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H.B. 197
133rd General Assembly

Fiscal Note & Local Impact Statement

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Version: As Passed by the Senate

Primary Sponsors: Reps. Powell and Merrin

Local Impact Statement Procedure Required: No

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Highlights

The bill makes numerous changes to law, many of which are in response to the COVID-19 crisis. Descriptions of these changes in this fiscal note are organized into the following sections: (1) tax provisions, (2) use of the Budget Stabilization Fund, and (3) other changes.

The bill declares an emergency so will go into immediate effect.

Tax provisions

- The bill authorizes the Tax Commissioner to extend state tax filing and payment deadlines for the duration of the Governor's COVID-19 emergency declaration and to waive associated interest and penalties for taxpayers affected by the emergency. This provision likely delays receipt of an uncertain magnitude of tax payments accompanying submission of tax returns, potentially delaying expected FY 2020 receipts until FY 2021.
- The bill incorporates into Ohio income tax law changes made to the federal Internal Revenue Code (IRC) since 2018. The most significant of those changes occurred in December 2019, with provisions generally affecting tax returns to be filed for tax year (TY) 2019.
  - Incorporation of IRC changes potentially reduces personal income tax (PIT) revenue by up to $13 million during the FY 2020-FY 2021 biennium; the filing delay described above makes the timing uncertain. In the current biennium, the revenue loss would be shared by the GRF (96.62%), the Local Government Fund (LGF, 1.68%), and the Public Library Fund (PLF, 1.70%). Funds deposited into the LGF and PLF are distributed to counties, municipalities, townships, and public libraries according to statutory formulas and decisions by county budget commissions.

- The modification of federal adjusted gross income (FAGI) incorporated in Ohio law may reduce school district income taxes by up to $340,000 during the FY 2020-FY 2021 biennium. The amount of the local revenue reduction for each respective school district would depend on the number (if any) of taxpayers in that district that are impacted by the IRC changes recognized for conformity by the bill.

Budget Stabilization Fund

- The bill allows the Director of Budget and Management to transfer cash, with the approval of the Controlling Board, from the Budget Stabilization Fund (BSF) to the GRF. The balance in the BSF is currently $2.69 billion.

Other provisions in response to COVID-19 pandemic

- The bill's changes to unemployment compensation during a COVID-19 outbreak may increase the state and political subdivision's' unemployment compensation costs.
- The bill appropriates $20 million to Fund 7026 capital appropriation item C10050, State Agency Capital Projects, in the Department of Administrative Services' budget. The bill allows for a temporary transfer of up to $20.0 million in cash from the Building Improvement Fund (Fund 5KZ0) to the Administrative Building Fund (Fund 7026) to pay contractors for capital projects until a bond sale is completed by the Treasurer of State.
- The bill provides a $7.0 million appropriation to the Secretary of State, under appropriation item 050627, Absent Voter's Ballot Application Mailing, to cover the cost of extending absent voting by mail for the 2020 primary election until April 28. To facilitate this appropriation, the bill transfers $7.0 million from the Emergency Purposes/Contingencies Fund (Fund 5KM0).
- Public water systems generally, including those operated by local governmental agencies, may experience an immediate decrease in revenue from the loss of connection and reconnection fees, as well as a delay in revenue from routine usage fees and charges, that otherwise might have been collected during the state of the emergency. The total amount would depend upon the number of consumer accounts that would fall under the order issued by the Director of the Ohio EPA, if one is issued.
- The bill extends the date providers of publicly funded child care must receive a quality rating in order to receive state funding from July 1, 2020 to September 1, 2020.
- The bill exempts a school or entity that has a food service operation license and is transporting food under the U.S. Department of Agriculture's Seamless Summer Option Program or the Summer Food Service Program from registering as a food processing establishment overseen by the Department of Agriculture and paying the fee of $50 to $300.
- Political subdivisions and state licensing agencies, boards, and commissions may experience a short-term delay in fee revenues from motor vehicle licensing, driver's licenses, concealed handgun licenses, and professional licensing renewals under the bill's provision deferring these renewals as a result of the COVID-19 state of emergency.
- The bill appropriates payments under a provision authorizing the Medicaid Director to classify providers as COVID-19 community providers, make payments to these providers,

and request additional funds related to the COVID-19 outbreak during a specified time period.

- The bill's waiver of state test requirements for the 2019-2020 school year is likely to decrease state expenditures for the tests. Administration, scoring, and reporting functions for the tests represent about $31 million of FY 2020 contract costs for those assessments.
- The bill provides additional flexibility for public schools to deliver alternative methods of instruction during the period of school closure caused by COVID-19 to meet minimum instructional hour requirements in continuing law, which may eliminate or reduce public school costs that may otherwise be necessary to extend the scheduled school year.
- Under the bill's safe harbor provision on report card ratings, some school districts and schools would not bear the expense of potentially costly sanctions or penalties to which they may otherwise have been subject.
- The bill reduces FY 2021 GRF expenditures by up to $10 million by prohibiting first-time performance-based Educational Choice ("EdChoice") scholarships for the 2020-2021 school year for students who were not eligible in the prior school year (the recently enacted S.B. 120 appropriated this amount for these first-time scholarships).
- The bill may increase deductions of FY 2021 state foundation aid from school districts to pay for first-time performance-based scholarships for additional students. Also, school district expenditures may decrease from educating fewer students.
- The bill authorizes the Ohio Department of Job and Family Services (ODJFS) to continue to pay providers of publicly funded child care during the COVID-19 emergency.
- Because of the bill's provisions related to the tolling of certain limitations and deadlines for criminal, civil, and administrative actions, state and local governmental entities (criminal and civil justice systems, boards, and commissions) can expect a decrease in expenses and revenues during the emergency period, likely to be made up when the period ends and cases resume as before.
- Allowing political subdivisions to qualify for agreed-upon audit procedure (AUP) audits during the declared COVID-19 emergency could reduce audit expenses for both political subdivisions and the Auditor of State. Audit fees charged to local governments are paid into the Public Audit Expense – Local Government Fund (Fund 4220).
- The bill makes several allowances for the Ohio Public Works Commission, the Ohio Water Development Authority, and the Ohio Environmental Protection Agency regarding project schedules, loan repayment, and certain reporting requirements during the period of the emergency declared by Executive Order 2020-01D. These three state entities may realize a loss in revenue for the duration of the emergency. Likewise, local governmental entities that have existing loan agreements with these state entities may realize a savings if they would have been subjected to penalties or late fees. The exact fiscal impact to any impacted entity is indeterminate.
- The bill allows the Board of Nursing to issue temporary registered nurse and licensed practical nurse licenses to applicants that have not yet passed their licensure exam

