



Legislative Update from Kochanek Law Group

Below is an update we've put together on what the General Assembly, and specifically the House Select Committee on COVID-19, has been doing in preparation for the upcoming session. We expect the session to convene for remote committee work on April 28th and the voting session to begin on April 30. Once the COVID response package is passed we then expect the session to adjourn until July or August for the traditional "short" session, at which time the impact on state revenue will be more clear a budget can be assembled to manage the expected shortfall.

Let us know if you questions have any questions or would like additional information about the potential legislatives responses being discussed.

For the first time in state history, members of the North Carolina General Assembly have held meetings remotely to prepare a legislative response to the COVID-19 crisis. In March, Speaker Moore assembled a bipartisan House Select Committee on COVID-19, including four area-specific subcommittees to address this developing crisis: an economic support subcommittee, an education subcommittee, a continuity of state operations subcommittee, and a health care subcommittee. At this time, the North Carolina House of Representatives are the only members of the General Assembly conducting meetings. Speaker Moore expects to use the recommendations made by the subcommittees to help form legislation ready to move when the General Assembly convenes for the short session at the end of this month. The subcommittee recommendations will be used as a part of a wider conversation with Senate leadership and the Governor to develop legislation addressing the urgent needs of the state.

The legislature is expected to vote on a limited package exclusively dealing with the COVID-19 pandemic at the end of this month and are expected to return in July or August to consider other matters, including the budget. After much discussion on how

the General Assembly should convene under the circumstances, the General Assembly plans to limit access to the Legislative Building and Legislative Office Building to members, staff, and credentialed media beginning April 20, 2020 through May 8, 2020. Those entering the building will also have their temperatures taken upon entry. The General Assembly encourages members of the public to continue to schedule times to meet with members electronically, and continue to reach out to legislators' offices via phone and email leading up to April 28th and after session, as well.

Last week, the subcommittee on health care co-chair Donny Lambeth said he expects there to be no other business on April 28th, aside from calling the General Assembly into session and assigning bills to committees. On the 29th, Rep. Lambeth expects committees to meet remotely to take up the assigned bills, including appropriations committees for the bills related to funding. Rep. Lambeth anticipates all of the individual bills will then be combined into a single COVID-19 bill and voted out of the House over to the Senate on April 30th. The actual floor vote is the only time Rep. Lambeth believes members will be expected to physically be in attendance throughout this process.

All four subcommittees are expected to develop draft legislation to address the urgent needs of North Carolinians. So far, the economic support subcommittee is the only subcommittee to have drafted bills, consolidating several draft bills in order to expedite the process and help to practice social distancing by limiting time in the building for members when they return. The subcommittees on continuity of state operations and health care have begun to discuss various possible legislative actions this week, expecting to draft legislation next week.

The subcommittee on health care met on Thursday, April 16th, and discussed various legislative actions to address the COVID-19 crisis. The subcommittee intends to meet next week with two bill drafts ready to be discussed: one bill addressing policy issues, and one on funding issues. There were more than 65 legislative actions that were considered so it will be interesting to see what ends up in the final bill.

COVID-19 UI Response Act - Economic Support

This Act was a combination of several bills discussed in this subcommittee. It would provide aid to North Carolinians in response to the coronavirus crisis by increasing access to unemployment benefits, providing employers a suta tax credit, and waiving the accrual interest on certain tax payments and extending certain tax-related deadlines, as recommended by the economic support working group of the House select committee on COVID-19. In further detail, this bill would do the following:

- waive the accrual of interest on individual income tax and corporate income and franchise tax returns due on or before April 15, 2020, from April 15 until July 15. The relief applies to partnership and estate and trust tax returns, as well as estimated tax payments for 2020 due on or before April 15, 2020. This Part

