluation procedures through the grievance procedure specified in the teacher's collective bargaining agreement. In the challenge, the arbitrator is

<sup>9</sup> R.C. 3311.72.

<sup>10</sup> R.C. 4117.10(A), not in the bill.

Topic	Current law (applicable to all school districts)	The bill (applicable only to municipal school districts)
		<p>limited to ordering the correction of procedural errors that resulted in "substantive harm" to the teacher. Under the bill, the failure of the district board of education or an evaluator to strictly comply with a deadline or evaluation form during the evaluation process is not cause for finding a procedural error, unless the arbitrator determines that the teacher suffered the requisite "substantive harm." The arbitrator may not modify the teacher's evaluation results, but may stay any employment decision affecting the teacher pending the correction of a procedural error. The district must correct any procedural error identified by the arbitrator within 15 business days.</p>
<b>Collective bargaining</b>	<p>Specifies that a district's evaluation policy must be implemented at the expiration of the teachers' collective bargaining agreement in effect on September 29, 2011, and must be included in renewals or extensions of that agreement.</p>	<p>Specifies that the requirements regarding evaluations prevail over collective bargaining agreements entered into on or after the bill's effective date. Nevertheless, the district and teachers' union may bargain over additional evaluation procedures, including the incorporation of peer assistance and review into the evaluation process, but any negotiated procedures must be consistent with the bill's requirements.</p>

## Teacher salaries

### Background – current law

Current law requires each school district that receives federal Race to the Top grant funds to adopt an annual performance-based salary schedule for teachers. The timeline for the district to adopt the schedule and begin using it are outlined in its scope of work, which was previously approved by the Superintendent of Public Instruction as a condition for receipt of the grant money. Each school district that is *not* a recipient of Race to the Top funding must either (1) adopt a performance-based salary schedule like

a Race to the Top district or (2) pay teachers a statutory minimum salary based on years of service and educational training.<sup>11</sup>

**The bill**

(R.C. 3311.78; conforming change in R.C. 3302.061)

The bill requires each municipal school district to adopt an annual performance-based salary schedule for teachers, in the same manner currently required for a school district that receives a Race to the Top grant. Therefore, under the bill, a municipal school district must pay teachers based on performance, regardless of whether it is a grant recipient. But if a municipal school district is a grant recipient, the bill probably requires the district to begin implementing performance pay beginning on the bill's effective date, even if that date is earlier than the implementation date approved for the grant.

Additionally, municipal school districts must implement performance-based pay for teachers differently in some ways from Race to the Top districts. The differences are shown in the table below.

Topic	Current law (applicable to school districts receiving Race to the Top funds)	The bill (applicable only to municipal school districts)
<b>Initial placement on salary schedule</b>	No provision.	Requires the district, with respect to new teachers hired on or after the bill's effective date, to determine initial placement on the salary schedule based on years of experience, area of licensure, and any other factors the district considers appropriate. In the case of teachers hired before the bill's effective date, each teacher must be initially placed on the schedule so that the teacher's salary on the performance-based schedule is comparable to the teacher's salary under the pay schedule in effect for the prior school year.

<sup>11</sup> R.C. 3317.13, 3317.14, and 3317.141, none in the bill.



<b>Topic</b>	<b>Current law (applicable to school districts receiving Race to the Top funds)</b>	<b>The bill (applicable only to municipal school districts)</b>
<b>Performance measures</b>	Requires the district to measure a teacher's performance by (1) the level of educator license that the teacher holds, (2) whether the teacher is "highly qualified" under the federal No Child Left Behind Act (NCLB), and (3) the teacher's evaluation ratings.	Same, but adds that the district also must consider specialized training and experience a teacher has in the assigned position when measuring performance.
<b>Duties for additional pay</b>	Permits the district to provide in the salary schedule for additional compensation for teachers who assume duties that the district determines warrant extra pay, but for which the teacher does not have a supplemental contract. These duties may include, among others determined by the district, (1) assignment to a school that is eligible for federal funding for low-income or other at-risk students or that has failed to meet the NCLB standard of "adequate yearly progress" for two or more consecutive years, (2) teaching in a grade or subject area for which the district has a shortage of teachers, or (3) assignment to a hard-to-staff school.	Same, but adds teaching in a school with an extended school day or school year to the duties for which the district may provide additional compensation.
<b>Salary review</b>	No provision.	Requires the district's CEO to review each teacher's salary annually and make a recommendation to the board of education.
<b>Salary adjustments</b>	Requires the salary schedule to provide for annual adjustments based on evaluation ratings. The annual performance-based adjustment for an "accomplished" teacher must be more than the adjustment for a "proficient" teacher.	Permits the district to increase a teacher's salary for good performance, but specifies that the performance-based increase for an "accomplished" teacher must be greater than the increase for a "proficient" teacher. The district also may increase a teacher's salary if the teacher takes on duties for which the district provides additional compensation. But if those duties will be fewer or

Topic	Current law (applicable to school districts receiving Race to the Top funds)	The bill (applicable only to municipal school districts)
		<p>different in the ensuing school year, the teacher's salary may be decreased for that year. Under current law, a district may not decrease a teacher's salary during the term of the employment contract, unless the decrease is part of a uniform plan affecting all district employees.<sup>12</sup> The bill appears to limit salary reductions to a change in duties.</p> <p>Otherwise, the bill specifies that a teacher's salary may not be reduced unless the decrease is accomplished through a collective bargaining agreement.</p>
<b>Collective bargaining</b>	No provision.	Specifies that the bill's requirements regarding performance-based pay for teachers prevail over collective bargaining agreements, except that the district and the teacher's union <i>must</i> bargain over the implementation of the salary schedule and <i>may</i> bargain over additional factors regarding salaries, so long as those factors are consistent with the bill's requirements.

### Nonrenewal of teacher contracts

(R.C. 3311.81; conforming changes in R.C. 3319.10 and 3319.283)

Current law outlines the due process procedures that school districts must follow when they decide not to reemploy a teacher.<sup>13</sup> The bill makes several changes to these nonrenewal procedures for a municipal school district, as shown in the table below.

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<sup>12</sup> R.C. 3319.12.

<sup>13</sup> R.C. 3319.11, not in the bill.

