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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 164  
133<sup>rd</sup> General Assembly

## Fiscal Note & Local Impact Statement

[Click here for H.B. 164's Bill Analysis](#)

**Version:** As Enacted

**Primary Sponsor:** Rep. Ginter

**Local Impact Statement Procedure Required:** No

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### Highlights

- The bill appropriates an additional \$24.0 million from the GRF in FY 2020 to support an additional payment to school districts to partially offset executive-ordered state foundation aid reductions.
- The bill increases GRF expenditures in FY 2020 and FY 2021 for an additional payment to school districts that have at least one power plant in their territory and that experience certain decreases in public utility tangible personal property (PUTPP) value. The estimated FY 2020 payment totals to \$3.5 million for eight districts. Fiscal year 2021 payments will depend on PUTPP values for tax year 2020.
- Three additional school districts will receive one-time payments from the GRF totaling about \$545,000 to reimburse amounts that, under a provision of former law, were deducted from state foundation aid due to certain PUTPP value increases.
- The bill decreases school facilities project costs for some public schools by extending from September 15, 2020 to November 30, 2022, the existing moratorium on a building code requirement that new school buildings contain a storm shelter. Any decrease in construction or renovation costs for affected school districts participating in the Classroom Facilities Assistance Program will be shared by the state and school districts depending on the district's relative wealth.
- Various provisions of the bill may reduce school district and educational service center operating costs and provide flexibility in staffing decisions and offering certain services.
- The Ohio Department of Education's administrative costs may increase to develop and implement an online training platform for the classroom portion of pre-service and annual in-service training for school bus drivers.

## Detailed Analysis

### School funding

#### Reduction offset payment

On May 5, 2020, the Governor announced an appropriation reduction of about \$300 million to state foundation aid for school districts in response to the economic disruption caused by the COVID-19 pandemic and the extension of tax payment deadlines. The bill appropriates \$24.0 million to GRF line item 200550, Foundation Funding, in FY 2020 to support an additional payment to school districts to partially offset the executive-ordered reductions. The additional funds limit a school district's funding reduction, after including a district's allocation from the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act's Elementary and Secondary School Emergency Relief (ESSER) Fund, to no more than 6.0% of its original FY 2020 foundation aid amount. An estimated 70 school districts will receive a payment, ranging from a maximum of \$2.0 million to a minimum of \$182. The average payment under the bill is about \$333,500.

#### Additional payment due to decreases in public utility tangible personal property value

##### Current law

Under current law, suspended for FY 2020 and FY 2021 by H.B. 166 of the 133<sup>rd</sup> General Assembly, state foundation aid is recalculated for school districts with substantial decreases in their public utility tangible personal property (PUTPP) values. This recomputation, which is referred to as the "028" adjustment (after the section of the Revised Code in which it appears – R.C. 3317.028) and is performed annually, ensures that the PUTPP values for a district during a given fiscal year are not substantially different than what is assumed in that year's foundation aid formula. For example, tax year (TY) 2018 PUTPP values were not used in the state foundation aid formula for FY 2019. However, the actual PUTPP tax revenues received by school districts during FY 2019 were partly based on TY 2018 PUTPP values. The recomputation applies to a school district whose PUTPP value decreased by more than 10% between the preceding and second preceding tax years (for example, between tax years 2017 and 2018 for purposes of the FY 2019 recomputation). The recomputation replaces an eligible district's three-year average total taxable value used in the formula to calculate a district's state foundation aid with the district's total taxable value for the preceding tax year and removes the district's funding cap, if any. The payment is the lesser of (1) the difference between the district's foundation funding prior to recomputation and the district's recomputed foundation funding and (2) the absolute value of the change in the district's local property taxes between the preceding and the second preceding tax years.

H.B. 166 suspended the operation of the state foundation aid formula and the "028" adjustment for FY 2020 and FY 2021 and, instead, provides school districts with the same foundation aid allocations received for FY 2019. However, as noted above, the Governor subsequently ordered FY 2020 appropriation reductions to state foundation aid.

