CLIENT ALERTS & INSIGHTS

What Didn't Happen During the Lame Duck (and what Did)

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What Didn't Happen

The 134th General Assembly wrapped up its work last week putting the final touches on a marathon lame duck session. Benesch secured numerous big wins for our clients, including an amendment to the tax code, advancing key healthcare policy changes and an appropriation, and killing a surprise proposal added to legislation on the last day of committee that would have significantly diminished industry educational standards. However, some of the most notable items are those that didn't happen during lame duck.

A major overhaul of the State Board of Education that would have put a gubernatorial appointee in charge of a proposed new Department of Education and Workforce was left on the table along with a slew of other issues after the legislature met until the sun came up the following morning. Also failing to gain enough support to pass was language barring transgender athletes from playing women's high school sports.

Other issues that did not see a legislative vote were gun safety measures, in addition to Senate language that would have clarified the state's six-week abortion ban. Given the ongoing litigation on abortion rights, legislators chose to wait for the outcome of the lawsuit before moving forward on this issue.

Several bills were pending this session regarding the legalization of marijuana in Ohio-none made it to the Governor's desk this year. That includes majority party-sponsored S.B. 261, which would have transferred regulation of dispensaries from the Board of Pharmacy to the Department of Commerce, among other deregulatory efforts. The Coalition to Regulate Marijuana like Alcohol (CRMLA) plans to put the question of whether to legalize adult recreational use to Ohio voters in November 2023 via an initiated statute if the General Assembly again fails to act within four months of the successful collection of signatures by CRMLA to qualify the measure.

Also failing to pass was a House resolution that would increase from a simple majority to 60% the required voter approval threshold to make future amendments to the Ohio Constitution. However, the resolution's sponsor has promised to revisit it in the next General Assembly.

Three proposals advanced by the House Health Committee saw no floor action in the final session: a measure giving anesthesiology assistants the same scope of practice afforded to certified nurse anesthetists; a requirement for state-regulated insurance plans to cover biomarker testing; and a proposal that would have provided $15 million on pilot programs using prescription digital therapeutics to treat opioid use disorders.

A bill criticized by business groups as a labor mandate on construction jobs at privately owned refineries (H.B. 235) did not prevail. The same goes for H.B. 68, which would have subjected private owners of construction projects to Ohio's Prompt Pay Act.

Legislation backed by the Ohio State Bar Association proposing reforms to Ohio's Nonprofit Corporation Act failed, but is sure to be reintroduced next year (H.B. 556). The same goes for a proposal advocated by the Moritz family attempting to amend the state's charitable trust law.

What Did Happen

In addition to the legislation that didn't pass, there were several significant issues to gain legislative approval that are now headed to the Governor for his signature.

A $6 billion spending package includes appropriations for:

- $350 million for nursing facility providers to make workforce relief payments
- $85 million to expand career-focused programming and other initiatives to recruit, train, and retain a robust behavioral health workforce
- $90 million for one-time infrastructure investments to support the expansion of crisis infrastructure, including stabilization units, short-term crisis residential services, hospital diversion and step-down centers, mobile crisis response, and behavioral health urgent care centers
- $100 million for critical access and rural hospitals that are Medicaid providers for direct care staff compensation, such as staff retention bonus payments, overtime pay and shift differential payments, staff recruitment costs, and new hire incentive payments
- $88 million for Assisted Living Workforce Support, Hospice Care Workforce Support, Home and Community Based Services (HCBS) Workforce Support, and Adult Day Care Providers
- $50 million for expansion of the Program of All-Inclusive Care for the Elderly (PACE)
- $250 million in additional grant funding for political subdivisions under the Water and Sewer Quality Program
- $161 million in rent and utility assistance
- $150 million in lead abatement and prevention, including lead-safe building certification and screening and testing for lead poisoning, and workforce development, recruitment, and retention of lead contractors
- $112 million in additional school safety grants
- $50 million in grants through the Department of Development for performing arts organizations and cultural arts museums

Other measures to pass during lame duck include a temporary nonrefundable income tax credit of up to $25,000 per year for training expenses paid by employers to train employees to operate a commercial vehicle; language requiring the submission of a report by the Department of Taxation to the Governor describing all property tax exemptions under Ohio law and their fiscal impact (H.B. 66);

two occupational licensure bills that allow for reciprocity with other states and revise and streamline occupational regulations in certain areas (S.B. 131 and H.B. 509); and with the passage of S.B. 251, employers can now hire 14- and 15-year-olds to work until 9 p.m. year-round, with their parents' consent.

Ohio's restrictive raffle law will soon allow public schools, charter schools, prep schools, STEM schools, and chartered nonpublic schools to raise funds using a raffle, an expansion from the current limitation to 501(C)(3) nonprofit organizations.

The legislature passed major criminal justice reform measures, including changes to the distracted driving statute to make it a primary offense in Ohio, which will allow law enforcement officers to pull motorists over for solely that reason. Additional provisions were passed to crack down on elder abuse, legalize fentanyl testing strips, expand access to naloxone, specify that arrest or conviction for illegal use or possession of marijuana drug paraphernalia does not constitute a criminal record and need not be reported, reduce the penalty for underage drinking from a first-degree to a third-degree misdemeanor, increase penalties for disturbing a religious worship gathering, codify the Office of the Solicitor General within the Office of the Attorney General, and create the Tenth Amendment Center within the Office of the Attorney General.

An election reform bill was passed that will require Ohio voters to have a government-issued photo ID as proof of ID and eliminates the requirement that ballot contracts be awarded to in-state vendors only.

If you are interested in learning more about any of the legislative items mentioned in this article, or the priorities of the new 135th Ohio General Assembly, the Benesch Government Relations Team is here to assist.

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