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Agenda

Norma Houston	• State budget overview; emergency management
Jill Moore	• Communicable disease law and related issues
Mark Botts	• Involuntary commitment/telehealth
Frayda Bluestein	• Electronic meetings
Trey Allen	• Quorum, voting and liability
Adam Lovelady	• Land use law and planning
Chris McLaughlin	• Property tax
Kara Millonzi	• Local government finance
Tyler Mulligan	• State-funded small business loans

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Materials

Collected Legislative Summaries

- <https://lrs.sog.unc.edu/lrs/legsumms/2020>

Coates' Canons Blog

- <https://canons.sog.unc.edu/>

COVID-19 Resource Site

- <https://www.sog.unc.edu/resources/microsites/coronavirus-covid-19>

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Legislative Reporting Service

<https://lrs.sog.unc.edu/>

- Free summaries of bills, amendments, committee substitutes every day the legislature is in session
- Personalized tracking features
 - *My Bills*
 - *My Monitors*

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State COVID-19 Budget

Norma Houston

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2020 COVID-19 Recovery Act Appropriations Summary	
Purpose	Amount
Life safety, health, and sanitation supplies	\$50 million
Counties*	\$150 million
State Agencies (continuity of operations)	\$70 million
Reserve for DOT Revenue Losses**	\$300 million
Reserve for State Agencies Revenue Losses**	\$20 million
General Assembly	\$100,000
Public Education	\$231.65 million
Community Colleges	\$25 million
Public Universities	\$44.4 million
Private Colleges and Universities	\$20 million
Vaccine and Other COVID-19 Research	\$85 million
Health, Public Health, and Social Services	\$180.84 million
Hospitals	\$95 million
Agriculture	\$15 million
Marketing NC	\$5 million
Golden LEAF Small Business Loan Program	\$125 million
Broadband Service	\$9 million
TOTAL	\$1.425 billion

**Held in reserve if federal law changes to authorize use of CARES Act funds for revenue losses

*Additional \$150M held in reserve if federal law changes to authorize use of CARES Act funds for revenue losses

**CARES Act
Funding
Appropriated
S.L. 2020-4 (H 1043)**

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County Allocation - \$150 million

Allocation Formula	Amount
Base Allocation to 97 Counties	\$250,000 each (\$24.25M)
Per Capita Distribution	\$125.75M

- **Who is eligible:** Counties *not* receiving direct funding under CARES Act (Guilford, Mecklenburg, Wake, and Charlotte excluded)
- **Cities:** County *may* allocate a portion of its funding to municipalities but not *required*
- Guidance coming from NC PRO (NC Pandemic Recovery Office)

County Allocation - \$150 million

Fund Requirements:

1. "Necessary expenditures" for COVID-19 response consistent with US Treasury guidance
2. Expenses not accounted for in budget approved as of 3/27/2020
3. Expenses incurred between 3/1/2020 – 12/30/2020

Misspent Funds:

- Subject to federal recoupment
- Liable to State, including clawback or reduction of other State funds
- Local government officers, officials, or employees who violate requirements are subject to civil action and held personally liable to reimburse State

Cannot be used to replace revenue losses

Emergency Management

Public Health Face Masks S.L. 2020-3 (S 704), § 4.3

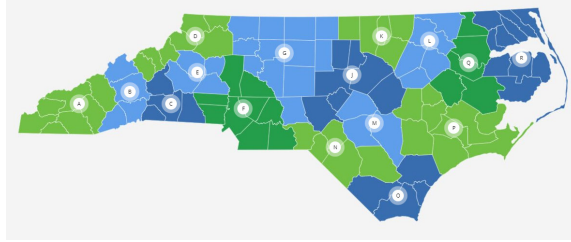
Exempts from prohibition against wearing masks or hoods in public masks worn for the purpose of “ensuring the physical health or safety of the wearer or others” (G.S. 14-12.11)

Wearer must remove mask if requested by law enforcement at traffic stops or during criminal investigation with reasonable suspicion or probable cause

Expires August 1, 2020



COGs Help With FEMA Reimbursement S.L. 2020-3 (S 704), § 4.42



Division of Emergency Management authorized to use COGs to assist local governments with FEMA reimbursement

Local governments may designate COGs to act on their behalf in seeking FEMA reimbursement

Communicable Disease Law & Related Issues *Jill Moore*

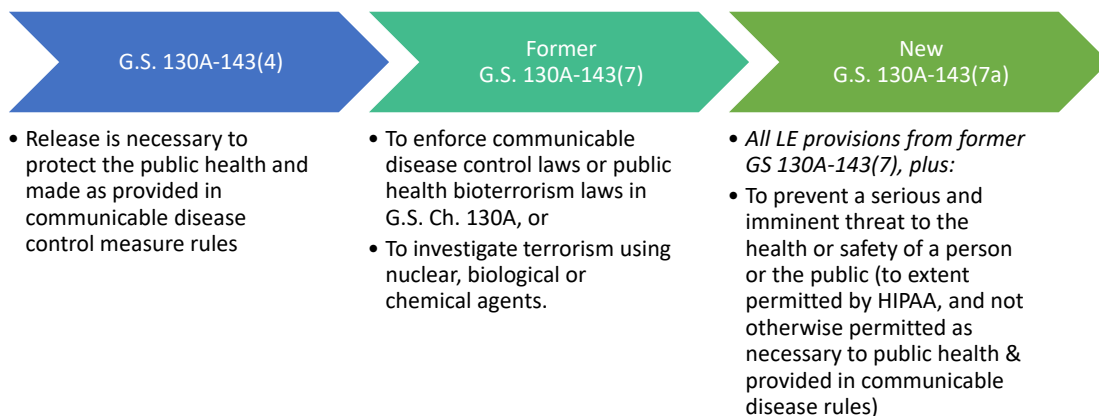
Disclosures to law enforcement

S.L. 2020-3 (S 704), § 4.17

NC communicable disease confidentiality law (G.S. 130A-143)

- Information and records that identify a person who has or may have a reportable communicable disease are strictly confidential, not public records, and may be released only as provided by this law
- General rule: Written consent required
- Exceptions: Include disclosures for medical treatment of the individual and for public health purposes

When does G.S. 130A-143 allow release of information to law enforcement (LE)?



