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# OHIO LEGISLATIVE SERVICE COMMISSION

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S.B. 22  
134<sup>th</sup> General Assembly

## Final Analysis

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

**Primary Sponsors:** Sens. Johnson and McColley

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## SUMMARY

### State of emergency

- Limits the duration of a state of emergency issued by the Governor to 90 days unless extended by the General Assembly, and allows the General Assembly to extend a state of emergency in 60-day intervals by adopting a concurrent resolution.
- After a state of emergency declared by the Governor has been in effect for 30 days, permits the General Assembly to terminate the state of emergency.
- Prohibits the Governor from reissuing a state of emergency for 60 days after expiration or termination, unless approved by the General Assembly by adopting a concurrent resolution.
- Permits the General Assembly to rescind orders and rules issued in response to the emergency, and prohibits the reissuance of a rescinded order or rule for 60 days unless approved by the General Assembly by adopting a concurrent resolution.
- During a state of emergency, requires the Governor and Department of Health (ODH) to report to the Senate President and Speaker of the House any actions taken in response to the emergency.

### Ohio Health Oversight and Advisory Committee

- Establishes the Ohio Health Oversight and Advisory Committee, consisting of three members of the Senate and three members of the House.
- Authorizes the Committee to oversee actions taken by the Governor, ODH, or any agency in response to a state of emergency; to oversee actions taken by ODH and the Director of Health for preventing the spread of contagious or infectious disease and for

controlling and suppressing the cause of disease; and to consult with and advise the Governor, ODH, and other agencies during a state of emergency.

### **Authority of ODH and local boards of health**

- Permits the General Assembly to rescind certain orders and rules issued by ODH and certain actions of the Director of Health.
- Specifies that the authority of ODH relating to the preservation of the life and health of the people is superior to the authority of local boards of health.
- Specifies that a local board of health may only issue a quarantine and isolation order that applies to specific individuals that have been medically diagnosed with or have come into direct contact with someone who has been medically diagnosed with a specified disease.
- Generally, prohibits a local board of health from closing schools or prohibiting public gatherings and instead permits a local board to close a specific school if certain conditions are met.
- Specifies that a local board of health may only issue orders and regulations that apply to specific individuals and businesses, and that orders and regulations for preventing or restricting disease may only apply to individuals and businesses that have been medically diagnosed with or come into direct contact with someone who has been medically diagnosed with the disease or have a documented incident of the disease in the building.

### **Impact of act on existing emergency declarations, orders, rules, and actions**

- Terminates the current state of emergency 30 days after the act takes effect, unless extended by the General Assembly by concurrent resolution, and prohibits the Governor from reissuing a state of emergency for 60 days, unless approved by the General Assembly by adopting a concurrent resolution.
- Subjects existing emergency orders and rules issued in response to a state of emergency, and certain orders and rules issued by ODH or actions taken by the Director of Health to review by the Committee and rescission by the General Assembly.

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## DETAILED ANALYSIS

### State of emergency

#### Duration; extension; termination

The act limits the duration of a state of emergency<sup>1</sup> declared by the Governor to 90 days, unless extended by the General Assembly. An amendment to a declaration of a state of emergency,<sup>2</sup> the declaration of a substantially similar state of emergency, or the reissuance of any part of an initial declaration is not considered a new state of emergency.<sup>3</sup> The General Assembly may extend a state of emergency for up to an additional 60 days by adopting a concurrent resolution, and can do so continuously by adopting subsequent concurrent resolutions.<sup>4</sup> The General Assembly also has authority, after a state of emergency declared by the Governor has been in effect for 30 days, to terminate the state of emergency by adopting a concurrent resolution.<sup>5</sup>

If the General Assembly does not extend a state of emergency or if the General Assembly terminates a state of emergency, the Governor cannot declare an identical or substantially similar state of emergency — or issue a declaration with any part of the initial declaration — for 60 days following the expiration or termination. However, during those 60 days, the Governor can submit a request to the General Assembly to issue such a declaration before the 60 day period ends; the General Assembly can review the request and adopt a concurrent resolution authorizing the request. A state of emergency terminated by the General Assembly or declared by the Governor in violation of the act is invalid and has no legal effect.<sup>6</sup>

#### Governor and ODH report to General Assembly during emergency

During a state of emergency, the Governor and Department of Health (ODH) are required to report to the Senate President and Speaker of the House every action the Governor or ODH takes in response to the emergency.<sup>7</sup>

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<sup>1</sup> “State of emergency” means the period of time between when the Governor declares any emergency and the expiration of that emergency. This specifically includes the three types of emergencies the Governor has specific statutory authority to declare under continuing law: an air pollution emergency (R.C. 3704.032), an energy shortage emergency (R.C. 4935.03), and an adulterated consumer product emergency (R.C. 3715.74). R.C. 107.42(A).

