

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

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HOUSE BILL 264  
Committee Substitute Favorable 3/30/21

Short Title: Emergency Powers Accountability Act.

(Public)

Sponsors:

Referred to:

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, TO  
4 CLARIFY THE ABATEMENT OF STATEWIDE IMMINENT HAZARDS, AND TO  
5 CLARIFY STATEWIDE QUARANTINES.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 166A-19.3 is amended by adding the following new subdivisions  
8 to read:

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

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

24 ...

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

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

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          (c2) Multiple Declarations to Avoid Concurrence of Council of State. – If the Governor  
11          declares more than one state of emergency based on the same emergency that would extend the  
12          application of the emergency area, when combined, to more than two-thirds of the counties in  
13          the State, the Governor shall obtain the concurrence of the Council of State in accordance with  
14          subdivision (c)(2) of this section for each declaration of emergency.

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

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

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

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

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

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

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

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

39           "**§ 130A-20. Abatement of an imminent hazard.**

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

1 property the lien has been filed may defeat the lien by showing that that person was not culpable  
2 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 a statewide imminent hazard. For a period of no more than seven calendar days,  
8 the Secretary may order owners, operators, or other persons in control of that class or category  
9 of property uses to abate the statewide imminent hazard. If the Secretary has notified the  
10 Governor, and the Governor has received the concurrence of the Council of State, such order  
11 may be extended for up to 30 days at a time. The Secretary may, after notice to or reasonable  
12 attempt to notify the owners, operators, or other persons in control of a specific property not  
13 complying with the order of abatement, enter upon the property and take any action necessary to  
14 abate the imminent hazard. If the Secretary's orders under this subsection would extend the  
15 application of the class or categories of properties in areas, when combined, to statewide  
16 application, the Secretary shall notify the Governor, and the Governor shall seek the concurrence  
17 of the Council of State in accordance with this subsection prior to extension of any of the orders.

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

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

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

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

23 **SECTION 5.** G.S. 130A-145 reads as rewritten:

24 "**§ 130A-145. Quarantine and isolation authority.**

25 (a) The State Health Director and a local health director are empowered to exercise  
26 quarantine and isolation ~~authority.~~ authority in accordance with this section. Quarantine and  
27 isolation authority shall be exercised only when and so long as the public health is endangered,  
28 all other reasonable means for correcting the problem have been exhausted, and no less restrictive  
29 alternative exists.

30 (b) No person other than a person authorized by the State Health Director or local health  
31 director shall enter quarantine or isolation premises. Nothing in this subsection shall be construed  
32 to restrict the access of authorized health care, law enforcement, or emergency medical services  
33 personnel to quarantine or isolation premises as necessary in conducting their duties.

34 (c) Before applying quarantine or isolation authority to livestock or poultry for the  
35 purpose of preventing the direct or indirect conveyance of an infectious agent to persons, the  
36 State Health Director or a local health director shall consult with the State Veterinarian in the  
37 Department of Agriculture and Consumer Services.

38 (d) When quarantine or isolation limits the freedom of movement of a person or animal  
39 or of access to a person or animal whose freedom of movement is limited, the period of limited  
40 freedom of movement or access shall not exceed 30 calendar days. Any person substantially  
41 affected by that limitation may institute in superior court in Wake County or in the county in  
42 which the limitation is imposed an action to review that limitation. The official who exercises  
43 the quarantine or isolation authority shall give the persons known by the official to be  
44 substantially affected by the limitation reasonable notice under the circumstances of the right to  
45 institute an action to review the limitation. If a person or a person's representative requests a  
46 hearing, the hearing shall be held within 72 hours of the filing of that request, excluding Saturdays  
47 and Sundays. The person substantially affected by that limitation is entitled to be represented by  
48 counsel of the person's own choice or if the person is indigent, the person shall be represented by  
49 counsel appointed in accordance with Article 36 of Chapter 7A of the General Statutes and the  
50 rules adopted by the Office of Indigent Defense Services. The court shall reduce or terminate the  
51 limitation unless it determines, by the preponderance of the evidence, that the limitation is

1 reasonably necessary to prevent or limit the conveyance of a communicable disease or condition  
2 to others.

