

LC 45 (6/19/20) STAFF MEASURE SUMMARY

Joint Interim Committee on the First Special Session of 2020

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WHAT THE MEASURE DOES:

Eviction Moratorium and Foreclosure Protections: Makes legislative findings and declarations regarding potential impact to state contracts. Defines “emergency period,” “nonpayment,” and “nonpayment balance” for residential and commercial evictions. Prohibits and restricts landlords from taking specified actions based on a tenant’s nonpayment balance during the emergency period. Specifies a landlord shall apply payments received from a tenant to the tenant’s nonpayment balance. Authorizes landlord to send written notice to tenant reflecting status of rent due. Establishes that tenants may not defer payment of nonpayment balances for more than 90 days. Authorizes tenant injunctive relief for landlord violation of moratorium restrictions. Repeals eviction restrictions 270 days after declaration of state of emergency was issued by the Governor. Establishes temporary foreclosure protections. Defines “borrower,” “emergency period,” “financing agreement,” “foreclosure avoidance measure,” “forfeiture remedy,” “lender,” “subject property,” “trust deed,” and “trustee.” Prohibits a lender from treating a borrower’s failure to make loan payment as a declaration of default or imposing specified fees. Prohibits and restricts other specified foreclosure procedures. Repeals foreclosure protections 90 days after expiration of emergency period as defined in measure.

Local Government and Special Government Body Public Meetings and Operations: Allows local governments to hold all meetings of their governing bodies, including taking public testimony, by telephone or video conference, provided a method is made available for the public to listen or observe the meeting. Requires recording of meetings, to be made available to public, if technology allows. Specifies that meetings held in person must maintain social distancing. Clarifies meeting notice requirements. Specifies that quorum requirements exclude persons unable to attend because of illness due to COVID-19. Authorizes reasonable expenditures if local government is unable to comply with local budget law during Governor’s declared state of emergency.

Garnishment Modifications: Protects CARES Act recovery rebate payments from garnishment. Applies to garnishment issued on or before the date that is 90 days after the date emergency declaration was issued on March 8, 2020, and any extension of the declaration, is no longer in effect.

Judicial Proceeding Extensions and Electronic Appearances: Authorizes the Chief Justice to extend or suspend a time period requirement relating to the initiation of a court case or proceeding requirement related to a pending court case during a declaration of a state of emergency issued by the Governor related to COVID-19. Provides power of Chief Justice to extend or suspend timelines to continue for 90 days after the declaration is no longer in effect. Allows orders to appear for criminal citations issued to be more than 30 days after the date of issue. Authorizes the extension of pre-trial custody of defendant’s beyond statutory limits if a court makes certain findings relating to the dangerousness of the individual. Includes within the definition of “good cause” circumstances caused by COVID-19.

Extends expiration of period to commence or give notice of civil action by 90 days from the end of Governor-declared COVID-19 state of emergency if expiration of claim or period for notice falls within the time period of the emergency declaration. Applies to civil claims, wrongful death actions, tort claims against public bodies, or any

other civil cause of action. Excludes time periods for commencement of criminal actions, appeals to Tax Court or Court of Appeals, or initiation of cases or proceedings before the Supreme Court. Repeals provisions December 31, 2021. Declares emergency; effective on passage.

Emergency Shelter: Defines “emergency shelter” as a building that provides shelter on a temporary basis for individuals and families who lack permanent housing. Stipulates that a building used as an emergency shelter may resume its use as an emergency shelter after that use has been stopped if the interruption was two years or less. Prohibits use of building for any purpose other than an emergency shelter except upon the approved application of a permit for other use under current land use laws and regulations. Requires local governments to approve an application for an emergency shelter if specified requirements are met, including: (1) providing sleeping and restroom facilities; (2) complying with building codes; (3) being located within an urban growth boundary or area zoned for rural residential; (4) not resulting in the development of a new building in an area designated as a natural disaster area or floodplain (5) providing adequate access to public transit; (6) not posing an unreasonable risk to public health or safety; and, (7) being operated by a public benefit corporation, a religious corporation, a local government, or nonprofit corporation in partnership with another eligible entity. Specifies that the approval of an emergency shelter is not a land use decision. Repeals provisions 90 days after effective date of 2020 special session.

Stipulates that a political subdivision may allow any person to offer any number of overnight camping spots on the person’s property to homeless individuals living in vehicles. Requires religious institutions offering this service to provide campers access to sanitary facilities. Allows local governments to regulate vehicle camping spaces as transitional housing accommodations. Repeals provisions 90 days after effective date of 2020 special session.