##### The bill

For FY 2020 and FY 2021 only, the bill enacts a temporary payment similar to the "028" adjustment but with some modifications. To be eligible for an adjustment in FY 2020, a

traditional or joint vocational school district must have at least one power plant located within its territory and the district's PUTPP value must have decreased by more than 10% between at least one of the following three time periods: (1) TY 2017 to TY 2019, (2) TY 2018 to TY 2019, or (3) TY 2017 to TY 2018. The eligibility criteria in FY 2021 generally is the same, except that the decrease in PUTPP value must have occurred from either (1) TY 2017 to TY 2020, or (2) TY 2019 to TY 2020.

Instead of a year-over-year comparison in local property taxes, the bill's FY 2020 and FY 2021 payment calculations compare TY 2019 and TY 2020 local property taxes, respectively, to TY 2017. For both fiscal years, an eligible district's FY 2019 foundation aid is recomputed using the preceding tax year's total taxable value. For example, the bill's FY 2020 payment calculation recomputes an eligible district's FY 2019 foundation aid using TY 2019 total taxable value. In this case, the payment is the greater of (1) the lesser of (a) the positive difference between the district's FY 2019 foundation funding prior to recomputation and the district's FY 2019 recomputed foundation funding and (b) the absolute value of the change in the district's local property taxes between TY 2017 and TY 2019 and (2) 50% of (1)(b). Essentially, (2) ensures that a district receives a payment of at least 50% of the change in local property taxes in an effort to assist a school district that is eligible but would otherwise receive little or nothing under the calculation in (1) because it was on the foundation formula's guarantee in FY 2019.

The bill will increase GRF expenditures by \$3.5 million in FY 2020 to make recomputation payments to eight school districts, including one JVSD. Fiscal year 2021 payments will depend on PUTPP values and local property taxes for TY 2020, which are not yet known. Table 1 below lists the districts projected to receive funding under the bill's recomputation payment and their estimated payment for FY 2020. The estimated payment amounts are based on actual TY 2019 property values and local property taxes published by the Ohio Department of Taxation.

<b>Table 1. Estimated Recomputation Payment, FY 2020</b>		
<b>County</b>	<b>District</b>	<b>Estimated Payment</b>
Adams	Manchester Local	\$1,318,835
Lake	Perry Local	\$1,055,667
Gallia	Gallia County Local	\$402,650
Clermont	New Richmond Exempted Village	\$388,487
Clermont	Felicity-Franklin Local	\$137,864
Coshocton	River View Local	\$117,665
Clermont	US Grant JVSD	\$73,976
Meigs	Southern Local	\$623
<b>Total</b>		<b>\$3,495,765</b>

The bill also provides a payment reimbursing school districts for amounts deducted from foundation aid due to the “028” adjustment for FY 2018 (that this, due to changes in PUTPP value between TY 2016 and TY 2017). Just as districts whose PUTPP value substantially decreases are eligible for payments, former law also required the foundation aid recomputation for districts whose PUTPP values increased substantially, which may have resulted in deductions of foundation aid. As a result of provisions in H.B. 166, districts are no longer subject to deductions beginning with the “028” adjustment for FY 2019. The bill’s one-time reimbursement payment will provide three additional districts with about \$545,000. Table 2 below lists the districts slated to receive funding from this reimbursement.

Table 2. Proposed “028” Adjustment Reimbursement		
County	District	“028” Adjustment Reimbursement
Clermont	Felicity-Franklin Local	\$400,266
Trumbull	Weathersfield Local	\$144,811
Mahoning	Lowellville Local	\$189
<b>Total</b>		<b>\$545,266</b>

The bill supports the additional payments by modifying the permissible uses of an earmark of GRF line item 200550, Foundation Funding, without increasing line item 200550’s appropriations. Specifically, the bill permits the additional payments to be made from an earmark of \$7.0 million in each fiscal year currently allocated for payments to assist school districts that faced substantially lower local revenues due to nuclear power plant devaluation. In practice, this provision only affects the Benton-Carroll-Salem Local School District in Ottawa County. The Ohio Department of Education (ODE) anticipates the payments to the district to be far less than the earmarked amount, at about \$158,000 in FY 2020 and \$0 in FY 2021.<sup>1</sup> Thus, the remaining amounts earmarked appear to be sufficient to fund the payments required by the bill.

