



HOUSE BILL 1043: COVID-19 Time Sensitive Matters.

2019-2020 General Assembly

Committee:	House Rules, Calendar, and Operations of the House	Date:	April 29, 2020
Introduced by:	Reps. Bell, Jackson, Lewis	Prepared by:	Billy R. Godwin Staff Attorney
Analysis of:	PCS to Second Edition H1043-CSSTfp-68		

OVERVIEW: *House Bill 1043 would make various changes to the law related to the COVID-19 public health crisis, as recommended by the House Select Committee on COVID-19, Continuity of State Government Working Group.*

BILL ANALYSIS:

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 signing 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 August 1, 2020, 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 August 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 technology. This section would expire on August 1, 2020.

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 or others, but require the wearer to remove that mask upon the

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request of a law enforcement officer. 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. This section would be effective when it becomes law.

Section 4.5 would clarify that any signature required for the issuance of a search warrant or judicial order issued following a court hearing conducted by remote audio or visual transmission in a civil or criminal case, may be signed by use of an electronic signature. This section would be effective when it becomes law and expire on August 1, 2020.

Section 4.7 would authorize the Chairman of the ABC Commission to allow certain on-premises permittees to engage in retail sales for consumption off the premises, including delivery, and to allow a delivery service permittee to deliver certain products prepared by those on-premises permittees. The Chairman may prescribe terms and conditions under which sales and deliveries under this section are allowed, but must at least require that the products be (i) packaged in a container with a secure lid or cap and packaged in a manner designed to prevent consumption without removal of the lid or cap, (ii) sold only with food, and (iii) limited to two servings per meal or food item ordered. This section would be effective when it becomes law and would expire on the date that Executive Order 116 expires or is rescinded.

Section 4.8 would allow a lottery prize winner to submit a delayed claim for a lottery prize that is expiring or awarded between March 10, 2020, and August 1, 2020. The claim must be submitted to the Lottery Commission in writing no later than 90 days after the date the online game prize was announced or the instant game has closed. This section would be effective when it becomes law.

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 and would expire August 1, 2020.

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

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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 at 12:01 A.M. on March 1, 2021.

Section 9 would allow a sheriff to serve process on a resident of a long term care facility during a declared state of emergency for public health reasons by leaving a copy of the notice of hearing and petition with the employee of the facility who is apparently in charge of the office or who has apparent authority to receive documents intended for residents. The employee would then present the documents to the resident respondent. Proof of service would be filed with the clerk showing how the respondent was served. This section would become effective when it becomes law and expire August 1, 2020.

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 would become effective when it becomes law.

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 would be valid for up to 120 days, rather than 60 days. This section would become effective February 1, 2020, and expire August 1, 2020.

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. This section would become effective when it becomes law, and expire August 1, 2020.

Section 12.5 would authorize a justice or judge of the General Court of Justice to remotely administer the oath prescribed for attorneys using a form of live video conferencing technology, provided the swearing attorney is personally known to the justice or judge or the swearing attorney provides satisfactory evidence of identity. This section would become effective when it becomes law and expire December 1, 2020.

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.

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Section 13.5 would provide that unexpended and unencumbered funds appropriated in the 2019-2020 fiscal year from the Civil Penalty and Forfeiture Fund to the State Public School Fund for drivers education will not revert, but rather remain available until the end of the 2020-2021 fiscal year. This section would become effective June 30, 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 become effective when it becomes law and expire August 1, 2020.

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. This section would become effective when it becomes law and expire August 1, 2020.

Section 16 would specifically permit 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 16.2 would authorize an individual licensed as a soil scientist to prepare signed and sealed soil and site evaluations, specifications, plans, and reports for the site layout, construction, operation, and maintenance of a wastewater system without needing any further certification from the North Carolina On-Site Wastewater Contractors and Inspectors Board. A licensed soil scientist would also be authorized to conduct all necessary inspections, certifications, and approvals, including the issuance of the final inspection and report. Such authority would be at the direction of the owner of a proposed on-site wastewater system and would expire August 1, 2020.

Section 16.3 would authorize the Secretary of the Department of Environmental Quality (DEQ), to protect the public health and environment, to develop and implement emergency measures and procedures necessary for the proper management of solid waste generated during the Coronavirus emergency. The Secretary may act on the Secretary's own initiative, or upon the request of a public or private landfill operator. This section would also allow a county, city, or private company that is providing collection services for yard waste to request a waiver from DEQ to allow the disposal of yard waste in a landfill when able to show that prohibiting the disposal would constitute an economic hardship or a potential public health risk. This section would become effective when it becomes law and would expire on August 1, 2020.

Section 17 would expand the 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 become effective when it becomes law.

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 would be effective retroactively to January 1, 2020.

Section 20 would temporary allow the Director of the Retirement Systems Division to make interim, eligibility only determinations and certifications and these interim decisions would be in place only until

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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, but before April 1, 2020, who return in a position needed due to COVID-19. This section temporarily lifts the earnings caps for TSERS and Local Governmental Retirement System (LGERS) retirees from March 10, 2020 until expiration for those retirees who retired prior to April 1, 2020 and return in a position needed due to COVID-19. 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 if the officer returns in a position needed due to COVID-19. This section would become effective when it becomes law and would expire on August 1, 2020.

Section 21.2 would extend until March 12, 2021, the validity of any probationary certificates issued to Code-enforcement officials by the North Carolina Code Officials Qualification Board under G.S. 143-151.13 that are otherwise set to expire between March 10, 2020, and March 10, 2021.

