

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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SENATE BILL 312

Short Title: Clarify Emergency Powers. (Public)

Sponsors: Senators Burgin, Galey, and Edwards (Primary Sponsors).

Referred to: Rules and Operations of the Senate

March 17, 2021

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THE EXPIRATION OF A STATE OF EMERGENCY, THE
3 EXERCISE OF CERTAIN POWERS UNDER A STATE OF EMERGENCY, AND THE
4 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 three new subdivisions to read:

7 "(2a) Concurrence of the Council of State. – The consensus, within seven calendar
8 days of contact, of a majority of the Council of State prior to the Governor
9 exercising a power or authority requiring a concurrence of the Council of
10 State. The Governor shall document the contact and response of each Council
11 of State member and shall release the concurrence, nonconcurrence, or no
12 response provided by each member by name and position. If consensus is
13 achieved, the release of information by the Governor shall be prior to, or
14 simultaneously with, exercising the stated authority.

15 (2b) Council of State. – The Lieutenant Governor, Secretary of State, Auditor,
16 Treasurer, Superintendent of Public Instruction, Attorney General,
17 Commissioner of Agriculture, Commissioner of Labor, Commissioner of
18 Insurance, or any interim officer or acting officer appointed in accordance
19 with Section 7 of Article III of the North Carolina Constitution.

20 ...

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

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

24 **"§ 166A-19.20. Gubernatorial or legislative declaration of state of emergency.**

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

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

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

31 (1) If the emergency area is not statewide, when it is rescinded by the authority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

33 (2) If the emergency area is a statewide emergency area, seven calendar days after
34 issuance without a concurrence of the Council of State. With the concurrence
35 of the Council of State, the declaration of emergency may be extended for 30
36 days at a time.



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2 **SECTION 3.** G.S. 166A-19.30 is amended by adding two new subsections to read:

3 "(c1) Upon exercise of the powers granted in subsection (c) of this section, the following

4 shall apply:

5 (1) Immediately upon exercising the powers and any extensions thereof, the

6 Governor shall notify the affected local authorities.

7 (2) In exercising the powers, notwithstanding subdivision (c)(1) of this section,

8 the Governor shall not exceed a duration of seven calendar days without a

9 concurrence of the Council of State. Any extensions of duration beyond seven

10 calendar days shall also require a concurrence of the Council of State, for up

11 to 30 days at a time.

12 (c2) Upon exercise of the powers granted in subsection (c) of this section, the Governor

13 shall disclose and release to the Council of State any and all communications with local

14 authorities, including, but not limited to, emails, letters, notes of oral conversations, and other

15 written documents that formed the basis of the Governor's determination that local control of the

16 emergency is insufficient to assure adequate protection for lives and property."

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

18 "**§ 130A-20. Abatement of an imminent hazard.**

19 (a) ~~If the Secretary or a local health director determines that an imminent hazard exists,~~

20 ~~the Secretary or a local health director may order the owner, lessee, operator, or other person in~~

21 ~~control of the a specific identified property to abate the imminent hazard or may, after notice to~~

22 ~~or reasonable attempt to notify the owner, lessee, operator, or other person in control of the~~

23 ~~property enter upon any the property and take any action necessary to abate the imminent hazard.~~

24 ~~If the Secretary or a local health director abates the imminent hazard, the Department or the local~~

25 ~~health department shall have a lien on the property of the owner, lessee, operator, or other person~~

26 ~~in control of the property where the imminent hazard existed for the cost of the abatement of the~~

27 ~~imminent hazard. The lien may be enforced in accordance with procedures provided in Chapter~~

28 ~~44A of the General Statutes. The lien may be defeated by a showing that an imminent hazard did~~

29 ~~not exist at the time the Secretary or the local health director took the action. The owner, lessee,~~

30 ~~operator, or any other person against whose property the lien has been filed may defeat the lien~~

31 ~~by showing that that person was not culpable in the creation of the imminent hazard.~~

32 (b) ~~The Secretary of Environmental Quality and a local health director shall have the~~

33 ~~same rights enumerated in subsection (a) of this section to enforce the provisions of Articles 9~~

34 ~~and 10 of this Chapter.~~

35 (c) The Secretary shall have the authority to determine that a class or category of property

36 uses presents an imminent hazard. The Secretary may order owners, operators, or other persons

37 in control of that type of class or category of property uses to abate the imminent hazard if the

38 Secretary has notified the Governor and the Governor has the concurrence of the Council of State.

39 No action may be taken to close a category or class of properties without a concurrence of the

40 Council of State. The Secretary may, after notice to or reasonable attempt to notify the owners,

41 operators, or other persons in control of a specific property not complying with the order of

42 abatement, enter upon the property and take any action necessary to abate the imminent hazard.

43 (d) The Secretary of Environmental Quality shall have the same rights enumerated in

44 subsection (c) of this section to enforce the provisions of Articles 9 and 10 of this Chapter.

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

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

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

1 **SECTION 5.** 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 seven calendar days after this act becomes law unless a concurrence of the Council of
7 State is sought and received in accordance with G.S. 166A-19.20 or G.S. 166A-19.30, as
8 amended by this act.