during the COVID-19 emergency. The Board could have administrative costs to do this, but could realize a gain in revenue if a fee was charged.

- The Board of Nursing may experience minimal costs due to changes to certified registered nurse anesthetists' authority and government hospitals may experience minimal costs to develop written policies.

Detailed Analysis

Tax provisions

The bill authorizes the extension of tax filing deadlines, incorporates Internal Revenue Code (IRC) changes since 2018 into Ohio income tax law, narrows a sales and use tax exemption for certain protective incontinence products, and makes many other technical and corrective changes that appear to have no fiscal effects. Please refer to the LSC bill analysis for a detailed description of these changes.

Extension of tax filing and payment deadlines

The bill expressly authorizes the Tax Commissioner to extend state tax filing and payment deadlines for the duration of the Governor's COVID-19 emergency declaration and to waive associated interest and penalties for taxpayers affected by the emergency. This provision applies to all state taxes, school district income taxes, municipal income taxes administered by the state, and certain fees administered by the Department of Taxation. The bill also extends the deadlines for businesses subject to municipal income taxes to opt in to state administration of those taxes and, if already subject to state administration, to opt out. These provisions apply for a period of time specified by the Commissioner.

This provision likely delays receipt of tax payments accompanying submission of tax returns, potentially delaying expected FY 2020 receipts until FY 2021. It also eliminates revenue from interest and penalties that would otherwise be due. Thus, the bill would reduce receipts from various state taxes, school district income taxes, and municipal net profits income tax revenues in FY 2020, but increase them in FY 2021 by undetermined amounts.

Municipal withholding taxes changes

The bill specifies that, for municipal income tax purposes, employees who must report to a temporary worksite (including their homes) during the emergency period, or within 30 days thereafter, are considered to be working at their principal places of work (which, by law, is where the employee reports for work on "a regular and ordinary basis"). This affects which municipal corporation the employer must withhold income taxes for, which municipal corporation may tax the employee's pay, and whether and how much of the employer's own income is subject to a municipality's income tax.

Under current law, an employee may work in a municipality for up to 20 days per year without the employee becoming subject to that municipality's income tax and the employer becoming subject to that municipality's tax withholding requirements. And, if an employee does not exceed the 20-day threshold, that employee's pay is not counted toward the business's payroll factor.[1]

This provision may shift some income tax revenue from one municipality to another, and could result in a decrease or an increase in total income tax revenue, but is assumed to have little, if any, overall statewide fiscal impact.

IRC incorporation

The bill incorporates changes to the IRC made by House Resolution (HR) 1865, the Further Consolidated Appropriations Act, 2020, into Ohio income tax law. The Act represents the most significant federal tax revenue law change since 2018. Ohio tax law incorporates by reference parts of the IRC and other federal laws. Periodic amendments to federal law do not become part of Ohio law unless they are incorporated by an act of the General Assembly. Several provisions in HR 1865 modified the definition of federal adjusted gross income (FAGI) and these actions materially affect the tax base for some Ohio taxpayers. FAGI is the starting point for determining Ohio adjusted gross income (FAGI with certain additions and deductions), Ohio tax base, and Ohio taxable income.

The following provisions in HR 1865 would tend to materially decrease Ohio income tax revenue during the current biennium:

- Increase of the age of required beginning date for required distributions to 72 years (up from 70.5 years);
- Repeal of the maximum age for allowing contributions to a traditional individual retirement account (IRA; the previous age limit was 70.5 years);
- Extension of the exclusion from gross income of discharge of indebtedness on qualified principal residence (effective for discharge of indebtedness after December 31, 2017);
- Expansion of section 529 plans to allow distributions for expenses associated with apprenticeship programs and up to $10,000 of student loan repayments (for distributions made in 2019);
- Penalty-free distributions of up to $5,000 from qualified retirement plans and IRAs for births and adoptions;
- Extension of the above-the-line deduction for qualified tuition and related expenses (effective after December 31, 2017);
- Repeal of rules related to the taxation of unearned income of certain children (effective after December 31, 2017);
- Extension of energy-efficient commercial buildings deduction (effective after December 31, 2017).

[1] This is one of three factors – along with property and sales – that determines whether, and the extent to which, an employer's own income is subject to the municipality's tax on net profits.

The following provisions in HR 1865 would tend to materially increase Ohio income tax revenue during the current biennium:

- Reduction of the minimum age for allowable in-service distributions of pensions for miners from 62 years to 59.5 years;
- Nonspouse designated beneficiaries of an IRA required to take distributions over ten years instead of distributions over the designated beneficiary's lifetime.

