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# OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 197  
133<sup>rd</sup> General Assembly

## Final Analysis

[Click here for H.B. 197's Fiscal Note](#)

**Version:** As Passed by the General Assembly

**Primary Sponsors:** Reps. Powell and Merrin

**Effective date:** Emergency: March 27, 2020; one item vetoed

LSC Staff

## SUMMARY

### Extension of absent voting in 2020 primary election

- Voids Secretary of State directive 2020-06, issued on March 16, 2020.
- Extends absent voting in the March 17, 2020, primary election through April 28, 2020.
- Allows an elector who has not already cast a ballot in the election, and who was registered to vote in Ohio as of the February 18, 2020, deadline, to cast absent voter's ballots in the election through 7:30 p.m. on April 28.
- Requires ballots already cast in the election before or after the March 27, 2020, also to be counted after 7:30 p.m. on April 28.
- Requires the Secretary of State to mail a postcard to each elector in Ohio with information about voting.
- Requires generally that an elector apply for absent voter's ballots by mail to the board of elections by noon on April 25.
- Requires the board daily to compile a list of the applications received and to transmit the list to the Secretary, who must make it available to the public upon request.
- Requires the board to prepay the return postage on absent voter's ballots sent to electors under the act.
- Allows a person whose application for absent voter's ballots under the act is denied to cast a provisional ballot by mail in the same manner as casting absent voter's ballots.
- Requires the board to provide assistance in casting ballots and an extended application deadline for electors who are ill, have disabilities, or are confined, in the same manner as under permanent law.

- Permits an elector instead to cast ballots in person at the office of the board on April 28 by 7:30 p.m. if (1) the elector has a disability and wishes to use an accessible voting machine, or (2) the elector is unable to receive mail.
- Requires the board to place a secure receptacle outside the board's office for the return of absent voter's ballots under the act.
- Requires all ballots to be received at the office of the board not later than 7:30 p.m. on April 28 in order to be counted, but includes a ten-day grace period for ballots to arrive by mail after that time, the same as under the permanent statute.
- Allows an absent voter or provisional voter to cure an incomplete ballot statement or provide additional information, if required, not later than May 5.
- Requires the Secretary of State and the boards of elections to conduct all post-election procedures by adding 42 days to the statutory deadlines (the number of days between March 17 and April 28).
- Specifies that for the purpose of contribution limits that apply during a primary election period, the primary election period ended on March 17.
- Extends the filing deadline for candidates and political entities to file their post-primary campaign finance statements to 4:00 p.m. on June 5, 2020.

### **Purchasing and contracting requirements**

- Suspends the state purchasing and contracting requirements, such as competitive bidding, that otherwise would apply to the Secretary of State, to implement the act's election provisions.
- Requires the Secretary to file a report with the President of the Controlling Board describing all purchases for which the Secretary did not follow the state purchasing and contracting requirements.

### **Appropriation**

- Appropriates \$7 million to the Secretary of State in FY 2020 to pay for expenses related to implementing the election provisions.

### **Unemployment compensation**

- Specifies that, during the period of emergency declared by Executive Order 2020-01D, dated March 9, 2020, but not beyond December 1, 2020, an individual is not disqualified from receiving unemployment benefits if the individual is unable to work because of an order issued by the individual's employer, the Governor, or a state or local health authority.
- Charges benefits paid to an individual who is unable to work due to an order described above to the mutualized account, unless the benefits are chargeable to a reimbursing employer.

- Suspends, during the period described above, a requirement that an individual serve a waiting period before receiving unemployment benefits.
- Allows the Director of Job and Family Services, during the period described above, to waive the requirement that a person actively search for suitable work as a condition of receiving unemployment benefits.

## **K-12 education**

### **State assessments**

- Exempts all public and chartered nonpublic schools from administering the state achievement assessments for the 2019-2020 school year.

### **Report cards; sanctions and penalties**

- Prohibits the Department of Education from publishing and issuing ratings for overall grades, components, and individual measures on the state report cards and submitting preliminary data for report cards for school districts and buildings.
- Establishes a safe harbor from penalties and sanctions for districts and schools based on the absence of state report card grades for the 2019-2020 school year.

### **Third-grade reading guarantee**

- Exempts schools from retaining a student under the third-grade reading guarantee based solely on the student's academic performance in reading in the 2019-2020 school year, unless the student's principal and reading teacher determine the student is not reading at grade level and is not prepared for fourth grade.

### **High school graduation**

- Permits public and nonpublic schools to grant a diploma to any student on track to graduate and for whom the principal, in consultation with teachers and counselors, determines has successfully completed the high school curriculum or individualized education program at the time of the order to close schools.
- Permits a district or school that previously adopted a resolution to exceed the state minimum high school curriculum requirements to elect to require only the minimum curriculum for the purpose of determining high school graduation for the 2019-2020 school year.
- Declares the intent of the General Assembly that school districts and schools continue to find ways to keep students actively engaged in learning opportunities for the remainder of the school year and to grant needed in-person instructional experiences as soon as reasonably possible.

### **Other education provisions**

- Prohibits the use of the value-added progress dimension from the 2019-2020 school year to measure student learning for teacher performance evaluations.

- Prohibits use of certain components for community school sponsor ratings for the 2019-2020 school year.
- Permits a district board of education to elect not to conduct evaluations of district employees, including teachers, administrators, or a superintendent for the 2019-2020 school year, if the board determines that it would be impossible or impracticable to do so.
- Authorizes the Superintendent of Public Instruction to adjust deadlines for certain annual requirements.
- Permits the Chancellor of Higher Education, in consultation with the state Superintendent, to extend, waive, or otherwise modify requirements of the College Credit Plus Program.
- Permits the state Superintendent to waive or extend deadlines, or otherwise grant providers and students flexibility, for completion of adult education program requirements.
- Permits the Department, on behalf of the State Board of Education, to issue one-year, nonrenewable, provisional licenses to educators that have met all other requirements for the requested license except for the requirement to pass a subject area exam.

### **Ed Choice performance-based scholarships**

- Prohibits the Department of Education from generally awarding first-time, performance-based Educational Choice (Ed Choice) scholarships for the 2020-2021 school year to students who were newly eligible for those scholarships for that year.
- Requires the Department to continue awarding performance-based scholarships to students who received them in the prior year and to award first-time scholarships to:
  - Students with siblings who received those scholarships in the 2019-2020 school year, if the students also meet other eligibility criteria;
  - Students who were eligible for those scholarships for the 2019-2020 school year, regardless of whether they received them, and who remain eligible for the 2020-2021 school year; and
  - Students, including those entering kindergarten or high school or recently relocated, who did not receive a scholarship in the 2019-2020 school year, but are enrolled or would be newly enrolled for the 2020-2021 school year in a district school building that meets certain conditions.
- Specifies that performance-based scholarships for the 2020-2021 school year will be financed through deductions from the students' resident school districts.

### **Services to special needs students**

- Permits nonclassroom personnel providing professional services to students with disabilities, for the duration of the Director of Health's order to close schools for the

COVID-19 outbreak or until December 1, 2020, if the order or extension of the order has not been rescinded, to provide services electronically or via telehealth communication.

### **Distance learning make up**

- For the 2019-2020 school year, 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 for the COVID-19 outbreak.

### **Summer food programs**

- Authorizes the Director of Agriculture, during the period of the emergency declared by Executive Order 2020-01D, but not beyond December 1, 2020, to exempt a school or other entity from regulation as a food processing establishment if:
  - It has been issued a food service operation license; and
  - It is transporting food only for purposes of the Seamless Summer Option Program or the Summer Food Service Program (both programs are administered by the U.S.D.A.).

### **Public water systems**

- Authorizes the Director of Environmental Protection to issue an order to a public water system that does any of the following:
  - Requires the system to restore service to any customer whose service was disconnected as a result of nonpayment of fees and charges;
  - Requires it to waive all fees for connection or reconnection; or
  - Prohibits it from disconnecting customers because of nonpayment of fees and charges.
- Specifies that the order may be enforced under the Safe Drinking Water Law.
- Specifies that the order may be issued and is valid during the period of the emergency declared by the Governor under Executive Order 2020-01D, but not beyond December 1, 2020.

### **Temporary tax compliance relief**

- Authorizes the Tax Commissioner, for the duration of the declared COVID-19 state of emergency, to further extend state filing and payment deadlines on state taxes and fees administered by the Commissioner, and suspends penalties on those delayed filings and payments.
- Authorizes the Tax Commissioner to waive the accrual of interest on extended tax payments.
- Authorizes the Commissioner to similarly extend filing and payment deadlines, suspend penalties, and waive interest for municipal income taxes on the net profits of businesses

that file those taxes with the Department of Taxation instead of with individual municipalities.

- For municipal income tax purposes, treats income earned by an employee required to work at a temporary worksite because of the emergency as being earned at the employee's principal place of work, potentially affecting the municipal income tax withholding and liability of the employee and the employer.

## **Child day care**

- Suspends child-to-staff ratios and maximum group sizes for licensed child day-care centers during the COVID-19 emergency period, but not beyond December 1, 2020.
- Authorizes the Ohio Department of Job and Family Services (ODJFS) to continue to pay publicly funded child care providers during the COVID-19 emergency.
- Extends to September 1, 2020 (from July 1, 2020) the date by which providers of publicly funded child care must be rated through the Step Up to Quality Program.

## **Medicaid COVID-19 community providers**

- Authorizes the Medicaid Director, during the COVID-19 emergency period, but not beyond December 1, 2020, to classify certain Medicaid providers as COVID-19 community providers and to transfer, or request transfer of, funds to pay those providers.
- Appropriates the transferred funds.

## **Nurses**

- Authorizes the Board of Nursing, during the period of the COVID-19 emergency, to issue certain temporary nursing licenses without the otherwise required licensure examinations.
- Permanently grants certified registered nurse anesthetists (CRNAs) authority to select, order, and administer drugs, treatments, and intravenous fluids for conditions related to the administration of anesthesia, but only during specified time periods and in accordance with a health care facility's required policy.
- Permits a CRNA to direct nurses and respiratory therapists to perform specified tasks, including administering drugs, in certain circumstances.
- Authorizes a CRNA to perform additional activities or services, including ordering and evaluating diagnostic tests.
- Allows a supervising practitioner or health care facility to prohibit a CRNA from performing an activity or service authorized by the act if the supervising practitioner or facility determines that is not in a patient's best interest for the CRNA to do so.

## **Deadline, license extensions**

- Temporarily extends continuing law deadlines with which a state agency must comply, and deadlines with which a licensee must comply to maintain a valid license, that occur during the emergency declared by Executive Order 2020-01D, until the earlier of 90 days after the emergency ends or December 1, 2020.
- Allows a license that would otherwise expire during the emergency to remain valid until the earlier of 90 days after the emergency ends or December 1, 2020, unless it is otherwise subject to discipline or limitation for reasons unrelated to a licensee's delay in taking action to maintain the license's validity during the deadline extension.
- Extends expiration dates that apply to concealed handgun licenses scheduled to expire during the emergency, until the earlier of 90 days after the scheduled expiration or December 1, 2020.
- Excludes from the act's deadline extensions an individual who has a duty to register or enroll as a violent offender, arson offender, or sex offender.
- Exempts from suit a state agency and licensee for complying with the act's deadline extensions.

## **Tolling of statutes of limitations and other time limits (PARTIALLY VETOED)**

- Tolls the criminal statutes of limitations, the civil statutes of limitations, and the administrative statutes of limitations and any other criminal, civil, or administrative time limitations that are set to expire between March 9, 2020, and July 30, 2020.
- Would have required any other "deadline" that is set to expire between March 9, 2020, and July 30, 2020, to be tolled (VETOED).
- Specifies that the tolling of these statutes of limitations and court time limitations and deadlines apply retroactively to March 9, 2020, the date of the emergency declared by Executive Order 2020-01D.
- Specifies that the tolling provisions expire on the date the period of emergency ends or July 30, 2020, whichever is sooner.

