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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 169  
134<sup>th</sup> General Assembly

## Fiscal Note & Local Impact Statement

*Revised*

[Click here for H.B. 169's Bill Analysis](#)

**Version:** As Enacted<sup>1</sup>

**Primary Sponsors:** Reps. Cutrona and Swearingen

**Local Impact Statement Procedure Required:** No

Shannon Pleiman, Senior Budget Analyst, and other LBO staff

### Summary of Appropriations

The bill appropriates a total of approximately \$4.19 billion in additional funding provided to Ohio for FY 2022 under various federal acts. This funding would go to seven state agencies. Of those seven, the Department of Education receives approximately \$2.49 billion, or about 59.3% of the appropriations under the bill. This is followed by the Department of Job and Family Services (\$687.0 million), Department of Medicaid (\$529.0 million), Department of Public Safety (\$250.0 million), Department of Developmental Disabilities (\$142.0 million), Department of Health (\$91.1 million), and Department of Higher Education (\$4.0 million). If all the funding is not distributed in FY 2022, the bill allows for any remaining amount to be carried forward for use in FY 2023. These appropriations are detailed by agency, fund, and line item in the table below, in the order in which they appear in the bill.

Table 1. H.B. 169 Appropriations by Agency, FY 2022

Department of Developmental Disabilities			
Fund	ALI	ALI Name	Amount
3A40	653654	Medicaid Services	\$142,000,000
<i>Subtotal Federal Fund Group</i>			<i>\$142,000,000</i>
<b>Department of Developmental Disabilities Total</b>			<b>\$142,000,000</b>

<sup>1</sup> Reflects Governor's veto.

Table 1. H.B. 169 Appropriations by Agency, FY 2022

Department of Education			
Fund	ALI	ALI Name	Amount
3HQ0	200627	Governor Emergency Education Relief – EDU	\$33,803,196
3HQ0	200651	Emergency Assistance to Non-Public Schools	\$155,190,488
3HS0	200640	Federal Coronavirus School Relief	\$2,288,901,788
3HZ0	200641	ARP – Homeless Children and Youth	\$7,327,165
<i>Subtotal Federal Fund Group</i>			<i>\$2,485,222,637</i>
<b>Department of Education Total</b>			<b>\$2,485,222,637</b>
Department of Health			
Fund	ALI	ALI Name	Amount
3GN0	440683	ARPA – Crisis Response Workforce	\$32,000,000
3HP0	440673	Public Health Emergency Response	\$8,476,274
3HP0	440684	ARPA – Disease Intervention Workforce	\$12,643,140
3HP0	440685	ELC Nursing Home & Long-Term Care Strike Teams	\$10,958,150
3HP0	440686	ELC Strengthening HAI/AR Grant	\$5,676,540
3HP0	440688	Detect and Mitigate COVID-19 – Confinement Facilities	\$13,090,000
3HP0	440689	SHIP – Testing and Mitigation Grant	\$8,268,032
<i>Subtotal Federal Fund Group</i>			<i>\$91,112,136</i>
<b>Department of Health Total</b>			<b>\$91,112,136</b>
Department of Job and Family Services			
Fund	ALI	ALI Name	Amount
3H70	600617	Child Care Federal	\$28,000,000
3H70	600661	Child Care ARPA Supplement	\$639,000,000
3V40	600678	Federal Unemployment Programs	\$20,000,000
<i>Subtotal Federal Fund Group</i>			<i>\$687,000,000</i>
<b>Department of Job and Family Services Total</b>			<b>\$687,000,000</b>