<sup>2</sup> “Declaration of a state of emergency” means any order, proclamation, or other action of the Governor that creates a state of emergency. R.C. 107.42(A).

<sup>3</sup> R.C. 107.42(B).

<sup>4</sup> R.C. 107.42(C).

<sup>5</sup> R.C. 107.42(D)(1).

<sup>6</sup> R.C. 107.42(D) to (F).

<sup>7</sup> R.C. 107.43(B).

## Authority of the General Assembly during emergency

Beginning the day a state of emergency is declared, the General Assembly may do any of the following by adopting a concurrent resolution:<sup>8</sup>

- Rescind, in whole or in part, any order or rule<sup>9</sup> issued or adopted by the Governor, Lieutenant Governor, Secretary of State, Auditor of State, Attorney General, or Treasurer of State (the “statewide elected officers”); by an administrative department or administrative department head;<sup>10</sup> or by a state agency in response to the state of emergency, including an order authorizing an agency to adopt, amend, or rescind rules on an emergency basis;
- Invalidate, in whole or in part, a rule adopted or amended on an emergency basis by an agency in response to the state of emergency;<sup>11</sup>
- Authorize a rule rescinded by an agency, in response to the state of emergency, to be readopted, in whole or in part.<sup>12</sup>

If the General Assembly rescinds or invalidates an order or rule, or portion thereof, the order or rule cannot be reissued or readopted for 60 days. The act also prohibits, within those 60 days, the issuance or adoption of any rescinded portion, substantially similar order, rule, or portion, or any restriction contained in the rescinded order or rule or rescinded portion. The act permits the Governor, on behalf of a department, department head, or state agency, within 60 days of the General Assembly rescinding the order or rule, to submit a request to the General Assembly to allow the department, head, or agency to reissue or readopt a rescinded order or rule (or the rescinded portion; substantially similar order, rule, or portion; or any restriction contained in the rescinded order or rule or rescinded portion). After reviewing the request, the General Assembly may adopt a concurrent resolution authorizing the request, in whole or in part.<sup>13</sup>

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<sup>8</sup> R.C. 107.43(C)(1), 106.022, 111.15, and 119.03.

<sup>9</sup> “Rule” is defined as any rule, regulation, or standard adopted, promulgated, and enforced under the authority of law. It does not include an “internal management rule,” which is any rule, regulation, or standard governing the day-to-day staff procedures and staff operations. R.C. 107.43(A). This provision does not apply to an order to declare the emergency; that is addressed under R.C. 107.42.

<sup>10</sup> See R.C. 121.02 and 121.03, not in the act, for a list of the departments and heads.

<sup>11</sup> This applies to emergency rules adopted under the Administrative Procedure Act (see R.C. 119.03(G)(1)) or under the abbreviated rulemaking procedure (see R.C. 111.15(B)(2)).

<sup>12</sup> This applies to emergency rules adopted by an agency under the Administrative Procedure Act (see R.C. 119.03(G)(1)).

<sup>13</sup> R.C. 107.43(C)(2) and (3). A statewide elected officer is responsible for making this request on behalf of the statewide elected officer.

An order or rule issued or adopted in violation of the act's provisions is invalid and has no legal effect.<sup>14</sup>

### **Orders and rules challenged in court**

The act authorizes a person who challenges an order or rule issued in response to a state of emergency, in a civil action for damages, declaratory judgment, injunctive relief, or other appropriate relief, to do so in the county where the person's residence or business is located. And, the state is required to pay reasonable attorney's fees and court costs on behalf of a person who successfully challenges an order or rule.<sup>15</sup>

### **Ohio Health Oversight and Advisory Committee**

The act establishes the Ohio Health Oversight and Advisory Committee. The Committee consists of six members. Three members of the Senate (two from the majority party and one from the minority party) are to be appointed by the Senate President, and three members of the House of Representatives (two from the majority party and one from the minority party) are to be appointed by the Speaker of the House.<sup>16</sup> When appointing Committee members from the minority party, the President and Speaker must consult with the Minority Leader from their respective chambers.