## **Public meetings and hearings**

- Establishes a policy for public meetings and hearings for use during the period of emergency declared by Executive Order 2020-01D only, but not beyond December 1, 2020.

## **Auditor of State**

- Allows the Auditor of State to waive the requirement that the Auditor conduct a standard financial audit after conducting an agreed-upon procedures audit in two consecutive audit periods, for any audit period during which the emergency declared by Executive Order 2020-01D is effective.

- Allows the Auditor to waive all criteria a public office is required to satisfy in order for the Auditor to conduct an agreed-upon procedures audit instead of a standard financial audit, for any audit period during which the emergency declared by Executive Order 2020-01D is effective.

### **Retirant reemployment penalty**

- Waives the penalty for a retired state retirement system member who becomes reemployed by certain public employers during the period of the emergency declared by the Governor, but not beyond December 1, 2020.

### **Retirement board elections**

- Allows a public retirement system board to delay to December 1, 2020, a board member election scheduled to take place during the period of the emergency declared by the Governor but before December 1, 2020.

### **Various fees and requirements**

- During the period of the emergency declared by Executive Order 2020-01D, but not beyond December 1, 2020, allows the Ohio Public Works Commission, Ohio Water Development Authority, and OEPA to waive fees and other specified requirements.

### **Local government**

- Suspends, until August 30, 2020, the law regarding liability of a county recorder for failure to timely perform certain duties of the office.
- Requires certain local offices to remain open during the period of the emergency declared by Executive Order 2020-01D, to perform certain functions.
- Provides a county central committee of a political party an additional 45 days to fill a vacancy from the date the vacancy was required to be filled during the period of the emergency declared by Executive Order 2020-01D.

### **Budget Stabilization Fund transfer**

- Authorizes the Director of Budget and Management (OBM) to transfer cash, with the approval of the Controlling Board, from the Budget Stabilization Fund to the GRF in FY 2020.

### **Capital appropriation**

- Appropriates \$20 million to capital appropriation item C10050, State Agency Capital Projects, and allows a temporary transfer of up to \$20 million from the Building Improvement Fund to the Administrative Building Fund.

### **Permanent tax changes**

- Incorporates into Ohio income tax law changes to federal tax law taking effect since March 30, 2018, including the recently enacted "Further Consolidated Appropriations Act, 2020."



- Narrows application of a sales and use tax exemption for diapers and incontinence products reimbursed by Medicaid.
- Makes technical and corrective changes to the tax laws.
- Makes a few substantive changes in tax laws to correct apparent errors in previous legislation.

### **Severability clause**

- Stipulates that if any item of law contained in the act is held invalid, the invalidity does not affect the other items.

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## DETAILED ANALYSIS

### Extension of absent voting in 2020 primary election

In a presidential election year, Ohio law requires the primary election to be held on the third Tuesday after the first Monday in March; for 2020, that date is March 17.<sup>1</sup> However, on March 16, 2020, the Director of Health issued an [order](#) that all polling places be closed on March 17 because of the threat of widespread exposure to COVID-19.<sup>2</sup> Immediately thereafter, the Secretary of State issued a [directive](#) rescheduling in-person voting for June 2, 2020, extending absent voting until that date, and prohibiting the boards of elections from counting any ballots until then.<sup>3</sup>

The act voids the Secretary of State directive and extends absent voting for the March 17, 2020, primary election to Tuesday, April 28, instead of June 2, 2020.<sup>4</sup> It also extends voting in any special election held on the day of the primary election in the same manner, such as for a local ballot issue. (For the sake of brevity, this analysis refers to both the primary election and any simultaneous special election as the primary election.) However, the act does not allow in-person voting at polling places for the election, as the directive did.

### Eligibility to vote in the 2020 primary

Under the act, an elector who has not already cast a ballot in the primary election and who was registered to vote in Ohio as of February 18, 2020 – the continuing-law registration deadline for the March 17 election – may vote absentee in the election in the manner described below. Any elector who has already cast a ballot in the election, either before the original March 17 deadline or later, under the Secretary of State’s directive, will have the elector’s ballot counted if it is received by the board of elections by the extended deadline and is otherwise eligible to be counted.<sup>5</sup> These eligibility requirements are the same under the Secretary’s directive.

### Suspension of election procedures

During the period beginning on March 27, 2020 (the act’s effective date) and ending at 7:30 p.m. on Tuesday, April 28, 2020, the act prohibits a board of elections or any election official from counting any ballots cast in the 2020 primary, releasing the count or any portion of the count of any ballots cast in the election, or processing any voter registration application

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<sup>1</sup> R.C. 3501.01(E), not in the act.

<sup>2</sup> Ohio Department of Health, *Director’s Order In re: Closure of the Polling Locations in the State of Ohio on Tuesday March 17, 2020* (March 16, 2020), available at <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/home/public-health-orders/odh-directors-order-closure-polling-locations>.

<sup>3</sup> Ohio Secretary of State, Directive 2020-06 (March 16, 2020), available at <https://www.ohiosecretaryofstate.gov/globalassets/elections/directives/2020/dir2020-06am.pdf>.

<sup>4</sup> Section 32(A).

<sup>5</sup> Section 32(C)(1). See also R.C. 3503.01, not in the act.

submitted after February 18, 2020. The Secretary of State's directive included similar provisions.<sup>6</sup>

### **Absentee ballot applications**

The act requires the Secretary of State to mail a postcard to each elector in Ohio, telling the elector how to obtain an application for absent voter's ballots, the procedures and deadlines to apply to vote under the act, and the procedures and deadline to return voted ballots to the board under the act.

In general, the act allows an elector to apply for absentee ballots for the 2020 primary only by mail to the appropriate board of elections. If the elector is eligible under permanent law to cast absent voter's ballots with the assistance of a bipartisan team of election officials because of a disability or confinement, the elector may include with the application a request to cast ballots in that manner.

At the end of each day, the board of elections must compile a list of all of the applications received that day, excluding any information that is not a public record, and transmit it to the Secretary. The Secretary must make the list available to the public upon request.

All applications for absentee ballots under the act must be received at the office of the board of elections not later than noon on Saturday, April 25, except that an elector who would qualify under permanent law to apply by 3:00 p.m. on Election Day because of an unforeseeable hospitalization may apply by 3:00 p.m. on April 28.

This deadline is similar to the continuing deadline in the Revised Code, which requires applications for absentee ballots mailed to the office of the board to be received by the board by noon on the third day before Election Day, except for those applications that may be received by 3:00 p.m. on Election Day. The Secretary of State's directive required the boards to accept applications delivered to the board by mail if they were postmarked on or before May 26, seven days before the end of voting on June 2, except for those applications that could be received by 3:00 p.m. on the last day of voting.<sup>7</sup>

### **Processing applications**

If the board of elections receives an application for absent voter's ballots for the 2020 primary and determines that it is incomplete, the board must promptly notify the applicant of the additional information the applicant must provide, the same as under permanent law. The act specifies that in order for the application to be valid, the applicant must provide that information not later than the applicable deadline described above. An application must not be considered invalid solely on the basis that the applicant indicated a date other than March 17 as the date of the 2020 primary election.

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<sup>6</sup> Section 32(B).

<sup>7</sup> Section 32(C)(2), (3), and (4). See also R.C. 3509.03, 3509.08, and 3511.02, not in the act.

If the board determines that an application submitted under the act is valid, the board promptly must mail absent voter's ballots to the elector, except in cases where election officials personally deliver ballots to an elector because of a disability or confinement. The board must prepay the return postage on those ballots.

The act makes an exception to a continuing provision of law that prohibits the board of elections from prepaying the return postage on absent voter's ballots.<sup>8</sup>

### **Provisional voters**

Under the act, any person who applies for absentee ballots for the 2020 primary by the applicable deadline and has the person's application denied may vote in the election by casting a provisional ballot by mail. Provisional voters include electors who have moved or changed their names without updating their voter registrations and any person the election officials determine is not eligible to vote in the election.

If the board determines that an absentee ballot application submitted under the act is not valid, the board must mail a provisional ballot to the applicant, return postage prepaid, in the same manner as an absentee ballot, except in cases where election officials must personally deliver the ballot to an elector because of a disability or confinement. The board must include all of the following with the provisional ballot:

- The reason the applicant has received a provisional ballot;
- Instructions to complete the provisional ballot affirmation, including an option to provide a copy of an identification document that normally would be shown to an election official in person;
- Instructions to return the provisional ballot in the included return envelope in the same manner as an absentee ballot; and
- Instructions for the applicant to ascertain the status of the applicant's ballot in the manner provided under the continuing law governing provisional ballots.

The continuing statute allows such persons to vote provisionally at a polling place on Election Day, except that an elector who has moved or had a change of name also may cast a provisional ballot at the office of the board of elections. Under the Secretary of State's directive, any provisional voting would have occurred at polling places on June 2.<sup>9</sup>

### **In-person absent voting**

The act prohibits electors from casting ballots in person for the 2020 primary, except for an eligible elector to whom one of the following applies:

- The elector has a disability and wishes to cast ballots using an accessible voting machine, which normally must be available at every polling place on Election Day; or

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<sup>8</sup> Section 32(C)(5) and (6). See also R.C. 3509.04 and 3511.04, not in the act.

<sup>9</sup> Section 32(C)(7). See also R.C. 3503.16 and 3505.181, not in the act.

- The elector is unable to receive mail where the elector lives or at another place.

Such an elector may appear at the office of the board of elections on April 28, not later than 7:30 p.m., to apply for absentee ballots and cast them in person. If electors are waiting in line to cast ballots at that time, they must be permitted to cast their ballots.

The Revised Code generally allows any elector to vote absentee in person before an election. The Secretary of State sets the days and hours for in-person absent voting. The Secretary's directive did not appear to state whether in-person absent voting was permitted for the extended 2020 primary.<sup>10</sup>

### **Returning voted ballots**

The board of elections must place a secure receptacle outside the board's office for the return of ballots cast under the act. The act requires all ballots for the 2020 primary to be received at the board of elections' office not later than 7:30 p.m. on Tuesday, April 28, except that ballots received by mail by Friday, May 8, are eligible to be counted if they are postmarked on or before April 27 and are not postmarked using a postage evidencing system. Ballots cast by uniformed services and overseas absent voters received by mail by May 8 are eligible to be counted if they are submitted for mailing by 12:01 a.m. on April 28 at the place where they are cast, regardless of whether they are postmarked.

The Revised Code specifies that absentee ballots must be received at the office of the board by 7:30 p.m. on Election Day, except that ballots received by mail receive the same ten-day grace period. The Secretary of State's directive also included that ten-day grace period.<sup>11</sup>

### **Curing ballots**

Under the act, if the election officials find that an absent voter's ballot identification statement is incomplete or incorrect, the voter must provide the required information to the board not later than Tuesday, May 5. Similarly, a provisional voter who is required to provide identification or additional information to the board must do so by May 5.

Continuing law provides the same seven-day deadline to cure an absent voter's ballot or provisional ballot. The Secretary of State's directive also provided for that seven-day cure period and included the hours during which the boards were required to be open during the cure period.<sup>12</sup>

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<sup>10</sup> Section 32(D). See also R.C. 3506.10, 3509.05, 3509.051, and 3511.10, not in the act, and Ohio Secretary of State, *Election Official Manual*, ch. 5, p. 10, available at [ohiosecretaryofstate.gov/globalassets/elections/directives/2019/eom\\_12-2019/eom\\_ch5\\_2019-12-18.pdf](https://ohiosecretaryofstate.gov/globalassets/elections/directives/2019/eom_12-2019/eom_ch5_2019-12-18.pdf).

<sup>11</sup> Section 32(E). See also R.C. 3509.06 and 3511.11, not in the act.

<sup>12</sup> Section 32(F). See also R.C. 3505.183 and 3509.06, not in the act.

