



Bill Draft 2019-STf-47: COVID-19 Time Sensitive Matters.

2019-2020 General Assembly

Committee:		Date:	April 17, 2020
Introduced by:		Prepared by:	Legislative Analysis
Analysis of:	2019-STfzp-47		Division

OVERVIEW: *Bill Draft 2019-STfzp-47 would make various changes to the law related to the COVID-19 public health crisis.*

BILL ANALYSIS:

Section 1 would amend the Rules of Civil Procedure by adding the use of electronic means to the options of service to the attorney of record for pleadings and other required papers. This section would also require that the email address of every person served be shown on the certificate of service.

This section would become effective when it becomes law and expires XX days after Executive Order 116, a Declaration of a State of Emergency to Coordinate Response and Protective Actions to Prevent the Spread of COVID-19, expires or is rescinded.

Section 2 & 3 address matters related to video notarizations and the notary commission. Sections 2(a) and (c) would allow North Carolina notaries to perform acknowledgments by observing, via video conference technology, the principal sign a document as opposed to the current requirement that the principal and the notary be physically present in the same location at the same time. The video conference technology must occur in real time, allow for direct audio and visual interaction between the notary and the principal, be of sufficient quality that the notary can observe the face of the principal and any required identification provided by the principal, is not pre-recorded, and is capable of being recorded and retained by the notary. The notary must visually observe the principal sign each document and the principal must state what documents are being signed. Depending upon the requirements of the transaction, the notary would then notarize either the original document or a legible copy of the document and return the same to the principal or the principal's designee. If the notarial act is an oath or affirmation, the notary may administer it using video conference technology. The notary must keep a journal of all emergency video notarizations for 10 years. The authority to perform emergency video notarizations would begin when the act becomes law and would expire at 12:01 A.M. on March 1, 2021, but any notarial acts performed during that time would remain effective.

Section 2(b) gives applicants for a notary commission an additional 45 days to appear before a register of deeds and take the general oath of office. It also allows register of deeds to administer the oath of office using video conference technology. This authority only applies to applicants whose commission was issued by the Secretary of State after March 9, 2020, and before October 1, 2020.

Section 3 would allow 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

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Draft

Page 2

technology. This section would expire upon termination of the State of Emergency declared in Executive Order No. 116.

Section 4 would clarify that masks may be worn on certain public and private premises to ensure the physical health or safety of the wearer. 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.

Section 5 would extend the validity of credentials issued by the Division of Motor Vehicles (Division). The Division issues many credentials, the requirements and durations of which are set out in Chapter 20 of the General Statutes. Credentials include: drivers licenses, permits, and identification cards; vehicle registrations, which require vehicle inspections and payment of vehicle property taxes; handicapped parking placards; inspection station and mechanic licenses; and motor vehicle dealer, sales representative, and manufacturer licenses. This section would do all of the following:

- Authorize the Commissioner of Motor Vehicles to extend validity of any credential issued by the Division for a period of up to six months if the credential expires during the coronavirus emergency.
- Require the Division to waive any penalties associated with failure to renew during a period of extension.
- Clarify that motor vehicle property tax due dates that are tied to vehicle registration expirations would also be delayed to correspond with extensions granted for registrations.
- Provide a defense for any person charged with an offense resulting from failure to renew a credential when that credential is valid by extension.

The Division would be directed to report to the Joint Legislative Transportation Oversight Committee and the Fiscal Research Division on any extension granted under this authority.

This section would apply retroactively to expirations occurring on or after March 10, 2020.

Section 6 would authorize the remote renewal of special identification cards. Under current law, drivers licenses may be renewed remotely under certain circumstances. Identification cards, which use the same application, share a similar format, and expire on the same time line as drivers licenses, may not be renewed remotely. This section would authorize remote renewal of identification cards in the same manner as drivers licenses.

Section 7 would delay the DMV Headquarters move. A 2018 budget provision directed all workers at the Division of Motor Vehicles Headquarters in Raleigh to vacate the property by October 1, 2020. This section would amend that provision, requiring that they only begin to vacate by that date.

Section 8 would amend 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. This section would expire upon termination of the State of Emergency declared in Executive Order No. 116.

Section 9 addresses two matters around adult guardianship. **Section 9(a)** would allow a sheriff serving a resident of a long term care facility during a declared state of emergency for public health reasons to leave a copy of the notice and petition with the owner, manager, or director of the facility, provided the sheriff notes the name and position of the individual that received the notice and petition. **Section 9(b)** would allow the clerk of court to determine if a hearing for the appointment of an interim guardian during a

Draft

Page 3

declared state of emergency for public health reasons can be conducted remotely and allow any witness or party to appear remotely if the clerk determines good cause exists.

