

HOUSE No. 4586

The Commonwealth of Massachusetts



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March 24, 2020

To the Honorable Senate and House of Representatives,

I am filing for your consideration a bill entitled “An Act to Further Address Challenges Faced by Municipalities and School Districts Resulting from COVID-19.” This legislation is designed to provide flexible solutions for local officials across the Commonwealth as the challenges of the COVID-19 epidemic disrupt the normal process of administering local government.

As you know, on March 15, 2020, I issued an Emergency Order temporarily closing all public and private K-12 schools in the Commonwealth. While that Order was necessary to protect the health and safety of the Commonwealth, this legislation provides important flexibility to address potential disruptions that may result. First, it empowers the Commissioner of Elementary and Secondary Education to delay beyond April 1 the requirement, established in the recently enacted Student Opportunity Act, that school districts submit three-year evidence-based plans aimed at closing achievement disparities among student subgroups. Second, it authorizes the Board of Elementary and Secondary Education, upon the recommendation of the Commissioner, to modify or waive the requirements of the competency determination for high school graduation. Third, the legislation authorizes the Commissioner, to modify or waive the requirement for the Commonwealth’s annual statewide student assessment, known as the MCAS. In all three instances, action can be taken only to address disruptions caused by the pandemic.

This bill also provides flexibility to Regional School Districts in case they are not able to approve their budgets by the statutory deadline. The bill would accordingly permit Regional School Districts to suspend the statutorily-required vote on the approval of their fiscal year 2021 budget and allow the Department of Elementary and Secondary Education (“DESE”) to certify an amount sufficient for the operation of the district until a budget can be adopted.

Also in the area of municipal finance, this bill would provide cities and town flexibility on tax collections, such that they can allow their residents more time to pay taxes without incurring penalties. Specifically, the bill would allow municipalities to waive late-payment penalties for 4th quarter tax bills, which are due May 1. It would also allow municipalities to change their tax bill due date and extend the deadline for property tax exemptions and deferrals from April 1 to June 1, 2020.

There are a number of important modifications to the local permitting process in this bill. These include the following changes:

- Provides that no permit is automatically granted, approved, or denied because a local permitting authority does not act within a time period required by law.
- Provides that any permit that is currently valid will not lapse or expire during the state of emergency, and suspends any time limitation on such permits during the emergency.
- Allows applications for permits to be filed electronically, so as to eliminate the need for in-person filing.
- Suspends any requirement that a hearing on a permit application be held within a certain period of time until 45 days after the end of the state of emergency.

These changes will provide necessary relief to cities and towns that, due to disruptions caused by the state of emergency, are unable to timely process and hear permitting applications. At the same time, these changes balance the needs of residents and developers by ensuring that their current permits are not impaired by the emergency.

Additionally, I am proposing a method that would allow municipalities to utilize retirees during the current state of emergency, so that municipalities can tap qualified workers when their workforces may be disrupted. Currently, retirees collecting a pension are limited in how many hours they may work and the compensation they can earn. This proposal would lift those restrictions for calendar year 2020 for work done during the emergency

I am also proposing changes that would allow for electronic signatures on search warrant applications and criminal complaints that are necessary in light of the current public health emergency. This would decrease traffic to courthouses and thereby reduce risk to judicial and public safety officers as well as courthouse staff and court users.

Lastly, I propose to allow restaurants and other establishments that are licensed to sell alcohol for on-premises consumption to sell wine and beer for takeout and delivery subject to certain conditions. As you know, restaurants and bars are currently barred from allowing customers to eat or drink on-premises, and their liquor licenses limit them to the sale of alcohol for on-premises consumption. This change would restore a critical source of revenue to restaurants and other food establishments.

The Lieutenant Governor and I are happy to see that the Joint Committee on Municipalities and Regional Government reported a bill on Monday, H.4580, that contains a number of similar provisions intended to relieve pressure on municipalities. We look forward to working with you to share ideas and language to achieve our common goals. In light of the ongoing emergency, I urge your prompt enactment of legislation to relieve pressure on our cities and towns.

Respectfully submitted,

Charles D. Baker,
Governor

HOUSE No. 4586

Message from His Excellency the Governor recommending legislation relative to further addressing challenges faced by municipalities, school districts and state authorities resulting from COVID-19. March 24, 2020.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act to further address challenges faced by municipalities, school districts and state authorities resulting from COVID-19.

Whereas, The deferred operation of this act would tend to defeat its purpose, which are forthwith to make certain changes in law in response to a public health emergency, each of which is immediately necessary to carry out to accomplish important public purposes, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public health and convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 20 of chapter 161A, of the General Laws, as appearing in the 2018
2 Official Edition, is hereby amended by striking out, in line 2, the word, “March”, and inserting in
3 place thereof the following word:- May.

