Local Government Laws Updated to Deal with COVID-19 and States of Emergency

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On Monday, May 4 Governor Roy Cooper signed two COVID-19 relief bills into law: House Bill 1043 and Senate Bill 704. The laws cover a variety of stimulus, tax, and legislative issues, but they also seek to provide important COVID-19 relief to local governments.

Some changes are relatively technical, but others establish unprecedented flexibility for how local governments may meet and create a budget.

New Funding Sources in House Bill 1043

The legislature established a $150 Million reserve. Then, the legislature allocated another $150 Million to counties that did not receive a direct appropriation from Congress (leaving out Guilford, Mecklenburg, and Wake Counties). The remaining 97 counties may share their funds with the municipalities within those counties, subject to the county commissioners directing a slice of the county's funding to the municipalities. These funds place conditions on the local governments receiving them, including a reporting requirement and an acceptance of liability that the funds will spent in accordance with the CARES Act.
The legislature also allows NCDOT some financial relief by setting aside $300 Million. However, that money will only become available if Congress or the U.S. Treasury loosens up restrictions on the CARES Act to allow these dollars to be spent as replacement revenue. For this money to go to NCDOT, the federal government must act by June 15.

**Daily Deposits**

The Local Government Budget and Fiscal Control Act (N.C. Gen. Stat. § 159-32) was amended to allow greater flexibility for local governments to make daily deposits of funds received. The State Treasurer may set the amount of required daily deposits during a state of emergency to a level higher than normal. The State Treasurer may also waive the requirement that deposits be made daily, provided the money is kept in a "secure location" and deposited at least weekly.

**Statement of Financial Information**

N.C. Gen. Stat. § 159-33.1 concerning semiannual reports of financial information prepared by the finance officer of each local government has been modified to require data documenting the impact of COVID-19 on the finances of the local government by February 15, 2021. The revised statute requires monthly data from July 1, 2019 through December 31, 2020 and specifies seven required categories of information including reduction in tax revenue, reductions in total revenues receiving from building inspection, and a catch-all for "any other information prescribed by the Secretary." Local governments should take care to track and record the required data so they are positioned to fulfill this new requirement.

**Bonds**

N.C. Gen. Stat. § 159I-30 (which had expired in 2019) has been reactivated as N.C. Gen. Stat. § 159-146. The law allows local governments to borrow money to finance or refinance the cost of acquiring or constructing a project and may issue bonds for that purpose. The law details which projects qualify for bond issuance under the section (e.g. solid waste management projects, water supply systems, and any service of facility provided in a municipal service district in a city).

The law is substantial, and local governments interested in taking advantage of this reinstated option should pay close attention to the limits on maturity dates of issued instruments, and additional guidance on interest rates and remedies for bond or note holders.

**Remote Meetings**

N.C. Gen. Stat. § 166-19.24 is added as a new section concerning remote meetings during states of emergency. Under this new section, a public body within an area subject to the state of emergency may conduct remote meetings if it follows certain procedures. **For instance:**

- Public notice is still required,
- Certain technology must be used.
The method of communication must allow all members of the public body to hear and be heard by everyone, and to hear what any individual addressing the public body says. Remote meetings must be simultaneously streamed online with live audio and video (if any).

If conducting the meeting by telephone conference the public must be provided with an opportunity to dial in or stream the audio so they can listen to the meeting.

The new law also gives local governments the ability to conduct quasi-judicial meetings remotely, but the guidance on how to conduct those meetings is vague. The law requires that "all due process rights of the parties affected are protected" but doesn't explain how that goal would be accomplished. Given the unique nature of quasi-judicial meetings, we recommend local governments consult with their attorney and take careful action to avoid errors that might generate lawsuits later.

Also, this new procedure does not necessarily limit local governments' ability to conduct remote meeting when there is not a state of emergency. Generally, if a local government was authorized to conduct remote meetings before May 4, it can still do so even when there is not a state of emergency. However, there is considerable debate about whether local governments can or should ever conduct remote meetings. Additional guidance and clarification is expected from the General Assembly and the Attorney General.

**Development Approval**

Development approvals that are valid at between March 10, 2020 and April 28, 2020, and any associated vested rights are extended for five months. A development approval is defined as one of several approvals issued by a unit of local government, including building permits, sketch plans, site specific development plans, and development permits.

**Conclusion**

These new additions include a mix of obligations and new tools for local governments to continue to operate during COVID-19 and beyond. These are brand new pieces of legislation so it's not yet clear how different public bodies will use the new laws, but we encourage interested parties to carefully analyze these new rules and seek advice from their attorneys to ensure compliance.

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