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Public Law for the Public's Lawyers Fall 2020 Civil Law (Short Session) Update

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Before we get started!

We want to take a moment to thank our colleagues at the Legislative Analysis Division and Legislative Drafting Division whose contributions in the form of bill summaries were used exclusively to prepare the content found in each slide.

THANK YOU!

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3

S.L. 2020-18 (SB315) North Carolina Farm Act of 2019-20.

- ▶ Effective October 1, utility companies are required to dispose of certain unused easements under certain circumstances:
 - ▶ Creates a process by which an underlying fee owner of land encumbered by any easement acquired by a utility company, on which the utility company has not commenced construction within 20 years of the date of acquisition, may file a complaint with the Utilities Commission for an order requiring the utility company to terminate the easement in exchange for payment by the underlying fee owner of the current fair market value of the easement.
 - ▶ If the utility company does not agree that the easement should be terminated, the utility company may request a determination from the Utilities Commission as to whether the easement is necessary or advisable for the utility company's long range needs for the provision of utilities to serve its service area, and whether termination of the easement would be contrary to the interests of the using and consuming public.

3

S.L. 2020-18 (SB315) North Carolina Farm Act of 2019-20.

4

- ▶ Effective December 1, prohibits the passing of self-propelled farm equipment by vehicles proceeding in the same direction when the farm equipment is making a left turn or signaling that it intends to make a left turn.
- ▶ Expands outdoor advertising near highway rights-of-way for bona fide farm property by increasing the size of the sign allowed, broadening the area where the sign can be placed, allowing all bona fide farms to place signs, and allowing the sign to stand year-round.

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S.L. 2020-18 (SB315) North Carolina Farm Act of 2019-20.

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- ▶ Allows the Commissioner of Agriculture to register, license, and protect a trademark for the sale and promotion of North Carolina Sweetpotatoes and to collect a reasonable royalty or license fee for use of the mark.
- ▶ Provides that all information that is collected by soil and water conservation districts from farm owners, animal owners, agricultural producers or owners of agricultural land that is confidential under federal or State law must be held confidential by the soil and water conservation districts.

5

S.L. 2020-21 (HB1157) Abolish Coroner in Various Counties.

6

- ▶ Abolishes the office of coroner in Avery, Bladen, Hoke, Montgomery, and Yadkin Counties and any coroner elected in the 2018 or 2020 general election would serve the remainder of the coroner's term.
- ▶ Background:
 - ▶ From 1965-67, several local laws were enacted providing for the appointment of medical doctors as county medical examiners and abolishing the office of coroner in several counties.
 - ▶ In 1967, the General Assembly enacted S.L. 1967-1154 which established the State Office of Chief Medical Examiner to provide for a Statewide system for postmortem examinations of deaths related to crimes, suicide, prison confinement, or other specified circumstances.
 - ▶ Since the 1960s, the office of elected county coroner has been abolished in most counties of the State.

6

S.L. 2020-40 (HB307) Mod. Utility Vehicle Classification

- Effective October 1, amends the motor vehicle laws to create a definition for a modified utility vehicle, sets the registration fee, and allows for the operation of a modified utility vehicle on roadways with certain restrictions.

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<https://pubpublic.com/newsroom/indiana/mod-utility-vehicle-classification-2020-40>

7

S.L. 2020-40 (HB307) Mod. Utility Vehicle Classification.

- Defines a modified utility vehicle as a passenger vehicle, for the purposes of motor vehicle laws, as a motor vehicle that:
 - Is manufactured for off-road use with equipment required by G.S. 20-121.1 (2), except a vehicle identification number.
 - Has four wheels, an engine displacement greater than 2,400 cubic centimeters, an overall length of 142 inches or greater, an overall width of 58 inches or greater, an overall height of 70 inches or greater, a maximum speed capability of 40 miles per hour or greater, and does not require an operator or passenger to straddle a seat.
- Does not include all-terrain vehicles, golf cars, utility vehicles, or riding lawn mower.

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S.L. 2020-40 (HB307) Mod. Utility Vehicle Classification.

- Places restrictions and requirements on the operation of a modified utility vehicle, including, operation limited to streets and highways where the posted speed limit is 55 mph or less. Other restrictions include:
 - Modified utility vehicles must be equipped with certain equipment similar to that of a low-speed vehicle or mini-truck. If a modified utility vehicle does not have a VIN, the DMV is required to assign one upon owner application.
 - Modified utility vehicles are registered and insured.
 - Modified utility vehicles abide by DOT roadway prohibitions in the interest of safety.

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S.L. 2020-40 (HB307) Mod. Utility Vehicle Classification.

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- Fiat Chrysler (maker of Jeep) sued Mahindra (maker of Roxor) alleging design infringement. This year, Mahindra was barred by the International Trade Commission from selling the Roxor in the US.
- As a result, Mahindra has reworked the front end to avoid a resemblance to the iconic Jeep Wrangler.



10

S.L. 2020-46 (HB679) Rules of Civil Procedure/E-Filing and Service.

11

- Background: Chapter 1A of the General Statutes sets forth the Rules of Civil Procedure. Rule 3 of the Rules of Civil Procedure governs the commencement of civil actions. Rule 5 of the Rules of Civil Procedure governs service and filing of pleadings and other papers.
- Effective October 1, Rule 3 of the Rules of Civil Procedure is amended to allow electronic filing made in accordance with Rule 5 of the General Rules of Practice for the Superior and District Courts, if electronic filing is available in the county of filing.
- Rule 5 of the Rules of Civil Procedure is amended to allow service by email and through the court's electronic filing system.
- Service may be made to a party's attorney of record by email to an email address of record with the court in the case, and upon a party by email if the party has consented to receive email service in the case at a particular email address.

11

S.L. 2020-51 (HB455) Amend Various Motor Vehicle Laws.

