



SENATE BILL 346: Emergency Management Act Revisions.

2021-2022 General Assembly

Committee:	Senate Rules and Operations of the Senate	Date:	April 22, 2021
Introduced by:	Sens. Rabon, Burgin, Ford	Prepared by:	Kristen L. Harris Staff Attorney
Analysis of:	Second Edition		

OVERVIEW: *Senate Bill 346 would define terms used in the Emergency Management Act (the Act), require the Governor to have the agreement of the majority of the membership of the Council of State in order to exercise certain powers, and set expiration dates for executive orders issued under the Act.*

CURRENT LAW: Under Article 1A of Chapter 166A of the General Statutes, known as the Emergency Management Act, the Governor and the General Assembly 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-3(6)

Upon a state of emergency being declared by either the Governor or the General Assembly, the Governor is granted certain powers to exercise. To exercise some, but not all, of these powers, the Governor must have the concurrence of the Council of State. Currently, under G.S. 166A-19.30(b), the Governor must have the concurrence of the Council of State to:

- Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the State.
- Establish a system of economic controls over all resources, materials, and services.
- Regulate and control the flow of vehicular and pedestrian traffic and the congregation of persons in public places or buildings.
- Waive a provision of any regulation or ordinance of a State agency or political subdivision which restricts the immediate relief of human suffering.
- Appoint or remove an executive head of any State agency or institution which is regularly selected by a State board or commission.
- Perform or exercise other functions, powers, and duties as are necessary to promote and secure the safety and protection of civilians.
- 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.

"Concurrence of the Council of State" is not defined in Article 1A.

BILL ANALYSIS:

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Section 1(a) would add definitions to the North Carolina Emergency Management Act.

- "Concurrence of the Council of State" would mean:
 - The consensus, within 10 calendar days of the issuance of an executive order, of a majority of the membership of the Council of State prior to the Governor exercising a power or authority requiring a concurrence of the Council of State.
 - The Governor would be required to document the contact and response of each Council of State member and release the response, or lack of response, by each member on the same website in which the executive order is published.
 - If consensus is achieved, the release of the information by the Governor would be prior to, or simultaneously, with the exercise of the stated authority.
- "Council of State" would be: 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 appointed interim officer or acting officer.
- "Executive Order" would mean: a signed, written, and published directive issued by the Governor that carries the force of law.

Section 1(b) would require the Governor to have the concurrence of the Council of State to:

- Utilize available State resources as reasonably necessary to cope with an emergency.
- Take action and give direction to State and local law enforcement officers and agencies for the purpose of securing compliance with orders and rules issued under the Act.
- Take steps to assure measures are taken to qualify for temporary housing assistance from the federal government.
- Relieve any public official having administrative responsibilities under the Act for willful failure to obey an order, rule, or regulation.
- Waive requirements for an environmental document or permit for repair, protection, safety enhancement, or replacement of a component of the State highway system along the coast that poses a substantial risk to public health, safety, and welfare. G.S. 166A-19.30(a)

After determining, based on a specific finding under G.S. 166A-19.30(c), that local control of the emergency is insufficient to assure adequate protection for lives and property, the Governor would be required to have the concurrence of the Council of State to:

- Impose prohibitions and restrictions on local emergency areas or amend and rescind prohibitions and restrictions imposed by local authorities.
- Give to all participating State and local agencies and officers directions as may be necessary to assure coordination among them.

Section 1(b) would determine when an executive order issued by the Governor during a state of emergency expired.

- An executive order would expire 10 days after issuance unless the Council of State concurs with it.

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- If the Council of State concurs with an executive order, the order would expire 45 days from the date of issuance, unless the General Assembly extends the order by the enactment of a general law.
- If the Council of State fails to concur and the General Assembly does not extend the order, the Governor is prohibited from issuing a substantially similar order.

EFFECTIVE DATE: This act is effective when it becomes law.