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135<sup>th</sup> General Assembly

## Bill Analysis

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**Primary Sponsor:** Sen. Cirino

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### SUMMARY

#### STATE INSTITUTIONS OF HIGHER EDUCATION

#### Diversity, equity, and inclusion (DEI), intellectual diversity, and other concepts

##### Policy

- Requires state institutions of higher education to adopt and enforce a policy requiring the institution to:
  - Prohibit any mandatory programs or training courses regarding DEI, except that a state institution may receive an exemption if such a program or course is required for certain specified purposes;
  - Affirm and declare a primary function to the pursuit of knowledge;
  - Affirm and declare that the institution will ensure full intellectual diversity;
  - Demonstrate intellectual diversity for course approval, approval of general education courses, student course evaluations, common reading programs, annual reviews, strategic goals for each department, and student learning outcomes;
  - Seek out invited speakers who have diverse ideological and political views;
  - Post a complete list of all speaker fees, honoraria, and other emoluments in excess of \$500 that are sponsored by the state institution prominently on its website.
- Requires each state institution's policy to affirm and declare that the state institution will not:
  - Endorse or oppose, as an institution, any controversial beliefs or policies, specified concepts, or specified ideologies;

- Influence or require students, faculty, or administrators to endorse or express a given ideology, political stance, or view of a social policy;
- Require a student to endorse or express a given ideology, political stance, or view to obtain an undergraduate or post-graduate degree;
- Use political and ideological litmus tests in any hiring, promotion, and admissions decisions, including diversity statements and other requirements that applicants describe commitment to a specified concept, specified ideology, or controversial belief;
- Influence or require students, faculty, or administrators to endorse or express a given ideology or political stance in any hiring, promotion, or admissions process or decision;
- Use a diversity statement or any other assessment of an applicant's political or ideological views in any hiring, promotions, or admissions process or decision;
- Influence or require students, faculty, or administrators to endorse or express a given ideology or political stance in any process or decision regulating conditions of work or study.

### **Intellectual diversity protections and disciplinary sanctions**

- Requires each state institution to do all of the following:
  - Implement a range of disciplinary sanctions for any an administrator, faculty member, staff, or student who interferes with the intellectual diversity rights of another;
  - Inform all students and employees of their intellectual diversity protections and any applicable policies adopted by the state institution to put the protections into practice;
  - Issue and post to its website an annual report on any violations of intellectual diversity rights and resulting disciplinary sanctions.

### **Mission statements**

- Requires each state institution to incorporate statements into its mission statement declaring commitment to free and open intellectual inquiry, independence of thought, tolerance of differing viewpoints, and equality of opportunity.

### **Policies on equal opportunity**

- Requires state institutions to do both of the following with regard to every position, policy, program, and activity:
  - Treat all faculty, staff, and students as individuals, hold all individuals to equal standards, and provide every individual with equality of opportunity with regard to those individuals' race, ethnicity, religion, sex, sexual orientation, gender identity, or gender expression;

- Provide no advantage or disadvantage to faculty, staff, or students on the basis of race, ethnicity, religion, sex, sexual orientation, gender identity, or gender expression in admissions, hiring, promotion, tenuring, or workplace conditions.

### **Prohibition on support and training for certain concepts**

- Prohibits state institutions from providing or requiring training for any administrator, teacher, or staff member that advocates or promotes certain prescribed concepts regarding race and sex.
- Requires state institutions to implement a range of disciplinary sanctions for any administrator, teacher, staff member, or employee who authorizes or engages in a training that violates the above prohibitions.
- Requires state institutions to issue and post on their websites an annual report regarding violations of the above prohibitions, resulting disciplinary sanctions, and statistics on the academic qualifications of accepted and matriculating students, disaggregated by race and sex.

### **Segregation prohibition**

- Requires state institutions to prohibit all policies designed explicitly to segregate faculty, staff, or students based on those individuals' race, ethnicity, religion, sex, sexual orientation, gender identity, or gender expression in credit-earning classroom settings, formal orientation ceremonies, and formal graduation ceremonies.

### **Higher education employee strikes**

- Prohibits state institutions of higher education employees from striking and instead requires them to submit unresolved collective bargaining disputes to a final offer settlement procedure.

### **Faculty evaluations**

#### **Student and peer evaluations**

- Requires the Department of Higher Education (DHE) to develop a minimum set of standard questions to be used in student evaluations, including a question about whether a faculty member creates a classroom atmosphere free of bias.
- Requires each state institution to establish a written system of faculty evaluations completed by students that uses the questions developed by DHE.
- Requires state institutions to establish a written system of peer evaluations for faculty members with a focus on professional development regarding the faculty member's teaching responsibilities.

#### **Faculty annual performance evaluations**

- Requires state institutions to adopt and, every five years, submit to the Chancellor of Higher Education a faculty annual performance evaluation policy.

- Requires state institutions to conduct an annual evaluation for each full-time faculty member directly compensated by the state institution.

### **Post-tenure review policies**

- Requires state institutions with tenured faculty to adopt and, every five years, submit to the Chancellor a post-tenure review policy.
- Requires state institutions with tenured faculty to adopt and, every five years, submit to the Chancellor policies on tenure and retrenchment.

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

- Establishes the scope and procedures for a civil action when a state institution of higher education violates a restriction in an endowment agreement.
- Permits the Attorney General, the person who transferred property under the agreement, or that person's benefactor representative to file a complaint for breach of an endowment agreement.
- Permits the Attorney General and any party to an endowment agreement, including the recipient state institution of higher education, to file a complaint to obtain a declaration of rights and duties under the agreement.
- Requires complaints to be filed within six years of discovering the violation, or within 50 years after the effective date of the endowment agreement, whichever is sooner.
- Limits application to endowment funds established on and after the 120<sup>th</sup> day following the provision's effective date and to breaches of endowment agreements that occur on or after that date.

### **Other changes**

#### **Five-year institutional cost summaries**

- Requires state institutions to submit to the Chancellor a rolling five-year summary of institutional costs to be considered by the General Assembly when evaluating operating and capital project funding for each biennial main operating appropriations bill and capital appropriations bill.
- Requires the Chancellor to submit a report to the General Assembly including all state institutions' five-year institutional cost summaries.
- Requires that the president of each state institution or the Chancellor have the opportunity to present in the appropriate hearings conducted by committees considering higher education legislation regarding the institutions' five-year summaries.
- Requires the Chancellor to, prior to the enactment of each main operating appropriations and capital appropriations bill, create and present a report to the General Assembly including the total institutional costs for state universities and community colleges separately.