12

- Delays the implementation from 2021 to 2025 for when a new motor vehicle dealer must display a loaner dealer plate on a vehicle being loaned to a service customer under certain circumstances.
- Creates a time extension of 7 months for the implementation of new dealer data protection laws enacted in 2019.
- Allows a motor vehicle dealer, when a certificate of title is unavailable, to transfer title to a vehicle currently titled out-of-state to another. The dealer must certify to DMV that the title was unavailable, but that if the title is subsequently received or found by the dealer, it will be submitted to DMV.

12

S.L. 2020-52 (HB920) Condominium Association Changes

13

- ▶ Amends Article 2 of Chapter 47C of the General Statutes (the North Carolina Condominium Act) in the following manner:
 - ▶ Specifies what must be contained in an architect/engineer's certification of what the condominium plat/plan depicts, and in a professional land surveyor's certification of the statutory requirements that have been met by the plat.
 - ▶ Amends the statutory requirements for the contents of a condominium declaration.
 - ▶ Limits the time within which any development or declarant rights must be exercised if not specified in the declaration.
 - ▶ Permits the time limit for exercising any development or declarant right as set forth in the declaration, to be extended for a period of not more than 10 years by consent of owners of units to which at least 67% of the association votes are allocated.

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S.L. 2020-52 (HB920) Condominium Association Changes

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- ▶ Requires liberal construction of statutory provisions governing establishment of a condominium in favor of its validity.
- ▶ Specifies purposes for which the executive board may propose a corrective amendment to the declaration and provide that upon recordation in the office of the register of deeds for the county where the condominium is located, any such correction relates back to and is effective as of the date the declaration was originally recorded.
- ▶ Provides a procedure for judicial reformation of a declaration to correct certain ambiguities, errors, inconsistencies in condominium instruments, and requiring any collateral action challenging a judgment ordering reformation to be brought within one year of the entry of judgment.

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S.L. 2020-52 (HB920) Condominium Association Changes.

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- ▶ Amends provisions governing encroachment easements.
- ▶ Provides that when a declarant's failure to substantially comply with the Condominium Act in establishing a condominium is due to defects in the drafting, execution, or recordation of the declaration, plats or plans, a condominium unit's title will be deemed marketable if there is no legal challenge to the validity of the documents establishing the condominium within four years of their recordation.
- ▶ Conforms provisions in the Condominium Act to corresponding provisions in the Planned Community Act relating to executive board members and officers, meeting notice and quorum requirements, and assessments against a unit for common expenses caused by a unit occupant's misconduct.
- ▶ The act's provisions for judicial reformation of a declaration became effective on October 1, 2020, and apply to actions filed on or after that date. The remainder of the act became effective on June 24, 2020.

15

S.L. 2020-60 (HB736) Elective Share-Joint Accounts.

16

- ▶ Changes the calculation of the amount of property subject to a surviving spouse's elective share as follows:
 - ▶ Treats property held by a deceased spouse and surviving spouse as joint tenants with right of survivorship the same as property held by other persons.
 - ▶ Treats all property held as joint tenants with right of survivorship as owned by the decedent only to the extent of the decedent's pro rata share of property. Contributions are presumed to equal the share owned. The presumption can be rebutted by clear and convincing evidence.
 - ▶ Imposes a new \$200 fee for filing a claim for an elective share.

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S.L. 2020-60 (HB736) Elective Share-Joint Accounts.

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- ▶ Article 1A of Chapter 30 of the General Statutes requires that a certain percentage of a deceased, married person's assets pass to the surviving spouse, called an "elective share."

- ▶ The surviving spouse can elect to receive the elective share even if the will and contract rights (e.g., bank accounts, brokerage accounts, insurance) provide otherwise. A surviving spouse is entitled to a percentage of the deceased spouse's assets based on the length of the marriage:

Length of Marriage	Elective Share Amount
Less than 5 years	15% of Total Net Assets
5-10 years	25% of Total Net Assets
10-15 years	33% of Total Net Assets
15 or more years	50% of Total Net Assets

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S.L. 2020-60 (HB736) Elective Share-Joint Accounts.

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- ▶ The following table summarizes the prior and current law:

Type of Ownership	Prior Law Decedent's Ownership for Elective Share	Current Law Decedent's Ownership for Elective Share
Tenancy by the Entirety	50% No Rebuttal	50% No Rebuttal (unchanged)
Joint Tenant with Right of Survivorship with Spouse	50% No Rebuttal	Treated same as Joint Tenant with Right of Survivorship with Others
Joint Tenant with Right of Survivorship with Others	Presumption: 100% Rebuttal: clear and convincing evidence. If you rebut, then Decedent's contribution plus pro rata share of remainder (not attributable to other joint tenant's contributions)	Presumption: Ownership % Rebuttal: clear and convincing evidence. If you rebut, then Decedent's pro rata share attributable to their contribution

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S.L. 2020-65 (HB32) Collaborative Law.

19

- ▶ Recommended by the General Statutes Commission and is a modified version of the Uniform Collaborative Law Act as approved in 2009, and amended in 2010, by the Uniform Law Commission.
- ▶ Collaborative law is a voluntary alternative dispute resolution process in which parties make a good faith effort to resolve their dispute without the intervention of a court or other tribunal. In 2003, the General Assembly authorized collaborative law procedures for the resolution of divorce and family law disputes as set forth in Article 4 of Chapter 50 of the General Statutes, G.S. 50-70 through 50-79.
- ▶ Collaborative law procedures for family law disputes remain unchanged, but extends the availability of collaborative law to other areas of the law, beyond family law matters.

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S.L. 2020-65 (HB32) Collaborative Law.

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- ▶ Effective October 1, S.L. 2020-65 establishes a statutory framework for the collaborative law process, with the following key features:
 - ▶ Requires a lawyer to provide specified information to a client to assure that the client makes an informed decision as to whether to enter into the collaborative law process.
 - ▶ Establishes minimum requirements for a collaborative law participation agreement.
 - ▶ Defines when a collaborative law process begins and ends.
 - ▶ Provides that the filing of a notice of a collaborative law process operates as a stay of any pending proceeding and precludes a court or other tribunal from dismissing the proceeding without giving the collaborative lawyers an opportunity to be heard.