### **Extending moratorium on storm shelter requirement**

The bill extends from September 15, 2020 to November 30, 2022, the existing moratorium on the building code requirement for new public and nonpublic schools to have storm shelters. Specifically, the bill prohibits the storm shelter requirement from applying to any public or private school building either in operation or undergoing or about to undergo construction or renovation for which financing has been secured prior to November 30, 2022.

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<sup>1</sup> If ODE reflects the executive-ordered reduction to the district’s foundation aid in the payment calculations, the district’s FY 2020 payment would increase to about \$518,000.

This provision will decrease construction project costs for public districts and schools that were slated to begin a facilities project before that date and would otherwise have needed to add a storm shelter to their facilities plans to comply with the building code requirement. If the school district's facilities project is funded under the Classroom Facilities Assistance Program (CFAP), the reduction in cost will be shared by the state and the district. CFAP provides state funding for school facilities based on each district's relative wealth. Lower wealth districts receive a larger percentage of their total project funding from the state and are funded before higher wealth districts.

Before the storm shelter requirement was slated to go into effect in November 2017, Ohio Facilities Construction Commission (OFCC) staff developed estimates of the cost to incorporate a storm shelter into public school construction projects that were in design at the time. According to OFCC's model, a storm shelter added an average of \$589,000 (3.8%) to the total cost of a new public school.<sup>2</sup>

## **Provisions responding to the implications of COVID-19**

The bill also makes a variety of changes to education law for the 2020-2021 school year in response to the implications of COVID-19 and changes enacted in H.B. 197 of the 133<sup>rd</sup> General Assembly. That act waived state testing and state report card requirements for the 2019-2020 school year and various other requirements and deadlines in response to the school closure ordered by the Director of Health. These provisions are discussed below.

### **Teacher and staff provisions**

#### **Teacher evaluation cycles**

Districts generally must evaluate teachers annually, but there are two optional exceptions. If a teacher is rated as "skilled" on their most recent evaluation, their district can choose to evaluate that teacher every two years; if a teacher is rated as "accomplished" on their most recent evaluation, their district can choose to evaluate them every three years. According to ODE, teachers on a less frequent evaluation cycle are required to have student growth measures. If they do not, evaluations are completed based on performance only meaning that the educator will be placed on a full evaluation cycle for the following school year, which entails additional observations. Due to the cancellation of state tests under H.B. 197 and school closures for the 2019-2020 school year, ODE indicates that many school districts and schools will not have student academic growth measures available for teacher evaluations. Without the required student growth measures as part of their evaluations, teachers evaluated less frequently under current law would revert to a full evaluation for the 2020-2021 school year. In other words, a district would need to evaluate all of their teachers in the next school year. Most districts and schools that are required to use the teacher evaluation system have opted for a less frequent interval cycle for formal observations and evaluations for eligible teachers.

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<sup>2</sup> Ohio Facilities Construction Commission. "School Storm Shelter Study Report to the 133<sup>rd</sup> General Assembly," December 2019, page 5. Available online at <https://ofcc.ohio.gov/Resources/Publications/#1156211-school-storm-shelter-report>.

The bill permits districts that complete evaluations for the 2019-2020 school year without a student growth measure to continue evaluating teachers who are on a two- or three-year evaluation cycle on their longer evaluation cycles. These teachers must remain at the same point in their evaluation cycle and retain their evaluation rating for the 2020-2021 school year as in the 2019-2020 school year. This provision may reduce administrative workload or costs for school districts by authorizing certain teachers to be evaluated less frequently than would otherwise be the case.

