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OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 671
133rd General Assembly

Fiscal Note & Local Impact Statement

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Version: As Introduced

Primary Sponsors: Reps. Abrams and Stephens

Local Impact Statement Procedure Required: Yes

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Highlights

- Local boards of health will experience an increase in expenditures, to the extent certain orders are issued, to notify businesses if there is cause for closure. In addition, boards may be ordered to pay attorney's fees of a business that successfully appeals an order.
- Local boards may also realize an increase in costs to seek Joint Committee on Agency Rule Review (JCARR) approval to issue or extend certain orders as specified by the bill. These costs will depend on how often a board seeks JCARR approval for these orders or extensions, as well as the scope of the orders themselves.
- State and local licensing authorities may experience a decrease in costs to take disciplinary action under the bill's provisions. However, there could be administrative costs to determine if an individual or entity is complying with licensure specifications during a pandemic.

Detailed Analysis

Board of health orders

Current law authorizes a local board of health to make orders or regulations as are necessary to prevent or restrict disease. The bill establishes conditions and limits on this authority. Under the bill, a board of health is permitted to issue an order when the Ohio Department of Health (ODH) has already done so, but only on the approval of the General Assembly's Joint Committee on Agency Rule Review (JCARR). If ODH has not taken action on the same epidemic, a board of health may issue its own order or regulation without JCARR's approval. However, the bill specifies that any order or regulation issued by a board of health is effective no more than 14 days. It may be extended, but only on JCARR's approval, even if the initial order did not require JCARR approval. Local boards of health will experience an increase in expenditures, to the extent such orders are issued. Boards may also realize an increase in

administrative costs to seek JCARR approval to issue or extend certain orders as specified by the bill. The amount of costs will depend on the scope and number of orders that need approval and the time and documentation required to seek approval. Whoever violates a board of health order or regulation issued in an emergency caused by an epidemic to prevent or restrict disease is subject to a fine of not more than \$100.

The bill specifies that, if an order or regulation issued by a board of health in accordance with the bill will result in the closure of a business, the board must notify the business of that fact. The business may then appeal the order or regulation to the court of common pleas for the county in which the city health district is located, or, in the case of a general health district, in the most populous county of the health district. Under current law, if a business violates such an order, that business may file an action for declaratory judgment to have determined whether the regulation or order is unreasonable or unlawful. A violation cannot be prosecuted if judgment is pending.

Boards of health may realize an increase in costs in relation to the above provision. The costs could be to notify businesses of closures, address business and public questions regarding closures, and possibly to provide any necessary administrative or legal costs if a court case is brought forward. In the event a business successfully appeals a decision, a board may be ordered to pay attorney's fees. The total impact to boards will depend on many factors including how the notifications are carried out, how many businesses appeal, and how many appeals are successful. The magnitude of additional costs that a given court of common pleas will incur depends on (1) the number of appeals filed compared to declaratory judgments or charges that might otherwise have been filed under current law and (2) whether the appeals process involves costs exceeding those associated with those other actions. Presumably, regardless of the action to avoid closure, violations will occur. The bill produces a marginal savings to counties and municipalities related to incarceration costs, removing the possibility for a jail stay of up to 90 days for repeat offenders.

Application of health orders to other government entities

The bill provides that a special or standing order or rule made by ODH to prevent the spread of contagious or infectious diseases does not apply to the following: the General Assembly, state courts, state departments, including their divisions and offices, and state correctional institutions. Similarly, it provides that an order or regulation made by a local board of health in an emergency caused by an epidemic of a contagious or infectious disease to prevent or restrict disease also does not apply to the above-mentioned entities. There should be no direct fiscal impact associated with this provision.

Licensing authorities and pandemic events

The bill prohibits a state or local licensing authority from disciplining a licensee for (1) engaging in a profession, occupation, or occupational activity or (2) operating a business or other enterprise permitted by the license during a pandemic event. State and local licensing authorities may experience a decrease in costs to take disciplinary action under this provision. However, it is also possible that if a health order is issued in accordance with the bill, that these entities could realize an increase in complaints and possibly investigations in order to determine if someone or some entity is complying with licensure specifications.