CLIENT ALERTS & INSIGHTS

Benesch COVID-19 Resource Center: Summary of Amended Substitute Ohio House Bill 197

MARCH 26, 2020

HB 197, which was passed by the Ohio House of Representatives back in October, 2019 and was designated as a bill to "to make technical and corrective changes to the laws governing taxation," was selected by the Senate as the vehicle for emergency coronavirus response legislation. The legislation was unanimously passed by the Senate on March 25, 2020, and the House unanimously concurred in the Senate's amendments later that same day. The Governor is expected to sign the bill Thursday or Friday, March 26 or 27, 2020. The bill contains an emergency clause, meaning that its provisions will take immediate effect upon the Governor's signature.

As enacted, the bill contains the following emergency measures:

1. Child Care

(a) Suspends the statutory staff-to-child ratio requirements and maximum group sizes at child-care centers during the pendency of the declared emergency, but not beyond December 1, 2020.

(b) Allows the Department of Jobs and Family Services to continue making payments to publicly funded child care providers during the emergency so that the system may quickly return to full operation following the emergency.

(c) Delays from July 1, 2020 to September 1, 2020 the requirement that child care centers participate in Step Up to Quality in order to receive public funding.

2. Education

(a) Exempts all public and chartered nonpublic schools from administering state achievement and alternative assessments, prohibits the Department of Education from subtracting from a district or school's state aid account for students who were unable to complete assessments, prohibits an e-school from withdrawing students who were unable to complete assessments, and waives the requirement that the parents of a homeschooled student submit assessment data to the resident school district as a condition of the district allowing the student to continue to be homeschooled for the 2020-2021 school year.

(b) Provides that students participating in the Educational Choice Scholarship Program, the Jon Peterson Special Needs Scholarship Program, and the Cleveland Pilot Project cannot be considered ineligible for renewal of those scholarships solely because the student not being administered an assessment in the 2019-2020 school year.

(c) Prohibits the Department of Education from publishing and issuing ratings for overall grades, components, and individual measures on the state report cards, report cards for dropout recovery schools, report cards for joint vocational school districts and other career-technical planning

districts, and submitting preliminary data for report cards for school districts and buildings, and establishes a safe harbor from penalties and sanctions for districts and schools based on the absence of state report card grades for the 2019-2020 school year.

(d) Prohibits schools from retaining students in the third grade under the Third-Grade Reading Guarantee, unless the school principal and student's reading teacher determine the student is not reading at grade level.

(e) Permits high school seniors to graduate if the school determines that they were on-track to do so prior to the declaration of the emergency.

(f) Permits a district or school that has previously adopted a resolution to exceed the minimum curriculum requirements prescribed under current law to elect to require only the minimum curriculum for the purpose of determining high school graduation for the 2019-2020 school year.

(g) Prohibits the use of the value-added progress dimension from the 2019-2020 school year in teacher performance evaluations.

(h) Prohibits the Department of Education issuing a community school sponsor rating for academic performance, from using that rating for the overall rating, and from finding a sponsor out of compliance for any requirement for an action that should have occurred while schools were closed.

(i) Permits the Department of Education to issue one-year, nonrenewable, provisional licenses to educators that have met all other requirements for the requested license except for the requirement to pass a subject area exam, provided that such provisional licensee is required to take and pass the appropriate subject area exam prior to expiration of the license.

(j) Authorizes the Superintendent of Public Instruction to adjust statutory deadlines for teacher evaluations, intent to reemploy notifications, school safety drills, emergency management tests, requirements to fill a vacancy on a board of education, updating teacher evaluation policies, and gifted screening.

(k) Allows the Chancellor and State Superintendent to waive College Credit Plus timelines and requirements.

(l) Permits the Superintendent of Public Instruction to waive or extend deadlines, or to otherwise grant providers and students flexibility, for completion of adult education program requirements.

(m) Permits a board of education to dispense with evaluations of teachers, administrators, or other employees if the district board determines that it would be impossible or impracticable to do so, and provides that individuals not evaluated shall not be penalized for purposes of reemployment.

(n) Exempts schools and other entities from food processing requirements to allow for continued student meal delivery during the pendency of the declared emergency, but not beyond December 1, 2020.

(o) Permits school districts, STEM schools, and community schools other than e-schools, and chartered nonpublic schools to use distance learning to make up for any missed days or hours of instruction as a result of the closure of Ohio schools.

(p) Allows licensed special education providers to utilize tele-health and electronic communication methods to serve students who are receiving special education services through their school district or through the Autism Scholarship or Jon Peterson Special Needs Scholarships.

(q) Limits the number of Ed Choice designated school buildings for the 2020-21 school year to those buildings previously eligible in the 2019-20 school year, but allows siblings of current scholarship recipients, incoming Kindergarten students, and rising high school students to receive a performance-based scholarship for the 2020-21 school year if the building they attend or would attend meets the criteria.

3. Elections

(a) Extends the mail-in ballot period for the suspended March 17, 2020 primary election to April 28, the new date by which absentee ballots must be post-marked, with certain exceptions for disabled citizens.

(b) Authorizes $7.0M transfer from Emergency purposes fund to pay the costs associated with the extended voting period.

(c) Provides an extra 45 days for a political party county central committee to fill a vacancy that was otherwise required to be filled during the period of the declared emergency.

4. Government Operations

(a) Extends the validity of licenses issued by state agencies and political subdivisions, provides a 90-day window for license renewal, and provides that disciplinary action can still be taken against the licensee for reasons other than the deadline extension.