Please note that the list above is not exhaustive as the federal bill includes numerous other provisions that may have an impact on Ohio income taxes to a lesser degree. Also few of the federal provisions are likely to modify the treatment of business income for Ohio personal income tax purposes. However, because of the business income deduction in current law, those would have a negligible effect on Ohio income taxpayers, so they are not considered in this analysis.[2]

On balance, incorporation of the federal law changes in Ohio income tax law is likely to reduce GRF revenue during this biennium. Given the extent and complex nature of these changes, and the confidential nature of individuals' tax returns, LBO cannot provide a precise estimate of the net revenue loss from the bill. Notwithstanding those limitations, the potential revenue loss from the bill might be up to $13 million during the FY 2020-FY 2021 biennium; the bill's filing deadline extension makes the timing uncertain. However, LBO does not rule out that the actual fiscal impact could be less than estimated above.[3] In the current biennium, the GRF retains 96.62% of all GRF tax receipts, the Local Government Fund (LGF) receives 1.68% of all GRF tax receipts, and the Public Library Fund (PLF) receives 1.70% of all GRF tax receipts.[4]

For the next biennium, however, LBO believes the revenue impact on the GRF is likely to be more limited. The bill might result in no fiscal gain or loss, or may be a potential gain of up to $1 million each in FY 2022 and FY 2023, as the revenue gains from certain provisions offset losses that may arise from other provisions in HR 1865.

[2] HR 1865 also includes an extension of the federal New Market Tax Credit (NMTC) which would have a material negative fiscal impact on the GRF in the next biennium (FY 2022-FY 2023) from the Ohio New Market Tax Credit. This credit is a nonrefundable tax credit for financial institutions and insurance companies that qualify for the federal NMTC Program. Thus, it is not a credit against the Ohio income tax, but against the financial institutions tax or insurance taxes. The Ohio Development Services Agency determines the amount of credits and may issue a maximum of $10 million worth of credits each fiscal year.

[3] The Joint Committee on Taxation (JCT) of the United States Congress estimated the federal revenue effects of individual income tax changes, and these estimates served as the basis for this estimate. JCT estimates were converted into a nationwide taxable income base using the appropriate federal tax rates. Ohio was assumed to have 3.2% of that nationwide individual income tax base (Ohio's share of the nation's personal income was approximately 3.2% in 2018). The fiscal estimation assumes that changes in FAGI affect taxpayers uniformly across the country.

[4] Under codified law, the GRF receives 96.68% of the tax receipts, and the LGF and PLF each receives 1.66%.

School district income taxes (SDITs) are based on either (1) the Ohio taxable income (OTI) of taxpayers residing in the school district, plus any business income deducted in deriving OTI, or (2) the portion of that income that is earned income, generally limited to wages and self-employment income.[5] As of January 2020, 203 school districts levy an income tax, and the majority of those use adjusted OTI (also known as the traditional base). For school districts using the traditional base, the reduction in FAGI will reduce adjusted OTI and school district income taxes. This would result in overall revenue loss for affected school districts (statewide) of up to $340,000 during the FY 2020-FY 2021 biennium. The filing extension deadline makes the timing uncertain. The amount of the local revenue reduction for each respective school district would depend on the number (if any) of taxpayers in that district that are impacted by the IRC changes recognized for conformity by the bill.

Sales tax exemption: Medicaid-covered incontinence products

The bill modifies a recently enacted sales and use tax exemption for sales of prescription diapers or protective incontinence underpads for the benefit of a Medicaid recipient, specifying that the exemption is available for only those products sold by a Medicaid provider that has entered into a valid provider agreement with the state. The purpose of the change is to enable the state to remain in compliance with the Streamlined Sales and Use Tax Agreement. The change will apply beginning in April 2020 – the same month in which the exemption itself is scheduled to begin to apply.

The sales and use tax exemption for such products, purchased for individuals enrolled in the state's Medicaid Program, was enacted by S.B. 26 of the 133rd General Assembly. Based on a review of expenditures reported by the Ohio Department of Medicaid and sold by Medicaid providers, the exemption was estimated to reduce state sales tax receipts by $1.7 million per year (or about $0.4 million in FY 2020). This revenue loss estimate was predicated on the presumption that Medicaid providers have a valid provider agreement with the state, so this provision of H.B. 197 appears to have no additional fiscal effect.

Use of the Budget Stabilization Fund

The bill allows the Director of Budget and Management to transfer requested amounts of money from the Budget Stabilization Fund (Fund 7013, or "BSF") to the GRF, for the purpose of ensuring GRF receipts and balances in FY 2020 are not less than expenditures. To initiate the transfer, the Director requires approval from at least four members of the Controlling Board, including two from the Senate and two from the House of Representatives.

The amount to be transferred is unknown at this time. It will depend on (1) the magnitude of the FY 2020 GRF tax revenue loss due to the economic disruption caused by the COVID-19 pandemic and the extension of tax payment deadlines and (2) the ability of the state to decrease expenditures. The current balance of the BSF is $2.69 billion.

[5] School boards and voters of individual school districts choose whether to enact income taxes in their districts and which of the two bases to use.

Other provisions in response to COVID-19 pandemic

On March 9, 2020, Governor DeWine issued Executive Order 2020-01D. Several provisions of the bill represent responses to that Executive Order. Unless otherwise indicated below, references in this section to the "Governor's Executive Order" mean Executive Order 2020-01D.

Unemployment compensation changes during COVID-19

The bill makes several changes regarding unemployment compensation benefits during the emergency declared by the Governor's Executive Order. All changes will remain in effect until the state of emergency concludes or December 1, 2020, whichever comes sooner.

