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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

**S.B. 358**  
**133<sup>rd</sup> General Assembly**

## **Fiscal Note & Local Impact Statement**

[Click here for S.B. 358's Bill Analysis](#)

**Version:** As Introduced

**Primary Sponsors:** Sens. Fedor and Manning

**Local Impact Statement Procedure Required:** Yes

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### **Highlights**

- State testing costs are likely to decrease due to the bill's waiver of state testing requirements.
- Under the bill's safe harbor provision on report card ratings, some school districts and schools would not bear the expense of potentially costly sanctions or penalties to which they may otherwise have been subject. Although, other districts and schools under sanction would not have the opportunity for relief from such sanctions.
- District administrative costs may decrease due to more flexibility regarding teacher and principal evaluations.
- Extending Educational Choice Scholarship Program eligibility provisions that limit first-time, performance-based scholarships to certain students for the 2020-2021 school year into the 2021-2022 school year may result in decreased deductions from districts' foundation aid due to fewer first-time scholarship awards. However, the districts' expenses may increase to educate more students.

### **Detailed Analysis**

In general, the bill extends various provisions of law enacted in response to the COVID-19 pandemic and ordered school closure during the 2019-2020 school year to cover the 2020-2021 school year. These provisions involve administration of state tests, safe harbor provisions on report cards and other accountability measures, school employee evaluations, and eligibility for performance-based Educational Choice (EdChoice) scholarships.

## Testing administration

### State tests

The bill extends the waiver for school districts and other public schools from administering elementary and secondary state tests for the 2019-2020 school year to also cover the current 2020-2021 school year. The bill also permits the Superintendent of Public Instruction to waive any required reports that are based on the assessment results and prohibits students from being excluded from their district's 2021-2022 enrollment or deemed ineligible for any scholarships solely because the student was not administered an assessment.

As a result of the bill, expenditures for the state's testing contracts are likely to decrease. In FY 2020, GRF testing costs were about \$8.8 million lower than the appropriation due to the cancellation of the spring state tests that year. The amount of cost savings in FY 2021 will depend on a number of factors, but is likely to be larger compared with the 2019-2020 school year. For example, work was already performed by vendors pursuant to the contracts and readers for open-ended (constructed response) items were already trained at the time the 2019-2020 school year testing administration waiver was enacted. Additionally, according to the Ohio Department of Education (ODE), many, but not all, juniors completed the state-sponsored SAT or ACT and roughly 70% of students subject to Alternate Assessment for Students with Significant Cognitive Disabilities and the Ohio English Language Proficiency Assessment completed the assessment prior to the 2019-2020 testing administration waiver. For reference, the state paid \$4.9 million to administer both the ACT and SAT in FY 2019. Most students are unlikely to have been administered these tests for the 2020-2021 school year, resulting in the waivers yielding more savings than compared with the 2019-2020 school year waiver.

### End-of-course examinations

H.B. 164 of the 133<sup>rd</sup> General Assembly generally allowed students to substitute a final course grade for an end-of-course examination grade in the event the examination for the 2019-2020 school year was cancelled due to the COVID-19 pandemic. The bill extends this provision to cover the 2020-2021 school year. Specifically, students scheduled to take or retake an end-of-course examination in the 2020-2021 school year, but do not do so because the administration of that examination is cancelled, may use a final course grade to satisfy graduation requirements prescribed under continuing law in lieu of an examination score. The bill allows students to take the relevant end-of-course examination in a subsequent year if they so choose. Thus, the bill may increase a school district or other public school's administrative workload to inform and advise students of their options. It also may decrease state test costs by reducing the number of students that take or retake in a subsequent school year an end-of-course examination for a course taken during the 2020-2021 school year. The table below shows the bill's designated achievement levels for each corresponding course grade. The first column includes any corresponding letter grade for each letter (e.g., "A" includes both "A-" and "A+," and so on).