When does HIPAA allow disclosure to prevent or lessen a serious or imminent threat?

45 C.F.R. 164.512(j) – Disclosing entity must:

- Have good faith belief that disclosure of protected health information (PHI) is necessary to prevent a serious or imminent threat to a person or the public, &
- Act consistently with law and ethical standards.

May disclose to a person reasonably able to prevent or lessen the threat, including the target of the threat.

HIPAA's minimum necessary standard applies [45 C.F.R. 164.514(d)]

Limitations on redisclosure

A law enforcement official who receives information under G.S. 130A-143(7a) shall not disclose it further except:

- When necessary to enforce the communicable disease control laws or public health bioterrorism laws in G.S. Ch. 130A, or
- When necessary to investigate a terrorist incident using nuclear, biological, or chemical agents, or
- When state or local public health officials seek the law enforcement official's assistance in preventing or controlling the spread of disease and expressly authorize the disclosure as necessary to that purpose.

<p>Release of information to law enforcement under G.S. 130A-143:</p> <ul style="list-style-type: none"> • All former provisions allowing release to law enforcement are retained • A new provision allows releases that are necessary to prevent a serious & imminent threat (to extent permitted by HIPAA) <p>Other technical changes and updates to G.S. 130A-143</p> <p>Effective upon enactment (May 4) and does not sunset</p>	<p>Summary</p> <p>S.L. 2020-3 (S 704), § 4.17</p>
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<p>Strategic State Stockpile S.L. 2020-3 (S 704), § 3C</p> <p>State health and emergency management agencies must develop a plan for creating and maintaining a state stockpile of PPE and testing supplies for use in North Carolina by:</p> <ul style="list-style-type: none"> • Acute care providers (hospitals and others) • First responders (local health departments, EMS, law enforcement, fire, rescue) • Health care providers • Long-term care providers • Non-health care entities including DSS, correctional facilities, shelters, hotels/motels used for isolation/quarantine, child care <p>Intended for COVID-19 and future public health emergencies.</p>

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Immunizing Pharmacists S.L. 2020-3 (S 704), § 3D

Creates a procedure to authorize immunizing pharmacists to administer a COVID-19 vaccine, if the CDC recommends a vaccine while the legislature is not in session:

- Petition to State Health Director (SHD)
- SHD has 30 days approve or deny petition
- If approved, SHD may issue standing order for immunizing pharmacists to administer vaccines in accordance with protocols
- Immunity from liability for SHD and immunizing pharmacists who administer pursuant to standing order
- SHD order expires on adjournment of the next regular session of the General Assembly

Statement of support for prioritizing front-line care providers to receive antibody tests when available, including:

EMS	Health care providers
Firefighters	Long-term care workers
Rescue squad workers	Child care providers
Law enforcement officers	Other persons essential to provision of medical care, dental care, long term care, or child care

Antibody testing priorities

**S.L. 2020-3 (S 704),
§ 3B.1**

Liability—Emergency/Disaster Treatment S.L. 2020-3 (S 704), § 3D.7

Qualified immunity from civil liability for health care providers and health care facilities for acts and omissions in arranging for or providing health care for COVID-19, provided:

- Occurs during the period of the COVID-19 emergency, and
- Arrangement for or provision of health care services is directly or indirectly impacted by decisions or activities in response to or as a result of the pandemic, and
- Facility or provider acts in good faith.

No immunity for gross negligence, reckless misconduct, or intentional infliction of harm.

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Involuntary Commitment

Mark Botts

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Telehealth for Involuntary Commitment Exams

- Generally, involuntary commitment for mental illness or substance use disorder requires two clinical examinations.
- Generally, the clinician performing a commitment examination must be in the physical face-to-face presence of the patient respondent.
- S.L. 2020-3 authorizes the use of “Telehealth,” “the use of two-way, real-time interactive audio and video where the respondent and commitment examiner can hear and see each other.”
 - Expires 30 days after Executive Order No. 116 is rescinded.
 - Section 3F.1 of S.L. 2020-3.

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Telehealth—Involuntary Commitment Exams

Before S.L. 2020-3	S.L. 2020-3
<ul style="list-style-type: none"> • Commitments based on mental illness: <ul style="list-style-type: none"> ✓ 1st exam—telehealth permitted “when distance separates” the patient and examiner “who are in different geographic locations” ✗ 2nd exam—<u>No</u> telehealth permitted • Commitments based on substance use disorder: <ul style="list-style-type: none"> ✗ 1st exam—<u>No</u> telehealth permitted. ✗ 2nd exam—<u>No</u> telehealth permitted. 	<ul style="list-style-type: none"> • Commitments based on mental illness: <ul style="list-style-type: none"> • 1st exam—No change. Telehealth permitted when geographic distance separates patient and clinician. ✓ 2nd exam—Telehealth <u>permitted</u>. • Commitments based on substance use disorder: <ul style="list-style-type: none"> ✓ 1st exam—Telehealth <u>permitted</u>. ✓ 2nd exam—Telehealth <u>permitted</u>.

