

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019**

**SENATE BILL 105
RATIFIED BILL**

AN ACT TO CLARIFY THE EXPIRATION OF A STATE OF EMERGENCY AND THE
EXERCISE OF CERTAIN POWERS UNDER A STATE OF EMERGENCY AND TO
CLARIFY THE ABATEMENT OF STATEWIDE IMMINENT HAZARDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 166A-19.3 is amended by adding two new subdivisions to read:

"(2d) Concurrence of the Council of State. – The consensus, within 48 hours of contact, of a majority of the Council of State prior to the Governor exercising a power or authority requiring a concurrence of the Council of State. The Governor shall document the contact and response of each Council of State member and shall release the concurrence, nonconcurrence, or no response provided by each member by name and position. If consensus is achieved, the release of information by the Governor shall be prior to, or simultaneously with, exercising the stated authority.

...

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

...

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

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

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

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

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

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

(1) If the emergency area is not statewide, when it is rescinded by the authority that issued it.

(2) If the emergency area is a statewide emergency area, 48 hours after issuance without a concurrence of the Council of State. With the concurrence of the Council of State, the declaration of emergency may be extended for 30 days at a time.

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



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

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

- (1) Immediately upon exercising the powers and any extensions thereof, the Governor shall notify the affected local authorities.
- (2) In exercising the powers, notwithstanding subdivision (c)(1) of this section, the Governor shall not exceed a duration of 48 hours without a concurrence of the Council of State. Any extensions of duration beyond 48 hours shall also require a concurrence of the Council of State, for up to 30 days at a time."

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

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

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

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

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

(d) The Secretary of Environmental Quality shall have the same rights enumerated in subsection (c) of this section to enforce the provisions of Articles 9 and 10 of this Chapter.

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

- (1) "Concurrence of the Council of State." – As defined in G.S. 166A-19.3(2d).
- (2) "Statewide." – Two-thirds or more of the counties in this State."

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

In the General Assembly read three times and ratified this the 26th day of June, 2020.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

Roy Cooper
Governor

Approved _____m. this _____ day of _____, 2020