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## OHIO ALLIANCE FOR ARTS EDUCATION

Arts Online Newsletter Week of February 5, 2024

### 135th OHIO GENERAL ASSEMBLY



#### **Governor DeWine signs budget Corrections Bill into law**

Governor Mike DeWine signed Sub. House Bill 101 into law on January 30, 2024. Originally introduced by sponsors Representatives Adam Bird and Jean Schmidt **to modify laws about dissolving a village government**, HB101 became a budget corrections bill in the Ohio Senate Finance Committee in December 2023, when **hundreds of pages were added to correct parts of HB33** the FY24-25 Operating Budget (Jay Edwards), passed in June 2022.

The Senate approved HB101 on December 13, 2023, but House Speaker Jason Stephens told reporters last December that the House needed more time to review the bill. The House concurred on changes to HB101 on January 10, 2024.

The bill **includes the following changes for primary and secondary education** as described by the Legislative Service Commission's analysis, reported by the Senate Finance Committee [HERE](#).

#### **Primary and Secondary Education**

- Section 3317.16(A)(1)(a): **Increases the minimum state share percentage for** joint vocational school districts (JVSDs) from 5 percent to 10 percent for FY2024 and FY2025. According to the Legislative Service Commission (LSC) HB33 increased the minimum state share percentage from 5 percent to 10 percent for school districts, but left out Joint Vocational School Districts.
- Section 3310.41(A)(6): **Qualifies a child for the Autism Scholarship Program if**, in addition to other requirements, the child is eligible to enter school in any grades from preschool through 12 during the school year in which a scholarship is first sought.
- Sections 3318.05 and 3318.41: Clarifies that **school construction projects that receive conditional approval during 2023 are subject to the 16-month time period** during which voters must approve bonds and tax levies for a project granted conditional approval from the Ohio Facilities Construction Commission.

- Sections 3319.22(A)(1) and (4): Continues a **school district's or community school's authority to employ an educator to teach outside of the educator's designated grade band** beyond December 29, 2023.
- Sections 3319.0812 and Sections 3319.316, 3319.391, and 3327.10: **Clarifies that the State Board of Education, rather than the Department of Education and Workforce, is responsible for** criminal records checks and RAPBACK enrollment of holder of pre-service teaching permits.
- Section 3301.077 and conforming changes in Sections 3313.608, 3319.233, and 3333.049: **Requires the DEW rather than the State Board, to adopt and as necessary update reading competencies for all reading credentials and training.**
- Sections 3319.60, 3319.611, and 3319.612: **Removes the Director of Education and Workforce from** the Educator Standards Board and its subcommittees.
- Sections 2950.11, 3301.55, 3313.7117, 3314.017, 3317.22, 3319.22, 3322.24, 3333.048, and 3701.0212. Makes corrective **changes related to the establishment of the DEW and the transfer of State Board and Superintendent of Public Instruction powers and duties.**

## Higher Education

- Section 3345.60: **Exempts private, nonprofit colleges and universities from posting certain information about student access to transcripts** on their websites. HB33 established requirements that made clear that students have a right to access transcripts for the purposes of seeking employment, regardless of how much a student owes the institution. The amendment limits that right to students attending state institutional of higher education.
- Repeals Sections 3352.16(A) and 3361.06: **Abolishes the Center for Civics, Culture, and Society at the University of Cincinnati** created in HB33 and **establishes a new center at Wright State University and transfers \$2 million** appropriation for the Center Civics, Culture, and Workforce Development at Wright State University.
- Sections 3352.16(C)(1) and 66 R.C. 3352.16(C)(2): Establishes instructional requirements for the Center for Civics, Culture and Workforce, **including a focus on the United States Armed Forces and the workforce needs of the Wright-Patterson Air Force Base.**

## STRS Membership for Pre-service teaching

- Section 3505.30: **Includes, as State Teachers Retirement System members, student teachers who** hold pre-service teacher permits and are employed as substitute teachers, **and excludes them from** School Employees Retirement System membership.

Source: Legislative Service Commission, Analysis of Sub. HB101 **Modifying the Law Regarding Village Dissolution and Budget Corrections** (Adam Bird and Jean Schmidt) [HERE](#).

Source: Henry, Megan, “**Ohio law banning gender-affirming care and trans athletes heads to Gov. Mike DeWine's desk**,” Ohio Capital Journal, December 15, 2023 [HERE](#).

Source: Callahan, Carey, “**By vetoing HB 68, Gov. DeWine will keep our state's exemplary gender-affirming health care as a national model**,” December 14, 2023, Cleveland.Com [HERE](#).