## **Faculty workload policy**

- Requires each state institution to take formal action to adopt a faculty workload policy consistent with standards adopted by the Chancellor, review and update its policy on faculty tenure, require multiple pathways to tenure to receive certain state funds, and update its faculty workload policy every five years.
- Requires each state institution to include in its faculty workload policy a teaching workload expectation based on credit hours, a definition of all faculty workload elements in terms of credit hours including a full-time minimum standard established by the board of trustees, justifiable credit hour equivalents, and any administrative action that the state institution may take if a faculty member fails to comply with the policy's requirements.

## **American government or history course requirement**

- Requires the Chancellor of Higher Education to develop a three credit hour course in the subject of American government or American history with mandatory reading assignments including the United States Constitution, Declaration of Independence, five essays from the Federalist Papers, the Emancipation Proclamation, Gettysburg Address, and Letter from Birmingham Jail by Dr. Martin Luther King, Jr.
- Requires state institutions to require all students seeking a bachelor's degree to take the course or receive an exemption, beginning with students who graduate in the spring of the 2028-2029 academic year.
- Permits state institutions to offer the course under the College Credit Plus Program.

## **Syllabus requirements**

- Requires each state institution to either post a syllabus for each undergraduate course offered for college credit on its website or ensure that each course instructor posts the syllabus on a publicly accessible website that has specified information about the instructor and each syllabus the instructor is teaching.
- Requires each state institution and the Chancellor to prepare reports regarding state institution compliance with syllabus posting requirements.

## **Interactions with the People's Republic of China**

- Prohibits state institutions from accepting gifts, donations, or contributions from the People's Republic of China or any organization that the institution reasonably suspects is acting on behalf of the People's Republic of China.
- Requires state institutions to submit to the Chancellor a copy of the foreign gifts report it sends to the United States Department of Education.
- Prohibits state institutions from entering into new or renewed academic partnerships with an academic or research institution located in China unless the Chancellor approves such a partnership.

- Permits the Chancellor to approve academic partnerships with academic or research institutions located in China only if the Chancellor, in consultation with the Attorney General, determines that the state institution maintains sufficient structural safeguards to protect the state institution’s intellectual property, the security of Ohio, and national security interests.
- Requires the Auditor of State to audit state institutions’ structural safeguards during the course of a normal audit.

### **Board of trustees training**

- Requires the Chancellor to develop and provide annual training to the board of trustees of each state institution.
- Eliminates a requirement that the Chancellor, working with specified stakeholders, develop voluntary, model training for state institution board of trustee members.

### **Board of trustees terms of office**

- Changes the term of office to four years for all nonstudent trustees at state universities, community colleges, state community colleges, and technical colleges who are appointed by the Governor on or after January 1, 2024.
- Eliminates a prohibition on state university trustees who served at least six years of a term being reappointed as a trustee before four years have elapsed since the end of the trustee’s previous term.

### **Northeast Ohio Medical University principal goals**

- Removes language establishing the principal goals of the Northeast Ohio Medical University to work in collaboration with area state universities.

## **OTHER HIGHER EDUCATION PROVISIONS**

### **Three-year bachelor’s degree study**

- Requires the Department of Higher Education to conduct a study on the feasibility of implementing three-year bachelor’s degree programs in Ohio.

### **Act title**

- Entitles the bill the “Ohio Higher Education Enhancement Act.”

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## **DETAILED ANALYSIS**

### **STATE INSTITUTIONS OF HIGHER EDUCATION**

The bill makes several changes to higher education. It creates, among other things, new requirements for state institutions of higher education regarding diversity, equity, and inclusion policies and training, intellectual diversity, and faculty evaluations. It also prohibits higher education employees from striking and instead requires employees to submit unresolved collective bargaining disputes to a final offer settlement procedure.

Throughout the bill, “state institution of higher education” or “state institution” includes any state university or college, community college, state community college, university branch, or technical college. Further, when the bill requires that something be posted on a website, that posting must be: (1) accessible from the main page of the state institution’s website by using no

more than three links, (2) searchable by keywords and phrases, and (3) accessible to the public without requiring any user registration.

## **Diversity, equity, and inclusion (DEI), intellectual diversity, and other concepts**

### **Policy**

The bill requires the board of trustees of each state institution of higher education to adopt and enforce a policy requiring the institution to do all of the following:

1. Prohibit any mandatory programs or training courses regarding diversity, equity, or inclusion, unless the institution receives an exemption;
2. Affirm and declare that its primary function is to practice, or support the practice of, discovery, improvement, transmission, and dissemination of knowledge by means of research, teaching, discussion, and debate;
3. Affirm and declare that the institution will ensure the fullest degree of intellectual diversity. Under the bill, “intellectual diversity” means multiple, divergent, and opposing perspectives on an extensive range of public policy issues.<sup>1</sup>
4. Affirm and declare that faculty and staff will allow and encourage students to reach their own conclusions about all controversial beliefs or policies and will not seek to inculcate any social, political, or religious point of view;
5. Demonstrate intellectual diversity for course approval, approval of courses to satisfy general education requirements, student course evaluations, common reading programs, annual reviews, strategic goals for each department, and student learning outcomes;
6. Declare that it will not endorse or oppose, as an institution, any controversial belief or policy, specified concept, or specified ideology, although it may endorse the United States Congress when it establishes a state of armed hostility against a foreign power. This does not include the recognition of national and state holidays, support for the Constitution and laws of the United States or Ohio, or the display of the American or Ohio flag.

Under the bill:

- a. A “controversial belief or policy” means any belief or policy that is the subject of political controversy, including issues such as climate policies, electoral politics, foreign policy, diversity, equity, and inclusion programs, immigration policy, marriage, or abortion;

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<sup>1</sup> R.C. 3345.0217(A)(2) and 3345.0218(A)(1).

