

Legislative Update April 23, 2021

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The 2021 Legislative Session continued to pick up pace this week. The Senate is now in the throes of crafting its budget after holding joint meetings with the House over the past month. Senators are expected to continue their work for the next several weeks before handing the budget off to the House. It is still unclear if the two chambers have agreed on a total spending number for the budget. This lack of a unified starting point may prove challenging during the conference process, but only time will tell.

While the Senate's bill filing deadline has already passed, the House extended theirs until May 4, and they continue to file new bills each day. Other than time-sensitive bills, each chamber will likely not move bills from the other chamber until after the May 13 crossover deadline. As a reminder, the crossover deadline is the date that requires most bills to pass the chamber they originated in to be eligible for the remainder of the session.

Finally, on Wednesday, Governor Roy Cooper announced plans to lift many COVID-19 restrictions in June. Cooper noted that he would like for at least two-thirds of North Carolinians to have received at least one vaccine by June to lift the restrictions. The list of restrictions under consideration includes capacity limits, social distancing requirements, and mass gathering limits. There will also be a consideration regarding lifting the statewide mask mandate, but that topic remains under discussion. The Governor plans to issue an executive order spelling out his plans next week.

WRAL: Cooper expects to remove capacity limits, end distancing requirements in June

House Passes Tax Changes

This week, the House passed a bill that would change how North Carolina treats federal Paycheck Protection Program (PPP) loans. These loans were essential to many businesses across the state who were struggling during the COVID-19 pandemic.

Currently, North Carolina allows businesses to exempt forgiven PPP loans from income for tax purposes, but businesses cannot deduct business expenses paid for by PPP loans. However, the federal government allows businesses to deduct those expenses, and North Carolina is one of a few states not conforming to this decision. The bill would couple North Carolina's code to the federal code and allow those deductions.

The House initially only allowed businesses to deduct expenses for the 2020 tax year but amended the bill on the floor to include the 2021 tax year. In that same amendment, they also voted to include a deduction for unemployment benefits. For people who received unemployment insurance benefits, the federal government will exempt the first \$10,200 from taxable income. North Carolina currently treats all unemployment insurance benefits as taxable income. The North Carolina Department of Revenue (DOR) claims that around 530,000 people who received unemployment benefits opted not to withhold taxes, meaning that they could owe a sizable tax bill. Those who did choose to withhold taxes will be reimbursed for their federal taxes but not their state taxes. With the bill now coupling to the federal code, the lost revenue price tag climbs to nearly \$850 million. However, this is an expense that many businesses and individuals who lost their jobs claim they cannot pay.

The bill passed the House with only one no vote. That "no" vote was Rep. Julia Howard, who lost her position as Senior Chair of the Finance Committee for her opposition to the bill. Howard was removed from her chairmanship by Speaker Tim Moore earlier in the week due to claims that she was forced to run the bill over her concerns that legislators pushing the bill stood to benefit from the PPP expenditure deduction. Senate leader Phil Berger said that the Senate has not determined how they will handle the bill but does not expect it to be considered for another few weeks.

WRAL: Speaker deposes powerful NC House committee chair amid dispute over tax bill

WRAL: \$850 million tax break passes NC House, but Senate expected to sit on it

Tax Extension

Earlier this year, NC DOR followed the federal government in moving the tax filing deadline from April 15 to May 17. NC DOR has the authority to waive any penalties for filing after April 15 and make them effective after the new deadline, but they lack statutory authority to waive any interest accrued after the April date.

The House unanimously passed a bill last week that would waive any interest in the extension period and move the deadline for requesting a refund to reflect the date change. The Senate advanced the bill through committee this week and is expected to take a floor vote on the bill next week.

The Fiscal Research Division estimates that the lost interest revenue will be around \$5 million. The bill also excludes federal stimulus payments and the State's Extra Credit grant program payments from income for several needs-based assistance program qualifications.

Certificate of Need Bills

The legislature has introduced a handful of bills this session on the State's Certificate of Need (CON) law. There are currently six bills (Senate Bill 462, Senate Bill 506, House Bill 410, Senate Bill 309, Senate Bill 641, House Bill 660) which span from CON updates, carve-outs, and full repeal of the law.

CON has been a controversial issue for over a decade. The law requires health care providers to be granted a certificate from the state before they can open certain facilities or make expensive modifications to existing facilities. CONs are geographic and ensure health care providers a specific pool of patients before they invest in building a facility or offering a particular service in an area. Opponents of the law cite fundamental free-market beliefs that opening up the health care sector to more competition will increase access and lower costs. However, those claims are not proven. Many worry that if CON is repealed, then it will no longer be financially feasible for providers to offer services or operate facilities in rural or low-income areas. In the CON application, providers must agree to treat all patients in that area, much like hospital emergency room requirements. However, without CON, providers could choose to only see insured patients and those who can pay.

The Senate has typically been more opposed to the CON law. This week, the Senate Health Committee passed a relatively non-controversial CON bill that would make two main modifications to the law. The first would increase the price threshold for when new equipment or facilities would require a new CON. This provision would also index those increases to inflation each year. The second provision aims to ensure that providers use a CON within a certain amount of time after receiving it. This provision is known as a "shot clock," which would give projects costing over \$50,000,000 four years to initiate construction and two years for projects at or under that cost. There is currently no time limit to commence construction.

The committee passed the bill with little discussion, and it was scheduled to be heard in the Senate Rules Committee this Thursday but was removed from the calendar. It is expected that work is being done on the second provision to prevent a CON expiring when the time limit is not met for reasons beyond the holder's control.

Patient Visitation Bills

Last session, lawmakers took exception to many health care providers' and nursing homes' COVID-19 protocols, which limited visitors in healthcare settings. The policies were aimed at preventing the spread of the virus, especially among those already sick or vulnerable. But it also meant that many people in hospitals and nursing homes were isolated from their loved ones, and, sadly, some died alone. A bill was passed by the Senate last year seeking to change these policies but never made it across the legislative finish line.

Lawmakers are taking another shot this year at setting up minimum visitation policies. Senate Bill 191, the No Patient Left Alone Act, would require health facilities to allow visitors or face a \$500 a day fine. Facilities could still use health screenings. The bill was heard in the Senate Health Committee this week, where some changes were made, but no vote was taken.

WRAL: NC lawmakers look to fine hospitals, nursing homes that block visitors

Bill Action Dates

- March 11: Senate local bill filing deadline
- March 25: House local bill filing deadline
- April 6: Senate public bill filing deadline (does not apply to constitutional amendments, elections bills, or appointments)

- May 4: House filing deadline for non-budget bills
- May 11: House filing deadline for budget bills
- May 13: Crossover deadline for both the House and Senate in which bills must have passed at least one chamber to remain eligible for consideration

List of All Filed Bills: <https://www.ncleg.gov/Legislation/Bills/WithAction/2021/10>

2020 Summary of Substantive Legislation

The Legislative Analysis Division has published the 2020 Summary of Substantive Legislation, which breaks down new laws by subject matter. Below is a link to the document:

<https://www.ncleg.gov/Legislation/SummariesPublication/Subjects/2020/>