

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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SENATE BILL 105
Transportation Committee Substitute Adopted 3/6/19
House Committee Substitute Favorable 10/31/19
PROPOSED HOUSE COMMITTEE SUBSTITUTE S105-PCS15562-ST-78

Short Title: Clarify Emergency Powers.

(Public)

Sponsors:

Referred to:

February 25, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THE EXPIRATION OF A STATE OF EMERGENCY AND THE
3 EXERCISE OF CERTAIN POWERS UNDER A STATE OF EMERGENCY AND TO
4 CLARIFY THE ABATEMENT OF STATEWIDE IMMINENT HAZARDS.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 166A-19.3 is amended by adding two new subdivisions to read:

7 "(2d) Concurrence of the Council of State. – The Governor making contact with
8 each member of the Council of State and seeking the concurrence or
9 nonconcurrence of that member with the respect to exercise of a stated
10 authority under this Article. The Governor shall document the contact and
11 response of each member and shall release the concurrence, nonconcurrence,
12 or no response provided by each member by name and position prior to, or
13 simultaneously with, exercising the stated authority under this Article.

14 ...

15 (20) Statewide emergency area. – Any emergency area applicable to two-thirds or
16 more of the counties in this State."

17 **SECTION 2.** G.S. 166A-19.20 reads as rewritten:

18 "**§ 166A-19.20. Gubernatorial or legislative declaration of state of emergency.**

19 (a) Declaration. – A state of emergency may be declared by the Governor or by a
20 resolution of the General Assembly, if either of these finds that an emergency exists.

21 (b) Emergency Area. – An executive order or resolution declaring a state of emergency
22 shall include a definition of the area constituting the emergency area.

23 (c) Expiration of States of Emergency. – A state of emergency declared pursuant to this
24 section shall expire as follows:

25 (1) If the emergency area is not statewide, when it is rescinded by the authority
26 that issued it.

27 (2) If the emergency area is a statewide emergency area, upon the earlier of the
28 following:

29 a. The date it is rescinded by the authority that issued it.

30 b. Thirty days after the declaration pursuant to this section.

31 (d) Exercise of Powers Not Contingent on Declaration of Disaster Type. – Once a state
32 of emergency has been declared pursuant to this section, the fact that a declaration of disaster
33 type has not been issued shall not preclude the exercise of powers otherwise conferred during a
34 state of emergency.



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1 (e) Extension of Statewide State of Emergency. – If a state of emergency exists beyond
2 30 days after the declaration of a state emergency pursuant to this section and it is applicable to
3 a statewide emergency area, the declaration may be extended beyond 30 days only upon a
4 concurrence of the Council of State."

5 **SECTION 3.** G.S. 166A-19.30(c) reads as rewritten:

6 (c) In addition to any other powers conferred upon the Governor by law, during a
7 gubernatorially or legislatively declared state of emergency, if the Governor determines that local
8 control of the emergency is insufficient to assure adequate protection for lives and property
9 because (i) needed control cannot be imposed locally because local authorities responsible for
10 preservation of the public peace have not enacted appropriate ordinances or issued appropriate
11 declarations as authorized by G.S. 166A-19.31; (ii) local authorities have not taken implementing
12 steps under such ordinances or declarations, if enacted or declared, for effectual control of the
13 emergency that has arisen; (iii) the area in which the emergency exists has spread across local
14 jurisdictional boundaries, and the legal control measures of the jurisdictions are conflicting or
15 uncoordinated to the extent that efforts to protect life and property are, or unquestionably will
16 be, severely hampered; or (iv) the scale of the emergency is so great that it exceeds the capability
17 of local authorities to cope with it, with the concurrence of the Council of State, the Governor
18 has the following powers:

