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# OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 327  
134<sup>th</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Grendell and Fowler Arthur

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### SUMMARY

- Prohibits school districts, community schools, STEM schools, state agencies, and state institutions of higher education from teaching “divisive concepts” or accepting private funding to further promotion of “divisive concepts.”
- Requires the Department of Education to withhold funding from a school district or school that violates the bill’s provisions until such time as the district or school complies.
- Requires the administrative head of each state agency to review its grant and training programs as well as ensure and encourage compliance with the bill’s provisions by its employees.
- Requires the Department of Administrative Services to adopt a policy that complies with the bill’s provisions and establish rules for the implementation and enforcement of that policy.

### DETAILED ANALYSIS

#### Prohibition on teaching specified topics

The bill prohibits public schools, state agencies, and state institutions of higher education from (1) offering teaching, instruction or training on “divisive concepts” and (2) accepting private funding to develop curriculum, purchase or select course materials, or provide training for a course promoting “divisive concepts.”<sup>1</sup> The bill places various responsibilities for its implementation on the Department of Administrative Services, heads of state agencies, the Superintendent of Public Instruction, and the State Board of Education.

<sup>1</sup> R.C. 3313.6027(B), 3314.03(A)(11)(d), 3326.11, and 4113.35(B).

For purposes of the bill's provisions a "divisive concept" is a concept that promotes or insinuates any of the following:

- One nationality, color, ethnicity, race, or sex is inherently superior to another nationality, color, ethnicity, race, or sex.
- The United States is fundamentally racist or sexist.
- An individual, by virtue of the individual's nationality, color, ethnicity, race, or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously.
- An individual should be discriminated against or receive adverse treatment solely or partly because of the individual's nationality, color, ethnicity, race, or sex.
- Members of one nationality, color, ethnicity, race, or sex cannot and should not attempt to treat others without respect to nationality, color, ethnicity, race, or sex.
- An individual's moral character is necessarily determined by the individual's nationality, color, ethnicity, race, or sex.
- An individual, by virtue of the individual's nationality, color, ethnicity, race, or sex, bears responsibility for actions committed in the past by other members of the same nationality, color, ethnicity, race, or sex.
- Meritocracy or traits such as a hard work ethic are racist or sexist or were created by a particular nationality, color, ethnicity, race, or sex to oppress another nationality, color, ethnicity, race, or sex.
- Any other form of race or sex stereotyping or any other form of race or sex scapegoating.<sup>2</sup>

The does permit, however, all of the following: (1) teaching divisive concepts in an objective manner, without endorsement, (2) discussing the history of an ethnic group as described in textbooks and instructional materials, (3) the impartial discussion of controversial aspects of history, (4) the impartial discussion on historical oppression of a group based on nationality, color, ethnicity, race, sex, religion, or geographic region, and (5) permitted historical documents such as the national motto, national anthem, the Ohio Constitution, the U.S. Constitution, the Revised Code, federal law, and U.S. Supreme Court decisions.<sup>3</sup>

## **Superintendent of Public Instruction/State Board of Education duties**

As noted above, the bill prohibits all public schools (school districts, community schools, and STEM schools) from teaching, instructing, or training any divisive concepts. It also prohibits requiring a student to advocate for or against a specific topic or point of view to receive credit

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<sup>2</sup> R.C. 3313.6027(A)(1) and 4113.35(A)(1).

<sup>3</sup> R.C. 3313.6027(D) and 4113.35(E).

for any coursework. Districts and schools must not accept private funding to develop curriculum, purchase or select course materials, or provide training for a course promoting divisive concepts.

If the Superintendent of Public Instruction finds that a school district or other public school knowingly violates the bill's provisions, the Department of Education must withhold state funding from the district or school in an amount determined by the Department until the district or school is in compliance.<sup>4</sup> The State Board of Education may adopt rules regarding implementation of and compliance with the bill's public school provisions.<sup>5</sup>

## **Department of Administrative Services/heads of state agencies duties**

The bill prohibits state agencies from (1) offering teaching, instruction, or training on divisive concepts to any employees, contractors, staff members, or any other individual group and (2) requiring the adoption or belief in divisive concepts. For purposes of the bill, a state agency includes every organized body, office, or agency that exercises any government function, including a state institution of higher education and state retirement and pension funds.<sup>6</sup>

Like the prohibitions placed on public schools, state agencies must not accept private funding to develop curriculum, purchase or select course materials, or provide training for a course promoting divisive concepts. However, state agencies, unlike public schools, are expressly prohibited from (1) taking adverse action on account of an employee's refusal to support or otherwise assent to divisive concepts or (2) requiring an employee to complete a curriculum including divisive concepts as a condition or prerequisite of employment.<sup>7</sup>

The bill requires the administrative head of each state agency to do all of the following:

1. Review the agency's respective grant programs and identify any that may require certification that a recipient will not use funds to promote divisive concepts;
2. Review employee training programs relating to diversity or inclusion to ensure compliance with the bill's provisions;
3. Ensure compliance with the bill's provisions by agencies, employees during work hours, and contractors;
4. Encourage agency employees not to judge each other based on their color, race, ethnicity, sex, or any other characteristic protected by federal or state law;

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<sup>4</sup> R.C. 3313.6027(C).

<sup>5</sup> R.C. 3313.6027(E).

<sup>6</sup> R.C. 4113.35(A)(2).

<sup>7</sup> R.C. 4113.35(B)(2) and (3).

5. If a contracted entity promotes divisive concepts and violates a public contract, evaluate whether to pursue debarment of contractor;
6. Issue to all agency employees the policy developed by the Department of Administrative Services (see below), annually review and assess the agency's compliance with that policy, and submit a report to the Department of Administrative Services regarding the agency's compliance; and
7. Make at least one employee within the agency responsible for ensuring compliance with the policy.<sup>8</sup>

The bill requires the Department of Administrative Services to develop a policy that (1) complies with the bill's provisions, (2) incorporates the requirements of diversity and inclusion efforts, and (3) encourages state employees not to judge each other by their color, race, ethnicity, sex, or any other protected characteristic. The Department of Administrative Services must establish rules for the implementation and enforcement of the policy.<sup>9</sup>

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## HISTORY

| Action     | Date     |
|------------|----------|
| Introduced | 05-25-21 |

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<sup>8</sup> R.C. 4113.35(C)(2).

<sup>9</sup> R.C. 4113.35(D).