Topic	Current law (applicable to all school districts)	The bill (applicable only to municipal school districts)
<b>Deadline for notice of nonrenewal</b>	Requires the district board of education to notify a teacher of its intent not to renew the teacher's contract by April 30.	Extends the deadline for notification of nonrenewal to June 1. Under the bill, teacher evaluations, which are to be considered in nonrenewal decisions, also must be completed by June 1, with results provided to the teacher by the earlier of ten days after the evaluation is done or the last teacher work day. Since the deadlines for completing evaluations and notifying teachers of nonrenewal are the same, a municipal school district probably will need to complete evaluations well ahead of June 1 in order to give proper notice of nonrenewal.
<b>Delivery of notice</b>	Requires the notice of nonrenewal to be given to the teacher by (1) personal delivery or (2) certified mail sent to both the teacher's place of employment and the teacher's residence.	No provision.
<b>Hearing on nonrenewal</b>	<p>Permits a teacher who has been notified of nonrenewal, within ten days after receipt of the notice, to demand a written statement describing the circumstances that led to the decision. This statement must be provided to the teacher within ten days. Within five days after receiving the statement, the teacher may request a hearing before the district board. The hearing must be held within 40 days after the teacher's request.</p> <p>Requires the hearing to be held in executive session, unless the board and teacher agree to a public hearing.</p> <p>Specifies that the district superintendent and assistant</p>	<p>Permits a teacher who has been notified of nonrenewal, within ten days after receipt of the notice, to request a hearing before the district board. The hearing must be held at the board's next scheduled meeting.</p> <p>Requires the hearing to be held in executive session.</p> <p>No provision.</p>



Topic	Current law (applicable to all school districts)	The bill (applicable only to municipal school districts)
	<p>superintendent may be present at the hearing.</p> <p>Permits the teacher to be represented by counsel.</p> <p>Requires the board, within ten days after the hearing, to issue a decision affirming the nonrenewal or vacating the decision. If the board vacates the nonrenewal, it must expunge any record of it.</p>	<p>No provision.</p> <p>Requires the board to act on the question of the teacher's reemployment after the hearing.</p>
<b>Automatic reemployment for procedural violations</b>	<p>Specifies that, in the case of a teacher who is not eligible for tenure and whom the district board does not want to reemploy, the failure of the board to evaluate the teacher or to give notice of its intent not to renew the teacher's contract by the required deadline results in automatic reemployment of the teacher for an unspecified contract term.</p> <p>Specifies that, in the case of a teacher who is eligible for tenure and whom the board does not want to reemploy, the failure of the board to evaluate the teacher or to give notice of its intent not to renew the teacher's contract by the required deadline results in automatic reemployment of the teacher for one year. If the board reemploys the teacher after the one-year contract expires, the teacher must be given a continuing contract.</p>	<p>No provision.</p> <p>No provision.</p>
<b>Appeal procedures</b>	<p>Allows a teacher who is not reemployed to appeal the nonrenewal to common pleas court on the grounds that the district board failed to comply with the required evaluation or nonrenewal procedures. In an appeal, the court is limited to correcting procedural errors and has no jurisdiction to order the</p>	<p>Specifies that the district board's decision to not renew a teacher's contract is final and not subject to appeal. However, under a separate provision of continuing law, any order or decision of a political subdivision, including a school district, that affects a person's rights, duties, privileges, or benefits may be appealed to</p>



Topic	Current law (applicable to all school districts)	The bill (applicable only to municipal school districts)
	<p>reemployment of the teacher, unless the teacher was not properly evaluated or given notice of the nonrenewal.</p> <p>Permits a teacher aggrieved by an action of the teacher's employer to seek final and binding arbitration through the grievance procedure specified in the teacher's collective bargaining agreement.<sup>14</sup></p>	<p>common pleas court. In the appeal, the court may affirm, reverse, or modify the order or decision on the grounds that it is unconstitutional, illegal, arbitrary, or unsupported by the evidence.<sup>15</sup> It is not clear whether the bill's statement that the board's decision is unappealable negates a teacher's ability to appeal a nonrenewal under this provision.</p> <p>Same. Again, though, it is not clear if the bill, by making the board's decision final, is meant to prohibit a teacher from challenging the nonrenewal through the grievance procedure.</p>
<b>Collective bargaining</b>	No provision.	<p>Specifies that the bill's requirements regarding nonrenewal of teacher contracts prevail over collective bargaining agreements entered into on or after the bill's effective date. However, the district and teachers' union must bargain over the due process procedures that precede the district board's notification that it intends not to renew a teacher's contract, but those procedures must be consistent with the bill.</p>

### Nonrenewal notification deadline for unemployment benefits

(R.C. 4141.29(I)(1)(e))

Under current law, a school district must notify employees by April 30 if their contracts will not be renewed for the following school year in order for the employees to qualify for unemployment benefits. The bill exempts a municipal school district from

<sup>14</sup> R.C. 4117.10(A), not in the bill.

<sup>15</sup> R.C. 2506.01 and 2506.04, neither section in the bill.





this deadline due to the bill's extension to June 1 of the deadline for notifying teachers of nonrenewal. However, the exemption applies to all employees of the district, not just teachers. Presumably, then, any teaching or nonteaching employee of a municipal school district whose contract is not renewed will not lose eligibility for unemployment benefits due to the date the employee is notified of the nonrenewal.

## **Teacher terminations and disciplinary suspensions**

(R.C. 3311.82; conforming changes in R.C. 124.36, 3302.061, 3314.10, 3319.12, 3319.13, 3319.141, 3319.143, 3319.151, and 3319.283)

Under the bill, municipal school districts are subject to different procedures for terminating teacher employment contracts than other school districts. The bill's changes apply only to teachers. The termination procedures of current law (see "**Background – due process under current law**" below) continue to apply to other employees of a municipal school district who are licensed by the State Board of Education, such as principals or counselors. The bill also allows a municipal school district to place a teacher on an unpaid disciplinary suspension using the same procedures it establishes for contract terminations.