Section 10 would amend 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 expires upon the earlier of the date the register of deeds reopens for the transaction of public business or accepts documents for electronic recording.

Section 11 would authorize each Register of Deeds to issue a license for marriage via remote audio-video communication provided the register of deeds can positively identify each applicant before the register of deeds, rather than having the applicants appear in person, and that marriage license be valid for up to 120 days, rather than 60 days. The section would expire XX days after Executive Order 116 expires or is rescinded.

Section 12 addresses personnel matters at the Department of Public Safety. Section 12(a) would provide that providing certain security services at a State prison facility is an authorized function of a person licensed as a security guard and patrol professional under Chapter 74C of the General Statutes. **Section 12(b)** would require that any security guard and patrol professional employed to provide services at a State prison facility must be trained in State prison policies prior to providing any services, and if so trained, may detain and use necessary force pursuant to those policies to prevent contraband entry and inmate escape. The section becomes effective when it becomes law and expires XX days after Executive Order 116 expires or is rescinded.

Section 13 would extend the time that the 2020 report by the Local Government Commission to the General Assembly on the level of each county's appropriations for public school capital outlay and any other information the Local Government Commission considers relevant from May 1, 2020, to July 1, 2020.

Section 14 would authorize cities and counties to establish an expedited training for employees other than law enforcement for custody and transport of individuals for involuntary commitment proceedings. This section would expire XX days after Emergency Order 116 is rescinded.

Section 15 would permit the administration of involuntary commitment cases with less face-to-face contact by authorizing the use of telemedicine for some statutorily required examinations and recommendations.

Section 16 specifically permits release of communicable disease health information by the DHHS or a local health department to a law enforcement official (i) to prevent or lessen a serious or imminent threat to the health or safety of a person or the public to the extent allowed under HIPPA; (ii) to enforce the communicable disease and health laws of this State, or (iii) to investigate a terrorist incident using nuclear, biological, or chemical agents. The law enforcement official would be limited in disclosing the information shared.

Section 17 would expand types of professionals qualified to serve as a medical examiner by allowing retired physicians, medicolegal death investigators, and pathologists' assistants to be appointed as county medical examiner. This section would authorize the Chief Medical Examiner to appoint temporary medical examiners as county medical examiners for the duration of a declared emergency.

Draft

Page 4

Section 18 would temporarily change the turnaround time from 10 days to 20 days for applications for charitable solicitations with the Secretary of State. With some limited exceptions, any organization or person that intends to directly solicit contributions in North Carolina, or intends to hire a person or business to solicit contributions in North Carolina, must obtain a license from the Charities Division. Organizations must renew their licenses each year to maintain licensed status.

Section 19 would authorize the State Treasurer, with approval of the Board of Trustees for the State Health Plan, to give certain members or employing units the option to defer premium or debt payment when there is a state of disaster or emergency. A deferral period would not last beyond 90 days from the last day of the time period in which there is a state of disaster. Any payments in arrears would continue to be owed to the State Health Plan. Currently, the Commissioner of Insurance has authority to order a deferral of insurance premium and debt payment in the event of a state of emergency or disaster. This authority does not apply to the State Health Plan. This section is effective retroactively to January 1, 2020.

Section 20 would temporary allow the Director of the Retirement System Division to make interim, eligibility only determinations and certifications and these interim decisions would be in place only until the medical board was able to make a final determination. The Director would not be able to determine that any individual was not eligible for disability benefits. If the medical board later determined that an individual found eligible by the Director was not eligible for benefits, then the medical board's decision would be a final decision and the benefit payments would cease. An individual would not be required to refund any payments or benefits received during that interim period. Currently, the medical board makes eligibility, or ineligibility, determinations and certifications for disability benefits under the Teachers' and State Employees' Retirement System, the Consolidated Judicial Retirement System, the Legislative Retirement System, and the Governmental Employees' Retirement System, and for the Disability Income Plan of North Carolina. These determinations and certifications are considered final decisions.

Section 21 would temporarily change the six month separation requirement for Teachers' and State Employee's Retirement System (TSERS) retirees to a one month separation and applies to individuals retiring on or after October 1, 2019 to April 1, 2020. This section temporarily lifts the earnings caps for TSERS and Local Governmental Retirement System (LGERS) retirees from March 10, 2020 until expiration. This section also requires that any work performed between March 10, 2020 and the time that this section expires does not impact a law enforcement officer's special separation allowance benefits.

Section 22 would provide for the rescheduling of public hearings during temporary rule making. Under the State Administrative Procedure Act, there is a provision for rescheduling cancelled public hearings during the permanent rule making process, but there isn't such a provision for the temporary rule making process. **Section 22.(a)** would add the same type of provision for rescheduling cancelled public hearings for the temporary rule making process. This section would become effective retroactively to March 10, 2020.

