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# OHIO LEGISLATIVE SERVICE COMMISSION

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S.B. 135  
134<sup>th</sup> General Assembly

## Bill Analysis

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**Version:** As Passed by the Senate

**Primary Sponsor:** Sen. Cirino

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## SUMMARY

### Degree programs

- Requires the Chancellor of Higher Education, when considering approval of a new degree or degree program for a state institution of higher education, to take into account the extent to which it aligns with in-demand jobs.
- Permits the Chancellor to adopt rules to suspend or limit enrollment in a state institution's degree program if it has a low completion rate at that institution.
- Requires the Chancellor to approve all programs for nursing bachelor's degrees at community colleges, state community colleges, and technical colleges if they meet prescribed criteria.

### Student tuition and fees

- Prohibits a state institution of higher education from charging an additional fee to a student for academic activity associated with regular coursework, such as grading student assignments.
- Prohibits a state institution from charging more in tuition and fees for an online course than for a course taught in an in-person, classroom setting.
- Requires special fees for online courses at state institutions to be based on the actual demonstrated cost incurred by the institution.

### Student financial aid

- Establishes the Second Chance Grant Pilot Program to operate in the 2021-2022 and 2022-2023 academic years, under which an eligible student enrolled in a "qualifying institution" who has a remaining cost of attendance after other financial aid is applied to the student's account must receive a one-time \$2,000 grant.

- Establishes a supplemental grant for OCOG recipients who have completed at least two years of a bachelor's degree program and are making progress toward completing that program.
- Requires the Chancellor, to the extent permitted by federal law, to distribute certain unused federal funds to community colleges, state community colleges, or technical colleges to support students enrolled in certain certificate or credential programs.

### **Accommodations for students unable to enroll in a course**

- Requires a state institution to offer prescribed accommodations to a qualifying student who was unable to register for a course necessary to complete the student's bachelor's degree program in the student's final two academic years, rather than requiring the institution only to waive tuition and fees for a necessary course as under current law.

### **Guaranteed pathways, joint programming, and dual enrollment**

- Establishes the Ohio Guaranteed Transfer Pathways Initiative to permit community college students to transfer credits to state universities pursuant to the system of articulation and transfer policies and procedures prescribed under continuing law.
- Requires state universities to enter into agreements with multiple community colleges, state community colleges, or technical colleges to establish joint academic programming and dual enrollment opportunities.

### **Reporting requirements**

- Requires the Chancellor, by November 1 of each even-numbered year, to issue a report regarding the extent to which degree and certificate attainment at state institutions align with in-demand jobs.
  - Requires the Chancellor to consider that report's findings and, in collaboration with the Office of Budget and Management, to consider changing the weights and allocations in the state share of instruction formula.
- Requires each state institution of higher education to issue an annual report about the institution's tuition and fees, average cost of attendance, and certain other post-graduation data and requires the Chancellor to issue a similar report for all state institutions.
  - Requires each state institution to provide prospective students, and their parents and guardians, with a copy of the most recent report about the institution's tuition and fees, average cost of attendance, and student post-graduation data.
- Requires the Chancellor to issue an annual report regarding student admissions during the academic year.
  - Requires each state institution of higher education to issue a similar report and post it on the institution's website.

- Requires the Chancellor to issue an annual report regarding the tuition and general fee revenue of state institutions during the academic year.
  - Requires each state institution to issue a similar report and post it on the institution's website.
- Requires the Chancellor to issue a report about the mental health and wellness services and initiatives of state institutions of higher education.

### **Due process for disciplinary actions**

- Requires a state university to provide a student who is subject to a disciplinary action with a notice of the action, the reasons for it, and the student's right to appeal it.
- Requires a state university to afford a student with a fair and impartial hearing within a reasonable time if the student opts to appeal a disciplinary action.

### **Contracts without a nonboycott declaration are prohibited**

- Prohibits a state institution of higher education from entering into or renewing a contract with a company for the acquisition or provision of supplies, equipment, or services, or for construction services, unless the contract declares that the company is not boycotting Israel or other jurisdictions with whom Ohio can enjoy open trade.

### **Uniform Prudent Management of Institutional Funds Act**

- Revises the annual spending safe harbor from endowment funds for state institutions of higher education, from not greater than 5% creating an irrebuttable presumption of prudence, to spending exceeding 7% creating a rebuttable presumption of imprudence.
- Establishes the scope and procedures for the civil action for when a state institution of higher education violates a restriction in an endowment agreement.

### **Free speech policies**

- Requires each state institution of higher education to adopt a policy that affirms prescribed principles regarding the regulation of free speech on campuses and to include that policy in the institution's handbook, website, and orientation programs.
- Requires each state institution of higher education to establish a process under which a student, student group, or faculty member may submit a complaint about an alleged violation by an employee of its policy.

### **Other higher education provisions**

- Prohibits a state institution of higher education from withholding a student's official transcripts from a potential employer if the student has authorized the transcripts to be sent to the employer and the employer affirms the transcripts are a prerequisite for employment.

- Requires each state university to endeavor to avoid prioritizing the admission of out-of-state applicants over in-state applicants if both applicants apply in the same general timeframe and have substantially similar qualifications.
- Requires each state institution of higher education to generally accept and provide credit for coursework in the same manner across all instructional methods, unless a course requires in-person observations and experiences.
- Requires each state institution of higher education to submit to the Chancellor a written statement explaining how any capital facilities project involving state capital appropriations advances the state’s master plan for higher education.

### **K-12 career advising policy**

- Modifies the law on K-12 career advising policies.

### **K-12 free speech polices**

- Requires each school district and other public school to adopt a policy that affirms prescribed principles regarding the regulation of free speech and to make it available to students and teachers annually.
- Requires each school district and other public school to establish a process under which a student, student group, or teacher may submit a complaint about an alleged violation by an employee of the district’s or school’s policy.