- b. A “specified concept” means a concept such as allyship, diversity, social justice, sustainability, systematic racism, gender identity, equity, or inclusion;
  - c. A “specified ideology” means any ideology that classifies individuals within identity groups, divides identity groups into oppressed and oppressors, and prescribes advantages, disadvantages, or segregation based on identity group.<sup>2</sup>
7. Affirm and declare that the institution will not encourage, discourage, require, or forbid students, faculty, or administrators to endorse, assent to, or publicly express a given ideology, political stance, or view of a social policy, nor will the institution require students to do any of those things to obtain an undergraduate or post-graduate degree;
  8. Prohibit political and ideological litmus tests in all hiring, promotion, and admissions decisions, including diversity statements and any other requirement that applicants describe their commitment to a specified concept, specified ideology, or any other ideology, principle, concept, or formulation that requires commitment to any controversial belief or policy;
  9. Affirm and declare that no hiring, promotion, or admissions process or decision shall encourage, discourage, require, or forbid students, faculty, or administrators to endorse, assent to, or publicly express a given ideology or political stance;
  10. Affirm and declare that the institution will not use a diversity statement or any other assessment of an applicant’s political or ideological views in any hiring, promotions, or admissions process or decision;
  11. Affirm and declare that no process or decision regulating conditions of work or study, such as committee assignments, course scheduling, or workload adjustment policies, shall encourage, discourage, require, or forbid students, faculty, or administrators to endorse, assent to, or publicly express a given ideology or political stance;
  12. Affirm and declare that the institution will seek out invited speakers who have diverse ideological or political views;
  13. Post prominently on its website a complete list of all speaker fees, honoraria, and other emoluments in excess of \$500 for events that are sponsored by the state institution.<sup>3</sup>

Under the bill, the second through fifth requirements in this list do not apply to the exercise of professional judgment about how to accomplish intellectual diversity within an academic discipline, unless that exercise is misused to constrict intellectual diversity.<sup>4</sup>

The sixth and seventh requirements do not apply to the exercise of professional judgment about whether to endorse the consensus or foundational beliefs of an academic

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<sup>2</sup> R.C. 3345.0217(A).

<sup>3</sup> R.C. 3345.0217(B)(1) to (13).

<sup>4</sup> R.C. 3345.0217(B)(5).

discipline, unless that exercise is misused to take an action prohibited by the sixth requirement.<sup>5</sup>

Each institution must adopt this policy within 90 days of the bill's effective date.

The bill states that none of the above requirements prohibit faculty or students from classroom instruction, discussion, or debate, so long as faculty members remain committed to expressing intellectual diversity and allowing intellectual diversity to be expressed.<sup>6</sup>

## **Exemptions**

Under the bill, a state institution may receive an exemption for the requirement to prohibit any mandatory programs or training courses regarding diversity, equity, and inclusion, if such a course is required to comply with state or federal laws or regulations, comply with professional licensure requirements, to obtain or retain accreditation, or to secure or retain grants or cooperative agreements.<sup>7</sup>

A state institution may receive an exemption if, prior to the initial offering of a diversity, equity, and inclusion program or training course, the state institution submits a request for an exemption to the Chancellor. The request must include the following:

1. The specific law, license requirement, accreditation, grant, or cooperative agreement at issue;
2. The specific language in the law, licensure requirement, accreditation, grant, or cooperative agreement that requires the training;
3. A detailed description of the diversity, equity, and inclusion program or training to be taught, including any materials that will be used;
4. The specific population of individuals who will be mandated to take the training;
5. The number of times the training is expected to be offered on a six-month basis;
6. An estimate of the cost of the program or training; and
7. If the exemption is sought for an accreditation, proof that alternative accreditation has been researched and evaluated. An alternate accreditation is an accreditation that would obtain the same or similar results for the institution while not requiring a diversity, equity, and inclusion program or training.

Under the bill, the Chancellor must approve a state institution's request if the Chancellor determines that the request is required for state or federal law or regulation compliance, compliance with professional licensure requirements, to obtain or retain accreditation, or to secure or retain grants or cooperative agreements.

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<sup>5</sup> R.C. 3345.0217(B)(7).

<sup>6</sup> R.C. 3345.0217(E).

<sup>7</sup> R.C. 3345.0217(B)(1).

If a state institution makes a change to an approved diversity, equity, and inclusion program or training, the institution must submit a new request for approval for that program or training.<sup>8</sup>

The bill requires the Chancellor to prepare a report at least once every six months that summarizes all exemptions sought for diversity, equity, and inclusion programs during that six month period, including the number of exemptions granted and rejected. The Chancellor must submit each report to the chairpersons of the standing committees of the Ohio Senate and House of Representatives that consider higher education legislation.<sup>9</sup>

### **Intellectual diversity protections and sanctions**

The bill requires each state institution of higher education to implement a range of disciplinary sanctions for any administrator, faculty member, staff, or student who interferes with the intellectual diversity rights of another individual.<sup>10</sup>

The bill also requires each state institution to inform its students and employees of the protections given to them under the bill and any policies adopted to put the protections into practice, including by providing the information to new employees and to students during any new student orientation. This information must be posted on the institution's website.<sup>11</sup>

Each state institution is also required to issue an annual report on any violations to the intellectual diversity rights prescribed under the bill by any individual under the state institution's jurisdiction and any consequent disciplinary sanctions issued for that violation. The institution must post this report on its website.<sup>12</sup>

### **Mission statements**

The bill requires each state institution to incorporate certain principles into its mission statement. In the statement, the institution must declare all of the following:

1. It will educate students by means of free, open, and rigorous intellectual inquiry to seek the truth;
2. Its duty is to equip students with an opportunity to develop the intellectual skills they need to reach their own, informed conclusions;
3. Its duty is to ensure that, within or outside the classroom, the institution will not require, favor, disfavor, or prohibit speech or lawful assembly;

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<sup>8</sup> R.C. 3345.0217(C).

<sup>9</sup> R.C. 3345.0217(D).

<sup>10</sup> R.C. 3345.0218(B).

<sup>11</sup> R.C. 3345.0218(C) and (E).

<sup>12</sup> R.C. 3345.0218(D) and (E).