4 SECTION 2. Said section 20 of said chapter 161A, as so appearing, is hereby amended
5 by striking out, in line 4, the word, “April” and inserting in place thereof the following word:-
6 June.

7 SECTION 3. Section 2 of chapter 275 of the General Laws, as so appearing, is hereby
8 amended by inserting, in line 5, after the word “subscribed”, the following words:- ,
9 electronically or in person.

10 SECTION 4. Section 2A of chapter 276 of the General Laws, as so appearing, is hereby
11 amended by striking out, in line 1, the word “The” and inserting in place thereof the following
12 words:- The signature on the warrant may be made by electronic signature. The.

13 SECTION 5. Section 2B of said chapter 276, as so appearing, is hereby amended by
14 inserting, in lines 1 and 2, after the word “personally”, the following words:- or through wire or
15 electronic means.

16 SECTION 6. Said section 2B of said chapter 276, as so appearing, is hereby further
17 amended by inserting, in line 13, after the word “form”, the following words:- and the signature
18 therein may be made by electronic signature.

19 SECTION 7. Section 22 of said chapter 276, as so appearing, is hereby amended by
20 inserting, in line 4, after the word “subscribed”, the following words:- , electronically or in
21 person.

22 SECTION 8. Said section 22 of said chapter 276, as so appearing, is hereby further
23 amended by adding the following sentence:- If a complaint is subscribed to electronically by the
24 complainant, the complainant, if a law enforcement officer, may, in lieu of being examined on
25 oath by a justice, subscribe to the complaint under the pains and penalties of perjury.

26 SECTION 9. (a) As used in this section, the following words shall have the following
27 meanings:

“Permit” means a permit, variance, special permit, license, amendment, extension or other approval issued by a permit granting authority pursuant to a statute, ordinance, bylaw, rule or regulation, whether ministerial or discretionary.

“Permit Granting Authority” means (i) a local, county or regional official, or (ii) a local, county or regional multi-member body, that is authorized to issue a permit.

(b) Notwithstanding any general or special law, rule, regulation, charter, ordinance or by-law to the contrary, during the state of emergency declared by the governor on March 10, 2020 as a result of the outbreak of the 2019 novel Coronavirus also known as “COVID-19”:

(1) An application for a permit shall be deemed duly filed and accepted as of the date of the filing by the applicant, if filed with and certified as received by the city or town clerk if a municipality, or with the secretary or other official established by law to receive such applications if a county or regional entity. Notwithstanding the foregoing, a permit granting authority may contest the completeness of an application at the time of filing, if the application is ultimately denied by the permitting board on other grounds, or if the permit is ultimately appealed by the applicant. An application for a permit may be filed electronically, either through an electronic submission website established by the permit granting authority, or through attachment of the requisite forms and supplemental materials to electronic mail sent to the aforesaid clerk, secretary, or official. Certification of receipt for purposes of this paragraph may be provided electronically to the applicant, and shall be provided electronically if the permit application is submitted electronically and electronic certification of receipt is requested by the applicant.

(2) A requirement of a statute, ordinance, bylaw, rule, or regulation that a hearing commence within a specific period of time after the filing of an application or request for approval of a permit is suspended as of March 10, 2020; provided, however, that the applicable period shall resume 45 days after the termination of the state of emergency, or as of a date otherwise prescribed by law, whichever is later.

(3) A permit in effect or existence as of March 10, 2020, including any deadlines or conditions of the permit, shall not lapse or otherwise expire and the expiration date of the permit, or time period for meeting a deadline or for performance of a condition of the permit, shall toll during the state of emergency.

(4) No permit shall be considered granted, approved or denied, constructively or otherwise, due to a failure of the permit granting authority to act within the time required by a statute, ordinance, bylaw, rule or regulation; provided, however, that the permit granting authority acts within 45 days of the termination of the state of emergency or by a date otherwise prescribed by law, whichever is later; provided, however, that the applicant and Permit Granting Authority may agree to alternative timing in writing.

(5) Notwithstanding the time periods by which a permit is to be either heard or acted upon, a permit granting authority may, by a declaration of its chair, which the chair is authorized to make irrespective of whether a quorum is present to vote on such matter, schedule or reschedule on one or more occasions the hearing or decision deadlines on a permit application provided no such date or deadline is rescheduled for more than 45 days after the termination of the state of emergency or after a date otherwise prescribed by law, whichever is later. The chair shall provide written notice of any applicable rescheduled dates or deadlines to the applicant at

the applicant's address, and to the general public by posting electronically on the website of the city or town clerk or the website of the county or regional entity.