### **Apprenticeship subprogram of the College Credit Plus program**

- Creates a subprogram of the College Credit Plus program, beginning with the 2022-2023 school year, that permits eligible students to participate in certified apprenticeship programs.
- Requires the Chancellor of Higher Education and Superintendent of Public Instruction, by December 31, 2021, to develop a proposal to implement the subprogram and submit it to the State Board of Education.
- Requires the State Board, not later than June 30, 2022, to adopt rules to implement the program.

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## **TABLE OF CONTENTS**

Degree programs .....	6
State institutions of higher education and degrees – generally .....	6
Community and technical college bachelor’s degrees .....	7
Student tuition and fees .....	7
Prohibit additional fees for academic activities .....	7
Tuition and fees for online courses .....	7
Student financial aid .....	7

Second Chance Grant Pilot Program .....	7
Operations .....	7
Student eligibility .....	8
Reporting requirements .....	9
Second Chance Grant Pilot Program Fund .....	9
Rules .....	9
Supplemental OCOG awards .....	9
Federal funds and community colleges .....	10
Accommodations for students unable to enroll in a course .....	10
Student eligibility .....	10
Accommodations .....	11
Guaranteed pathways, joint programming, and dual enrollment .....	11
Ohio Guaranteed Transfer Pathways Initiative .....	11
Joint academic programming and dual enrollment opportunities .....	12
Reporting requirement .....	12
Rules .....	12
Additional reporting requirements .....	12
State share of instruction and in-demand jobs .....	12
Posting of cost and postgraduate data .....	13
Other reports .....	14
Due process for disciplinary actions .....	15
Contracts without a nonboycott declaration are prohibited .....	15
Uniform Prudent Management of Institutional Funds Act .....	15
Endowment spending standards .....	15
Civil action .....	16
Notification to Attorney General .....	16
The complaint .....	16
Jurisdiction .....	17
Different interests in case .....	17
Remedies .....	17
Reopening an estate .....	18
Free speech policies .....	18
Other higher education provisions .....	21
Withholding of transcripts .....	21
Admissions and Ohio residents .....	21
Credit for online coursework at other institutions .....	21

Written statement regarding capital facilities projects .....	21
K-12 provisions.....	21
Career advising policies.....	21
Free speech policies .....	22
Apprenticeship subprogram of CCP .....	25
Proposal and rule adoption .....	25

## **DETAILED ANALYSIS**

The bill revises several laws on the operation of state institutions of higher education, including those regarding degree programs, tuition and fees, student financial aid, accommodations for students unable to enroll in certain courses, reporting requirements, and disciplinary due process. It also expressly adds state institutions of higher education to the Non-Boycott Law and modifies the Uniform Prudent Management of Institutional Funds Act as it pertains to gifts to them.

In addition to those changes, the bill requires state institutions of higher education and public K-12 schools to adopt prescribed policies regarding free speech on campus or school property. Finally, it modifies the law on K-12 career advising policies and creates a subprogram in the College Credit Plus Program concerning credit for apprenticeship programs.

Under continuing law, a “state institution of higher education” is any of the 13 state universities, the Northeast Ohio Medical University, a community college, state community college, university branch, or technical college. The 13 state universities are the University of Akron, Bowling Green State University, Central State University, University of Cincinnati, Cleveland State University, Kent State University, Miami University, Ohio University, Ohio State University, Shawnee State University, University of Toledo, Wright State University, and Youngstown State University.<sup>1</sup>

### **Degree programs**

#### **State institutions of higher education and degrees – generally**

The bill requires the Chancellor of Higher Education, when considering approval of a new degree or degree program for a state institution of higher education, to take into account the extent to which that degree or program aligns with in-demand jobs in Ohio and its regions.<sup>2</sup>

In addition, the Chancellor may adopt rules to suspend or limit enrollment in any degree program offered by a state institution if the Chancellor determines a program has a low completion rate at that institution.<sup>3</sup>

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<sup>1</sup> R.C. 3345.011, not in the bill.

<sup>2</sup> R.C. 3333.04(N). See also R.C. 3333.94(A)(1), not in the bill.

<sup>3</sup> R.C. 3333.073.

Under continuing law, the Chancellor must approve or disapprove all new degrees or degree programs at state institutions of higher education. Such institutions are prohibited from offering a new degree or degree program without the approval of the Chancellor.<sup>4</sup>

### **Community and technical college bachelor's degrees**

The bill modifies a program established under continuing law that permits the Chancellor to authorize applied bachelor's degrees at community colleges, technical colleges, and state community colleges in two ways.

First, it requires the Chancellor to approve all nursing bachelor's degree programs that meet the requirements prescribed under continuing law for approving an applied bachelor's degree and which also meet the standards and procedures for academic approval.

Second, it eliminates a requirement that the Chancellor, before approving an "applied" bachelor's degree program, must consult with the Governor's Office of Workforce Transformation, the Inter-University Council of Ohio, the Ohio Association of Community Colleges, and the Association of Independent Colleges and Universities of Ohio.<sup>5</sup>

### **Student tuition and fees**

#### **Prohibit additional fees for academic activities**

The bill prohibits a state institution of higher education from charging an additional fee to a student for an employee or an entity contracting with the institution to complete any academic activity associated with regular coursework, including grading student assignments.<sup>6</sup>

#### **Tuition and fees for online courses**

The bill prohibits a state institution of higher education from charging more in tuition and fees for an online course than for a course taught in an in-person, classroom setting. It further requires that special fees charged for an online course, if applicable, must be based on the actual demonstrated cost incurred by the state institution to provide the course.<sup>7</sup>

### **Student financial aid**

#### **Second Chance Grant Pilot Program**

##### **Operations**

The bill requires the Chancellor to establish and operate the Second Chance Grant Pilot Program in the 2021-2022 and 2022-2023 academic years. Under the program, the Chancellor must award a one-time grant of \$2,000 to each eligible student approved to participate, except that the Chancellor cannot approve more than 3,000 applicants. A student must apply in a form

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<sup>4</sup> R.C. 3333.04(N). See also R.C. 3333.07(C), not in the bill.

