

The proponents of SB1 (transfer of State Board of Education powers and functions to the governor's office) have a constitutional problem.

1. From 1913 to 1953 the superintendent of public instruction and thus the state education agency was a department in the governor's office.
2. In 1953 Ohioans adopted a constitutional amendment to establish the State Board of Education and Superintendent of Public Instruction to be selected by the Board.
3. The legislature honored that amendment and established an elected State Board of Education, thus withdrawing the responsibilities of the state education agency from the governor's office (all the state education agency's responsibilities).
4. SB1 would return the core responsibilities of the State Board of Education to the governor's office, which renders the 1953 constitutional amendment ineffectual.
5. Conclusion: SB1 will violate the Constitution.

If enacted, the legislation should be challenged in court. The State Board of Education should request the Attorney General to provide special counsel for the Board to protect its operation from unconstitutional legislation.