



# North Carolina Chapter of the Appraisal Institute

Legislative Report  
May 15, 2020

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The General Assembly will return to Raleigh on May 18. They held a brief session two weeks ago that focused on COVID-19 relief funding and policy changes. The session beginning next week is expected to see more COVID-19 relief bills, but will be open to other issues. Senate President Pro Tem Phil Berger has indicated that he prefers to wait for further guidance from the federal government before the state decides how to spend additional federal money. It is not clear yet if states will be allowed to fund shortfalls in their own budgets with the federal money, and North Carolina is expected to have a sizable shortfall this year. Visitors were not allowed in the Legislative Building for the brief session held two weeks ago and committees were held virtually. Leadership has indicated that visitors will be allowed next week, as the legislature returns to more normal functioning, but will still likely limit the number of visitors allowed in the building. The House Select Committee on COVID-19 has continued meeting virtually.

Governor Cooper has relaxed COVID-19 restrictions and moved the State into Phase 1 of his three-phase plan to reopening. Phase 1 allows retail establishments to open at 20% capacity. Restaurants and bars are still limited to takeout or delivery only. Gyms, salons, entertainment venues, and playgrounds remain closed. Phase 1 is expected to last two to three weeks.

The Revenue Laws Study Committee met this week to recommend two bills for consideration during the upcoming session. The first, Various Sales Tax Changes, has three parts that do the following: expands the definition of livestock for sales tax purposes, broadens the large fulfillment facility sales and use tax exemption to attract more companies, and exempts various education related digital property from sales tax. The Fiscal Research Division released a fiscal memo stating that the provisions would have an insignificant effect on revenue. The second issue taken up by the Committee was the annual IRC Update. This bill updates the State Tax Code to reflect changes to the federal code, and adopts most of the federal code, but decouples from certain provisions. The bill currently has the State decoupling from many of the tax relief changes made by the federal CARES Act. The decision to treat payments from the Paycheck Protection Program as taxable income drew criticism from several members. Bill sponsors noted that choosing not to decouple would cost the State hundreds of millions of dollars when the State is already facing a sizable shortfall. The bill was approved, but Committee members noted that they wanted to revisit the issue as it makes its way through the legislative process. The IRC Update was rolled into a larger bill with the following parts: IRC Update, excise tax changes, sales and use tax changes, personal income tax changes, corporate tax changes, and tax enforcement and administrative changes.

Legislators had until Wednesday May 13 to file bills recommended by study commissions. Budget bills and bills affecting state or local retirement systems were due by Thursday May 14, and all local bills must be filed by Tuesday May 19. There are a number of bills that do not have introduction deadlines, such as proposed constitutional amendments, election law changes, and appointments.

Likely due to the unusual nature of a session in the middle of a pandemic, legislators have filed substantially fewer bills than during the same period of 2018's short session. Legislative leaders expect much of their work will focus on coronavirus relief and budget problems caused by revenue losses. As of Wednesday May 13, House members had filed 39 bills since the session opened on April 28, and senators had filed 30. These numbers are much less than the legislation filed ahead of the same deadline in 2018, when the House had 153 new bills and the Senate had 91.

The House and Senate adjourned this week, and the Senate will return on Monday and the House on Tuesday.

## **BILLS OF INTEREST**

**House Bill 1072, GSC Technical Corrections 2020**, would make technical corrections to the general statutes and session laws and to provide that the Register of Deeds does not need to verify the capacity or authority of the person listed as the drafter of a deed or deed of trust, as recommended by the General Statutes Commission. The bill would amend GS 28A-2-6, regarding transfers of estate proceedings, to consistently refer to "estate proceeding" rather than "trust" throughout. The bill would amend GS 36C-8B-13, regarding special-needs fiduciary authority, to no longer specify that the fiduciary's decanting power is subject to expanded distributive discretion.

The bill amends SL 2018-80 to change the effective dates of Section 2.1 of the act (amending GS 47-17.1 concerning the designation of draftsmen of registered documents) to July 1, 2020, applicable to deeds and deeds of trust presented for registration on or after that date, and Section 2.2 of the act (amending GS 47-18.3 concerning the execution of corporate instruments) to July 1, 2020, applicable to all instruments entered into on or after that date. Both Sections 2.1 and 2.2 of the act are effective as of June of 2018 under the existing effective date provisions of SL 2018-80. The bill would amend GS 47-17.1 to no longer require the register of deeds to verify or make inquiry concerning the capacity or authority of the person or entity shown as the drafter on the instrument (thereby eliminating language added by SL 2018-80). **Introduced by Representative Davis and referred to the House Judiciary Committee.**

**House Bill 1080, Revenue Laws Recommendations**, would make various changes to the revenue laws, including but not limited to modify the allowable itemized deduction an individual may elect to deduct from their gross income for mortgage expense and property tax; and would prohibit the amount allowed as a deduction for interest paid or accrued during the taxable year under the Code with respect to any qualified residence from including the amount for mortgage insurance premiums treated as qualified residence interest for taxable years 2014 through 2020 (currently limited to taxable year 2014, 2015, 2016, and 2017). **Introduced by Representatives Howard, Ross, Setzer, and Szoka and referred to the House Finance Committee.**

**Senate Bill 720, GSC Conforming Amends./2019 Land-Use Changes**, would complete the consolidation of land-use provisions into one chapter of the General Statutes, as directed by Session Law 2019-111, as recommended by the General Statutes Commission. **Introduced by**