<b>Table 1. H.B. 169 Appropriations by Agency, FY 2022</b>			
<b>Department of Public Safety</b>			
<b>Fund</b>	<b>ALI</b>	<b>ALI Name</b>	<b>Amount</b>
5CV3	768622	Community Violence Intervention – First Responder Program	\$250,000,000
<i>Subtotal Dedicated Purpose Fund Group</i>			<i>\$250,000,000</i>
<b>Department of Public Safety Total</b>			<b>\$250,000,000</b>
<b>Department of Higher Education</b>			
<b>Fund</b>	<b>ALI</b>	<b>ALI Name</b>	<b>Amount</b>
3HQ0	235509	GEER – Higher Education Initiatives	\$4,000,000
<i>Subtotal Federal Fund Group</i>			<i>\$4,000,000</i>
<b>Department of Higher Education Total</b>			<b>\$4,000,000</b>
<b>Department of Medicaid</b>			
<b>Fund</b>	<b>ALI</b>	<b>ALI Name</b>	<b>Amount</b>
5HC8	651698	MCD Home and Community Based Services	\$158,700,000
<i>Subtotal Dedicated Purpose Fund Group</i>			<i>\$158,700,000</i>
3HC8	651699	MCD Home and Community Based Services – Federal	\$370,300,000
<i>Subtotal Federal Fund Group</i>			<i>\$370,300,000</i>
<b>Department of Medicaid Total</b>			<b>\$529,000,000</b>
<b>Total Appropriations under H.B. 169, All Funds</b>			<b>\$4,188,334,773</b>

## Detailed Analysis

### Department of Education

#### Appropriations

The bill appropriates a total of \$2.49 billion in FY 2022 across four federally funded line items for the Ohio Department of Education (ODE) to provide additional relief in response to the COVID-19 pandemic. Additional details are provided below.

#### **Federal Coronavirus School Relief (ALI 200640)**

Of the total for ODE, \$2.29 billion (92.1%) is appropriated under Fund 3HS0 line item 200640, Federal Coronavirus School Relief. ODE uses Fund 3HS0 to distribute Ohio's allocation of the Elementary and Secondary School Emergency Relief Fund (ESSER) created by the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act ("ESSER I") and later supplemented by the Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act ("ESSER II"), which was enacted as part of the federal Consolidated Appropriations Act, 2021, and

the American Rescue Plan Act (ARPA) (“ARP ESSER”). The bill’s appropriation is in addition to \$1.14 billion that has been appropriated for item 200640 since FY 2020 by the Controlling Board and H.B. 110 and H.B. 170, both of the 134<sup>th</sup> General Assembly.

The federal acts require ODE to distribute at least 90% of federal ESSER funds to local education agencies (LEAs; in this case, traditional school districts and community and STEM schools) in proportion to their share of Title I, Part A funds. LEA ESSER funds may be used for a variety of eligible activities, including maintaining continuity of services and employment of staff; purchasing educational technology to assist in distance learning; coordinating and improving COVID-19 preparedness and response efforts; training staff on sanitation and purchasing supplies to sanitize school facilities; providing mental health services and supports; addressing the needs of individual schools and the unique needs of low-income children, students with disabilities, and other vulnerable populations; and planning and implementing summer learning and supplemental afterschool programs, among others. ARPA requires an LEA to use at least 20% of its ESSER III allocation to address learning loss.

Up to 0.5% of the state’s allocation may be used for administrative costs and the remainder may be used for certain state-level activities. Under the CARES Act and CRRSA Act, these state activity funds must be used to respond to emergency needs related to COVID-19, as determined by ODE. ARPA is somewhat different. In general, ARPA requires ODE to use its state activity funds as follows: (1) at least 5% to address learning loss, (2) at least 1% for summer enrichment programs, (3) at least 1% for after-school programs, and (4) the remainder for emergency needs (after reserving up to 0.5% for administrative costs). The bill earmarks \$458.9 million of its FY 2022 appropriation for item 200640 for various purposes using the state activity funds authorized under ESSER II and ARP ESSER. The table below lists each earmark and the source of the state activity funds supporting it. The earmarks are listed in the order in which they appear in the bill.

<b>Earmark</b>	<b>Source</b>	<b>Amount</b>
State broadband backbone middle mile connection bandwidth increases	ESSER II – Emergency Needs	\$6,500,000
Minimum ESSER per-pupil formula funding for districts and community and STEM schools	ESSER II – Emergency Needs and ARP ESSER – Emergency Needs	\$92,243,663
Student wellness and success initiatives	ARP ESSER – Emergency Needs	\$15,000,000
Family and community liaisons	ARP ESSER – Emergency Needs	\$11,000,000
Address educator shortages	ARP ESSER – Emergency Needs	\$5,200,000
Chronic absenteeism reduction strategies	ARP ESSER – Emergency Needs	\$5,000,000
Internet connectivity, devices, and other supports	ARP ESSER – Emergency Needs	\$3,000,000