The bill suspends the requirement that an individual serve a waiting week before receiving unemployment compensation benefits during this emergency. Executive Order 2020-03D, dated March 16, 2020, states individuals are not required to serve a waiting week in order to receive unemployment insurance. Thus, the bill is implementing the policy specified in the Executive Order and will allow individuals to access benefits sooner.

The bill also allows the Director of Job and Family Services to waive the work search requirement as a condition of receiving benefits during the period previously specified. Executive Order 2020-03D waives the work search requirements for individuals requested by a medical professional, local health authority, or employer to be isolated or quarantined as a consequence of COVID-19. If the Director chooses to waive the work search requirement for all workers, it is possible that unemployment insurance recipients will draw additional benefits. Any additional cost to the Unemployment Compensation Insurance Fund (the Fund), which is not part of the state treasury, will depend on the number of recipients that would otherwise fail to meet the work search requirement. The state and political subdivisions will reimburse the Fund for benefits paid as a result of the bill. During December 2019, unemployment insurance recipients received an average of $384 per week.

The bill provides, during the period specified, an individual is not disqualified from receiving unemployment benefits if unemployed or is unable to return to work because of an order to be isolated or quarantined by the individual's employer, the Governor, the Department of Health, or a board of health. The bill states that these benefits will be charged to the mutualized account within the Fund and not to the respective employer's account for contributory employers. Similarly, Executive Order 2020-03D states unemployed workers include those being isolated or quarantined, and that benefits charged to the Fund will be paid from the mutualized account during this period. Thus, the bill is essentially implementing the policy specified in the Executive Order. The state and political subdivisions, which are reimbursing employers, will reimburse for any workers that receive benefits due to these orders. The total cost will depend on the number of workers employed by the state and political subdivisions that are subject to the orders and apply for benefits.

Appropriation for capital projects under the Administrative Building Fund (Fund 7026)

The bill appropriates $20 million to Fund 7026 capital appropriation item C10050, State Agency Capital Projects in the budget of the Department of Administrative Services. The bill authorizes the Director of Budget and Management, at the request of the Director of Administrative Services, to transfer up to $20.0 million cash from the Building Improvement Fund (Fund 5KZ0) to the Administrative Building Fund (Fund 7026) to pay costs associated with state agency capital projects. Subsequently, the bill requires the Director of Administrative Services to request the Director of Budget and Management to transfer cash from Fund 7026 to repay Fund 5KZ0 in an amount equal to the initial cash transfer between the two funds when there is a sufficient cash balance in Fund 7026 to support such a transfer.

Extension of absent voting by mail for the 2020 primary election

The bill modifies election law by expanding the absent voter period for the March 17, 2020 primary until April 28, 2020. Overall, the provisions of the bill will result in increased costs to the Secretary of State's (SOS) Office, as well as county boards of elections. However, county boards of elections costs would be offset through required reimbursements from the SOS. County boards of elections might also see cost savings from no longer operating voting precincts for the primary election.

The bill appropriates $7.0 million to the SOS in FY 2020 to pay these costs. This appropriation comes from a $7.0 million cash transfer from the Emergency Purposes/ Contingencies Fund (Fund 5KM0), under the purview of the Controlling Board, to the Absent Voter's Ballot Application Mailing Fund (Fund 5RG0) under the SOS budget. The Secretary of State must also provide a report of all purchases made for the purposes of completing this election to the President of the Controlling Board.

Secretary of State reimbursements and mailings

The bill requires county boards of elections to include return postage on absent voter ballots. The appropriation granted to the SOS under the bill intends for these postage costs to be reimbursed by the SOS. The cost of these mailings would ultimately depend on how many such ballots were sent in that particular county, and the cost of the required return postage. During the 2018 general election, the return postage cost for an absent voter's ballot ranged from 50¢ to 71¢. If it is assumed that voter participation matches that of the 2016 primary election of over 3.0 million total votes, these reimbursement costs would range from $1.5 million to slightly more than $2.1 million. However, if voter turnout matches that of the 2018 general election, the total return postage costs could reach as high as $2.8 million.

The bill requires the SOS to mail a postcard to all registered voters in the state indicating how the voter may obtain an absent voter ballot application, the procedures, and deadlines to apply and return those ballots. The cost of mailing this postcard is not clear. However, the SOS spent slightly less than $1.4 million to mail absent voter ballot applications to all registered voters for the 2018 general election. It can be assumed that the mailing of a postcard as required by the bill, instead of the application, would result in a cost below the $1.4 million spent previously.

Impact on county boards of elections

County boards of elections would experience both cost increases and cost decreases associated with the bill. The bill would result in cost increases to county boards of elections primarily related to postage costs. While county boards of elections would experience an increase in mailing costs for sending out substantially more absent voter ballots, presumably, these costs would be offset through a reduction in costs associated with the operation of voting precincts and the payment of precinct election officials. During the 2018 general election, there were approximately 8,900 total precincts operated by county boards of elections, each of which were staffed by either two or four poll workers. Ultimately, it would appear as though county boards of elections would experience a net cost savings under the bill.

Environmental Protection Agency

The bill authorizes the Director of the Ohio Environmental Protection Agency (during a state of emergency declared by the Governor's Executive Order) to issue an order that does any of the following:

- Requires a public water system to restore service to any customer whose service was disconnected as a result of nonpayment of fees and charges;
- Requires a public water system to waive all fees for connection or reconnection; and
- Prohibits a public water system from disconnecting customers because of nonpayment of fees and charges.