### **Termination procedures**

Like other districts, under the bill, a municipal school district may only terminate a teacher's contract prior to its expiration for "good and just cause" or for willfully belonging to an organization that advocates overthrow of the government by force or violence,<sup>16</sup> falsification of a sick or assault leave statement,<sup>17</sup> assisting a student in cheating on a state achievement assessment,<sup>18</sup> or sexual conduct with a student. But the bill explicitly states that, in a municipal school district, good and just cause for termination also includes receiving an evaluation rating of "ineffective" for two consecutive years. An "ineffective" rating is the lowest of the four possible evaluation ratings.<sup>19</sup>

Under the bill's termination procedures, if an administrator in a municipal school district decides, after a preliminary investigation, that a teacher may have engaged in conduct that could lead to termination, the teacher is entitled to a fact-finding hearing to determine if termination is warranted. This hearing must be held before an

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<sup>16</sup> R.C. 124.36.

<sup>17</sup> R.C. 3319.141 and 3319.143.

<sup>18</sup> R.C. 3319.151.

<sup>19</sup> R.C. 3319.112(B)(1).

administrator designated by the district's CEO. Before the hearing, the designated administrator must give the teacher written notice of the allegations against the teacher and of the right to request representation by the teacher's union. If there is any written evidence related to the allegations, copies of that information also must be provided to the teacher.

The hearing must occur within a "reasonable" period of time after the teacher's receipt of the notice of the allegations. During the hearing, the teacher must be given a "meaningful" opportunity to respond to the allegations and to submit additional evidence in the teacher's defense. Within ten business days after the hearing, the designated administrator must give the teacher and the CEO written notice of the administrator's recommendation for discipline and the rationale for the recommendation.

If termination is recommended, the CEO must review the evidence to determine whether termination is justified and then make a recommendation regarding discipline to the board of education at its next scheduled meeting. The board may adopt or modify the CEO's recommendation, but it may not increase the level of discipline recommended for the teacher. The board must notify the teacher of any action it takes on the CEO's recommendation. If that action is to terminate the teacher's contract, the termination takes effect immediately.

The teacher may appeal a termination through the collective bargaining agreement's grievance procedure, as currently allowed under the Public Employees' Collective Bargaining Law.<sup>20</sup> However, unlike current law, the bill prohibits an arbitrator from overturning the termination because the school board, CEO, or designated administrator failed to strictly comply with the termination procedures in the bill or a collective bargaining agreement, unless the arbitrator finds that the failure resulted in "substantive harm" to the teacher.

Also, unlike current law, the bill does not explicitly state that the teacher may appeal the termination to court. However, under other provisions of continuing law, any order or decision of a political subdivision, including a school district, that affects a person's rights, duties, privileges, or benefits may be appealed to common pleas court.<sup>21</sup>

#### **Background – due process under current law**

Under the existing termination procedures for licensed school district employees, before terminating an employee's contract, the board of education must give the

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<sup>20</sup> See R.C. 4117.10(A), not in the bill.

<sup>21</sup> R.C. 2506.01, not in the bill.

employee written notice of its intent to consider termination, with a full description of the grounds for doing so. Within ten days after receipt of the notice, the employee may file a written request with the district treasurer for a hearing before the board or a referee. The board may suspend the employee pending the board's final decision, if it feels the character of the charges warrant that action.

If requested, a hearing must be held within 30 days after the employee's filing of the request, and the employee must be given at least 20 days' notice of the hearing's time and place. The hearing may not be held during summer vacation without the employee's consent. It also must be private, unless the employee requests a public hearing. During the hearing, both parties may be represented by counsel, cross-examine witnesses, and exercise the subpoena power.

If the employee or board has requested a referee for the hearing, the Superintendent of Public Instruction must designate three candidates from a list solicited from the Ohio State Bar Association and the employee and board must make a mutually agreeable selection. After the hearing, the referee must file a report with the board, which may, by a majority vote, accept or reject the referee's recommendation regarding the employee's termination.

If the board ultimately decides against termination, the charges and the record of the hearing must be expunged from the board's minutes. Also, if the board suspended the employee without pay pending its decision, the employee must be paid all salary lost during the suspension.

If the board decides in favor of termination, the employee may appeal the decision to common pleas court within 30 days. Either the employee or the board also may have the right to appeal the common pleas court's decision to the appropriate court of appeals subject to the Rules of Appellate Procedure.<sup>22</sup> Finally, if the employee is covered by a collective bargaining agreement, the employee may seek final and binding arbitration through the grievance procedure specified in that agreement.<sup>23</sup>

### **Disciplinary suspensions without pay**

The bill's new procedures for terminations also apply when a municipal school district places a teacher on an unpaid disciplinary suspension for a definite period of time. As with terminations, "good and just cause," including sexual conduct with a student, is grounds for disciplinary suspension under the bill.

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<sup>22</sup> R.C. 3319.16 and 3319.161, neither section in the bill.

<sup>23</sup> R.C. 4117.10(A), not in the bill.

## Teacher layoffs

(R.C. 3311.83; conforming changes in R.C. 3313.975, 3316.07, 3319.14, and 3319.18)

While current law allows every school district to reduce the number of teachers it employs,<sup>24</sup> the bill modifies the layoff procedures in a municipal school district by revising (1) the reasons for which the district may lay off teachers and (2) the factors used to determine the order of layoffs and the order of rehiring when positions become available again. The bill's changes are shown in the table below.

Topic	Current law (applicable to all school districts)	The bill (applicable only to municipal school districts)
<b>Reasons for layoffs</b>	<p>Permits a district to lay off teachers for the following reasons:</p> <ul style="list-style-type: none"> <li>(1) Return to duty of regular teachers after leaves of absence;</li> <li>(2) Decreased student enrollment;</li> <li>(3) Suspension of schools;</li> <li>(4) Financial reasons; or</li> <li>(5) Territorial changes affecting the district.</li> </ul>	<p>Same, but (1) omits suspension of schools as a reason for layoffs and (2) permits layoffs for academic reasons resulting in the consolidation of teaching positions, duties, or functions or in changes in educational programs.</p> <p>The bill also states, with respect to the current authority to undertake layoffs when regular teachers return from leaves of absence, that those leaves of absence include leaves for illness or disability, military service, or educational, professional, or other purposes.</p>
<b>Order of layoffs and rehiring</b>	<p>Requires a district, within each teaching field affected by the layoffs, to give preference in retention to teachers with tenure.</p>	<p>Requires a district to lay off teachers, for each area of licensure affected, according to their tenure status and composite evaluation ratings, as follows:</p> <ul style="list-style-type: none"> <li>(1) Nontenured teachers rated "ineffective" first;</li> <li>(2) Tenured teachers rated "ineffective" next;</li> <li>(3) Nontenured teachers rated "developing" next;</li> </ul>

<sup>24</sup> R.C. 3319.17, not in the bill.

