

The legislature met this week and approved a COVID-19 pandemic relief package of nearly \$1.6 billion. The House and Senate gave final approval to two bills in a Saturday session, wrapping up the legislature's first action on COVID-19. The votes in both the House and the Senate Saturday were unanimous, which is unusual for large legislation in a General Assembly so often divided by party. Governor Roy Cooper is expected to sign the bills into law quickly, and they would take effect immediately.

Among other things, the COVID-19 relief package extends driver's license and tag expiration deadlines, waives interest payments on state income and business taxes that would have been due in April, spends hundreds of millions of dollars on public schools, vaccine and treatment research, and coronavirus testing and contact tracing, and establishes a bridge loan program for small businesses.

In addition to the \$1.57 billion in federal CARES Act funding to be spent under the General Assembly's direction, the package includes another \$1 billion to account for additional federal aid that has come directly to the executive branch and local agencies. That stream of money includes significant funding for public schools, higher education and child care grants.

Another session is expected later this month as the legislature decides how to allocate more of the \$3.5 billion in federal funding passed down to the state as part of Congress' stimulus bills. Senate President Pro Tem Phil Berger said he hopes most of the \$2 billion or so left can be used to supplement the state budget, which will take a major revenue hit from reduced sales and other tax collections. This would depend on a change in federal rules for the funding, which is also an issue for some of the funding provisions in the bills passed Saturday.

There were several provisions under consideration last week that were **not** included in the final version of the COVID-19 relief bill, including:

- Would have allowed restaurants to sell “to go” liquor drinks with to-go orders, much as beer and wine sales are allowed now.
- Would have provided for a partial expansion of Medicaid to cover COVID-19 treatment costs for people under a certain income threshold. However, there is increased funding in one bill for Medicaid in general, and there is direct funding to hospitals to cover treatment costs.
- Would have required insurance companies to pay for telehealth doctor's visits the same as face-to-face visits.

- Would have increased the state's weekly maximum on unemployment benefits. But, the federal \$600-a-week increase and extension on the duration of benefits remains in place.

Regarding the committee meetings and general sessions held last week, the COVID-19 virus concerns made for an odd set-up - legislators could vote by proxy for the first time in legislative history. Committee meetings were held by video. Regarding the House vote on the COVID-19 relief bill, a total of 23 Democrats and one Republican took that option to avoid a trip to the House floor, and House Democratic Leader Darren Jackson had a large monitor on his desk to collect remote votes from his absent caucus members through a Zoom meeting. Once the proxy votes were counted, all 117 votes were in, and the House vote was finalized after about 25 minutes.

The House adjourned on Saturday and will reconvene on Wednesday May 6. The Senate adjourned on Saturday and will reconvene on Tuesday May 5. Both the House and Senate are expected to just “gavel in and out” over the next few weeks, while they analyze and prepare to address the next round of COVID-19 relief issues as the 2020 legislative session continues into the summer.

### **BILLS OF INTEREST**

**House Bill 1043, 2020 COVID-19 Recovery Act**, contains the provisions to appropriate approximately \$1.6 billion of the COVID-19 relief funds received from the federal government. The bill includes the following provisions of interest:

- Establishes the Local Government Coronavirus Relief Reserve (Local Reserve), and specifies that it is the intent of the General Assembly to appropriate a sum of up to \$150,000,000 if local governments experience a revenue shortfall and federal CARES Act is amended to allow the use of federal funds to address the shortfall(s). The funding under this provision would flow to counties not cities, and the funding would be available to counties that are ineligible to receive direct funding from the CARES Act. Each county would receive a base funding of \$250,000, with remainder distributed on a per capita basis. Funds can be allocated to municipalities by the county if a necessary expenditure and consistent with federal guidance on COVID-19 relief.
- Appropriates the following amounts (of the federal COVID-19 relief funds):
  - \$300M for NC Department of Transportation’s General Maintenance Reserve in the Highway Fund if federal guidance is revised to allow the use of funds for revenue replacement. This allocation would revert if federal guidance were not updated before June 15, 2020.
  - \$5M to Commerce for stimulus investment in Visit NC to develop safe travel concepts and strategies and research tools and analysis needed for implementation.
  - \$125M for Golden LEAF and provides guidelines to Golden LEAF for the purpose of making emergency loans to small businesses adversely affected by the COVID-19 outbreak in North Carolina

House Bill 1043 was approved by the House and Senate on Saturday, May 2, 2020, was ratified, and sent to Governor Cooper for his consideration. The Governor has 10 days to either sign the bill, veto the bill, or allow it to become law without his signature.