Defines “low-barrier emergency shelter” and “navigation center,” and outlines the operations for both. Directs the Oregon Department of Administrative Services to award grants to local governments to: (1) plan the location, development, or operations of a navigation center; (2) construct, purchase, or lease a building for use as a navigation center; (3) operate a navigation center; or, (4) contract for any of these activities. Repeals provisions on January 2, 2022.

Low Income Utility Bill Assistance: Establishes the Low-Income Utility Payment Fund (the Fund) within the State Treasury, separate and distinct from the General Fund. Interest earned by the Fund will be credited to the Fund. Continuously appropriates the moneys in the Fund to Oregon Housing and Community Services (OHCS) to provide low-income energy bill payment assistance. Directs OHCS to allocate money to subgrantees who contract with OHCS under the federal Low-Income Home Energy Assistance Act of 1981. Subgrantees must give priority to low-income households affected by the COVID-19 pandemic, for reasons including reduced work hours, medical conditions, loss of work, or dependents in the home. A subgrantee can determine the eligibility standards for low-income households and may base such standards on categorical eligibility. Requires subgrantees to report to OHCS on the use of these moneys.

Notarial Acts: Establishes pilot program for remote notarization services. Allows notary public to perform notarial acts, including taking acknowledgments, administering oaths or affirmations, witnessing or attesting a signature, or certifying or attesting copies of documents, with individuals who are not in the physical presence of the notary. Requires technology that allows simultaneous sight and sound, or appropriate adaptive technologies, between notary and individual. Requires personal knowledge of the identity of the remote individual, a recorded oath or affirmation from a credible witness of the identity of the individual, or identity proofing. Requires notary to make audiovisual recording of the performance of the notarial act and retain the recording for a period of at least 10 years. Requires Secretary of State to establish remote notarization rules. Allows notary public to charge up to \$25 per remote notarial act. Repeals provisions on June 30, 2021.

Isolation Shelter Liability Limits: Provides immunity from civil liability for claim of illness, injury, or death from COVID-19 for owner, officer, operator, employee, or agent of an isolation shelter brought by either an individual or an employee. Provides immunity from civil liability for public entities entering into sheltering agreements. Immunity does not apply if the owner, operator, officer, employee, or agent engages in conduct that constitutes gross negligence, fraud, or malice, is willful, intentional, reckless, or criminal, or is unrelated to COVID-19 exposure. Allows employees to bring claim under Workers Compensation as covered condition. Defines terms.

Enterprise Zone Termination Extensions: Allows an enterprise zone that would otherwise terminate on June 30, 2020 to terminate on December 31, 2020. Authorizes sponsor to redesignate otherwise terminating enterprise zones prior to January 1, 2021, but specifies that redesignation will not take effect before December 31, 2020.

Individual Development Account Modifications: Permits the use of an individual development account (IDA) for establishing emergency savings. Defines “emergency expenses” as extraordinary medical costs, periods of unanticipated unemployment or other substantial personal expenses that significantly impact the account holder’s noncash assets, health, housing or standard of living if not promptly addressed. Allows funds in the IDA to be withdrawn for emergency expenses without regard to whether the account was established for emergency savings. Requires the account holder to reimburse a non-emergency IDA savings account for the amount withdrawn before withdrawing any matching deposits or accrued interest for a non-emergency expense. Eliminates the requirement that an account holder be removed from the program if the funds are not reimbursed within 12 months.

Oregon OSHA Infectious Disease Standards: Requires Department of Consumer and Business Services to adopt a temporary rule by August 1, 2020, for an emergency temporary infectious disease standard to address immediate health risk posed by occupational exposure and impose measures to protect workers against such exposure. Requires Department to adopt permanent infectious disease standard by July 31, 2021.

Race and Ethnicity Data Collection and Reporting During COVID-19 Pandemic: Requires specified licensed health care providers to collect data on race, ethnicity, preferred spoken and written languages, English proficiency, interpreter needs and disability status during COVID-19 encounters. Defines “COVID-19,” “encounter,” and “health care provider.” Requires health care providers to report collected data to testing laboratory, the Oregon Health Authority (OHA), and the Department of Human Services (DHS). Requires OHA to adopt rules establishing deadlines, frequency, and manner of reporting. Allows regulatory boards, OHA, and DHS to enforce reporting requirements within current legal authority. Prohibits individuals from using collected data to reject, deny, limit, cancel, refuse to renew, increase the rates of, affect the terms and conditions of a hospital, medical expense, or insurance policy. Repeals reporting requirements 270 days after the date on which the declaration of a state of emergency issued by the Governor on March 8, 2020, and any extension of the declaration, is no longer in effect.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

BACKGROUND:

Eviction Moratorium and Foreclosure Protections: According to Oregon Housing and Community Services (OHCS), prior to the COVID-19 pandemic, 27 percent of Oregon renter households were severely housing cost burdened,

meaning that they spent more than half their income on rent. As a result of the pandemic, tenants impacted financially due to unemployment and lost wages have either missed rent payments or leveraged economic impact payments, savings, and unemployment benefits to meet rent demands. OHCS surveyed affordable housing providers across the state in May 2020 and estimates that 11.6 percent of rent payments were not made in that month.

The federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act) allows eligible homeowners who suffer a financial hardship due to COVID-19 to enter forbearance and temporarily suspend or reduce their mortgage payments. It is estimated that four million homeowners have already applied for mortgage forbearance. According to the National Conference of State Legislatures, nearly a dozen states have introduced consumer protection legislation to provide temporary relief from evictions and foreclosures of residential and commercial properties during COVID-19; several other states have provided similar protection through executive or judicial orders.

LC 45 (sections 1-8) restricts landlords and lenders from actions against tenants and borrowers due to late or nonpayment of rent or mortgage during the Governor's declared emergency period.

Local Government and Special Government Body Public Meetings and Operations: Government agencies at all levels in Oregon are subject to public meeting laws generally codified in ORS 192.610 and following, as well as ORS 221.770 for revenue distribution for cities. Meetings of governing bodies must be open to the public, provide adequate public notice, and abide by quorum requirements. LC 45 outlines procedures for meeting by electronic means during the Governor's declared state of emergency issued on March 8, 2020.

Garnishment Modifications: Courts impose financial obligations through judgments, and creditors can enforce judgments using a procedure called garnishment. When a writ of garnishment is delivered to a financial institution, the financial institution must conduct a review of the debtor's account. The following deposits in the 60-day lookback period are not subject to garnishment: federal benefit payments, certain retirement benefits, public assistance and medical assistance payments from the state, unemployment benefit payments, black lung benefit payments, and workers' compensation payments. LC 45 adds CARES Act recovery rebate payments to those deposits that are not subject to garnishment. Executive Order 20-18, signed April 17, provides a similar protection.

Judicial Proceeding Extensions and Electronic Appearances: In March 2020, Oregon Judicial Department sought legislative authority to extend or suspend certain mandatory statutory timelines that apply to the procedure of cases during the COVID-19 state of emergency, including the mandatory timelines to conduct jury trials. Following concerns expressed about the broad authority proposed to extend certain timelines relating to pre-trial custody, a work group was convened to develop a proposal that addressed those concerns.

Civil actions must be commenced within the court system within a certain period of time from the injury or discovery of the injury. This period is commonly called the "statute of limitation." For example, a civil suit to recover for breach of contract must be commenced within six years of the breach occurring, ORS 12.080, while the statute of limitation for a wrongful death claim is three years from the death of the decedent. ORS 30.020.

Section 15 of LC 45 extends the statute of limitation in civil actions when the statute of limitation falls within a Governor-declared COVID-19 emergency order. The period of extension is for 90 days beyond the end date of the emergency order. The extension does not apply to the time periods for commencing criminal actions, appeals of the Tax Court, appeals to the Court of Appeals, or any initiation of cases or proceedings before the Oregon Supreme Court.

Emergency Shelter: Oregon's rate of homeless individuals who are unsheltered, at 64 percent (10,142 individuals in 2019), is one of the highest in the US. Many of these unsheltered homeless individuals are in families (65 percent).

At the national level, two-thirds of unsheltered homeless individuals in families were located in the states of Oregon, California, Florida, or Colorado. In Oregon, unaccompanied youth, of which 1,590 were identified in the 2019 Point in Time count, are largely unsheltered (72percent). The count also identified 1,438 homeless veterans, an increase of 11 percent in five years.

The health and economic impacts of the COVID-19 crisis have heightened the need for more safe shelter space to slow the spread of the disease and accommodate a growing homeless population. According to the National Institute for Health Care Management, homeless individuals infected by COVID-19 are two time as likely to be hospitalized and two to three times more likely to die than the general population when infected with COVID-19.

Low Income Utility Bill Assistance:

Notarial Acts: A notary public, or notary, is a person commissioned by the Secretary of State to provide witnessing, acknowledging, or certifying services. To perform a notarial act, the notary and the individual must be in the same physical location so the notary can verify signatures, check identification, and detect possible fraud or coercion. Currently, notaries may charge \$10 for each notarial act. With social distancing requirements resulting from COVID-19, many notarial services are unavailable.

The Oregon Law Commission convened a work group in May of 2019 to examine adoption of the Revised Uniform Law on Notarial Acts, which addressed remote notarization. In the fall of 2019, the Law Commission approved the measure for introduction, but was unable to introduce the bill in the 2020 session.