The act requires initial appointments to the Committee to be made not later than July 8, 2021. Thereafter, appointments to the Committee occur every two years, not later than 15 days after the commencement of the first regular session of each General Assembly. A member appointed to the Committee serves until appointments are made in the next General Assembly, until a member no longer serves as a member of the chamber from which the member was appointed, or until the member is removed by the President or Speaker. However, a member of the Committee may not be removed during the member's term during a state of emergency (see "**State of emergency**" above) unless an extraordinary circumstance exists that prevents a Committee member from serving.<sup>17</sup>

In odd-numbered years, the President must appoint a member of the Committee from the Senate who is a member of the majority party to serve as the Committee chairperson, and the Speaker must appoint a member of the Committee from the House who is a member of the majority party to serve as the Committee vice-chairperson, and a member of the Committee from the House who is a member of the minority party to serve as the Committee ranking minority member. In even-numbered years, the Speaker must appoint a member of the Committee from the House who is a member of the majority party to serve as the Committee chairperson, and the President must appoint a member of the Committee from the Senate who is a member of the majority party to serve as the Committee vice-chairperson, and a

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<sup>14</sup> R.C. 107.43(E).

<sup>15</sup> R.C. 107.43(D) and 2743.03.

<sup>16</sup> R.C. 103.65(A).

<sup>17</sup> R.C. 103.65(B).

Committee member from the Senate who is a member of the minority party to serve as the Committee ranking minority member. The Committee meets at the call of the chairperson.<sup>18</sup>

The act authorizes the Committee to oversee actions taken by the Governor, ODH, and other agencies and to consult with and provide advice to the Governor, ODH, and other agencies regarding necessary and appropriate actions during a state of emergency. Additionally, the Committee is authorized to oversee actions taken by ODH to prevent the spread of contagious or infectious diseases under R.C. 3701.13 and by the Director of Health to investigate, make inquiry, and take prompt action to control and suppress the cause of disease or illness, including contagious, infectious, epidemic, pandemic, or endemic conditions, under R.C. 3701.14.<sup>19</sup>

To assist the Committee in performing its duties, including those duties described below, the act permits the Committee chairperson to issue subpoenas. Before issuing subpoenas, the Committee chairperson must receive authorization from the Committee, the President, and the Speaker. The act requires the executive director and staff of the Joint Medicaid Oversight Committee to serve the Committee to enable it to successfully and efficiently perform its duties.<sup>20</sup>

## **Authority of ODH and local boards of health**

### **Authority of the General Assembly regarding ODH orders or rules**

The act also allows the General Assembly to rescind a special or standing order or rule for preventing the spread of contagious or infectious disease issued by ODH under R.C. 3701.13, or an action taken by the Director of Health to investigate, make inquiry, and take prompt action to control and suppress the cause of disease or illness, including contagious, infectious, epidemic, pandemic, or endemic conditions, under R.C. 3701.14. At any time after ODH issues a special or standing order or rule, or the Director takes an action described above, the General Assembly may rescind that standing order or rule or action, in whole or in part, by adopting a concurrent resolution.<sup>21</sup>

After the General Assembly rescinds a special or standing order or rule, ODH and the Director are prohibited from reissuing the special or standing order or rule or action, or rescinded portion for 60 days. The act also prohibits, within those 60 days, the issuance or adoption of any rescinded portion, substantially similar order, rule, action, or portion, or any restriction contained in the rescinded order, rule, action, or rescinded portion. If ODH or the Director attempts to reissue a special or standing order or rule or action in violation of the act's provisions, the order or rule or action is invalid and has no legal effect.<sup>22</sup>

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<sup>18</sup> R.C. 103.65(C) and (E).

<sup>19</sup> R.C. 103.651(B).

<sup>20</sup> R.C. 103.65(B)(2) and (F).

<sup>21</sup> R.C. 101.36(A)(1) and (2).

<sup>22</sup> R.C. 101.36(A)(3) and (C).