### **Use of student growth data in 2020-2021 school year evaluations**

The bill also prohibits districts from using any student growth measure in evaluations for both teachers and principals for the 2020-2021 school year and permits districts to complete evaluations for principals for the 2019-2020 school year without a student growth measure. H.B. 197 previously prohibited districts from using value-added progress data from the 2019-2020 school year in teacher evaluations, which, as noted above, will not be available due to the cancellation of state tests. This provision may reduce administrative workload or costs for school districts by eliminating the need to develop or measure student academic growth outside of value-added progress data for purposes of teacher evaluations.

### **Teacher subject and grade band flexibility**

The bill allows, for the 2020-2021 school year, district superintendents to employ or reassign licensed teachers to provide instruction in either a different subject area or to teach a grade level for which they are not licensed, provided it is within two grade levels of that the teacher is licensed to teach. Superintendents may only employ or reassign teachers under this provision if the teacher has at least three years of teaching experience. The provision provides staffing flexibility for school districts and may enable districts to defer making certain hiring decisions for the upcoming school year.

### **Preschool special education teachers**

The bill also provides districts with staffing flexibility by allowing licensed special education teachers who teach a preschool class in which 50% of the students are children with disabilities (“preschool integrated classes”) to continue to teach those classes regardless of licensure qualification changes made by the State Board of Education. The class the teacher is teaching must be operated by a public school, an educational service center, or a county board of developmental disabilities. The exception for these teachers lasts until they retire, resign, or are reassigned.

### **Optional remote learning models**

The bill permits, for the 2020-2021 school year, a school district, site-based community school, or STEM school that has not otherwise been approved to use a blending learning model<sup>3</sup> under continuing law to adopt a plan to provide instruction using a remote learning model. Qualifying schools that desire to use a remote learning model must submit their plan to ODE by July 31, 2020, and include statements or descriptions on how student progress will be

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<sup>3</sup> A blended learning model combines education in a supervised physical location away from home and online delivery where the student has some control over the time, place, path, and/or pace of learning.

monitored, how competency will be determined, how equitable access to quality instruction will be ensured, the school's attendance requirements, and the professional development opportunities offered to teachers.

Costs for schools that choose to develop and implement a remote learning model may increase or decrease depending on the specifics of the plan and what operating costs would have been to offer full-time instruction to all students at the school with the appropriate health and safety protocols to limit the spread of COVID-19. For example, a remote learning model may increase a school's costs for the technology necessary to extend online learning into the 2020-2021 school year but may decrease costs associated with building operations and maintenance, utilities, and student transportation. Under the bill, schools that adopt a remote learning model are considered to have complied with requirements regarding minimum hours of instruction and the receipt of state funding. ODE's administrative workload may increase to review the plans (though they are not subject to ODE approval) and to post each plan it receives on its website.

### **Third grade reading guarantee and reading improvement plans**

The bill places a one-year moratorium (for the 2020-2021 school year) on the requirement that the State Board of Education review and increase the third grade English language arts (ELA) assessment score necessary for a student to be promoted to the fourth grade. Also for that school year, it prohibits a school district and other public school from retaining in the third grade students who do not attain a passing score on the fall administration of the third grade ELA assessment if the student's principal and reading teacher agree that other evaluations of the student's skill in reading demonstrate that the student is academically prepared to be promoted to the fourth grade. Fewer students are likely to be retained in the third grade, meaning that public schools may avoid some costs associated with providing reading intervention services. Schools may still opt to continue providing additional supports for students who, though meeting the promotion score, may be struggling in reading. As a point of reference, 5% (about 5,700) of third grade students statewide who were subject to the third grade reading guarantee in the 2018-2019 school year did not meet the promotion score.

Also for the 2020-2021 school year only, the bill exempts certain school districts, community schools, and STEM schools from two separate requirements, each with different conditions, to develop reading improvement plans based on 2019-2020 report card or state assessment results. Under one provision, districts and schools must submit reading improvement plans supported by reading specialists to the district board or school governing authority for approval if less than 80% of its students attain a proficient score or higher on the third grade ELA assessment. Under the other, districts and schools must submit plans meeting State Board of Education guidelines to ODE if, for two consecutive years, less than 60% of its students attain a proficient score or higher on the third grade ELA assessment and the district or school receives a "D" or "F" letter grade on the Improving At-Risk K-3 Readers component of the report card. For reference, 555 school districts and community schools met the former threshold while 91 met the latter based on the assessment and report card results for the 2017-2018 and 2018-2019 school years. These provisions may lead to reduced costs for the affected districts.