<sup>5</sup> R.C. 3333.051; conforming changes in R.C. 3354.01, 3357.09, and 3358.01.

<sup>6</sup> R.C. 3345.028.

<sup>7</sup> R.C. 3345.461.

and manner prescribed by the Chancellor. To be approved, the student must enroll in a “qualifying institution” and have a remaining cost of attendance, as defined under federal law, after all other financial aid for which the applicant qualifies has been applied to the applicant’s account. The Chancellor must approve applications in the order in which they are received.<sup>8</sup>

The Chancellor must pay grants to the institution in which a participating student is enrolled in the academic year in which the student’s application is approved. The institution must apply the grant to the participant’s cost of attendance for that year. If any amount of the grant remains after it is applied to the student’s cost of attendance for that year, the institution must apply the remaining grant amount to the student’s cost of attendance for any other academic year in which the student is enrolled in the institution and in which the program operates. The institution must return to the Chancellor any grant amount remaining after the participant graduates or disenrolls from the institution, or after the pilot program ceases to operate.<sup>9</sup>

For the purposes of the program, a “qualifying institution” is a state university or branch campus, community college, state community college, or technical college, a private nonprofit college or university, a private for-profit career college, or an Ohio Technical Center.<sup>10</sup> Ohio Technical Centers are career-technical centers and schools that provide adult education and are recognized as such by the Chancellor.<sup>11</sup>

### **Student eligibility**

A student is eligible for the pilot program if the student:

1. Is an Ohio resident;
2. Has not attained a bachelor’s degree from an institution of higher education in Ohio or another state prior to applying for a Second Chance grant;
3. Disenrolled from a state university, while being in good standing including with respect to academics and the student’s disciplinary record, and did not transfer to an institution of higher education in Ohio or another state in the three semesters immediately following that disenrollment;
4. Enrolls in the “qualifying institution” within five years of disenrolling from the state university;
5. Is not enrolled in the College Credit Plus Program; and

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<sup>8</sup> R.C. 3333.126(A), (B), and (C).

<sup>9</sup> R.C. 3333.126(D).

<sup>10</sup> R.C. 3333.126(A)(3).

<sup>11</sup> See for example, R.C. 3313.902 and 3333.94. See also the Chancellor’s list of Ohio campuses at <https://www.ohiohighered.org/campuses>.

6. Meets any other eligibility criteria determined necessary by the Chancellor.<sup>12</sup>

### **Reporting requirements**

In each academic year in which the pilot program operates, the Chancellor must submit to the General Assembly a report that contains:

1. The number of eligible students participating in the pilot program who received a grant in that academic year;
2. The state universities from which participants disenrolled;
3. The types of academic programs in which participants were enrolled prior to disenrolling from state universities;
4. The types of academic programs in which participants were enrolled when they received grants under the pilot program; and
5. Information regarding how the grants were used.<sup>13</sup>

### **Second Chance Grant Pilot Program Fund**

The bill establishes the Second Chance Grant Pilot Program Fund in the state treasury to consist of amounts designated for the purposes of the fund by the General Assembly. The fund must be administered by the Chancellor and used to pay grants under the pilot program. The Chancellor also may use the fund to implement and administer the pilot program.<sup>14</sup>

### **Rules**

The bill requires the Chancellor to adopt rules to administer the pilot program.<sup>15</sup>

### **Supplemental OCOG awards**

In addition to the need-based Ohio College Opportunity Grant (OCOG) awarded under continuing law, the bill requires the Chancellor to award eligible students a supplemental grant. To be eligible, a student must receive an OCOG award, have completed at least two years of a bachelor's degree program, and be making progress toward completing that program. Supplemental grants must be paid using funds appropriated for OCOG. They also are subject to the same requirements prescribed under continuing law for OCOG. Finally, the Chancellor must adopt rules to implement this provision, which must include a method to calculate supplemental grant amounts.<sup>16</sup>

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<sup>12</sup> R.C. 3333.126(A)(2).

<sup>13</sup> R.C. 3333.126(E).

<sup>14</sup> R.C. 3333.126(F).

<sup>15</sup> R.C. 3333.126(G).

<sup>16</sup> R.C. 3333.125; conforming change in R.C. 3333.122.

The OCOG Program provides need-based financial aid for higher education students based on their expected family contribution (EFC). EFC is calculated using the information that students provide when they fill out their Free Application for Federal Student Aid (FAFSA) form, and, generally, is the same method that the federal government uses to determine the federal government's need-based Pell Grants.<sup>17</sup>

### **Federal funds and community colleges**

The bill requires the Chancellor, to the extent permitted by federal law, to distribute certain unused federal funds to community colleges, state community colleges, and technical colleges to provide support to students enrolled in programs that may be completed in less than one year and for which a certificate or industry-recognized credential is awarded for an in-demand job. Specifically, the bill requires the Chancellor to distribute any funds received under the federal Coronavirus Aid, Relief, and Economic Security Act that remain after payments are made under required higher education priorities.<sup>18</sup>

### **Accommodations for students unable to enroll in a course**

The bill changes a provision of current law that requires state institutions of higher education to waive tuition and fees for a final course necessary for a student to complete a bachelor's degree program if the student was unable to enroll in that course in the student's final year. Under the bill, a state institution must offer one of several prescribed accommodations to a student if the student was unable to register for a course that is necessary to complete the student's bachelor's degree program, but that is not a general elective, in the student's final two academic years.<sup>19</sup>

#### **Student eligibility**

Specifically, a state institution must provide a prescribed accommodation to a student if the student was unable to register for a course in one of the last two years of full-time study a bachelor's degree is typically designed to require and the student:

1. Has not completed the course prior to that academic year;
2. Was enrolled full time, as defined by the Chancellor, in that academic year;
3. Was unable to register for the course because it was not offered or circumstances beyond the student's control made registration unfeasible, as determined by the Chancellor;
4. Successfully paid all tuition and fees and did not receive a refund for the courses for which the student registered in that academic year at the start of the academic year; and

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<sup>17</sup> R.C. 3333.122.

