



Legislators adjourned the 2020 short session on September 3, “sine die”, which means they are not scheduled to return to Raleigh until the 2021 session. Legislators spent the entire spring and summer dealing with coronavirus relief. The majority of North Carolina’s share of federal CARES Act relief funds was allocated by the end of June, but legislators stopped short of spending all the federal relief money and had been awaiting additional guidance from a second federal coronavirus relief package that was expected before the end of August. Although the second federal relief bill had not passed, North Carolina lawmakers returned to Raleigh September 2 for a two-day session to allocate the remaining \$1.1 billion.

The 2020 “short” session was schedule to begin in late April and run through the end of June. However, COVID-19 changed the legislature’s schedule for the year. Legislative leaders spent the first few weeks of the COVID-19 crisis hearing from constituents and industries about the impact of COVID-19, evaluating ways the state could assist, and making plans to allocate federal CARES Act funds that would be allocated to North Carolina. The legislature held a brief session at the end of April where they allocated approximately \$1.6 billion of the federal CARES Act funds, as well as addressed other issues to assist businesses and individuals as they attempted to deal with COVID-19.

The legislature then returned for the “short” session this summer. Although the focus was again on COVID-19, the legislature did consider and pass non-COVID related bills, including bills that had made the “crossover” deadline during the 2019 legislative session. The session was much more limited in duration and in the issues considered then was originally anticipated. In anticipation of the state’s receipt of additional federal relief funds, the legislature adjourned the short session to reconvene on September 2. Although the federal relief package has yet to be approved by Congress, the legislature met in early September and passed House Bill 1105, the Coronavirus Relief Act 3.0, to allocate the remaining \$1.1 billion in federal relief funds which must be in the hands of the recipient entities by the end of the year.

This year is also marked by the struggle of certain business that have been required to stay closed under Governor’s Executive Orders, and the legislature’s attempts to allow these business to reopen. There were bills considered and passed by the legislature to reopen a number of different businesses, including restaurants, breweries, bars, gyms, amusement parks, arcades, and bowling alleys. In all cases, legislation passed by the General Assembly was vetoed by the Governor. Ultimately some businesses were allowed to reopen under modified executive orders, such as restaurants and gyms. But a number of businesses remain closed. Certain elected officials continue to call for the reopening of businesses, as well as call for public schools to meet in person as opposed to virtual learning. These “reopening” issues should continue to dominate the headlines as we head towards the November 3 election.

The legislature is scheduled to convene the 2021 long session on January 13, 2021.

This Final Legislative Report for 2020 includes a summary of all the bills enacted by this year's General Assembly that are of interest to the association, and some bills that were considered but not enacted this year.

### **BILLS OF INTEREST ENACTED INTO LAW**

**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.
- 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.
- Authorizes, until August 1, 2020 (later extended to March 1, 2021), 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 (later extended to March 1, 2021), 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.
- Allows 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 (later extended to March 1, 2021).
- 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.
- 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 (later extended to March 1, 2021).
- 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.
- 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.

**Effective: May 4, 2020. Session Law 2020-3.**

**Senate Bill 729, GSC Modernize Partition Laws.** modernizes 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 adds 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 excludes 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. In addition, the bill authorizes the court to allocate other attorneys' fees among the parties.

The bill enacts 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 establishes 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 adds 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 requires 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 adds 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 authorizes 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 requires 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. The bill 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 eliminates 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 requires 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 expands 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 requires 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 requires 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 establishes 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. **Effective: October 1, 2020. Session Law 2020-23.**

**Senate Bill 595, Change to Real Property Statutes**, makes 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. **Effective: August 1, 2020. Session Law 2020-50.**

**House Bill 902, P&C Changes/Glob. Tranp./Prison Pilot**, among other things, amends Chapters 47C and 47F to provide that a unit owners association may impose reasonable charges in connection with the preparation of statements of unpaid assessments, which must be furnished within 10 business days after receipt of the request, in an amount not to exceed \$200.00 per statement or request, and an additional expedite fee in an amount not to exceed \$100.00 if the request is made within 48 hours of closing, all of which charges may be collected by the association, its managers, or its agents. **Effective: July 2, 2020. Session Law 2020-90.**

**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:

- 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

**Effective: May 4, 2020. Session Law 2020-4.**

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For more information about legislation described in this final legislative report, 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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