The resulting fiscal effect would be that public water systems generally, including those operated by local governmental agencies, may experience an immediate decrease in revenue from the loss of connection and reconnection fees, as well as usage fees and charges, that otherwise might have been collected during the state of the emergency. While the connection and reconnection fees would be permanently foregone, the remainder of charges and fees that are part of a routine billing cycle continue to accrue and remain collectible. This potential fiscal impact would only occur if the Director of the Ohio EPA issues any or all of the orders listed above. This provision is valid during the period of the emergency declared by the Governor's Executive Order, but not beyond December 1, 2020, if the period of the emergency continues beyond that date.

Ohio has approximately 4,900 public water systems providing drinking water to 11-plus million people daily. About 30%, or 3.3 million, of that population is served by the cities of Cleveland, Columbus, and Cincinnati.

Temporary changes to child day-care center staffing requirements

The bill suspends child day-care center staff member ratios and maximum group sizes during the state of emergency declared in the Governor's Executive Order. The ratios will be suspended until the state of emergency concludes or December 1, 2020, whichever comes sooner. The suspension of staff member ratios could allow child day-care centers to continue to provide services if the center was short staffed during the COVID-19 state of emergency.

Step Up to Quality ratings for publicly funded child care

The bill moves the date publicly funded child care (PFCC) providers must be rated in the Step Up to Quality rating and improvement system from July 1, 2020 to September 1, 2020. This gives PFCC providers two additional months to be rated before they would no longer be eligible to receive subsidized payments for children. As of January 2020, 86% of programs offering PFCC were quality rated.

Payments to publicly funded child care providers

The bill authorizes the Ohio Department of Job and Family Services (ODJFS) to continue to pay providers of publicly funded child care (PFCC) during the period of the COVID-19 emergency declared by the Governor's Executive Order. This applies if both of the following apply: the provider is currently under contract with ODJFS and the provider is unable to provide publicly funded child care to children of eligible caretaker parents as a result of the emergency. The bill will allow providers, including political subdivisions that operate child day-care centers, to receive payments during the COVID-19 emergency. In December 2019, the latest caseload report available, ODJFS provided PFCC to about 147,000 children at a monthly cost of about \$53.7 million.[6]

Food processing registration exemption for schools

During the period of any emergency due to COVID-19 and not beyond December 1, 2020, the bill authorizes the Department of Agriculture to exempt from regulation a food processing establishment at a school or other entity that has (1) a food service operation license (issued by local boards of health), and (2) is transporting food from the establishment only for purposes of the Seamless Summer Option Program or the Summer Food Service Program administered by the U.S.D.A. Without the exemption under these conditions, a school or entity may be required to undergo an inspection as a food processing establishment from the Department's Division of Food Safety and pay annual fees ranging from \$50 to \$300, with the proceeds going to the Food Safety Fund (Fund 4P70).

License extensions during COVID-19 state of emergency

The bill defers actions, including licensure renewal, by state agencies, political subdivisions, and individuals that are otherwise required by law to take place during the state of emergency due to the COVID-19 outbreak until 90 days after the date the emergency ends or December 1, 2020, whichever comes sooner. Disciplinary actions would generally be permitted to continue as normal. Although this applies broadly to required actions, the deferral applicability to motor vehicle registrations, driver's licenses, concealed handgun licenses, and professional license renewals will likely result in at least some short-term loss of revenue received by political subdivisions, county sheriffs, and state licensing agencies, boards, and commissions. Revenue lost during the deferral period would presumably be mostly regained by December 1, 2020.

The bill excludes from the deadline extensions noted above an individual's duty to register or enroll as a violent offender, arson offender, or sex offender. It also exempts from suit a state agency or licensee for complying with the deadline extensions.

Waivers of reemployment penalties during a COVID-19 outbreak

The bill specifies that, during the state of emergency due to COVID-19 declared by the Governor's Executive Order, but prior to December 1, 2020, a retired state retirement system member who has received a retirement allowance from the Public Employees Retirement System, the State Teachers Retirement System, the School Employees Retirement System, the Ohio Police and Fire Pension Fund, or the State Highway Patrol Retirement System for less than two months and is reemployed by one of several specified state agencies is not required to forfeit the retirement allowance during that two-month period. The agencies for which this provision is applicable are: (1) the Department of Rehabilitation and Correction, (2) the

[6] http://jfs.ohio.gov/pams/Case-Load-Summary-Report-December-2019.stm.

Department of Youth Services, (3) the Department of Mental Health and Addiction Services, (4) the Department of Veterans Services, and (5) the Department of Developmental Disabilities.

The waiver of reemployment penalties may minimally increase the retirement systems' expenditures. There would be no direct fiscal effect on the state or on political subdivisions.

Medicaid COVID-19 community providers

The amendment authorizes the Medicaid Director to take a number of actions during the state of emergency due to COVID-19 or until December 1, 2020, whichever is earlier. These include the following: classify certain providers as COVID-19 community providers, request the Director of Budget and Management to designate additional funds related to the COVID-19 outbreak for Medicaid payments to COVID-19 community providers, make payments to COVID-19 community providers, and facilitate payments to COVID-19 community providers by transferring funds to the departments of Developmental Disabilities and Mental Health and Addiction Services via intrastate transfer vouchers. The amendment appropriates any funds that are provided through these provisions. Additionally, the Medicaid Director is required to specify the following regarding the Medicaid payments authorized: any requirements that COVID-19 community providers must meet, enhanced rates or additional services of reimbursement, and methods of payments. The fiscal impacts will depend on several factors including the number of COVID-19 community providers, the payments made to these providers, and whether any additional funds are available or designated.