Waiver of Witness Requirement for Certain Health Care Documents

Waiver:

- Applies to Health Care Powers of Attorney
- Applies to Advance Directives for a Natural Death
- Does not apply to Advance Instructions for Mental Health Treatment

Section 4.10:

- Waives requirement that instrument be executed in the presence of two qualified witnesses
- Instrument must contain a statement indicating that it was executed under the waiver
- Instruments made while waiver is in effect shall remain effective after the state of emergency and do not need to be reaffirmed
- Applies to instruments executed during the state of emergency
 - from the effective date of S 740 until the termination of the state of emergency, but no later than 12:01 A.M. on August 1, 2020

Electronic Meetings

Frayda Bluestein

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New statute

GS 166A-19.24

Remote meetings during certain declarations of emergency

- Authorizes remote meetings, in which at least one person is participating with "simultaneous [electronic] communication."
- Creates new procedures that apply to remote meetings only during state-level state of emergency declaration.
- Modifies existing quorum and voting statutes for cities and counties to affirm that members participating remotely are considered to be present.
- Creates additional requirements for public hearing and quasi-judicial hearings.

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General Overview and Applicability

- Provisions in the new law apply ***only when there is a declaration of state of emergency by the Governor or the General Assembly, and only if the public is within the emergency area***. They do not apply under a locally declared state of emergency.
- Unless modified by the new requirements in the new law, existing statutory requirements for meetings still apply.
- The law does not require public bodies to conduct remote meetings, but if they choose to do so, the new requirements apply.
- The law validates any actions in meetings involving remote participation that were undertaken between March 10, 2020 and May 4.

Key Concept: Simultaneous Communications

- **Definition:** Any communication by conference telephone, conference video, or other electronic means.
- **Requirements:**
 - Participation is allowed as long the communication is maintained
 - Communication must allow the remote person to hear and be heard
 - Remote participants must identify themselves when speaking and voting
 - Votes must be roll call
 - Public must be given notice of the means of the remote meeting, no requirement for there to be a physical location
 - Closed sessions are allowed; all of the usual requirements apply
 - Minutes must document remote participation

- Public bodies may conduct public meetings at a remote meeting
 - Must allow written comments
 - Must give notice of the right to submit written comments starting with the date of the notice and until 24 hours after the hearing
 - This means that a public body can't take action immediately after the hearing and will have to either recess the meeting or schedule a new meeting after the 24 hours have elapsed

Public Hearings and Quasi-judicial Meetings

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Implications for remote participation during normal times

- Does this law imply that remote participation is allowed only during a state-level state of emergency?
- The law says that it "does not supersede any authority for electronic meetings under the open meetings law."
- Questions regarding remote voting and quorum for city and county governing board will remain. For most other public bodies, it is clear that the open meetings law recognized electronic meetings as official meetings.

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Quorum, Voting and Liability

Trey Allen

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City/County Quorum Calculations G.S. 166A-19.20









- City council member or county commissioner attending electronically "shall be counted as present for [quorum] purposes . . . **only** during the period while simultaneous communication is maintained for that member." G.S. 153A-43 (amended); 160A-74 (amended).
- ([S.L. 2020-3 \(S 704\)](#))



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City/County Quorum Calculations G.S. 166A-19.20

Present for Quorum Purposes?

	City Council	Board of County Commissioners
Member Physically Present (MPP)		
Member Virtually Present (MVP)		
MPP Leaves Unexcused		
MVP Loses/Terminates Connection		

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City Council/BOCC Voting G.S. 166A-19.20



Image: <https://my.lwv.org/>

- For city council & BOCC, MVP has same duty to vote as MPP (G.S. 166A-19.24(c))
- Amended G.S. 160A-75: Failure to vote by City Council MVP "shall be treated as if the member were physically present **only** during the period while simultaneous communication is maintained for that member."

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City Council Voting G.S. 166A-19.20

	Record Affirmative Vote?
MPP's Unexcused Failure to Vote	<input checked="" type="checkbox"/>
MVP's Unexcused Failure to Vote	<input checked="" type="checkbox"/>
Vote After MPP's Unexcused Departure	<input checked="" type="checkbox"/>
Vote After MVP Loses/Terminates Connection	<input type="checkbox"/>

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Liability Limitation: Essential Businesses

- Liability protection for **Essential Business (EB)** whose employees or customers contract COVID-19 while doing business with or employed by **EB**
- Limited to negligence
- **EB** includes **Essential Governmental Operations**

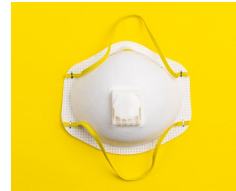


Covered Period:
Issuance of EO 121 to
expiration or rescission of
EO116

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Liability Limitation: Emergency Response Entities

- Liability protection for **Emergency Response Entities (ERE)** whose customers, users, or consumers allegedly suffer death/injury
 - resulting from COVID-19 or
 - while doing business with **ERE**
- Limited to negligence
- Narrow **ERE** definition



Covered Period: Issuance of EO 121 to expiration or rescission of EO116

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Questions?



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Take a break!

See you at 1:00

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**Local Government
Legislative Review**
Part One