Additionally, the bill exempts, for the 2020-2021 school year only, teachers assigned to provide intense remediation reading assistance to students who are subject to third grade retention from meeting certain qualifications otherwise required under continuing law, which may provide staffing flexibility.

### **Community school sponsor evaluations**

H.B. 197 prohibits ODE from issuing a rating for the academic performance component of the community school sponsor evaluation system for the 2019-2020 school year. Under the act, community schools or sponsors are exempt from being deemed not compliant with requirements that should have occurred during the period of time in which schools were closed due to the COVID-19 emergency orders. Instead, the bill prohibits ODE from issuing any community school sponsor ratings for the 2019-2020 school year. Additionally, the bill creates a safe harbor period from sponsor penalties and sanctions based on the absence of ratings for the 2019-2020 school year. Instead, ratings from previous and subsequent years will be considered.

This may prevent some sponsors, which include school districts, educational service centers (ESCs), and other nonprofit organizations, who would otherwise have received ratings of “ineffective” or “poor” for the 2019-2020 school year from having sponsorship authority revoked. Sponsorship authority is revoked, subject to an available appeals process, for sponsors that receive a poor rating or three consecutive ineffective ratings. Since no schools will lose sponsorship authority due to ratings for the 2019-2020 school year, the administrative costs of ODE’s Office of School Sponsorship, may decrease. The Office of School Sponsorship is authorized to take over sponsorship for a school having a sponsor rated as “poor” or “ineffective” for three consecutive years until the school finds a new sponsor. The Office’s operations are financed by a sponsorship fee of up to 3% of each sponsored school’s operating revenue.

On the other hand, some sponsors may not be able to newly take advantage of certain incentives for “effective” or “exemplary” ratings. For example, entities with an overall rating of “exemplary” or “effective” for at least three consecutive years are evaluated by ODE once every three years, instead of annually. Entities with an overall rating of “exemplary” for at least two consecutive years may sponsor an unlimited number of schools with no territorial restrictions and also receive exemptions from certain requirements on contracts with ODE and the sponsored schools.

### **Bus driver certification training**

The bill requires ODE to develop an online training platform for the classroom portion of pre-service and annual in-service training for school bus driver certification for the 2020-2021 school year. “On-the-bus” training must continue to be completed in person. ODE may incur administrative costs to develop and implement the online training. Current law requires that bus drivers complete 15 hours of pre-service classroom training to receive initial certification and nine hours of pre-service classroom training every six years for recertification. In addition, drivers must complete at least four hours of annual in-service training. ODE contracts with seven ESCs and one joint vocational school district to provide the Ohio Preservice Driver Training Program, which is funded with an earmark of about \$839,000 each year for FY 2020



and FY 2021 from GRF line item 200502, Pupil Transportation. Typically, about 3,000 veteran drivers are recertified each year and 3,000 new drivers are trained.

### **Graduation requirements and modifications**

As noted above, H.B. 197 waived the requirement to administer elementary and secondary state tests for the 2019-2020 school year in response to school closures caused by the implications of the COVID-19 pandemic. The bill clarifies that students who were scheduled to take or retake an end-of-course examination in the 2019-2020 school year, but did not do so because the administration of that examination was canceled, may use a final course grade to satisfy graduation requirements prescribed under continuing law in lieu of an examination score. The bill allows students to take the relevant end-of-course examination in a subsequent year if they so choose. Thus, the bill may increase a school district or other public school's administrative workload to inform and advise students of their options. It also may decrease state test costs by reducing the number of students that take or retake in a subsequent school year an end-of-course examination for a course taken during the 2019-2020 school year. Table 3 shows the bill's designated achievement levels for each corresponding course grade. The first column includes any corresponding letter grade for each letter (e.g., "A" includes both "A-" and "A+," and so on).

