

Key Federal and Massachusetts State COVID-19 Developments

As of Friday, April 3, 2020

This memorandum provides a summary of certain key federal and state COVID-19 developments of potential relevance to non-health-related Massachusetts state and local agencies as of **noon on April 3, 2020**. As legislative and regulatory decisions are being taken rapidly, this memorandum should be taken as current only through that time.

NEW OR UPDATED FEDERAL LEGISLATION AND AGENCY ACTIONS

- **HUD Relief Funding and Forbearance.** On April 2, HUD announced its [priorities for the use of the \\$3 billion in federal CDBG funds](#) appropriated by the CARES Act. HUD also announced that it had instructed mortgage servicers to establish [six months' forbearance periods](#) for single family homeowners with FHA-insured mortgages who demonstrate financial hardship due to the national emergency. This supplements HUD's March 18 [announcement](#) of a foreclosure and eviction moratorium for single-family homeowners with FHA-insured mortgages for 60 days.

PREVIOUS FEDERAL LEGISLATION AND AGENCY ACTIONS

- **CISA Updated Guidance on "Essential Critical Infrastructure Workers."** On March 28, the U.S. DHS Cybersecurity & Infrastructure Security Agency (CISA) [released updated guidance](#) to assist government agencies at the federal, state, and local levels in identifying "essential critical infrastructure workers" for purposes of COVID-19. This updates the CISA Guidance first [released](#) on March 19.
- **Federal Financial Stimulus / Passed.** On March 27, the President signed the "Coronavirus Aid, Relief, and Economic Security Act" ([CARES Act](#)).

The Act is approximately 850 pages long, and covers the entirety of the American economy. Among other provisions, the Act extends unemployment benefits and applies to all workers, and provides \$1,200 as an "advance refund" tax credit to each individual taxpayer who has an adjusted gross income of up to \$75,000 (plus a credit to those taxpayers of \$500 per child). The Act also creates a **\$500 billion** loan fund for "eligible businesses, States, and municipalities", with regulations for applications to be promulgated within ten days after enactment.

[Foley Hoag's summary of provisions affecting state and local governments is available here.](#) State and local governments are eligible for **\$150 billion** in relief funds to cover expenditures incurred due to COVID-19 between March 1 and December 30, 2020. Among other things, the Act also includes **\$30 billion** in emergency education funding (including \$13.5 billion in formula grants to states for elementary and secondary education and a \$3 billion education fund for governors), **\$25 billion** in emergency transit funding, a **\$45 billion** Disaster Relief Fund to provide financial assistance to governments and nonprofits providing critical services, and **\$850 million** for Byrne Justice Assistance Grant (JAG) programs for state and local police departments (including

personal protective equipment). The Act also includes **\$1.5 billion** for National Guard deployments, **\$400 million** in state election preparation grants, **\$900 million** in LIHEAP assistance funds, **\$1 billion** in project-based rental assistance, and **\$5 billion** for HUD Community Development Block Grants.

- **H.R. 6074 – 8.3 Billion Emergency Funding / Passed.** The first federal bill to address the coronavirus outbreak was [H.R. 6074](#), which was signed into law on March 6 and provided \$8.3 billion in emergency funding to certain federal agencies.
- **H.R. 6201 – Medical Leave and Food Assistance / Passed.** The second federal bill was signed into law on March 18, the “Families First Coronavirus Response Act,” [H.R. 6201](#). Of potential relevance to state and local agencies, the law amends the federal Family and Medical Leave Act (FMLA) to temporarily require employers to provide FMLA leave of up to 12 weeks through December 31, 2020 to an employee who is “unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.” The first 10 days of leave can be unpaid, after which leave would be paid, and in an amount not less than 2/3 of the employee’s regular pay rate and not to exceed \$200/day or \$10,000 in aggregate.

Other provisions of H.R. 6201 with potential relevance to state and local agencies allow for certain waivers to requirements for school meals, suspend the work requirements for the Supplemental Nutrition Assistance Program (SNAP), and allow states to request waivers to provide certain emergency SNAP benefits.