K-12 education waivers

On March 14, 2020, the Director of Health issued an order closing all Ohio site-based schools serving any grades K-12 from March 17 through April 3, 2020, due to the implications of COVID-19. In response to the school closure, the bill waives state testing and state report card requirements for the 2019-2020 school year and various other requirements and deadlines and allows schools to make up through distance learning any number of days or hours necessary to meet minimum instructional hour requirements. The provisions affect each school district, community school, STEM school, and nonpublic school, and the Ohio School for the Deaf and the Ohio State School for the Blind. Fiscally notable provisions are described in more detail below.

State tests

The bill waives requirements in current law that school districts and other public schools administer elementary and secondary state tests. The bill also permits the Superintendent to waive any required reports that are based on the assessment results and prohibits students from being excluded from their district's 2020-2021 enrollment or deemed ineligible for any scholarships solely because the student was not administered an assessment. For the 2019-2020 school year, the spring test window for elementary state tests and high school end-of-course exams was slated to run from March 23 to May 8. The windows for the state-funded administration of the ACT and SAT to high school juniors were to run during certain dates from February 25 to April 28, depending on the test and the mode of testing. According to ODE, many, but not all, juniors have completed the state-sponsored SAT or ACT. In addition, ODE indicates that roughly 70% of the students subject to Alternate Assessment for Students with Significant Cognitive Disabilities and the Ohio English Language Proficiency Assessment have already taken them this year. Also, on March 20, 2020, the U.S Department of Education announced that if a state is unable to assess its students due to the COVID-19 pandemic it may seek a waiver from federal testing requirements and from the requirement that the testing data be used in the state's accountability system.

As a result of the bill, expenditures for the state's testing contracts are likely to decrease. The amount will depend on a number of factors, including work already performed by the vendors pursuant to the contracts and administrative decisions made by ODE. For example, not administering the tests would also result in savings for not having to score and ship them; however, the readers for open-ended (constructed response) items have already been trained. Also, for tests that have already been administered, ODE expenditures may decrease if the Department directs the vendor to not score and report the completed tests. As a point of reference, the FY 2020 contract amounts for the elementary state tests, high school end-of-course exams, and the Ohio Graduation Tests (for students in the classes of 2017 and earlier), all of which may be particularly affected by the state's ordered school closure, total roughly $48 million. Of this amount, administration, scoring, and reporting functions represent about $31 million, the remainder being for test development, project management, and other responsibilities. These expenditures are funded from a combination of GRF and federal funds.

Continued learning opportunities

Under continuing law, school districts, community schools, STEM schools, and chartered nonpublic schools must be open a minimum number of hours for instruction over the course of a school year. Current law also permits a school district and site-based schools to adopt a plan for distance learning (either web-based or paper-based) to make up the equivalent of up to three days in a school year for which it is necessary to close schools for disease epidemic, hazardous weather conditions, and other situations.

For the 2019-2020 school year, the bill permits school districts, STEM schools, community schools that are not internet- or computer-based schools (e-schools), and chartered nonpublic schools to make up through distance learning any number of days or hours necessary due to school closures as a result of the Director of Health's order closing K-12 schools, any local board of health order, or an extension of an order. A district or school may amend its existing plan or adopt one, if it does not have an existing plan, to make up those days or hours.

The bill provides flexibility for public schools to deliver alternative methods of instruction during the period of school closure caused by COVID-19. Thus, the provision may lead to avoided costs to the extent public schools are able to use the provision to eliminate or reduce the need to extend the scheduled school year. However, there may be some additional workload for teachers in districts opting to make use of the provision to prepare additional distance learning lessons for students.

In addition, the bill specifies the intent of the General Assembly that school districts, community schools, STEM schools, and chartered nonpublic schools continue to provide learning opportunities to keep students actively engaged for the remainder of the school year and to grant access to school facilities for students who need in-person instructional experiences to complete diploma requirements or career-technical education programs as soon as reasonably possible after the Director of Health permits such in-person access, even after the last instructional day of the school year.

Safe harbor provisions

The bill prohibits ODE from publishing state report card ratings and assigning overall or component letter grades on the state report cards for the 2019-2020 school year and prohibits any report card ratings for this school year from being considered in determining whether a district or school is subject to sanctions or penalties. Although, while the bill prohibits the publishing of ratings and assignment of overall and component letter grades, it specifies that ODE is still required to report performance data for the state's schools and districts by September 15, 2020, as under current law. H.B. 166 appropriates $7.5 million from the GRF in FY 2020 for the administration of the state's accountability system and report cards, the majority of which is used to contract with SAS Institute, Inc. for the production of value-added reports.

Effectively, until the release of 2020-2021 report cards, 2018-2019 will be the most recent school year used for provisions and programs dependent on report card grades. Thus, the bill prevents some schools and districts from beginning to be subject to potentially costly state sanctions for low performance, including the creation of academic distress commissions (ADCs), state interventions for school improvement purposes, designation of buildings for the EdChoice Scholarship Program, locations of start-up community schools, community school closure provisions, community school restrictions with respect to sponsor changes, and other school restructuring requirements. On the other hand, districts and schools that were on track to improve their report card grades may be subject to such sanctions longer than they otherwise would have.

The bill permits a district board to elect not to conduct evaluations of district employees, including teachers, administrators, or a superintendent, for the 2019-2020 school year, if the district board determines that it would be impossible or impracticable to do so, without penalty to the employee for purposes of reemployment and prohibits the use of 2019-2020 value-added data for the purpose of teacher evaluations. It also prohibits the issuance of a rating for the academic performance component of the community school sponsor evaluation system for the 2019-2020 school year. Community schools or sponsors also will be exempt from being deemed not compliant with requirements that should have occurred during the school closure period.