4. It is committed to creating a community dedicated to an ethic of civil and free inquiry, which respects the autonomy of each member, supports individual capacities for growth, and tolerates the differences in opinion that naturally occur in a public higher education community;
5. Its duty is to treat all faculty, staff, and students as individuals, to hold them to equal standards, and to provide them equality of opportunity.<sup>13</sup>

### **Affirmations and policies on equal opportunity**

The bill requires each state institution to do both of the following with respect to every position, policy, program, and activity:

1. Treat all faculty, staff, and students as individuals, hold every individual to equal standards, and provide every individual with equality of opportunity with regard to those individuals' race, ethnicity, religion, sex, sexual orientation, gender identity, or gender expression; and
2. Provide no advantage or disadvantage to faculty, staff, or students on the basis of race, ethnicity, religion, sex, sexual orientation, gender identity, or gender expression in admissions, hiring, promotion, tenuring, or workplace conditions.<sup>14</sup>

The bill defines "position, policy, program, and activity" to include all of the following:<sup>15</sup>

1. All forms of employment, including staff positions, internships, and work studies;
2. All policies, including mission statements, hiring policies, promotion policies, and tenure policies;
3. All programs and positions, including deanships, provostships, offices, programs presented by residence halls, and committees; and
4. All activities, including those conducted by the administrative units of orientation, first-year experience, student life, and residential life.

### **Prohibition on support and training for certain concepts**

The bill prohibits state institutions from providing or requiring training for any administrator, teacher, staff member, or employee that advocates or promotes any of the following concepts:<sup>16</sup>

1. One race or sex is inherently superior to another race or sex;

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<sup>13</sup> R.C. 3345.0216.

<sup>14</sup> R.C. 3345.87(B).

<sup>15</sup> R.C. 3345.87(A).

<sup>16</sup> R.C. 3345.87(C).

2. An individual, by virtue of the individual's race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously;
3. An individual should be discriminated against or receive adverse treatment solely or partly due to the individual's race;
4. Members of one race cannot or should not attempt to treat others without respect to race;
5. An individual's moral standing or worth is necessarily determined by the individual's race or sex;
6. An individual, by virtue of the individual's race or sex, bears responsibility for actions committed in the past by other members of the same race or sex;
7. An individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of the individual's race or sex;
8. Meritocracy or traits such as hard work ethic are racist or sexist, or were created by members of a particular race to oppress members of another race;
9. Fault, blame, or bias should be assigned to a race or sex, or to members of a race or sex because of their race or sex.

The bill requires each state institution to implement a range of disciplinary sanctions for any administrator, teachers, staff member, or employee who authorizes or engages in a training prohibited above.<sup>17</sup>

Each state institution is required to issue an annual report including all violations of the above training prohibition with all consequent disciplinary sanctions and statistics on the academic qualifications of accepted and matriculating students, disaggregated by race and sex. The statistics must include information correlating students' academic qualifications and retention rates, disaggregated by race and sex. State institutions are required to post the reports in a prominent place on the state institution's website.<sup>18</sup>

### **Segregation prohibition**

The bill requires state institutions to prohibit all policies explicitly designed to segregate faculty, staff, or students based on those individuals' race, ethnicity, religion, sex, sexual orientation, gender identity, or gender expression in credit-earning classroom settings, formal orientation ceremonies, and formal graduation ceremonies.<sup>19</sup>

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<sup>17</sup> R.C. 3345.87(D).

<sup>18</sup> R.C. 3345.87(E) and (F).

<sup>19</sup> R.C. 3345.87(G).

## Higher education employee strikes

The bill prohibits state institution of higher education employees from striking. Instead, those employees must submit to a final offer settlement procedure to settle unresolved collective bargaining disputes with their employers in accordance with continuing law.<sup>20</sup> In the event of a strike by these employees, the institution of higher education that employs them may seek an injunction against the strike in the court of common pleas of the county where the strike occurs.<sup>21</sup>

The Public Employees' Collective Bargaining Law<sup>22</sup> (PECBL) governs collective bargaining between public employees and public employers who are subject to that law. Under the PECBL, all matters related to wages, hours, or terms and other conditions of public employment are subject to collective bargaining between a public employer and the "employee organization" (essentially, a union) that represents the employer's public employees.<sup>23</sup> The PECBL establishes timelines and requirements for negotiating collective bargaining agreements. It also specifies procedures the parties must follow if they reach an impasse during negotiations, including submitting unresolved issues to a fact-finding panel. If the parties are unable to reach agreement within seven days after the publication of findings and recommendations from a fact-finding panel or if any existing collective bargaining agreement has expired, the public employees who are permitted to strike may do so in accordance with statutory procedures. Public employees who are not permitted to strike must follow a final offer settlement procedure to settle unresolved collective bargaining disputes with their employers.<sup>24</sup> In general, the PECBL currently prohibits peace officers, firefighters, corrections officers, public service dispatchers, employees of the State School for the Deaf and the State School for the Blind, and a limited number of public-sector healthcare workers from striking.<sup>25</sup>

Under continuing law, if public employees governed by the PECBL engage in a strike that is not authorized under the PECBL, the employees may be subject to discipline in accordance with the procedures specified in the PECBL.<sup>26</sup>

## Faculty evaluations

### Student and peer evaluations

The bill requires each state institution of higher education to establish a written system of faculty evaluations completed by students and focusing on teaching effectiveness and

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<sup>20</sup> R.C. 4117.14.

<sup>21</sup> R.C. 4117.15.

<sup>22</sup> R.C. Chapter 4117.

<sup>23</sup> R.C. 4117.08, not in the bill.

<sup>24</sup> R.C. 4117.14(A) to (C).

<sup>25</sup> R.C. 4117.14(D)(1).