- **U.S. Small Business Administration.** On March 18, the SBA [approved the Massachusetts disaster declaration](#), making small businesses, private non-profit organizations of any size, small agricultural cooperatives and small aquaculture enterprises that have been financially impacted as a direct result of the Coronavirus (COVID-19) since Jan. 31, 2020, eligible for Economic Injury Disaster Loans of up to \$2 million to help meet financial obligations and operating expenses which could have been met had the disaster not occurred.
- **Federal Transit Administration.** The [FTA stated](#) on March 18 that it is “taking steps to make more resources available to local transit authorities to fund cleaning efforts and other measures to reduce the spread of COVID-19.” In particular, the FTA noted that its Emergency Relief Program ([49 USC § 5324](#)) allows transit agencies in states where a state of emergency has been declared (and the Department concurs) to “use their urban and rural transit formula funding to pay up to 80 percent of the cost of activities aimed at containing Covid-19,” including “performing enhanced cleaning and sanitizing of trains, buses, stations, bus shelters [and] providing personal protective equipment as appropriate.” FTA also noted that “Local transit agencies can also request other relief from Federal requirements by making a request through the Federal Transit Administration’s [Emergency Relief Docket](#).”

NEW OR UPDATED STATE LEGISLATION AND AGENCY ACTIONS

Emergency orders from the Office of the Governor are listed at <https://www.mass.gov/info-details/covid-19-state-of-emergency>. Directives and Guidance from executive agencies are listed at <https://www.mass.gov/info-details/covid-19-guidance-and-directives>.

- **State Beach Closure Order.** On April 2, the Governor issued an [Order](#) closing all public parking facilities at state beaches as of noon on April 3, as well as all DCR roads that provide access to those beach facilities. The beaches remain open to the public for transitory recreation, but not for “sitting, sunbathing, and other stationary recreational activities.”

- **Municipal Legislation I | Passed.** On April 2, the Legislature passed [House 4598](#) (with the text of [House 4617](#)) sending it to the Governor for approval. When signed, it will become effective immediately.
 - **Town Meetings.** The bill allows towns to delay Town Meetings until June 30 (and issue further continuances for 30 days at a time), and to carry over budgets month-to-month at FY2020 levels starting on July 1, 2020 until new town budgets can be passed.
 - **Permitting.** The bill tolls the time in which municipal or regional *permitting entities* must act upon filed permit applications (thereby eliminating constructive approval of applications that are not acted upon within an established time period), and also tolls the time within which *permit recipients* must act upon received permits in order to avoid lapse. The bill allows permit applications to be filed electronically.
 - **Taxes.** The bill allows municipalities to waive late-payment penalties for Q4 tax bills, due May 1, and extend the deadline for property tax exemptions and deferrals from April 1 to June 1. It would also extend the income tax deadlines to June 15.
 - **Alcohol Sales.** The bill allows restaurants and bars licensed to sell alcohol on-premises to offer beer and wine for takeout and delivery with food.
 - **Retired Municipal Employees.** The bill lifts the limit on the number of hours and compensation a municipal retiree can earn by returning to work for the municipality during the state of emergency.
- **Municipal Legislation II | Pending .** On April 2, the House passed [House 4616](#) (previously House 4586), which would authorize the Education Commissioner to modify or waive certain MCAS requirements, allow school districts to budget on a month-by-month basis, preclude municipalities from terminating essential services due to nonpayment of taxes or bills arising from a COVID-10 hardship, and provide homeless organizations with authority to utilize existing funds for rapid rehousing purposes.
- **Housing Assistance Legislation | Pending.** On April 2, the House passed [House 4615](#), which would establish a moratorium on residential and commercial evictions and residential foreclosures during the state of emergency. Also pending before the Housing Committee are [House Docket 4935](#) (to establish a moratorium on residential evictions and residential foreclosures during the state of emergency) and [House Docket 4956](#) (to establish a rent increase freeze).
- **Higher Education Host Community Relief Fund Legislation | In Committee.** [House Docket 4937](#) would create a \$125 million grant fund for small businesses, non-profits and municipalities in towns where institutions of higher education are located and have closed in response to coronavirus. The bill is pending before the Committee on Community Development.
- **First Responder Duty Time and Overtime Legislation | In Committee.** [Senate 2602](#) is pending before the Public Safety Committee. It would establish a presumption that all public safety officials — including police and other first responders — with COVID-19 symptoms requiring hospitalization or self-quarantine shall have their condition be presumed to be work-related, and thus their time for hospitalization or quarantine be considered duty time and not required to use sick or other leave time to cover their absence. [Senate Docket 2886](#) proposes a grant program to provide “funding for cities and towns for the overtime costs of municipal police officers, municipal law enforcement personnel with arrest powers, municipal personnel with authority to enforce public health regulations, members of the fire department, and emergency medical technicians during the COVID-19 state of emergency.”