<sup>18</sup> Section 3. See Pub. Law 116-136.

<sup>19</sup> R.C. 3345.481.

5. Did not enroll in the maximum amount of credit hours in that academic year, as determined by the state institution.<sup>20</sup>

### **Accommodations**

The accommodations that a state institution must offer a student are:

1. Waive the student's tuition and fees for that course if the student successfully registers for it in the next academic year in which it is offered. However, such waiver must not grant a student guaranteed or priority registration for that course.
2. Reimburse the student for any tuition and fees the student paid to register for an equivalent course offered by an institution of higher education with a similar accreditation. To qualify for that reimbursement, a student must register for the equivalent course in the same year in which the student was unable to register for the course.
3. Permit the student to complete an independent study that meets specified guidelines in lieu of the course in order to meet the requirements of the student's bachelor's degree program.<sup>21</sup>

## **Guaranteed pathways, joint programming, and dual enrollment**

### **Ohio Guaranteed Transfer Pathways Initiative**

The bill requires the Chancellor, pursuant to the system of transfer and articulation policies and procedures prescribed under continuing law, to establish the Ohio Guaranteed Transfer Pathways Initiative. It also requires each state university to participate in that Initiative.

Under the Initiative, a student must be permitted to complete an associate's degree at a community college, state community college, or technical college and transfer those credits to a state university to continue making progress toward a bachelor's degree. Similarly, a student must be permitted to transfer credits from a community college, state community college, or technical college to a state university, regardless of the geographic proximity between the college and university.<sup>22</sup>

Furthermore, the bill defines a "guaranteed pathway" as an articulation or transfer agreement included in the Initiative that a state university and a community college, state community college, or technical college enter into in accordance with the system of transfer and articulation policies and procedures prescribed under continuing law.<sup>23</sup>

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<sup>20</sup> R.C. 3345.481(A) and (B).

<sup>21</sup> R.C. 3345.481(C).

<sup>22</sup> R.C. 3333.168(A)(3).

<sup>23</sup> R.C. 3333.168(A) and (B).

## **Joint academic programming and dual enrollment opportunities**

The bill requires each state university to enter into agreements with multiple community colleges to establish both joint academic programming and dual enrollment opportunities to assist students in completing their degrees in a timely and cost-effective manner.<sup>24</sup>

For the bill's purposes, "joint academic programming" is defined as a structured pathway curriculum agreement that permits an individual to attain a specific degree that has been jointly developed by at least one state university and at least one community college, state community college, or technical college.<sup>25</sup>

Similarly, "dual enrollment" is defined as concurrent enrollment by an individual at both a state university and a community college, state community college, or technical college.<sup>26</sup>

## **Reporting requirement**

The bill requires each state university, community college, state community college, and technical college to annually report to the Ohio Articulation and Transfer Network Oversight Board the number of guaranteed pathways and joint academic programming and dual enrollment opportunities the university or college offers. The Oversight Board must compile that information and provide a summary of it to the Chancellor. The summary must include a confirmation that each college and university is in compliance with the provision's requirements and any recommendations necessary to enhance and strengthen the guaranteed pathways and joint academic programming or dual enrollment opportunities.

## **Rules**

The bill requires the Chancellor to adopt rules regarding the Ohio Guaranteed Transfer Pathways Initiative and the bill's joint academic programming and dual enrollment requirements.<sup>27</sup>

## **Additional reporting requirements**

### **State share of instruction and in-demand jobs**

The bill requires the Chancellor, by November 1 of each even-numbered year, to issue a report on the extent to which degree and certificate attainment at state institutions of higher education align with in-demand jobs in the state. After the report is issued, the Chancellor must consider the findings and, in collaboration with the Office of Budget and Management, consider

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<sup>24</sup> R.C. 3333.168(C).

<sup>25</sup> R.C. 3333.168(A)(4).

<sup>26</sup> R.C. 3333.168(A)(2).

<sup>27</sup> R.C. 3333.168(E).

changing the weights and allocations in the state share of instruction (SSI) formula to ensure that degree and certificate attainment at state institutions align with in-demand jobs in Ohio.<sup>28</sup>

The SSI formula, which is revised and enacted in the main operating budget for each biennium, is used to distribute core state operating funding to state institutions of higher education. The SSI formula computes funding separately for two sectors: (1) the university main and regional campus sector and (2) the community college sector, which includes community colleges, state community colleges, and technical colleges. Each sector has its funding computed using prescribed components. For the university sector, those components are: course completions, degree completions, and doctoral and medical set-asides. For the community college sector, those components are: course completions, student progress metrics, and completion milestones.<sup>29</sup>

### **Posting of cost and postgraduate data**

Beginning in the next academic year following the bill's effective date, each state institution of higher education annually must prepare and post on its website a report that, to the extent practicable, includes:

1. An itemized list of the estimated or actual charges of the tuition, general fees, special fees, service charges, fines, and other fees or surcharges for enrolled students;
2. The estimated or actual average cost of attendance;
3. Student degree completion rates;
4. Post-graduation student debt rates; and
5. Post-graduation employment rates.

In addition, each institution must disaggregate student degree completion rates, post-graduation student debt rates, and post-graduation employment rates by degree, student demographics, and by students who do and do not receive Ohio College Opportunity Grant awards, if applicable. For any post-graduation data, the bill also requires each state university to collect information from its alumni, as available.<sup>30</sup>

Each institution must provide the most recent copy of that report to prospective students, as well as their parents and guardians. It also must submit to the Chancellor, in a form and manner prescribed by the Chancellor, the data used to prepare its report.<sup>31</sup>

With that data, the Chancellor must issue an annual report that contains the same information for all state institutions and submit that report to the General Assembly.<sup>32</sup>

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<sup>28</sup> R.C. 3333.0418.

<sup>29</sup> <https://www.ohiohighered.org/node/933>.

<sup>30</sup> R.C. 3345.024(A).

<sup>31</sup> R.C. 3345.024(B) and (C).