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S.L. 2020-65 (HB32) Collaborative Law.

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- ▶ Allows a court or other tribunal, during a collaborative law process, to issue emergency orders to protect the health, safety, welfare, or interest of a party or otherwise preserve the status quo.
- ▶ Disqualifies a collaborative lawyer and a lawyer in an associated law firm from appearing before a court or other tribunal in a proceeding related to the collaborative matter, subject to certain exceptions.
- ▶ Encourages candor by the parties by providing for the confidentiality of collaborative law communications and privileges against their disclosure in later legal proceedings.

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S.L. 2020-73 (§B739) Personal Delivery Device/PDD/Delivery Robots.

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<https://www.technetworld.com/story/84582.htm>

22

S.L. 2020-73 (§B739) Personal Delivery Device/PDD/Delivery Robots.

23

- ▶ Personal delivery devices, or delivery robots, are electrically powered, autonomous devices designed to travel at moderate speeds on sidewalks and along roadsides to deliver small shipments to customers at their homes and businesses.
- ▶ Under prior North Carolina law, personal delivery devices would fall under the definition of a motor vehicle and could not legally be operated on highways. Vehicles intended to be operated on highways are required to be registered. Motor vehicles are also prohibited from operating on sidewalks.
- ▶ A pedestrian in North Carolina is subject to pedestrian-control and traffic-control signals. Where signals are not in place, vehicles must yield the right-of-way to pedestrians crossing highways in marked crosswalks or unmarked crosswalks at intersections. Outside of those areas, pedestrians are required to yield the right-of-way to vehicles on the highway. However, all drivers of vehicles on the highway are required to exercise due care to avoid colliding with pedestrians on the highway.

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S.L. 2020-73 (§B739) Personal Delivery Device/PDD/Delivery Robots.

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- ▶ Authorizes the operation of personal delivery devices by businesses in pedestrian areas and on portions of highways in North Carolina.
- ▶ The Personal delivery device is required to operate as a pedestrian, with all rights and duties of a pedestrian, subject to additional requirements and restrictions..
- ▶ Personal delivery devices are no longer vehicles and removes them from the definition of vehicle in Chapter 20, making provisions in that chapter regulating the operation of vehicles inapplicable to personal delivery devices.

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S.L. 2020-73 (§B739) Personal Delivery Device/PDD/Delivery Robots.

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- ▶ Operation requirements for personal delivery devices. Whether in a pedestrian area or on a highway, the device must be monitored by an operator (an agent of the business who is 14 or older) who is able to exercise remote control over the device. The device is required to do all of the following:
 - ▶ Obey all traffic control devices.
 - ▶ Yield to all human pedestrians.
 - ▶ Not unreasonably interfere with vehicles or pedestrians.
 - ▶ Not transport hazardous materials regulated under federal law.
- ▶ If operated in a pedestrian area, the device is not allowed to travel faster than 10 miles per hour.

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S.L. 2020-73 (§B739) Personal Delivery Device/PDD/Delivery Robots.

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- ▶ A device is not permitted to operate on a highway except to cross the highway or along a highway where there is no sidewalk available to travel. When operating along a highway, the device must:
 - ▶ Operate on the shoulder or as close to the right edge as possible in the direction of traffic (this differs from the requirement for pedestrians walking along the highway to walk against traffic).
 - ▶ Yield to all vehicles.
 - ▶ Not travel faster than 20 miles per hour.
 - ▶ Not operate on a highway with a speed limit greater than 35 miles per hour.
- ▶ A device is required to be equipped with all of the following:
 - ▶ A marker with the name and contact information of the owner and an identification number.
 - ▶ A braking system that allows the device to come to a controlled stop.
 - ▶ When operated at night, lighting equipment on the front and rear of the device.

26

S.L. 2020-73 (§B739) Personal Delivery Device/PDD/Delivery Robots.

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- ▶ For the first two years after the act is effective, local governments are authorized to adopt ordinances to regulate the time and place of operation of devices, but may not prohibit their use. After the first two years, they are only authorized to adopt ordinances prohibiting use of personal delivery devices if they find it necessary. Any ordinance regulating time and place adopted in the first two years will remain in effect unless the local government repealed it.
- ▶ Any business that operates a personal delivery device must maintain general liability insurance covering at least \$100,000 per claim for damages arising from operation of the device.
- ▶ Business entities are required to register personal delivery devices with the Division of Motor Vehicles. To register a device, a business entity must pay a one-time fee of \$250 per personal delivery device.
- ▶ Violations of the operating and equipment requirements are an infraction, punishable by a fine up to \$100. A violation of the insurance requirement is a Class 2 misdemeanor, punishable by a fine up to \$1,000.

27

S.L. 2020-85 (HB471) Exempt Direct Primary Care from DOI Regs.

28

- ▶ Clarifies that medical direct primary care agreements are not subject to the provisions of Chapter 58 (Insurance) and establishes standards for medical direct primary care agreements. Medical direct primary care agreements were not previously regulated by the Department of Insurance. No requirements for what must be included in a medical direct primary care agreement previously existed.
- ▶ Medical direct primary care is a method of providing health care where the patient pays a monthly or annual fee to a primary care provider that covers all or most primary care services the patient may need during the time period covered by the fee, including clinical and laboratory services. Currently, 32 states have laws on direct primary care.

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S.L. 2020-85 (HB471) Exempt Direct Primary Care from DOI Regs.

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- ▶ Defines the terms "medical direct primary care," "primary care provider," and "primary care service." It also clarifies that medical direct primary care agreements are not insurance and are not subject to the provisions of Chapter 58.
- ▶ Requires that medical direct primary care agreements do all of the following:
 - ▶ Be in writing.
 - ▶ Be signed by the parties to the agreement.
 - ▶ Allow either party to terminate the agreement with written notice to the other party.
 - ▶ Specify the periodic fee for the agreement.
 - ▶ Specify the primary care services that are included in the agreement.
 - ▶ Specify the term of the agreement.
 - ▶ Include a prominent statement that the agreement is not health insurance.