**Senate Bill 704, COVID-19 Recovery Act**, contains the statutory changes and other provisions to allow the state, local governments, and various industries and businesses continue to operate given the COVID-19 state of emergency. The bill includes the following provisions of interest:

- Adjusts certain tax filings to mirror the relief provided by the IRS so the federal and State income tax laws will continue to work in concert with one another. It waives the accrual of interest on an underpayment of tax imposed on a franchise, corporate income, or individual income tax return, including a partnership and estate and trust tax return, from April 15, 2020, through July 15, 2020. The relief from accrual of interest would also include estimated tax payments due on or before April 15, 2020; that would apply to the first and second quarter estimated taxes. This section does not waive the accrual of interest on the tax payment extension of the other tax types. It also extends certain tax-related administrative and appeals-related deadlines.
- Affirms the flexibility to administer unemployment compensation, as allowed by Executive Orders No. 118 and 131, and encouraged by Congress under the *Families First Coronavirus Response Act*. The flexibility extends to the following: determination of unemployed, elimination of the waiting week, work search requirements, attached claims, and non-charging of employer accounts. It also allows a tax credit against the employer's contributions in an amount equal to the amount of contributions payable on the report filed by the employer on or before April 30, 2020. If an employer paid the contributions payable with the report due on or before April 30, 2020, the credit will be applied to the contributions payable on the report due on or before July 31, 2020. If the amount of the credit exceeds the amount of contributions due on the report, the excess credit amount is considered an overpayment and will be refunded to the employer.
- Authorizes the Buncombe County Tourism Development Authority to use existing occupancy tax proceeds in its Tourism Product Development Fund to provide grants up to \$50,000, through the use of an agency experienced in emergency management funding, to businesses that promote tourism and patronage of lodging facilities in the county and that have either closed or suffered significant economic loss due to the COVID-19 epidemic. The grant program would end 6 months following the date the state of emergency ends.
  - When this provision was explained in committee, legislative staff noted that as drafted, this section presents two constitutional concerns. First, providing grants to private businesses to jumpstart or maintain operations may violate a combination of the public purpose doctrine and the exclusive emoluments clause found in Article V, Section 2(1) and Article I, Section 32, respectively. Second, repurposing existing occupancy tax funds for a use other than that set out in existing law may violate the "special object" limitation in Article V, Section 5 of the Constitution.

- Grants health care facilities and providers immunity from civil or criminal liability for acts and omissions in the course of arranging health care services if all of the following apply:
  - The services are provided pursuant to a COVID-19 emergency
  - The health care services are impacted by (1) a provider or facility's decisions in response to the COVID-19 epidemic, or (2) by the decisions or activities, in response to or as a result of the COVID 19 epidemic, of a health care facility or entity where a health care provider provides health care services.
  - The health care facility or provider is arranging the services in good faith.
    - Immunity would not apply if the damages were caused by willful or intentional misconduct, gross negligence, reckless misconduct, or intentional infliction of harm on the part of the health care facility or provider. Volunteer organizations would be immune from liability for damages that occur at their facility unless the volunteer organization unless there was willful or intentional misconduct, gross negligence, reckless misconduct, or intentional infliction of harm on the part of the volunteer organization.
    - This section would become effective when it becomes law and would apply to acts or omissions occurring during the time of Executive Order No. 116 issued on March 10, 2020, by Governor Roy A. Cooper, and any subsequent time period during which a state of emergency is declared to be in effect during calendar year 2020.
- Would authorize, until August 1, 2020, a notary to perform acknowledgments and administer oaths and affirmations through the use of video conference technology if the notary and principle are physically present in North Carolina at the time of notarization and provided certain requirements are met. The section would also (i) extend for 45 days the time an applicant granted a commission by the Secretary of State after March 9, 2020, and before August 1, 2020, to appear before a register of deeds and take the general oath of office and (ii) authorize a register of deeds to administer the required oath to such appointee using video conference technology.
- Would allow a person to witness a principal sign a document by using video conference technology instead of being in the physical presence of the principal if the technology allows for direct, real time audio and video interaction between the principal and the witness. An attesting witness will be considered to have signed the record in the presence of the principal if the witness signs the record immediately after observing the principal sign it and while still in direct communication using the technology. Both the principle and witnesses must be physically located in North Carolina. This section would expire on August 1, 2020.
- Clarifies that masks may be worn on certain public and private premises to ensure the physical health or safety of the wearer or others, but require the wearer to remove that mask upon the request of a law enforcement officer during a traffic stop or when the officer has reasonable suspicion or probable cause during a criminal investigation. Currently, the law allows masks to be worn for the following reasons: holidays; employment purposes; theatrical productions; defense drills, exercises, or emergencies; as part of a parade, ritual, initiation, ceremony, or

celebration requirement of a society, order or organization; or when operating a motorcycle. This section would be effective when it becomes law and expire August 1, 2020.