Source: Hannah News Service, “**DeWine Undecided about HB68, HB201, Administration Working on the Capital Budget**,” December 15, 2023 [HERE](#).

Source: Hannah News Service, “**Stephens Talks Marijuana, Term Limits in End of Year Roundtable**,” December 14, 2023 [HERE](#).

Source: Hannah News Service, “**Budget Corrections Bill Clears Senate**,” December 13, 2023 [HERE](#).

### Some thoughts on implementing HB68 (Click)

Attorneys at Bricker Graydon LLP prepared for the Ohio Association of School Business Officials some points for school district and institutions of higher education to consider as they **prepare to implement the complicated provisions of Sub. HB68 Gender Services for Minors and Single-Sex Sports Teams** (Gary Click).

**Governor Mike DeWine vetoed HB68** on December 29, 2024 based on the rationale that the parents of a transgender child are more qualified than the State of Ohio to determine the health and mental health needs for their child. **Both the Ohio House and Senate disagreed with the governor and voted to override the governor's veto.** Enacted HB68 will go into effect on April 23, 2024.

**HB68 enacts the Save Women's Sports Act**, to require schools, state institutions of higher education, and private colleges to designate separate single-sex teams and sports for each sex, and prohibits transgender women and girls from participating on women's sports teams in institutions of higher education and in schools.

**Sub. HB68 also enacts the Saving Ohio Adolescents from Experimentation Act (SAFE)**, which prohibits physicians and mental health professionals from providing certain gender transition services to minors, but allows those individuals already transitioning to another gender to continue their medical treatment.

**The new law requires the following:**

- Section 3129.03(A) prohibits a “mental health professional ”from diagnosing or treating a minor “who presents...a gender-related condition” without first obtaining parental consent. Section 3129.01(H) defines a mental health professional as nurse/school nurse, physician, psychologist, school psychologist, social worker, clinical counselor, marriage/family therapist.
- Section 3129.03(B) requires mental health professionals to screen individuals seeking gender related care for “other comorbidities” (e.g., depression, autism) and “traumas” (e.g., physical, sexual, mental, emotional abuse).
- Section 3129.02 prohibits physicians from performing gender reassignment surgery on a minor; prescribing certain puberty-blocking drugs; or engaging in conduct that aids or abets those practices. Section 3129.01(C) defines gender reassignment surgery and Section 3129.01(L) defines puberty-blocking drugs.

**HB68 is expected to have a significant impact on school districts and institutions of higher education.** The attorneys at Bricker and Graydon recommend that boards of education and institutions of higher education “...take proactive steps to understand the new laws and their implications.” Boards of

education and institutions of higher education should update policies and procedures regarding parental notifications to comply with the law and ensure that mental health professionals, including school nurses, counselors, and psychologists, understand the law pertaining to gender care.

**Institutions of higher education should also review the healthcare and mental services that are provided to 17-year-olds who attend their institutions and make sure that the services comply with the law.** For example, physicians will have to determine how to handle healthcare services for out-of-state minors who have already begun a course of treatment that includes “puberty-blocking drugs.”

HB68 also enacts the **“Save Women’s Sports Act” to govern interscholastic and intercollegiate sports at both the K-12 and higher education levels.** According to Bricker and Graydon attorneys, HB68 conflicts with existing rules created by the Ohio High School Athletic Association (OHSAA) and the National Collegiate Athletic Association (NCAA), as well as pending Title IX federal regulations.

Amended Sections 3313.5319(A) and 3345.562(A) ORC **require school districts, institutions of higher education, as well as athletic conferences and associations, to designate athletic teams “based on the sex of the participants,” and defines “sex” as meaning the “biological indication of male and female.”**

**HB68 prohibits these organizations from knowingly allowing a student of the “male sex” to participate on a female team.** The law also allows an individual to sue a school and institution of higher education for injunctive relief and/or damages for depriving an athletic opportunity due to a failure to follow the law, or retaliating against an individual for reporting a violation of the law.

According to the attorneys, **“These laws supersede existing policy from the OHSAA and NCAA and other college sports governing bodies.** [7] The OHSAA currently allows a narrow exception for transgender females who meet certain criteria.[8] There were only seven students in the 23-24 school year. There are currently 46 NCAA institutions in Ohio who follow the NCAA’s policy which also allows transgender participation. Beginning in August 2024, the NCAA will fully implement its updated policy which moves to a sport-by-sport approach that aligns with the Olympics.[9] But since state law supersedes these bodies, Ohio educational organizations will have to abide by these stricter standards or face legal risks.”