**Senators Edwards, Wells, D. Davis and referred to the Senate State and Local Government Committee.**

**Senate Bill 727, Revenue Laws Recommendations**, is identical to House Bill 1080 discussed above. **Introduced by Senator Newton and referred to the Senate Finance Committee.**

**Senate Bill 729, GSC Modernize Partition Laws**, would modernize the statutes on partition of property and to make technical, conforming, and modernizing amendments to the elective life estate statute, as recommended by the General Statutes Commission. These changes to the partition statutes were examined by the GSC over the last year or so, with the input of a number of real estate practitioners. The bill would add a new requirement for the court to allocate among all cotenants of property subject to a partition proceeding, in proportion to each cotenant's property interest, reasonable attorneys' fees incurred by any cotenant for the common benefit of all cotenants, unless a cotenant shows that doing so would be inequitable. The bill would exclude attorneys' fees incurred in disputing the method of partition or the division of partition proceeds; instead, provides for those attorneys' fees incurred to be allocated by the court among cotenants aligned on that issue, according to property interest. Additionally authorizes the court to allocate other attorneys' fees among the parties.

The bill would enact a new statute that expressly establishes the right of a cotenant to contribution from the other cotenants for payment of the real property's carrying costs, as defined, and for the lesser of (1) the value added by improvements as of the proceeding's commencement, or (2) the actual cost of the improvements. The bill provides for the procedure for asserting this right. The bill would establish that a cotenant's right to contribution for property taxes is limited to the amount of property taxes paid by the cotenant during the 10 years preceding the filing, plus interest at the legal rate set in GS 24-1. The bill specifies that the new provisions do not affect the right of cotenants outside a real property partition proceeding initiated under the Chapter.

The bill would add to the authorized court orders before final determination of a proceeding to include orders relating to access to the property for the purpose of inspecting, surveying, appraising, or selling the property. The bill adds a new requirement to mandate that the party applying to the court for such orders before a final determination must serve a copy of the application on all other parties and any other person the court may require. The bill provides a procedure for a hearing on the application within 10 days of service a person filed a response in opposition; otherwise, allows for a decision without a hearing.

Regarding the appointment of commissioners to divide and apportion real estate, the bill would require the commissioners to be sworn according to GS Chapter 11 (was, sworn by the magistrate, the sheriff or deputy, or any other authorized person, to do justice among the tenants in comment according to their best skill and ability). The bill authorizes the court to remove a commissioner and appoint a new commissioner when any commissioner unreasonably delays or neglects to perform their duties. The statute would no longer provide for contempt liability and a \$50 civil penalty.

The bill would add a new provision to allow for commissioners to adjust the shares or owelty charged on the shared to account for a court order for contribution or any other court

order, as they find necessary to make an equitable partition. The bill provides that owelty bears interest at the legal rate under GS 24-1 until paid. Regarding the dedication of streets, now expressly includes interests of an incompetent adult which cannot be affected until a dedication is approved by a superior court judge.

The bill would authorize the commissioners to employ a disinterested surveyor to prepare a map of the real property (previously, authorized to use the county surveyor or another surveyor if he or she is absent or connected with the parties). The bill would require the clerk to confirm the report of the commissioners within 10 days of service of the report on all the parties (was, within 10 days of the report's filing).

The bill now requires the confirmed commissioners' report and the order of confirmation to be enrolled and certified to the register of deeds and registered in the office of each county where the real property is located (was, in the office where the real estate is situated). The bill enacts a new statute authorizing the clerk of superior court to issue an order for possession of real property apportioned under Article 2, in favor of the party to which an apportionment has been made and against any party in possession at the time of application, if three conditions are met: (1) that no appeal from the order of confirmation has been made or a judge has confirmed the report; (2) the report and confirmation have been duly recorded; and (3) 10 days' notice has been given to the party applying for the order of possession to each party remaining in possession at the time of application. Details the procedure and effect of an order of possession.

The bill establishes that in a partition sale, the court is not required to appoint more than one commissioner. The bill would eliminate requirements concerning certification of notice prior to sale to persons who filed a written request to be given notice of any resale. Concerning cotenants' bidding and offers, the bill would require adjustments to be made for court orders concerning lack of contribution by one or more cotenants to the payment of carrying costs or improvements (was, expenses of real property). The bill would expand the provisions concerning the sale of mineral interests to include the sale of oil and gas interests pursuant to the same restrictions. Concerning sale proceeds, the bill would require the court to secure to each cotenant the cotenant's ratable share upon receipt of the sale proceeds by either the court or the commissioner (was, at the time that the order of confirmation becomes final). The bill adds new language to require the court to set the matter for a hearing on the court's own motion or a motion of a party or commissioner if the ratable share due to each cotenant has yet to be determined.

Concerning the partition of personal property, the bill would require commissioners to serve a copy of their report filed with the court on all parties. The bill changes the terminology to provide for relief from the confirmation order, rather than impeachment, for fraud, mistake or collusion. The bill would establish that a court is not required to appoint more than one commissioner in a partition sale of real property. The bill provides that the provisions regarding the partition sale proceeds of real property apply to the partition sale proceeds of personal property.

These partition changes would apply to partition proceedings commenced on or after October 1, 2020. **Introduced by Senators Edwards, Bryan, D. Davis and referred to the Senate Judiciary Committee.**

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For more information about legislation described in the legislative reports, feel free to contact me at [dferrell@nexsenpruet.com](mailto:dferrell@nexsenpruet.com) or (919) 573-7421. Information is also available on the General Assembly's website: [www.ncleg.gov](http://www.ncleg.gov).

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