<sup>26</sup> R.C. 4117.23, not in the bill.

student learning. For this purpose, the Chancellor of Higher Education must develop a minimum set of standard questions that state institutions must include in student evaluations of faculty members. The set of questions must include the question, “Does the faculty member create a classroom atmosphere free of political, racial, gender, and religious bias?”<sup>27</sup>

In addition to student evaluation of faculty members, the bill requires each state institution to establish a written system of peer evaluations for faculty members. The evaluations must place an emphasis on the faculty member’s professional development regarding the faculty member’s teaching responsibilities.<sup>28</sup>

Under the bill, this section takes effect on July 1, 2024.<sup>29</sup>

### **Faculty annual performance evaluations**

The bill requires the board of trustees of each state institution to adopt and submit to the Chancellor a faculty annual performance evaluation policy. The board of trustees must review and update the policy every five years.<sup>30</sup>

Each state institution must conduct an annual evaluation for each full-time faculty member it directly compensates.<sup>31</sup> Each evaluation conducted by a state university under its policy must meet all of the following:

1. The evaluation is comprehensive and includes standardized, objective, and measurable performance metrics;
2. The evaluation includes an assessment for each of the following areas that the faculty member has spent at least 5% of their annual work time on over the preceding year:
  - a. Teaching;
  - b. Research;
  - c. Service;
  - d. Clinical care;
  - e. Administration;
  - f. Other categories, as determined by the state institution.
3. The evaluation includes a summary assessment of the above performance areas that includes the parameters “exceeds performance expectations,” “meets performance expectations,” or “does not meet performance expectations;”

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<sup>27</sup> R.C. 3345.451.

<sup>28</sup> R.C. 3345.451(D).

<sup>29</sup> Section 4.

<sup>30</sup> R.C. 3345.452(B).

<sup>31</sup> R.C. 3345.452(C).

4. Student evaluations conducted under the bill account for at least 50% of the teaching area component of the evaluation; and
5. The evaluation establishes a projected work effort distribution for the faculty member which will be used for the next year's evaluation. This distribution must be compliant with the state institution's established workload policies and must be approved by the dean of faculty or the equivalent.

Evaluations must be conducted by the department chairperson or equivalent administrator, reviewed and approved or disapproved by the dean, and submitted to the provost for review. If the chairperson and dean disagree, the provost must have final decision authority.<sup>32</sup>

Under the bill, this section takes effect on July 1, 2024.<sup>33</sup>

### **Collective bargaining**

With respect to collective bargaining agreements entered into under the PECBL on or after July 1, 2024, employees of a state institution may not collectively bargain with the institution regarding faculty evaluations developed under the bill. Additionally, the evaluation systems and policies established under the bill prevail over any conflicting provision of a collective bargaining agreement entered into on or after that date.

The bill's prohibition against collective bargaining on faculty evaluations is identical to a continuing law prohibition against collectively bargaining faculty workload policies described below.<sup>34</sup>

### **Post-tenure review policy**

The bill requires each state institution that has tenured faculty members to adopt a post-tenure review policy and submit the policy to the Chancellor. Each state institution's board of trustees must update the policy every five years.

Under the bill, a state institution must conduct a post-tenure review if a tenured faculty member receives a "does not meet performance expectations" evaluation within the same evaluative category for at least two of the past three consecutive years on the faculty member's annual performance review.

If a faculty member maintains tenure after a post-tenure review and then receives an additional "does not meet performance expectations" assessment on any area of the faculty member's annual performance evaluation in the subsequent two years, then the state institution must subject the faculty member to an additional post-tenure review.

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<sup>32</sup> R.C. 3345.452.

<sup>33</sup> Section 4.

<sup>34</sup> R.C. 3345.455 and Section 4.

If a faculty member has a documented and sustained record of significant underperformance outside of the faculty member's annual performance evaluation, the department chairperson, dean of faculty, or provost of the state institution may require an immediate and for cause post-tenure review. For this purpose, for cause cannot be based on a faculty member's allowable expression of academic freedom as defined by the state institution or Ohio law.

A state institution's post-tenure review due process period cannot exceed six months, except that the state institution president may grant a one-time two-month extension.

At the conclusion of a post-tenure review, the state institution's provost must submit a recommended outcome of the post-tenure review process to the institution's entity that is responsible for the final decision of post-tenure review pursuant to the institution's policy. The institution may take administrative action under the post-tenure review process, including censure, remedial training, or for-cause termination, regardless of tenure status, and any other action permitted by the institution's post-tenure review policy.<sup>35</sup>

Additionally, the bill requires state institutions of higher education that have tenured faculty members to develop policies on tenure and retrenchment and submit those policies to the Chancellor. Each state institution must update those policies every five years.<sup>36</sup>

As with faculty evaluation policies described above, a post-tenure review, tenure, or retrenchment policy adopted in accordance with the bill is not subject to collective bargaining between the institution and its employees.<sup>37</sup>

Under the bill, these sections take effect on July 1, 2024.<sup>38</sup>

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

### **Cause of action for equitable relief**

Under the bill, an "endowment agreement" means a gift instrument signed by a person and a state institution of higher education, where the person commits to transfer property to that state institution of higher education or another state institution of higher education, and the institution commits that it (or the other state institution of higher education) will hold or administer the property as an endowment fund.<sup>39</sup> Continuing law defines an endowment fund as an institutional fund that, under the terms of a gift instrument, is not wholly expendable by the institution at the current time. Endowment funds are subject to restrictions on

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<sup>35</sup> R.C. 3345.453.

<sup>36</sup> R.C. 3345.454.

<sup>37</sup> R.C. 3345.455.

<sup>38</sup> Section 4.

<sup>39</sup> R.C. 1715.551(A)(2).

management, investment, spending, or purpose that may be contained in an associated endowment agreement.<sup>40</sup>

The bill establishes the scope and procedures for a civil action when a state institution of higher education violates a restriction in an endowment agreement. After such a violation, the person who transferred property through the agreement, or the person's benefactor representative, may submit a complaint to the charitable law section of the Attorney General's office. The bill defines "benefactor representative" as either:

- The administrator or executor of a person's estate; or
- A person designated in the endowment agreement to act in place of a party to the agreement in resolving disputes.

The bill specifies that "benefactor representative" does *not* mean the state institution of higher education receiving or administering property under an endowment agreement. If a benefactor representative is named in the endowment agreement, they are the only benefactor representative, regardless of whether the person who transferred the property also has an estate administrator or executor.<sup>41</sup>

The Attorney General may enforce the endowment agreement by filing a complaint in the proper court for breach of the agreement or to obtain a declaration of rights and duties expressed therein.<sup>42</sup> If the Attorney General does not obtain full compliance within 180 days of the complaint, the person who transferred property under the agreement, or their benefactor representative, may file a complaint of their own for breach of the agreement or to obtain a declaration of rights and duties. The complaint may be filed regardless of any contrary terms of the agreement, but the complaint must not seek an award of any damages, costs, fees, money, or other property. Instead, the complaint must seek only declaratory relief or equitable relief consistent with the charitable purposes of both the endowment agreement and the state institution of higher education.<sup>43</sup>

By contrast, a state institution of higher education may obtain only a declaration of rights and duties under the endowment agreement. The institution may seek such a declaration as part of a suit brought against it, or by filing its own complaint in the proper court.<sup>44</sup>

### **Procedures and deadlines for filing a complaint**

The bill requires a complaint to name as parties the Attorney General, the state institution of higher education that signed the agreement, any state institution of higher

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<sup>40</sup> R.C. 1715.51(D), not in the bill.

