

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

H.B. 264  
Mar 10, 2021  
HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH40174-ST-11C

Short Title: Emergency Powers Accountability Act. (Public)

Sponsors: Representatives Kidwell, D. Hall, Bell, and Moffitt (Primary Sponsors).

Referred to:

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 the following new subdivisions  
7 to read:

8 "(2d) Concurrence of the Council of State. – The consensus, within 48 hours of  
9 contact, of a majority of the Council of State prior to the Governor exercising  
10 a power or authority requiring a concurrence of the Council of State. The  
11 Governor shall document the contact and response of each Council of State  
12 member and shall release the concurrence, nonconcurrence, or no response  
13 provided by each member by name and position. Any failure to respond to the  
14 Governor within the 48 hours of contact shall be deemed a concurrence by the  
15 member of the Council of State failing to respond. All documentation of the  
16 contact and response of each member of the Council of State shall be a public  
17 record.

18 (2m) Council of State. – The Lieutenant Governor, Secretary of State, Auditor,  
19 Treasurer, Superintendent of Public Instruction, Attorney General,  
20 Commissioner of Agriculture, Commissioner of Labor, Commissioner of  
21 Insurance, or any interim officer or acting officer appointed in accordance  
22 with Section 7 of Article III of the State Constitution.

23 ...  
24 (20) Statewide emergency area. – Any emergency area applicable to two-thirds or  
25 more of the counties in this State."

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

27 "Part 4. Declarations of State of Emergency.

28 **"§ 166A-19.20. Gubernatorial or legislative declaration of state of emergency.**

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

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

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

35 (1) If not a statewide emergency area, when it is rescinded by the authority that  
36 issued it.



1           (2) If a statewide emergency area, seven calendar days after issuance without a  
 2           concurrence of the Council of State. A declaration of emergency may not be  
 3           extended without the concurrence of the Council of State. Any such extension  
 4           shall not be for more than 30 days without further concurrence of the Council  
 5           of State.

6           (c1) Effect of Failure of Concurrence of the Council of State. – If the concurrence of the  
 7           Council of State fails with the issuance or extension of a declaration of emergency under  
 8           subdivision (c)(2) of this section, the Governor shall not issue the same or any other substantially  
 9           similar declarations of emergency based on the same emergency.

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

14          (e) Extra Session; Emergency Transportation Expenditures. – The General Assembly  
 15          considers a determination by the Secretary of Transportation under G.S. 136-44.2E(f) that  
 16          anticipated emergency expenses will exceed the funds in the Transportation Emergency Reserve  
 17          within the meaning of the term "extraordinary occasions," and therefore the Governor is  
 18          authorized to convene the General Assembly in Extra Session under Section 5(7) of Article III  
 19          of the North Carolina Constitution. The General Assembly strongly urges the Governor to  
 20          convene the General Assembly in Extra Session within 14 days of notice by the Secretary under  
 21          G.S. 136-44.2E(f) for the purpose of appropriating funds from the Savings Reserve to the  
 22          Emergency Reserve to address the transportation needs of the State necessitated by a major  
 23          disaster."

24           **SECTION 3.** G.S. 166A-19.30 is amended by adding a new subsection to read:

25           "(c1) Upon exercise of any of the powers granted in subsection (c) of this section, the  
 26           following shall apply:

27           (1) The Governor shall notify the affected local authorities immediately upon  
 28           exercising any of the powers and any extensions thereof.

29           (2) In exercising any of the powers, notwithstanding subdivision (c)(1) of this  
 30           section, the Governor shall obtain a concurrence of the Council of State.

31           (3) The duration of the exercise of any power by the Governor shall expire in  
 32           accordance with G.S. 166A-19.20."

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

34           "**§ 130A-20. Abatement of an imminent hazard.**

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

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

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

10       (d)     The Secretary of Environmental Quality, in accordance with subsection (c) of this  
11 section, may enforce the provisions of Articles 9 and 10 of this Chapter.

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

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

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

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