

Legislative Update from Kochanek Law Group

The North Carolina General Assembly arrived (some virtually) in Raleigh on Tuesday the 28th. The House had held virtual working group meetings for a month and the legislation filed on Monday reflected the discussions and drafts that were created in those groups. The mystery was on the Senate side where no public meetings or real information had been provided about how they intended to address the session. Now we know that Senators have been working behind the scenes in a bipartisan way so that by the next day their bill was unanimously approved. The House ran their various bills through committees, combined the bills into one bill and then voted to approve the whole package yesterday. Since the bills are different, they worked to reach an agreement on the final provisions, but no deal was reached last night, and we have not heard of any resolution so far today.

According to Rep. Chuck McGrady (R-Henderson), a House budget Chair, the two sides agreed on the total spending amount late last night, but are still negotiating specific provisions. Among these are which universities will receive money to help develop a COVID vaccine (and the total amount allocated for that effort), as well as unemployment benefits increases included in the Senate bill.

Speaking to reporters about the differences that still need to be worked out, House Speaker Tim Moore said late yesterday, “There’s things with the (education) policy, the health policy, there’s the money, but I think that’s getting close.” Moore also signaled support for the Senate bill’s provision that would provide “limited” protections from lawsuits for “essential businesses” in situations where someone contracts coronavirus “while doing business with or while employed by the essential business.” Moore said, “You don’t want lawsuits abusing the system. Things are bad enough already. At the same time, if someone is careless and reckless and just commits a reckless act, that’s different.”

Update on the COVID Response Session: The General Assembly has been hard at work this week during this unconventional short session to address the many needs of North Carolinians as a result of the COVID-19 crisis. Yesterday, the North Carolina House passed its \$1.7 billion COVID-19 response bill, House Bill 1043: Pandemic Response Act. The bill passed nearly unanimously, with 116 voting in the affirmative and one vote in the negative from Rep. Speciale of Craven County.

Wednesday, the Senate unanimously passed its own COVID-19 response bill, Senate Bill 704: COVID-19 Recovery Act. At its floor vote, the bill provided \$1.36 billion in relief funding, a rise from its introduction earlier this week with \$1.2 billion, but still over 300 million less than the House’s funding plan.

The Chairs of House Appropriations and chairs of Senate Appropriations have been charged with reaching a compromise between the chambers, and hope to do so today. Once they have come to an agreement, both House Bill 1043, which has been sent to the Senate, and Senate Bill 704, which has been sent to the House, will become proposed committee

substitute (PCSs). Part of the provisions will be taken up in the House bill, and the rest will be addressed in the Senate bill. Speaker Moore explained that this process will be used, rather than going to conference since there is consensus on the bills and this will save time. The Speaker does not intend to ask members to convene next week.

Speaker Moore has said that many of the differences between the House and Senate bills were about spending levels, rather than policy, but some policy differences also exist. “We’re still getting a lot of guidance from the federal government about how we can spend these dollars,” said Senate Majority Leader Harry Brown. “We don’t want to spend all the money up front. We’re trying to be cautious but also take care of what we know are immediate needs. It’s going to be months before we know all the information and how best to attack it.” Most legislative leaders believe it is not in our state’s best interest to spend all of the federal money at once, but there is some disagreement on how much the state should be spending now.

Key Differences:

- The House provides \$75 million to the Golden LEAF Foundation to fund low-cost small business loans, the Senate would provide \$125 million.
- The House would expand Medicaid temporarily so people making up to twice the poverty rate can be treated for coronavirus-related illnesses. The Senate proposal doesn't; Sen. Berger has said that spending going directly to medical providers will help treat the uninsured.
- The House requires health benefit plans to cover and reimburse for telehealth and virtual health care at the same level as an in person visit. The Senate does not include this language.
- The House provides \$25 million to DHHS to support behavioral health, including \$12.6 million for the purposes of providing temporary additional funding assistance to Intermediate Care Facilities for individuals with intellectual or developmental disabilities. Funding will also go to divert mental health emergencies from emergency departments. The Senate did not initially include funding for behavioral health but via an amendment introduced by Sen. Robinson and adopted by the Senate on Wednesday, the Senate added \$20 million to DHHS to provide funding for items including food banks, support for residential settings, child care, and support for behavioral crisis services to divert mental health emergencies from emergency departments.
- The House and Senate both provide liability protection for health care workers for harm or damages alleged to have been sustained as a result of an act or omission in the course of providing health care during the COVID-19 emergency declaration. The act or omission must not constitute gross negligence, reckless misconduct, or intentional infliction of harm. The Senate also includes limited business immunity for essential businesses.
- The House would allow restaurants to sell up to two sealed liquor drinks per takeout or delivery food orders during the coronavirus crisis. The Senate proposal doesn't. Sen. Chaudhuri proposed an amendment on the floor to consider this

provision but ultimately withdrew it, because there was no consensus among the chamber.

- Both bills would allow the DMV to add six months to the expiration date of any license, permit, registration or other credential. It would waive any fees, fines or penalties for not complying with the old date, and motor vehicle tax payments would also be delayed to the new expiration date. The effective date differs between the two bills: the House version would apply retroactively to licenses and registrations that expired March 10, and the Senate version would apply retroactively to March 1.

Regulatory Flexibility: Both the House and Senate bills would authorize state agencies to exercise regulatory flexibility during the coronavirus emergency, in order to protect the economic well-being of North Carolinians and state businesses. It would allow state agencies to:

- delay collection of or modify collection of any fees, fines, or late payments accessed by the agency;
- delay the renewal dates of permits, licenses, and similar certifications, registrations, and authorizations issued by the agency; and
- delay or modify any educational or examination requirements implemented by the agency.

The provision would require the state agency to determine that the action is in the public interest due to the impacts of the Coronavirus. The House version would exclude the Division of Employment Security of the Department of Commerce, the Department of Health and Human Services, the State Board of Education, the Department of Public Instruction, UNC, the State Board of Community Colleges, and the State Board of Elections – meaning this flexibility would not be provided to those agencies, but would to all others. The Senate version would exclude the North Carolina Department of Justice, the State Board of Education, and the State Board of Elections. The Senate version would also require each State agency to review its rules, policies, procedures, enforcement actions, and any other type of agency requirement or action that affects the economic well-being of the citizens and businesses of the state and determine if, due to the impacts of the coronavirus, a waiver, delay, or modification of the agency's requirements or actions would be in the public interest. Both would require agencies to report by October 1, 2020, to specified NCGA committees and commissions and OSBM on its efforts to exercise such regulatory flexibility, but the Senate bill also provides that an agency would have to explain to the committee why it did not choose to exercise regulatory flexibility during this time, as well. Both authorize agencies to adopt emergency rules for implementation, and both would retroactively go into effect for March 10, 2020. The House version would expire on August 1, 2020, and the Senate version would expire on the earlier of the date of the Governor rescinding Executive Order No. 116, or September 1, 2020. We expect some version of this provision to be included in the final package.

You may view a detailed chart of the differences between the House and Senate bills [here](#).

More to Come: Leaders in both chambers have indicated that these provisions are just the initial response to the crisis, and there will be more legislation to follow in the coming months. The exact schedule for doing so is as yet unknown, but we understand there may be more mini-sessions to take up additional bills before the main “short” session convenes later this summer.