



# North Carolina Spirits Association

Legislative Report  
May 29, 2020

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Lawmakers continued work for the short session this week, taking up a mix of COVID-19 and general matter legislation. The state remains under Phase II of Governor Cooper's three-part reopening plan. Restaurants and hair salons are open at 50% capacity, and the stay at home order has been lifted as spelled out in Executive Order 141. Phase II also limits mass gatherings to no more than 25 people. Several groups, including gyms, have filed lawsuits hoping the courts will allow them to open.

The House passed the Bipartisan Elections Act of 2020 this week, which is aimed at making various changes to ensure elections are not disrupted by COVID-19. The bill addresses concerns with handling absentee ballots, since the number of absentee voters, currently around 5%, is expected to increase to 40% this year. It adds barcodes to ballots to allow them to be tracked, temporarily drops the absentee ballot witness requirement from two to one, and establishes multi-partisan teams to assist with requesting or collecting absentee ballots. The bill also appropriates over \$12 million for county election boards to pay for election equipment, election workers, and personal protective equipment. The bill passed with broad support on a 116-3 vote and is now in the Senate. House leaders have said that the bill was pre-negotiated with the Senate and they do not expect trouble passing the bill in that chamber next week.

Both chambers advanced a series of budget bills this week, indicating they will opt to fund a select few projects instead of passing an entire, all-encompassing budget. Budget writers are pointing to the revised May Consensus Revenue Forecast, which indicates that the effects of COVID-19 will leave the state with a \$4.2 billion revenue hole over the next two fiscal years, as reason for only funding a limited number of projects. Of the bills considered this week, the following projects were included: upgrades to the VIPER communications network used by emergency personnel and first responders; detention facilities needed for Raise the Age implementation, replacement of a failing steam plant needed to heat Western Carolina University, and community projects around the state's military installations. Leadership in both chambers has indicated more projects will be funded if the state receives guidance from the federal government that funds allocated to the state in the federal CARES Act can be used to fill state budget holes.

The Senate Health Committee heard two bills this week. The first, House Bill 471, would exempt direct primary care agreements from Department of Insurance requirements and specify that such agreements are not a form of insurance. Direct primary care agreements are arrangements between a patient and doctor, where, for a monthly fee, the doctor agrees to treat the patient for a variety of general health matters. The agreements do not cover hospital stays or hospital surgeries. The bill sets up the regulatory framework for these agreements, including what must be included. The second bill, the COVID-19 Health Care Flexibility Act, takes many of the temporary

flexibilities allowed under Governor Cooper's Executive Order 130 and extends them for a year after the state of emergency is lifted. These flexibilities include regulations around adding or moving beds, dialysis stations, ambulatory surgical care facilities, and imaging equipment. One key difference between Cooper's order and the bill is that the order requires the Division of Health Service Regulation (DHSR) to approve requests, and the bill only requires providers to submit written notice to DHSR. The bill sponsor, Senator Chuck Edwards, stated in committee that the proposal was not requested by providers or the Department of Health and Human Services but arose from conversations with constituents. He believes these measures are needed in the event of a second wave of COVID cases. The committee only heard the bill for discussion but is expected to meet next week for a vote.

The Senate Transportation Committee met twice this week to continue discussions surrounding an audit conducted by the State Auditor of the Department of Transportation (NCDOT) that contends that NCDOT has overspent its budget by \$728 million. The committee had the State Auditor present her audit last week, and this week heard from NCDOT and the State Treasurer. State Treasurer Dale Folwell and State Auditor Beth Wood both recommended moving NCDOT's budget oversight to the Office of State Budget Management; however, State Budget Director Charlie Perusse claimed his office did not have the staffing capabilities or the funds to take over NCDOT's budget operations. In the auditor's performance audit, she blames poor budgeting practices and lack of accountability for the overspending. This has led to legislative leaders calling for more oversight and spending tracking at NCDOT as part of a broad reform at the agency. In addition, they have also talked about short-term fixes to help ease the current budget stress and long-term fixes to prevent future budget problems at NCDOT, which have been occurring with greater frequency.

Two significant finance bills have been moving through the legislature this session. The first, House Bill 1079, has been unanimously approved by both chambers. The bill has three parts that do the following: expands the definition of livestock for sales tax purposes, broadens the large fulfillment facility sales and use tax exemption to attract more companies, and exempts various education-related digital property from sales tax. The second bill, House Bill 1080 has passed the House Finance Committee but has been sitting in the House Rules Committee for over a week, indicating more work needs to be done before the bill gets a floor vote. The bill contains changes to the following: excise tax, sales and use tax, personal income tax, corporate tax, and tax enforcement and administration. The bill also updates the State Tax Code to reflect changes to the federal code and adopts most of the federal code but decouples from certain provisions. This bill has been the subject of some controversy: one section that would have allowed payments from the federal Paycheck Protection Program to be taxed as income by the state has been removed. Members have also raised concern over a section that would allow businesses to deduct 100% of their net operating losses over five years instead of a single year.

The House and Senate adjourned Thursday and will reconvene Monday.

## **BILLS OF INTEREST**

**Senate Bill 858, Expand Mixed Beverage Sale During Pandemic**, would authorize the Chairman of the Alcoholic Beverage Control Commission to allow mixed beverage permittees to engage in retail sales for consumption off the premises, including delivery by the permittee, an

employee of the permittee, or independent contractor during the COVID-19 emergency. The bill would allow the Chairman to set terms and conditions for the sales and deliveries, but requires that products sold or delivered under the provision to be (1) packaged in a container with a secure lid or cap and in a manner designed to prevent consumption without removal, (2) sold only with food, and (3) limited to two servings per meal or food item ordered. This bill would expire on the date that Executive Order 116, declaring a state of emergency to coordinate COVID-19 response, expires or is rescinded. **Introduced by Senator Garrett.**

## **BILL STATUS**

**House Bill 536, Temp Outdoor Restaurant for Outdoor Seating, and House Bill 902, Temp Open Clubs & Similar Establishments/Outdoor.** The General Assembly passed combined the provisions of these bills into House Bill 536, and enacted House Bill 536 on Thursday. This legislation would allow restaurants, breweries, wineries, distilleries, bars, and clubs to open and/or increase their capacity beyond what is allowed under Governor Cooper’s executive orders. The bill would allow those establishments to serve up to 50% of their occupancy capacity outdoors and make public areas like streets, sidewalks, and parking lots available for outdoor seating. As mentioned above, currently restaurants are limited to 50% of their capacity indoors, and bill sponsors claim that their legislation is an attempt to allow struggling service industry businesses to “stay afloat” with the added 50% outdoors. The legislation also prohibits the Governor and local governments from closing these businesses because of the more-restrictive Executive Order. The bill was overwhelmingly approved by the Senate, but only passed the House 65-53, with all but two House Democrats voting against the bill. The Governor and many House Democrats raised concerns that removing the ability to close these businesses threatens public health in the event of a spike in COVID cases. The Governor has until June 7, 2020, to sign or veto the bill; otherwise it becomes law without his signature.

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For more information about legislation described in the legislative reports, feel free to contact me at [dferrell@nexsenpruet.com](mailto:dferrell@nexsenpruet.com) or (919) 573-7421. Information is also available on the General Assembly’s website: [www.ncleg.gov](http://www.ncleg.gov).

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