

HB 4212 A STAFF MEASURE SUMMARY
Joint Committee On The First Special Session of 2020

Carrier: Rep. Holvey

Action Date: 06/25/20

Action: Do pass with amendments. (Printed A-Eng.)

House Vote

Yeas: 7 - Bynum, Drazan, Holvey, Lewis, Salinas, Speaker Kotek, Stark

Senate Vote

Yeas: 6 - Burdick, Frederick, Knopp, President Courtney, Prozanski, Thatcher

Nays: 1 - Girod

Fiscal: Fiscal impact issued

Revenue: Has minimal revenue impact

Prepared By: Melissa Leoni, LPRO Analyst

Meeting Dates: 6/25

WHAT THE MEASURE DOES:

Makes changes to various statutes to address the effects of the COVID-19 pandemic, including local government and special government body public meetings and operations, garnishment modifications, judicial proceeding extensions and electronic appearances, emergency shelter approval, notarial acts, enterprise zone termination extensions, individual development account modifications, race and ethnicity data collection and reporting, and physician assistant practice authorization. Declares emergency; effective on passage.

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 garnishments issued on or before September 30, 2020.

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 state of emergency declaration issued by the Governor related to COVID-19. Permits Chief Justice to extend or suspend timelines to continue for 90 days after the declaration is no longer in effect.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 defendants beyond statutory limits if a court makes certain findings relating to the dangerousness of the individual. Includes within the definition of “good cause” for extension of custody or postponement of trials 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.

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

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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, religious corporation, local government, or nonprofit corporation in partnership with another eligible entity. Includes youth shelters, winter or warming shelters, veterans' shelters, day shelters, and family violence shelters as facilities eligible for approval as emergency shelters. Allows emergency shelters to provide additional services assisting individuals transitioning from unsheltered homeless status and to charge a fee of up to \$300 per month per client to clients able to pay the fee and who request the services. Specifies that the approval of an emergency shelter is not a land use decision. Specifies an application for the development of land for an emergency shelter that was completed and submitted before the repeal date is not affected. Repeals provisions 90 days after effective date of measure. 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 measure. Defines "low-barrier emergency shelter" and "navigation center," and outlines the operations for both. Allows Oregon Department of Administrative Services (DAS) 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.

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.

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 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.

Race and Ethnicity Data Collection and Reporting During COVID-19 Pandemic: Requires licensed or certified health care providers to collect data on race, ethnicity, preferred spoken and written languages, English proficiency, interpreter needs and disability status (REALD) during in the provision of health services related to

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COVID-19. Defines “COVID-19,” “encounter,” “telemedicine,” and “health care provider.” Directs Oregon Health Authority (OHA) to adopt rules requiring health care providers to collect and report data using existing standards (ORS 413.161), specifies timelines for data collection, and allows OHA to provide incentives to health care providers to comply with requirements. Clarifies data collected by providers is confidential and subject to federal and state laws limiting any disclosure of health information. Grants enforcement authority to OHA, the Department of Human Services (DHS), and professional regulatory boards beginning December 31, 2020. Clarifies insurers cannot use collected data to deny, limit, cancel, refuse to renew, or increase premiums for an insurance policy.

Physician Assistants: Authorizes physician assistants (PAs) to provide patient care services within their scope of practice without entering into a practice agreement and with specified supervision requirements. Authorizes PAs to provide patient services to individuals located outside of Oregon if services are within the PA’s scope of practice. Repeals these authorities on the date 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:

- Membership of work group that developed the consensus -36 amendments; clarification on the pre-trial extension limit; and who is affected by the limit
- Liability limits in -38 amendments, including how to prove gross negligence, how businesses prove they are following existing guidance, making "good faith" efforts, setting regulations, establishing standards, protection of front-line workers, and avoiding harm to workers and businesses
- Opportunities for student participation in sports without the -10 amendments
- Clarifications in emergency shelter provisions by -7 and -27 amendments
- Inequitable impact of COVID-19 crisis on low-income communities and communities of color
- Creating flexibility in currently held individual development account funds
- Change to public meeting notice requirement (-23 amendments)
- Use of REALD data collection for public health purposes and importance of data collection to communities of color (-30 amendments)
- Providing more flexibility for physicians assistants and allowing practice at top of scope during the pandemic (-33 amendments)

EFFECT OF AMENDMENT:

Local Government and Special Government Body Public Meetings and Operations: Deletes requirement that a public body posting meeting notices on its website shall also send notices by electronic mail to persons who have requested notice.