May 7, 2020

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Agenda

Adam
Lovelady

- Land use law and planning

Chris
McLaughlin

- Property tax

Kara
Millonzi

- Local government finance

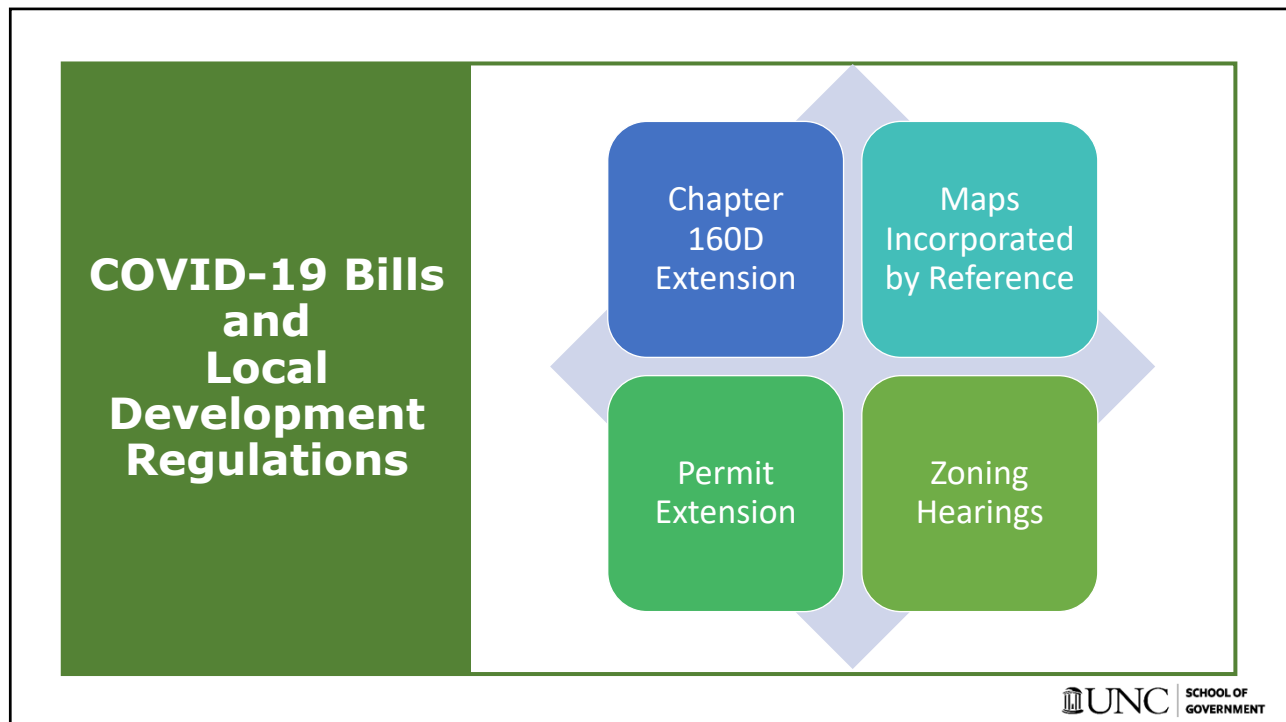
Tyler
Mulligan

- State-funded small business loans

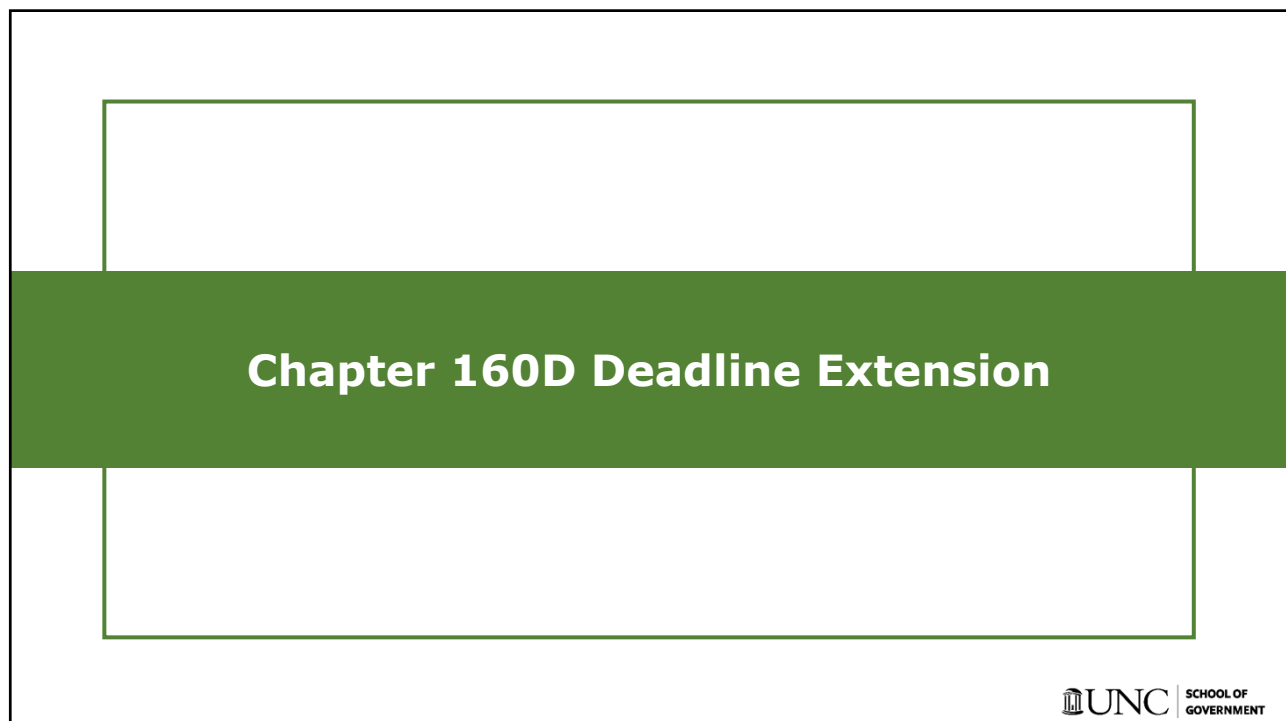
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COVID-19 Bills and Local Development Regulations

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Chapter 160D

- Comprehensive re-write of the planning and development regulation statutes
(currently 160A, Art. 19; 153A, Art. 18)
- Original effective date:
January 1, 2021

Chapter 160D Deadline Extension

OF
MENT

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SL 2020-3 (S 704), § 4.33

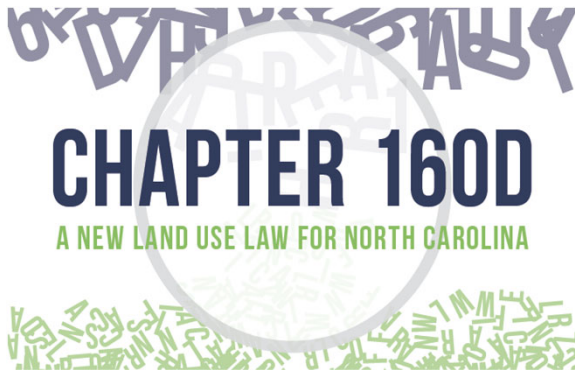
- Chapter 160D effective date
extended to August 1, 2021
- Separate General Statutes
Commission Bill
(July 1, 2021)