## **Post-election procedures**

Under the act, the boards and the Secretary of State must complete the unofficial count, the canvass of the election returns, and all other post-election procedures with respect to the 2020 primary by adding 42 days to each statutory deadline (the number of days between March 17 and April 28). The Secretary of State's directive had similarly adjusted the dates for the official canvass.<sup>13</sup>

## **Campaign finance**

The act specifies that for purposes of dollar limits on campaign contributions during a primary election period, the primary election period ended on March 17, as required under the Revised Code. However, the act extends the deadline for candidates and political entities to file their post-primary statements of contributions and expenditures to 4:00 p.m. on June 5, 2020 (38 days after April 28). Under the statute, those statements are due at 4:00 p.m. on the 38<sup>th</sup> day after Election Day (April 24). The Secretary of State's directive had moved that filing deadline to July 10, 38 days after June 2.<sup>14</sup>

## **Purchasing and contracting requirements**

In implementing the act, the Secretary of State must proceed as though the Department of Administrative Services has suspended the state purchasing and contracting requirements, such as competitive bidding, that otherwise would apply to the Secretary. Under continuing law, the Department may suspend those requirements for a state agency, upon request, during the period of an emergency declared by the President, Congress, or the Governor. The Governor has declared such an emergency because of the COVID-19 pandemic.

The act requires the Secretary to comply with the law that requires an agency that has been granted such a suspension to file a report with the President of the Controlling Board, within 90 days after the emergency declaration expires, describing all purchases for which it did not follow the general purchasing and contracting requirements.<sup>15</sup>

## **Appropriation**

The act appropriates \$7 million to the Secretary of State to pay for expenses related to implementing the election extension.<sup>16</sup>

## **Unemployment compensation**

The act makes temporary changes to the law governing nonmonetary eligibility for unemployment benefits. Nonmonetary eligibility concerns the reason why an individual is

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<sup>13</sup> Section 32(G). See also R.C. 3505.32, not in the act.

<sup>14</sup> Section 32(H). See also R.C. 3517.10 and 3517.102, not in the act.

<sup>15</sup> Section 32(I). See also R.C. 125.061, not in the act, and Executive Order 2020-01D, issued on March 9, 2020, available at [coronavirus.ohio.gov/wps/portal/gov/covid-19/home/public-health-orders/executive-order-2020-01d](https://coronavirus.ohio.gov/wps/portal/gov/covid-19/home/public-health-orders/executive-order-2020-01d).

<sup>16</sup> Section 33.



unemployed and completing work search requirements. The act does not change the monetary requirements, which relate to whether an individual worked in employment covered by the Unemployment Compensation Law long enough and earned enough within a specified period of time.

### **Reason for leaving work**

Under continuing law, an individual may not receive unemployment benefits for the duration of the individual's unemployment if the individual left work for a disqualifying reason. The act specifies that, during the period of emergency declared by Executive Order 2020-01D, issued March 9, 2020, but not beyond December 1, 2020, an individual cannot not be disqualified from being paid benefits if the individual left work or is unable to return to work because of an order, including an isolation or quarantine order, issued by any of the following:

- The individual's employer;
- The Governor;
- The board of health of a city health district;
- The board of health of a general health district;
- A health commissioner;
- The Director of Health.

If an individual is unable to work because of an order described above, and the individual was previously employed by a contributory employer (most private sector employers), the benefits are paid from the mutualized account in the Unemployment Compensation Fund and are not charged to the employer. The mutualized account is a separate account that is primarily used to pay benefits when an employer's account cannot be charged for those benefits for a variety of reasons. If the employer was a reimbursing employer (most public sector employers and nonprofit organizations), the employer pays the benefits by reimbursing the fund.<sup>17</sup>

### **Waiting period**

Ordinarily, an individual who is eligible for unemployment benefits must serve a waiting period of one week before receiving benefits. An individual is only required to serve one waiting period during any "benefit year" (generally the 52-week period beginning with the first day of the week with respect to which the individual first files an initial valid application for benefits). During the period of emergency declared by the Executive Order, but not later than December 1, 2020, the act suspends the waiting period requirement for any benefit year that begins after the act's March 27, 2020, effective date.<sup>18</sup>

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<sup>17</sup> Section 19(B)(3) and (4). See also R.C. 4141.25 and 4141.29(D)(2), not in the act.

<sup>18</sup> Section 19(B)(1). See also R.C. 4141.01(R) and 4141.29(B), not in the act.

## Waiver of work search requirement

The act authorizes the Director of Job and Family Services to waive the active work search requirement for any individual who files a claim for benefits. The Director's authority to waive the requirement for any individual ends when the emergency declared by the Executive Order ends or December 1, 2020, whichever occurs first.<sup>19</sup> (Under continuing law, an unemployed individual must be available and actively searching for suitable work to remain eligible for unemployment benefits. The Director may exempt certain individuals from the active work search requirement under specific conditions.)

## K-12 education

In response to the Director of Health's order "In re: Order the Closure of All K-12 Schools in the State of Ohio" issued on March 14, 2020, the act waives several requirements for the 2019-2020 school year, as described below.

### State assessments

The act specifies that all public and chartered nonpublic schools are not required to administer any state assessments otherwise prescribed in the 2019-2020 school year. In addition to the state achievement assessments and end-of-course exams, this also includes the Ohio English Language Proficiency Assessment administered to English learners, WebXams for career-technical education students, and the Alternate Assessment for Students with Significant Cognitive Disabilities.<sup>20</sup>

Under continuing law, school districts, other public schools, and certain nonpublic schools must administer state assessments to students each year on dates set by the Superintendent of Public Instruction.<sup>21</sup> Many, but not all, of the state assessments are required by federal law to qualify Ohio for federal education funds. In a March 20, 2020, [press release](#), however, the U.S. Secretary of Education indicated a willingness to be flexible in granting waivers from federal testing requirements to states as a result of school closure during the national emergency declared in response to the COVID-19 pandemic.<sup>22</sup>

### State aid to districts

The act prohibits the Department of Education from subtracting from a district or school's student count for state funding any students to whom a district or school did not administer assessments.<sup>23</sup>

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<sup>19</sup> Section 19(B)(2). See also R.C. 4141.29(A), not in the act.

<sup>20</sup> Section 17(A)(1) and (2).

<sup>21</sup> R.C. 3301.0710, 3301.0711, and 3301.0712, none in the act.

<sup>22</sup> <https://www.ed.gov/news/press-releases/helping-students-adversely-affected-school-closures-secretary-devos-announces-broad-flexibilities-states-cancel-testing-during-national-emergency>.

<sup>23</sup> Section 17(A)(3). See also, R.C. 3314.08(L)(3), 3317.03(E)(3), and 3326.37, none in the act.

## **E-school students**

The act prohibits an internet- or computer-based school from withdrawing students who were unable to complete assessments for the 2019-2020 school year.<sup>24</sup>

Under continuing law, internet- or computer-based schools (operated either as community schools or as separate school district schools) are required to automatically withdraw any student who has not participated in the spring administration of any required assessment for two consecutive years and were not otherwise excused from taking such an assessment.<sup>25</sup>

## **Scholarship students**

The act specifies that students participating in the Educational Choice Scholarship Program, the Jon Peterson Special Needs Scholarship Program, or the Pilot Project (Cleveland) Scholarship Program may apply to renew their scholarships for the 2020-2021 school year regardless of whether they took the state assessments in the 2019-2020 school year.<sup>26</sup>

Continuing law specifies that a student who receives a state scholarship will remain eligible for that scholarship and may continue to receive that scholarship in subsequent school years if the student meets certain eligibility requirements.<sup>27</sup> One of those requirements is that the student take all required state assessments unless otherwise excused.

The act makes other temporary revisions regarding eligibility for performance-based Educational Choice Scholarships. See below for a description of those provisions.

## **Homeschooled students**

The act waives the administrative requirement that the parents of a homeschooled student must submit assessment data to the resident school district as a condition of the district allowing the student to continue to receive home instruction for the 2020-2021 school year.<sup>28</sup>

## **Reports**

The act permits the state Superintendent to waive the requirement to complete any report based on data from assessments that would have been but were not administered in the 2019-2020 school year.<sup>29</sup>

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<sup>24</sup> Section 17(A)(4).

<sup>25</sup> R.C. 3313.6410 and 3314.26, neither in the act.

<sup>26</sup> Section 17(A)(5).

<sup>27</sup> R.C. 3301.0711(K), 3310.03(F), 3310.522, and 3313.976(A)(11), none in the act.

<sup>28</sup> Section 17(L). See Ohio Administrative Code 3301-34-04.

<sup>29</sup> Section 17(G).

## Report cards; sanctions and penalties

The act prohibits the Department of Education from publishing and issuing ratings for overall grades, components, and individual measures on the state report cards for any school districts or schools for the 2019-2020 school year. It also relieves the Department from the requirement to submit preliminary data for report cards for school districts and buildings. However, the Department must report any data that it has regarding the performance of districts and buildings for the 2019-2020 school year by September 15, 2020.

The act establishes a safe harbor from penalties and sanctions for districts and schools based on the absence of state report card grades for the 2019-2020 school year. The act includes safe harbor from all of the following:

1. Restructuring under state law based on poor performance;
2. The Columbus City School Pilot Project;
3. Provisions for academic distress commissions and progressive consequences for existing commissions (but specifically retains the chief executive officer's powers prior to the 2020-2021 school year);
4. Buildings becoming subject to the Ed Choice Scholarship (see "**Ed Choice performance-based scholarships**" below);
5. Determination of "challenged school districts" where new start-up community schools may be located;
6. Community school closure requirements;
7. Identification of school districts and buildings for federal and state targeted support and improvement; and
8. Restrictions to which community schools may change sponsors.

Additionally, the act specifically states that the state report card ratings of previous and subsequent school years still must be used in determining sanctions and penalties. It further states that the 2019-2020 school year does not create a new starting point for such determinations that are based on multiple years of state report card ratings.<sup>30</sup>

## Third-grade reading guarantee

The act exempts schools from retaining students in the third grade under the third-grade reading guarantee based solely on a student's academic performance in reading in the 2019-2020 school year, unless the student's principal and reading teacher determine the student is not reading at grade level and is not prepared for fourth grade.<sup>31</sup>

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<sup>30</sup> Section 17(B).

<sup>31</sup> Section 17(C).

The third-grade reading guarantee requires school districts and schools to assess a student's reading skills at the beginning of kindergarten and first, second, and third grade to identify students reading below grade level. Upon identification of a student as underperforming, the district or school must notify the student's parent and provide the student with intervention services. Also, school districts and schools are generally prohibited from promoting to fourth grade a student who does not attain at least the "equivalent level of achievement" on the third-grade achievement assessment as determined by the Department of Education. A similar guarantee applies to students attending chartered nonpublic schools with state scholarships.<sup>32</sup>

## **High school graduation**

### **High school diplomas**

The act permits public and nonpublic schools to grant a diploma to any student on track to graduate and for whom the principal, in consultation with teachers and counselors, determines that the student has successfully completed the high school curriculum or individualized education program at the time of the Director's order.<sup>33</sup>

For a full description of graduation requirements for the class of 2020, see [guidance](#) published by the Department of Education.<sup>34</sup>

The act also expressly permits a district or school that has previously adopted a resolution to exceed the state minimum high school curriculum requirements to elect to require only the minimum curriculum for the purpose of determining high school graduation for the 2019-2020 school year.<sup>35</sup>

### **Intent to continue education during closure**

The act declares the intent of the General Assembly that school districts and other public and nonpublic schools continue to find ways to keep students actively engaged in learning opportunities for the remainder of the school year, and to grant students who need in-person instructional experiences to complete diploma requirements or career-technical education programs access to school facilities as soon as reasonably possible. This includes access even if the last instructional day of the school year has passed.<sup>36</sup> See also "**Distance learning make up**" below.

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<sup>32</sup> R.C. 3301.163 and 3313.608, not in the act.

<sup>33</sup> Section 17(D)(2).

<sup>34</sup> <http://education.ohio.gov/getattachment/Topics/Ohio-s-Graduation-Requirements/News/Two-additional-graduation-options-available-fo-1/GradReq20.pdf>.

<sup>35</sup> Section 17(D)(3). See also R.C. 3313.603(C) to (F), not in the act.