29

S.L. 2020-87 (HB1053) PED/Military OL & Audiology Interstate Compct.

30

- ▶ Implements recommendations from the Program Evaluation Division regarding ways to improve the occupational licensing process for military-trained applicants and military spouses; and makes North Carolina a member of the Interstate Compact for Audiology and Speech-Language Pathology.
- ▶ Requires an occupational licensing or State agency licensing board to issue a license, certification, or registration no later than 15 days to a military-trained applicant or military spouse that has satisfied the requirements for licensure, and shortens the time period for a board to provide notice to an applicant from 30 days to 15 days if that applicant's training or experience does not satisfy the requirements for licensure, or if a pending complaint in another jurisdiction constituting similar grounds for denial of licensure in this State exists.
- ▶ A board is also required no later than 15 days, to issue a temporary practice permit to an applicant who is licensed, certified, or registered in another jurisdiction while they are satisfying the requirements for licensure.

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S.L. 2020-87 (HB1053) PED/Military OL & Audiology Interstate Compct.

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- Expands existing licensure provisions for military-trained applicants and military spouses applicable to occupational licensing boards to include State agency licensing boards to maintain consistency with definitional changes made under S.L. 2019-19.
- Requires boards and the Secretary of the Department of Military and Veteran Affairs to publish certain information on their respective websites related to veterans and military spouses and require boards to submit electronically each year, relevant data related to the numbers of applicants, number of licenses granted, and reasons for denial as it pertains to military-trained individuals and military spouses in an annual report to various governmental entities.

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S.L. 2020-87 (HB1053) PED/Military OL & Audiology Interstate Compct.

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- Creates a new Article to Chapter 90 of the General Statutes to implement the Interstate Compact for Audiology and Speech Pathology with the goal of improving public access to audiology and speech-language pathology services.
- The practice of audiology and speech-language pathology occurs in the state where the patient/client/student is located at the time of the patient/client/student encounter. The Compact seeks to preserve the regulatory authority of states to protect public health and safety through the current system of state licensure.
- Becomes effective when at least 10 states have enacted the Interstate Compact for Audiology and Speech Pathology.

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Public Law for the Public's Lawyers Fall 2020 COVID-19 Update/S.L. 2020-3

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S.L. 2020-3/Part I, Section 1.1 *Waive Accrual of Interest on Deferred Payment of Corporate Income and Franchise Tax and Individual Income Tax and Extend Certain Tax Related Deadlines*

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- ▶ Waived the accrual of interest on individual income tax and corporate income and franchise tax returns due on or before April 15, 2020, from April 15 until July 15.
- ▶ The relief applied to partnership and estate and trust tax returns, as well as estimated tax payments for 2020 due on or before April 15, 2020. It also extended certain tax-related deadlines.

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S.L. 2020-3/Part I, Section. 1.2 *Flexibility to Administer Unemployment Compensation and SUTA Tax Credit*

38

- ▶ Authorized unemployment insurance benefits (UI) for employees affected by the coronavirus emergency due to the employer temporarily ceasing operations or reducing hours or the employee being diagnosed with coronavirus or being quarantined by a health care provider or government official.
- ▶ Granted employers a credit equal to the employer's first quarter UI tax due, effectively eliminating UI tax for the first quarter of 2020.

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S.L. 2020-3/Part I, Sections 1.3 and 1.4 *Unemployment Insurance Oversight Committee Recommendations*

39

- ▶ Enacted three recommendations of the Joint Legislative Oversight Committee on Unemployment Insurance:
 - ▶ Allowed an unemployment insurance (UI) claimant to satisfy a work search contact by attending a reemployment activity offered by a local career center.
 - ▶ Allowed an employer to file a UI claim for an employee (i.e., attached claim) for unemployment due directly to a disaster covered by a federal disaster declaration.
 - ▶ Clarified that liens for UI taxes have the same priority as other State tax liens.

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S.L. 2020-3/Part II Education

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► Background:

House Select COVID-19 Committee – Education Working Group
<https://www.ncleg.gov/Committees/CommitteeInfo/HouseSelect/199#Education%20Working%20Group>

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Public Law for the Public's Lawyers Fall 2020 COVID-19 Update/S.L. 2020-3/Part III Health

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S.L. 2020-3/Part III Health

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► Background:

House Select COVID-19 Committee – Health Care Working Group
<https://www.ncleg.gov/Committees/CommitteeInfo/HouseSelect/199#Health%20Care%20Working%20Group>

House Bill 1037: COVID-19 Health Care Working Group Policy Rec.

42

S.L. 2020-3/Part III, Section 3C.1 *State Plan for a Strategic State Stockpile of Personal Protective Equipment and Testing Supplies for Public Health Emergencies*

43

- ▶ Directed the Division of Public Health (DPH) and the Division of Health Service Regulation (DHSR) within the Department of Health and Human Services (DHHS), in conjunction with the North Carolina Division of Emergency Management within the Department of Public Safety to develop a plan for creating and maintaining a strategic state stockpile of personal protective equipment (PPE) and testing supplies.
- ▶ Report has been received by the Joint Legislative Oversight Committee on Health and Human Services and the Joint Legislative Committee on Justice and Public Safety.
<https://www.ncleg.gov/documents/committees/JLOCHHS/Reports%20to%20JLOC-HHS/Reports%20Received%201%202020-21/3C%202020-3%203C.1%20PPE%20Stockpile%20Plan.pdf>

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S.L. 2020-3/Part III, Section 3D.6 *Pandemic Health Care Workforce Study*

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- ▶ North Carolina Area Health Education Center (NC AHEC) to study issues that impact health care delivery and the healthcare working force during a pandemic.
- ▶ Due to the House Select Committee on COVID-19, Health Care Working Group, on or before November 15, 2020.