PREVIOUS STATE LEGISLATION AND AGENCY ACTIONS

- Essential Services / Construction.** On April 2, the Commonwealth released new [construction protocols](#) and [enforcement procedures](#). These protocols are mandatory for state-sponsored projects, and are advisory (but can be adopted by and enforced by municipalities) for private projects. Under the enforcement procedures, municipalities may require owners to “develop and submit a site-specific risk analysis and enhanced COVID-19 safety plan.” The enforcement procedures also state that for private construction projects, “the primary enforcement responsibility rests with the city or town.”
- Essential Services Extended and Updated.** On March 31, the Governor [issued an Order](#) extending the essential services limitations to May 4. Businesses or employees not deemed essential are encouraged to continue operation remotely. The Order does permit limited central office staff assisting in coordinating remote operations to continue to report to bricks-and-mortar establishments. The Order can be enforced through civil and criminal penalties, including court injunctions. The Governor also issued an [updated list of essential services](#), providing significant additional detail and clarity. [The FAQ clarifying the classification of certain specific services](#) is being continually updated and should be consulted together with the updated list of essential services.
- Judiciary / Litigation.** On April 1, the Supreme Judicial Court [extended its orders](#) postponing all trials (other than those ongoing) until May 6, requiring all matters to be filed electronically except in exigent circumstances, and closed courthouses for all but emergency matters (with proceedings requiring judicial involvement to be conducted by videoconference or telephone). In particular, the SJC’s extended order expressly tolls all statutes of limitations and deadlines that would otherwise expire before May 4, 2020 to be extended to that date (unless otherwise ordered by one of the trial court departments). Thus, any filings required in ongoing matters, any obligations to respond to pleadings or pursuant to other court rules (such as depositions or interrogatories), as well as any appeals of decisions rendered, would not need to be acted upon until May 4.
- Hotel, Motel, and Short-Term Rental Guidance.** On March 31, the Department of Public Health issued [Guidance](#) limiting hotels, motels, and short-term rentals (such as AirBNB) to use by those in “essential services,” as emergency shelter, or for quarantine, and allowed these restrictions to be enforced by local boards of health.
- Major Disaster Declaration Request.** On March 27, the President [approved](#) the Governor’s [request](#) that the federal government issue a Major Disaster Declaration for Massachusetts. The declaration allows FEMA to provide additional financial assistance to municipalities, state agencies, and nonprofits for all areas affected by COVID-19 with the federal government paying 75 percent of the cost.
- Licensing Extension Order.** On March 26, the Governor issued an [Order](#) extending for 90 days after the end of the state of emergency all licenses, certificates, or registrations issued by any state agency to any for-profit or non-profit organization that expire during the state of emergency. This expanded upon the [Order](#) of March 18, through which the Governor extended all occupational or professional licenses of individuals that are in good standing and that would otherwise be up for renewal during the COVID-19 emergency for 90 days after the end of the state of emergency.
- State Permit Tolling Order.** On March 26, the Governor issued an [Executive Order suspending state permitting deadlines](#) and extending the validity of state permits. The Order provides that any state permit valid as of March 10 “shall not lapse or otherwise expire during the state of emergency” and that “the expiration date of the approval shall toll during the state of emergency.” All appeal deadlines that would fall during the state of emergency are extended until 45 days after the emergency is lifted. The Order also prohibits “constructive approvals” of state permits and suspends certain requirements for hearings or decision deadlines.