Topic	Current law (applicable to all school districts)	The bill (applicable only to municipal school districts)
	<p>Specifies that laid-off tenured teachers have the right of restoration to "continuing service status" to any positions for which they qualify (apparently regardless of the passage of time since their layoff).</p> <p>No provision.</p> <p>Prohibits a district from giving preference in layoffs or rehiring based on seniority, except when deciding between teachers with comparable evaluations.</p>	<p>(4) Tenured teachers rated "developing" next;</p> <p>(5) Nontenured teachers rated "proficient" next;</p> <p>(6) Tenured teachers rated "proficient" next;</p> <p>(7) Nontenured teachers rated "accomplished" next; and</p> <p>(8) Tenured teachers rated "accomplished" last.</p> <p>Specifies that decisions regarding the recall of teachers, as positions open, must be made in the reverse order of the tenure status and composite evaluation rating categories used in the layoff decisions.</p> <p>Specifies that laid-off teachers (both tenured and nontenured) have the right of restoration <i>only</i> to positions for which they qualify <i>within three years after</i> the date their contracts were suspended.</p> <p>Regardless of the categories described above, specifies that the district board and the teachers' union "shall negotiate" how specialized training and experience will be factored into both reduction in force and recall decisions.</p> <p>Specifies that, after applying the negotiated specialized training and experience factors and any other negotiated factors, teachers within the same tenure status and composite evaluation rating category must be given preference based on seniority.</p>



Topic	Current law (applicable to all school districts)	The bill (applicable only to municipal school districts)
<b>Collective bargaining</b>	Specifies that the requirements regarding layoffs prevail over collective bargaining agreements entered into after September 29, 2005, except that the prohibition on giving preference in layoffs or rehiring based on seniority prevails over agreements entered into on or after September 29, 2011.	Specifies that the requirements regarding layoffs prevail over collective bargaining agreements entered into on or after the bill's effective date, except that:  (1) The district board and the teachers' union "shall negotiate" how specialized training and experience will be factored into both reduction in force and recall decisions; and  (2) The district and teachers' union may bargain over additional factors to be considered in determining the order of layoffs, so long as the factors are consistent with the layoff provisions described above.

### Collective bargaining for teachers

(R.C. 3311.77(G), 3311.78(G), 3311.79(G), 3311.80(G), 3311.81(F), 3311.82(E), and 3311.83(E)(1))

The bill's requirements regarding the employment of teachers in a municipal school district generally prevail over collective bargaining agreements entered into on or after the bill's effective date. Therefore, a municipal school district and its teachers' union cannot negotiate alternative employment provisions, except where the bill grants them explicit authority to do so. The following table summarizes the bill's provisions that are exempt from collective bargaining and indicates exceptions where the bill allows, or even requires, bargaining.

Bill's provisions exempt from collective bargaining	Exceptions
Tenure eligibility requirements	
Length of limited employment contracts	
Procedures for awarding extended limited contracts to tenure-eligible teachers	
Authorization to include the teaching of courses for high school credit outside of the normal school day among a teacher's duties	



Bill's provisions exempt from collective bargaining	Exceptions
under the teacher's regular employment contract	
Teachers' building assignments	Bargaining is <i>required</i> over the implementation of the assignment requirements and the process by which building-level teams conduct interviews and make recommendations
Teacher evaluations	Bargaining is <i>permitted</i> over additional evaluation procedures, including the incorporation of peer assistance and review into the evaluation process
Performance-based pay for teachers	Bargaining is <i>required</i> over implementation of the salary schedule and is <i>permitted</i> over additional factors regarding salaries
Procedures for not renewing a teacher's employment contract	Bargaining is <i>required</i> over the due process procedures preceding a teacher's receipt of notice of nonrenewal
Grounds and procedures for teacher terminations and disciplinary suspensions	
Reasons and procedures for implementing teacher layoffs	Bargaining is <i>required</i> over how specialized training and experience will factor in layoff and recall decisions and is <i>permitted</i> over additional factors to be considered in determining the order of layoffs

## Employment of principals and assistant principals

### Salaries

(R.C. 3311.78)

The bill requires municipal school districts to annually adopt a performance-based salary schedule for principals and assistant principals, in the same manner required by the bill for teachers in those districts. Although the schedule must be separate from the one for teachers, it must be applied in the same way in terms of (1) how performance is measured, (2) how new employees are placed on the schedule, (3) the provision of extra pay for additional duties, and (4) the reasons for which salaries may be increased. (See "**Teacher salaries**" above.)

However, the bill requires the performance-based salary schedule to be applied differently to principals and assistant principals in two ways. First, principals and

assistant principals hired before the bill's effective date must be initially placed on the new schedule consistent with their employment contracts.

Second, the bill prohibits a municipal school district from decreasing a principal's or assistant principal's salary during the term of the employment contract, unless the reduction is mutually agreed to by the employee and the district or is part of a uniform plan affecting the entire district. But the bill also states that, notwithstanding that prohibition, a principal's or assistant principal's salary may be decreased if the employee will perform fewer or different duties for which the district provides additional pay. The bill, then, may allow the district to reduce a principal's or assistant principal's salary based solely on the employee's duties, regardless of whether the employee agrees to the decrease or whether it is part of a uniform plan affecting all district employees.

### Evaluations and contract nonrenewals

(R.C. 3311.84(B) to (D); conforming changes in R.C. 3302.04 and 3319.112)

Under the bill, municipal school districts must continue to comply with the requirements in current law regarding the evaluation of administrators and the nonrenewal of administrator employment contracts (see below), but those requirements are modified somewhat for principals and assistant principals in municipal districts. The bill's modifications are shown in the table below.