<sup>41</sup> R.C. 1715.551(A)(1).

<sup>42</sup> R.C. 1715.551(B) and (D).

<sup>43</sup> R.C. 1715.551(C).

<sup>44</sup> R.C. 1715.551(E).

education that currently administers property subject to the agreement, and, if the Attorney General files the complaint within 50 years of the effective date of the agreement, each person that transferred property under the agreement or their benefactor representative. If a person who transferred property under an endowment agreement is not named as a party, the court may not act of the merits of the complaint or on any motion to address its merits without first ensuring that the plaintiff acted diligently to notify that person or their benefactor representative, and that they have an opportunity to be heard or to intervene.<sup>45</sup>

Any cause of action brought under the bill must be filed within six years of discovering a violation of an endowment agreement. However, no cause of action may be brought under the bill more than 50 years after the effective date of the endowment agreement. If the person who transferred property or their benefactor representative notifies the Attorney General during the sixth year after discovering the violation, the deadline by which they must file a complaint is extended by 210 days.<sup>46</sup>

### **Applicability**

The bill's endowment agreement provisions apply only to endowment funds established on or after the 120<sup>th</sup> day following the provisions' effective date and to breaches of endowment agreements that occur on or after that date. If an endowment fund exists prior to that 120<sup>th</sup> day, the bill still applies, but only to breaches that occur on or after that day. Any breach that occurred prior to the 120<sup>th</sup> day after the provisions' effective date is not subject to the bill.<sup>47</sup>

Furthermore, the changes apply only to endowment agreements involving a state institution of higher education. Violations of agreements governing other types of endowment funds are not subject to the bill.<sup>48</sup> Under continuing law, a "state institution of higher education" means a community college, state community college, university branch, technical college, or a public institution of higher education. The term includes all of the following: University of Akron, Bowling Green State University, Central State University, University of Cincinnati, Cleveland State University, Kent State University, Miami University, Northeast Ohio Medical University, Ohio University, Ohio State University, Shawnee State University, University of Toledo, Wright State University, and Youngstown State University.<sup>49</sup>

### **Other changes**

#### **Five-year institutional cost summaries**

The bill requires each state institution of higher education, for each biennial main operating appropriations bill and capital appropriations bill, to prepare and submit to the

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<sup>45</sup> R.C. 1715.551(F) and (G).

<sup>46</sup> R.C. 1715.551(I).

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

<sup>48</sup> R.C. 1715.551(A)(2).

<sup>49</sup> R.C. 1715.551(A)(3); R.C. 3345.011 and 3345.12(A)(1), not in the bill.

Chancellor, by a date determined by the Chancellor, a rolling five-year summary of its institutional costs to be considered by the General Assembly when evaluating operating and capital project funding. The Chancellor is required to submit a report to the General Assembly including each state institution's five-year institutional cost summary.<sup>50</sup>

Each state institution's institutional cost summary must consist of the following categories:<sup>51</sup>

1. All costs related to student instruction, including instructor salaries, benefits, and related operating costs;
2. All general staff costs related to maintenance, grounds, utilities, food service, and other areas, as determined by the state institution; and
3. All other costs for staff, including academic administrators, counseling, financial aid assistance, healthcare services, and housing management.

For each of the above categories, a state institution's five-year institutional cost summary must include all of the following:<sup>52</sup>

1. A detailed breakdown of annual costs and employee headcounts;
2. A complete accounting of all spending on diversity, equity, and inclusion, or related subjects; and
3. An annual count of all faculty, administration, and employees.

The bill requires the Chancellor to consult with state institutions of higher education to develop a standardized reporting format for the five-year institutional cost summaries and a uniform approach to completing the required categories.<sup>53</sup>

The bill also requires that during the General Assembly's consideration of the main operating appropriations and capital appropriations bills, the president of each state institution of higher education or the Chancellor has the opportunity to present in front of the General Assembly in the appropriate hearings conducted by committees that consider higher education legislation. The president or Chancellor may use the opportunity to provide commentary on trends, potential justifications, or other explanations regarding the state institution's five-year institutional cost summary.<sup>54</sup>

The Chancellor is required to create and present to the General Assembly, prior to the enactment of the main operating appropriations and capital appropriations bills, an aggregation

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<sup>50</sup> R.C. 3345.80(B).

<sup>51</sup> R.C. 3345.80(C).

<sup>52</sup> R.C. 3345.80(D).

<sup>53</sup> R.C. 3345.80(E).

<sup>54</sup> R.C. 3345.80(F).

report summarizing the total institutional costs for state universities and community colleges separately.<sup>55</sup>

### **Faculty workload policies**

The bill requires each state institution of higher education, instead of only state universities as under current law, to do all of the following:

1. Jointly develop standards with the Chancellor of Higher Education for instructional workloads for full-time and part-time faculty that keep with the institutions' missions, place a special emphasis on the undergraduate learning experience, and contain clear guidelines for acceptable undergraduate teaching;
2. Take formal action to adopt a faculty workload policy consistent with the standards developed by the Chancellor;
3. Review the state institution's policy on faculty tenure and update that policy; and
4. Require multiple pathways for tenure to receive certain state funds.<sup>56</sup>

The bill also requires each state institution of higher education to, every five years, update its existing faculty workload policy and submit the revised policy to the Chancellor. The state institution's board of trustees must approve the policy each time the state institution submits an updated policy to the Chancellor.<sup>57</sup>

Each policy must include all of the following:

1. An objective and numerically defined teaching workload expectation based on credit hours as defined under federal law;
2. A definition of all faculty workload elements in terms of credit hours as defined under federal law, with a full-time workload minimum standard established by the state institution's board of trustees and made publicly accessible on the state institution's website;
3. A definition of justifiable credit hour equivalents for activities other than teaching, including research, clinical care, administration, service, and other activities as determined by the state institution;
4. Administrative action that a state institution may take if a faculty member fails to comply with the policy's requirements, including censure, remedial training, for-cause termination, or other disciplinary action, regardless of tenure status. Termination under these circumstances must require the recommendation of the dean, provost, or

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<sup>55</sup> R.C. 3345.80(G).