Garnishment Modifications: Changes end date for garnishment protection from 90 days after emergency declaration is no longer in effect to September 30, 2020.

Judicial Proceeding Extensions and Electronic Appearances: Removes provision authorizing court to extend pre-trial detention beyond the 180-day statutory limit for cases involving non-person felony charges. Allows courts to extend pre-trial detention beyond 180-day statutory limit for certain cases involving person felony and misdemeanor charges. Prohibits any pre-trial extension under these provisions to exceed 240 days.

Emergency Shelter: Adds veterans’ shelters to the list of facilities eligible for approval as an emergency shelter. Allows emergency shelters to provide additional services assisting individuals transitioning from unsheltered homeless status and to charge a fee of up to \$300 per month per client to clients able to pay the fee and who request the services. Specifies that the repeal of the emergency shelter provisions 90 days after the measure's effective date does not affect an application for the development of land for an emergency shelter that was completed and submitted before the repeal date. Makes DAS navigation center award grants to local governments optional.

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Individual Development Account Modifications: Removes the limitation for use of emergency savings during periods of unanticipated unemployment, modifying the definition of “emergency expenses” to include expenses for extraordinary medical costs or other unexpected and substantial personal expenses that would significantly impact the account holder’s non-cash assets, health, housing, or standard of living if not promptly addressed.

Race and Ethnicity Data Collection and Reporting During COVID-19 Pandemic: Requires licensed or certified health care providers to collect data on race, ethnicity, preferred spoken and written languages, English proficiency, interpreter needs and disability status (REALD) during in the provision of health services related to COVID-19. Defines “COVID-19,” “encounter,” “telemedicine” and “health care provider.” Directs Oregon Health Authority (OHA) to adopt rules requiring health care providers to collect and report data using existing standards (ORS 413.161), specifies timelines for data collection, and allows OHA to provide incentives to health care providers to comply with requirements. Clarifies data collected by providers is confidential and subject to federal and state law limiting any disclosure of health information. Grants enforcement authority to OHA, the Department of Human Services (DHS), and professional regulatory boards beginning December 31, 2020. Clarifies insurers cannot use collected data to deny, limit, cancel, refuse to renew, or increase premiums for an insurance policy.

Physician Assistants: Authorizes physician assistants (PAs) to provide patient care services within their scope of practice without entering into a practice agreement and with specified supervision requirements. Authorizes PAs to provide patient services to individuals located outside of Oregon if services are within the PA’s scope of practice. Repeals these authorities on the date 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.

Other: Removes the Low Income Utility Bill Assistance, Isolation Shelter Liability Limits, and Oregon OSHA Infectious Disease Standards sections.

BACKGROUND:

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. House Bill 4212-A 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. House Bill 4212-A adds CARES Act recovery rebate payments to those deposits that are not subject to garnishment. Executive Order 20-18, signed on April 17, 2020, provides a similar protection.

Judicial Proceeding Extensions and Electronic Appearances: In March 2020, the 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 commence 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

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limitation for a wrongful death claim is three years from the death of the decedent (ORS 30.020).

House Bill 4212-A 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 (72 percent). 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 times 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: The federal Low-Income Home Energy Assistance Act (LIHEAP) of 1981 (Public Law 97-35), as amended, provides grants to states and tribes to assist low-income households that pay a high proportion of household income for home energy, primarily to meet immediate home energy needs. LIHEAP includes bill payment assistance, heating or cooling equipment repairs and replacement, and energy education. In 2014, according to the American Community Survey, 436,520 Oregon households qualified for the program based on income. The LIHEAP income-eligibility for 2014 was defined as the greater of 150 percent of the 2012 Federal Poverty Guidelines published by the U.S. Department of Health and Human Services, or 60 percent of the state's median income. Oregon also provides the Oregon Energy Assistance Program (OEAP). OEAP is a ratepayer-funded program that aims to reduce service disconnection.

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.

House Bill 4212-A allows 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 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

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isolation and treatment.

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 House Bill 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 (REALD) 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, REALD 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.

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Physician Assistants: In Oregon, a supervising physician may use the services of a physician assistant (PA) in accordance with a written practice agreement. The agreement describes what and how the PA will practice and requires a supervising physician or supervising physician organization to direct and review the medical services provided by a PA. In March 2020, the Joint Special Committee on Coronavirus Response considered allowing PAs to practice within their scope without supervision requirements during the COVID-19 pandemic. At the same time, the Oregon Medical Board adopted a temporary emergency rule to increase the number of PAs available to assist in the state's response to COVID-19.