Topic	Current law (applicable to all school districts)	The bill (applicable only to municipal school districts)
<b>Deadline for providing evaluation results in year contract expires</b>	Requires an administrator to be given the results of the employee's final evaluation at least five days before the district board of education acts to renew or not renew the employee's contract.	Requires a principal or assistant principal to be given the results of the employee's final evaluation at least five days before the district's CEO makes a recommendation to the board regarding the renewal or nonrenewal of the employee's contract.
<b>Notification of board action</b>	Requires the district board, before March 31 of the year in which an administrator's contract expires, to notify the employee that the employee may request a meeting with the board regarding the board's intended action to renew or not renew the employee's contract.	Requires the board, at least 30 days prior to taking action to renew or not renew a principal's or assistant principal's contract, to notify the employee of the board's intended action on the contract and that the employee may request a meeting with the board regarding the action.



Topic	Current law (applicable to all school districts)	The bill (applicable only to municipal school districts)
<b>Automatic reemployment for procedural violations</b>	Specifies that the failure of the district board to evaluate an administrator, or to grant a requested meeting regarding the renewal or nonrenewal of the administrator's contract, results in automatic reemployment of the administrator for one year. However, the duration of the reemployment is two years if the administrator has been working as an administrator in the district for at least three years.	No provision.

### Background

Under current law, every school district must adopt evaluation procedures for administrators, including assistant superintendents, principals, assistant principals, supervisors, and business managers. In the case of principals, the evaluation procedures must be based on principles comparable to the district's teacher evaluation policy, but tailored to the duties and responsibilities of principals and the environment in which principals work. Administrators must be evaluated annually by the district superintendent or the superintendent's designee, except that an administrator must have two evaluations in any year in which the administrator's contract is due to expire. Each evaluation must measure the administrator's effectiveness in performing assigned duties. The school board must consider evaluations when deciding whether to renew an administrator's employment contract. An administrator may request a hearing before the board to discuss the reasons for the proposed renewal or nonrenewal of the administrator's contract.<sup>25</sup>

### Contract terminations

(R.C. 3311.84(F))

The bill generally requires municipal school districts to comply with the existing due process procedures for the termination of principals and assistant principals (see "**Background – due process under current law**" above). However, under the bill, the failure of a principal's or assistant principal's building to meet academic performance standards established by the district's CEO is "good and just cause" for termination of

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<sup>25</sup> R.C. 3319.02(D).

the employee's contract. Additionally, the bill specifies that if the CEO intends to recommend to the school board that a principal or assistant principal be terminated, the CEO must give the employee a copy of the employee's evaluation at least five days before making the recommendation.

### **Academic performance plan**

(R.C. 3311.74)

Current law requires the CEO of a municipal school district to develop, implement, and regularly update a plan to measure student academic performance at each school within the district.

#### **Parent-teacher conferences**

The bill adds a requirement that the CEO's plan must include a component that requires the parents or guardians of students who attend district schools to attend, prior to December 15 each year, at least one parent-teacher conference or similar event held by the students' schools. The stated purpose of the conference or event is to provide an opportunity for a student's parent or guardian to meet the student's teachers, discuss expectations for the student, discuss the student's performance, and foster communication between home and school.

#### **Corrective actions**

Current law also specifies that the CEO's academic performance plan must contain provisions requiring the CEO (with the concurrence of the district board) to take corrective actions at schools that are not achieving the academic goals set by the district board or are not improving their achievement levels at an acceptable rate. The law states that these actions can include reallocation of academic and financial resources, reassignment of staff, redesign of academic programs, and deploying additional assistance to students.

The bill adds adjusting the length of the school year or school day to the items that may be included in the corrective actions specified in the plan.

#### **Development of the corrective plan**

The bill also adds procedures for the development of the corrective measures. First, it requires the CEO, before taking any corrective action, to identify which schools are in need of corrective action, what corrective action is warranted at each school, and when the corrective action should be implemented (collectively known under the bill as the "corrective plan"). The bill states that the corrective plan is not intended to be used

as a cost savings measure but, instead, is intended to improve student performance at targeted schools.

Immediately after developing the corrective plan, the CEO and the presiding officer of each labor union whose members will be affected by the plan must each appoint up to four individuals to form one or more corrective action teams. Each team, within timelines set by the CEO, must collaborate with the CEO and, where there are overlapping or mutual concerns, with other corrective action teams to make recommendations to the CEO on implementation of the corrective plan. If the CEO disagrees with all or part of a team's recommendations, or if a team fails to make timely recommendations, the CEO may implement the corrective plan in the manner in which the CEO determines to be in the best interest of the students.

#### **Priority over collective bargaining**

The bill states that the CEO and any corrective action team are not bound by the applicable provisions of collective bargaining agreements in developing recommendations for and implementing the corrective plan. Moreover, it also specifies that the content and implementation of the corrective plan prevail over collective bargaining agreements entered into on or after the bill's effective date.

#### **Additional accountability measures for an existing municipal school district**

(R.C. 3311.741)

The bill provides for new, additional accountability measures applying only to a municipal school district already in existence on July 1, 2012. Under this provision, the district board of education must develop an array of measures to be used to report on the academic performance of the district. These measures are in addition to and independent of the annual state report card or other reports the district makes to its parents, students, and residents.

Under the bill, by December 1, 2012, the district board must submit to the Superintendent of Public Instruction an array of measures to be used in evaluating the performance of the district, including at least measures to assess overall student achievement, student progress over time, the achievement and progress over time of each subgroup of students, and college and career readiness. The state Superintendent must approve or disapprove the measures by January 15, 2013. If the measures are disapproved, the state Superintendent must recommend modifications that will make the measures acceptable.

Then, beginning with the 2012-2013 school year, the board must establish goals for improvement on each of those approved measures, using data for the 2011-2012 school year as a baseline for determining improvement. By October 1 of each year, beginning in 2013, the district board must issue a report to the General Assembly, Governor, and state Superintendent describing the district's performance for the previous school year on each of those measures.

Finally, not later than November 15, 2017, the state Superintendent must evaluate the district's performance based on those same approved measures and issue a report to the General Assembly and Governor.