- **DHCD Rental Assistance Order.** On March 25, the Department of Housing & Community Development [issued emergency provisional measures](#) suspending federal rental assistance terminations (except in cases of criminal activity), automatically extending the current 60-day voucher search term by 30 days, to 90 days, and clarifying that any temporary income from stimulus legislation would be excluded from income for purposes of rent calculation. DHCD is also [urging private landlords](#) to suspend all non-emergency evictions.
- **MassDEP Public Drinking Water Guidance.** On March 25, MassDEP published updated Guidance on the [operation of public drinking water systems](#), including on issues pertaining to bacteria testing, inspections, repairs, safety, staffing, and licensure.
- **Plastic Bag Bans Order.** On March 25, the Commissioner of Public Health issued an [Order](#) allowing all grocery stores and pharmacies to use single-use plastic bags, regardless of any municipal ordinances or regulations prohibiting their use, until the State of Emergency is lifted.
- **Assembly Restrictions.** On March 23, the Department of Public Health [issued an order](#) restricting gatherings in confined areas (indoor or outdoor) to no more than ten individuals, with certain express exceptions for transit locations, food stores, banks, pharmacies, and health care services. This order can be enforced through civil and criminal penalties.
- **Local Elections Legislation.** On March 23, the Governor [signed legislation](#) authorizing municipalities to postpone any municipal election until May 30. Any incumbent whose term would have expired due to an election intended to be held sooner shall continue to serve until a successor is elected and qualified. It also allows for any voter to vote in such an election by mail.
- **Intrastate Waste and Recycling Collection Order.** Announced on March 23, the Governor issued an order on March 20 providing relief from state and federal requirements that govern the hours of service allowed for commercial vehicle operators involved in waste and recycling transportation and collection. The Order remains in effect until April 12.
- **National Guard Activation Order.** On March 19, the Governor [activated 2,000 National Guard members](#), tasked with “supporting requests from state agencies for equipment, logistics, warehousing, and related duties.” Local cities, towns, and state agencies should submit requests for support through the Massachusetts Emergency Management Agency.
- **Open Meeting Law Order.** The Governor issued an order [suspending certain provisions of the Open Meeting Law](#) on March 12. This Order allows government bodies subject to the law to meet using remote participation, without presence of the chair or a quorum in a physical location at a specified meeting location. If the public body has a specific requirement in law that there be active, real-time public participation in the meeting, any alternative means of public access must provide for such participation. State and local agencies are entitled to utilize the provisions of this Order with respect to any meetings of public bodies to which the Open Meeting Law applies.
- **State Civil Defense Act (Chapter 639 of the Acts of 1950).** The Governor’s [legislative authority to proclaim a state of emergency](#) includes a number of broad powers. Although some of the specific provisions below have not been invoked with respect to the current state of emergency, their existence may be of particular interest to state and local agencies:
 - As to public procurement, the Act authorizes the Governor to act to “regulat[e] the manner and method of purchasing or contracting for supplies, equipment or other property or personal or other services, and of contracting for or carrying out public works, for the commonwealth or any of its agencies or political subdivisions, including therein housing authorities.”

- As to licenses and permits, the Act authorizes the Governor to establish “[v]ariance of the terms and conditions of licenses, permits or certificates of registration issued by the commonwealth or any of its agencies or political subdivisions.”
- Of interest to public transit providers, the Act specifically authorizes the Governor to exercise “any and all authority over persons and property necessary or expedient for meeting said state of emergency” including over “[t]ransportation or travel on Sundays or week-days by aircraft, watercraft, vehicle or otherwise, including the use of registration plates, signs or markers thereon.”
- Of interest to municipalities with municipal light plants, the Act authorizes the Governor to have authority relative to “[m]aintenance, extension or interconnection of services of public utility or public-service companies, including public utility services owned or operated by the commonwealth or any political subdivision thereof.”
- With respect to schools, the Governor has authority over “[v]ocational or other educational facilities supported in whole or in part by public funds, in order to extend the benefits or availability thereof.”
- The Governor also has authority with respect to “public records and the inspection thereof.”

Foley Hoag has formed a firm-wide, multi-disciplinary [task force](#) dedicated to client matters related to the novel coronavirus (COVID-19). For more guidance on your COVID-19 issues, visit our [Resource Page](#) or contact your Foley Hoag attorney.