## Other reports

The bill prescribes other new reporting requirements for the Chancellor and state institutions of higher education.

First, the Chancellor annually must, to the extent practicable, issue a report regarding student admissions to state institutions of higher education during the academic year. The report must include information regarding student demographics and qualifications, including grade point averages, scores on nationally standardized assessments that are used for college admission, and other data used by them in making admissions decisions. The information in the report must be disaggregated by students who are and are not Ohio residents. Each state institution of higher education must issue a similar report and post it on the institution's website.<sup>33</sup>

Second, the Chancellor must, to the extent practicable, issue an annual report regarding the revenue state institutions of higher education received from tuition and general fees during the academic year and how the institutions used such revenue. The report must categorize the expenditures, including teaching costs and administrative costs. The report must compare student enrollment trends with tuition and general free revenue trends. Again, each institution must issue a similar report and post it on the institution's website.<sup>34</sup>

Finally, the Chancellor must, to the extent practicable, issue an annual report about the mental health wellness and services and initiatives of state institutions. The report must include:

1. A description of each institution's mental health and wellness services and initiatives;
2. An analysis of how much funding each institution dedicates to mental health and wellness services and initiatives, including the percentage of that funding that is used for administrative costs;
3. An analysis of the aggregate amount of funding institutions dedicate to mental health and wellness services and initiatives, including the percentage of that funding that is used for administrative costs; and
4. Any other information the Chancellor determines appropriate.<sup>35</sup>

The Chancellor must submit each of the Chancellor's reports to the General Assembly. Each state institution must submit to the Chancellor, in a form and manner the Chancellor

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<sup>32</sup> R.C. 3345.024(C) and (D).

<sup>33</sup> R.C. 3333.0419(B)(1) and (D).

<sup>34</sup> R.C. 3333.0419(B)(2) and (D).

<sup>35</sup> R.C. 3333.0419(B)(3).

prescribes, any information or data the Chancellor requires to issue these reports. Finally, the Chancellor must adopt rules to implement this provision.<sup>36</sup>

## **Due process for disciplinary actions**

The bill expressly requires a state university to provide a student who is subject to a disciplinary action by the university with a notice of the action, the reasons for it, and the student's right to appeal it. If the student chooses to appeal the action, the state university must afford the student with a fair and impartial hearing within a reasonable time under the university's regular procedures.<sup>37</sup>

The bill does not affect provisions of continuing law that establish specific due process procedures for students, faculty, and staff members who have been arrested for certain criminal offenses.<sup>38</sup>

## **Contracts without a nonboycott declaration are prohibited**

The bill expands Non-Boycott Law to include state institutions of higher education. Under current law, a state agency may not enter into or renew a contract with a company for the acquisition or provision of supplies, equipment, or services, or for construction services, unless the contract declares that it is not boycotting any jurisdiction with whom Ohio can enjoy open trade, including Israel, and will not do so during the contract period. The bill expressly states that, for purposes of this law, "state agency" includes a state institution of higher education.<sup>39</sup>

## **Uniform Prudent Management of Institutional Funds Act**

The Uniform Prudent Management of Institutional Funds Act (UPMIFA)<sup>40</sup> governs the management and investment of endowment funds controlled by charitable institutions. For institutional funds held by state institutions of higher education, the bill provides a different safe harbor for spending and establishes procedures for civil action against a state institution of higher education if the institution does not follow the intent of the donor expressed in a gift instrument.<sup>41</sup>

### **Endowment spending standards**

Under continuing law, subject to the intent of the donor expressed in a gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which

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<sup>36</sup> R.C. 3333.0419(C) and (E).

<sup>37</sup> R.C. 3345.241.

<sup>38</sup> See R.C. 3345.22 to 3345.24, none in the bill.

<sup>39</sup> R.C. 9.76.

<sup>40</sup> R.C. 1715.51 to 1715.59.

<sup>41</sup> R.C. 1715.51, 1715.53, and 1715.551.

the endowment fund is established. Institutions must act in good faith and with care that an ordinary prudent person in a like position would exercise under similar circumstances. Ohio's UPMIFA includes a "5% of fund value" annual spending safe harbor rule. More specifically, the law says that the appropriation for expenditure in any year of an amount not greater than 5% of the fair market value of an endowment, whether or not the total expenditures from it exceeds 5%, creates irrefutable presumption of prudence.<sup>42</sup> The bill changes this rule for endowment funds held by a state institution of higher education.

Instead, under the bill, for state institutions of higher education, the appropriation for expenditures in any year of an amount greater than 7% of the fair market value of an endowment fund creates a rebuttable presumption of imprudence. The bill specifies that expenditures less than or equal to 7% does not create a presumption of prudence for an appropriation for expenditure of an amount less than or equal to 7% of the fair market value of the endowment fund.<sup>43</sup>

## **Civil action**

### **Notification to Attorney General**

Under the bill, if a state institution of higher education violates a restriction contained in an endowment agreement on the management, investment, or purpose of the endowment fund, the person who transferred property under the agreement, or that person's legal representative, may notify the Office of the Attorney General's Charitable Law Section of the violation. If, within 180 days after receiving the notice, the Attorney General has not obtained full compliance with the restriction, and restitution to the endowment fund of property approximately equal to any value lost due to the violated restriction, the party who notified the Attorney General may file a complaint.<sup>44</sup>

### **The complaint**

The party who notified the Attorney General or the Attorney General may file a complaint for breach of the endowment agreement or to obtain a declaration of rights and duties expressed in the agreement and as to all of the actions it contemplates, including the interpretation, performance, and enforcement of the agreement and determination of its validity. The complaint may be filed regardless of whether the agreement expressly reserves a right to sue or enforce. The complaint cannot seek a judgment awarding damages to the plaintiff. Also, the bill provides a six-year statute of limitations for the person who transferred property under an endowment agreement, or that person's legal representative, to file the complaint.

The state institution of higher education may also obtain a judicial declaration of rights and duties expressed in an endowment agreement and as to all of the actions it contemplates,

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<sup>42</sup> R.C. 1715.53(A) and (D).