<sup>36</sup> Section 17(D)(4).

## **Teacher evaluations and value-added data**

The act prohibits the use of the value-added progress dimension from the 2019-2020 school year to measure student learning for teachers' performance evaluations.<sup>37</sup>

Under continuing law, the State Board of Education must develop a framework for school districts to use in evaluating teachers' performance. One component of this framework requires that at least two measures of "high-quality" (as defined by the State Board) student data are used to provide evidence of student learning directly attributable to the teacher being evaluated. When applicable, continuing law specifies that one of these measures of high-quality student data being used is the value-added progress dimension used for state report cards.<sup>38</sup>

## **Community school sponsor evaluations**

For community school sponsor ratings, the act prohibits the Department from (1) issuing a rating for the academic performance component, (2) using that rating for the overall rating, and (3) finding a sponsor out of compliance with laws and rules for any requirement for an action that should have occurred while schools were closed.<sup>39</sup>

Under continuing law, the Department is required to conduct evaluations of entities that sponsor community schools. Based on those ratings, an entity's authority to sponsor schools may be limited or revoked for "ineffective" or "poor" performance.<sup>40</sup>

## **District employee evaluations**

The act permits a district board of education to elect not to conduct evaluations of district employees, including teachers, administrators, or a superintendent for the 2019-2020 school year, if the board determines that it would be impossible or impracticable to do so. If a district board elects not to evaluate an employee for the 2019-2020 school year, the employee may not be penalized for the purpose of reemployment for lack of an evaluation. But the act expressly states that it does not preclude a district board from using an evaluation completed prior to the Director of Health's closure order in employment decisions.

The district board may collaborate with any bargaining organization representing its employees in determining whether to complete evaluations for the 2019-2020 school year.<sup>41</sup>

Under continuing law, district employees are required to complete annual evaluations for the purpose of determining eligibility for re-employment.<sup>42</sup> The act essentially removes the penalty on district employees when an evaluation cannot be completed due to the COVID-19 outbreak.

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<sup>37</sup> Section 17(E).

<sup>38</sup> R.C. 3302.021 and 3319.112, neither in the act.

<sup>39</sup> Section 17(F).

<sup>40</sup> R.C. 3314.016, not in the act.

<sup>41</sup> Section 17(M).

<sup>42</sup> R.C. 3319.11, not in the act.

## Authority to adjust various deadlines

The act gives the state Superintendent authority to adjust deadlines for the following:<sup>43</sup>

1. District teacher evaluations;
2. District intent to reemploy notifications;
3. School safety drills;
4. Emergency management tests;
5. Requirements to fill a vacancy on a district board of education;
6. Updating teacher evaluation policies; and
7. Gifted screening requirements.

## College Credit Plus

The act permits the Chancellor of Higher Education, in consultation with the state Superintendent, to extend, waive, or otherwise modify requirements of the College Credit Plus Program.<sup>44</sup>

Under that program, a high school student who is an Ohio resident may enroll in college courses, on a full- or part-time basis, to complete nonsectarian and nonremedial courses for high school and college credit.<sup>45</sup>

## Adult education

The act permits the state Superintendent to waive or extend deadlines, or otherwise grant providers and students flexibility, for completion of adult education program requirements interrupted due to the COVID-19 outbreak.<sup>46</sup>

This provision specifically applies to the 22+ Adult High School Diploma Program and the Adult Diploma Program. The 22+ Adult High School Diploma Program helps adults earn a high school diploma. The program is free to adults who are over 22 years old, living in Ohio and who do not have a diploma or a GED. The Adult Diploma Program provides job training and a new pathway for adults, ages 22 or older, to earn a high school diploma and industry credentials aligned to one of Ohio's in-demand jobs.<sup>47</sup>

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<sup>43</sup> Section 17(I).

<sup>44</sup> Section 17(J).

<sup>45</sup> R.C. 3365.02, not in the act.

<sup>46</sup> Section 17(K).

<sup>47</sup> R.C. 3313.902, 3314.38, 3317.23, 3317.231, 3317.24, and 3345.86, none in the act.

## **Provisional teacher licensure**

The act permits the Department, on behalf of the State Board of Education, to issue one-year, nonrenewable, provisional licenses to educators who have met all other requirements for the requested license except for the requirement to pass a subject area exam prescribed by the State Board. However, an educator who is issued a provisional license must take and pass the appropriate subject area exam before the license expires as a condition of advancing the license.<sup>48</sup>

## **Ed Choice performance-based scholarships**

### **Prohibition on certain first-time scholarships for 2020-2021**

The act generally prohibits the Department of Education from accepting, processing, and awarding first-time, performance-based Educational Choice (Ed Choice) scholarships for the 2020-2021 school year to students newly eligible to receive those scholarships in that year. These scholarships were to be funded under the \$10 million appropriation made in Section 265.210 of H.B. 166 of the 133<sup>rd</sup> General Assembly, as amended by S.B. 120 of the 133<sup>rd</sup> General Assembly.<sup>49</sup> Students disqualified for a first-time, performance-based scholarship under the act are those who were not eligible to receive one for the 2019-2020 school year and whose resident district school building was included on the list published by the Department in November 2019 entitled “EdChoice Scholarship Program 2020-2021 List of Designated Public Schools.”

### **Permitted performance-based scholarships for 2020-2021**

However, the act requires the Department to accept, process, and award some performance-based Ed Choice scholarships under the 60-day application period, beginning April 1, 2020, that was established by S.B. 120. The Department must award performance-based scholarships to students who received them in the previous year (renewals) and to students who apply for a first-time scholarship and meet one of three sets of eligibility criteria established by the act. Performance-based scholarships must be paid using the deduct-and-transfer method prescribed under continuing law for those scholarships.<sup>50</sup>

First, the act qualifies a student for a first-time, performance-based scholarship for the 2020-2021 school year if the student meets all of the following criteria:

1. The student has a sibling who received a performance-based scholarship in the 2019-2020 school year;
2. The student is enrolled in or would be enrolled in a district school building that satisfied the eligibility conditions for performance-based scholarships in the 2019-2020 school year; and

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<sup>48</sup> Section 17(H).

<sup>49</sup> Section 31(A), first paragraph.

<sup>50</sup> Section 31(A)(1) and (4), second and third paragraphs.



3. The student was enrolled in a public or nonpublic school in any of grades K-12 or was homeschooled for the equivalent of those grades in the 2019-2020 school year.

The act defines “sibling” as a brother, half-brother, sister, or half-sister, by birth, adoption, or marriage, without regard to residence or custodial status, or child residing in the same household as a foster child or under a guardianship or custodial order.<sup>51</sup>

Second, the act qualifies a student for a first-time scholarship if the student was eligible for a scholarship for the 2019-2020 school year, regardless of whether the student received a scholarship for that year, and remains eligible for the 2020-2021 school year.<sup>52</sup>

Third, the act qualifies a student for a first-time scholarship if:

1. The student did not receive a scholarship for the 2019-2020 school year;
2. For the 2020-2021 school year, the student is enrolled or would be newly enrolled in a school building operated by the student’s resident school district; and
3. The building met the eligibility conditions prescribed for a performance-based scholarship for the 2019-2020 school year and continued to meet those conditions in the 2020-2021 school year.

The act further specifies that students meeting the third set of eligibility criteria could include students entering kindergarten or high school, or students who recently relocated to the district’s or building’s attendance territory.<sup>53</sup>

### **Performance-based scholarships for 2021-2022**

The act requires the Department to resume accepting, processing, and awarding performance-based Ed Choice scholarships on February 1, 2021, for scholarships for the 2021-2022 school year.<sup>54</sup>

### **No effect on income-based scholarships**

Finally, the act specifies that it does not affect the awarding of income-based, Ed Choice scholarships.<sup>55</sup>

### **Background**

The Ed Choice Scholarship Program operates statewide in every school district except Cleveland to provide scholarships for students who (1) are assigned or would be assigned to district school buildings that have persistently low academic achievement (known as “traditional” or “performance-based” Ed Choice) or (2) are from low-income families (known as

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<sup>51</sup> Section 31(A)(2).

<sup>52</sup> Section 31(A)(3).

<sup>53</sup> Section 31(A)(4).

<sup>54</sup> Section 31(B).

<sup>55</sup> Section 31(C).

“income-based” Ed Choice Expansion). Students may use their scholarships to enroll in participating chartered nonpublic schools.

For students who qualify based on the performance of their resident districts’ schools, the scholarships are deducted from the districts’ state aid accounts. For students who qualify based on family income, the scholarships are paid from a specific appropriation of the General Assembly.<sup>56</sup>

S.B. 120 of the 133<sup>rd</sup> General Assembly modified the awarding of performance-based Ed Choice scholarships for the 2020-2021 school year. That act appropriated \$10 million to directly fund first-time, performance-based scholarships for students who were newly eligible for them for 2020-2021. It also required the Department to award and pay those scholarships on a first-come, first-served basis through a 60-day application period starting April 1, 2020, until the appropriated amount is exhausted.

Additionally, S.B. 120 established the same application period for other performance-based Ed Choice scholarships for students who (1) were eligible for the 2019-2020 school year, regardless of whether they received scholarships for that year, and (2) remain eligible for the 2020-2021 school year. But it required that those scholarships be paid through the usual deduct-and-transfer method prescribed under continuing law for performance-based scholarships.<sup>57</sup>

## **Services to special needs students**

The act permits licensed nonclassroom personnel providing professional services to students with disabilities, for the duration of the Director of Health’s order to close schools for the COVID-19 outbreak, or until December 1, 2020, if the order or extension of it has not been rescinded by then, to provide services electronically or via telehealth communication. This authority applies to personnel licensed by the Speech and Hearing Professionals Board; the Occupational Therapy, Physical Therapy, and Athletic Trainers Board; the State Board of Psychology; and the Counselor, Social Worker, and Marriage and Family Therapist Board. It also applies to intervention specialists licensed by the State Board of Education. The act specifies that its provisions regarding services to students with disabilities applies to those receiving services through their resident school districts or under the Autism Scholarship or the Jon Peterson Special Needs Scholarship programs.<sup>58</sup>

## **Distance learning make up**

For the 2019-2020 school year, the act 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

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<sup>56</sup> R.C. 3310.01 to 3310.17, none in the act.

<sup>57</sup> Sections 265.10 and 265.210 of H.B. 166 of the 133<sup>rd</sup> General Assembly, as amended by S.B. 120 of the 133<sup>rd</sup> General Assembly.

<sup>58</sup> Section 16.

due to school closures as a result of any emergency order issued by the Governor or the Director of Health regarding COVID-19.<sup>59</sup> 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.

Continuing law, which does not apply for the 2019-2020 school year under the act's provisions, permits all public and chartered nonpublic schools, prior to August 1 each year, to adopt a plan for students to access and complete online classroom lessons or substantially similar paper lessons to make up hours a school is closed due to disease epidemic, hazardous weather, law enforcement emergencies, inoperability of school buses or other necessary equipment, damage to a school building, or other temporary circumstances.

Each plan must do the following:

1. Provide for making up any number of hours, up to the equivalent of three school days;
2. Include the written consent of the teachers' labor organization representative, if there is one; and
3. Require each classroom teacher to develop a sufficient number of lessons for each course taught by the teacher to cover the number of make-up hours specified in the plan.<sup>60</sup>

The act does not address the make-up of days or hours by paper lessons, which remains limited to three days under continuing law.

Separate state law requires school districts, STEM schools, and chartered nonpublic schools to be open for instruction each school year for a minimum of 910 hours for grades 1-6 or all-day kindergarten, 1,001 hours for grades 7-12, and 455 hours for kindergarten that is less than all day. Community schools must provide at least 920 hours of learning opportunities.<sup>61</sup>

## **Summer food programs**

The act authorizes the Ohio Director of Agriculture, during the period of the emergency declared by Executive Order 2020-01D, but not beyond December 1, 2020, to exempt a school or other entity from regulation as a food processing establishment if:

1. It has been issued a food service operation license;
2. With respect to a school, it is transporting food only for purposes of the Seamless Summer Option Program or the Summer Food Service Program (both programs are administered by the U.S. Department of Agriculture (U.S.D.A.));

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<sup>59</sup> Section 15.