Section 21.3 would authorize, a State agency, as defined in G.S. 147-86.20(5), to waive any interest due on a past due account receivable. This section would not apply to money owed to the University of North Carolina Health Care System or to East Carolina University's Division of Health Sciences for health care services, to the North Carolina Turnpike Authority for money owed to the Authority for tolls, or to the North Carolina State Health Plan for past due account receivables related to premiums and claims payments. This section would become effective when it becomes law and would expire on August 1, 2020.

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

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

Section 23.5 would provide that the budget officer of a unit of local government must file a copy of the unit's proposed budget with the clerk to the unit's governing board and that the clerk may post of copy of the proposed budget on the website of the unit of local government and must make the proposed budget available for public inspection. This section would become effective when it becomes law and would expire on August 1, 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. This section would become effective when it becomes law.

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. This section would become effective when it becomes law and would expire on August 1, 2020.

Section 26.1 would allow land use development ordinances adopted by a county or city to reference or incorporate by reference flood insurance rate maps, watershed boundary maps, or other maps officially adopted or promulgated by State and federal agencies and would authorize those ordinances or zoning maps to incorporate by reference the most recent officially adopted version of such maps. This section would also authorize land use development ordinances to provide that the zoning district boundaries are automatically amended to remain consistent with changes in the officially promulgated State or federal maps, provided a copy of the currently effective version of any incorporated map is maintained for public inspection by the county or city. This section would become effective when it becomes law and would expire on August 1, 2021.

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. This section would become effective when it becomes law and would apply throughout the duration of any declaration of emergency issued under G.S. 166A-19.20 in effect on or after that date.

Sections 28 & 29 would delay the deadline for local governments to report ordinances with criminal penalties to the Joint Legislative 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.

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Section 29.1 would extend to January 15, 2021, the final report of the Child Well-Being Transformation Council to the chairs of the House of Representatives Appropriations Committee on Health and Human Services, the Joint Legislative Oversight Committee on Health and Human Services, and the Fiscal Research Division. This section would be effective when it becomes law.

Section 29.2 would extend until July 1, 2021, the date that transportation network sign company's must comply with signage requirements. This section would be effective when it becomes law.

Section 29.3 would extend until December 1, 2020, the Joint Legislative Study Committee on Small Business Retirement Options final report and any legislative proposals to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Fiscal Research Division. This section would be effective retroactively to March 31, 2020.

Section 30 would direct State agencies to exercise regulatory flexibility during the Cronovirus emergency.

Section 30(a) would 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 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, The University of North Carolina, the State Board of Community Colleges, or the State Board of Elections.

Section 30(b) would 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: (i) delay the collection of or modify the method 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, (ii) delay the renewal dates of permits, licenses, and other similar certifications, registrations, and authorizations issued by the agency pursuant to its statutes, and (iii) delay or modify any educational or examination requirements implemented by the agency pursuant to its statutes. **Section 30(c)** would 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. The reports would be due no later than October 1, 2020. **Section 30(d)** would direct State agencies to exercise the authority granted in this section to the maximum extent practicable. **Section 30(e)** would 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 would be effective retroactively to March 10, 2020, and expire August 1, 2020.

Section 30.1 would authorize the Forensic Tests for Alcohol Branch of the Department of Health and Human Services to delay or modify any educational or examination requirements for recertification of law enforcement officers, and may extend any certifications already issued if the educational or examination requirements are delayed. This section would be effective March 10, 2020, and expire January 1, 2021.

Section 30.2 would provide that for any development approval that is current and valid at any point during the period beginning March 10, 2020, and ending April 28, 2020, the expiration date of the period of development approval and any associated vested rights is extended for five months. A development approval is defined as one of several approvals issued by a unit of local government, including building permits, sketch plans, site specific development plans, and development permits. This section would be effective when it becomes law and would expire September 28, 2020.

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Section 30.5 would allow a chief district court judge, until August 1, 2020, to modify an order of confinement or imprisonment in a local confinement facility if all the following conditions exist:

- Due to the local confinement facility's restrictions on inmates during the COVID-19 State of Emergency, the defendant is unable to serve one or more periods of confinement.
- Unless the order is modified, the defendant would be in violation of the criminal judgment.
- The District Attorney consents to the modification of the criminal judgment.

This section would be effective when it becomes law and would expire August 1, 2020.

Section 30.6 would require the Department of Transportation to maintain an available cash balance at the end of each month equal to at least one hundred twenty-five million dollars (\$125,000,000) for one year from the effective date. In the event this cash position is not maintained, no further transportation project contract commitments could be entered into until the cash balance has been regained. Any federal funds on hand are not to be considered as cash for this purpose. This section would be effective when it becomes law and would expire one year from its effective date.

Section 30.7 would amend the Transportation Emergency Reserve by:

- Clarifying Emergency Reserve funds may be used for unreimbursed expenditures arising from an emergency.
- Authorizing use of Emergency Reserve funds if the U.S. Secretary of Transportation authorizes the expenditure of federal emergency relief funds or if the Governor declares a disaster.
- Authorizing use of \$64,000,000 in the Emergency Reserve for an emergency occurring after December 31, 2015 that meets the criteria set forth in Transportation Emergency Reserve.
- Providing the Department of Transportation does not have to transfer funds to the Emergency Reserve in the 2020-2021 fiscal year.

This section would also clarify that the Department may use funds appropriated for Hurricane Dorian relief for unreimbursed expenditures, and it temporarily permits the Department to enter into contracts when the Department's cash balance goes below the cash floor if they are entered into in response to an emergency or they are future transportation project contract commitments funded by bonds or grants.

Section 30.8 would authorize the North Carolina Department of Emergency Management to utilize North Carolina Regional Councils of Government administering Federal Emergency Management Agency public assistance and individual assistance funds.

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