<sup>56</sup> R.C. 3345.45(A) to (C).

<sup>57</sup> R.C. 3345.45(D)(1).

equivalent official, concurrence of the state institution's president, and approval of the state institution's board of trustees.<sup>58</sup>

Under existing law, state universities have been required to have a formally adopted faculty workload policy since June 30, 1994. These existing policies were required to be based on standards developed by the Chancellor with state university input.<sup>59</sup>

Under the bill, this section takes effect on July 1, 2024.<sup>60</sup>

Under continuing law, faculty workload policies are not subject to collective bargaining between a state university and its employees. And a university's policy prevails over a conflicting term in a collective bargaining agreement. The bill applies the collective bargaining prohibition to a state institution of higher education's policy. Thus, an institution's policy will prevail over a conflicting term in any collective bargaining agreement entered into on or after the section's effective date.<sup>61</sup>

### **American government or history requirement**

Beginning with students who graduate in the spring of the 2028-2029 academic year, the bill prohibits each state institution from granting a bachelor's degree to any student who has not completed a course with at least three credit hours in the subject area of American government or American history.<sup>62</sup>

The bill requires the Chancellor to develop the course in compliance with the criteria, policies, and procedures established under R.C. 3333.16. The course may be offered under the College Credit Plus program. The course must include both of the following.<sup>63</sup>

1. A requirement that students read all of the following:
  - a. The entire United States Constitution;
  - b. The entire Declaration of Independence;
  - c. At least five essays in their entirety from the Federalist Papers, with essays being selected by the department chair;
  - d. The entire Emancipation Proclamation;
  - e. The entire Gettysburg Address;
  - f. The entire Letter from Birmingham Jail written by Dr. Martin Luther King Jr;

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<sup>58</sup> R.C. 3345.45(D)(2).

<sup>59</sup> R.C. 3345.45(A) and (B).

<sup>60</sup> Section 4.

<sup>61</sup> R.C. 3345.455.

<sup>62</sup> R.C. 3345.382(C).

<sup>63</sup> R.C. 3345.382(B).

2. A requirement that students pass a cumulative final examination at the end of the course that assesses student proficiency on the required readings.

The president of a state university or the president's designee may exempt a student from the course requirement if the president or designee determines that the student has either:

1. Completed at least three credit hours, or the equivalent, in a course in the subject area of American history or American government; or
2. Passed an examination, developed by the Chancellor, that assesses the student's competence in the required readings and concepts in the course.<sup>64</sup>

### **Syllabus requirements**

The bill requires each state institution of higher education to make a syllabus for each undergraduate course it offers for college credit available to the public.<sup>65</sup>

Under the bill, a "syllabus" is a document produced for students by a course instructor that includes all of the following:

1. The name of the course instructor;
2. A calendar for the course outlining what materials and topics will be covered and when they will be covered;
3. A list of any required or recommended readings for the course; and
4. The course instructor's professional qualifications.<sup>66</sup>

State institutions must make a syllabus for each undergraduate course offered for college credit publicly available no later than on the first day of classes for the semester or academic term in which the course is offered, by doing either of the following:

1. Ensuring that each course instructor posts a syllabus on a publicly accessible website that includes information on the course instructor's professional qualifications, contact information, course schedule, and a link or download for the syllabus for each course the instructor is currently teaching; or
2. Posting each course's syllabus on the institution's publicly accessible website.<sup>67</sup>

Each syllabus posted to the institution's website must remain on the state institution's website for at least two years after being posted for the first time. If a syllabus posted by a course instructor is no longer used, upon request, the course instructor must make that

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<sup>64</sup> R.C. 3345.382(D).

<sup>65</sup> R.C. 3345.029(B).

<sup>66</sup> R.C. 3345.029(A)(2).

<sup>67</sup> R.C. 3345.029(B).

syllabus available for at least two years after posting the syllabus. To the extent practicable, each state institution must ensure that the most recently updated syllabus for each undergraduate course offered for college credit is posted according to these requirements.<sup>68</sup>

State institutions are not required to adhere to the syllabus posting requirements for courses offered through the College Credit Plus program that are delivered in a secondary school and taught by a high school teacher.<sup>69</sup>

The board of trustees of each state institution is required to designate an administrator to implement these requirements. The administrator is permitted to delegate the responsibilities to one or more administrative employees.<sup>70</sup>

The bill also requires all of the following to occur by the first day of January each year:

1. Each state institution submits a written report regarding its compliance with the syllabus posting requirements;
2. The Chancellor prepares a report including all of the syllabus compliance reports received from state institutions; and
3. The Chancellor submits the Chancellor's report to the Governor, Speaker of the House of Representatives, President of the Senate, and chairpersons of the Senate and House of Representatives standing committees that consider higher education legislation.<sup>71</sup>

### **Interactions with the People's Republic of China**

The bill prohibits state institutions of higher education from accepting gifts, donations, or contributions from the People's Republic of China or any organizations that the institution reasonably suspects are acting on behalf of the People's Republic of China. The bill explicitly states that this does not prohibit state institutions from accepting payments from Chinese citizens related to instructional fees, general fees, special fees, cost of instruction, or educational expenses or donations from the institution's alumni. The bill defines the "People's Republic of China" as the government of China, the Chinese Communist Party, the People's Liberation Army, or any other extension of, or entity affiliated with, the government of China.

The bill also requires each state institution to submit to the Chancellor a copy of the foreign gifts report it submits to the United States Department of Education pursuant to federal law regarding the disclosure of foreign gifts.<sup>72</sup>

The bill also requires the Chancellor to make any of the information reported by state institutions available to any member of the General Assembly who requests it.

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<sup>68</sup> R.C. 3345.029(C).

