

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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SENATE BILL DRS15213-NB-121

Short Title: Emergency Management Reform Act. (Public)

Sponsors: Senator Sanderson (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS CHANGES TO THE EMERGENCY MANAGEMENT ACT.
3 The General Assembly of North Carolina enacts:

4 SECTION 1.(a) G.S. 166A-19.3 reads as rewritten:

5 "§ 166A-19.3. Definitions.

6 The following definitions apply in this Article:

7 ...

8 (6) Emergency. – An occurrence or imminent threat of widespread or severe
9 damage, injury, or loss of life or property ~~resulting from requiring an~~
10 immediate response as a result of any natural or man-made accidental,
11 military, paramilitary, terrorism, weather-related, public health,
12 explosion-related, riot-related cause, or technological failure or accident,
13 including, but not limited to, a cyber incident, an explosion, a transportation
14 accident, a radiological accident, or a chemical or other hazardous material
15 incident. Regardless of how imminent and regardless of how severe it may be,
16 an ongoing occurrence or threat that persists for more than six months does
17 not constitute an emergency and should be addressed by the General
18 Assembly through appropriate legislation.

19 ...

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

22 SECTION 1.(b) G.S. 166A-19.20 reads as rewritten:

23 "§ 166A-19.20. Gubernatorial or legislative declaration of state of emergency.

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

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

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

30 (1) If the emergency area is not statewide, when it is rescinded by the authority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

32 (2) If the emergency area is a statewide emergency area, 30 calendar days after
33 issuance, unless extended by enactment of a general law by the General
34 Assembly.

35"

36 SECTION 1.(c) G.S. 166A-19.22 reads as rewritten:



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1 "§ 166A-19.22. Municipal or county declaration of state of emergency.

2 ...
 3 (c) Expiration of States of Emergency. – Unless an ordinance adopted pursuant to
 4 G.S. 166A-19.31 provides otherwise, a state of emergency declared pursuant to this section shall
 5 expire 30 calendar days after the date of issuance or when it is terminated by the official or
 6 governing body that declared it. The governing body that declared the state of emergency may
 7 petition the General Assembly for an extension of the state of emergency issued pursuant to this
 8 section.

9"

10 SECTION 1.(d) G.S. 166A-19.23 is repealed.

11 SECTION 1.(e) G.S. 166A-19.30 reads as rewritten:

12 "§ 166A-19.30. Additional powers of the Governor during state of emergency.

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

27 (1) To impose by declaration prohibitions and restrictions in the emergency ~~area-~~
 28 area within the jurisdiction of the local authority or authorities for which the
 29 determination is made. These prohibitions and restrictions may, in the
 30 Governor's discretion, as appropriate to deal with the emergency, impose any
 31 of the types of prohibitions and restrictions enumerated in
 32 G.S. 166A-19.31(b), and may amend or rescind any prohibitions and
 33 restrictions imposed by local authorities. Prohibitions and restrictions
 34 imposed pursuant to this subdivision shall take effect in accordance with the
 35 provisions of G.S. 166A-19.31(d) and shall expire upon the earliest
 36 occurrence of either of the following: (i) the prohibition or restriction is
 37 terminated by the Governor or (ii) the state of emergency is terminated.

38 ...
 39 (3) The powers enumerated in this section supplement the emergency powers
 40 granted to the Governor in this Article only to the extent necessary to allow
 41 the Governor to assume powers otherwise delegated to specific local
 42 authorities within the areas of the local authorities' jurisdiction. It does not
 43 grant the Governor any additional power to impose prohibitions and
 44 restrictions through an executive order declaring a state of emergency that
 45 contains a statewide emergency area beyond the powers described in
 46 G.S. 166A-19.30(b), and this section does not remove the requirement for a
 47 concurrence of the Council of State before the Governor may issue statewide
 48 prohibitions and restrictions.

49"

50 SECTION 1.(f) Article 1A of Chapter 166A of the General Statutes is amended by
 51 adding a new Part to read:

"Part 8. Protection of Constitutional Rights.

"§ 166A-19.80. Protection of constitutional rights.

(a) For the purposes of this Article, constitutional rights include all of the following:

- (1) Freedom of movement.
- (2) The right to work and enjoy the fruits of one's labor.
- (3) The right to vote in free and open elections.
- (4) The right of assembly.
- (5) The right to petition.
- (6) Religious liberty.
- (7) Freedom of speech and press.
- (8) Property rights.
- (9) Due process.
- (10) Equal protection.
- (11) The right to have a trial by jury.
- (12) The right to keep and bear arms.
- (13) All rights enumerated in Article I of the North Carolina Constitution.
- (14) All rights protected by the Constitution of the United States against infringement by state government.

(b) All orders, including emergency orders, decrees, regulations, or other mandates, that bind, curtail, or infringe the constitutional rights of private parties must be narrowly tailored to serve a compelling public health or safety purpose. Each order shall be limited in duration, applicability, and scope in order to reduce any infringement of individual liberty.

(c) Any challenge to the validity of or application of an executive order issued by the Governor shall be heard in accordance with G.S. 1-267.1.

(d) Inequality in the applicability or impact of emergency orders on analogous groups, situations, or circumstances may constitute one ground among others for a court of competent jurisdiction to invalidate or enjoin an order or its application to a jurisdiction on the basis the order is not narrowly tailored to serve a compelling public health or safety purpose.

(e) To the extent that this Chapter or other State law grants the power to issue an executive order declaring a state of emergency that contains a statewide emergency area, only the Governor may issue such orders that bind, curtail, or infringe constitutional rights in a nontrivial manner and such orders shall only be issued with the concurrence of the Council of State."

SECTION 1.(g) G.S. 1-267.1 reads as rewritten:

"§ 1-267.1. Three-judge panel for actions challenging plans apportioning or redistricting State legislative or congressional districts; claims challenging the facial validity of an act of the General Assembly; claims challenging the validity of or application of executive orders.

...

(a2) Any challenge to the validity of or application of an executive order issued by the Governor shall be filed in the Superior Court of Wake County and shall be heard and determined by a three-judge panel of the Superior Court of Wake County, organized as provided by subsection (b2) of this section.

...

(b2) For each challenge to the validity of statutes and acts subject to subsection (a1) of this section, and for each challenge to the validity of or application of an executive order issued by the Governor subject to subsection (a2) of this section, the Chief Justice of the Supreme Court shall appoint three resident superior court judges to a three-judge panel of the Superior Court of Wake County to hear the challenge. The Chief Justice shall appoint a presiding judge of each three-judge panel. To ensure that members of each three-judge panel are drawn from different regions of the State, the Chief Justice shall appoint to each three-judge panel one resident superior

1 court judge from the First or Second Judicial Division, one resident superior court judge from
2 the Third or Fourth Judicial Division, and one resident superior court judge from the Fifth Judicial
3 Division. Should any member of a three-judge panel be disqualified or otherwise unable to serve
4 on the three-judge panel or be removed from the panel at the discretion of the Chief Justice, the
5 Chief Justice shall appoint as a replacement another resident superior court judge from the same
6 group of judicial divisions as the resident superior court judge being replaced.

7"

8 **SECTION 2.** This act becomes effective October 1, 2021.