Chapter 160D Deadline Extension


OF
MENT

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Chapter 160D Resources




<http://nc160D.sog.unc.edu>

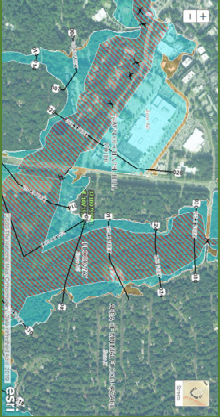


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Maps Incorporated by Reference




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Maps Incorporated by Reference


- Maps in development regulations
- Popular new authority in Chapter 160D



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Maps Incorporated by Reference

- SL 2020-3 (S 704), § 4.34
- Authority to incorporate maps by reference
 - flood insurance rate maps
 - watershed boundary maps
 - other maps officially adopted or promulgated by State and federal agencies



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Maps Incorporated by Reference

- May adopt specific map or the most recent version
- Zoning boundaries may be amended automatically to remain consistent
- Maintain current map for public inspection


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Permit Extension

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SL 2020-3 (SB 704), § 4.40

Five-month extension
qualifying development
approvals



**Permit
Extension**

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Qualifying Development Approvals

- Valid at some point between March 10, 2020 and April 28, 2020
- Types
 - erosion and sedimentation control plans;
 - building permits;
 - sketch plans, preliminary plats, or final plats;
 - site-specific development plans or phased development plans;
 - development permits;
 - development agreements; and
 - certificates of appropriateness.





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Obligations of Approval Holder

- Comply with all applicable laws, regulations, and policies in effect at the time of the development approval
- Maintain all performance guarantees for the duration of the extension or until affirmatively released
- Complete any infrastructure necessary to obtain a certificate of occupancy or other final development approval

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- Local gov may terminate approval for failure to comply with terms of extension
- Written notice of reason for termination
- Appealed to board of adjustment

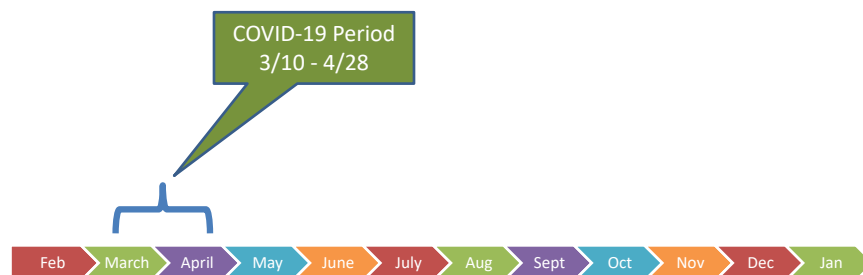
Termination and Appeal

58

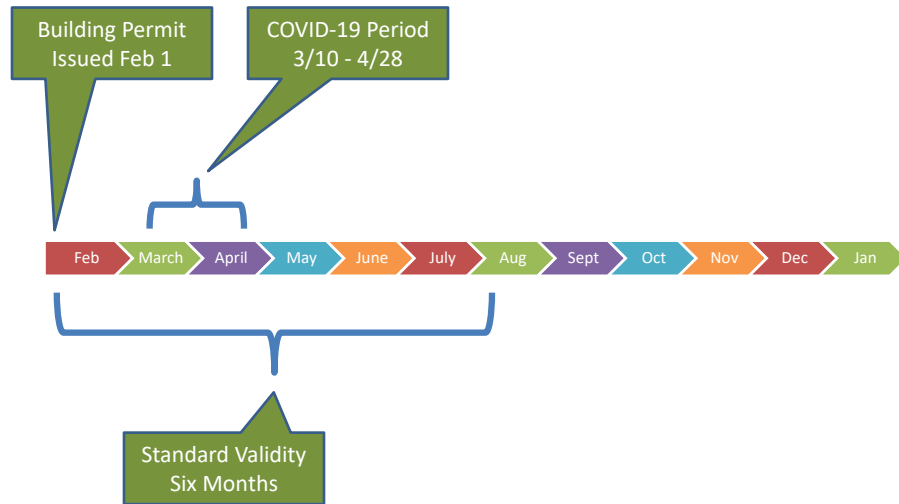
Exclusions

- Extend a permit from the federal government nor a permit for which the duration is set by federal law
- Shorten any development approvals
- Prohibit extensions of development approvals
- Affect Department of Environmental Quality administrative consent orders between the May 4 and September 28, 2020
- Prevent agencies from revoking or modifying a development approval
- Modify requirements necessary to retain federal delegation
- Modify obligations or rights under contract, including bond obligations or rights
- Authorize charging water or wastewater tap fees that have previously been paid in full.

Sample Permit Extension

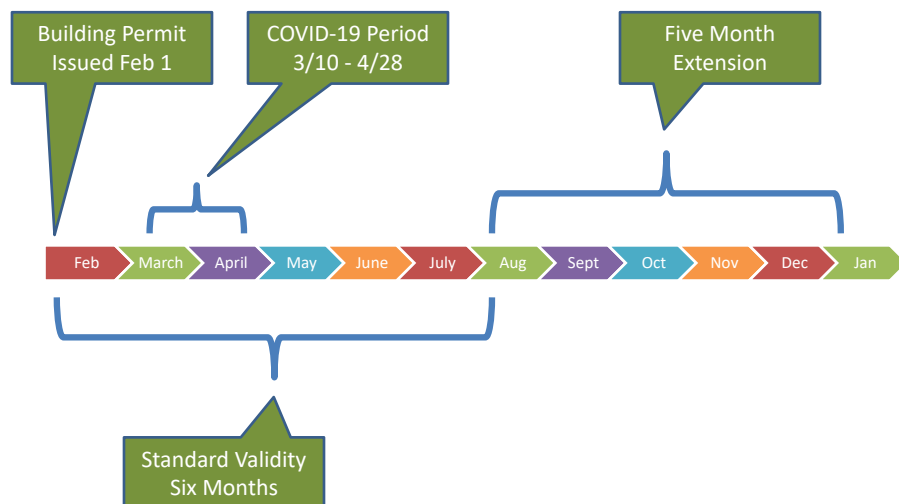


Sample Permit Extension



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Sample Permit Extension



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Remote Zoning Hearings during Declared Emergency