2019-2020 and 2020-2021 School Year Final Course Grade and End-of-Course Examination Equivalent Achievement Levels	
Final Course Grade	End-of-Course Examination Performance Level Equivalent
A	Advanced
B	Accelerated
C	Proficient
D	Basic
F	Limited

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

### **Federal waiver**

ODE will incur additional workload as the bill requires the Department to seek a waiver from the United States Secretary of Education from federal testing requirements for the 2020-2021 school year. If no waiver is granted, the bill requires ODE to determine which assessments are necessary to meet federal requirements and adjust administration dates accordingly.

### **Safe harbor provisions**

#### **Report cards**

The bill prohibits ODE from publishing state report card ratings and assigning overall or component letter grades on the state report cards for the 2020-2021 and 2021-2022 school years and prohibits any report card ratings for this school year from being considered in determining whether a district or school is subject to sanctions or penalties. Although, while the bill prohibits the publishing of ratings and assignment of overall and component letter grades, it specifies that ODE is still required to report any performance data that it has for schools and districts by September 15 each of those years, as under current law. H.B. 166 appropriates \$7.6 million from the GRF in FY 2021 for the administration of the state’s accountability system and report cards, the majority of which is used to contract with SAS Institute, Inc. for the production of value-added reports.

Effectively, until the release of 2022-2023 report cards, 2018-2019 will be the most recent school year used for provisions and programs dependent on report card grades. Thus, the bill prevents some schools and districts from beginning to be subject to potentially costly state sanctions for low performance, including the creation of academic distress commissions (ADCs), state interventions for school improvement purposes, designation of buildings for the EdChoice Scholarship Program, locations of start-up community schools, community school closure

provisions, community school restrictions with respect to sponsor changes, and other school restructuring requirements. On the other hand, districts and schools that were on track to improve their report card grades may be subject to such sanctions longer than they otherwise would have.

### **Third-grade reading guarantee, graduation, and other adjustments**

In addition to safe harbor from report card-related sanctions, the bill prohibits schools from retaining a student in the third grade under the third-grade reading guarantee based on reading performance in the 2020-2021 school year unless the principal of the student's school and the student's reading teacher agree that the student is reading below grade level and not prepared to be promoted to fourth grade. Similarly, until September 30, 2021, the bill requires schools and districts to grant a diploma to any student in the twelfth grade or who was on track to graduate this year (regardless of grade) but has not completed the requirements as long as the student's principal, in consultation with teachers and counselors, determines that the student has successfully completed the high school curriculum or the student's individualized education program.

### **Community school sponsors**

The bill prohibits ODE from issuing any community school sponsor ratings for the 2020-2021 school year, extending a provision in effect for the 2019-2020 school year. Additionally, the bill creates a safe harbor period from sponsor penalties and sanctions based on the absence of ratings for the 2019-2020 and 2020-2021 school years. Instead, ratings from previous and subsequent years will be considered.

This may prevent some sponsors, which include school districts, educational service centers (ESCs), and other nonprofit organizations, who would otherwise have received ratings of "ineffective" or "poor" for the 2019-2020 or 2020-2021 school years from having sponsorship authority revoked. Sponsorship authority is revoked, subject to an available appeals process, for sponsors that receive a poor rating or three consecutive ineffective ratings. Since no schools will lose sponsorship authority due to ratings for the 2019-2020 and 2020-2021 school years, the administrative costs of ODE's Office of School Sponsorship, may decrease. The Office of School Sponsorship is authorized to take over sponsorship for a school having a sponsor rated as "poor" or "ineffective" for three consecutive years until the school finds a new sponsor. The Office's operations are financed by a sponsorship fee of up to 3% of each sponsored school's operating revenue.

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

## **Teacher and staff provisions**

### **School employee evaluations**

The bill may reduce school district administrative costs by permitting a district board to elect not to conduct evaluations of district employees, including teachers, administrators, or a superintendent, for the 2020-2021 school year, if the district board determines that it would be impossible or impracticable to do so, without penalty to the employee for purposes of reemployment and prohibits the use of 2020-2021 value-added data for the purpose of teacher evaluations.