**Table 2. Fund 3HS0 ALI 200640, Federal Coronavirus School Relief,  
ESSER State Activity Funds Earmarks**

<b>Earmark</b>	<b>Source</b>	<b>Amount</b>
Literacy Lab – Leading Men Fellowship for mentoring and literacy programs	ARP ESSER – Emergency Needs	\$3,000,000
College and career readiness, graduation initiatives, and Ohio high school redesign	ARP ESSER – Emergency Needs	\$2,691,079
Regional collaboration pilot programs connecting education and workforce	ARP ESSER – Emergency Needs	\$2,000,000
Learning loss and academic recovery efforts	ARP ESSER – Learning Loss	\$70,000,000
Pilot programs and instructional materials to address learning loss	ARP ESSER – Learning Loss	\$30,000,000
Boys and Girls Clubs Ohio Alliance – before and after school and learning loss programs	ARP ESSER – Learning Loss	\$17,900,000
School improvement	ARP ESSER – Learning Loss	\$11,000,000
LearningAid Ohio initiative – tutoring and supports for students with disabilities	ARP ESSER – Learning Loss	\$8,000,000
Learning recovery data supports	ARP ESSER – Learning Loss	\$7,500,000
Center of Science and Industry (COSI) – Ohio Distance Learning Initiative	ARP ESSER – Learning Loss	\$4,000,000
Educational service center learning recovery initiatives (remainder of ARP ESSER – Learning Loss)	ARP ESSER – Learning Loss	\$75,362,176
Summer enrichment activities	ARP ESSER – Summer Enrichment	\$44,752,435
Comprehensive afterschool programs	ARP ESSER – Afterschool Programs	\$44,752,435
<b>FED Fund 3HS0 ALI 200640 Earmark Total</b>		<b>\$458,901,788</b>

### **Emergency Assistance to Non-Public Schools (ALI 200651)**

The bill appropriates \$155.2 million from Fund 3HQ0 line item 200651, Emergency Assistance to Non-Public Schools. These funds are used to provide emergency support to nonpublic schools through the Emergency Assistance to Non-Public Schools (EANS) Program. Nonpublic schools wishing to receive services or assistance must apply to ODE, which must prioritize services or assistance to nonpublic schools that enroll a significant percentage of low-income students and are most impacted by the pandemic. ODE has contracted with

educational service centers (ESCs) to administer these funds on its behalf. The funds may be used for a variety of COVID-19-related activities.

### **Governor Emergency Education Relief – EDU (ALI 200627)**

Fund 3HQ0 line item 200627, Governor Emergency Education Relief – EDU, is used to provide federal emergency support grants from the flexible Governor’s Emergency Education Relief (GEER) Fund to assist recipients with responding to the COVID-19 pandemic and maintaining educational services. In general, the line item supports LEAs that did not receive subsidies through federal ESSER funds, such as county developmental disabilities (DD) boards, ESCs, and joint vocational school districts (JVSDs), and other education-related, nonprofit entities. The bill appropriates \$33.8 million for FY 2022 for this line item from the GEER Fund authorized under the CRRSA Act (“GEER II”) and fully earmarks the appropriation for the purposes or entities listed in the table below.

<b>Table 3. Fund 3HQ0 ALI 200627, Governor Emergency Education Relief – EDU</b>	
<b>Earmark</b>	<b>Amount</b>
Emergency relief grants to county DD boards, ESCs, and JVSDs	\$20,746,066
Establishment or expansion of school-based health centers	\$9,057,130
National Aviation Hall of Fame – educational programming	\$2,000,000
Ohio State School for the Blind	\$500,000
Ohio School for the Deaf	\$500,000
Department of Youth Services	\$500,000
Department of Rehabilitation and Correction	\$500,000
<b>FED Fund 3HQ0 ALI 200627 Total</b>	<b>\$33,803,196</b>

### **ARP – Homeless Children and Youth (ALI 200641)**

The bill appropriates \$7.3 million for FY 2022 from the ARP – Homeless Children and Youth Fund (Fund 3HZ0) line item 200641, ARP – Homeless Children and Youth. These funds are used to support the specific needs of homeless children and youth, including facilitating student participation in school activities and providing wraparound services for students and families experiencing homelessness.