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Remote Zoning Hearings during Declared Emergency

- SL 2020-3 (S 704), § 4.31(a), creating G.S. 166A-19.24
- Public Hearings
 - Zoning Amendment
 - Rezoning
- Quasi-Judicial Evidentiary Hearings
 - Special Use Permits
 - Variances
 - Appeals of Staff Decisions
 - Certificates of Appropriateness

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Remote Zoning Public Hearings

Must allow written comments on the subject of the public hearing to be submitted between publication of notice and 24 hours after the public hearing




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Remote Quasi-Judicial Evidentiary Hearings

Three conditions required:

1. The right of an individual to a hearing and decision occur during the emergency
2. All persons with standing have notice and consent to the remote meeting
3. All due process rights of the parties affected are protected

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Right of an individual to a hearing and decision occur during the emergency

Under normal circumstances, the hearing would have occurred during the time of the declared emergency

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All persons with standing have notice and consent to the remote meeting

G.S. 160A-393 on who has standing

- the applicant
- owner
- local government (if decision being appealed)
- individual who will suffer special damages (or association)

Challenge of identifying and obtaining consent

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All due process rights of the parties affected are protected

Rights include, among other things, right to

- Present evidence
- Object to opposing evidence
- Cross-examine witnesses
- Challenge the impartiality of the decision-maker

Challenge of ensuring

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Chapter
160D
Extension

Maps
Incorporated
by
Reference

Permit
Extension

Zoning
Hearings

COVID-19 Bills and Local Development Regulations

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Local Taxes

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Taxes on RMVs Extended for 5 Months S.L. 2020-3 (S 704), § 4.7

- Extends motor vehicle registrations that expire from March to July for **5 months**
- Also extends **all taxes** owed on those RMVs for 5 months
 - County and municipal property taxes
 - Municipal vehicle registration taxes

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Impact on County RMV Tax Revenues

- April 2019: \$87.2 M
- April 2020: \$67.6 M
- 22% / \$19.6 M decrease
 - Mecklenburg: \$5,000,000 (40%)
 - Wake: \$2,500,000 (23%)
 - Buncombe Cou: \$500,000 (28%)
- Remember this was BEFORE deferral took effect
- Revenue should eventually arrive, but when???

Bds of Equalization & Review S.L. 2020-3 (S 704), § 4.31(f)

- BOER may meet electronically if
 - all parties consent
 - due process rights “protected”
- DOR still strongly recommends that BOER hearings be postponed if possible

<ul style="list-style-type: none"> • Buncombe County may use TDA funds for grants to local businesses that “promote tourism” and have closed due to the pandemic • Hotels not eligible for the grants • No other local government received this authority • All governing boards may waive OT penalties/interest • Refunds or grants may be problematic without legislative approval 	<p style="text-align: center;">Use of Occupancy Tax Proceeds S.L. 2020-3, § 1.5</p>
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75

<p style="text-align: center;">Property Tax Lien Priority S.L. 2020-3, § 1.4(b)</p>	<ul style="list-style-type: none"> • Amends G.S. 105-356 • State liens for unpaid unemployment contributions are “first in time, first in right” as compared to local property tax liens • Treated the same as state tax liens • Local property tax liens remain senior to all other liens
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Enforced Collections

- **No new prohibitions** against use of enforced collection remedies
- Federal stimulus checks **not** exempt from attachment once in taxpayers' bank accounts
- Additional \$600 federal unemployment benefits treated the same as "regular" unemployment benefits
 - Exempt from attachment unless "comingled" with other funds
- But . . . check with your board and/or manager for policy decision about collection efforts during pandemic

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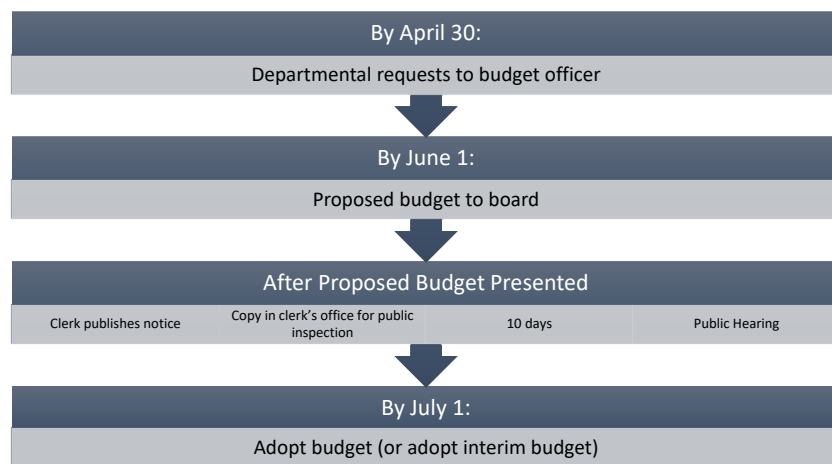
78