### **Student advisory committees**

(R.C. 3311.742)

The bill requires a municipal school district and each of its partnering community schools to establish a student advisory committee at each of their schools offering grades 9 to 12. (Like other provisions of the bill, for this purpose, a partnering community school is a community school located in the district that is either sponsored by the district or is a party to an agreement with the district whereby the district and the community school endorse each other's programs.) Under the bill, the principal of each school to which this provision applies and representatives of the teachers' union, if applicable, must determine the composition of the school's student advisory committee and the process for selecting committee members. That process must allow for all students enrolled in the school to be informed about, and involved in, member selection.

Each student advisory committee must make regular (but at least semiannual) recommendations on:

- (1) Strategies to improve teaching and learning at the school, including the use of technology in the classroom;
- (2) Strategies to encourage high-achieving students to work with underperforming students to improve the school's academic culture and graduation rate;
- (3) Ways in which students may improve the behavior of other students and reduce incidents of bullying and other disruptive conduct;
- (4) Procedures for monitoring the progress of the changes implemented; and

(5) Any other issues requested by school personnel or the district board or community school governing authority.

The student advisory committee must provide copies of its recommendations to the district CEO, the school principal, and, if applicable, the person designated to be the representative of the teachers' labor organization for the school. The district board or community school governing authority must post the recommendations on the district's or community school's web site.

## **School calendars**

(R.C. 3311.85)

The bill directs the district board to establish school calendars annually, and declares that "the board has final authority to establish a school calendar, including starting and ending times for the school day, for one or more of the district's school buildings that provides for additional student days or hours beyond the minimum prescribed by [state law]." The board may prescribe year-round instruction or an extended school day. The school calendars must comply with the state minimum required of all school districts.

The bill specifies that the school calendar adopted by a municipal school district board prevails over any conflicting provisions of a collective bargaining agreement entered into on or after the bill's effective date. However, it requires the board and the teachers' union to negotiate regarding any additional compensation for working an extended school day or school year. The negotiated compensation must be consistent with the bill's provisions regarding teacher salaries.

## **Municipal School District Transformation Alliance**

(R.C. 3311.86)

The bill allows the mayor of the city containing the greatest portion of a municipal school district to initiate proceedings to establish a Municipal School District Transformation Alliance as a nonprofit corporation under R.C. Chapter 1702., if one or more partnering community schools are located in that district. As in other provisions of the bill, a "partnering community school" is a community school that is located within the territory of the municipal school district, and either (1) is sponsored by the district, or (2) is a party to an agreement with the district where the district and the community school endorse each other's programs.

## **Board of directors**

(R.C. 3311.86(B))

If such an Alliance is created, the mayor has the "sole authority" to appoint the members of the board of directors, who must include representatives from the municipal school district, partnering community schools, the community at large (including parents and educators), and the business community (including business leaders and foundation leaders). None of these categories may comprise a majority of the directors. The mayor must identify the directors in the articles of incorporation. The mayor is an ex officio director and must serve as the chairperson of the board of directors.

## **Duties**

(R.C. 3311.86(D))

If an Alliance is created, it must do all of the following:

(1) Confirm and monitor implementation of a "transformation alliance education plan," prepared by the mayor. The bill defines this as a plan "to transform public education in the municipal school district to a system of municipal school district schools and partnering community schools that will be held to the highest standards of school performance and student achievement."

(2) Suggest national education models for and provide input in the development of new school district schools and partnering community schools located in the district;

(3) Report annually on the performance of all municipal school district schools and all community schools located in the district using the criteria (framework) adopted jointly by the Alliance, the Department of Education, and a statewide community school sponsor organization (see below); and

(4) Make recommendations to the Department on the approval of sponsors of new community schools located in the district using standards adopted jointly by the Alliance, the Department, and a statewide community school sponsor organization (see below).

## **Sunset**

The bill specifies that the authority to create an Alliance expires on January 1, 2018, and that any Alliance created under the bill is terminated on that date.

## **Public meetings**

(R.C. 3311.86(C)(1))

Any formal action of the board of directors must take place at a board meeting with the concurrence of a majority of board members. Board meetings, other than executive sessions, must be public meetings "open to the public at all times." Executive sessions may be for personnel issues, property purchase deliberations, consultation with an attorney concerning pending or imminent court action, matters that must be kept confidential under state or federal law, and security and emergency response protocols. The board must establish methods to determine the time and place of public meetings, and must provide, upon request, advance notice of meetings, which may include mailing notices to subscribers on a mailing list or mailing notices in self-addressed, stamped envelopes provided by persons who request advance notice.

## **Access to records**

(R.C. 3311.86(C)(2))

The Alliance must organize and maintain all of its records, and must file copies with the Department of Education. The Alliance and the Department must make the records available to the public as though they were public records under the Public Records Law. The Department must promptly notify the Alliance when the Department receives requests for Alliance records.

## **Conflicts of interest policy**

(R.C. 3311.86(C)(3))

The board of directors must establish a conflicts of interest policy. The policy, and any subsequent amendments to it, must be adopted at a public meeting.

## **Nonpublic status**

(R.C. 3311.86(F))

The bill specifies that the directors, officers, and employees of an Alliance are not public employees or public officials and are exempt from the state Open Meetings Act (but see "**Public meetings**" above), Public Records Law (but see "**Access to records**" above), Public Ethics Law (but see "**Conflicts of interest policy**" above), Civil Service Law, Public Employees Retirement System Law, and Public Employee Collective Bargaining Law. Alliance members and employees are not considered "public officials" or "public servants" for purposes of the Public Administration Law.

The bill asserts that membership on the Alliance board does not constitute an incompatible holding of a public office or public employment. In other words, an individual may hold a public office simultaneously while serving on the Alliance board. Membership on the Alliance board is not considered holding a public office and thus does not violate any prohibition against an individual holding more than one public office simultaneously.

### **Bribery**

(R.C. 2921.02)

The bill also expands the offense of bribery, a third degree felony, to include (1) promising, offering, or giving any valuable thing or valuable benefit, with purpose to corrupt or improperly influence, to a director, officer, or employee of an Alliance, or (2) knowingly soliciting or accepting for self or another, by a director, officer, or employee of an Alliance, any valuable thing or valuable benefit to corrupt or improperly influence the discharge of duties. As under current law for public servants convicted of bribery, if an Alliance director, officer, or employee is convicted of bribery, that person is forever disqualified from holding any public office, employment, or position of trust in this state.