<sup>69</sup> R.C. 3345.029(D).

<sup>70</sup> R.C. 3345.029(E).

<sup>71</sup> R.C. 3345.029(F).

<sup>72</sup> 20 U.S.C. 1011(f).

Under the bill, state institutions are prohibited from entering into a new or renewed academic partnership with an academic or research institution located in China unless the state institution receives approval from the Chancellor of Higher Education. The Chancellor may only approve a state institution's partnership if the Chancellor, in consultation with the Attorney General, determines that the state institution maintains sufficient structural safeguards to protect the state institution's intellectual property, the security of the state of Ohio, and the national security interests of the United States. To be approved, a state institution's safeguards must meet the following requirements:

1. Compliance with all federal requirements, including the requirements of federal research sponsors and federal export control agencies, including regulations regarding international traffic in arms and export administration regulations, and economic and trade sanctions administered by the Federal Office of Foreign Assets Control;
2. Annual formal institution-level programs for faculty on conflicts of interest and conflicts of commitment; and
3. A formalized foreign visitor process and uniform visiting scholar agreement.

The bill requires the Auditor of State to audit the safeguards implemented by state institutions of higher education during the course of a normal audit.<sup>73</sup>

### **Board of trustees training**

The bill requires the Chancellor to develop and annually provide educational programs for the board of trustees of each state institution. The Chancellor must consult with state institutions and members of their boards of trustees as part of this process. The programs may be held online and be offered periodically. New members of a board of trustees must participate in the programs at least one time within their first two years in office. Current trustees are required to participate in continuing trustee training as determined by the Chancellor.<sup>74</sup>

The educational programs developed by the Chancellor must be designed to address the role, duties, and responsibilities of a trustee and may include in-service programs on current issues in higher education. The Chancellor may consider similar programs offered in other states or through a recognized trustee group. The educational programs must include presentations and content related to all of the following:

1. Each board member's duty to the state of Ohio;
2. The committee structure and function of a board of trustees;
3. The duties of the executive committee of a board of trustees;
4. Professional accounting and reporting standards;

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<sup>73</sup> R.C. 3345.591; see also R.C. 117.46, not in the bill.

<sup>74</sup> R.C. 3333.045.

5. Methods for meeting the statutory, regulatory, and fiduciary obligations of a board of trustees;
6. Public records law requirements;
7. Institutional ethics and conflicts of interest;
8. Creating and implementing institution-wide rules and regulations;
9. Business operations, administration, budgeting, financing, financial reporting, and financial reserves, including a segment on endowment management;
10. Fixing student general and instructional fees, and other necessary changes, including a review of student debt trends;
11. Overseeing planning, construction, maintenance, expansion, and renovation projects that impact the state institution's consolidated infrastructure, physical facilities, and natural environment, including its lands, improvements, and capital equipment;
12. Workforce planning, strategy, and investment;
13. Institutional advancement, including philanthropic giving, fundraising initiatives, alumni programming, communications and media, government and public relations, and community affairs;
14. Student welfare issues, including academic studies, curriculum, residence life, student governance and activities, and the general physical and psychological well-being of undergraduate and graduate students;
15. Current national and state issues in higher education; and
16. Future national and state issues in higher education.<sup>75</sup>

The bill also eliminates an existing law requirement that the Chancellor develop voluntary, model training for state institution board of trustee members.<sup>76</sup>

### **State institution of higher education trustees terms of office**

The bill reduces from nine to four years the length of the terms of office for each nonstudent state university board of trustees member appointed on and after January 1, 2024. The bill also eliminates the prohibition against reappointing a person who has served at least six years of a term as a state university board of trustee member unless four years have elapsed since the last day of the person's previous term.<sup>77</sup>

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<sup>75</sup> R.C. 3333.045(A) to (P).

<sup>76</sup> R.C. 3333.045 (repealed and replaced).

<sup>77</sup> R.C. 3335.02, 3337.01, 3339.01, 3341.02, 3343.02, 3344.01, 3350.10, 3352.01, 3356.01, 3359.01, 3361.01, 3362.01, and 3364.01.

The bill reduces from five to four years the length of the terms of office for each community college board of trustees member appointed by the Governor on and after January 1, 2024.<sup>78</sup> The bill increases the length of terms of office for each technical college board of trustees member appointed by the Governor on and after January 1, 2024, from three to four years.<sup>79</sup> Finally, the bill reduces from six to four years the length of the terms of office for each state community college board of trustees member appointed on and after January 1, 2024.<sup>80</sup>

### **Northeast Ohio Medical University principal goals**

The bill removes the language that establishes the principal goals of the Northeast Ohio Medical University to work in collaboration with area state universities.<sup>81</sup>

## **OTHER HIGHER EDUCATION PROVISIONS**

### **Three-year bachelor's degree study**

The bill requires the Department of Higher Education to complete a feasibility study regarding the implementation of bachelor's degree programs in the state that require three years to complete. The study must investigate a variety of fields of study and determine the feasibility of reducing specific course requirements, quantity of electives, and total credit hours required for graduation. The study cannot include the use of College Credit Plus or any other current programs used to accelerate degree programs. The study must also present and evaluate potential issues related to accreditation. The bill requires the Department to submit a report to the General Assembly regarding the study's findings within one year of the bill's effective date.<sup>82</sup>

Under continuing law, the Chancellor, as a condition of reauthorization for certification of each baccalaureate program the state institution offers, must require all state institutions that offer baccalaureate degrees to submit a statement describing how each major may be completed within three academic years.<sup>83</sup> Under this requirement, state institutions are permitted to include advanced placement credits, international baccalaureate program credits, and College Credit Plus credits.<sup>84</sup>

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<sup>78</sup> R.C. 3354.05, 3354.24, and 3357.022.

<sup>79</sup> R.C. 3357.022 and 3357.02.

<sup>80</sup> R.C. 3358.03.

<sup>81</sup> R.C. 3350.10(A).

<sup>82</sup> Section 5 of the bill.

<sup>83</sup> R.C. 3333.43(A), not in the bill.

<sup>84</sup> R.C. 3333.43(B), not in the bill.

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## HISTORY

Action	Date
Introduced	03-14-23
Reported, S. Workforce and Higher Education	05-17-23
Passed Senate (21-10)	05-17-23

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