LC 45, Sections 27-40 allow remote notarization services until June 30, 2021. The measure requires recorded sight and sound, or appropriate adaptive technologies, of the notarial act. Individuals must prove their identity and the notary must be able to reasonably confirm that the record before the notary is the same record before the individual. Notaries would be able to charge up to \$25 per remote notarial act. The measure requires the Secretary of State to adopt rules on the use of remote notarization.

Isolation Shelter Liability Limits: Best practices for individuals who are diagnosed with COVID-19 or have been exposed to the virus is for individuals to isolate. This may be problematic for individuals who lack housing and may already be in vulnerable health conditions. Shelters may not be able to provide housing for COVID-19 positive individuals or individuals who have been exposed to the virus because of the risk of transmission to the rest of the shelter population.

In response to this issue, some hotels, motels, and short-term rentals have signed agreements with state and local government to provide housing for COVID-19 exposed or positive individuals for the purpose of isolation and treatment.

LC 45, Section 41 provides immunity from civil suits to the owners, operators, or employees of hotel, motel, or short-term rental who have entered into an agreement with a public body to provide housing and services for COVID-19 affected individuals and have agreed to adhere to state and federal health guidance on cleaning and disinfecting common areas. The liability protection also extends to public entities entering into agreements. The liability is only for claims related to COVID-19 exposure or infection that results in injury, illness, or death, and is not provided in cases in which conduct is beyond negligent or unrelated to COVID-19 exposure or illness. The measure specifies that employers are protected from claims by workers, but exposure or illness is covered by Workers Compensation.

Enterprise Zone Termination Extensions: Enterprise zones exempt businesses from local property taxes on new

investments for a specified amount of time based on the specific zone program (standard or special). Enterprise zones aim to help attract private business investment and help resident businesses to reinvest and grow in communities facing economic challenges. Enterprise zones are sponsored and administered by a city, county, tribe, port, or combination of such governments. There are currently 74 enterprise zones in Oregon; five terminate on June 30, 2020: Columbia River, Dallas/Independence/Monmouth, Grande Ronde {La Grande}, Greater Redmond Area, and Salem.

The process to redesignate an enterprise zone includes advising Business Oregon 45 days in advance, consulting with local taxing districts, meeting certain economic criteria, and completing a sponsoring resolution. The consultation with local taxing districts includes an open, public meeting with notice sent 21 days in advance. Extension of the termination deadline for these enterprise zones will allow zone sponsors to complete the redesignation process without further operational interruptions that would be caused by zone termination on June 30, 2020.

Individual Development Account Modifications: The Oregon Investment Account Initiative was established in 1999. It aims to alleviate poverty and build pathways of opportunity by matching funds in savings accounts, called individual development accounts (IDAs), for Oregonians with lower incomes. Participants plan and save for a defined goal (such as a home purchase, education or microenterprise) and the matching funds are drawn from various private resources. Neighborhood Partnerships manages the initiative, while Oregon Housing and Community Services and the Department of Revenue provide oversight.

Oregon OSHA Infectious Disease Standards: Within the Department of Consumer and Business Services, the Oregon Occupational Safety and Health Division (Oregon-OSHA) enforces occupational safety and health regulations in workplaces. Oregon-OSHA operates under an agreement with the federal Occupational Safety and Health Administration (OSHA). The federal OSHA has been working on an infectious disease standard since 2010 in the aftermath of the H1N1 pandemic. Development of the standard is currently on the long-term portion of the U.S. Department of Labor's regulatory agenda.

Race and Ethnicity Data Collection and Reporting During COVID-19 Pandemic: In 2013, the Oregon Legislature passed HB 2134, which directed the Oregon Health Authority (OHA) and the Department of Human Services (DHS) to collaborate in standardizing and improving how race, ethnicity, spoken and written language, and disability (REAL D) demographics are collected. These data collection standards provide a consistent method to gather information across all state data systems and are used to measure and compare service and health disparities. According to OHA, REAL D data standards can help Oregon understand, identify, track, and address social and health inequities, guide the development of culturally specific and accessible services, and inform the equitable allocation of resources to address health inequities.

In response to COVID-19, OHA has released daily updates and weekly reports of the state's COVID-19 cases by demographic groups often with missing or unknown race or ethnicity data for COVID-19 related testing, test results, and hospitalizations. Nationally, black, indigenous, and people of color represent a higher percent of COVID-19 confirmed cases compared to the general population. According to the Centers for Disease Control and Prevention, one-third of people hospitalized by the virus nationwide are African American: two and a half times greater than the proportion of Black people in the overall U.S. population. In response to national and local data showing the disproportionate effect of COVID-19 on communities of color, OHA also established "Actions for an Equity-Centered Response to COVID-19." Data collection and standardization of demographic data is an important public health tool to assess and address the disproportionate effects of COVID-19 on communities of color in Oregon.