### **Framework to assess district and community schools in a municipal school district**

(R.C. 3311.87(B))

As noted above, the Transformation Alliance, if created, is required to report annually on the performance of all municipal school district schools and all community schools located in the district. For that purpose, the bill requires the Department of Education, the Alliance, and a statewide nonprofit organization whose membership is comprised solely of sponsors of community schools and whose members sponsor the majority of start-up community schools in Ohio, by April 30, 2013, jointly to establish a framework to assess the "efficacy" of district schools and community schools located in the district. The bill also specifies that, where possible, this framework must be based on nationally accepted quality standards and principles for schools and must be specific to a school's model, mission, and student populations.

### **Criteria for community school sponsorship in a municipal school district**

(R.C. 3311.87(A))

Similar to the framework to assess schools in the district (described above), the bill requires the Department of Education, the Transformation Alliance, if created, and



that same statewide community school sponsor organization, by December 31, 2012, jointly to establish criteria for both (1) sponsors to use to determine if they will sponsor new community schools in the municipal school district, and (2) the Department and the Alliance to use in assessing the ability of a sponsor to successfully sponsor schools in the district. These criteria must be based on standards issued by the National Association of Charter School Authorizers or any other nationally organized community or charter school organization.

### **Approval of sponsors of community schools in a municipal school district**

(R.C. 3311.86(E))

The bill prescribes a special procedure for the approval of sponsors of new community schools in the municipal school district. But this procedure applies only to a sponsoring entity that must be approved by the Department of Education. That is, it does not apply at all to those early pilot sponsors originally operating only in Lucas County who do not have to be approved by the Department. In addition, in regard to those entities to which it does apply, the bill's approval procedure applies to them only when they request from the Department a new or renewed approval to sponsor schools.

Under the bill's procedure, (1) a sponsor must request a recommendation from the Municipal School District Transformation Alliance, (2) the Alliance must make a recommendation to the Department regarding that sponsor based on the criteria for sponsors as described above, and (3) the Department must use those same criteria, in addition to any other requirements prescribed by law, to make a final determination, on recommendation of the Alliance, of whether the sponsor may sponsor new community schools in the municipal school district. Finally, the bill stipulates that a sponsor is not subject to approval under this procedure more than one time.

### **Use of criteria by community school sponsors**

(R.C. 3311.87(A)(1))

In addition to its use by the Alliance and the Department in approving sponsors, the bill requires the sponsors themselves to use the criteria developed by the Alliance, Department, and statewide sponsor organization to determine when they will sponsor new community schools in the municipal school district, beginning with any community school that opens in the district after July 1, 2013. This provision appears to apply to all sponsors, including those not subject to approval by the Department.

## Combining community school and district report card data

(R.C. 3302.03)

The bill revises the law on combining data of community schools and school districts on the annual state-issued report cards specifically for a municipal school district. It permits a municipal district that has a qualifying relationship with a start-up or conversion community school to elect to have (1) the community school's student academic performance data combined with comparable data from the schools of the district for the purpose of calculating the district's rating on its report card, and (2) to have the number of students attending the community school noted separately on the district's report card. The district's option to include community school data on its report card applies to any community school located in the district that either is sponsored by the district, or has entered into an agreement with the district whereby the school and the district endorse each other's programs. The option to combine a community school's performance data with the district's performance data is expressly subject to approval by the community school's governing authority. On the other hand, the option to note a community school's enrollment number on the district's report card is left entirely to the discretion of the municipal school district.<sup>26</sup>

To exercise either option, by October 1 each year, the district must file with the Department of Education documentation, as required by the Department, indicating eligibility for that election.

### Comparison with current law

Current law, which would remain in effect for all other districts, makes the combination of performance data mandatory, not optional, in the case of conversion community schools.<sup>27</sup> However, that provision does not apply to conversion community schools that primarily enroll students who previously dropped out of school or are at risk of dropping out of school because of poor attendance, disciplinary problems, or suspensions. This same exclusion applies to the bill's new optional provisions applying to a municipal school district.<sup>28</sup> In contrast to current law, a municipal district under the bill (a) could opt to include start-up, as well as conversion, community schools, (b) could opt not to include any community schools, whether start-up or conversion, and (c) possibly could elect to include some community schools it sponsors and not others. Of course, as noted above, the option to combine a

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<sup>26</sup> R.C. 3302.03(C)(6)(c).

<sup>27</sup> R.C. 3302.03(C)(6)(a).

<sup>28</sup> R.C. 3302.03(C)(6), first paragraph.

community school's performance data with the district's performance data is subject to approval by the community school's governing authority.

Current law also allows any school district to elect to include on its report card the performance data of students enrolled in a community school located in the district that either leases a building from the district or enters into an agreement with the district whereby the district and the school endorse each other's programs.<sup>29</sup>

Finally, the bill permits a municipal district to elect to have the enrollment count of start-up or conversion community schools that it sponsors or endorses noted separately on the district's report card. Current law does not authorize this option for other school districts.

### **Deposit of proceeds from sale of real property**

(R.C. 3311.751)

Ordinarily, under current law, when a school district sells a parcel of real property it owns, the proceeds from that sale must be deposited into the sinking fund, the bond retirement fund, or a special fund for the construction or acquisition of permanent improvements. Under the bill, however, a municipal school district that sells real property may deposit those proceeds into the district's general fund, as long as all of the following conditions are satisfied:

- (1) The district has owned the property for at least ten years;
- (2) Any securities or other obligations issued by the district to pay for the real property or improvements to it are no longer outstanding at the time of the sale; and
- (3) The deposit is not prohibited by any agreements the district has with the Ohio School Facilities Commission.