Third grade reading guarantee, graduation, and other adjustments

In addition to safe harbor from report card-related sanctions, the bill prohibits schools from retaining a student in the third grade under the third grade reading guarantee unless the principal of the student's school and the student's reading teacher agree that the student is reading below grade level and not prepared to be promoted to fourth grade. Similarly, the bill also requires schools and districts to grant a diploma to any student in the twelfth grade or who was on track to graduate this year (regardless of grade) but had not completed the requirements as of March 17, 2020, as long as the student's principal, in consultation with teachers and counselors, determines that the student has successfully completed the high school curriculum or the student's individualized education program at the time the school closed due to the Director of Health's order. Also, the bill allows any board of education that has opted to require a curriculum more challenging than the state requirements to use the state minimum requirements in making the determination of whether the student has completed the high school curriculum. These provisions may result in more students promoted to fourth grade or graduating on time than otherwise would have.

The bill permits ODE to issue one-year, nonrenewable, provisional educator licenses to practice in any category, type, or level, provided that the licensee met all requirements other than passing a State Board-required examination. The bill requires any such licensee to pass the required assessment prior to the license's expiration. This may reduce administrative costs for school districts and other public schools by ensuring continuity in the hiring process for those that were planning to employ anyone who had yet to sit for the requisite exams.

EdChoice Scholarship Program

The performance-based Educational Choice ("EdChoice") Scholarship Program funds scholarships for students, other than those residing in the Cleveland Municipal School District, who attend or would otherwise attend a traditional school building that meets one of a number of conditions related to low performance on the state report card. Students use the scholarships to attend participating chartered nonpublic schools. The amount awarded under the program is the lesser of the actual tuition charges of the school or the maximum scholarship award. The maximum scholarship award is $4,650 for students in grades K-8 and $6,000 for students in grades 9-12. In general, scholarship students are counted in the resident district's student count in order to calculate state aid. Funding for these scholarships is deducted from the state foundation aid of the student's resident school district.

The recently enacted S.B. 120 appropriates $10 million from the GRF in FY 2021 to directly pay a limited number of performance-based EdChoice scholarships for students who are eligible for the first time for the 2020-2021 school year. That act limits the number of first-time scholarships that may be awarded for these students to only those funded by this appropriation. In general, this applies to students who attend or would otherwise attend one of the 727 public schools that have been newly designated under the performance-based program for the 2020-2021 school year. Also under that act, first-time scholarships for students who were eligible for the performance-based program in both the 2019-2020 and 2020-2021 school years, as well as scholarships for students who received one in the prior year, will continue to be financed by a deduction of foundation aid of the student's resident school district in FY 2021.

The bill prohibits ODE from awarding first-time performance-based scholarships for the 2020-2021 school year to students who were not eligible for a scholarship in the prior school year, in effect reducing GRF expenditures by up to $10 million in FY 2021, the amount appropriated for the first-time scholarships in S.B. 120. However, ODE must award scholarships, to be paid through the usual deduct and transfer method, to the following students:

- Students who received a scholarship in the 2019-2020 school year;
- Students who were eligible in the 2019-2020 and 2020-2021 school years, but did not receive a scholarship in the 2019-2020 school year (this applies to students assigned to one of the 500 school buildings that meet the above criteria);
- Students in grades K-12 in the 2019-2020 school year or will be enrolled in kindergarten in the 2020-2021 school year who are assigned to one of the 517 buildings designated

for the EdChoice Program in the 2019-2020 school year and whose sibling received a performance-based scholarship in the 2019-2020 school year;

- Students who are or would be newly assigned to a building or district that would qualify a student for a scholarship in both the 2019-2020 and 2020-2021 school years, including entering kindergarten students, rising high school students, and students who move into a qualified building's district or territory.

The latter two provisions may increase the number of first-time scholarships awarded in FY 2021 relative to current law, which may increase the amount deducted from a district's state foundation aid. Also, school district expenditures may decrease from educating fewer students. As a point of reference, in the 2019-2020 school year, ODE awarded more than 30,200 performance-based EdChoice scholarships, totaling about $149 million.

Delivery of services to students with special needs

The bill provides flexibility in the provision of services to students with special needs due to the implications of COVID-19. Specifically, the bill permits, during the period of the Director of Health's order closing K-12 schools, any local board of health order to close schools, or any extension of an order but prior to December 1, 2020, if the order or an extension has not been rescinded by that date, the holders of licenses issued by the following boards to provide services electronically or via telehealth communication to children who receive services through their resident school districts or under the Autism Scholarship or the Jon Peterson Special Needs Scholarship with no penalty: (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.

Public meetings via teleconference or video conference

The bill grants permissive authority to defined state and local public bodies to hold public meetings via teleconference or video conference until December 1, 2020, or during the period of the COVID-19 emergency, whichever occurs first. In order to hold such meetings, the public body must meet the qualifications established in the bill related to providing adequate public notice, methods of public participation, and distribution of information and materials. It is possible that entities opting to use this technology to conduct public meetings might incur some costs if they are not equipped to do so already.

Tolling of statutes of limitations and time limitations and deadlines

The bill: (1) requires that the criminal statutes of limitations, the civil statutes of limitations, and the administrative statutes of limitations and court time limitations and deadlines that are set to expire between March 9, 2020, and July 30, 2020, be tolled, (2) specifies that it is retroactive to March 9, 2020, and (3) specifies that it expires on the date the period of emergency ends or July 30, 2020, whichever is sooner.

