

# Legislature Limits Governor's Emergency Powers, Overriding Veto on SB 22

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The Statehouse hosted its first veto override votes of 2021 on Wednesday, when the House and Senate gathered to override Governor DeWine's veto of Senate Bill 22, which amends the powers of the executive branch in an emergency, making virtually all emergency actions subject to legislative review, rescission, or invalidation, and removes certain powers from local boards of health.

The bill is the response from Republican majorities in both the House and Senate to the perceived overreach by Governor DeWine during the pandemic, some of whom feel that the governor picked "winners" and "losers" during the early days of the pandemic.

## Executive Branch Powers

SB 22 specifies that a state of emergency declared by the governor may exist for not more than 90 calendar days, unless extended by the General Assembly. Extensions may be continuously granted by the General Assembly, but for no more than 60 days at a time. The bill also allows the General Assembly to end the state of emergency earlier. Additionally, SB 22 allows the General Assembly to rescind or invalidate any rule issued by an administrative agency in response to the state of emergency.

The bill requires the governor and the Ohio Department of Health (ODH) to report to the President of the Senate and Speaker of the House of Representatives every action they or their representatives take in response to the state of emergency. Any such action is immediately subject to legislative review, rescission, or invalidation, in whole or in part.

SB 22 creates the Ohio Health Oversight and Advisory Committee, a six-member, bicameral body whose express purpose is to oversee actions taken by the Governor, ODH, or any other agency during a state of emergency, and to consult and advise each regarding necessary and appropriate action during a state of emergency.

## Powers of Boards of Health

Current law provides broad authority to local health departments to issue quarantine or isolation orders to individuals suspected to have been in contact with diseases of concern, even if the individual has not been medically diagnosed with the disease. A local board of health may also indefinitely close schools and prohibit public gatherings during an epidemic or threatened epidemic. SB 22 significantly restricts, but does not eliminate, these authorities, allowing certain quarantine orders, school closures, and gathering bans.

## Implications for Schools, Businesses and Venues

SB 22 will end the emergency order issued by the governor 30 days after its effective date, unless extended by the General Assembly. It will also subject all of the current state health orders, including

the mask mandate and business and venue occupancy restrictions, to General Assembly oversight. The legislature seems likely to repeal all of these, if the Governor has not done so already.

When SB 22 is enacted, local boards of health will no longer be permitted to generally and indefinitely close schools during an epidemic or threatened epidemic. They may instead close a specific school building for such a time as is necessary to bring the building into sanitary condition when a dangerous communicable disease is unusually prevalent and verified positive cases are documented in the specific school building. **It is important to note that these changes do not become effective for 90 days**, long after the end of the 2020-2021 school year.

### **Additional Legislative Context**

SB 22 is not the first bill curtailing the executive's emergency powers which passed both Chambers of the General Assembly. Governor DeWine vetoed a narrower bill (Senate Bill 311) in December, citing the objections of medical experts concerned about the state's ability to address COVID-19 spread. Even before SB 22 was passed, DeWine had publicly indicated he would veto it for the same reasons.

For more information, please contact any of the listed professionals.

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