- would also extend certain tax-related deadlines, similar to the relief provided by the IRS in a notification published last Thursday, April 9th;
- affirm the ability of the Division of Employment Security (DES) to be flexible or waive, as appropriate, the eligibility requirements when administering the State's unemployment compensation laws, as provided in Executive Orders 118. It would provide that benefits may be payable in any of the following circumstances: an employer temporarily ceases operations due to the coronavirus, an employer reduces the hours of employment due to the coronavirus, an individual has a current diagnosis of coronavirus, or an individual is quarantined at the instruction of a health care provider or local State or federal official;
 - codify the ability of employers to file attached claims, as provided in Executive Order 131, executed on April 9, 2020. An attached claim is one an employer may file on behalf of employees that will remain "attached" to the employer's business. It is a process customarily used by employers who are temporarily laying off employees. Allowing an employer to file an attached claim for employees simplifies the process because each claimant does not need to file a separate claim, and it expedites the process because DES is able to forego the customary 10-14 days it takes to contact and receive a response from an employer concerning the reason for separation. It also mitigates overpayments that may result when a claimant returns to work, and fails to properly notify DES, thereby continuing to receive UC while working. This section gives an employer the ability to file an attached claim without the restrictions imposed under general law, if the reasons for the work separation are COVID-19 related. The employer does not need to have a positive Trust Fund balance and the employer does not need to pay DES the full amount of the benefits payable in advance. The funds to pay the claims would be drawn from the Trust Fund and the employer's account would not be charged. The period of unemployment would not be limited to six weeks, and the employer's use of the attached claim process under this section would not be counted as a use of the process for purposes of statute regarding administration of benefits, attached claims;
 - allow 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. This would apply for unemployment benefits filed for periods beginning on or after March 10, 2020 and expires for unemployment benefits filed for periods beginning on or after the earlier of the following: (i) the date the Governor signs an Executive Order rescinding Executive Order 116, or (ii) December 31, 2020; and
 - make changes to unemployment insurance laws, as recommended by the Division of Employment Security: (i) allow a claimant to satisfy one of the weekly job

contacts by attending a reemployment activity offered by a local career center that the Division has verified as a suitable credit toward the work search requirement. The claimant will have to verify attendance at the activity to DES, (ii) allow an employer to initiate an unemployment claim for employees when the unemployment is due directly to a disaster covered by a federal disaster declaration, (iii) provide that a lien for county property taxes does not take priority over a previously filed lien for past due contributions, and (iv) removes the July 1, 2023, date that would sunset the Joint Legislative Oversight Committee on Unemployment Insurance.

The subcommittee on economic support unanimously approved this bill and sent it forward for filing on April 28th.

Small Business Emergency Loans

This Act would provide emergency loans for small businesses affected by the COVID-19 epidemic. This bill draft would appropriate \$25M to the Golden Leaf Foundation (GLF) for entities to provide emergency bridge loan funding for small businesses adversely affected by the COVID-19 epidemic. The draft, in large part, mimics the existing bridge loan program GLF has been providing with non-State funds. In further detail, this bill would do the following:

- make funds available to GLF for entities to provide emergency loans for businesses of 50 or fewer employees, measured at the time of the declaration of the State of Emergency;
- for the first 6 months after loan closing, the loans would have no payments due and an interest rate of up to 4%. Thereafter, repayment would commence and the interest rate would increase to not less than 5.5% for the rest of the loan term, which is capped at a total of 54 months and capped in amount at \$50k per recipient;
- recipients would have to certify loaned funds were used on behalf of a business in NC and would be required to repay the loan upon receipt of federal funds, provided that doing so would not negatively impair federal funding benefits, such as federal fund repayment forgiveness or eligibility;
- repaid loan amounts would remain eligible for new loans to qualifying businesses until six months following the date the state of emergency ends;
- pursuant to Section 3 in the bill draft, and based on GLF having already used approximately \$15M in non-State funds in an existing emergency/bridge loan program, there would be a \$15M required match for the \$25M appropriation in Section 4 of the bill draft. No new matching funds from GLF other than what has already been provided would be required;
- section 3 would require that the amount appropriated in the act for bridge loans be returned to the General Fund minus (i) the cost of administering all loans made under the program, capped at 5% and (ii) any amounts lost as a result of, for example, default that represent the State's proportionate share of funding. Interest

- on the loans, as in past disaster relief loan programs, would be retained by the lender to offset the costs of originating and servicing the loans; and
- under Section 5 of the bill draft, GLF would report semi-annually on the program, including recipient NAICS codes, jobs retained, number and total amount of loans made, repaid, defaulted on, and recaptured, and the average loan amount.

A motion has not been made on this bill yet, but will likely be voted on by the subcommittee on economic support this week and then will be filed when they come into session.

Potential Legislative Action, Subcommittee on Continuity of State Operations

The subcommittee on the continuity of state operations met on Tuesday, April 14, and discussed various legislative actions that have been referred to them to address the COVID-19 crisis. Here is a summary of the changes considered below.