### **Reappropriations**

In addition to the bill’s general reappropriation of the unused balances of its FY 2022 appropriations mentioned above, the bill allows for amounts up to the unexpended, unencumbered balances of appropriations from the ARP – Homeless Children and Youth Fund (Fund 3HZ0) and the ARP – Students with Disabilities Fund (Fund 3IA0) at the end of FY 2022 to be reappropriated to FY 2023. Both funds previously received FY 2022 appropriations through the Controlling Board to spend federal emergency relief funds under ARPA. Currently, Fund 3HZ0

line item 200641, ARP – Homeless Children and Youth, is appropriated \$22.0 million in FY 2022. The bill’s appropriation of \$7.3 million for item 200641 is in addition to this amount. Fund 3IA0 line item 200657, ARP – Students with Disabilities Fund, currently is appropriated \$99.2 million in FY 2022 to support the provision of special education and related services to students with disabilities.

### **Negative fund balance due to delay in ESSER Fund claims reimbursement**

The bill allows school districts and other public schools to have a deficit in the special revenue fund established to receive funds from the Elementary and Secondary School Emergency Relief (ESSER) Fund when that deficit resulted from a temporary delay in ODE’s ability to process claims for reimbursement.

### **Department of Job and Family Services**

The bill appropriates \$687.0 million in FY 2022 to the Department of Job and Family Services. Of the total appropriation, \$28.0 million is appropriated to Federal Fund 3H70 line item 600617, Child Care Federal, \$639.0 million to Federal Fund 3H70 appropriation item 600661, Child Care ARPA Supplement, and \$20.0 million is appropriated to Federal Fund 3V40 appropriation item 600678, Federal Unemployment Programs. The bill earmarks line item 600661, Child Care ARPA Supplement, to supplement existing child care expenses to support the stability of the child care sector during and after the COVID-19 public health emergency and to carry out certain programs (e.g., expanding child care access, mental health supports, and outreach) supported by the Child Care and Development Fund Block Grant. The bill specifies that child care providers that receive funds through a subgrant are to use the funds for specified purposes.

### **Department of Medicaid**

#### **Home and community-based provider payments**

In total, the bill appropriates \$529.0 million in FY 2022 to the Ohio Department of Medicaid (ODM) to provide additional payments for the home and community-based Medicaid providers. Of the \$529.0 million in funding provided by the bill, \$158.7 million is appropriated under Fund 5HC8 line item 651698, MCD Home and Community Based Services, and \$370.3 million is appropriated under Federal Fund 3HC8 line item 651699, MCD Home and Community Based Services – Federal.

The bill allows the Office of Budget and Management (OBM) Director to increase expenditures in line items 651698, MCD Home and Community Based Services, 653698, DDD Home and Community Based Services, 652698, MHA Home and Community Based Services, 655698, JFS Home and Community Based Services, and 656698, AGE Home and Community Based Services, as long as the additional expenditures are offset by equal expenditure reductions in another of these appropriation items. Similarly, the bill allows the OBM Director to increase expenditures in appropriation items 651699, MCD Home and Community Based Services – Federal, 653699, DDD Home and Community Based Services – Federal, 652699, MHA Home and Community Based Services – Federal, 655699, JFS Home and Community Based Services – Federal, and 656699, AGE Home and Community Based Services – Federal. If additional expenditures are authorized in any of these appropriation items, the OBM Director must make appropriation adjustments in any of the other items as necessary.

## **Medicaid allocations from enhanced FMAP**

The bill requires the continuation of the enhanced federal medical assistance percentage (FMAP) authorized under the “Families First Coronavirus Response Act” (FFCRA) to be used to fund the following provider relief allocations from line item 651525, Medicaid Health Care Services, in FY 2022:

1. \$300 million for nursing facilities;
2. \$33 million for residential care facilities;
3. \$23 million for hospice care programs;
4. \$124 million for providers from critical access hospitals or from rural or distressed hospitals.

