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H.B. 404
133rd General Assembly

Final Analysis

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Version: As Passed by the General Assembly

Primary Sponsors: Reps. Manchester and Sweeney

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SUMMARY

Local CARES Act revenue distribution

- Requires that unspent federal CARES Act funds paid to local subdivisions be paid to the state treasury if they cannot be redistributed.

Temporary extensions

- Extends, until July 1, 2021, temporary law that:
 - Authorizes the Director of Agriculture to exempt a school or entity from regulation as a food processing establishment for federal summer food programs;
 - Authorizes public bodies to hold meetings virtually; and
 - Waives the penalty for a retirant who becomes reemployed by certain public employers.

Deadline and license extensions

- Prolongs the temporary extension of state agency compliance with deadlines, so that agencies have until July 1, 2021, to comply with deadlines that fall between March 9, 2020, and April 1, 2021.
- Prolongs the temporary extension of licensee compliance with deadlines to maintain their licenses, so that licensees have until July 1, 2021, to comply with deadlines that fall between March 9, 2020, and April 1, 2021.
- Prolongs the temporary extension of license validity so that licenses otherwise expiring between March 9, 2020, and April 1, 2021, remain valid until July 1, 2021.

Education provisions

Diagnostic assessments

- Specifies that schools cannot be penalized for failing to administer specified assessments in the fall of 2020 to certain students who could not come to school.

Kindergarten and first grade health screenings

- Specifies that schools cannot be penalized for failing to conduct health screenings prior to November 1, 2020, for certain students in kindergarten or first grade who could not come to school.
- Requires a district or school to conduct health screenings for kindergartners and first graders who did not receive them for the 2020-2021 school year, but specifies that a school may forego screenings for certain students until they can be safely conducted.

Community school transportation

- Permits a community school, by December 31, 2020, to accept responsibility to provide or arrange transportation of its students for the 2020-2021 school year.
- Specifies that a community school that accepts responsibility to provide or arrange for transportation must receive state transportation funding for the entire school year.

School employee evaluations

- Extends to the 2021-2022 school year the prohibition against using certain academic growth data to measure student learning attributable to a teacher, principal, or school counselor while conducting performance evaluations.
- Extends the authorization for a school district to choose to complete a principal's performance evaluation for the 2020-2021 school year without using a student growth measure as part of the evaluation.
- For the 2020-2021 school year, permits a school district board of education to elect not to complete a performance evaluation of a district employee if the district or board determines that it is impossible or impracticable to do so.
- Extends the authority for a school district to continue evaluating teachers on two-year or three-year evaluation cycles, even if the district completes an evaluation for those teachers in the 2020-2021 school year without using a student growth measure.
- Specifies that a teacher who did not have a student growth measure as part of an evaluation for the 2020-2021 school year must remain at the same point in the evaluation cycle, and retain the same evaluation rating, for the 2021-2022 school year as for 2019-2020.

College Credit Plus

- Extends to the 2020-2021 and 2021-2022 school years the Chancellor of Higher Education's temporary authority to extend, waive, or modify requirements of the College Credit Plus Program.

DETAILED ANALYSIS

Local CARES Act revenue distribution

The act modifies the procedure for redistributing unspent federal CARES Act funds paid to local subdivisions. Prior law did not specify what should happen to the funds if no subdivisions are eligible for a redistribution or if only the county is eligible. The act specifies that any funds that cannot be redistributed must be paid to the state treasury.

Federal CARES Act

Among other provisions, the CARES Act directs federal money to states and more populous local governments to fund "necessary expenditures incurred due to the public health emergency" connected with the COVID-19 pandemic, provided those expenses are incurred between March 1 and December 30, 2020, and are not accounted for in the state's or subdivision's current budget.¹

The state received approximately \$4.53 billion in CARES Act funding.² Local governments with a population of 500,000 or more may receive a direct payment from the federal government out of their state's allocation. Ohio has six of these subdivisions – the City of Columbus, and Cuyahoga, Franklin, Hamilton, Montgomery, and Summit counties – that received directly \$778 million altogether, accounting for 17% of Ohio's total share.³ Thus, the state treasury received approximately \$3.75 billion of the state's total allocation. Of that amount, the General Assembly and Controlling Board have appropriated \$1.175 billion to counties, municipalities, and townships that did not receive a direct payment.