**The Biden Administration is currently developing new rules for Title IX, which ban discrimination based on sex, and would make bans on transgender student sports participation illegal.** The rules might be finalized in March 2024. According to the attorneys at Bricker and Graydon LLP, the recent changes enacted through HB68 “...would put Ohio school districts and higher education institutions in a difficult bind – abide by the new law and face discrimination charges, or refuse to abide by the new law and face a civil action.” [HERE](#).

The American Civil Liberties Union (ACLU) of Ohio announced on January 29, 2024, that it will file a **lawsuit challenging the provision of HB68 (Click)** that bans gender-affirming medical care for transgender minors and block its implementation. [HERE](#).

ACLU Legal Director Freda Levenson said in a press release, **“Families should be able to make these private, personal decisions** based on the advice of their physicians, and free from interference by politicians. HB 68 is not only cruel; it violates the Ohio Constitution and must be challenged.”

**Currently 24 states have laws in place with provisions similar to those in HB68, and litigation is pending in multiple federal courts challenging the constitutionality of some state laws.<sup>1</sup>** [HERE](#).

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<sup>1</sup> Lawsuits regarding laws that impact transgender students:

Source: Orlansky, Izaak and Nielson, Kasey Nielsen of Bricker Graydon LLP. **“After House Bill 68 Override, Implications for Education in Ohio,”** for OASBO Collaborate, January 31, 2024 [HERE](#).

Source: ACLU Press Release, “**ACLU of Ohio Preparing Lawsuit Challenging HB68,**” January 29, 2024 [HERE](#).

Source: *Hannah News Service*, “**Senate Overrides Veto on Trans Health, Nicotine Regulation; Ingram Joins Leadership Team,**” January 24, 2024 [HERE](#).

Source: Hancock, Laura. “**With 2nd vote legislature crushes Gov. DeWine’s veto. Bans on young transgender Ohioans soon to begin.**” *Plain Dealer*, January 24, 2024 [HERE](#).

Source: **Ohio Senate Ohio Channel** January 24, 2024 [HERE](#).

Source: Congressional Research Service, “**Regulating Gender in School Sports:** An Overview of Legal Challenges to State Laws,” January 2, 2024 [HERE](#).

### **Senator Cirino summons Ohio College Presidents to explain Capital Budget Requests and DEI spending**

Last week several news outlets reported that State Senator Jerry Cirino sent a **letter to the presidents of Ohio’s 14 public universities** directing them to appear in person before the **Senate Workforce and Higher Education Committee** in April to present their **capital budget requests** for FY25 and FY26 and provide additional information, including “**...a complete accounting of all spending on diversity, equity, and inclusion or related subjects.**” Two-year community college presidents were not included in the letter. [HERE](#).

According to the letter, **each president will have one hour to present their capital budget request**, including the need for the capital projects; any cost avoidance data; and how the projects will impact the future delivery of instruction to students.

In addition, **presidents are also required to present a five-year institutional cost summary that includes all costs related to** student instruction; all costs related to general staff; other costs related to staff, including academic administration, counseling, financial aid assistance, healthcare services and housing; employee headcounts, an annual count of faculty, administration, and employees; and a complete accounting of all spending on diversity, equity, and inclusion or related subjects.

The General Assembly approves the capital budget in even-numbered years. The capital budget funds state and community projects that are eligible to be funded from state bonds, including parks, cultural institutions, sports stadiums, museums, social service agencies, hospitals, institutions of higher education and state-

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*K. C. v. Individual Members of Med. Licensing Bd. of Indiana*, No. 123CV00595JPHKMB, 2023 WL 4054086 (S.D. Ind. June 16, 2023) (ban on gender transition procedures likely violated equal protection)

*L. W. by & through Williams v. Skrmetti*, 73 F.4th 408, 419 (6th Cir. 2023) (ban on gender transition procedures did not likely violate equal protection);

*B. P. J. v. W. Virginia State Bd. of Educ.*, 649 F. Supp. 3d 220 (S.D.W. Va. 2023) (transgender sports ban did not violate equal protection or Title IX)

owned infrastructures. **The capital budget for FY23-24 appropriated \$3.51 billion, including \$300 million for the infrastructure needs of institutions of higher education.**

Lawmakers have also **set aside this year a separate \$700 million One-Time Community Investment Fund to support “transformational” investments.** The fund was included in HB33 the FY24-25 Operating Budget using General Revenue Funds and has fewer restrictions on its use than the capital budget.