The bill also allows the OBM Director to increase expenditures from Federal Fund 3F00 line item 651623, Medicaid Services – Federal, and the federal share of appropriation item 651525, Medicaid Health Care Services, as long as the additional expenditures are offset by equal expenditure reductions in the other appropriation item.

The bill further authorizes the utilization of appropriations in line item 651689, Medicaid Health & Human Services without the requirement of seeking Controlling Board approval.

### **Provider relief payments**

The bill allows ODM to make relief payments to the following Medicaid home and community-based services providers, as authorized under ARPA:

1. Developmental disabilities providers;
2. Long-term services and supports providers;
3. Behavioral health services providers;
4. Home and community-based services-related providers.

The bill also allows ODM to make provider relief payments to the following Medicaid providers:

1. Critical access, rural, and distressed hospitals;
2. Residential care facilities;
3. Hospice care programs.

### **Nursing facility workforce incentive payments**

The bill allows the Medicaid Director, in addition to the regular nursing facility (NF) Medicaid day payment rate, to make payments to NFs in good standing exclusively for direct care staff retention bonus payments, overtime pay and shift differential payments, staff recruitment costs, and new hire incentive payments. No payment is to be made to any of the following:

1. Contract workers;
2. Staff supplied through or by staffing agencies;
3. Facility administrators;
4. Facility executive staff;



## 5. Facility owners.

The bill states that the Medicaid Director may recover any funds that are used for any purpose other than allowed purposes. Additionally, the bill states that any NF that receives the incentive payments, and sells any of its business or bed licenses on or before June 30, 2023, must reimburse the state for the funds received.

### **ICF/IID workforce incentive payments**

The bill allows the Medicaid Director, in addition to the regular rates, to make payments to the nonstate intermediate care facilities for individuals with intellectual disabilities (ICFs/IID) who are in good standing. An ICF/IID Medicaid provider must use the payments exclusively for direct care staff compensation, including staff retention bonus payments, overtime pay and shift differential payments, staff recruitment costs, and new hire incentive payments. No payment is to be made to any of the following:

1. Contract workers;
2. Staff supplied by a staffing agency;
3. ICF/IID administrators;
4. ICF/IID executive staff;
5. ICF/IID owners.

### **Hospital workforce incentive payments**

The bill allows the Medicaid Director to make workforce incentive payments to hospitals that are Medicaid enrolled general acute-care hospitals in good standing and classed as either a critical access hospital, rural hospital, or distressed hospital. These payments are to be used exclusively for direct care staff retention bonus payments, overtime pay and shift differential payments, staff recruitment costs, and new hire incentive payments. No payment is to be made to any of the following:

1. Contract workers;
2. Staff supplied through or by staffing agencies;
3. Hospital administrators;
4. Hospital executive staff;
5. Hospital owners.

The bill states that the Medicaid Director may recover any funds that are used for any purpose other than allowed purposes.

### **Department of Public Safety**

The bill appropriates \$250.0 million in FY 2022 from the State Fiscal Recovery Fund (Fund 5CV3) to line item 768622, Community Violence Intervention – First Responder Program, in the Department of Public Safety’s budget.

Of the total appropriation, \$175.0 million is earmarked for grants to support communities that have experienced an increase in violent crime or more difficulty providing services to

respond to or mitigate the effects of violence during the COVID-19 pandemic. Allowable uses include:

- Grants to support collaborative responses to violent crime and violence related to drug trafficking resulting from the COVID-19 pandemic;
- Investments in technology and equipment to allow law enforcement to respond to the rise in violent crime due to the COVID-19 pandemic; and
- Grants to state and local crime laboratories to reduce backlogs brought on by the COVID-19 pandemic.

The remaining \$75.0 million is earmarked to administer and distribute grants to support communities that have experienced an impact to service levels due to the COVID-19 pandemic. Allowable uses include:

- Strategies to attract new recruits that also include creative methods to increase diversity and attract new members to the first responder ranks;
- Wellness initiatives for law enforcement and first responders to mitigate the mental and physical impact of the COVID-19 pandemic; and
- Investments in technology to increase cybersecurity to protect critical infrastructure.