(b) Allows state boards & commissions, local & county governments, and higher education boards to operate meetings electronically during the declared emergency but not beyond December 1, 2020, so long as the public is aware and can participate electronically.

(c) Tolls criminal statutes of limitations, civil statutes of limitations, and administrative statutes of limitations and other court time limitations and deadlines that expired or are set to expire between March 9, 2020 and July 30, 2020, and that such tolling expires on the date the emergency ends or July 30, 2020, whichever is sooner.

(d) Allows the Auditor of State, for an audit period during which the declared emergency is in effect, to waive the requirement that he conduct a standard financial audit after conducting an agreed-upon procedure audit in two consecutive audit periods and; and to waive all criteria a public office is required to satisfy in order for the Auditor of State to conduct an agreed-upon procedure audit instead of a standard financial audit.

(d) During the emergency, but not beyond December 1, 2020, allows the Ohio Public Works Commission, to automatically extend project schedules and waive penalties and late fees owed to the Commission from the issuance of outstanding loans.

(e) During the emergency, but not beyond December 1, 2020, allows the Ohio Water Development Authority, to waive penalties and late fees owed to the Authority from the issuance of outstanding loans.

(f) During the emergency, but not beyond December 1, 2020, allows the Ohio Environmental Protection Agency, to waive penalties or late fees owed to the Agency from the issuance of outstanding loans or permits and to suspend reporting requirements for water research recovery facilities or solid waste facilities.

(g) Suspends, until August 30, 2020, a provision of law regarding liability of a county recorder for failure to perform certain duties of the office, including the duty to record a document not later than the morning of the day after the document was filed for recording.

(h) Requires the office of a county recorder, the office of a county auditor, the title office of a clerk of court of common pleas, and a county map office to remain open and operational during the emergency in order to allow land professionals physical access to the office as necessary to search records that are not otherwise available online, digital, or by some other means, and to allow land professionals, automobile, watercraft, outboard motor, all-terrain vehicles, and mobile home dealers access to the office as necessary to process titles that are not otherwise available online. The bill further specifies that all essential services to effectuate a property transfer must remain open and available with all offices, but that the office may provide such access during limited hours and for a limited duration, and may subject searchers to requirements and restrictions in the interest of public health.

(i) Authorizes the Director of Budget and Management to transfer funds from the state's "rainy day fund" to the general revenue fund to ensure that the state's budget is balanced.

5. Health Care

(a) Authorizes the Medicaid Director, during the state of emergency, or until December 1, 2020, whichever is earlier, to classify certain Medicaid providers as COVID-19 community providers, request the Director of Budget and Management to designate additional funds related to the COVID-19 outbreak for Medicaid payments to COVID-19 community providers, make payments to COVID-19 community providers, and facilitate payments to COVID-19 community providers by transferring funds to the Departments of Developmental Disabilities and Mental Health and Addiction Services via intrastate transfer vouchers.

(b) Permanently grants certified registered nurse anesthetists, under certain conditions, the authority to perform additional duties or services related to anesthesia care, including ordering and administering drugs and IV fluids, ordering diagnostic tests and directing nurses to administer drugs.

(c) Allows for recent nursing graduates to obtain a temporary license to practice prior to passing the licensure examination, which temporary licenses expire either 90 days after the duration of the emergency or 90 days after December 1, 2020, whichever comes sooner.

6. Public Retirement Systems

(a) Provides a public retirement system retirant that is rehired by the Department of Rehabilitation and Correction, Youth Services, Mental Health and Addiction Services, Veteran Services, or Developmental Disabilities is not required to forfeit their retirement allowance during the declared emergency but not beyond December 1, 2020.

(b) Appropriates $20M for state agency capital projects and authorizes the Director of Budget and Management, at the request of the Department of Administrative Services, to transfer up to $20M from the Building Improvement fund to the Administrative Building Fund to pay costs associated with state agency capital projects, and to transfer such funds back when sufficient funds become available from upcoming bond sales.

(c) Allows state public retirement system boards to delay board member elections until December 1, 2020.

7. Relief for Individuals

(a) Authorizes the Director of Environmental Protection, during the emergency, but not beyond December 1, 2020, to issue an order that requires a public water system to restore service to any customer whose service was disconnected as a result of nonpayment of fees and charges and, to waive all fees for connection or reconnection, and prohibits a public water system from disconnecting customers because of nonpayment of fees and charges.

(b) Codifies the Governor's Executive Order related to unemployment compensation (#2020-03D) by suspending the one-week waiting period, allowing the Director of Job and Family Services to waive the work search requirements, and changing eligibility requirements to include COVID-19 unemployment situations during the emergency or until December 1, 2020, whichever is earlier.

8. Taxation

The bill makes several changes to Ohio tax laws to align Ohio law with the recent changes in federal changes:

(a) Allows the Tax Commissioner to extends date for tax filing and payment dates for the duration of the emergency and to waive interest payments.

(b) Provides that, for municipal income tax purposes, an employee working from home or from a temporary worksite during the emergency is to be considered as working from their otherwise principal place of work for purposes of the "20-day rule."

(c) Extends due date of the state-administered municipal net profit tax.

For more information on Amended Substitute House Bill 197, contact a member of the firm's Public Law/Government Relations Practice Group.

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Please note that this information is current as of the date of this Client Alert, based on the available data. However, because COVID-19's status and updates related to the same are ongoing, we recommend real-time review of guidance distributed by the CDC and local officials.