(6) In the event a permit is required to be recorded with the registry of deeds or filed with registry district of the land court, as the case may be, for the county or district in which the property subject to the permit is located, within a certain period of time after its issuance in order to remain in force and effect or as a condition to exercising the permit, (i) the period of time for recording the permit shall be suspended during such time as the relevant registry of deeds or registry district of the land court is either closed or subject to rules and procedures restricting public in-person access; and (ii) the failure to record the permit shall not preclude the permit holder from applying for, obtaining and commencing construction activities pursuant to other required permits and approvals, including, without limitation, a building permit, which building permit may be issued and shall be considered duly issued pursuant to the provisions of section 6 of chapter 40A of the General Laws.

(7) A hearing on a pending application for a permit opened by a permit granting authority prior to March 10, 2020, which has either not been concluded as of March 10, 2020 or has been continued by the permit granting authority as of March 10, 2020, shall be automatically tolled and continued to the first hearing date of the permit granting authority following the termination of the state of emergency, or to a date otherwise prescribed by law, whichever is later; provided, however, that the date is no later than 45 days from of the termination of the state of emergency or the date otherwise prescribed by law, whichever is later.

(c) Nothing in this section shall affect the ability of a permit granting authority, subject to applicable notice and hearing requirements, to revoke or modify a permit when that

93 permit or the law or regulation under which the permit was issued authorizes the modification or
94 revocation thereof; provided, however, that in no event shall the permit granting authority revoke
95 or modify the permit for failure of the permit holder as a result of the state of emergency to
96 exercise or otherwise commence work pursuant to the permit, or where such work commenced
97 on or prior to March 10, 2020, but has stopped as a result of the state of emergency or actions
98 taken by an agency or political subdivision of the commonwealth in reliance thereon. The
99 limitations set forth in this subsection shall apply as long as the state of emergency is in effect
100 and for a period of 60 days following the termination thereof; provided, however, that a permit
101 holder shall be entitled to a further extension of reasonable length to exercise or otherwise
102 commence work pursuant to said permit at the discretion of the permit granting authority for
103 good cause shown; provided, further, that the chair of any permit granting authority shall be
104 authorized to grant such further extension irrespective of whether a quorum is present to vote on
105 the matter.

106 (d) Notwithstanding the requirements of section 20 of chapter 30A of the General
107 Laws, a permit granting authority, during the state of emergency, shall be permitted to conduct
108 meetings and public hearings remotely, consistent with the Governor's order entitled "Order
109 Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A Section 20" issued March
110 12, 2020, as the order may be amended, supplemented or replaced.

111 (e) Nothing in this section shall preclude or prohibit a permit granting authority from
112 issuing decisions on permit applications for which duly held public hearings or meetings have
113 been held, or preclude or prohibit any building commissioner, inspector of buildings, or other
114 permit granting official as the case may be, from issuing permits, including but not limited to
115 demolition or building permits.

(f) Notwithstanding any general or special law to the contrary and without limiting the foregoing, this section shall apply to all local boards and commissions' conduct of public meetings, public hearings, or other actions taken in a quasi-judicial capacity.

SECTION 10. (a) Notwithstanding any general or special law to the contrary, the provisions of subsections (b) and (c) of section 91 of chapter 32 of the General Laws shall not apply in calendar year 2020 to the following two categories of persons for hours worked during the state of emergency issued by the governor on March 10, 2020 as a result of the outbreak of the 2019 novel Coronavirus also known as "COVID-19":

(i) any person who has been retired and who is receiving a pension or retirement allowance, under the provisions of said chapter 32 or any other general or special law, from the commonwealth, a county, city, town, district or authority, or

(ii) any person whose employment in the service of the commonwealth, county, city, town, district or authority has been terminated, under the provisions of said chapter 32 or any other general or special law, by reason of having attained an age specified in said general or special law or by the rules and regulations of any department or agency of the commonwealth, county, city, town, district or authority without being entitled to any pension or retirement allowance.

Accordingly, these two categories of persons may, during the state of emergency and subject to all other laws, rules and regulations, governing the employment of persons in the commonwealth, county, city, town, district or authority, be employed in the service of the commonwealth, county, city, town, district or authority, including as a consultant or independent

contractor or as a person whose regular duties require that his time be devoted to the service of the commonwealth, county, city, town, district or authority during regular business hours.

(b) The provisions of this section shall not apply to individuals retired under a general or special law on disability.