Finance-Related Legislation

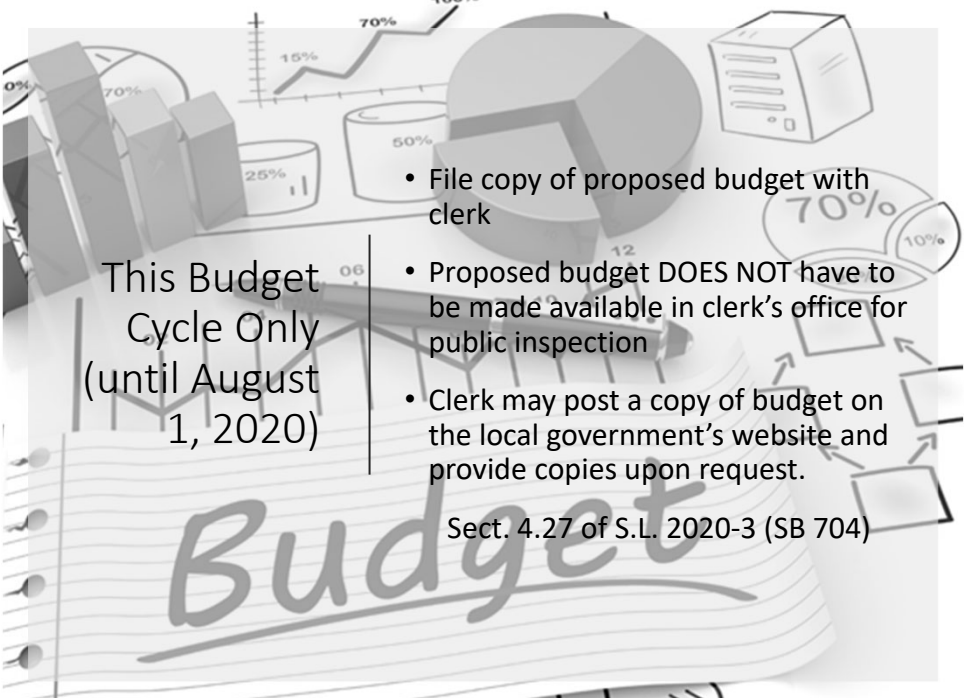
Kara Millonzi

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Annual Budget Process



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This Budget Cycle Only
(until August 1, 2020)

- File copy of proposed budget with clerk
- Proposed budget DOES NOT have to be made available in clerk's office for public inspection
- Clerk may post a copy of budget on the local government's website and provide copies upon request.

Sect. 4.27 of S.L. 2020-3 (SB 704)

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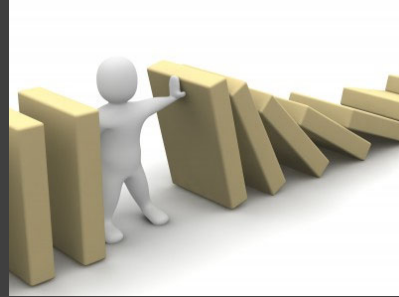
Public Hearing
on Budget

- Must hold at least 1 public hearing on budget before its adoption
- During state emergency declaration: "A public body may conduct any public hearing required or authorized by law during a remote meeting, and take action thereon, provided the public body allows for written comments on the subject of the public hearing to be submitted between publication of any required notice and 24 hours after the public hearing."
- Once budget ordinance is adopted, tax rate, board member compensation, and appropriation to schools (for counties) are locked in

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Interim Budget (G.S. 159-16)

- Governing board may make interim appropriations if budget ordinance not adopted by July 1
- Pay "salaries, debt service payments, and the usual ordinary expenses" of the local government or public authority
- Interim appropriations are funded with fund balance and must be incorporated into budget ordinance when adopted
- Cannot levy taxes or fees
- Cannot authorize new activities



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Budgeting Options

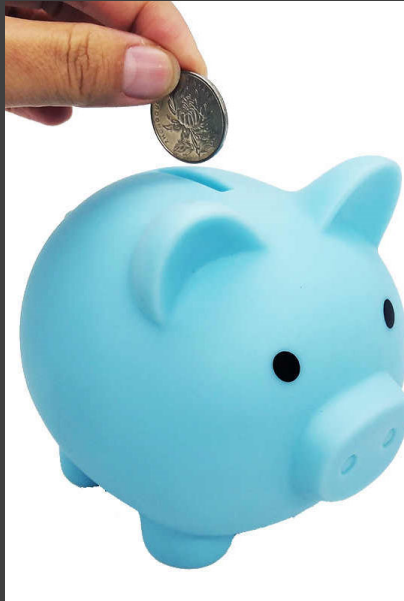
Interim Budget

- Allows more time / flexibility
- Cannot levy tax or do anything new

Annual Budget Ordinance

- Provides more "certainty"
- Can amend at any time
- But locks in tax rate

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Daily Deposit Requirement

During emergency declaration,
Secretary of LGC....

...May set amount of moneys on hand
before deposit required

...May authorize deposits to be made
less frequently than once per day, as
long as moneys kept in secure
location and deposited at least once
per week

Sect. 4.28 of S.L. 2020-3 (SB 704)

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New Report to LGC

Sect. 4.29 of S.L. 2020-3
(SB 704)

Finance officer of county, municipality, water
district or authority, sewer district or authority,
sanitary district, and metropolitan sewage district

Must submit statement of financial information
concerning the impact of COVID-19 to Secretary
of LGC by February 15, 2021

Statement must include Monthly data from
July 1, 2019-December 31, 2020 about:

- Utility payments, including water, sewer, electric
- Reductions in tax revenue
- Reductions in services due to reductions in tax revenue
- Total revenues received from building inspections, by type
- The ability to meet debt service obligations
- The balances of any capital reserve funds
- The purpose of any withdrawals from capital reserve funds
- Any other information required by LGC

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Special Obligation Bonds

- Reinstated retroactive to July 2019
- Now in Article 7A of Ch. 159
Sect. 4.30 of S.L. 2020-3 (SB 704)