During the Coronavirus emergency, a number of State agencies have had to cancel and reschedule public hearings during the temporary rule making process in order to provide for social distancing and virtual public hearings. There is some concern that without a provision for rescheduling cancelled public hearings for the temporary rule making process that some of the emergency and temporary rules related to the Coronavirus emergency could be invalidated.

Section 23 would authorize the Chief Administrative Law Judge to extend the time period for the filing of petitions for contested cases, but only if the Chief Justice of the North Carolina Supreme Court has determined that catastrophic conditions exist. Currently, if the Chief Justice of the North Carolina Supreme Court determines that catastrophic conditions exist, the Chief Justice may extend the time period

for the filing of pleadings, motions, notices, and other documents and papers. This section would become effective retroactively to March 10, 2020.

Section 24 would permit the Secretary of the Local Government Commission to set the amount of money local governments keep on hand that require daily deposit during a declared emergency. This section would authorize the Secretary to allow less than daily but no fewer than weekly deposits provided the money is maintained in a secure location.

Section 25 would reauthorize counties and municipalities to issue special obligation bonds and notes. Former Chapter 159I of the General Statutes primarily concerned solid waste management program funding; however, one section of the Chapter, G.S. 159I-30, more broadly authorized counties and municipalities to issue special obligation bonds and notes not only for solid waste projects, but also for water projects, wastewater projects, and, for municipalities, any project authorized under G.S. 160A-536 provided in a municipal service district. Session Law 2019-32 repealed Chapter 159I in its entirety, effective July 1, 2019, inadvertently eliminating the broader special obligation bond authority used by local units of government for a variety of the authorized purposes. **Section 25(a)** would reinstate this authority and recodify it under Chapter 159, where other forms of local government indebtedness are authorized. **Sections 25(b)-(h)** make conforming changes to statutes affected by the recodification. This section would become effective retroactively to July 1, 2019, the effective date of the inadvertent repeal.

Section 26 would delay the effective date of the new consolidated land use planning statutes, Chapter 160D of the General Statutes, from January 1, 2021, to August 1, 2021, to give more time to counties and cities to review, amend, and adopt comprehensive local land use ordinances as required by that Chapter.

Section 27 would add a provision to the Emergency Management Act to specifically authorize official meetings of public bodies to be conducted via remote, simultaneous communication during periods of declarations of emergency for public health reasons, and make conforming changes to clarify that counties and cities may meet via simultaneous communication.

Sections 28 & 29 would delay the deadline for local governments to report ordinances with criminal penalties to the Administrative Procedures Oversight Committee from November 1, 2019 to March 1, 2021. This section would also extend the deadline for reporting any rules with criminal penalties from State agencies, boards, and commissions to March 1, 2021.

Section 30 would direct State agencies to exercise regulatory flexibility during the Coronavirus emergency as follows:

- Define "State agency" for purposes of this section to mean an agency or an officer in the executive branch, including the Council of State, the Governor's Office, a board, a commission, a department, a division, a council, and any other unit of government in the executive branch. "State agency" would not include the North Carolina Department of Justice, the State Board of Education, or the State Board of Elections.
- Direct 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, including the public health, safety, and welfare and the economic well-being of the citizens and businesses of the State. If the State agency determines that a waiver, delay, or modification of the agency's requirements or actions would be in the public interest, the agency must adopt emergency rules or take other necessary actions to implement these waivers, delays, and modifications as expeditiously as possible.

- Provide that, notwithstanding any other provision of State law, if a State agency determines that, due to the impacts of the Coronavirus, it is in the public interest, including the public health, safety, and welfare and the economic well-being of the citizens and businesses of the State, the agency must:
 - 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.
 - Delay the renewal dates of permits, licenses, and other similar certifications, registrations, and authorizations issued by the agency pursuant to its statutes.
 - Delay or modify any educational or examination requirements implemented by the agency pursuant to its statutes.
- Direct each State agency to report to the Joint Legislative Administrative Procedure Oversight Committee, the Joint Legislative Commission on Governmental Operations, and the Office of State Budget and Management on its specific efforts to exercise regulatory flexibility under this section. If a State agency chooses not to exercise regulatory flexibility under this act, the report must include an explanation from the agency as to how it determined that its exercise of regulatory flexibility was not in the public interest. The reports would be due no later than October 1, 2020.
- Authorize State agencies to adopt emergency rules for the implementation of this act and provide that an emergency rule adopted pursuant to this act will remain in effect during the pendency of the Coronavirus emergency, unless the State agency specifies an earlier expiration date.

This section is effective March 10, 2020, and expires on the earlier of the date the Governor signs an Executive Order rescinding Executive Order 116 or September 1, 2020.

EFFECTIVE DATE: Except as otherwise noted, the act would become effective when it becomes law.