

Legislative Analysis



CODIFICATION OF EMERGENCY K-12 SCHOOL CLOSING AND CHILD CARE LICENSING EXECUTIVE ORDERS

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<http://www.house.mi.gov/hfa>

House Bill 5719 as introduced
Sponsor: Rep. Jason M. Sheppard

Analysis available at
<http://www.legislature.mi.gov>

House Bills 5734 and 5736 as introduced
Sponsor: Rep. Brandt Iden

Committee: Government Operations
Complete to 4-29-20

SUMMARY:

Taken together, House Bills 5719, 5734, and 5736 would largely codify Executive Order 2020-35, which suspended in-person K-12 instruction for the remainder of the 2019-2020 school year, and Executive Order 2020-51, which suspended child care licensing requirements. Those EOs would be incorporated into the State School Aid Act, the Revised School Code, and the Child Care Licensing Act (1973 PA 116), respectively.

On March 10, 2020, Michigan's first patient tested positive for COVID-19, at which time Governor Whitmer declared a statewide state of emergency.¹ On March 13, the governor signed an executive order² temporarily closing elementary and secondary school buildings, beginning March 16 and running until April 5. On March 18, she signed an executive order suspending child care licensing requirements and allowing for disaster relief child care centers for the children of essential workers, until April 16. On March 23, she signed a "Stay Home, Stay Safe" executive order directing all state businesses and operations to temporarily suspend in-person operations not necessary to sustain or protect life.³ Three days before the original school closure order was to expire, on April 2, the governor issued EO 2020-35.⁴ And on the day the child care order was to expire, she issued EO 2020-51,⁵ extending its provisions until May 13, 2020.

¹ Executive Order 2020-04, issued March 10, 2020 (<https://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-04.pdf>); rescinded and replaced on April 1 with Executive Order 2020-33 (<https://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-33.pdf>).

² Executive Order 2020-05, issued March 13, 2020: <https://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-05.pdf>

³ Executive Order 2020-21, issued March 23, 2020 (<https://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-21.pdf>); extended through April 30, 2020, on April 9 by Executive Order 2020-42 (<https://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-42.pdf>).

⁴ Executive Order 2020-35, issued April 2: <https://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-35.pdf>

⁵ Executive Order 2020-51, issued April 15, 2020: <https://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-51.pdf>

Executive Order 2020-35 did all of the following:

- Suspended in-person instruction for K-12 students and closed school buildings unless restrictions were lifted before the end of the school year.
- Suspended in-person extracurricular school activities while the state of emergency or state of disaster remains in effect.
- Required the Michigan Department of Education (MDE), in collaboration with the Michigan Association of Intermediate School Administrators and the Michigan Council of Charter School Authorizers, to develop and distribute a model template for instruction by April 3, 2020.
- Provided that decisions on the awarding of credit, the issuance of grades, and the use of pass or fail determinations be made at the district level by districts with due recognition of the impact of the COVID-19 pandemic.
- Allowed certain district employees and contractors to be present in district buildings in order to conduct certain operations, including distributing materials and equipment.
- Referenced the suspension of certain requirements, including required assessments, waived by the U.S. Department of Education for the 2019-2020 school year.
- Provided that 12th grade students would graduate from high school (with some options districts could utilize to determine grades).
- Required districts to comply with special education requirements to the extent practicable.
- Suspended certain certification and continuing learning requirements for teachers and other professionals.
- Suspended provisions limiting virtual instruction and requiring retention of 3rd grade students who do not test at a certain level on standardized reading assessments, among others.
- Allowed districts to adopt alternate school calendars for the 2020-2021 school year without applying for a waiver from calendar requirements.