<sup>43</sup> R.C. 1715.53(E).

<sup>44</sup> R.C. 1715.551(A) and (B)(1).

including the interpretation, performance, and enforcement of the agreement and determination of its validity. The institution must seek such declaration in any suit brought under the bill's provisions or by filing a complaint.<sup>45</sup>

### **Jurisdiction**

The bill requires that the complaint be filed in a court of general jurisdiction in the county where a state institution of higher education named as a party has its principal office or principal place of carrying out its charitable purpose, or in a federal court whose district includes such county. Every complaint must name as parties the Attorney General, the state institution of higher education that signed the agreement or its successor, and each institution that currently administers property transferred under the agreement. Also, if the Attorney General or state institution of higher education files the complaint within 50 years after the effective date of the endowment agreement, the complaint must name as parties each person who transferred property under the agreement or the legal representative of each person if the persons or legal representatives can be located and identified after diligent inquiry. Although, the failure to name or join any of these persons is not jurisdictional, the bill provides that the court cannot act on the merits of the complaint without first ensuring that the plaintiff has acted diligently to notify such person or legal representative of the complaint and, if the person or legal representative is located and identified, affords the person or legal representative an opportunity to be heard or to intervene.<sup>46</sup>

### **Different interests in case**

The bill specifies that the interest of a person who transferred property under an endowment agreement, and the interest of that person's legal representative, should not be presumed to be identical with the interest of either the Attorney General or a state institution of higher education.<sup>47</sup>

### **Remedies**

If the court determines that the state institution of higher education violated a restriction in an endowment agreement on the management, investment, or purpose of an endowment fund, the court may order one or more of the following remedies:

- An accounting;
- Declaratory relief;
- Restoration of property to the endowment fund;
- Restoration of a name required by the endowment agreement, or a change to its name;
- Future compliance with a restriction in the endowment agreement;

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<sup>45</sup> R.C. 1715.551(B), (C), (D), and (J).

<sup>46</sup> R.C. 1715.551(E) and (F).

<sup>47</sup> R.C. 1715.551(G).

- Measures to preserve the property and value of the endowment fund;
- Modification or release of the restriction as allowed under the UPMIFA;
- Reformation or dissolution of the endowment agreement;
- The transfer of property from the endowment fund to such other institution as the party, or the party's legal representative, directs in writing;
- The transfer of property from the endowment fund to the estate of a person who transferred property under the endowment agreement to be redirected by the estate administrator to an institution for charitable purposes consistent with those expressed in the endowment agreement;
- Any other equitable remedy consistent with the charitable purposes expressed in the endowment agreement and consistent with the charitable purpose of the state institution of higher education.

If a court orders the transfer of property from an endowment fund, the court may require that the value of the property to be transferred approximate the value of property lost to the fund due to the breach, based on the value of the lost property when originally received by the fund. The court may increase the amount to be transferred by the approximate value of earnings lost due to the breach. The court, however, cannot order the transfer of property from an endowment fund to the extent that the current value of such property exceeds that of the fund.<sup>48</sup>

### **Reopening an estate**

The bill specifies that the estate of a decedent who transferred property under an endowment agreement may be reopened for the purpose of appointing an administrator to file a complaint, if the applicant to reopen is a surviving spouse or one generation below.<sup>49</sup>

### **Free speech policies**

In addition to complying with other state laws regarding the regulation of free speech on campuses,<sup>50</sup> the bill requires each state institution of higher education to adopt a policy that affirms certain prescribed principles, which the bill specifies are the public policy of this state.<sup>51</sup>

The bill states that those principles are:

1. Students have a fundamental constitutional right to free speech;

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<sup>48</sup> R.C. 1715.551(H) and (I).

<sup>49</sup> R.C. 1715.551(K).

<sup>50</sup> See R.C. 3345.0212 to 3345.0214 (as enacted by S.B. 40 of the 133<sup>rd</sup> General Assembly, effective March 24, 2021), none in the bill.

<sup>51</sup> R.C. 3345.0215; conforming change in R.C. 3345.21.

2. A state institution must be committed to giving students the broadest possible latitude to speak, write, listen, challenge, learn, and discuss any issue;
3. A state institution must be committed to maintaining a campus as marketplace of ideas for students and faculty in which the free exchange of ideas is not suppressed because the ideas put forth are thought by some or most members of the institution's community to be offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or wrong-headed;
4. It is for individual students and faculty to make judgements about ideas for themselves, and to act on those judgements by openly and vigorously contesting the ideas they oppose and not by seeking to suppress free speech;
5. It is not the proper role of a state institution to attempt to shield individuals from free speech, including ideas and opinions they find offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or wrong-headed;
6. Although a state institution should greatly value civility and mutual respect, concerns about civility and respect must not be used by an institution as a justification for closing off the discussion of ideas, however offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or wrong-headed those ideas may be to some students or faculty;
7. Although students and faculty are free to state their views about and contest the views expressed on campus, and to state their views about and contest speakers who are invited to express their views on campus, they may not substantially obstruct or otherwise substantially interfere with the freedom of others to express views they reject or even loathe. To that end, a state institution has a responsibility to promote lively and fearless freedom of debate and deliberation and protect that freedom.
8. A state institution must be committed to providing an atmosphere that is most conducive to speculation, experimentation, and creation by students and faculty, who must remain free to inquire, study, evaluate, and gain new understanding; and
9. The primary responsibility of faculty is to engage an honest, courageous, and persistent effort to search out and communicate the truth that lies in areas of their competence.<sup>52</sup>

The policy affirming those principles must be included in the institution's handbook, on its website, and in its orientation programs for students.<sup>53</sup>

The bill also requires each institution to establish a process under which a student, student group, or faculty member may submit a complaint about an alleged violation by an employee of the institution of its policy, including any penalty imposed on a student's grade for an assignment or coursework that is unrelated to ordinary academic standards of substance

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<sup>52</sup> R.C. 3345.0215(B).

