

Legislative Update April 30 2021

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Practices

Legislative & Regulatory

Article

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Legislative committees cranked into high gear this week as each chamber pushed to have its bills heard before the May 13 crossover deadline, the date that bills must pass from one chamber to the other to remain eligible for the rest of the biennium. The next two weeks are expected to be very busy, with the fate of many bills yet to be decided.

While the Senate continues to work on its budget proposal, it is somewhat limited in its decision-making because it has not agreed on spending targets with the House. The state has a large amount of non-recurring money to spend this year, leading to challenging decisions regarding how to appropriate these funds.

On Monday, Governor Roy Cooper held his biennial “State of the State” address. In his speech, Governor Cooper called for more bipartisanship, citing examples of Republicans and Democrats coming together on several COVID-19 relief bills. He also reiterated his support for Medicaid expansion which has been a topic of much debate and has been a significant sticking point with Republicans, leading to the current two-year-long budget stalemate. The Governor also celebrated the announcement from earlier Monday that Apple selected North Carolina for a new \$1 billion campus that will create an estimated 3,000 high-paying jobs.

COVID-19 Restriction Rollback

Citing increased vaccine rates and lower hospitalization numbers, Governor Cooper announced this week that he would be easing COVID-19 restrictions soon. To that end, he issued Executive Order 209, which laid out the new, limited restrictions. Under the Order, the statewide mask mandate is lifted for individuals when they are outdoors but will still be required when in a large crowd outdoors. Schools will still have a mask requirement for students and staff.

The Order allows museums, personal care businesses and retail establishments to open at 100% capacity. Restaurants, amusement parks, fitness centers, and pools are permitted to open at 75% capacity. Movie

theaters, entertainment facilities, and bars can open at 50% capacity.

The curfew on alcohol sales is lifted, and the new mass gathering numbers are 200 people outside and 100 people inside. The Order goes into effect on April 30 at 5 pm and will remain in effect until June 1.

Tax Extension Bill Becomes Law

As mentioned last week, earlier this year, the North Carolina Department of Revenue (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.

Last week, the House passed House Bill 279. And this week, the Senate also approved the legislation by unanimous consent. The bill was presented to the Governor on Tuesday and signed into law.

The law waives any interest in the extension period and moves the deadline for requesting a refund to reflect the date change.

NCDOR Will Not Charge Interest for Taxes Due May 17 Under New Law

2021 Revenue Laws Bill

Senate Bill 322 “2021 Revenue Laws Changes” received its first hearing this week and was approved by the Senate Finance Committee.

The bill contains nine parts:

- Part one includes the Internal Revenue Code (IRC) Update, which sets what portion of the federal tax code North Carolina applies to its tax code or which part it chooses not to conform with, known as decoupling.
- Part two contains revenue laws technical changes.
- Part three reduces the impact of the federal SALT tax cap, allowing pass-through business entities to pay state and local taxes so that they are not subject to the \$10,000 federal deduction limit on individual income taxes.
- Part four changes the excise tax on premium cigars to collect the tax whether or not the sale is online or in-person.
- Part five extends the time to complete a project under the Mill Rehabilitation Tax Credit Program.
- Part six limits the gross premium tax on surety bonds to only apply the tax to transactions related to insuring the bond.
- Part seven provides tax parity to short-term vehicle rentals to tax peer-to-peer vehicle renting models.
- Part eight creates a staggered late tax payment model starting at 2% and increasing 2% a month, up to 10%.
- Part nine creates a separate state net operating loss calculation for individual income tax purposes.

→ The bill now moves to the Senate Appropriations and Rules Committees before going to the floor.

Fiscal Research Division Summary

Health Care Bills

Numerous health care bills have been filed, and many received hearings this week.

→ Senate Bill 462: CON/Threshold Amds. & Certificate Expirations

→ This bill increases the threshold for when a Certificate of Need (CON) is required for a new health care facility or equipment upgrade. A second provision, known as a “shot clock,” would give projects costing over \$50,000,000 four years to initiate construction and two years for projects at or under that cost. Language in the bill includes existing CONs but does not start the clock for them until October 2021, and there is a section to prevent an applicant/holder from losing a CON for delays that are out of their control. The bill is scheduled for a floor vote in the Senate on 5/4/2021.

→ Senate Bill 191: The No Patient Left Alone Act

→ This bill responds to healthcare facility policies that limited patient visitation during the COVID-19 pandemic. The bill requires health care facilities to offer patient visitation, except under limited and short-term circumstances. Facilities could be fined \$500 a day if their visitation policies violate the bill. The bill is scheduled for a floor vote in the Senate on 5/4/2021.

→ Senate Bill 505: Medical Billing Transparency

→ This bill requires health care providers to notify patients in advance when they have scheduled an appointment or procedure, and that provider is out-of-network with their insurer. The bill is expected to be heard in the Senate Rules Committee next week.

→ Senate Bill 228: Allow Employers to Offer EPO Benefit Plans

→ This bill allows health insurers to offer special plans to patients when in-network providers are not available in their area. Emergency and continuity of care costs are required to be covered by the insurer. The bill is expected to be heard in the Senate Rules Committee next week.

→ House Bill 93: Req. Opioid Antagonist Ed. w/Opioid Scripts

→ This bill requires health care providers to inform patients that are prescribed opioids of the dangers of the drugs and inform them that they can be prescribed a medication that will counteract the effects of an overdose. This bill passed the House 114 to 2 and was referred to the Senate Rules Committee.

→ Senate Bill 666: Update Reqs./Advance Health Care Directives

→ This bill changes the requirement for health care power of attorney and advance health care directive documents from two witnesses and a notary to two witnesses or a notary. The bill also allows advance health directives to be submitted electronically. Senate Bill 666 is scheduled for a vote on the Senate floor next week.

House Passes COVID-19 Related Tax Changes

Last week, the House passed a bill that would change how North Carolina treats federal Paycheck Protection Program (PPP) loans, which helped struggling businesses during the COVID-19 pandemic. Currently, North Carolina allows businesses to exempt forgiven PPP loans from income for tax purposes, but they cannot deduct business expenses paid for by PPP loans. The federal government allows businesses to deduct those expenses, and North Carolina is one of only 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 originally 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, it 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 determined that around 530,000 people who received unemployment benefits opted not to withhold taxes, meaning that they could have a significant tax liability.

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, but this is an expense that many businesses and individuals who lost their jobs claim that they cannot pay.

The bill passed the House with strong support, but Senate President Pro Tem Phil Berger said that the Senate has not determined how it will handle the bill but does not expect it to move for another few weeks.

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

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/>