This money has been distributed to eligible subdivisions based upon either the subdivision's population or the proportionate allocation it received in 2019 from the Local Government Fund (LGF).⁴ In order to receive a distribution, each subdivision was required to adopt a resolution or ordinance affirming that the money will only be used for the purposes prescribed in the CARES Act.

¹ Section 5001 of the "Coronavirus Aid, Relief, and Economic Security Act," as codified in 42 United States Code 801.

² Grant A. Driessen, The Coronavirus Relief Fund (CARES Act, Title V): Background and State and Local Allocations, Congressional Research Service, p. 4 (August 25, 2020), *available at* <https://crsreports.congress.gov/product/pdf/R/R46298>.

³ CRS CARES Act Report, p. 7.

⁴ Section 27 of H.B. 481 and Section 4 of H.B. 614 of the 133rd General Assembly.

Redistribution of unused funds

Continuing law requires subdivisions to return to the county treasury any CARES Act funding that remains unencumbered as of November 20, 2020. The county auditor must redistribute the returned funds no later than November 25, 2020. The returned funds are redistributed to subdivisions that (1) did not receive a direct federal distribution of CARES Act funds, (2) spent 100% of all previous CARES Act distributions, and (3) adopted a resolution or ordinance pertaining to the use of CARES Act funds, as described above.

Prior law did not specify what should happen to the unused funds if no subdivisions qualified for a payment or if only the county qualified. The act provides that, in either case, the funds that cannot be redistributed must be paid to the state treasury.⁵

Temporary extensions

The act extends until July 1, 2021, temporary provisions of H.B. 197 of the 133rd General Assembly that:

- Authorize the Director of Agriculture to exempt schools or entities from regulation as a food processing establishment for summer food programs;
- Authorize public bodies to hold meetings and hearings by teleconference, video conference, or other similar electronic technology;
- Waive the penalty for a retired state retirement system member who is reemployed by certain public employers.

Summer food program regulation

The act extends, from December 1, 2020, to July 1, 2021, the termination of temporary authority for the Director of Agriculture to exempt a school or entity from regulation as a food processing establishment if it:

1. Has been issued a food service operation license;
2. With respect to a school, is transporting food only for purposes of the Seamless Summer Option Program or the Summer Food Service Program administered by the U.S.D.A.;
3. With respect to any other entity, is transporting food only for purposes of the Summer Food Service Program.

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

⁵ Section 27 of H.B. 481 of the 133rd General Assembly, as amended by H.B. 614 of the 133rd General Assembly and Section 7 of this act; Section 9 of the act.

location or for sale at wholesale. Confectioneries, canneries, and bottlers are examples of food processing facilities.⁶

Open meetings during COVID-19 emergency

The act extends until July 1, 2021, the temporary authorization for a public body to hold and attend meetings and hearings by means of teleconference, video conference, or any other similar electronic technology. The authority originally was not to extend beyond December 1, 2020.⁷

Reemployed retirant penalty waiver

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 extends, from December 1, 2020, until July 1, 2021, the temporary penalty waiver for a retired state retirement system member who has received a retirement allowance for less than two months and is reemployed by any of the following during that two-month period:

- 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.⁸

Deadline and license extensions

State agency deadlines

The act prolongs the temporary extension of state agency compliance with deadlines, so that for deadlines that otherwise fall between March 9, 2020, and April 1, 2021, the agency now has until July 1, 2021, to comply. The original extension applied until December 1, 2020. State agencies to which the extension applies include every organized body, office, or agency established by state law for the exercise of any function of state government. JobsOhio, the state retirement boards, and state institutions of higher education are also included.⁹

⁶ Section 10 of H.B. 197 of the 133rd General Assembly, amended by Section 1 of the act. See R.C. 3715.021, 3717.01, and 3717.41, not in the act.

