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Emergency Management

Emergency management issues received considerable attention at the beginning of the 2005 Session when the General Assembly enacted the Hurricane Recovery Act of 2005 (S.L. 2005-1) funding \$247.5 million in disaster relief and establishing programs to assist communities in western North Carolina in recovering from Hurricanes Frances and Ivan in 2004. Little attention was given to emergency management issues for the remainder of the 2005 Session. When Hurricanes Katrina and Rita struck the Gulf Coast region in late August and early September 2005, legislative leaders became concerned about North Carolina's level of preparedness and ability to respond to a catastrophic disaster.

In response to these concerns, the President Pro Tempore of the Senate and the Speaker of the House of Representatives established the Joint Study Committee on Emergency Preparedness and Disaster Management Recovery. The forty-member committee divided into four subcommittees (Disaster Preparedness Issues, Public Health and Bioterrorism Issues, Energy Security Issues, and Building Code Issues) reflecting the main priorities of the committee's legislative charge. The committee issued an interim report with recommendations for legislative action to the 2006 session and is authorized to make a final report to the 2007 session. The majority of the committee's recommendations were either enacted as substantive legislation or incorporated as funding items in the 2006 adjustments to the 2005–06 state budget. In addition, several bills not included as part of the committee's recommendations were considered and enacted, reflecting the General Assembly's increased attention to disaster preparedness and response issues.

Liability Protection for State Medical Assistance Teams

G.S. 166A-14 provides immunity from liability (except in cases of willful misconduct, gross negligence, or bad faith) for emergency management workers when engaged in emergency management activities under the direction of either state or local governments. S.L. 2006-81 (H 2195) amends this statute to extend this liability protection to health care workers who are performing health care services in an emergency incident as a member of a hospital-based or county-based State Medical Assistance Team. State Medical Assistance Teams are designated as such by the Office of Emergency Medical Services (which is located within the North Carolina Department of Health and Human Services). This liability protection extends to State Medical Assistance Team members working anywhere within the state, including outside of the team members' normal jurisdiction. This legislation came as a recommendation from the Joint Study Committee on Emergency Preparedness and Disaster Management Recovery.

Embargo Authority Enhancements/Protection of Food Supply

In response to potential threats of contamination to food or drink supplies in North Carolina, the General Assembly enacted S.L. 2006-80 (H 2200) expanding the authority of the secretary of Environment and Natural Resources and local health directors to embargo food or drink suspected of being contaminated. Previously, the Department of Agriculture and Consumer Services was vested with the primary authority to embargo food or drink suspected of contamination, and this authority was available to the secretary of Environment and Natural Resources and local health directors only when delegated to them by the commissioner of agriculture. S.L. 2006-80 amends G.S. 130A-21 by repealing this delegation requirement and directly authorizing the secretary of Environment and Natural Resources and local health directors to embargo food or drink suspected of being contaminated under G.S. 106-125. If the secretary or a local health director exercises embargo authority, he or she must also perform all duties and procedures required under G.S. 106-125. This expanded authority applies to all establishments subject to regulation by the Department of Environment and Natural Resources or that are under a communicable diseases investigation pursuant to G.S. 130A-144. Primary embargo authority still rests with the Department of Agriculture and Consumer Services in establishments under inspection or regulation by that department. If food or drink is embargoed by any authorized official, it is unlawful to remove or dispose of the food or drink without the permission of the embargoing authority. This embargo authority, while directly authorized for local health directors, is not extended to individual environmental health specialists in local health departments. S.L. 2006-80 also directs the Departments of Agriculture and Consumer Services, Environment and Natural Resources, and Health and Human Services to jointly develop a comprehensive plan to protect the food supply in North Carolina (including plants, crops, and livestock) from intentional contamination. This legislation came as a recommendation from the Joint Study Committee on Emergency Preparedness and Disaster Management Recovery.