Advanced Health Care Directives: Currently in North Carolina, both a notary AND two witnesses have to sign off on documents for valid advanced health care directives. In this emergency, a special provision could be implemented that allows for either a notary OR two witnesses to sign off on these documents. Referred by the Secretary of State.

Business Registration: North Carolina could consider waiving annual report fees for LLCs, Corporations etc. to help small businesses that are dealing with an economic downturn. G.S. 55-1(22) and G.S. 57D-1(22). In addition the state should consider waiving all of the fees being charged on businesses and individuals as the state responds to an unprecedented crisis. Referred by the Secretary of State. Chairman Lewis put this potential legislative action aside to obtain more information first.

Charitable Solicitation: Charitable Solicitation Division would like the 10-day statutory limit by which an application has to be reviewed to be extended to 20 days during the emergency as it takes longer for employees to review these applications given teleworking and social distancing requirements. Referred by the Secretary of State.

Communicable Disease Information: Align state law with HIPAA to allow disclosures to law enforcement that are necessary to prevent or lessen a serious and imminent threat; remove outdated language; make clarifying changes. Referred by the School of Government.

DMV: (i) provide DMV Commissioner with the authority to extend expiration deadlines for various privileges and requirements – e.g. driver licenses, vehicle inspections, station licenses – during a declared emergency, (ii) provide DMV Commissioner authority to waive fines and fees during a declared emergency. Referred by the Department of Transportation.

Elections: Expand delivery of absentee requests to include fax and email of the requests and allow the HAVA document with absentee request form. Referred by the State Board of Elections.

Incompetency and Adult Guardianship Proceedings: (i) requires copies of the petition and notice initiating an incompetency proceeding to be personally served on the respondent. For the most part, this requires service on the alleged incompetent adult by the sheriff. There are cases where the respondent is at an adult care home, hospital, or other facility that will not allow the sheriff to enter to serve the respondent. The result is that incompetency and adult guardianship proceedings cannot go forward for these respondents.....For the duration of this public health crisis only, allow for another type of service on these respondents, (ii) Without a party's consent, pursuant to the Chief Justice's order, these interim proceedings may not be conducted remotely despite the fact that they most often involve vulnerable adults in emergency situations....Add to G.S. 35A-1114(c1): The hearing to consider the appointment of an interim guardian may be held, or any party or witness may appear, via video conference if the clerk determines good cause exists. Prior to any hearing held or appearance by video conference, the clerk shall submit to the Administrative Office of the Courts the procedures and type of equipment for video conference for approval by the Administrative Office of the Courts. Referred by the School of Government.

Involuntary commitment custody and transportation: Currently, the designation process and the training requirements involve a months-long process. Consider amending the relevant statutes to permit an expedited process for designating and training personnel other than law enforcement officers--personnel who would have the authority to carry out the various phases of transportation relating to involuntary commitment in lieu of law enforcement officers. Referred by the School of Government.

Involuntary commitment/ telemedicine: During the pandemic allow for (1) telemedicine for the second IVC examination in lieu of face-to-face examination; (2) telemedicine for the first examination for purposes other than geographic distance; and (3) telemedicine for substance abuse commitment examination. Referred by the School of Government.

Local Government Finance: Daily Deposit Requirement: Daily deposit requirement – may need relief in the form of a temporary suspension of requirement in certain circumstance and with certain safeguards in place. Referred by the Local Government Commission.

Marriage License: (i) personal appearance for applicants seeking a marriage license – many of our vital record services are able to be performed remotely including the issuance of birth and death certificates but NC law requires personal appearance for the issuance of a marriage license. The only exception the statutes make is G.S. 51-8.2 which gives options for one applicant to appear in person with a signed affidavit from the other

applicant who cannot appear in person. Registers would not advocate for a permanent change in the statute, however, the fear of statewide stay at home orders has driven a heavy volume of applicants to Registers offices across the state seeking marriage licenses. This has led many Registers to seek remote options for the issuance of marriage licenses. Currently most Registers have the ability for customers to fill out the application and submit electronically. The personal appearance is simply to sign the license and administer the required oaths. While electronic signatures are already validated in NC law, a short term solution to be able to use virtual technology to administer oaths removing the personal appearance requirement would be helpful, (ii) 60 day expiration on marriage licenses that have been issued - G.S. 51-16 states that an officiant can perform a ceremony anytime within 60 days of the issuance of a license. G.S. 51-7 states the officiant could be subject to a \$200 fine and guilty of a misdemeanor for conducting a ceremony after a license has expired. With many couples having wedding venues cancelling or postponing planned events, the 60 day expiration on licenses is becoming an issue. Couples should not be penalized for this by having to purchase a new license and this issue should not be driving customers to our office during the current pandemic to reapply for licenses. A temporary extension on the 60 day expiration would be very helpful. Referred by the Register of Deeds.