⁷ Section 12 of H.B. 197 of the 133rd General Assembly, amended by Section 1 of the act.

⁸ Section 13 of H.B. 197 of the 133rd General Assembly, amended by Section 1 of the act.

⁹ Section 11(B) of H.B. 197 of the 133rd General Assembly, amended by Section 1 of the act.

License extensions

The act prolongs the temporary extension of deadlines with which a licensee must comply to maintain a valid license, so that if a deadline falls between March 9, 2020, and April 1, 2021, the licensee now has until July 1, 2021, to comply. The original extension applied until December 1, 2020.¹⁰

It also prolongs the time that a license otherwise expiring pursuant to law remains valid, so that a license otherwise expiring between March 9, 2020, and April 1, 2021, remains valid until July 1, 2021, unless revoked, suspended, or otherwise subject to discipline or limitation for reasons other than a licensee's delay in taking action to maintain its validity. The original extension applied until December 1, 2020. A "license" to which the extensions apply is 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.¹¹

However, this extension does not apply to concealed handgun licenses because prior legislation, H.B. 614 of the 133rd General Assembly, already extended their validity. Accordingly, a standard concealed handgun license scheduled to expire between March 9, 2020, and June 30, 2021, remains valid until the later of 90 days after its expiration date or June 30, 2021. That is, standard concealed handgun licenses scheduled to expire before April 1, 2021, remain valid until June 30, 2021. The licenses scheduled to expire between April 1 and June 30, 2021, remain valid for 90 days after their scheduled expiration date.¹²

Diagnostic assessments in schools

The act specifies that school districts, community schools, STEM schools, chartered nonpublic schools, the State School for the Deaf, and the State School for the Blind cannot be penalized for failing to administer certain assessments in the fall of 2020 to students who could not come to school. The assessments are the kindergarten readiness assessment, any other diagnostic assessments, and the third-grade English language arts achievement assessment. The act designates the affected students as "qualifying students." Specifically, a student is a "qualifying student" if:

1. The student is being quarantined;
2. The student, or a member of the student's family, is medically compromised and the student cannot attend school, or another location outside the home, for the testing;
3. The student resides in an area that is subject to an order issued by the Governor, the Ohio Department of Health, or a local board of health that requires all persons in that area to remain in their residences; or

¹⁰ Section 11(C)(1) of H.B. 197 of the 133rd General Assembly, amended by Section 1 of the act.

¹¹ Section 11(C)(2) of H.B. 197 of the 133rd General Assembly, amended by Section 1 of the act.

¹² Section 11(E) of H.B. 197 of the 133rd General Assembly, amended by H.B. 614.

4. The student is receiving instruction primarily through a remote learning model up through the deadline for the assessments and they cannot be administered remotely.

The act also states that a district or school may not be prohibited from administering any of these assessments if it elects to do so.¹³

Kindergarten and first grade health screenings

The act specifies that a school district, community school, or STEM school cannot be penalized for failing to conduct health screenings for a kindergarten or first-grade student prior to November 1, 2020, as otherwise required by law, if that student was a “qualifying student” who could not come to school (see the description above) prior to that date. Those screenings are for hearing, vision, speech and communications, health or medical problems, and for any developmental disorders.¹⁴

The act expressly requires a district or school to conduct health screenings for students who did not receive them prior to November 22, 2020 (the act’s effective date). However, a school may forego the screenings until they can be safely conducted for a particular student if that student is a qualifying student.

The parent, guardian, or custodian of a kindergarten or first grade student who has not received a prescribed health screening for the 2020-2021 school year may request that the district or school conduct it. If a health screening is requested, the district or school must conduct it.¹⁵

Community school transportation

The act permits a community school to accept responsibility to provide or arrange for transportation of its students in accordance with continuing law for the 2020-2021 school year by December 31, 2020. Ordinarily, a community school would have had to do so by January 31, 2020.