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S.L. 2020-3/Part III, Section 3D.3 *Authorization Process for Immunizing Pharmacists to Administer COVID-19 Immunizations/Vaccinations*

45

- ▶ Allows any individual to petition the State Health Director to authorize immunizing pharmacists to administer a COVID-19 vaccine by means of a statewide order if one is approved by the CDC at a time when the General Assembly is not in session.
- ▶ Allows the Director to issue a statewide standing order allowing immunizing pharmacists to administer a COVID-19 vaccine. Any statewide standing order issued by the Director expire upon the adjournment of the next regular session of the General Assembly.
- ▶ Requires the State Health Director to develop a standard screening questionnaire and safety procedures.
- ▶ The State Health Director and any pharmacists administering COVID-19 vaccinations pursuant to the Director's order are immune from civil and criminal liability.

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S.L. 2020-3/Part III, Section 3E.2 *Temporary Waiver of 3-Year Fingerprinting Requirement/Childcare Providers/Adoptions/Foster Care*

- ▶ Temporarily waives the requirement that all child care providers complete a fingerprint-based criminal history check every 3 years.
- ▶ Clarifies that the Department must continue performing name-based background checks for prospective employees seeking employment in licensed child care facilities in accordance with federal law.
- ▶ Likewise, the provision temporarily waives fingerprint background checks pertaining to adoptions, foster care, or child care institutions but requires the Department to continue name-based criminal background checks for prospective foster parents adoptive parents, legal guardians, and adults working in child care institutions in accordance with federal law.
- ▶ Section became effective May 4, 2020, and expires 60 days after E.O. 116 is rescinded or December 31, 2020, whichever is earlier.

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S.L. 2020-3/Part III, Section 3E.4 *Temporary Waiver of 72-Hour Preservice Training Requirement/Child Welfare Staff*

- ▶ Temporarily waives the 72-hour requirement of preservice training before child welfare services staff assume direct client contact responsibilities.
- ▶ Authorizes the use of web-based training in meeting preservice training requirements.
- ▶ Section became effective May 4, 2020, and expires 60 days after E.O. 116 is rescinded or December 31, 2020, whichever is earlier.

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Public Law for the Public's Lawyers
Fall 2020 COVID-19 Update/S.L.
2020-3/Part IV *Continuity of State Government/Regulatory Relief*

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S.L. 2020-3/Part IV Continuity of State Government/Regulatory Relief

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► Background:

- House Select Committee on COVID-19 – Continuity of State Operations Working Group (Emergency Services, Elections & Public Safety)
- <https://www.ncleg.gov/Committees/CommitteeInfo/HouseSelect/199#Continuity%20of%20State%20Operations%20Working%20Group>

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S.L. 2020-3/Part IV, Section 4.1 Emergency Video Notarization

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- **Section 4.1** of S.L. 2020-3 amended the laws governing notaries under Chapter 10B of the General Statutes.
- It authorized a notary to perform acknowledgements and administer oaths and affirmations through use of video conference technology if:
 - The notary and principal were physically present in North Carolina at the time of notarization;
 - The principal identified the county where the principal was located at the time of the notarial act; and
 - The principal and notary used video conference technology that complied with the requirements of the section.
- It also extended for 45 days the time an applicant for commission had to take oath of office and authorized administering the oath using video conference technology.
- This section initially expired August 1, 2020 **but was extended to March 1, 2021** under Section 27 of S.L. 2020-74 (Regulatory Reform Act of 2020).
- Note: any notarial acts performed while the section is in effect remain effective and reaffirmation is not needed.

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S.L. 2020-3/Part IV, Section 4.2 Emergency Video Witnessing

51

- **Section 4.2** of S.L. 2020-3 created a new Article under Chapter 10B (Notaries) to provide for video witnessing during a state of emergency.
- It authorized a person to witness a principal sign a document using video conference technology without the requirement of physical presence if the technology allowed for direct, real time audio and video interaction between the principal and witness.
- An attesting witness was considered to have signed the record in the presence of the principal if the witness signed immediately after observing the principal sign and remained in direct communication while using the technology.
- Both the principal and witness must have been physically located in North Carolina.
- This section expired August 1, 2020.

51

S.L. 2020-3/Part IV, Section 4.3 *Masks and Hoods for the Protection of Health*

52

- ▶ **Section 4.3** of S.L. 2020-3 amended G.S. 14-12.11 (exemptions under the laws prohibiting certain criminal activities) to clarify that masks can be worn on certain public and private premises for the physical health and safety of the wearer or others.
- ▶ It requires the wearer to remove the mask:
 - ▶ Upon request of a law enforcement officer during a traffic stop (including checkpoint or roadblock).
 - ▶ When a law enforcement officer has reasonable suspicion or probable cause during a criminal investigation.
- ▶ Current 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 have expired August 1, 2020 but was **made permanent under Section 2 of S.L. 2020-93**, which became effective July 10, 2020.

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S.L. 2020-3/Part IV, Section 4.7 *Division of Motor Vehicles/Extend Deadlines*

53

- ▶ **Section 4.7** of S.L. 2020-3:
 - ▶ Extended for five months the validity of any credential issued by DMV that expired between March 1, 2020 and before August 1, 2020.
 - ▶ Waived fines, fees, and penalties associated with failing to renew an extended credential.
 - ▶ Extended the due date for motor vehicle taxes for extended registrations.
- ▶ Many of the provisions in this section expired August 1, 2020.

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S.L. 2020-3/Part IV, Section 4.7 *Division of Motor Vehicles/Extend Deadlines - Cont'd.*

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- ▶ However, S.L. 2020-97 (Coronavirus Relief Act 3.0) amended Section 4.7(b) to DMV.
- ▶ **Section 3.15** of S.L. 2020-97 (Coronavirus Relief Act 3.0) amended Section 4.7(b) to extend for five months the validity of a commercial driver's license, a commercial learner's permit, a handicapped placard, and a special identification card issued by DMV that expires between March 1, 2020, and the date 30 days after the date the Governor rescinds E.O. 116 or issues another order lifting restrictions on Division functions. It also authorizes DMV to waive requirements for medical examinations and certifications for commercial driver's license and commercial learner's permit holders consistent with any waiver issued by the Federal Motor Carrier Safety Administration.
- ▶ **Section 3.16** of S.L. 2020-97 amended Section 4.7(b)(1) to extend for five months the validity of interstate medical waivers for commercial drivers issued by DMV that expire between March 1, 2020 and the date 30 days after the date the Governor rescinds E.O. 116 or issues another order lifting restrictions on Division functions.

