

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021**

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**HOUSE BILL 264
Committee Substitute Favorable 3/30/21
Senate Judiciary Committee Substitute Adopted 9/1/21**

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 STATEWIDE STATE OF EMERGENCY
3 AND THE EXERCISE OF CERTAIN POWERS UNDER A STATEWIDE STATE OF
4 EMERGENCY, TO CLARIFY THE ABATEMENT OF STATEWIDE IMMINENT
5 HAZARDS, AND TO 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 on the same website in which
15 the executive order is published. If consensus is achieved, the release of the
16 information by the Governor shall be prior to, or simultaneously with,
17 exercising the stated authority. Any failure to respond to the Governor within
18 the 48 hours of contact shall be deemed a concurrence by the member of the
19 Council of State failing to respond. All documentation of the contact and
20 response of each member of the Council of State shall be a public record.

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

26 ...

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

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

30 **"§ 166A-19.20. Gubernatorial or legislative declaration of state of emergency.**

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

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



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

3 (1) If not a statewide emergency area, when it is rescinded by the authority that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

5 (2) If a statewide emergency area, seven calendar days after issuance without a
6 concurrence of the Council of State. A declaration of emergency may not be
7 continued without the concurrence of the Council of State. If the Council of
8 State concurs with the declaration of emergency, the declaration of emergency
9 shall expire 45 calendar days from the date of issuance, unless the General
10 Assembly extends the declaration of emergency by enactment of a general
11 law. If the General Assembly does not extend the declaration of emergency
12 by enactment in accordance with this subdivision, the Governor shall not issue
13 a substantially similar declaration of emergency arising from the same events
14 that formed the basis to issue the initial declaration of emergency that was not
15 extended.

16 (c1) Effect of Failure of Concurrence of the Council of State. – If the concurrence of the
17 Council of State fails with the issuance or continuation of a declaration of emergency under
18 subdivision (c)(2) of this section, the Governor shall not issue the same or any other substantially
19 similar declarations of emergency based on the same emergency.

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

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

29 (e) Extra Session; Emergency Transportation Expenditures. – The General Assembly
30 considers a determination by the Secretary of Transportation under G.S. 136-44.2E(f) that
31 anticipated emergency expenses will exceed the funds in the Transportation Emergency Reserve
32 within the meaning of the term "extraordinary occasions," and therefore the Governor is
33 authorized to convene the General Assembly in Extra Session under Section 5(7) of Article III
34 of the North Carolina Constitution. The General Assembly strongly urges the Governor to
35 convene the General Assembly in Extra Session within 14 days of notice by the Secretary under
36 G.S. 136-44.2E(f) for the purpose of appropriating funds from the Savings Reserve to the
37 Emergency Reserve to address the transportation needs of the State necessitated by a major
38 disaster."

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

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

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

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

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

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

49 "**§ 130A-20. Abatement of an imminent hazard.**

50 (a) ~~If the Secretary or~~ a local health director determines that an imminent hazard exists,
51 the ~~Secretary or~~ a local health director may order the owner, lessee, operator, or other person in

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

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

16 (c) The Secretary shall have the authority to determine that a class or category of property
17 uses presents a statewide imminent hazard. For a period of no more than seven calendar days,
18 the Secretary may order owners, operators, or other persons in control of that class or category
19 of property uses to abate the statewide imminent hazard. If the Secretary has notified the
20 Governor, and the Governor has received the concurrence of the Council of State, such order
21 may be extended for up to 30 days at a time. The Secretary may, after notice to or reasonable
22 attempt to notify the owners, operators, or other persons in control of a specific property not
23 complying with the order of abatement, enter upon the property and take any action necessary to
24 abate the imminent hazard. If the Secretary's orders under this subsection would extend the
25 application of the class or categories of properties in areas, when combined, to statewide
26 application, the Secretary shall notify the Governor, and the Governor shall seek the concurrence
27 of the Council of State in accordance with this subsection prior to extension of any of the orders.

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

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

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

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

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

34 "**§ 130A-145. Quarantine and isolation authority.**

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

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

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

48 (d) When quarantine or isolation limits the freedom of movement of a person or animal
49 or of access to a person or animal whose freedom of movement is limited, the period of limited
50 freedom of movement or access shall not exceed 30 calendar days. Any person substantially
51 affected by that limitation may institute in superior court in Wake County or in the county in

1 which the limitation is imposed an action to review that limitation. The official who exercises
2 the quarantine or isolation authority shall give the persons known by the official to be
3 substantially affected by the limitation reasonable notice under the circumstances of the right to
4 institute an action to review the limitation. If a person or a person's representative requests a
5 hearing, the hearing shall be held within 72 hours of the filing of that request, excluding Saturdays
6 and Sundays. The person substantially affected by that limitation is entitled to be represented by
7 counsel of the person's own choice or if the person is indigent, the person shall be represented by
8 counsel appointed in accordance with Article 36 of Chapter 7A of the General Statutes and the
9 rules adopted by the Office of Indigent Defense Services. The court shall reduce or terminate the
10 limitation unless it determines, by the preponderance of the evidence, that the limitation is
11 reasonably necessary to prevent or limit the conveyance of a communicable disease or condition
12 to others.

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

46 (f) Notwithstanding the first sentence of subsection (d) of this section, for a period of no
47 more than seven calendar days, the State Health Director shall have the authority to determine
48 and order that a class or category of persons or animals need to be quarantined or isolated to
49 protect the public health. If such an order under this section applies statewide, the State Health
50 Director may move the court for extensions of the order in accordance with subsection (e) of this
51 section after the State Health Director has notified the Governor, and the Governor has received

1 the concurrence of the Council of State. If such an order applies less than statewide, the State
2 Health Director may move the court for extension of the order in accordance with subsection (e)
3 of this section. If the State Health Director's orders under this subsection would extend the
4 application of the class or categories in areas, when combined, to statewide application, the State
5 Health Director shall notify the Governor, and the Governor shall seek the concurrence of the
6 Council of State in accordance with this subsection prior to moving the court for the extension
7 of any of the orders.

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

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

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

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