Notary: the Secretary of State has considered remote notarization and would be the appropriate source for a recommendation about an amendment, either to allow remote notarization in general, or to allow it during a state of emergency. Without such legislation, a real estate instrument or other documents notarized remotely in this State could be challenged as invalidly notarized. Referred by the School of Government.

Notary - Commission: (i) A notary, after taking the required class, should be allowed 6-9 months to complete the notary commission requirements, not 3 months as it is now, (ii) Notaries should be allowed 9 months to get sworn in, not 45 days as it is now, (iii) Notaries should be allowed to renew within 18 months, thus extending the current requirement that notaries renew every 12 months, (iv) Notaries should be allowed to renew within 18 months, thus extending the current requirement that notaries renew every 12 months. Referred by the Secretary of State.

Notary - Commission: Notary expiration dates – Many of our offices have had unnecessary customer traffic for notaries who are having to appear to take notary oaths because commissions expire during this pandemic. A short term solution to extend the expiration dates of notaries whose commissions expire during the statewide state of emergency for an additional 45-60 days would be helpful. Referred by the Register of Deeds.

Notary - Commission: This statute could be amended with the following qualification: "If the governor declares that a state of emergency exists, notaries may take their oath remotely by audio-video communication during such state of emergency, provided the

register of deeds can positively identify the appointee.” Referred by the School of Government.

OAH - contested cases: Authorize the Chief Administrative Law Judge, during times of catastrophic conditions, to extend the time period for filing a petition for a contested case. Referred by OAH.

OAH - emergency rules: Clarify ability to reschedule meetings during the emergency/temporary rulemaking process. Referred by OAH.

Open Meetings: Clarify Authority to Meet Remotely - Full Council, Other Board Meetings, Public Hearings. Referred by the NC League of Municipalities. Flexibility with open meeting laws and remote participation was requested by the NC Association of County Commissioners. Other legislative considerations were listed for open meetings, but the committee members had concerns with the potential for meetings to take up controversial content with little to no opportunity for public input. Because of this, all open meetings actions were displaced to be talked about next time after speaking with the NC League of Municipalities and the NC Association of County Commissioners.

Regulatory Relief: Either authorize or require State agencies to waive, delay, or modify the collection of any fees, fines, or late payments assessed by the agency under its statutes, including the accrual of interest associated with any fees, fines, or late payments. Recommended by Co-chairs.

Regulatory Relief: Either authorize or require State agencies to Delay the renewal dates of permits, licenses, and other similar certifications, registrations, and authorizations issued by the agency pursuant to its statute. Recommended by Co-chairs.

Regulatory Relief: Either authorize or require State agencies to Waive, delay, or modify any educational or examination requirements implemented by the agency pursuant to its statutes. Recommended by Co-chairs.**Co-chairs intend to continue to modify these recommendations. The members seem to all agree that they wish to delay fees, instead of waive them, anywhere from 30 to 90 days after the crisis. They are also considering empowering the boards to delay if they can or are able to do so, rather than make it mandatory across the board.**

Service: Service and filing of pleadings and other papers. Amendment to Rule 5 Service: This School of Government draft amendment includes proposed language which would make email a proper method of Rule 5 service. Amended language is primarily intended to be temporary and related to COVID-19 needs for electronic service. Referred by the AOC.

State Health Plan - Payment Deadlines: In the event of a federal and state declared disaster, allow the Treasurer (subject to approval by the SHP Board) to grant time-limited flexibility around payment deadlines. This would not mean that premiums are not owed to the Plan, only that due dates can be extended and temporarily disconnected from the requirement that we cease health coverage 30 days after non-payment. Additionally, it's also worth noting that a similar deferral arrangement has been approved by the Department of Insurance for private sector health insurance plans, but that deferral does not apply to the State Health Plan. Referred by the NC Treasurer's Office.

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