A community school that accepts responsibility to provide or arrange transportation under the act must receive state transportation funding for the entire school year, in accordance with continuing law.¹⁶

School employee evaluations

Prohibition on use of student academic growth data

The act extends to the 2021-2022 school year a prohibition enacted in H.B. 164 of the 133rd General Assembly against using student academic growth data to conduct employee performance evaluations. This prohibition expressly applies to value-added data, other high-

¹³ Sections 10 and 11(A) of the act.

¹⁴ See R.C. 3313.673, not in the act.

¹⁵ Section 11 of the act.

¹⁶ Section 14 of the act. See R.C. 3314.091, not in the act.

quality student data, any other metric used to evaluate positive student outcomes, or any other academic growth data to measure student learning attributable to a teacher, principal, or school counselor.¹⁷

One component of the State Board of Education's framework for teacher evaluations requires that at least two measures of "high-quality" (as defined by the Board) student data are used to provide evidence of student learning directly attributable to the teacher. 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.¹⁸

Continuing law also requires the State Board to develop a framework for evaluating school counselors. One component of this framework requires a metric to be used to evaluate "positive student outcomes" that can be attributed directly to the counselor.¹⁹

Authority not to evaluate for 2020-2021

For the 2020-2021 school year, the act authorizes a school district board of education to elect not to complete a performance evaluation of a district employee, including a teacher, school counselor, administrator, or superintendent, if the district or board determines it impossible or impracticable to do so. Further, a district board may collaborate with any bargaining organization representing its employees in determining whether to complete evaluations for 2020-2021.

For purposes of determining re-employment under continuing law, if a district board elects not to evaluate an employee for the 2020-2021 school year, that employee must be considered not to have had evaluation procedures complied with. As a result, it appears that employee will be reemployed under an extended limited contract for a term not to exceed one year at the same salary plus any increment provided by the teacher salary schedule.²⁰

Other evaluation provisions

The act extends the authority enacted in S.B. 216 of the 132nd General Assembly for a school district that did not participate in the teacher evaluation pilot established for the 2019-2020 school year to continue evaluating teachers on two-year or three-year evaluation cycles, even if the district completes an evaluation for those teachers in the 2020-2021 school year without using a student growth measure.

Additionally, it specifies that a teacher who did not have a student growth measure as part of an evaluation for the 2020-2021 school year must remain at the same point in the

¹⁷ Sections 10 and 11 of H.B. 164 of the 133rd General Assembly, amended in Section 3 of the act; Section 12 of the act. See also Section 17(E) of H.B. 197 of the 133rd General Assembly, as subsequently amended.

¹⁸ R.C. 3302.021 and 3319.112, neither in the act.

¹⁹ R.C. 3319.113, not in the act.

²⁰ Section 13 of the act. See R.C. 3319.11, not in the act.

teacher's evaluation cycle, and retain the same evaluation rating, for the 2021-2022 school year as for 2019-2020 (in addition to 2020-2021 under current law).²¹

College Credit Plus

The act extends to the 2020-2021 and 2021-2022 school years the Chancellor of Higher Education's temporary authority to extend, waive, or modify requirements of the College Credit Plus Program.²² H.B. 197 of the 133rd General Assembly originally granted this authority for 2019-2020 only.

HISTORY

Action	Date
Introduced	11-12-19
Reported, H. Higher Education	05-13-20
Passed House (88-6)	05-13-20
Reported, S. Gov't Oversight & Reform	11-18-20
Passed Senate (32-0)	11-18-20
House concurred in Senate amendments (85-5)	11-19-20

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²¹ Section 7 of S.B. 216 of the 132nd General Assembly, amended in Section 5 of the act.

²² Section 17(J) of H.B. 197 of the 133rd General Assembly, amended in Section 1 of the act.