Senate President Matt Huffman recently reported that he **expects the General Assembly to approve the biennial capital budget by Memorial Day.** The Senate timeline calls for budget requests to be submitted to the Senate Finance Committee, chaired by Senator Matt Dolan, by April 8, 2024, while in the Ohio House Finance Committee, chaired by Representative Jay Edwards, budget requests were due December 18, 2023.

The Inter-University Council, which includes Ohio's 14 public university presidents, **submitted in December 2023 a unified capital budget request to the Senate and House Finance Committees.** The unified capital budget request represents a consensus among university presidents about the capital needs and priorities of institutions of higher education for the next two years.

Senator Cirino's directive **adds an additional step to the capital budget process; requests information about operating costs and program costs that are not part of the capital budget process, including cost to operate DEI programs; and side-steps the capital budget priorities identified and agreed to by the university presidents.**

According to Senator Cirino the capital budget process provides an opportunity for lawmakers to receive information regarding the economic status of state universities, especially when enrollments have declined, and Ohio's universities have a huge and costly infrastructure capacity to support.

According to an article by Laura Hancock of Cleveland.com Senator Cirino said that he didn't have time last year when lawmakers were debating the state's operating budget to organize hearings to learn about funding priorities for higher education, so he is doing it now.

However, Senator Cirino is also eager to pass SB83, his **bill to overhaul higher education's governance structure, including limiting tenure; changing faculty evaluations; restricting diversity, equity, and inclusion programs; and addressing perceived liberal bias on campuses.** SB83 has stalled in the Ohio House, but some believe that these hearings are an **attempt to put university presidents on the spot about spending for DEI and increase support among lawmakers to pass SB83.**

**Arts education advocates have an interest in these hearings, because some Ohio universities are already eliminating programs and courses in the arts** to “right-size” the faculty as student enrollment declines.<sup>2</sup> These hearings could provide an opportunity to understand the financial status of Ohio's universities so that arts education advocates can create an advocacy agenda and message to urge continued support for arts related programs on Ohio's college campuses.

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<sup>2</sup> Over the past several years arts education programs have been eliminated or reduced at Ashland University (theatre), the University of Akron, and other universities. According to the *Youngstown Business Journal*, Youngstown State University has identified geography, art education, music composition, music performance and professional and technical writing as low enrollment programs. HERE [https://businessjournaldaily.com/ysu-examines-resource-reallocation-for-programs/?utm\\_content=274533393&utm\\_medium=social&utm\\_source=facebook&hss\\_channel=fbp-301863111156](https://businessjournaldaily.com/ysu-examines-resource-reallocation-for-programs/?utm_content=274533393&utm_medium=social&utm_source=facebook&hss_channel=fbp-301863111156)

Source: Center for Community Solutions, “**An Ohio Capital Budget with a Twist**”, December 1, 2023, [HERE](#).

Source: Hancock, Laura, “As lawmakers craft state building budget, **Ohio university presidents must justify spending for DEI**,” Cleveland.com, January 30, 2024 [HERE](#).

Source: Kasler, Karen. “**Senator tells Ohio university presidents: bring spending info with capital budget asks**,” The Statehouse New Bureau, January 22, 2024 [HERE](#).

Source: Dick, Denise. **YSU Examines Resource Reallocation for Academic Programs**, *The Business Journal*, December 7, 2023 [HERE](#).

### Bills introduced last week

- **HB387 Dissolve Academic Distress Commissions** (Lauren McNally and Juanita Brent): To dissolve existing academic distress commissions, to repeal the law that creates new commissions, and to declare an emergency.
- **HB394 Prohibit Commitment to Certain Beliefs (Adam Holmes)**: To prohibit state institutions of higher education from requiring individuals to commit to specific beliefs, affiliations, ideals, or principles.

### This week at the Statehouse

- **The House Higher Education Committee**, chaired by Representative Young, will meet on February 7, 2024, at 9:30 AM in Hearing Room 017. The committee **will be considering HB183 Single-Sex Bathrooms (Beth Lear and Adam Bird): To enact the Protect All Students Act regarding single-sex bathroom access in primary and secondary schools and institutions of higher education and to amend the version of section 3314.03 of the Revised Code that is scheduled to take effect January 1, 2025**, to continue the changes on and after that date.
- **The Ohio House of Representatives** will hold a voting session on Wednesday, February 7, 2024, at 2:00 PM in the House Chambers. The session agenda is not available at this time.