SECTION 11. (a) Notwithstanding any general or special law to the contrary, as a result of the outbreak of the 2019 novel Coronavirus also known as “COVID-19” and the declaration of a state of emergency issued by the governor on March 10, 2020, for fiscal year 2020, the chief executive officer of a city, town or district, as defined in clause Fifth B of section 7 of chapter 4 of the General Laws, may extend:

(i) for the purposes of the first paragraph of section 57 of chapter 59 of the General Laws, the date May 1 to a date not later than June 1, 2020;

(ii) for the purposes of the seventh and eighth paragraphs and the tenth and eleventh paragraphs of section 57C of chapter 59 of the General Laws, the date May 1 to a date not later than June 1, 2020; and

(iii) for the purposes of the third paragraph of section 59 of chapter 59 of the General Laws, the date April 1 to a date not later than June 1, 2020.

(b) Notwithstanding sections 57, 57C and 59 of chapter 59 of the General Laws or any other general or special law to the contrary, if municipal offices are closed as a result of the outbreak of the 2019 novel Coronavirus also known as “COVID-19” or the declaration of a state of emergency issued by the governor on March 10, 2020 on the date that a tax payment,

157 abatement or exemption application is due, the due dates shall not be extended except pursuant to
158 this section.

159 SECTION 12. Notwithstanding sections 57, 57A and 57C of chapter 59 of the General
160 Laws and section 2 of chapter 60A of the General Laws or any other general or special law to the
161 contrary, as a result of the outbreak of the 2019 novel Coronavirus also known as “COVID-19”
162 and the declaration of a state of emergency issued by the governor on March 10, 2020, for fiscal
163 year 2020, the chief executive officer of a city, town or district, as defined in clause Fifth B of
164 section 7 of chapter 4, may waive the payment of interest and other penalty in the event of late
165 payment of any excise, tax, betterment assessment or apportionment thereof, water rate or annual
166 sewer use or other charge added to a tax for payments made after its respective due date but
167 before June 30, 2020.

168 SECTION 13. Notwithstanding subsection (i) of section 1D of chapter 69 of the General
169 Laws, and any other general or special law to the contrary, upon recommendation of the
170 commissioner of elementary and secondary education, the board of elementary and secondary
171 education may modify or waive the requirements of the competency determination for high
172 school graduation, in order to address disruptions caused by the outbreak of the 2019 novel
173 Coronavirus also known as “COVID-19”.

174 SECTION 14. Notwithstanding section 1I of chapter 69 of the General Laws, and any
175 other general or special law to the contrary, the commissioner of elementary and secondary
176 education may modify or waive the requirement for a comprehensive diagnostic assessment of
177 individual students under said section 1I of chapter 69 in order to address disruptions caused by
178 the outbreak of the 2019 novel Coronavirus also known as “COVID-19”.

SECTION 15. Notwithstanding section 16B of chapter 71 of the General Laws or any other general or special law to the contrary, if a vote on the approval of a fiscal year 2021 regional school district budget by a town or city is delayed beyond June 30, 2020 as a result of the outbreak of the 2019 novel Coronavirus also known as “COVID-19” and the declaration of a state of emergency issued by the governor on March 10, 2020, the budget approval process described in said section 16B shall be suspended and the district shall notify the department of elementary and secondary education of a lack of a budget and the commissioner, or his designee, shall certify an amount sufficient for the operation of the district commencing July 1, 2020 in an amount not less than 1/12 of the total budget approved for the district in the most recent fiscal year. Similar sums shall be certified for each successive month to ensure the continued provision of services by the district until such time as a budget is adopted and approved by the regional committee and member towns or cities in the manner otherwise provided in said section 16B. The department may issue guidelines or regulations for the implementation of this section.

SECTION 16. Notwithstanding subsection (a) of section 23 of chapter 132 of the acts of 2019, or any other general or special law to the contrary, the commissioner of elementary and secondary education may set the deadline for each school district to submit its first 3-year plan required pursuant to subsection (d) of section 1S of chapter 69 of the General Laws, as inserted by section 5 of chapter 132 of the acts of 2019, as April 1, 2020, or such later date as determined by the commissioner, in order to address disruptions caused by the outbreak of the 2019 novel Coronavirus also known as “COVID-19”..

SECTION 17. Notwithstanding any general or special law to the contrary, during the state of emergency declared by the Governor on March 10, 2020 as a result of the outbreak of the 2019 novel Coronavirus also known as “COVID-19”, an establishment licensed to sell alcoholic

202 beverages or only wines and malt beverages on-premises may sell wine or malt beverage only
203 for off-premises consumption subject to the following conditions: (i) the wine or malt beverage
204 must be sold in its original, sealed container; (ii) the wine or malt beverage must be sold as part
205 of the same transaction as the purchase of food; and (iii) a customer is limited to 192 ounces of
206 malt beverage and 1.5 liters of wine per transaction.

207 SECTION 18. This act shall take effect upon its passage.