<sup>53</sup> R.C. 3345.0212(C)(2).

and relevance, and is instead based on the contents of the student's free speech. That process must comply with standards adopted by the Chancellor and, under the process, the state institution must investigate the alleged violation and conduct a fair and impartial hearing about it. If the hearing determines the policy was violated, the state institution must determine a resolution to address the violation and prevent any further violation of the policy.<sup>54</sup>

Each state institution must annually report to the Chancellor, in a form and manner prescribed by the Chancellor, the total number of complaints submitted under the process and, for each submitted complaint, a description of:

1. The state institution's investigation regarding the complaint;
2. The outcome of the hearing conducted by the state institution regarding the complaint; and
3. If the hearing determines the complaint included a violation of the state institution's policy, the resolution determined by the state institution to address the violation.<sup>55</sup>

The bill specifies that the free speech policies must not be construed as prohibiting a state institution from imposing measures that do not violate the U.S. Constitution or the Ohio Constitution, such as:

1. Constitutional time, place, and manner restrictions;
2. Reasonable viewpoint-neutral restrictions in nonpublic forums;
3. Restrictions on the use of the institution's property to protect the free speech rights of students and teachers and preserve the use of property for the advancement of the institution's mission;
4. Prohibitions or limitations on speech, expression, or assemblies that are not protected under the U.S. or Ohio constitutions;
5. Content restrictions on speech that are reasonably related to legitimate pedagogical purpose, such as classroom rules enacted by teachers.<sup>56</sup>

Finally, the bill states that it must not be construed to grant students the right to disrupt previously scheduled or reserved activities occurring in a traditional public forum.<sup>57</sup>

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<sup>54</sup> R.C. 3345.0215(C).

<sup>55</sup> R.C. 3345.0215(D).

<sup>56</sup> R.C. 3345.0215(E).

<sup>57</sup> R.C. 3345.0215(F).

## **Other higher education provisions**

### **Withholding of transcripts**

The bill prohibits a state institution of higher education from withholding a student's official transcripts from a potential employer because the student owes money to the institution if the student has authorized the transcripts to be sent to the employer and the employer affirms to the institution that the transcripts are a prerequisite of employment.<sup>58</sup>

### **Admissions and Ohio residents**

The bill requires each state university to endeavor to avoid prioritizing the admission of an out-of-state applicant over an in-state applicant if both applicants apply in the same general timeframe, as determined by the university, and have substantially similar qualifications that satisfy the university's admissions criteria. To the extent practicable, a state university must ensure that in-state applicants are given ample and sufficient opportunity to be admitted, as compared to out-of-state applicants, if the in-state applicants satisfy the university's admissions criteria.<sup>59</sup>

### **Credit for online coursework at other institutions**

The bill generally requires each state institution of higher education to accept and provide credit for coursework in the same manner across all instructional models, except in the case of courses that require in-person observations and experiences, such as laboratories and clinicals, which may necessitate instruction through an in-person component rather than online instruction.<sup>60</sup>

### **Written statement regarding capital facilities projects**

The bill requires each state institution of higher education to submit to the Chancellor a written statement explaining how a capital facilities project involving state capital appropriations advances the master plan for higher education prescribed under continuing law. A state institution must submit that statement prior to the commencement of a capital facilities project for the construction, reconstruction, improvement, renovation, enlargement, or alteration of a public improvement within the institution.<sup>61</sup>

## **K-12 provisions**

### **Career advising policies**

The bill requires school districts, community schools, and STEM schools to include certain prescribed information in the career advising policies they are required to adopt under

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<sup>58</sup> R.C. 3345.027.

<sup>59</sup> R.C. 3345.063.

<sup>60</sup> R.C. 3345.381.

<sup>61</sup> R.C. 3345.52.

continuing law. Specifically, the policy must include information regarding career fields that require an industry-recognized credential, certificate, associate's degree, bachelor's degree, graduate degree, or professional degree.

The policy also must provide students with information about ways to offset the costs of a post-secondary education, including:

1. The reserve officer training corps;
2. The College Credit Plus Program;
3. The Ohio Guaranteed Transfer Pathways Initiative; and
4. Joint academic programming or dual enrollment opportunities.

The Chancellor must develop informational materials that illustrate cost saving estimates for each of those options based on tuition and total cost of attendance, including room and board and other fees. The Chancellor must also develop a list of individual college courses that are transferable under the system of transfer and articulation policies and procedures prescribed under continuing law.<sup>62</sup>

### **Free speech policies**

In addition to complying with other state laws regarding religious expression in public schools,<sup>63</sup> the bill requires each school district, community school, STEM school, and college-preparatory boarding school to adopt a policy that affirms certain prescribed principles, which the bill specifies are the public policy of this state.<sup>64</sup>

The bill states that those principles, which are similar but not identical to those the bill specifies higher education institutions (see above), are as follows:

1. Students have a fundamental constitutional right to free speech;
2. A district or school must be committed to giving students the broadest possible latitude to speak, write, listen, challenge, learn, and discuss any issue
3. A district or school must be committed to maintaining its buildings as marketplace of ideas for students and teachers in which the free exchange of ideas is not suppressed because the ideas put forth are thought by some or most members of the district's or school's community to be offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or wrong-headed;

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<sup>62</sup> R.C. 3313.6020.

<sup>63</sup> See R.C. 3320.01 to 3320.03 (as enacted by H.B. 164 of the 133<sup>rd</sup> General Assembly, effective September 18, 2020), none in the bill.

<sup>64</sup> R.C. 3314.03(A)(11)(d), 3320.04, 3326.11, and 3328.24.