### **Evaluation cycles**

Districts generally must evaluate teachers annually, but there are two optional exceptions. If a teacher is rated as “skilled” on their most recent evaluation, their district can choose to evaluate that teacher every two years; if a teacher is rated as “accomplished” on their most recent evaluation, their district can choose to evaluate them every three years. According to ODE, teachers on a less frequent evaluation cycle are required to have student growth measures. If they do not, evaluations are completed based on performance only meaning that the educator will be placed on a full evaluation cycle for the following school year, which entails additional observations. Due to the cancellation of state tests under H.B. 197 of the 133<sup>rd</sup> General Assembly and school closures for the 2019-2020 school year, ODE indicated that many school districts and schools will not have student academic growth measures available for teacher evaluations. This situation will extend into the 2020-2021 school year due to the bill’s waiver of testing requirements. Without the required student growth measures as part of their evaluations, teachers evaluated less frequently under current law would revert to a full evaluation for the 2021-2022 school year. In other words, a district would need to evaluate all of their teachers in the next school year. Most districts and schools that are required to use the teacher evaluation system have opted for a less frequent interval cycle for formal observations and evaluations for eligible teachers.

The bill allows districts that complete evaluations for the 2020-2021 school year without a student growth measure to continue evaluating teachers who are on a two- or three-year evaluation cycle on their longer evaluation cycles. These teachers must remain at the same point in their evaluation cycle and retain the same evaluation rating for the 2021-2022 school year as in the 2019-2020 school year. This provision may reduce administrative workload or costs for school districts by authorizing certain teachers to be evaluated less frequently than would otherwise be the case.

### **Use of student growth data**

The bill permits districts to complete evaluations for principals for the 2020-2021 school year without a student growth measure if the district chooses. H.B. 197 granted districts the same option for the 2019-2020 school year. This provision may reduce administrative workload or costs for school districts by eliminating the need to develop or measure student academic growth outside of value-added progress data for purposes of principal evaluations.

## **EdChoice Scholarship Program**

The performance-based Educational Choice (“EdChoice”) Scholarship Program funds scholarships for students, other than those residing in the Cleveland Municipal School District,

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

H.B. 197 prohibited ODE from awarding first-time performance-based scholarships for the 2020-2021 school year to students who were not eligible for a scholarship in the prior school year, but permitted existing scholarship students to renew them and permitted students meeting certain criteria to receive first-time scholarships. The bill extends the eligibility provisions enacted in H.B. 197 to scholarships awarded for the 2021-2022 school year. Specifically, ODE must award scholarships, to be paid through the usual deduct-and-transfer method, to the following students:

- Students who received a scholarship in the previous school year;
- Students in grades K-12 in the 2020-2021 school year who are enrolled in or would be enrolled in a district school building that satisfied the eligibility conditions for performance-based scholarships in the 2020-2021 school year and whose sibling received a performance-based scholarship in the 2020-2021 school year;
- Students who were eligible in the 2020-2021 school year, regardless of whether they received a scholarship for that school year, and remain eligible for the 2021-2022 school year;
- Students who did not receive a scholarship for the 2020-2021 school year but are or would be newly enrolled in a building or district that would qualify a student for a scholarship for the 2020-2021 school years and would continue to qualify a student for the 2021-2022 school year, including entering kindergarten students, rising high school students, and students who move into a qualified building's district or territory.

Overall, these provisions may decrease the number of scholarships awarded in FY 2022 relative to current law, under which students from any of the 1,227 buildings currently designated for the EdChoice Scholarship Program would be eligible for a scholarship (the list of designated buildings is presumed to be the same for the 2021-2022 school year as in the 2020-2021 school year due to the safe harbor provisions). As a result, the bill may decrease the amount deducted from a district's state foundation aid. Also, school district expenditures may increase to educate more students. As a point of reference, in the 2019-2020 school year, ODE awarded more than 30,200 performance-based EdChoice scholarships, totaling about \$149 million.