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S.L. 2020-3/Part IV, Section 4.16

New Attorneys' Oath

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► **Section 4.16** of S.L. 2020-3 permits a justice or judge of the General Court of Justice to administer the required oath for attorneys remotely using a form of live video conferencing technology if:

- The individual taking the oath is personally known to the justice or judge; or
- Provides satisfactory evidence of identity to the justice or judge.

► **This section expires December 1, 2020.**

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S.L. 2020-3/Part IV, Section 4.31 *Public Bodies/Remote Meetings During Declared Emergencies*

56

► **Section 4.31** of S.L. 2020-3 amends the Emergency Management Act under Chapter 166A of the General Statutes to specifically authorize official meetings of public bodies, including closed sessions, public hearings, and quasi-judicial hearings to be conducted by remote, simultaneous communication during periods of declarations of emergency under G.S. 166A-19.20, **which refers to only a gubernatorial or legislative declaration of state of emergency.**

► Also, it makes conforming changes to clarify that counties and cities may meet via simultaneous communication.

► This section became effective May 4, 2020 and applies throughout the duration of a declaration of emergency issued under G.S. 166A-19.20 in effect on or after that date.

► These are permanent changes to the law but the trigger is the gubernatorial or legislative declaration of state of emergency.

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Public Law for the Public's Lawyers

Fall 2020 COVID-19 Update/S.L. 2020-4

57

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Federal Legislation

58

- ▶ Coronavirus Preparedness and Response Supplemental Appropriations Act (P.L. 116-123) ([P.L. 116-123](#))
- ▶ Families First Coronavirus Response Act ([P.L. 116-127](#))
- ▶ Coronavirus Aid, Relief, and Economic Security Act (CARES) ([P.L. 116-136](#))
- ▶ Paycheck Protection Program and Health Care Enhancement Act ([P.L. 116-139](#))

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S.L. 2020-4 2020 COVID-19 Recovery Act.

59

- ▶ Response to federal legislation
 - ▶ Directs Office of State Budget and Management (OSBM) to work with State agencies to ensure receipt awarded pursuant to federal legislation are in accordance with federal law and regulation.
 - ▶ Requires reports from OSBM and State agencies receiving funds that detail how the funds are used.
 - ▶ Creates the Coronavirus Relief Reserve to maintain federal funds received from the Coronavirus Relief Fund created under the CARES Act.
 - ▶ Establishes the Coronavirus Relief Fund to be used to provide necessary relief and assistance from the effects of COVID-19. Expenditures must have been incurred between March 1, 2020 and December 30, 2020.
 - ▶ Establishes Local Government Coronavirus Relief Reserve.

59

S.L. 2020-4 2020 COVID-19 Recovery Act.

60

- ▶ Section 3.3 directs OSBM on the allocation of funds:
 - ▶ Health and safety equipment
 - ▶ Department of Public Instruction programs
 - ▶ Funding for higher education
 - ▶ Testing, contract tracing, and research and vaccine funding
 - ▶ Hospital relief funds
 - ▶ Small business loan assistance
 - ▶ Targeted aid and assistance to State agencies

60

S.L. 2020-4 2020 COVID-19 Recovery Act.

- ▶ Health and safety equipment:
 - ▶ Supplies and equipment for life safety, health, and sanitation and purchase of personal protective equipment, divided between NC Healthcare Foundation, NC Senior Living Association, NC Health Care Facilities Association, NC Medical Society, and the Division of Emergency Management in the Department of Public Safety.

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S.L. 2020-4 2020 COVID-19 Recovery Act.

- ▶ Department of Public Instruction programs:
 - ▶ Emergency school nutrition services and innovative school meals provided to students in response to COVID-19.
 - ▶ Improvement of Internet, connectivity through extended reach mobile WiFi gateway router devices in school buses and other mobile Internet access points.
 - ▶ Computers or other electronic devices.
 - ▶ Physical and mental health support services for students in response to COVID-19, including remote services.
 - ▶ Supplemental summer learning program

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S.L. 2020-4 2020 COVID-19 Recovery Act.

- ▶ Department of Public Instruction programs:
 - ▶ Funding for public school units to provide remote instruction.
 - ▶ Nondigital remote instruction resources to students with limited connectivity.
 - ▶ Grants to public school units for extraordinary costs of providing Extended School Year Services or future services for exceptional children.
 - ▶ Funding for the Governor Morehead School for the Blind, the Eastern NC School for the Deaf, and the NC School for the Deaf for school nutrition, cleaning, sanitizing, remote learning resources, compensatory services, and Extended School Year Services.

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S.L. 2020-4 2020 COVID-19 Recovery Act.

64

► Funding for higher education:

- Community Colleges - to enhance online learning, cover expenses for resources and supports for faculty and staff, provide Small Business Center counselors, cover expenses for expanded IT demands, and provide sanitation and other expenses required for ongoing campus operations.
- BOG of UNC – for increased costs for online coursework, implementation of digital learning accelerator, providing sanitation and other expenses for ongoing campus operations, and covering necessary eligible expenses for students and employees.
- BOG of UNC for the State Education Assistance Authority - for private postsecondary institutions to transition to online education.

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S.L. 2020-4 2020 COVID-19 Recovery Act.

65

► Testing, contact tracing, and research and vaccine funding:

- Funding to DHHS to expand public and private initiatives for certain testing, contact tracing and trends tracking and analysis.
- Duke University Human Vaccine Institute.
- NC Policy Collaboratory.
- Brody School of Medicine.
- Campbell University School of Osteopathic Medicine.
- Wake Forest University Health Services.