Extreme Pricing Practices

Allegations of price gouging often follow soon after a major disaster. S.L. 2006-245 (H 1231) adds additional measures to existing consumer protection statutes designed to prevent price gouging following disasters. G.S. 75-38 prohibits excessive pricing practices during a state of emergency by a seller of goods or services that are used as a direct result of an emergency or used to preserve, protect, or sustain life, health, safety, or economic well-being. S.L. 2006-245 amends this statute to expand this prohibition to apply not only to the seller, but to all parties in the chain of distribution of the goods or services (such as the manufacturer, wholesaler, or distributor). The legislation further clarifies that the prohibition against *excessive pricing practices* (defined as being prices charged that are “unreasonably excessive under the circumstances”) is triggered by a declaration of a state of emergency by state or local officials under G.S. Chapter 166A, or the finding and declaration of the Governor of the existence of “abnormal market disruption.” The new *abnormal market disruption* triggering event is defined as a significant imminent or actual disruption to the production, distribution, or sale of goods and services in this state resulting from a disaster in which a disaster declaration at the state or federal level has been made, including federal declarations in other states (an example would be the threat of disruption to fuel supplies in North Carolina following Hurricane Katrina and the resulting increase in gas prices). If the Governor declares that an abnormal market disruption exists, excessive pricing practices prohibitions are triggered and remain in effect for forty-five days unless extended by the Governor.¹

¹ Before House Bill 1231 became law, it was amended by S.L. 2006-259 (S 1523) (The 2006 Technical Corrections Act) to make technical adjustments to the definition of a *triggering event* in G.S. 75-38(d).

Disaster Insurance Claim Voluntary Mediation Program

To help disaster victims resolve insurance claim disputes, the General Assembly created a voluntary alternative dispute resolution procedure. S.L. 2006-145 (S 277) creates a new Part 2 of Article 44 of G.S. Chapter 58 titled Mediation of Emergency or Disaster-Related Property Insurance Claims. As the title suggests, this part establishes a nonadversarial voluntary alternative dispute resolution procedure for handling residential property insurance claims resulting from a state or federally declared disaster. The program is limited to residential property insurance claims disputes and is not applicable to claims involving commercial, motor vehicle, or property liability insurance. Disputes eligible under this program include those over either the cause or the amount of the loss. Unless the parties agree otherwise, the amount in dispute must be at least \$1,500. Insurers are required to notify a policyholder in writing of the right to mediate eligible disputed claims (G.S. 58-44-80). This notice must be mailed to the policyholder within five days after notice of the underlying dispute has been given. Additional requirements relating to this notice (such as the style of the notice, certain required language, and instructions on how to request mediation) are also set out in G.S. 58-44-80. The policyholder must request mediation within sixty days of denial of a claim (G.S. 58-44-85). If such a request is made, the mediation process begins and is conducted under the procedural requirements set out in G.S. 58-44-85 through G.S. 58-44-115 (including the selection and qualifications of the mediator, scheduling and conduct of the mediation conference, the opportunity for rescission of the settlement agreement, and review by the Commissioner of Insurance). The insurer is responsible for payment of the mediator's fees, and the parties each bear their respective costs (G.S. 58-44-90).

The General Assembly also addressed another disaster-related insurance issue in S.L. 2006-145 by enacting a new section in Article 44 to require insurers to clearly state on all property insurance policies any exclusions of coverage for flood, earthquake, mudslide, mudflow, or landslide perils. The new G.S. 58-44-60 requires that this exclusion warning be printed in 16-point font on a separate page immediately before the declarations page of the policy and further specifies the exact language that must be contained in the warning.

The final section of the bill addressing disaster-related insurance issues adds two new sections to Article 2 of G.S. Chapter 58 to automatically stay proof of loss deadlines set forth in a real property insurance policy for forty-five days during a state or federal disaster declaration. The new G.S. 58-2-46 also requires that certain listed insurers give their customers who reside within the area covered by the disaster declaration the option of deferring for thirty days premium or debt payments due during the declaration period. This section also requires that losses for claims filed under separate windstorm policies (excluding those policies written by the North Carolina Insurance Underwriting Association, or "Beach Plan") be adjusted by the insurer that issued the property insurance policy as opposed to the insurer that issued the windstorm policy. Finally, in the event that the daily operations of the Department of Insurance (DOI) are disrupted and substantially affected, new G.S. 58-2-47 authorizes the Commissioner of Insurance to order the stay for up to thirty days of any deadlines and deemer provisions imposed on the DOI or the commissioner or persons subject to the commissioner's jurisdiction.