Executive Order 2020-51 rescinded its earlier iteration, EO 2020-16, clarified the scope of the expanded access to child care, and extended the provisions until May 13, 2020. It also did all of the following:

- Suspended rules for provisional licensing of child care organizations.
- Allowed employers, school districts, and nonpublic schools to establish *disaster relief child care centers* (DRCs) without a license.
- Required the Department of Licensing and Regulatory Affairs (LARA) to issue rules governing DRCs, and required DRCs to comply with those rules.
- Allowed the operation of DRCs in any district or nonpublic school facility that is approved for student use.
- Stipulated that hours worked by student teachers at DRCs could be counted by MDE toward student teaching and licensure requirements.
- Suspended rules as to the number and ages of children in DRCs.
- Extended the immunity from liability for disaster relief forces in the Emergency Management Act to DRCs and their employees.
- Classified DRCs as pilot programs under the Public Employment Relations Act, with the ability to charge for reasonable and customary services.

- Provided that districts and nonpublic schools should identify employees who volunteered to work at DRCs before assigning other employees to work there and exempted vulnerable or potentially contagious employees from working at DRCs.
- Required that DRCs perform health evaluations of all individuals entering the DRC and deny access to those who do not meet the evaluation criteria.
- Stated that nothing in the order should be construed to diminish the restrictions and requirements of the “Stay Home Stay Safe” executive order or any order that follows from it.
- Provided that a willful violation of the order is a misdemeanor under the Emergency Management Act and the Emergency Powers of the Governor Act (1945 PA 302).

Disaster relief child care center means a child center offering child care pursuant to the order. A disaster relief child care center must give priority for its services to the essential workforce, but may also provide child care services to the general public as space and governing rules and/or orders permit.

House Bill 5719 would amend the State School Aid Act to provide that all orders, rules, regulations, proclamations, directives, and provisions included in EO 2020-35 that are related to that act are incorporated into the section created by the bill and would remain in effect for the rest of the 2019-2020 school year. Additionally, if those measures extend beyond the 2019-2020 school year, they would likewise continue and remain in effect as specified in EO 2020-35.

Moreover, the bill states that it is the intent of the legislature that the bill codify the portions of EO 2020-35 that relate to the School Aid Act.

MCL 388.1701 and proposed MCL 388.296a

House Bill 5734 would amend the Revised School Code to provide that all orders, rules, regulations, proclamations, directives, and provisions included in EO 2020-35 (except those related to the Public School Employees Retirement Act) are incorporated into the section created by the bill and would remain in effect for the rest of the 2019-2020 school year. Additionally, if those measures extend beyond the 2019-2020 school year, they would likewise continue and remain in effect as specified in EO 2020-35.

Moreover, the bill states that it is the intent of the legislature that the bill codify EO 2020-35 into the Revised School Code.

In addition, the bill would codify into statute those sections of EO 2020-51 that recommend that districts and nonpublic schools identify employees who volunteer to work at DRCs before assigning other employees to work there and that exempt vulnerable or potentially contagious employees from working at DRCs.

MCL 380.1279g and proposed MCL 380.1851b and 380.1851c

House Bill 5736 would amend 1973 PA 116 to generally extend the provisions of EO 2020-51 until June 1, 2020 (whereas the EO runs until May 13, 2020) or until the end of the states of emergency and disaster related to COVID-19, whichever is later. However, it would not include the provision From EO 2020-51 that none of its provisions should be construed to diminish or relax the restrictions and requirements in EO 2020-42, and it would not deem violation of its provisions a misdemeanor.

MCL 722.115m and 722.117a

HBs 5734 and 5736 are tie-barred together, which means that neither could take effect unless both were enacted.

FISCAL IMPACT:

House Bills 5719 and 5734 would codify EO 2020-35 and would have no new fiscal impact on the state and for local entities. The bills reaffirm that districts must meet the requirements of EO 2020-35 summarized above to continue to receive state aid payments.

House Bill 5736 would have an indeterminate net fiscal impact on LARA. The bill would likely cause an indeterminate reduction in departmental child care licensing revenues by allowing employers, school districts, and nonpublic schools to maintain disaster relief child care centers without licensure, thus not remitting a licensure fee. The fees amount is determined by the facility type and capacity. The bill would require LARA to promulgate rules governing disaster relief child care centers, but such action would not result in any additional costs. Any potential enforcement or administrative costs resulting from the bill would likely be sufficiently offset by existing departmental appropriations.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.