

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 264

Short Title: Emergency Powers Accountability Act. (Public)

Sponsors: Representatives Kidwell, D. Hall, Bell, and Moffitt (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary 1, if favorable, Rules, Calendar, and Operations of the House

March 11, 2021

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:



1 (1) If not a statewide emergency area, when it is rescinded by the authority that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

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

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

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

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

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

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

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

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

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

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

36 "**§ 130A-20. Abatement of an imminent hazard.**

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

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

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

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

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

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

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

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