### **Current expense levy partially allocated to partnering community schools**

(R.C. 5705.192, 5705.21, 5705.212, 5705.215, 5705.216, 5705.218, 5705.251, 5705.261, and 5748.01)

The bill authorizes the school board of a municipal school district to propose a levy for current operating expenses, a portion of which would be allocated to "partnering" community schools. A partnering community school is a community school located within the territory of the municipal school district that either is

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<sup>29</sup> R.C. 3302.03(C)(6)(b).

sponsored by the district or is a party to an agreement with the district whereby the district and the community school endorse each other's program.<sup>30</sup> A copy of such an agreement must be certified to the Department of Education.<sup>31</sup>

Revenue from the community schools' share of the levy is to be credited to a "partnering community schools fund" created by the school board. Revenue in that fund is to be distributed among partnering community schools within 45 days after it is received in the fund. Each school must receive a share proportionate to its share of "resident" pupils relative to all the partnering community schools. To qualify as a "resident" pupil, the pupil must be entitled to attend a school of the municipal school district. Partnering community schools also will receive their share of state property tax reimbursements for the homestead exemption and the 10% and 2½% rollbacks.<sup>32</sup> Existing law does not permit tax revenue sharing between school districts and nondistrict schools.

The bill requires that the resolution and ballot language proposing such a shared levy specify the portion of proceeds allocated to the municipal school district and the portion allocated to partnering community schools. The tax could be levied for up to ten years or for a continuing period of time.<sup>33</sup> The levy may be renewed or replaced, or combined with a bond levy for permanent improvements. If combined with such a bond levy, only the current expense levy revenue may be shared; the bond levy is solely for the purpose of the school district. If a shared levy is imposed for a continuing period of time, it may be reduced by initiative petition in the same manner as any school district current expense levy. A renewal or replacement levy may increase or decrease the total millage as well as the amounts allocated to the municipal school district and to partnering community schools. However, an initiative petition to reduce such a levy must decrease the amounts allocated to the municipal school district and to partnering community schools in proportion to the decrease in the total millage.<sup>34</sup>

A shared levy may be imposed as an "incremental" levy, which is a series of successive levies currently authorized for school districts whereby the total rate of the levy increases by stated increments over up to five years. If a shared levy is

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<sup>30</sup> R.C. 5705.21(B)(6)(b).

<sup>31</sup> R.C. 5705.21(B)(4).

<sup>32</sup> R.C. 5705.21(B).

<sup>33</sup> R.C. 5705.21(B).

<sup>34</sup> See R.C. 5705.192; 5705.21(C); 5705.218; 5705.261.

incremental, the portion allocated between the district and partnering community schools must remain a fixed proportion of the revenue for each year the tax is levied.<sup>35</sup>

If the school board levying a shared tax issues tax anticipation notes, it may anticipate only the district's share of the levy revenue.<sup>36</sup>

The bill states that where, in the school funding law, reference is made to the amount of a school district's taxes, the reference includes only the district's share of levy revenue.<sup>37</sup>

The bill states that proceedings undertaken by the board of education to propose a shared levy are valid, even if they were initiated prior to the effective date of the bill, so long as the proceedings are consistent with the terms of the bill.<sup>38</sup>

## **Exemptions from education laws**

(R.C. 3311.76)

Under current law, the CEO of a municipal school district may to request from the Superintendent of Public Instruction exemptions from administrative rules of the State Board of Education. However, the state Superintendent may not exempt the district from any rule regarding (1) state retirement systems for teachers and other school employees, (2) employment procedures for nonteaching employees, (3) requirements for leave time, lunch periods, annual salary notices, employee training in child safety and violence prevention, licensing of educational paraprofessionals, and employment of substitute teachers, and (4) provision of services to students with disabilities. The bill maintains this provision, as is, and adds a provision citing to another section of existing law under which any school district board of education or chartered nonpublic school may request exemptions from education-related statutes and administrative rules for an innovative education pilot program. In other words, the bill specifically authorizes the municipal school district to request exemptions under this other existing law. Such an exemption also requires approval of a school district teachers' union. As under the section of law regarding rule exemptions for the municipal district, a district or school may not receive an exemption for an innovative pilot program for any of the items described in (1) to (4) above. A school district also

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<sup>35</sup> R.C. 5705.212(C).

<sup>36</sup> R.C. 5705.21(D)(4); 5705.212(C)(5); 5705.218(J)(5).

<sup>37</sup> R.C. 5705.21(B)(5).

<sup>38</sup> Section 3.

may not receive an exemption under that section from certain operating standards, but may request a waiver from them under yet another separate provision of law.

## Background

The Cleveland Metropolitan School District is governed by a nine-member board of education. Since 1998, the board has been appointed by the mayor of Cleveland. This mayoral appointment is a result of a 1997 Ohio law which requires that, when a school district is released from a federal court order "requiring supervision and operational, fiscal, and personnel management of the district by the state Superintendent of Public Instruction," the school board of that district will be appointed by the mayor of the "municipal corporation having the greatest portion of [the] school district's territory."<sup>39</sup>

## History

On August 31, 1976, a federal district court held that the Cleveland school district violated the Fourteenth Amendment of the U.S. Constitution rights by maintaining a segregated school system.<sup>40</sup> In 1994, the parties to the case signed a consent decree to bring the case to an end. On March 3, 1995, while hearing a request by the district for relief on the student assignment standards, the federal district judge ordered a state takeover of the Cleveland school district, and handed control of the district to the state Superintendent of Public Instruction, citing the school system to be "in a state of crisis."<sup>41</sup> The state took control of the district.

In 1997, the 122nd General Assembly passed Sub. H.B. 269, which required the mayor of the city that contains the majority of the territory of a school district under state control pursuant to federal court order to appoint the school board once the court released state control, which happened in 1998. The act also scheduled a referendum on the mayor's authority to appoint board members.

In November 2002, the referendum required by H.B. 269 was held for the voters in the Cleveland school district to decide whether to maintain mayoral appointment of the school board or whether to return to an elected school board. Over 70% voted in favor of maintaining the mayoral appointment of the school board.<sup>42</sup>

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<sup>39</sup> R.C. 3311.71.

<sup>40</sup> *Reed v. Rhodes*, 422 F.Supp. 708 (N.D. Ohio 1976).

<sup>41</sup> Ann Bradley, "'Crisis' spurs state takeover of Cleveland," *Education Week*, March 15, 1997, Vol. 14, Issue 25.

<sup>42</sup> "Mayoral Control of Schools Ok'd," *The Plain Dealer*, November 6, 1992.

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## HISTORY

ACTION	DATE
Introduced	04-24-12
Reported, S. Education	06-12-12
Passed Senate (27-4)	06-12-12

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