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S.L. 2020-4 2020 COVID-19 Recovery Act.

66

► Hospital relief funds:

- Funding to NC Healthcare Foundation (NCHF) for grants to hospitals designated by the Center for Medicare and Medicaid Services as critical access hospitals or non-critical access rural hospitals.
- Establish the COVID-19 Teaching Hospitals Relief Fund for grants to hospitals classified as teaching hospitals by the Centers for Medicare and Medicaid Services.
- Establish COVID-19 General Hospitals Relief Fund to hospitals not eligible for grants from NCHF or the COVID-19 Teaching Hospitals Relief Fund.

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S.L. 2020-4 2020 COVID-19 Recovery Act.

67

- ▶ Small business loan assistance (also Section 4.2):
 - ▶ Funding to the Golden Leaf Foundation (GLF) for grants to entities for the purpose of providing emergency bridge loan funding for small businesses adversely affected by the COVID-19 epidemic.
 - ▶ Largely mimics the existing bridge loan program GLF provides with non-State funds.
 - ▶ Prioritized to business establishments of 100 or fewer employees (measured at the time of the declaration of the State of Emergency).
 - ▶ The program was amended by Section 1.6 of House Bill 1105 (S.L. 2020-97) which changed loan terms and loan prioritization and included other technical changes.

67

S.L. 2020-4 2020 COVID-19 Recovery Act.

68

- ▶ Targeted aid and assistance to State agencies:
 - ▶ Food banks
 - ▶ NC Association of Free and Charitable Clinics
 - ▶ NC MedAssist
 - ▶ Division of Social Services for serving children in foster care
 - ▶ Rural and underserved communities
 - ▶ Behavioral health and crisis services

68

S.L. 2020-4 2020 COVID-19 Recovery Act.

69

- ▶ Other Highlights:
 - ▶ North Carolina Pandemic Recovery Office
 - ▶ Oversee and coordinating funding.
 - ▶ Provide technical assistance to State agencies and local government.
 - ▶ Ensure proper reporting and accounting of all funds.
 - ▶ Temporary in nature.
 - ▶ Medicaid coverage for COVID-19 testing for the uninsured
 - ▶ Medicaid provider rate increases

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Public Law for the Public's Lawyers Fall 2020 Elections-Related Legislation in Response to COVID-19

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S.L. 2020-17 Bipartisan Elections Act of 2020 - Highlights

- ▶ I want to specifically thank my colleagues, Erika Churchill and Jessica Sammons in the Legislative Analysis Division, whose contributions in the form of bill summaries were used exclusively to prepare the content found in each of the following slides pertaining to S.L. 2020-17/Bipartisan Elections Act of 2020.
- ▶ Elections-related matters were subjects under the purview of the Continuity of State Operations Working Group.
- ▶ The Working Group heard various issues that might affect elections occurring in 2020:
 - ▶ Second primaries, i.e., 11th Congressional District
 - ▶ 2020 General election
- ▶ As such, many of those issues were addressed in some form under S.L. 2020-17.
- ▶ Note: The legislation represents a mix of provisions that are effective for elections held in 2020 only, while others reflect permanent changes to elections laws.

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S.L. 2020-17 Bipartisan Elections Act of 2020 – Section 1(a)/Witness Requirement

- ▶ **Section 1(a)** of S.L. 2020-17, for the 2020 general election only, allows mail-in absentee ballots to be marked in the presence of **one qualified** witness, which is:
 - ▶ A person who is at least 18 years of age; **and**
 - ▶ Not disqualified by:
 - ▶ G.S. 163-226.3(a)(4) (an owner, manager, director, employee... who makes a written request, signs as a witness, or marks or assists in marking an absentee ballot for a registered voter who is a patient in a hospital, clinic, nursing home, etc., unless a near relative or verifiable legal guardian – See G.S. 163-226 for definitions); **or**
 - ▶ G.S. 163-237(c) (person attempts to act as a witness in any primary or election in which the person is a candidate for nomination or election, unless the voter is the candidate's near relative.)

72

S.L. 2020-17 *Bipartisan Elections Act of 2020* – Section 1(a)/Witness Requirement - cont'd.

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- ▶ Also, Section 1(a) requires the witness to sign and print the witness' name and address on the absentee application and certificate.
- ▶ Further, the provision allows the State Board of Elections to prepare applications for container-return envelopes for absentee ballots in accordance with the requirement for only one witness.
- ▶ Current law, under G.S. 163-231, requires voters voting by absentee ballot to mark the ballot in the presence of two qualified witnesses and those two witnesses must sign and indicate their address on the absentee application and certificate.
- ▶ Section became effective July 1, 2020 and expires December 31, 2020.
- ▶ **Note:** Evolving issue: concerns regarding deficient witness information, i.e. witness did not sign.

73

S.L. 2020-17 *Bipartisan Elections Act of 2020* – Section 3/Absentee Ballot Bar Code

74

- ▶ **Section 3** of S.L. 2020-17 requires the State Board of Elections to include on each container-return envelope for mail-in absentee ballots a bar code or other unique identifier.
- ▶ Allows the voted ballot to be tracked upon return by the voter by both:
 - ▶ The county board of elections; and
 - ▶ The voter.
- ▶ This provision is effective for all elections held on or after September 1, 2020.

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****Note: Returning A Voted Absentee Ballot**

75

- ▶ **Return your ballot to your county board of elections.** Only the voter or the voter's near relative or legal guardian may possess the absentee ballot to return it to the board of elections.
- ▶ In 2020, there are a few ways to return your absentee ballot:
 - ▶ By mail to your county board of elections, postmarked on or before Election Day, and received by 5 p.m. November 6
 - ▶ By commercial courier service (DHL, FedEx or UPS)
 - ▶ Dropped off in person at your county board of elections office by 5 p.m. Election Day (November 6)
 - ▶ Dropped off in person at any early voting site in your county during voting hours (October 15-31)*
- ▶ *Voted absentee ballots will **not** be accepted at polling places on Election Day.