These provisions will allow actions to be delayed during the emergency period, the intended outcome of which is to decrease temporarily the volume of work handled by certain state and local governmental entities (criminal and civil justice systems, boards, and commissions) involved in matters related to criminal, civil, and administrative actions. This creates a short-term revenue loss and expenditure decrease, followed by a revenue gain and expenditure increase at the end of the emergency period as cases resume.

Delay of public retirement system board elections

The bill permits the Public Employees Retirement Board, Ohio Police and Fire Pension Fund Board of Trustees, State Teachers Retirement Board, School Employees Retirement Board, or State Highway Patrol Retirement Board to delay an election of members to its board scheduled to take place during the period covered by the Governor's Executive Order, but prior to December 1, 2020, until December 1, 2020. The bill specifies that current elected board members whose terms expire after the original election date are to continue in office until the member's successor is elected and takes office.

Additional time to fill vacancy

The bill provides a county central committee of a political party an additional 45 days to fill a vacancy during the period of the COVID-19 emergency. The additional 45 days provided begins from the date by which any such vacancy was required to be filled. There is no apparent fiscal effect resulting from this extension.

Frequency of agreed-upon procedure audits of political subdivisions

The bill could potentially reduce audit costs for the Auditor of State and political subdivisions during the declared COVID-19 emergency by allowing a greater number of public offices to qualify for agreed-upon audit procedures (AUP) during this timeframe. This process is less expensive than carrying out a full financial audit. Specifically, the bill permits the Auditor of State to waive current law requirements that a public office that qualifies for an AUP still undergo a financial audit once every three audit periods. The bill also waives the current eligibility requirements for these entities to qualify for an AUP audit. The Auditor of State covers audit expenses with payments from local governments that are deposited into the Public Audit Expense – Local Government Fund (Fund 4220). The provision also allows the Auditor of State to waive a requirement that financial statements filed by various public offices be submitted using GAAP principles when there exists no other requirement for such entity to file financial statements under such principles.

Loan repayments owed to certain state agencies

The bill makes several allowances for the Ohio Public Works Commission, the Ohio Water Development Authority, and the Ohio Environmental Protection Agency regarding project schedules, loan repayment, and certain reporting requirements during the period of the emergency declared by the Governor's Executive Order, but not beyond December 1, 2020.

Ohio Public Works Commission

The bill permits the Ohio Public Works Commission to automatically extend project schedules and waive penalties and late fees owed to the Commission from the issuance of outstanding loans. The Commission may experience a revenue loss and affected local governmental entities may experience an expenditure savings, both of which are indeterminate.

Ohio Water Development Authority

The bill permits the Ohio Water Development Authority (OWDA) to waive penalties and late fees owed to the Authority from the issuance of outstanding loans. The resulting fiscal effect would be that the OWDA might realize a loss in revenue for the duration of the emergency. Likewise, local governmental entities that have existing loan agreements with the OWDA may realize a savings if they would have been subjected to penalties or late fees. The fiscal impact to any impacted entity, including the OWDA, is indeterminate.

Ohio Environmental Protection Agency

The bill permits the Ohio Environmental Protection Agency (OEPA) to waive penalties or late fees owed to the Agency from the issuance of outstanding loans or permits. The Agency also may suspend reporting requirements for a water research recovery facility or solid waste facility. The resulting fiscal effect would be that the OEPA might realize a loss in revenue for the duration of the emergency. Likewise, local governmental entities that have existing loan agreements with the OEPA may realize a savings if they would have been subjected to penalties or late fees. The fiscal impact to any impacted entity, including the OEPA, is indeterminate.

Ongoing services of county recorders, auditors, and clerks of courts

The bill suspends, until August 30, 2020, a provision of law regarding liability of a county recorder for failure to perform certain duties of the office, including the duty to record a document not later than the morning of the day after the document was filed for recording. In addition to this, during the period of the COVID-19 emergency, the bill (1) requires the office of a county recorder, the office of a county auditor, the title office of a clerk of court of common pleas, and a county map office to remain open for record searches, and (2) specifies that all essential services to effectuate a property transfer must remain open and available with all offices. This also includes keeping offices open for those who need to process various title documents for automobiles, watercraft, outboard motors, and ATVs. There is little apparent fiscal effect as a result of these requirements, as these offices would continue to provide these services on an ongoing basis during this timeframe.

Temporary nursing licenses without examination

The bill requires the Board of Nursing to issue temporary registered nurse and licensed practical nurse licenses to applicants that have completed all other requirements except for their licensure exam during the COVID-19 emergency. The temporary licenses will be valid until 90 days after December 1, 2020, or 90 days after the duration of the COVID-19 emergency, whichever occurs first. The Board could have administrative costs to issue these licenses, but could realize a gain in revenue if fees were collected.

Certified registered nurse anesthetists

The bill grants certified registered nurse anesthetists (CRNAs) the authority to select, order, and administer drugs, treatments, and intravenous fluids for conditions related to the administration of anesthesia during certain specified time periods. The bill also permits a CRNA to direct nurses and respiratory therapists to perform specified tasks under certain circumstances and authorizes a CRNA to perform additional activities or services. The Board of Nursing may experience a minimal cost if there are any questions or complaints regarding this provision. The Board could also realize a minimal increase in costs to promulgate rules and make any necessary administrative and information technology changes. Government hospitals will experience an administrative cost to develop a written policy that meets certain conditions regarding CRNAs' authority. At the end of FY 2019, the Board of Nursing licensed 3,273 CRNAs.

Emergency clause

The bill declares an emergency so its provisions will go into effect immediately on enactment and Governor's action.

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