<sup>60</sup> R.C. 3313.482, not in the act.

<sup>61</sup> R.C. 3313.48(A), 3314.03(A)(11)(a), and 3326.11, none in the act.

3. With respect to any other entity, it is transporting food only for the purposes of the Summer Food Service Program.<sup>62</sup>

Under the U.S.D.A.'s Seamless Summer Food Program, schools serve free meals to children under 18 who live in low-income areas. Schools that participate in the federal National School Lunch and School Breakfast Programs are eligible to apply for the Seamless Summer Food Program.<sup>63</sup> The U.S.D.A.'s Summer Food Service Program is a federally funded, state-administered program. It reimburses providers who serve free healthy meals to children and teens in low-income areas during the summer months when school is not in session.<sup>64</sup>

Under continuing law, a food processing establishment is a premises or part of a premises where food is processed, packaged, manufactured, or otherwise held or handled for distribution to another location or for sale at wholesale. Examples of food processing establishments are confectioneries, canneries, and bottlers. A food service operation is an establishment that receives a majority of its revenue from sales of food that is prepared and served in individual portions. Examples of food service operations are restaurants, cafeterias, and schools. A food service operation is licensed to operate by a board of health with oversight by the Director of Health.<sup>65</sup>

## Public water systems

For purposes of ensuring the supply of safe drinking water for Ohio residents, the act authorizes the Director of Environmental Protection to issue an order to a public water system that does any of the following:

- Requires the system to restore service to any customer whose service was disconnected as a result of nonpayment of fees and charges;
- Requires it to waive all fees for connection or reconnection; or
- Prohibits it from disconnecting customers because of nonpayment of fees and charges (see **COMMENT**).

The Director may issue the order, and the order is valid during the state of emergency declared by the Governor under Executive Order 2020-01D, issued on March 9, 2020, but not beyond December 1, 2020.

The act specifies that an order issued under this authority has the same status as any order issued under the Safe Drinking Water Law and may be enforced under that Law.

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<sup>62</sup> Section 10.

<sup>63</sup> <https://www.fns.usda.gov/school-meals/opportunity-schools>.

<sup>64</sup> <https://www.fns.usda.gov/sfsp/summer-food-service-program>.

<sup>65</sup> R.C. 3715.021, 3717.01, and 3717.41, not in the act.

Enforcement mechanisms include the imposition of administrative, civil, and criminal penalties.<sup>66</sup> A violation of an order is punishable by the penalties illustrated in the table below:

Type of penalty	Punishment	Citation
Administrative penalty	<ul style="list-style-type: none"> <li>▪ For public water systems serving populations of more than 10,000, \$1,000 for each day of each violation.</li> <li>▪ For systems serving populations of 10,000 or less, the amount is based on the number of people served by the system.</li> </ul>	R.C. 6109.23 and Ohio Adm. Code 3745-81-04
Civil penalty	<ul style="list-style-type: none"> <li>▪ Not more than \$25,000 for each violation.</li> </ul>	R.C. 6109.33
Criminal penalty	<ul style="list-style-type: none"> <li>▪ For a reckless violation, a misdemeanor punishable by a fine of not more than \$10,000 or imprisonment for not more than four years, or both.</li> <li>▪ For a reckless or knowing violation that poses a significant threat to or causes significant harm to public health, a felony punishable by a fine of not more than \$25,000 or imprisonment for not more than four years, or both.</li> </ul> <p>Each day of violation constitutes a separate offense.</p>	R.C. 6109.31 and 6109.99

## Temporary tax compliance relief

### Waiver of tax filing and payment deadlines

The act authorizes the Tax Commissioner, at any time during the COVID-19 emergency period declared by the Governor, to further extend state tax filing and payment deadlines and to waive associated interest and penalties for taxpayers “affected by” the COVID-19 emergency. Specifically, the Commissioner may extend the filing and payment deadline for any tax or fee administered by the Commissioner, including school district income taxes and municipal income taxes administered by the state, beyond the period allowed by ongoing permanent law. If the deadline is extended, then the penalty that would normally attach when a filing or payment is late will be abated for the term of the extension.<sup>67</sup> The length of the extension is within the Commissioner’s discretion, though continuing law already authorizes the Commissioner to extend the time for filing and paying any tax for up to 45 days.<sup>68</sup> The act does not specify criteria for which taxpayers are to be considered as being affected by the emergency. Presumably, the Tax Commissioner would make that determination.

<sup>66</sup> Section 8.

<sup>67</sup> Section 28(A).

<sup>68</sup> R.C. 5703.35, not in the act.

An extension may also be granted for affected taxpayers making an estimated or accelerated tax payment, such as quarterly estimated income tax payments and accelerated sales tax remittances.

If either extension is granted, the Commissioner may also waive any interest that accrues during the extension.<sup>69</sup> Continuing law, while allowing for extensions, does not specifically authorize interest to be waived during an extension.

The act also provides that, if the Commissioner extends, for all taxpayers, the date to file state income tax returns during the COVID-19 emergency, the due date for filing municipal net profits income tax returns with the Commissioner is extended by the same period.<sup>70</sup> Continuing law permits businesses to file and pay municipal income taxes with the Commissioner instead of filing and paying separately to each municipality in which they do business.<sup>71</sup>

### **Municipal income tax: temporarily relocated employees**

The act specifies that, for municipal income tax purposes, employees who must, as the result of the COVID-19 emergency, report to a temporary worksite, including their home, are temporarily considered to be working at their otherwise principal place of work, i.e., the location where the employee reports for work on “a regular and ordinary basis.” This treatment 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. In effect, considering this income to be earned in the location of the employee’s principal place of work potentially allows the employer to avoid withholding taxes for that employee in the municipality where the employee’s temporary worksite is located and prevents the employer from becoming subject to that municipality’s income tax. It also potentially prevents the employee from being taxed on that income by that municipality, unless the employee is a resident of that municipality. (Resident municipalities may tax individual taxpayers on their entire income, regardless of where the income is earned.<sup>72</sup>)

Under continuing law, a nonresident employee may work in a municipality for up to 20 days per year without the employer becoming subject to that municipality’s tax withholding requirements and the employee becoming subject to that municipality’s income tax. And, if an employee does not exceed the 20-day threshold, that employee’s pay is not counted toward the business’s payroll factor, 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.<sup>73</sup>

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<sup>69</sup> Section 28(A).

<sup>70</sup> Section 28(B).

<sup>71</sup> R.C. 718.80 to 718.95, not in the act.

<sup>72</sup> R.C. 718.01(A)(1)(b), not in the act.

<sup>73</sup> R.C. 718.01(C)(16) and (17), 718.011, 718.02, and 718.82, not in the act.

## Child day care

### Center staff ratios, group sizes

During the period of the COVID-19 emergency declared by Executive Order 2020-01D, but not beyond December 1, 2020, the act suspends the law governing child-to-staff ratios and maximum group sizes for child day-care centers licensed by the Ohio Department of Job and Family Services (ODJFS).<sup>74</sup> The following table outlines – by a child’s age – the current ratios and maximum group sizes, as established in statute.<sup>75</sup>

Age of children	Staff/child ratio	Maximum group size
Infants (Birth to under 12 months)	1 to 5 <i>or</i> 2 to 12 if in the same room	12
Infants (12 months to under 18 months)	1 to 6	12
Toddlers (18 months to under 2.5 years)	1 to 7	14
Toddlers (2.5 years to under 3 years)	1 to 8	16
Preschool (3 years)	1 to 12	24
Preschool (4 and 5 years)	1 to 14	28
School age (Kindergarten to 11 years)	1 to 18	36
School age (11 years through 14 years)	1 to 20	40

For purposes of the law governing child care providers, a child day-care center means a place in which child care or publicly funded child care is provided for seven or more children at

<sup>74</sup> Section 9. On March 13, 2020, Governor Mike DeWine, as a result of COVID-19, authorized ODJFS to amend on an emergency basis the rule governing child day-care staff ratios. See [Executive Order 2020-02D](#) and [Appendix A](#) to Ohio Administrative Code (O.A.C.) [5101:2-12-18](#), as amended on that date.

<sup>75</sup> R.C. 5104.033, not in the act. Because of the March 13 amendment, O.A.C. 5101:2-12-18 no longer corresponds with the ratios outlined in statute.

one time and that is not the permanent residence of the licensee or administrator.<sup>76</sup> Ohio law prohibits a center from operating without an ODJFS-issued license.<sup>77</sup>

### **Publicly funded child care payments**

During the period of the COVID-19 emergency declared by Executive Order 2020-01D, ODJFS may continue to pay a provider of publicly funded child care if both:

1. The provider is under contract with the Department; and
2. The provider is unable to provide publicly funded child care to children of eligible caretaker parents as a result of the emergency.<sup>78</sup>

### **Step Up to Quality ratings**

The act extends to September 1, 2020 (from July 1, 2020) the deadline by which a provider of publicly funded child care must be rated through the Step Up to Quality Program.<sup>79</sup>

The Step Up to Quality Program administered by ODJFS is a tiered quality ratings and improvement system for all early learning and development programs in Ohio.<sup>80</sup> Prior law required that, beginning July 1, 2020, publicly funded child care be provided only by a child care provider rated through the program.<sup>81</sup>

### **Medicaid COVID-19 community providers**

The act provides the Medicaid Director flexibility related to COVID-19 and paying certain Medicaid providers. Under the act, during the COVID-19 emergency declared by the Governor, or until December 1, 2020, whichever is earlier, the Medicaid Director may, subject to federal approval if necessary, do any of the following:

1. Classify certain Medicaid providers as COVID-19 community providers;
2. Direct Medicaid payments to those providers from previously appropriated Medicaid funds;
3. 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;
4. Make payments to those providers from those funds;

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<sup>76</sup> R.C. 5104.01(L), not in the act.

<sup>77</sup> R.C. 5104.02, not in the act.

<sup>78</sup> Section 18.

<sup>79</sup> R.C. 5104.31(C)(1).

<sup>80</sup> R.C. 5104.29, not in the act.

<sup>81</sup> R.C. 5104.31(C)(1).



5. Facilitate payments to COVID-19 community providers by transferring any of the funds described to the Departments of Developmental Disabilities and Mental Health and Addiction Services via an intrastate transfer voucher.

The Medicaid Director must specify (a) any requirements a COVID-19 community provider must meet, (b) enhanced rates or additional services reimbursement, and (c) methods of payment.

The act appropriates “all amounts,” which appears to refer to the funds requested as described in 3 and 5, above<sup>82</sup>.

## **Temporary nursing licenses without examination**

For the period of the COVID-19 emergency, the act suspends the requirement that an applicant pass a licensure examination accepted by the Board of Nursing before seeking a license to practice as a registered nurse (RN) or licensed practical nurse (LPN).<sup>83</sup> While this requirement is suspended, the Board must issue an RN or LPN license to an applicant who satisfies the remaining licensure requirements established in statute, including completing a nursing education program and a criminal records check. The license remains valid until whichever of the following occurs first: (1) March 1, 2021 (90 days after December 1, 2020) or (2) the date that is 90 days after the duration of the COVID-19 emergency period.

## **Certified registered nurse anesthetists**

### **Supervision and practice**

Under law unchanged by the act, a certified registered nurse anesthetist (CRNA) is required to practice under the supervision of a physician, podiatrist, or dentist. Supervision is described as being under the direction of a supervising practitioner acting within that practitioner’s scope of practice.<sup>84</sup>

The act maintains several preexisting services that a CRNA may perform with supervision<sup>85</sup> and also authorizes a CRNA to perform other services with supervision, as discussed below. CRNAs continue to be required to act in a manner that is consistent with the CRNA’s education and certification and in accordance with rules adopted by the Ohio Board of Nursing.<sup>86</sup>

### **Drugs, treatments, and IV fluids**

Prior to the act, CRNAs lacked authority to select and order drugs; whereas other advanced practice registered nurse (APRN) specialties are authorized to prescribe or furnish

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<sup>82</sup> Section 14.