4. It is for individual students and teachers to make judgements about ideas for themselves, and to act on those judgements by openly and vigorously contesting the ideas they oppose and not by seeking to suppress free speech;
5. It is not the proper role of a district or school to attempt to shield individuals from free speech, including ideas and opinions they find offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or wrong-headed;
6. Although a district or school should greatly value civility and mutual respect, concerns about civility and respect must not be used by a district or school as a justification for closing off the discussion of ideas, however offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or wrong-headed those ideas may be to some students or teachers;
7. Although students and teachers are free to state their views about and contest the views expressed on school property, and to state their views about and contest speakers who are invited to express their views on school property, they may not substantially obstruct or otherwise substantially interfere with the freedom of others to express views they reject or even loathe. To that end, a district or school has a responsibility to promote lively and fearless freedom of debate and deliberation and protect that freedom.
8. A district or school must be committed to providing an atmosphere that is most conducive to speculation, experimentation, and creation by students and teachers, who must remain free to inquire, study, evaluate, and gain new understanding; and
9. The primary responsibility of teachers is to engage an honest, courageous, and persistent effort to search out and communicate the truth that lies in areas of their competence.<sup>65</sup>

The bill requires the policy be made available to students and teachers annually through one or more of the following methods:

1. Published in the district's or school's student handbook and teacher handbook, whether paper or electronic;
2. A prominent notice on the district's or school's website other than through the electronic publication in the student handbook and teacher handbook;
3. Through the electronic mail address of students and teachers;
4. Orientation programs for new students and teachers.<sup>66</sup>

The bill also requires a district or school to establish a process under which a student, student group, or teacher may submit a complaint about an alleged violation by an employee of

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<sup>65</sup> R.C. 3320.04(B).

<sup>66</sup> R.C. 3320.04(F).

the district's or school's policy, including any penalty imposed on a student's grade for an assignment or coursework that is unrelated to ordinary academic standards of substance and relevance, and is instead based on the contents of the student's free speech. That process must comply with standards adopted by the Department of Education and, under the process, the district or school must investigate the alleged violation and conduct a fair and impartial hearing about it. If the hearing determines the policy was violated, the district or school must determine a resolution to address the violation and prevent any further violation of the policy.<sup>67</sup>

Each district or school must annually report to the Department, in a form and manner prescribed by the Department, the total number of complaints submitted under the process and, for each submitted complaint, a description of:

1. The district's or school's investigation regarding the complaint;
2. The outcome of the hearing conducted by the district or school regarding the complaint; and
3. If the hearing determines the complaint included a violation of the district's or school's policy, the resolution determined by the district or school to address the violation.<sup>68</sup>

The bill specifies that the free speech policies must not be construed as prohibiting a district or school from imposing measures that do not violate the U.S. Constitution or the Ohio Constitution, such as:

1. Constitutional time, place, and manner restrictions;
2. Reasonable viewpoint-neutral restrictions in nonpublic forums;
3. Restrictions on the use of the institution's property to protect the free speech rights of students and teachers and preserve the use of property for the advancement of the institution's mission;
4. Prohibitions or limitations on speech, expression, or assemblies that are not protected under the U.S. or Ohio constitutions;
5. Content restrictions on speech that are reasonably related to legitimate pedagogical purpose, such as classroom rules enacted by teachers.<sup>69</sup>

Finally, the bill states that it must not be construed to grant students the right to disrupt previously scheduled or reserved activities occurring in a traditional public forum.<sup>70</sup>

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<sup>67</sup> R.C. 3320.04(C).

<sup>68</sup> R.C. 3320.04(D).

<sup>69</sup> R.C. 3320.04(E).

<sup>70</sup> R.C. 3320.04(G).

## Apprenticeship subprogram of CCP

The bill creates a subprogram of the College Credit Plus (CCP) program, under which, beginning with the 2022-2023 school year, eligible students may participate in apprenticeship programs that are certified or registered by the United States Department of Labor and not offered by the student's high school. To be eligible for the subprogram, a student must be (1) at least 16 years old, (2) an Ohio resident, and (3) enrolled in a public high school or a chartered nonpublic high school.<sup>71</sup>

### Proposal and rule adoption

The bill requires the Chancellor of Higher Education and the Superintendent of Public Instruction, by December 31, 2021, and in consultation with the Director of Development Services and the Administrator of Workers' Compensation, to develop a proposal to implement the subprogram. The proposal must include recommendations on which requirements of the CCP program should apply to the subprogram. The proposal must then be submitted to the State Board of Education for consideration. Not later than June 30, 2022, upon consideration of that proposal, the State Board must adopt rules to implement the subprogram.

The rules must include at least the following:

1. Requirements that a student must fulfill in order to participate in the subprogram, including a minimum GPA of 2.5 out of a 4.0, or its equivalent;
2. A process by which a student may secure an apprenticeship;
3. An approval process for apprenticeships, including a method for evaluating the educational benefits of each apprenticeship;
4. The maximum number of hours per week a student may work as an apprentice;
5. A method for determining actual costs to a business for participation in the subprogram, including workers' compensation, insurance costs, and training costs;
6. A funding formula for students enrolled in a public high school, including a maximum amount, to pay businesses for costs associated with the subprogram;
7. A funding formula for students enrolled in a chartered nonpublic high school, including a maximum amount, to pay businesses for costs associated with the subprogram;
8. The method for making payments to participating businesses; and
9. A method by which credits for a certificate earned in an apprenticeship under the subprogram may transfer for college credit. However, each college must determine whether or not to accept work credits under the subprogram.<sup>72</sup>

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<sup>71</sup> R.C. 3365.16(A) and (B).

<sup>72</sup> R.C. 3365.16(C).

Much like under the current CCP program, the bill specifies that, for purposes of the funding formulas described above, payments made for participants enrolled in a public school (school district, community school, STEM school, or college-preparatory boarding school) must be deducted from state operating amounts computed for the student's district or school. Meanwhile, payments made for participants enrolled in a chartered nonpublic school must be made from funds appropriated by the General Assembly for that purpose.<sup>73</sup>

## HISTORY

Action	Date
Introduced	03-17-21
Reported, S. Workforce & Higher Education	06-16-21
Passed Senate (31-2)	06-16-21

S0135-PS-134/ec

<sup>73</sup> R.C. 3365.16(C)(6) and (7). Also see R.C. 3365.07(F)(1) and (2), not in the bill.