Local Government Mandate Statement Kentucky Legislative Research Commission 2021 Regular Session

Part I: Measure Information

Bill Request #: _71							
Bill #: HB 10 GA							
Document ID #: 2656							
Bill Subject/Title: AN ACT relating to the limitation of liability during the COVID-19 pandemic and declaring an emergency.							
Sponsor: Representative Steve Sheldon							
Unit of Government: X City X County X Urban-County Unified Local X Charter County X Consolidated Local X Government							
Office(s) Impacted: all offices							
Requirement: X Mandatory Optional							
Effect on Powers & Duties: X Modifies Existing Adds New Eliminates Existing							

Part II: Bill Provisions and the Estimated Fiscal Impact Relating to Local Government

HB 10 GA **Section 1** would establish a new section of KRS Chapter 411 to provide a good faith defense to civil liability for ordinary negligence for any "person" including business operators, charitable and nonprofit organizations, local governments and schools, for personal injury or death resulting from exposure to COVID-19. The defense is available so long as the person operates or maintains the premises as an ordinary, reasonable, and prudent person would under the same or similar circumstances. Safety measures adopted by a person that conform to Centers for Disease Control and Prevention Guidelines receive a rebuttable presumption that they are reasonable.

Section 2 of HB 10 GA would establish that a public school official's decision to open or close a school is a discretionary act for the purpose of determining qualified immunity of that official in his or her official or individual capacity. The language seems to limit applicability of this section to "the legally uncertain environment created by COVID-19."

Section 3 of HB 10 GA declares an emergency and provides for its immediate, and retroactive, effect.

The fiscal impact of HB 10 GA on local governments is indeterminable but likely positive. The good faith defense to civil liability and presumption of reasonableness of safety measures that comply with the Centers for Disease Control and Prevention Guidelines should serve as some protection against liability for monetary damages.

Part III: Differences to Local Government Mandate Statement from Prior Versions

Part II pertains to HB 10 GA version. The GA version is the same as the HCS version and the fiscal impact of the GA is the same as the impact to the HCS and the bill as introduced.

The House Committee Substitute to HB 10 expanded the definition of "person" from that in the original bill to include charitable and nonprofit organizations. The HCS applies the rebuttable presumption regarding safety measures to those adopted by "any person", not just by a retail establishment. The HCS requires conformance to guidelines of the Centers for Disease Control and Prevention in order for safety measures to be deemed "reasonable," rather than to the Kentucky Department of Public Health guidelines as required by the original bill. The HCS specifies that the rebuttable presumption does not alter the standard of care for medical, legal, or other negligence legal actions.

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