The act does permit the Governor, on behalf of ODH or the Director, within 60 days of the General Assembly rescinding a special or standing order or rule or action, to submit a request to the General Assembly to permit ODH or the Director to issue a special or standing order or rule or take an action that was rescinded by the General Assembly. After reviewing the request, the General Assembly may adopt a concurrent resolution authorizing ODH or the Director to issue the rescinded order or rule or action in whole or in part.<sup>23</sup>

## **Quarantine and isolation**

The act removes the word “ultimate” from the law describing ODH’s authority over matters of quarantine and isolation.<sup>24</sup> It also defines the terms quarantine and isolation as they relate to the authority of ODH and boards of health of city and general health districts.<sup>25</sup> “Isolation” is defined as “the separation of one or more individuals who have been medically diagnosed with a communicable or contagious disease from other individuals who have not been medically diagnosed with the disease.” “Quarantine” is defined as “the separation or restriction of movement of one or more individuals who have come into direct contact with someone who has been medically diagnosed with a communicable or contagious disease.”<sup>26</sup>

Additionally, the act specifies that the authority of ODH over matters related to the preservation of the life and health of the people is superior to the authority of boards of health of city and general health districts or another authority that has the power of a local board of health.<sup>27</sup>

## **Local boards of health**

### **Quarantine and isolation orders**

The act specifies that a local board of health may only issue a quarantine and isolation order that applies to individuals who have been medically diagnosed with or have come into direct contact with someone who has been medically diagnosed with the disease that is the subject of the order.<sup>28</sup>

### **School closures and prohibitions on public gatherings**

The act eliminates the authority of a local board of health to generally close schools and prohibit public gatherings during an epidemic or threatened epidemic. Instead, it permits a local board of health to close a specific school building for a period of time necessary to bring the building into sanitary condition. A local board of health may take this action against a

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<sup>23</sup> R.C. 101.36(B).

<sup>24</sup> R.C. 3701.13(B)(1). The act also makes technical changes to this section for organizational purposes.

<sup>25</sup> R.C. 3707.01(A).

<sup>26</sup> R.C. 3701.13(A).

<sup>27</sup> R.C. 3701.13(B)(1).

<sup>28</sup> R.C. 3707.11.

specific school building when a dangerous communicable disease is unusually prevalent and a verified positive case of the disease is documented in the specific school building.<sup>29</sup>

### **Orders and regulations for the public health**

In addition to the requirements regarding quarantine and isolation orders issued by a local board of health, the act specifies that a local board of health may issue orders or regulations that apply only to specific individuals or businesses. Any order that applies to a class of persons in violation of this provision is invalid and has no legal effect.<sup>30</sup> Specifically, the act provides that any order or regulation issued by a local board of health for the prevention or restriction of disease may only apply to individuals and businesses that (1) have been medically diagnosed with the disease that is the subject of the order or regulation, (2) have come in direct contact with someone who has been medically diagnosed with the disease that is the subject of the order or regulation, or (3) have a documented incident in the building of the disease that is the subject of the order or regulation.<sup>31</sup>

### **Impact of the act on existing declarations, orders, rules, and actions**

Beginning June 23, 2021, the General Assembly may terminate, via concurrent resolution, any state of emergency in existence at that time. If not terminated by the General Assembly, such a state of emergency terminates by operation of law on July 23, 2021, unless extended by the General Assembly by concurrent resolution, and the Governor is prohibited from reissuing a state of emergency for 60 days, unless approved by the General Assembly by adopting a concurrent resolution.<sup>32</sup>

Beginning June 23, 2021, the act subjects orders, rules, and actions covered by the act to review by the Committee and rescission by the General Assembly, in accordance with the act's provisions.<sup>33</sup>

### **Severability**

The act states that if any provision of the act or its application is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end invalid provisions are severable.<sup>34</sup>

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<sup>29</sup> R.C. 3707.26.

<sup>30</sup> R.C. 3707.54 and 3709.50.

<sup>31</sup> R.C. 3709.212.

<sup>32</sup> Section 3(C).

<sup>33</sup> Section 3(B).

<sup>34</sup> Section 4.



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## HISTORY

Action	Date
Introduced	01-26-21
Reported, S. Gov't Oversight & Reform	02-17-21
Passed Senate (25-8)	02-17-21
Reported, H. State & Local Gov't	03-10-21
Passed House (57-38)	03-10-21
Senate concurred in House amendments (25-8)	03-10-21
Vetoed by the Governor	03-23-21
Senate voted to override veto (23-10)	03-24-21
House voted to override veto (62-35)	03-24-21

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