2006 Budget Actions Affecting Emergency Management and Disaster Preparedness

The General Assembly responded favorably to a number of the funding items recommended by the Joint Study Committee on Emergency Preparedness and Disaster Management Recovery. Included in the 2006 adjustments to the 2005–06 biennial budget (S.L. 2006-66, S 1741) were the following appropriations and capital projects:

Appropriations:

- \$40,000 appropriated to the Department of Administration to conduct an update of the North Carolina Energy Emergency Plan (the requirements for this update are found in Section 18 of S.L. 2006-221)
- \$5.9 million appropriated to the Department of Health and Human Services to acquire expanded influenza vaccines and antiviral medications for pandemic flu prioritized for first responders and front-line healthcare workers
- \$200,000 appropriated to the Department of Health and Human Services to support continued activities under the Division of Medical Services of the Regional Advisory Committees
- \$2.1 million appropriated to the Department of Agriculture and Consumer Services to establish 15 new positions within the department to support emergency response and food safety programs and purchase lab equipment
- \$1.2 million appropriated to the Department of Crime Control and Public Safety for additional planning, response, and recovery staff within the Division of Emergency Management and additional training and equipment for the state's Urban Search and Rescue/Swift Water Rescue teams and HAZMAT regional response teams
- \$20 million appropriated to a new State Emergency Response Fund

Capital Projects:

- \$101 million (funded by borrowing) to construct a new 205,000 square foot State Public Health Lab and Office of Chief Medical Examiner to be located in Raleigh
- \$8.5 million appropriated to the Department of Crime Control and Public Safety for the construction of a new state Emergency Operations Center to be co-located in Raleigh with the new federally funded National Guard Readiness Center
- \$250,000 to the Department of Agriculture and Consumer Services to upgrade the biosecurity level of the Rollins Lab

In addition to significant capital investments in disaster preparedness facilities (new State Health Lab, new State Emergency Operations Center, and upgrades to Rollins Lab), the creation of the State Emergency Response Fund represents a major new commitment on the part of the General Assembly and the Governor to disaster response and recovery (the fund was recommended by Governor Easley). Previously, state funds needed for disaster response and recovery efforts (such as National Guard mobilization, N.C. Department of Transportation roadway clearing, Division of Emergency Management assets deployment, and assuming local governments' FEMA cost-sharing requirements) were taken from within existing state budget resources. Unless the General Assembly specifically appropriated additional funds from the state's Savings Reserve Account (Rainy Day Fund) as was done in response to Hurricane Floyd in 1999 and Hurricanes Ivan and Frances in 2005, costs incurred in state disaster response and recovery operations were absorbed within existing agency resources. The new G.S. 166A-6.02 [S.L. 2006-66, Sec. 6.5(b)] creates a new reserve account in the state General Fund called the State Emergency Response Account from which funds appropriated by the General Assembly to the account can be expended by the Governor to cover start-up costs of state emergency response team and first responder operations in Type I, II, or III declared disasters.

One further budget action taken in response to disaster recovery concerns is included in S.L. 2006-221 (S 198), commonly referred to as the Budget Technical Corrections Act. Section 1 of this act amends the Hurricane Relief Act of 2005 (S.L. 2005-1) to expand opportunities for persons in need of Crisis Housing Assistance Funds (CHAF) to apply for this assistance by clarifying that persons otherwise eligible for CHAF assistance could apply even if they failed to apply for federal assistance through FEMA (previously, only persons who failed to qualify solely on the basis of failing to apply for Small Business Assistance Administration Real Property Disaster loans could apply for state CHAF assistance). As a result of this change, up to 110 persons in western North Carolina affected by Hurricanes Ivan and Frances were given the opportunity to seek state crisis housing assistance where they were previously ineligible for both state and federal assistance. This extension expired on November 1, 2006.

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