<b>Final Course Grade</b>	<b>End-of-Course Examination Performance Level Equivalent</b>
A	Advanced
B	Accelerated
C	Proficient
D	Basic
F	Limited

Any grades "C" or higher are deemed equivalent to a competency score for purposes of graduation requirements. For pass-fail courses, the bill specifies that failure is equivalent to an "F" grade and limited level of skill, while passing is equivalent to a level of skill that the student's district or school determines, though a pass designation is equivalent to a competency score.

### **Homeschool assessment report requirement**

Under administrative rule, the parents of students who receive home instruction must submit to the student's resident school district an academic assessment report for their child as a condition of allowing the student to continue receiving home instruction for the next school year. Academic assessment reports can take one of three forms: (1) the results of a nationally normed, standardized achievement test, (2) a written narrative of the student's yearly progress,

or (3) an alternative assessment agreed upon between the parent and the superintendent. H.B. 197 exempts parents of students receiving home instruction, for the 2019-2020 school year, from submitting the results of a standardized achievement assessment administered to the student, which is only one alternative for the academic assessment report. The bill exempts parents from submitting any academic assessment report for their child as a condition of allowing the student to continue receiving home instruction for the 2020-2021 school year. This provision may result in less administrative work for school districts.

### **Delivery of services to students with special needs**

Current law<sup>4</sup> authorizes a number of health professions to provide services to students with disabilities via telehealth for the duration of the Ohio Director of Health's order to close schools due to the COVID-19 pandemic, or through December 1, 2020, if the Director had not rescinded the school closure order by that time.<sup>5</sup> The bill extends this authorization through the entirety of the 2020-2021 school year. The professionals authorized to provide these services are licensees regulated by the following boards: (1) the Ohio Speech and Hearing Professionals Board, (2) the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board, (3) the State Board of Psychology, (4) the Counselor, Social Worker, and Marriage and Family Therapist Board, and (5) the State Board of Education, with respect to intervention specialists and school psychologists.

According to the U.S. Centers for Medicare and Medicaid Services (CMS), states have the option to determine the following: whether they will cover telehealth, what types of telehealth services to cover, what types of practitioners may receive reimbursement, and how much to reimburse for telemedicine services (payment cannot exceed federal upper limits though). CMS states that a state does not need to submit a state plan amendment to reimburse for telehealth services, if they decide to reimburse for these services in the same way and in the same amount that they pay for face-to-face services. However, a state plan amendment would be required if telemedicine is reimbursed differently than face-to-face services.<sup>6</sup> Thus, it appears that federal guidelines allow states to determine telehealth coverage. If this is correct, any impact to Ohio's Medicaid Program resulting from extending the telehealth provision will depend on how these practitioners are reimbursed in comparison to face-to-face services.

### **Quality Community School Support Program criteria**

The bill adds a condition for certain community schools to qualify for designation as a "community school of quality." If the school operator operates schools in other states and meets other existing criteria, the bill further requires the school to be in its first year of operation. Thus, the bill's change may limit the number of schools designated for the program (though the ten schools designated under these criteria in FY 2020 under current law retain the designation for two fiscal years). Designated community schools receive additional funding of

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<sup>4</sup> Enacted by H.B. 197 of the 133<sup>rd</sup> General Assembly to deal with the COVID-19 pandemic.

<sup>5</sup> Typically, students with disabilities receive services through their resident school districts, under the Autism Scholarship, or under the Jon Peterson Special Needs Scholarship to provide these services via telehealth.

<sup>6</sup> <https://www.medicaid.gov/medicaid/benefits/telemedicine/index.html>.

up to \$1,750 per pupil for economically disadvantaged students and up to \$1,000 per pupil for students not identified as economically disadvantaged through lottery profits appropriated in Fund 7017 line item 200631, Quality Community Schools Support.