<sup>83</sup> Section 30. See also R.C. 4723.09 and 4723.10, not in the act.

<sup>84</sup> R.C. 4723.43(B). See also R.C. 4723.01(M), 4723.432(B), 4731.27(C), and 4731.35(A), not in the act.

<sup>85</sup> R.C. 4723.01(M), not in the act, and 4723.43(B).

<sup>86</sup> R.C. 4723.43(B).

most drugs and therapeutic devices as part of the APRN license.<sup>87</sup> The act, however, permits a CRNA to select, order, and administer drugs, treatments, or intravenous (IV) fluids for conditions related to the administration of anesthesia. This may occur as necessary for patient management and care and only during the time period that begins on a patient's admission to a health care facility for a surgery or procedure and ends with the patient's discharge from recovery.<sup>88</sup>

When a CRNA selects, orders, and administers a drug or treatment or IV fluids, the CRNA and the supervising practitioner must both be physically present at the health care facility. In addition, the CRNA must indicate the administration in the patient's medical or electronic health record. The act also requires the facility to have adopted a written policy (see "**Written policy**" below).

The act further provides that it does not authorize a CRNA to prescribe a drug for use outside the facility or other setting where the nurse provides anesthesia care.<sup>89</sup>

### **Clinical support functions and delegation**

Under the act, a CRNA – while performing clinical support functions – may direct a registered nurse (RN), licensed practical nurse (LPN), or respiratory therapist to do either of the following:

1. Provide supportive care, which may include monitoring vital signs, conducting electrocardiograms, and administering IV fluids;
2. Administer drugs, treatments, and IV fluids to treat conditions related to the administration of anesthesia, but only if a physician, podiatrist, or dentist ordered them.<sup>90</sup>

### **Delegation generally**

The act authorizes a CRNA to direct RNs, LPNs, and respiratory therapists to do the following as necessary for patient management and care:

1. Administer drugs, treatments, and IV fluids for the treatment of conditions related to administration of anesthesia;
2. Provide supportive care, including monitoring vital signs, conducting electrocardiograms, and administering IV fluids.

However, a CRNA may direct such actions only during the time period that begins on the patient's admission to the facility for a surgery or procedure and ends on the patient's discharge from recovery **and** in accordance with the facility's required policy. The act also

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<sup>87</sup> See R.C. 4723.43, and 4723.481, not in the act, with respect to certified nurse practitioners, certified nurse-midwives, and clinical nurse specialists.

<sup>88</sup> R.C. 4723.434.

<sup>89</sup> R.C. 4723.434.

<sup>90</sup> R.C. 4723.433.

requires the CRNA and supervising practitioner to both be present at the facility when the CRNA directs the actions. Moreover, the CRNA must indicate his or her direction in the patient's medical or electronic health record.<sup>91</sup>

### **Note on delegation**

The act's conditions on a CRNA's authority to delegate drug, treatment, or IV fluid administration differ depending on whether the CRNA does so (1) during the time period from admission to recovery discharge or (2) while performing clinical support functions. For example, when a CRNA delegates administration as part of performing clinical support functions, the act requires the drug, treatment, or IV fluid to have been ordered by a physician.<sup>92</sup> A physician's order is not specifically required, however, when a CRNA delegates administration during the period from the patient's admission for a surgery or procedure to recovery discharge.

It is unclear from the text of both continuing law and the act, though, when clinical support functions are performed. It is possible that they could occur during the period from admission to recovery discharge. If so, it remains uncertain whether a physician's order would be required before the CRNA could delegate to an RN, LPN, or respiratory therapist the administration of drugs, treatments, and IV fluids.

### **Additional services and activities**

In addition to the changes in a CRNA's practice described above, the act permits a CRNA to do all of the following:

1. Perform and document evaluations and assessments, which may include ordering and evaluating one or more diagnostic tests for conditions related to the administration of anesthesia;
2. Obtain informed consent for anesthesia care; and
3. Perform postanesthetic preparation and evaluation. (Prior to the act, Ohio law referred only to the authority to perform postanesthesia care.)

In the event a CRNA performs and documents evaluations and assessments, the act requires both the CRNA and supervising practitioner to be present at the health care facility. It also requires the CRNA to indicate those evaluations and assessments in the patient's medical or electronic health record.

The act continues provisions specifying that a CRNA is authorized to perform anesthesia induction, maintenance, and emergence in the immediate presence of a supervising practitioner.<sup>93</sup>

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<sup>91</sup> R.C. 4723.434 and 4761.17.

<sup>92</sup> R.C. 4723.433.

<sup>93</sup> R.C. 4723.43(B) and 4723.434.

## Written policy

The act prohibits a CRNA from (1) performing and documenting evaluations and assessments, (2) selecting, ordering, and administering drugs, treatments, and IV fluids for conditions related to the administration of anesthesia, and (3) directing RNs, LPNs, and respiratory therapists to perform certain actions unless the health care facility where the nurse practices has adopted a written policy that meets the act's requirements.<sup>94</sup>

Under the act, the policy must be developed by the health care facility's medical, nursing, and pharmacy directors. It also must establish standards and procedures to be followed by CRNAs when ordering and evaluating diagnostic tests; selecting, ordering, and administering drugs, treatments, and IV fluids; and directing RNs, LPNs, and respiratory therapists to administer drugs, treatments, and IV fluids or provide supportive care.<sup>95</sup>

In adopting a policy, a health care facility must not authorize a CRNA to select, order, or administer any drug that a supervising physician, podiatrist, or dentist is not authorized to prescribe. Also, the health care facility must allow a supervising practitioner to issue every order related to a patient's anesthesia care.<sup>96</sup>

## Opt-out provisions

Under the act, a CRNA is prohibited from doing any of the following if the CRNA's supervising practitioner or the health care facility where the CRNA practices determines that it is not in a patient's best interest:

1. Performing and documenting evaluations and assessments, including ordering and evaluating diagnostic tests;
2. Selecting, ordering, and administering drugs, treatments, and IV fluids for conditions related to the administration of anesthesia;
3. Directing RNs, LPNs, and respiratory therapists to administer drugs, treatments, and IV fluids or provide supportive care.

If the supervising practitioner or health care facility makes such a determination, the patient's medical or electronic health record must indicate that the CRNA is prohibited from performing the activity or activities.

The act also specifies that it does not prohibit a CRNA from implementing a supervising practitioner's verbal order.<sup>97</sup>

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<sup>94</sup> R.C. 4723.434(B) and 4723.435.

<sup>95</sup> R.C. 4723.434(B) and 4723.435(A).

<sup>96</sup> R.C. 4723.435(B).

<sup>97</sup> R.C. 4723.434(B) and (C).

## **Deadline, license extensions**

The act temporarily extends deadlines otherwise occurring during the emergency declared by Executive Order 2020-01D, but not beyond December 1, 2020, concerning (1) state agency actions and (2) licensee actions required to maintain a valid license. The act exempts from suit a state agency, licensee, and concealed handgun licensee for complying with the act's deadline extensions, described below. The extensions do not apply to an individual who must register or enroll as a violent offender, arson offender, or sex offender.<sup>98</sup>

### **State agency deadlines**

The act temporarily extends deadlines with which a state agency must comply that occur during the emergency declared by Executive Order 2020-01D until the earlier of 90 days after the emergency ends or December 1, 2020. State agencies to which the act applies include every organized body, office, or agency established by state law for the exercise of any function of state government. The act also applies to JobsOhio, the state retirement boards, and state institutions of higher education.<sup>99</sup>

### **State license extensions**

The act similarly temporarily extends deadlines with which a licensee must comply to maintain a valid license that occur during the emergency declared by Executive Order 2020-01D until the earlier of 90 days after the emergency ends or December 1, 2020. A license otherwise expiring pursuant to law during that period remains valid until the earlier of 90 days after the date the emergency ends or December 1, 2020, unless it is revoked, suspended, or otherwise subject to discipline or limitation under the applicable law for reasons other than a licensee's delay in taking action to maintain the license's validity during the act's deadline extension.

The deadline extensions do not limit a state or local licensing entity's authority to take disciplinary action against a licensee. However, a licensing entity cannot discipline a licensee who delays in taking action to maintain a valid license during the act's deadline extension.

The act defines a "license" as any license, permit, certificate, commission, charter, registration, card, or other similar authority that is issued or conferred by a state agency, political subdivision, or official of a political subdivision.<sup>100</sup>

### **Concealed handgun licenses**

With respect to a standard concealed handgun license scheduled to expire during the period of emergency declared by Executive Order 2020-01D, but not beyond December 1, 2020, the act:

- Extends a license's validity for 90 days or until December 1, 2020, whichever occurs earlier, with the 90-day period starting on the license's scheduled expiration date;

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<sup>98</sup> Section 11.

<sup>99</sup> Section 11(A) and (B), by reference to R.C. 187.01 and 3345.011, not in the act.

<sup>100</sup> Section 11(A), (C), and (D), by reference to R.C. 1.59, not in the act.

- Specifies that during the extension, for all purposes under Ohio law, the license is valid, and the person to whom it was issued is considered to be a holder of a valid license to carry a concealed handgun;
- Specifies that the extension does not affect the operation of laws governing the suspension or revocation of a license to carry a concealed handgun or regarding a suspension or revocation for specified conduct, activities, or factors, during the extension or at any other time.<sup>101</sup>

### **General Assembly encouragement**

Under the act, the General Assembly encourages licensees (including licensees holding a concealed handgun license) to make all reasonable efforts, taking into consideration the risks of COVID-19 to the health and safety of the licensee and others, to take action with respect to a license within the act's extensions before the extensions elapse.<sup>102</sup>

### **Tolling of statutes of limitations and other time limits (PARTIALLY VETOED)**

Under the act, the following that are set to expire between March 9, 2020, and July 30, 2020, are tolled:<sup>103</sup>

1. Statutes of limitations, as follows:
  - a. For any criminal offense, notwithstanding any other provision of law to the contrary, the applicable period of limitation set forth in R.C. 2901.13 for the criminal offense;
  - b. When a civil cause of action accrues against a person, notwithstanding any other provision of law to the contrary, the period of limitation for commencement of the action as provided under any section in R.C. Chapter 2305, or under any other provision of the Revised Code that applies to the cause of action;
  - c. For any administrative action or proceeding, the period of limitation for the action or proceeding as provided under the Revised Code or the Administrative Code, if applicable.
2. The time within which a bill of indictment or an accusation must be returned or the time within which a matter must be brought before a grand jury;
3. The time within which an accused person must be brought to trial or, in the case of a felony, to a preliminary hearing and trial;
4. Time deadlines and other schedule requirements regarding a juvenile, including detaining a juvenile;

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<sup>101</sup> Section 11(E) to (G), by reference to R.C. 2923.125 and 2923.128, not in the act.

<sup>102</sup> Section 11(J).

<sup>103</sup> Section 22(A).

5. The time within which a commitment hearing must be held;
6. The time by which a warrant must be issued;
7. The time within which discovery or any aspect of discovery must be completed;
8. The time within which a party must be served;
9. The time within which an appearance regarding a dissolution of marriage must occur pursuant to R.C. 3105.64;
10. Any other criminal, civil, or administrative time limitation under the Revised Code.

The act also specifies that the above-described provisions apply retroactively to the March 9, 2020, date of the emergency declared by Executive Order 2020-01D, and expire on the date the period of emergency ends or July 30, 2020, whichever is sooner.<sup>104</sup>

The Governor vetoed a provision that would have required any other “deadline” under the Revised Code that is set to expire between March 9, 2020, and July 30, 2020, to be tolled. The Governor vetoed the words “or deadline.”<sup>105</sup>

## Public meetings and hearings

The act authorizes a public body, during the state of emergency declared by Executive Order 2020-01D, but not beyond December 1, 2020, to hold and attend meetings and hearings by means of teleconference, video conference, or any other similar electronic technology. For this purpose, “public body” and “meeting” have the meanings defined in Ohio Open Meetings Law. “Hearing” includes an administrative hearing, hearing held in compliance with the Administrative Procedure Act, or any other hearing at which a person may present written or oral testimony on a matter before a public body.