**This information was taken from the NC State Board of Elections Website.

75

S.L. 2020-17 *Bipartisan Elections Act of 2020* –

76

Section 7/Online Portal for Requesting Absentee Ballots

- ▶ **Section 7** of S.L. 2020-17 required the State Board of Elections to establish, by September 1, 2020, a secure online portal for qualified voters to submit the request for mail-in absentee ballots and required the online portal to comply with the following:
 - ▶ The voter or the voter's near relative or verifiable legal guardian to provide all information that is required for a valid written request for absentee ballots.
 - ▶ The voter or the voter's near relative or verifiable legal guardian to submit an electronic signature.
 - ▶ Be able to track the IP address of anyone who accesses the online portal.
- ▶ Further, the State Board was **not** required to comply with initial purchase and contract requirements for establishing this online portal. However, this exemption expires December 31, 2020.
- ▶ The State Board must report to the Joint Legislative Elections Oversight Committee no later than February 1, 2021 regarding the usage of the new on-line portal for absentee requests during the 2020 general election.

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S.L. 2020-17 *Bipartisan Elections Act of 2020* –

77

Sections 11.1-11.3 & 11A.1 & 11A.2/Elections Funding

- Section 11.1** of S.L. 2020-17 appropriated federal CARES Act funds (with the required state match) to the State Board of Elections to establish the online portal for absentee ballot requests and allocated funds to counties to address the COVID-19 pandemic, including increased postage costs for mail-in ballots, ensuring adequate numbers of poll workers via public, awareness campaigns or incentive compensation, or recruitment/promotion of multipartisan assistance teams.
- Section 11.2** of S.L. 2020-17 appropriated Help America Vote Act (HAVA) funds (with the required state match) to the State Board to reimburse counties for eligible HAVA expenses, including various system and security updates and improvements; and requires the State Board to report on certain expenditures.
- Section 11.3** of S.L. 2020-17 requires:
- ▶ Counties to coordinate with local political parties to enhance or maintain the partisan balance of election day workers.
 - ▶ The State Board to purchase and distribute personal protective equipment to counties.
 - ▶ The State Board to provide counties with lists of example eligible expenses under HAVA and the CARES Act.
 - ▶ The State Board to submit a report by February 1, 2021, on the use of the funds appropriated in Sections 11.1 through 11.3.
- Sections 11A.1 and 11A.2**, respectively, clarify that the State Budget Act is incorporated by reference; and that any 2019 Regular Session appropriation remains in effect unless expressly altered by this bill.

77

S.L. 2020-71 *UI/Precinct Workers/2020 General Election*

78

- ▶ S.L. 2020-71 prevents certain payments to precinct officials and assistants working in the 2020 general election from reducing their unemployment insurance benefits.
- ▶ The bill covers work performed during the period from September 1, 2020, until November 5, 2020.

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Public Law for the Public's Lawyers Fall 2020/Other Funding Legislation in Response to COVID-19

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S.L. 2020-80 (H1023): Coronavirus Relief Fund/Additions & Revisions

- ▶ Provided additional appropriations of federal coronavirus relief funding, including modifying allocations in 2020-4:
 - ▶ Group homes for individuals with intellectual or developmental disabilities
 - ▶ Children's Advocacy Centers of NC
 - ▶ Small Meat Processors Assistance
 - ▶ Job Retention Grants
 - ▶ Domestic Violence prevention pilot program
 - ▶ Plasma Games pilot program

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81

S.L. 2020-97: Coronavirus Relief Act 3.0

- ▶ Further modifications of S.L. 2020-4:
 - ▶ The Extra Credit Grant Program
 - ▶ Provides a \$335 grant per family, that had at least one child eligible for the federal child tax credit, met qualifying residency requirements, and either (i) filed a 2019 tax return on or before October 15th, 2020, or (ii) did not file a 2019 tax return because their income fell below the filing threshold but apply for a grant on or before October 15th, 2020.
 - ▶ Unemployment Insurance
 - ▶ Provides additional information and statutory changes for \$50/week increased benefit amount for individuals receiving State unemployment assistance.

81

S.L. 2020-97: *Coronavirus Relief Act* 3.0

82

► Part II: Disaster Recovery

- Creates the Earthquake Disaster Recovery Reserve and Earthquake Disaster Recovery Fund.
- Provides funding for earthquake relief and recovery efforts in Allegheny County and elsewhere.
- Provides State match for ongoing relief and recovery efforts for Hurricanes Florence, Matthew, and Dorian.
- Provided funding to the Town of Bladenboro to repair public buildings damaged by Hurricane Florence.
- Reallocates and appropriates from the cash balance of State Emergency Response and Disaster Relief Fund to the Department of Public Safety to provide State match for Hurricane Isaias.

82

S.L. 2020-97: *Coronavirus Relief Act* 3.0

83

► Part III: Other Revisions of Law

- Permits virtual charter schools to increase enrollment.
- Expands the authority for the UNC System to designate legal counsel, including private counsel outside the Attorney General's Office, for representation.
- Provides flexibility for certain child-care licensing requirements by (i) authorizing use of community-based organizations (CBOs), (ii) clarifying the cooperative arrangements exemption under the definition of child care, and (iii) requiring CBOs to comply with the sanitation requirements for licensed child-care facilities.

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Again, a most sincere thank you to all of the staff of the Legislative Analysis Division and Legislative Drafting Division whose work is featured in this presentation.


84

Thank you!

84

Thank you all!

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- Additional information and summaries on any of these Session Laws can be found at:
- <https://www.ncleg.gov/Legislation> or;
 - <https://www.lrs.sog.unc.edu>
- 
- The screenshot shows a table with the following structure:
- | VIEW BILL DIGEST | |
|-------------------------------|-------------|
| VIEW AVAILABLE BILL SUMMARIES | |
| EDITION | FISCAL NOTE |
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