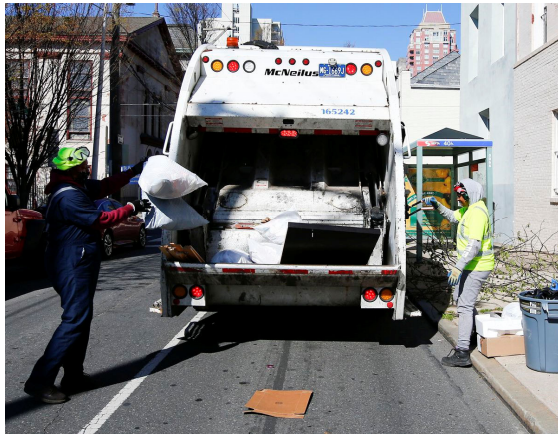
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Public schools must begin
August 17, 2020

Sect. 2.11(b) of S.L.
2020-3 (SB 704)

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Sect. 4.19 & 4.20 of S.L. 2020-3 (SB 704)

Until August 1, 2020

- DEQ may implement emergency measures and procedures related to solid waste, including restrictions on collection, storage, transportation, and facility operational conditions
- Counties and municipalities may request waivers from prohibition of disposing yard trash in landfill if can demonstrate economic hardship or potential public health risk

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Retirees Return to Work

If work needed because of COVID-19

- For individuals who retired before April 1, 2020, any earnings received between March 10, 2020 and August 1, 2020, will not be treated as earned by a beneficiary of LGERS. Need must be certified by Retirement Systems Division of Department of State Treasurer.
- Separation Allowance benefits paid to law enforcement officer or retired law enforcement officer not impacted by work performed between March 10, 2020 and August 1, 2020.

Sect. 4.23(c) & (d) of S.L. 2020-3 (SB 704)



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State Agency Flexibility

- State agencies may delay collection, or modify collection of fees, fines, or late payments; or delay renewal dates of permits, licenses, and other similar certifications, registrations, and authorizations, effective until August 1, 2020.

Sect. 4.38 of S.L. 2020-3 (SB 704)

- Does NOT grant local governments the same authority

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State-funded Small Business Loans *Tyler Mulligan*

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Context: At-risk small to mid-size businesses

	Firms Adversely Affected by COVID	Employees in High-Risk Sectors
Small Firms (1-19)	111,477	537,194
Medium-Sized Firms (20-99)	20,915	844,566

McCall, Jamie. 2020. Assessing the Economic Impacts of COVID-19 on North Carolina's Small Business Community. Raleigh, NC: Carolina Small Business Development Fund. <https://carolinasmallbusiness.org/research/>

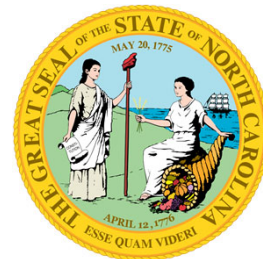
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Context: Federal Relief for Businesses

- Federal stimulus package ("CARES Act")
 - Federal SBA Paycheck Protection Program ("PPP") Loans
 - Federal SBA Economic Injury Disaster Loans ("EIDL") and *\$10K Loan Advance*
 - Treasury Economic Stability Program
 - Federal Reserve Main Street Lending Program
 - and others

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State Constitutional Considerations



- State constitutional considerations
 - Aid to “the poor, the unfortunate, and the orphan” (individuals, not businesses)
 - All expenditures “for public purposes only”
 - No exclusive privileges or emoluments (no gifts)
 - N.C. Supreme Court: “It is not the function of government to engage in private business.” (hotel not the same as water or sewer utility)
- NC Attorney General opinion
- Bill draft analysis for House Select Committee on COVID-19
- See Coates’ Canons blog posts for legal analysis

\$125,000,000 for small business loans

- Golden LEAF to distribute funds to lenders, who then make loans
- Eligible business
 - physical presence in North Carolina
 - able to show economic losses as a result of COVID-19
- Loan structure
 - Maximum loan \$50,000
 - Secured by a Uniform Commercial Code financing statement
 - Interest rate 4% for first six months and 5.5% thereafter
 - No payment for first six months (interest accrues but is not paid)
 - Term of loan no greater than 66 months
- Repayment by business
 - Business anticipated to repay with federal assistance
 - Lenders must “provide assistance ... with applying for available federal assistance.”
- Reporting

Aid to business through charitable entities

- IRS: Charitable entities provide aid to *individuals*; a business is “not an appropriate charitable object.”
- **IRS Publication 3833: Disaster Relief**
 - Aid to individuals
 - to provide “basic necessities, such as food, clothing...”
 - “aid that is appropriate depends on the individual’s needs and resources.”
 - after immediate needs met, further aid depends on “individual financial needs assessments.”
 - Aid to businesses in disaster areas
 - Any benefit to the private business must be “incidental.” Charity must document:
 - businesses selected for aid would hire unemployed or underemployed residents (Rev. Rul. 74-587)
 - business does not have adequate resources from its own assets, conventional financing, or insurance
 - without charitable intervention the business would not locate or remain in the area
 - assessment of financial need before disbursing aid
 - After “restored to *viability* ... further assistance from a charity is no longer appropriate.”
- Above requirements pertain to grants. Loan program can be less burdensome.

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- Local governments can tailor loan terms to reach smallest businesses.
- One example:
 - Maximum loan of \$10,000
 - No payment for one year (interest accrues but is not paid)
 - No collateral required, just a promise of payment
 - Interest rate based on risk: higher than 5.5% because risk is greater

What is the local government role?

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Need help designing a loan program?

- Coates' Canons blog post with loan model:
"Local Government as Lender"
- School's Development Finance Initiative (DFI)
 - COVID19 Resources web page (dfi.sog.unc.edu)
 - Blog posts
 - Zoom call
 - Free one-hour consult on designing loan program for governments and charitable partners

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Questions?



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Materials

Collected Legislative Summaries

- <https://lrs.sog.unc.edu/lrs/legsumms/2020>

Coates' Canons Blog

- <https://canons.sog.unc.edu/>

COVID-19 Resource Site

- <https://www.sog.unc.edu/resources/microsites/coronavirus-covid-19>

Legislative Reporting Service

- <https://lrs.sog.unc.edu/>

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Thank You

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