## **Department of Developmental Disabilities**

The bill appropriates \$142.0 million in FY 2022 in Federal Fund 3A40 line item 653654, Medicaid Services, to make payments for Medicaid services and for ICFs/IID. Specifically, the bill allows (1) due to the continuation of the enhanced FMAP, \$100.0 million to be used to make payments for Medicaid services in FY 2022, and (2) \$42.0 million to be used to make relief payments to nonstate ICFs/IID in FY 2022. The relief payments must be made through a process established by the Medicaid Director. An ICF/IID must use the payments exclusively for direct care staff compensation, which may include staff retention bonus payments, overtime pay and shift differential payments, staff recruitment payments, and new hire incentive payments as specified in the bill.

## **Department of Health**

The bill appropriates \$91.1 million in FY 2022 to the Department of Health for a variety of health-related purposes, including funds to support a crisis response and a disease intervention workforce, public health emergency response, and nursing home and long-term care strike teams.

## **Department of Higher Education**

The bill appropriates \$4.0 million in FY 2022 under the Governor's Emergency Education Relief (GEER) Fund (Fund 3HQ0) line item 235509, GEER – Higher Education Initiatives, to be distributed to the Foundation for Appalachian Ohio to implement, in consultation with the Department of Higher Education, an educational assistance program that will support the recruitment and retention of the K-12 educator workforce in the Appalachian region of Ohio in response to the COVID-19 pandemic. The program may include student loan repayments and scholarships to support educators, counselors, mental health professionals, school-based health

professionals, and other individuals in the educator workforce. The bill's appropriation is supported by the federal GEER II funds authorized under the CRRSA Act.

## **Department of Mental Health and Addiction Services**

The bill allows the Director of Mental Health and Addiction Services to certify to the Director of Budget and Management, on July 1, 2022, or as soon as possible thereafter, the unexpended, unencumbered balance of (1) Federal Fund 3A90 line item 336614, Mental Health Block Grant, and (2) Federal Fund 3G40 line item 336618, Substance Abuse Block Grant, at the end of FY 2022 to be reappropriated to FY 2023. The Director of Budget and Management may approve up to the amount certified. The amount approved is reappropriated to the same line item and for the same purpose in FY 2023.

## **State Coronavirus Relief Fund appropriation**

Lastly, the bill appropriates the unexpended and unencumbered amounts in the State Coronavirus Relief Fund (Fund 5CV1) to Fund 5CV1 line item 042621, COVID Response Costs – Multiple Agencies, for expenses incurred on or after March 1, 2020, in response to the COVID-19 pandemic. The bill requires OBM to report all of these transfers made to the Controlling Board by June 30, 2022.

## **Other provisions**

### **Personal protective equipment**

The bill requires that, when using funds under the bill, or under any future appropriation of federal coronavirus relief moneys, for the purchase of personal protective equipment (PPE), the PPE must be (1) approved by the National Institute for Occupational Safety and Health or (2) authorized for use by the U.S. Food and Drug Administration.

### **Commercial driver's license training**

The bill may generate, at most, minimal operating costs for the Bureau of Motor Vehicles to verify that applicants for a commercial driver's license (CDL) or certain endorsements have completed the federal training requirements, which take effect on February 7, 2022, before the applicant takes the skills or knowledge tests or before issuing a CDL or endorsement.

The bill specifically:

- Requires applicants initially applying for a Class A or Class B CDL, a passenger endorsement, a school bus endorsement, or a hazardous materials endorsement to complete new federal mandatory training requirements before taking the skills test or knowledge test related to that CDL or endorsement;
- Requires all authorized driver training schools that teach CDL students to incorporate the new federal training requirements; and
- Authorizes the Registrar to use the Trainer Provider Registry, available through the Federal Motor Carrier Safety Administration, to verify the completion of the required training.

## Vetoed Provision

The Governor vetoed a provision that would have suspended, through December 31, 2022, the requirement that child daycare centers, family daycare homes, and licensed preschools and school child programs be rated in the Step Up to Quality (SUTQ) Program in order to provide publicly funded child care (PFCC). This provision could have increased the number of child care providers eligible to receive PFCC. PFCC is supported through a combination of federal block grants and state matching dollars.