If a public body holds a meeting or hearing under this authority, all of the following apply:

1. Any resolution, rule, or formal action of any kind has the same effect as if it had occurred during an open meeting or hearing of the public body;
2. Notwithstanding the Ohio Open Meetings Law, members of a public body who attend meetings or hearings by means of teleconference, video conference, or any other similar electronic technology, must be considered present as if in person at the meeting or hearing, must be permitted to vote, and must be counted in determining whether a quorum is present;
3. Public bodies must provide notice of the meetings or hearings to the public, the media that have requested notification, and the parties required to be notified of a hearing, at least 24 hours in advance, by reasonable methods by which any person may determine the time, location, and the manner by which the meeting or hearing will be conducted, except in an

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<sup>104</sup> Section 22(B) and (C).

<sup>105</sup> The Governor’s veto message and the marked page are posted online at: <https://www.legislature.ohio.gov/legislation/legislation-documents?id=GA133-HB-197>.

emergency requiring immediate official action. In the event of an emergency, the public body must immediately notify the news media that have requested notification of a meeting, and any parties required to be notified of a hearing, of the time, place, and purpose of the meeting or hearing.

4. The public body must provide the public access to a meeting held under this provision, or to any hearing that is held under this provision if the public would otherwise be entitled to attend. The access must be commensurate with the method in which the meeting or hearing is being conducted. The act lists examples such as live-streaming on the internet, local radio, television, cable, or public access channels, call-in information for a teleconference, or any other similar electronic technology. The public body must ensure that the public can observe and hear each member's discussions and deliberations, whether the member is participating in person or electronically.

The act states that the authority applies notwithstanding any conflicting provision of the Revised Code, and specifies that nothing in the act may be construed to negate any provision of Open Meetings Law,<sup>106</sup> Administrative Procedure Act,<sup>107</sup> or other provision of the Revised Code that does not conflict with this provision.<sup>108</sup>

Generally, under continuing law, the Open Meetings Law requires public bodies to take official action and conduct all deliberations upon official business only in open meetings where the public may attend and observe. Public bodies must provide advance notice to the public indicating when and where each meeting will take place and, in the case of special meetings, the specific topics that the public body will discuss.

## **Auditor of State**

Ohio law generally requires the Auditor of State to conduct a financial audit of each public office at least once every two years (an "audit period").<sup>109</sup> As an exception, public offices meeting specific criteria may choose to have agreed-upon procedures audits performed, as an alternative to a financial audit conducted in accordance with standards. The act modifies this in two ways, but only with respect to an audit period during which the emergency declared by Executive Order 2020-01D is effective.

First, under current law, a public office may undergo only two consecutive agreed-upon procedures audits; then the Auditor must conduct a standard financial audit. In other words, the Auditor must conduct a standard financial audit of a public office in one of every three audit periods and may conduct agreed-upon procedures audits in the other two audit periods. The act authorizes the Auditor to waive this requirement on a case-by-case basis.

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<sup>106</sup> R.C. 121.22, not in the act.

<sup>107</sup> R.C. Chapter 119.

<sup>108</sup> Section 12.

<sup>109</sup> R.C. 117.11, not in the act.



Second, only public offices that satisfy specific criteria may choose to have agreed-upon procedures audits performed. Currently, the Auditor may waive *one* criterion on a case-by-case basis. The act allows the Auditor to instead waive *any number* of criteria on a case-by-case basis.<sup>110</sup>

## Retirant reemployment penalty

Under continuing law, a person who has received a retirement allowance from a state retirement system for less than two months must forfeit the retirement allowance for any of the two-month period during which the person is reemployed by a public employer. The act waives the required forfeiture for a retirant who is reemployed by any of the following public employers during the period of the emergency declared by the Governor, but not beyond December 1, 2020:<sup>111</sup>

- The Department of Rehabilitation and Correction;
- The Department of Youth Services;
- The Department of Mental Health and Addiction Services;
- The Department of Veterans Services;
- The Department of Developmental Disabilities.

## Retirement board elections

The law governing the five state retirement systems prescribes the procedures and timeframes for the election of members to the systems' governing boards.<sup>112</sup> The act authorizes the boards to delay until December 1, 2020, an election for board members scheduled to take place during the period of the emergency declared by the Governor, but before December 1, 2020.

The act includes a specific provision addressing the Ohio Police and Fire Pension Fund (OP&F). If the OP&F Board delays an election, it also must adjust the dates for nominating petitions to be filed and ballots to be returned to the Board to reflect the new election date.

Any delayed election must be conducted as provided for under the permanent law. The elected members of a board that chooses to delay an election whose terms expire after the normal election date must continue in office until their successors are elected and take office.<sup>113</sup>

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<sup>110</sup> Section 26. See also R.C. 117.114, not in the act.

<sup>111</sup> Section 13, by reference to R.C. 145.38, not in the act.

<sup>112</sup> R.C. 145.05, 742.04, 3307.06, 3309.06, and 5505.041, not in the act.

<sup>113</sup> Section 23, by reference to R.C. 145.058, 742.04, 3307.075, 3309.075, and 5505.047, none in the act.

## Various fees and requirements

The act allows the following governmental entities, during the period of the emergency declared by Executive Order 2020-01D, but not beyond December 1, 2020, to do the following:

1. Ohio Public Works Commission – to automatically extend project schedules and waive penalties and late fees owed to it from outstanding loans. (The Commission cannot extend a schedule for a project if federal law does not allow the extension.)

2. Ohio Water Development Authority – to waive penalties and late fees owed to it from outstanding loans; and

3. Ohio Environmental Protection Agency – to waive penalties or late fees owed to it from outstanding loans or permits, and to suspend reporting requirements for water research recovery facilities or solid waste facilities.<sup>114</sup>

## County recorder bond liability

The act suspends law regarding the liability of a county recorder who fails to perform certain duties of the office, until August 30, 2020. For instance, under the law, a county recorder must record a document by the morning of the day after the document is filed for recording, or face potential liability. By suspending this law, more leniency is provided to county recorders until that date.<sup>115</sup>

## Certain local offices to remain open

During the period of the emergency declared by Executive Order 2020-01D, the act requires certain local offices to remain open and operational to an extent. 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 must remain open and operational in order to allow land professionals physical access to the office as necessary to search records that are not otherwise available online, digitally, or by some other means, so long as all necessary public land records are available. And, all essential services to effectuate a property transfer must remain open and available with the offices. In addition, the title office of a clerk of court of common pleas must remain open and operational to allow land professionals and automobile, watercraft, outboard motor, all-terrain vehicle, and mobile home dealers access to the office as necessary to process titles that are not otherwise available online.

An office may provide the required access during limited hours and for a limited duration, and may subject searchers to requirements and restrictions in the interest of public health. And an office may allow other people (than those listed above) physical access to the office at the discretion of the office during such limited hours, for such limited duration, and subject to such requirements and restrictions in the interest of public health as the office determines.

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<sup>114</sup> Section 27.

<sup>115</sup> Section 20. See also R.C. 317.33, not in the act.

The act specifies that these provisions apply notwithstanding an order or directive from the court of common pleas or the board of county commissioners.<sup>116</sup>

## **Vacancies filled by county central committees**

The act provides a county central committee of a political party an additional 45 days to fill a vacancy from the date the vacancy was required to be filled, during the period of the emergency declared by Executive Order 2020-01D. Under continuing law, each major political party must elect members to county central committees. Certain office vacancies must be filled, according to prescribed timelines, by the county central committee of the political party that nominated the last occupant for that office for the current term.<sup>117</sup>

## **Budget Stabilization Fund transfer**

The act authorizes the Director of Budget and Management to transfer cash in FY 2020 from the Budget Stabilization Fund to the GRF to ensure the FY 2020 GRF budget is balanced. The transfer requires the approval of at least two Controlling Board members from each chamber of the General Assembly.<sup>118</sup>

## **Capital appropriation**

The act appropriates \$20 million, for the capital biennium ending June 30, 2020, to Administrative Building Fund capital appropriation item C10050, State Agency Capital Projects, in the budget of the Department of Administrative Services (DAS). It authorizes the Director of Budget and Management (OBM), at the DAS Director's request, to transfer up to that amount from the Building Improvement Fund to the Administrative Building Fund. The DAS Director must request the OBM Director transfer an equal amount of cash back, to repay the Building Improvement Fund, when there is a sufficient cash balance in the Administrative Building Fund to support the repayment.<sup>119</sup>

## **Incorporation of Internal Revenue Code changes**

The act incorporates into Ohio tax law recent changes to the Internal Revenue Code (IRC) or other federal law taking effect after March 30, 2018.<sup>120</sup>

Several changes to federal law are incorporated, including several changes made by the "Further Consolidated Appropriations Act, 2020," H.R. 1865 of the 116<sup>th</sup> Congress, in December of 2019.<sup>121</sup> Several of these changes directly affect the tax base of many Ohio income tax

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<sup>116</sup> Section 21.

<sup>117</sup> Section 24. See also R.C. 3517.02 and 3517.03, not in the act.

<sup>118</sup> Section 36.

<sup>119</sup> Sections 34 and 35.

<sup>120</sup> R.C. 5701.11(A).

<sup>121</sup> This Congressional act was amended to include both the "Setting Every Community Up for Retirement Enhancement Act of 2019" and the "Taxpayer Certainty and Disaster Tax Relief Act of 2019" – acts in which most of the federal tax provisions described in this final analysis originated.

taxpayers by increasing or decreasing federal adjusted gross income (FAGI), the starting number for determining a taxpayer's Ohio taxable income.<sup>122</sup> The incorporated changes also affect the tax base of school districts levying an income tax on the basis of FAGI.<sup>123</sup>

The following is a list of some of the most significant of the federal law changes affecting Ohio law. Many of these changes will first apply to taxable years beginning January 1, 2020, or thereafter, but some apply beginning in 2019 or, retrospectively, in 2018:

- The extension of the deduction for qualified tuition and related expenses (applies to taxable years beginning in or after 2018).
- The extension of an exclusion from gross income of the discharge of indebtedness on a qualified principal residence (taxable years beginning in or after 2018).
- An increase in the age of required beginning date for required minimum distributions from tax-advantaged "qualified" retirement plans, e.g., IRA and 401(k) retirement plans, from 70½ to 72 (taxable years beginning in or after 2020).
- A requirement for a nonspouse beneficiary of a qualified retirement plan to withdraw all money from an inherited account within ten years (taxable years beginning in or after 2020).
- The allowance of penalty-free distributions from qualified retirement plans for births and adoptions (taxable years beginning in or after 2020).
- An expansion of section 529 education plans to allow distributions for expenses associated with apprenticeship programs and up to \$10,000 in student loan repayments (taxable years beginning in or after 2019).

### **Reason for incorporation**

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.<sup>124</sup> The incorporation applies to only general, undated references to the IRC or other federal laws, and does not apply to references that specify a date.

If federal tax law amendments are not incorporated, an affected taxpayer would have to adjust the taxpayer's federal adjusted gross income or taxable income, either by adding or subtracting the relevant amounts, in order to compute the taxpayer's Ohio tax liability.

### **Alternative tax law election**

The act also revises Ohio tax law with respect to an election available to taxpayers whenever federal amendments become incorporated. Prior law authorized a taxpayer whose

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<sup>122</sup> R.C. 5747.01(A), not in the act.

<sup>123</sup> R.C. 5748.01(E), not in the act.

<sup>124</sup> See *State of Ohio v. Gill*, 63 Ohio St.3d 53 (1992).

taxable year ended after March 30, 2017, and before March 30, 2018, to irrevocably elect to apply to the taxpayer's state tax calculation the federal tax laws that applied to that taxable year. (The two March dates were the dates of the two most recent incorporations occurring prior to the act.) The election was available to taxpayers who were subject to the personal income tax and to electric and telephone companies that are subject to municipal income taxes.