- Extends for five months the validity of any credential issued by the Division of Motor Vehicles that expires between March 1, 2020, and before August 1, 2020, would waive fines, fees, and penalties associated with failing to renew an extended credential, and would extend the due date for motor vehicle taxes for extended registrations.
- Assists NC Department of Transportation (NCDOT)'s short term cash flow by providing that NCDOT does not have to transfer \$125 million to the a reserve account established last year for the 2020-2021 fiscal year.
- Amends the statutes related to Health Care Powers of Attorney and Advanced Directives for a Natural Death to waive the requirement that the principal's signature be executed in the presence of two qualified witnesses. This waiver would apply as long as the document is signed by the principal and properly acknowledged before a notary and would apply to those documents executed on or after the effective date of this section and prior to termination of the State of Emergency declared by Governor Roy Cooper in Executive Order No. 116, on March 10, 2020. This section would expire on August 1, 2020.
- Amends Chapter 45A of the General Statutes, Good Funds Settlement Act, to allow a settlement agent in a real estate transaction involving a one to four family residential dwelling or a lot restricted to residential use to disburse closing funds from the settlement agent's trust or escrow account prior to recording the deeds, deeds of trust, and any other required loan documents in the office of the register of deeds upon the written consent of the parties involved. Authority to disburse prior to recording would be limited to those areas under a declaration of emergency issued by the Governor or General Assembly where the office of the register of deeds is closed to the public and unable to accept documents for electronic recording. This section will expire on August 1, 2020.
- Provides time-limited civil liability immunity to essential businesses for injuries or death resulting from customers or employees contracting COVID-19 at the business. Immunity is also extended to emergency response entities with regard to customers that do business with the entity being injured as a result of COVID-19. Immunity does not apply, however, if the harm is caused by gross negligence, reckless misconduct, or intentional infliction of harm.
- Authorizes an individual licensed as a soil scientist to prepare signed and sealed soil and site evaluations, specifications, plans, and reports for the site layout, construction, operation, and maintenance of a wastewater system without needing any further certification from the North Carolina On-Site Wastewater Contractors and Inspectors Board. A licensed soil scientist would also be authorized to conduct all necessary inspections, certifications, and approvals, including the issuance of the final inspection and report. Such authority would be at the direction of the owner of a proposed on-site wastewater system and would expire August 1, 2020.
- Adds a provision to the Emergency Management Act to specifically authorize official meetings of public bodies including closed sessions, public hearings, and quasi-judicial hearings to be conducted via remote, simultaneous communication

during periods of declarations of emergency under G.S. 166A-19.20 and would make conforming changes to clarify that counties and cities may meet via simultaneous communication. This section would apply throughout the duration of any declaration of emergency issued under G.S. 166A-19.20 in effect on or after that date.

- Delays the effective date of the new consolidated land use planning statutes, Chapter 160D of the General Statutes, from January 1, 2020 to August 1, 2021, to give more time to counties and cities to review, amend, and adopt comprehensive local land use ordinances.
- Allows land use development ordinances adopted by a county or city to reference or incorporate by reference flood insurance rate maps, watershed boundary maps, or other maps officially adopted or promulgated by State and federal agencies and would authorize those ordinances or zoning maps to incorporate by reference the most recent officially adopted version of such maps. This section would also authorize land use development ordinances to provide that the zoning district boundaries are automatically amended to remain consistent with changes in the officially promulgated State or federal maps, provided a copy of the currently effective version of any incorporated map is maintained for public inspection by the county or city. This section would expire August 1, 2021.
- Provides that for any development approval that is current and valid at any point during the period beginning March 10, 2020, and ending April 28, 2020, the expiration date of the period of development approval and any associated vested rights is extended for five months. A development approval is defined as one of several approvals issued by a unit of local government, including building permits, sketch plans, site-specific development plans, and development permits. This section would expire September 28, 2020.

Senate Bill 704 was approved by the House and Senate on Saturday, May 2, 2020, was ratified, and sent to Governor Cooper for his consideration. The Governor has 10 days to either sign the bill, veto the bill, or allow it to become law without his signature.

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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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