3 (e) If the State Health Director or the local health director determines that a  
4 30-calendar-day limitation on freedom of movement or access is not adequate to protect the  
5 public health, the State Health Director or local health director must institute in superior court in  
6 the county in which the limitation is imposed an action to obtain an order extending the period  
7 of limitation of freedom of movement or access. If the person substantially affected by the  
8 limitation has already instituted an action in superior court in Wake County, the State Health  
9 Director must institute the action in superior court in Wake County or as a counterclaim in the  
10 pending case. Except as provided below for persons with tuberculosis, the court shall continue  
11 the limitation for a period not to exceed 30 days if it determines, by the preponderance of the  
12 evidence, that the limitation is reasonably necessary to prevent or limit the conveyance of a  
13 communicable disease or condition to others. The court order shall specify the period of time the  
14 limitation is to be continued and shall provide for automatic termination of the order upon written  
15 determination by the State Health Director or local health director that the quarantine or isolation  
16 is no longer necessary to protect the public health. In addition, where the petitioner can prove by  
17 a preponderance of the evidence that quarantine or isolation was not or is no longer needed for  
18 protection of the public health, the person quarantined or isolated may move the trial court to  
19 reconsider its order extending quarantine or isolation before the time for the order otherwise  
20 expires and may seek immediate or expedited termination of the order. Before the expiration of  
21 an order issued under this section, the State Health Director or local health director may move to  
22 continue the order for additional periods not to exceed 30 days each. If the person whose freedom  
23 of movement has been limited has tuberculosis, the court shall continue the limitation for a period  
24 not to exceed one calendar year if it determines, by a preponderance of the evidence, that the  
25 limitation is reasonably necessary to prevent or limit the conveyance of tuberculosis to others.  
26 The court order shall specify the period of time the limitation is to be continued and shall provide  
27 for automatic termination of the order upon written determination by the State Health Director  
28 or local health director that the quarantine or isolation is no longer necessary to protect the public  
29 health. In addition, where the petitioner can prove by a preponderance of the evidence that  
30 quarantine or isolation was not or is no longer needed for protection of the public health, the  
31 person quarantined or isolated may move the trial court to reconsider its order extending  
32 quarantine or isolation before the time for the order otherwise expires and may seek immediate  
33 or expedited termination of the order. Before the expiration of an order limiting the freedom of  
34 movement of a person with tuberculosis, the State Health Director or local health director may  
35 move to continue the order for additional periods not to exceed one calendar year each.

36 (f) Notwithstanding the first sentence of subsection (d) of this section, for a period of no  
37 more than seven calendar days, the State Health Director shall have the authority to determine  
38 and order that a class or category of persons or animals need to be quarantined or isolated to  
39 protect the public health. If such an order under this section applies statewide, the State Health  
40 Director may move the court for extensions of the order in accordance with subsection (d) of this  
41 section after the State Health Director has notified the Governor, and the Governor has received  
42 the concurrence of the Council of State. If such an order applies less than statewide, the State  
43 Health Director may move the court for extension of the order in accordance with subsection (d)  
44 of this section. If the State Health Director's orders under this subsection would extend the  
45 application of the class or categories in areas, when combined, to statewide application, the State  
46 Health Director shall notify the Governor, and the Governor shall seek the concurrence of the  
47 Council of State in accordance with this subsection prior to moving the court for the extension  
48 of any of the orders.

49 (g) For purposes of this section, the following definitions shall apply:

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

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

1           **SECTION 6.** This act is effective when it becomes law and applies to the exercise  
2 of power under a state of emergency or declaration of emergency existing on or after that date or  
3 any order of abatement issued on or after that date. Any power exercised under a state of  
4 emergency or declaration of emergency existing on that date that would require a concurrence of  
5 the Council of State under G.S. 166A-19.20 or G.S. 166A-19.30, as amended by this act, shall  
6 expire two days after this act becomes law unless a concurrence of the Council of State is sought  
7 and received in accordance with G.S. 166A-19.20 or G.S. 166A-19.30, as amended by this act.