



# SENATE BILL 105: Clarify Emergency Powers.

2019-2020 General Assembly

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<b>Committee:</b>		<b>Date:</b>	October 27, 2020
<b>Introduced by:</b>	Sens. J. Jackson, J. Davis, Britt	<b>Prepared by:</b>	Erika Churchill Staff Attorney
<b>Analysis of:</b>	Ratified		

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**OVERVIEW:** *Senate Bill 105 would have clarified that the Governor must seek a concurrence of the Council of State prior to exercising certain authorities under the Emergency Management Act.*

*Senate Bill 105 was ratified by the General Assembly on June 20, 2020, and was vetoed by the Governor on July 2, 2020.*

**CURRENT LAW:** Under Article 1A of Chapter 166A of the General Statutes, known as the Emergency Management Act, the Governor, the General Assembly, counties, and cities have concurrent authority to declare a 'state of emergency.' An emergency is defined as "an occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made accidental, military, paramilitary, terrorism, weather-related, public health, explosion-related, riot-related cause, or technological failure or accident, including, but not limited to, a cyber incident, an explosion, a transportation accident, a radiological accident, or a chemical or other hazardous material incident." G.S. 166A-19.3.

Upon a state of emergency being declared by the Governor or the General Assembly, the Governor is granted certain powers to issue executive orders with prohibitions and restrictions applicable in the emergency area until the emergency terminates, or the prohibition or restriction is terminated. Such restrictions and prohibitions include:

- To utilize all available State resources as reasonably necessary to cope with the emergency.
- To take such action and give such directions to State and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the orders, rules, and regulations made under the Emergency Management Act.
- To take steps to assure that measures are taken when necessary to qualify for temporary housing assistance from the federal government when that assistance is required to protect the public health, welfare, and safety.
- To impose prohibitions and restrictions in the emergency area that a county or city could, under the Emergency Management Act, impose, together with amending or rescinding any prohibitions and restrictions imposed by those local authorities, if during a gubernatorially or legislatively declared state of emergency, the Governor determines that local control of the emergency is insufficient to assure adequate protection for lives and property because any of the following apply:
  - Needed control cannot be imposed locally because local authorities responsible for preservation of the public peace have not enacted appropriate ordinances or issued appropriate declarations as authorized by G.S. 166A-19.31.

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- Local authorities have not taken implementing steps under such ordinances or declarations, if enacted or declared, for effectual control of the emergency that has arisen.
- The area in which the emergency exists has spread across local jurisdictional boundaries, and the legal control measures of the jurisdictions are conflicting or uncoordinated to the extent that efforts to protect life and property are, or unquestionably will be, severely hampered.
- The scale of the emergency is so great that it exceeds the capability of local authorities to cope with it.

Also, during a gubernatorially or legislatively declared state of emergency, *with the concurrence of the Council of State*, the Governor has powers such as the following:

- To direct and compel the evacuation of all or part of the population from any stricken or threatened area within the State.
- To prescribe routes, modes of transportation, and destinations in connection with evacuation.
- To control ingress and egress of an emergency area, the movement of persons within the area, and the occupancy of premises therein.
- To establish a system of economic controls over all resources, materials, and services to include food, clothing, shelter, fuel, rents, and wages, including the administration and enforcement of any rationing, price freezing, or similar federal order or regulation.
- To regulate and control the flow of vehicular and pedestrian traffic, the congregation of persons in public places or buildings, lights and noises of all kinds, and the maintenance, extension, and operation of public utility and transportation services and facilities.
- To waive a provision of any regulation or ordinance of a State agency or a political subdivision which restricts the immediate relief of human suffering.
- To procure, by purchase, condemnation, seizure, or by other means to construct, lease, transport, store, maintain, renovate, or distribute materials and facilities for emergency management without regard to the limitation of any existing law.

The Emergency Management Act does not clarify what is meant by "concurrence of the Council of State."

Under Chapter 130A of the General Statutes, the Secretary of Health and Human Services, and all county health directors, have the authority to declare a property an 'imminent hazard' and to issue an order of abatement of the imminent hazard. Similar authority exists for the Secretary of Environmental Quality and local health directors with respect to solid waste and drinking water regulated under Articles 9 and 10 of Chapter 130A, respectively.

**BILL ANALYSIS:** The bill would have done the following:

- Defined 'concurrence of the Council of State' for purposes of the Emergency Management Act and declarations of imminent hazards. The term would mean 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 must have documented the contact and response of each Council of State member and released the concurrence, nonconcurrence, or no response provided by each member by name and position. If consensus was achieved, the release of information by the Governor was to be prior to, or simultaneously with, exercising the stated authority.

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- Provided that a gubernatorial or legislatively declared statewide state of emergency expired in 48 hours unless a majority concurrence of the Council of State was sought and granted. For this purpose, statewide would mean an emergency area of 67 or more counties.
- Required the Governor to seek the concurrence of the Council of State, during a gubernatorially or legislatively declared state of emergency, prior to imposing prohibitions or restrictions appropriate to deal with the emergency in lieu of a county or city exercising its own authority under the Emergency Management Act.
- Required the Secretary of Health and Human Services and the Secretary of Environmental Quality to inform the Governor, and the Governor to seek the concurrence of the Council of State, prior to determining that a class or category of property uses present an imminent hazard and issuing an order of abatement to close that class or category of properties.

***EFFECTIVE DATE:*** Senate Bill 105 was ratified by the General Assembly on June 20, 2020, and was vetoed by the Governor on July 2, 2020.