- 19 (1) To impose by declaration prohibitions and restrictions in the emergency area.
20 These prohibitions and restrictions may, in the Governor's discretion, as
21 appropriate to deal with the emergency, impose any of the types of
22 prohibitions and restrictions enumerated in G.S. 166A-19.31(b), and may
23 amend or rescind any prohibitions and restrictions imposed by local
24 authorities. Prohibitions and restrictions imposed pursuant to this subdivision
25 shall take effect in accordance with the provisions of G.S. 166A-19.31(d) and
26 shall expire upon the earliest occurrence of either of the following: (i) the
27 prohibition or restriction is terminated by the Governor or (ii) the state of
28 emergency is terminated.
- 29 (2) Give to all participating State and local agencies and officers such directions
30 as may be necessary to assure coordination among them. These directions may
31 include the designation of the officer or agency responsible for directing and
32 controlling the participation of all public agencies and officers in the
33 emergency. The Governor may make this designation in any manner which,
34 in the Governor's discretion, seems most likely to be effective. Any law
35 enforcement officer participating in the control of a state of emergency in
36 which the Governor is exercising control under this section shall have the
37 same power and authority as a sheriff throughout the territory to which the
38 law enforcement officer is assigned."

39 **SECTION 4.** G.S. 130A-20 reads as rewritten:

40 "**§ 130A-20. Abatement of an imminent hazard.**

41 (a) If ~~the Secretary or~~ a local health director determines that an imminent hazard exists,
42 ~~the Secretary or~~ a local health director may order the owner, lessee, operator, or other person in
43 control of ~~the~~ a specific identified property to abate the imminent hazard or may, after notice to
44 or reasonable attempt to notify the owner, lessee, operator, or other person in control of the
45 property enter upon ~~any~~ the property and take any action necessary to abate the imminent hazard.
46 If the ~~Secretary or~~ a local health director abates the imminent hazard, ~~the Department or~~ the local
47 health department shall have a lien on the property of the owner, lessee, operator, or other person
48 in control of the property where the imminent hazard existed for the cost of the abatement of the
49 imminent hazard. The lien may be enforced in accordance with procedures provided in Chapter
50 44A of the General Statutes. The lien may be defeated by a showing that an imminent hazard did
51 not exist at the time ~~the Secretary or~~ the local health director took the action. The owner, lessee,

1 operator, or any other person against whose property the lien has been filed may defeat the lien
2 by showing that that person was not culpable in the creation of the imminent hazard.

3 (b) ~~The Secretary of Environmental Quality and a~~ local health director shall have the
4 same rights enumerated in subsection (a) of this section to enforce the provisions of Articles 9
5 and 10 of this Chapter.

6 (c) The Secretary shall have the authority to determine that a class or category of property
7 uses presents an imminent hazard. The Secretary may order owners, operators, or other persons
8 in control of that type of class or category of property uses to abate the imminent hazard if the
9 Secretary has notified the Governor and the Governor has the concurrence of the Council of State.
10 No action may be taken to close of category or class of properties without a concurrence of the
11 Council of State. The Secretary may, after notice to or reasonable attempt to notify the owners,
12 operators, or other persons in control of a specific property not complying with the order of
13 abatement, enter upon the property and take any action necessary to abate the imminent hazard.

14 (d) The Secretary of Environmental Quality shall have the same rights enumerated in
15 subsection (c) of this section to enforce the provisions of Articles 9 and 10 of this Chapter.

16 (e) For purposes of this section, the following definitions shall apply:

17 (1) "Concurrence of the Council of State." – As defined in G.S. 166A-19.3(2d).

18 (2) "Statewide." – Two-thirds or more of the counties in this State."

19 **SECTION 5.** This act is effective when it becomes law and applies to the exercise
20 of power under a state of emergency or declaration of emergency existing on or after that date or
21 any order of abatement issued on or after that date. Any power exercised under a state of
22 emergency or declaration of emergency existing on that date that would require a concurrence of
23 the Council of State under G.S. 166A-19.20 or G.S. 166A-19.30, as amended by this act, shall
24 expire two days after this act becomes law unless a concurrence of the Council of State is sought
25 and received in accordance with G.S. 166A-19.20 or G.S. 166A-19.30, as amended by this act.