The act allows this election to be made for a taxpayer's taxable year ending after March 30, 2018, but before March 27, 2020 (the act's effective date). The act retains a provision specifying that similar elections made under prior versions of the law remain effective for the taxable years to which the previous elections applied.<sup>125</sup>

### **Sales and use tax exemption: incontinence products**

The act narrows a sales and use tax exemption recently enacted in S.B. 26 of the 133<sup>rd</sup> General Assembly for sales of prescription diapers or protective incontinence underpads for the benefit of a Medicaid recipient to include only those products that are sold by a Medicaid provider that has entered into a valid provider agreement with the state.<sup>126</sup> (No provider may participate in the state's Medicaid program without first entering into a provider agreement with the state.)

The change applies beginning in April 2020.<sup>127</sup>

### **Tax law corrections**

The act makes many technical corrections to tax-related statutes to address obsolete provisions, typographical or syntactical errors, incorrect cross-references, organization, and effective dates. Some of the act's tax-related changes address more substantive issues.

#### **Substantive issues**

The act makes a few changes to statutes to remedy apparent errors or oversights from previous legislation. The changes could have substantive effects to the extent that prior law was construed strictly as it was written.

R.C. Section	Explanation
R.C. 323.154	Homestead exemption: The deadline for applying for the homestead exemption recently was changed from early June to December 31, but this section still required new applicants to be notified of whether they qualified in October. The act changes the notification deadline to 30 days after the application is approved or denied. It also changes the deadline for an applicant to appeal the decision to 60 days after being notified.

<sup>125</sup> R.C. 5701.11(B).

<sup>126</sup> R.C. 5739.02(B)(56).

<sup>127</sup> Section 6.

R.C. Section	Explanation
R.C. 718.01(PP)	Municipal income tax assessments: Continuing law distinguishes the kinds of actions or notices that are or are not considered to be a formal assessment for an alleged municipal income tax deficiency. (Issuance of an assessment invokes rights, duties, and appeal deadlines.) The act supplies an apparently omitted word, “not,” to clarify that correspondence that does not meet the definition of what constitutes an assessment is not an assessment.
R.C. 5721.39(D)	Delinquent property tax certificate interest period: The interest accrual period for a tax certificate bought at public auction is limited to three years, although the holding period is up to six years; by comparison, the interest period for a certificate bought in a private sale is six years, equal to the maximum holding period. The mismatch between the interest period and holding period for auctioned certificates appears to have resulted from a 2008 conference committee amendment extending the holding period but not conforming the interest period (H.B. 562 of 127 <sup>th</sup> General Assembly).
R.C. 5743.05	Cigarette tax refunds: When a taxpayer claims a refund of any state tax other than the cigarette excise tax, and the Department of Taxation determines that the amount to be refunded is at least as much as (“not less than”) the refund amount the taxpayer claimed, the Department pays the amount the Department determined. Under the prior wording of the cigarette excise tax statute, there was no such directive for when the Department’s calculated refund was not less than the amount the taxpayer claimed; the statute contemplated only instances when the calculated refund was less than the taxpayer’s claimed refund because of an apparently missing “not” in the appropriate phrase. The act corrects this by supplying the apparently missing “not.”

### Obsolete language

The act removes language that is no longer operative because it refers to a previously repealed provision or the circumstances under which it would operate can no longer exist, as indicated in the following table.

R.C. Section	Explanation
R.C. 131.45	Referred to a state sales tax dedicated to school funding that was never levied; it failed as a ballot issue in 1998.

R.C. Section	Explanation
R.C. 133.06, 5705.29(F) <sup>128</sup>	Referred to former R.C. 133.301, which was repealed in 2002 in the wake of <i>DeRolph</i> litigation. The repealed section authorized short-term borrowing by school districts for operating expenses; it was ruled unconstitutional.
R.C. 133.18, 5705.03, 5705.195	Referred to how assessment percentages for tangible personal property used in business are to be used to compute the tax rate for property tax levies. That class of property has not been taxable since 2008.
R.C. 319.301(E)	Included phase-in language for the tax reduction factor 20-mill floor and 2-mill floor (for school districts and JVSDs, respectively) that applied only in the first several years the floors were in effect.
R.C. 5705.211 <sup>129</sup>	Authorized a school property tax levy that is premised on a former school foundation funding formula (circa 2006) that no longer is in effect.
R.C. 5727.87, 5751.23 <sup>130</sup>	Compensated counties for reductions in property tax collection fee revenue resulting from (1) legislated reductions in public utility tangible personal property assessment rates and (2) the repeal of taxes on business TPP. (The fees are a percentage of tax collections.) This compensation ended in 2011 and 2015, respectively.
R.C. 5733.40	Section is amended to add reference to ‘C’ corporations as a class of investor in a pass-through entity for which the entity does not have to withhold tax (because there is no longer any underlying tax liability for a C corporation since the repeal of the corporation franchise tax). The act substitutes this more general reference for the prior, and more particular, reference to financial institutions.
R.C. 5735.06	Referred to a “cents-per-gallon” motor fuel tax rate that is no longer defined or operational.
R.C. 5739.01	Referred to several specific dates on which a service first became subject to the sales tax.

<sup>128</sup> Conforming changes in R.C. 5705.13, 5705.35(A), 5705.36, and 5747.51(E).

<sup>129</sup> Conforming changes in R.C. 319.301(A)(1) and 3317.01.

<sup>130</sup> Conforming change in R.C. 5727.84.

R.C. Section	Explanation
R.C. 5739.02(B)(48) <sup>131</sup>	Authorized a sales and use tax exemption for sales of machinery, equipment, and supplies to certain direct sale businesses; the exemption expired in 2013.
R.C. 5739.021, 5739.028, 5748.09	Referred to February special election date for a county or transit sales tax ballot issue or a school district income tax. February as a special election date was eliminated in 2015 by H.B. 64.
R.C. 5739.02(D), 5739.08, 5739.105, 5747.02(C), 5747.41	Stated that the levy of a state tax did not prevent a local government from levying the same kind of tax. The statement dated to a period when the prevailing judicial doctrine, known as “implied pre-emption,” asserted that the levy of a tax by the state implicitly pre-empted local governments from levying such a tax unless expressly authorized by law. (Doctrine overturned in 1998; R.C. 715.013 enacted in wake of court decision.) In some instances, the statement appeared even when the local tax is expressly authorized by law.
R.C. 5747.01 <sup>132</sup>	Referred to adjustments to income to compute taxable income that are no longer operative, including complex trust distributions to beneficiaries, college costs, federal adbacks for health plan beneficiaries, and a former version of the business income deduction.
R.C. 5747.082	Included phase-in of electronic filing requirement for tax return preparers based on number of returns; phase-in ended in 2013.
R.C. 5733.46, 5747.75 <sup>133</sup>	Authorized a credit for investing in an ethanol production plant; credit expired and could not be claimed after 2015.

## Organization

The act reorganizes the language of the following sections as described below.

R.C. Section	Explanation
R.C. 1545.21	Adds missing paragraph break.

<sup>131</sup> Conforming change in R.C. 5739.03.

<sup>132</sup> Conforming changes in R.C. 5703.94, 5747.011, 5747.012, 5747.013, 5747.11, 5747.231, and 5751.01(E)(7).

<sup>133</sup> Conforming changes in R.C. 122.075, 125.831, 901.13, 4301.20, 5733.98, and 5747.98.



R.C. Section	Explanation
R.C. 5713.30 <sup>134</sup>	Moves text in division (A)(3).
R.C. 5725.98, 5726.98, 5729.98, 5733.98, 5747.98, 5751.98 <sup>135</sup>	In the law listing the order in which tax credits may be claimed against various state taxes, removes divisional references preceding each listed credit. Credits are still arranged in the order that, in general, benefits taxpayers most, so, for example, nonrefundable credits are claimed before refundable credits.
R.C. 5739.08, 5739.09 <sup>136</sup>	Separates county lodging tax authority from township and municipal authority; reorders divisions; moves two existing provisions to new sections, one addressing alternative definitions of “hotel” (5739.091) and one addressing use of revenue (5739.092).
R.C. 5747.02(D)	Removes a duplicative list of income tax credits that a trust may not claim, instead specifying that a trust may claim any credit the trust is otherwise authorized under continuing law to claim. (All of the credits that had appeared on the list could not, by their terms, be claimed by trusts anyway.)
R.C. 5751.01	Moves operating provisions and related sub-definitions to new sections (5751.40, 5751.41, 5751.42) to preserve this section’s purpose of defining terms for the chapter.

## Cross-references

The act corrects erroneous cross-references in tax-related statutes as indicated in the following table.

Cross-references
R.C. 133.01, 133.06, 133.18, 135.142, 3316.03, 3316.06, 5703.54, 5705.213, 5705.29, 5705.35, 5705.36, 5705.49, 5709.85, 5709.93, 5715.36, 5727.33, 5727.80, 5733.055, 5733.40, 5739.011, 5739.02, 5739.034, 5739.21, 5743.33, 5743.65, 5747.061, 5747.51(l), 5747.55, 5751.09

<sup>134</sup> Conforming change in R.C. 929.01.

<sup>135</sup> Conforming change in Section 757.40 of H.B. 166 of the 133<sup>rd</sup> General Assembly.

<sup>136</sup> Conforming changes in R.C. 133.07, 305.31, 307.671, 307.672, 307.674, 307.678, 307.695, 351.01, 351.03, 351.141, 1711.15, 1711.16, 4582.56, and 5739.01(M).

## Typographical errors

The act corrects typographical and syntactical errors in tax-related statutes where one or more words are missing, repeated, misplaced, or misspelled or where there is erroneous punctuation, as indicated in the following table.

### Missing, repeated, or misplaced word or phrase

R.C. 306.322, 323.155, 718.021, 1545.041, 4582.024, 4582.26, 5703.04, 5733.042, 5733.052, 5743.05, 5745.14, 5748.08, 5751.01, 5751.08, 5751.51

### Misspelled word

R.C. 321.20, 5703.211, 5709.61, 5727.11, 5727.83, 5733.05, 5735.026, 5740.02, 5743.08, 5747.52, 5753.11

### Punctuation

R.C. 321.03, 5705.19, 5705.252, 5705.34, 5713.03, 5713.351, 5715.13, 5721.06, 5721.191, 5725.98, 5727.02, 5727.23, 5727.32, 5729.98

## Effective date

The act substitutes a date certain for references to another act's effective date in various tax-related statutes, as shown below. The existing references signal when an act's amendment to a section is to take effect in instances when that date is not known before the other act is passed and signed into law.

### Effective date

R.C. 5701.08, 5701.12, 5703.95, 5705.315, 5709.201, 5709.43, 5709.48, 5709.53, 5709.80, 5726.50, 5739.028, 5747.058, 5747.07, 5751.50

## Severability clause

Section 39 stipulates that the act's items of law, and their applications, are severable. If any item of law, or any application of an item, is held invalid, the invalidity does not affect the other items and their applications that can be given effect without the invalid one. (A clause of this nature usually is not necessary in Ohio legislation, because a general provision of law, R.C. 1.50, applies a severability principle to the Revised Code. Most Ohio legislation addresses statutes codified in the Revised Code. In this act, however, the COVID-19 measures are of a temporary nature and are not codified in the Revised Code. Therefore, R.C. 1.50 would not apply to them.)

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## COMMENT

Municipal corporations have broad home rule authority to operate public utilities under the Ohio Constitution (Article XVIII, Sections 4 and 6). A public utility includes a public water system. It is unclear if the Director of Environmental Protection's authority under the act to issue orders to a public water system operated by a municipal corporation conflicts with these constitutional provisions.

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## HISTORY

Action	Date
Introduced	04-11-19
Reported, H. Ways & Means	10-23-19
Passed House (92-0)	10-30-19
Reported, S. Ways & Means	02-26-20
Passed Senate (29-0)	03-25-20
House concurred in Senate amendments (92-0)	03-25-20

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