

North Carolina Emergency Management Act and the COVID-19 Response.

Public Law for the Public's Lawyer CLE
By Will Polk, Deputy General Counsel, Office of General
Counsel, North Carolina Department of Public Safety
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Chapter 166A

- 19.3(6) Emergency. - 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, weather-related, or riot-related cause.
- 19.3(7) Emergency area. - The geographical area covered by a state of emergency.
- 19.3(3) Disaster declaration. - A gubernatorial declaration that the impact or anticipated impact of an emergency constitutes a disaster of one of the types enumerated in G.S. 166A-19.21(b).

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Chapter 166A

§ 166A-19.10. Powers of the Governor.

- (a) State Emergency Management Program. - The State Emergency Management Program includes all aspects of preparations for, response to, recovery from, and mitigation against war or peacetime emergencies.
- (b) Powers of the Governor. - The Governor is authorized and empowered to do the following:
 - (1) To exercise general direction and control of the State Emergency Management Program and to be responsible for carrying out the provisions of this Article, other than those provisions that confer powers and duties exclusively on local governments.
 - (2) To make, amend, or rescind the necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor herein, with due consideration of the policies of the federal government.
 - (3) To delegate any authority vested in the Governor under this Article and to provide for the subdelegation of any such authority.
 - (4) To cooperate and coordinate with the President and the heads of the departments and agencies of the federal government, and with other appropriate federal officers and agencies, and with the officers and agencies of other states and local units of government in matters pertaining to the emergency management of the State and nation.

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Chapter 166A

§ 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 when it is rescinded by the authority that issued it.
- (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.

§ 166A-19.22. Municipal or county declaration of state of emergency.

- (a) Declaration. - A state of emergency may be declared by the governing body of a municipality or county, if either of these finds that an emergency exists. Authority to declare a state of emergency under this section may also be delegated by ordinance to the mayor of a municipality or to the chair of the board of county commissioners of a county.

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Chapter 166A

Part 5. Additional Powers During States of Emergency.

§ 166A-19.30. Additional powers of the Governor during state of emergency.

- (a) In addition to any other powers conferred upon the Governor by law, during a gubernatorially or legislatively declared state of emergency, the Governor shall have the following powers:
 - (1) To utilize all available State resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of State agencies or units thereof for the purpose of performing or facilitating emergency services.
 - (2) 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 provisions of this Article and with the orders, rules, and regulations made pursuant thereto.

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Part 5. Additional Powers During States of Emergency.

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- (b) During a gubernatorially or legislatively declared state of emergency, with the concurrence of the Council of State, the Governor has the following powers:
 - (1) 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; and to control ingress and egress of an emergency area, the movement of persons within the area, and the occupancy of premises therein.
 - (2) 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.
 - (3) 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.
 - (4) 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.
 - (5) To perform and exercise such other functions, powers, and duties as are necessary to promote and secure the safety and protection of the civilian population.

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(c) In addition to any other powers conferred upon the Governor by law, during a gubernatorially or legislatively declared state of emergency, if the Governor determines that local control of the emergency is insufficient to assure adequate protection for lives and property because (i) 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; (ii) 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; (iii) 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; or (iv) the scale of the emergency is so great that it exceeds the capability of local authorities to cope with it, the Governor has the following powers:

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Chapter 166A

Part 5. Additional Powers During States of Emergency.

§ 166A-19.30. Additional powers of the Governor during state of emergency.

The Governor has the following powers under 19.30 cross walked over to 19.31(b):

166A-19.30(c)(1) To impose by declaration prohibitions and restrictions in the emergency area. These prohibitions and restrictions may, in the Governor's discretion, as appropriate to deal with the emergency, impose any of the types of prohibitions and restrictions enumerated in G.S. 166A-19.31(b), and may amend or rescind any prohibitions and restrictions imposed by local authorities. Prohibitions and restrictions imposed pursuant to this subdivision shall take effect in accordance with the provisions of G.S. 166A-19.31(d) and shall expire upon the earliest occurrence of either of the following: (i) the prohibition or restriction is terminated by the Governor or (ii) the state of emergency is terminated.

166A-19.30(c)(2) Give to all participating State and local agencies and officers such directions as may be necessary to assure coordination among them. These directions may include the designation of the officer or agency responsible for directing and controlling the participation of all public agencies and officers in the emergency. The Governor may make this designation in any manner which, in the Governor's discretion, seems most likely to be effective. Any law enforcement officer participating in the control of a state of emergency in which the Governor is exercising control under this section shall have the same power and authority as a sheriff throughout the territory to which the law enforcement officer is assigned.

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§ 166A-19.31. Power of municipalities and counties to enact ordinances to deal with states of emergency.

(c) When Ordinances Take Effect. - Notwithstanding any other provision of law, whether general or special, relating to the promulgation or publication of ordinances by any municipality or county, upon the declaration of a state of emergency by the mayor or chair of the board of county commissioners within the municipality or the county, any ordinance enacted under the authority of this section shall take effect immediately unless the ordinance sets a later time. If the effect of this section is to cause an ordinance to go into effect sooner than it otherwise could under the law applicable to the municipality or county, the mayor or chair of the board of county commissioners, as the case may be, shall take steps to cause reports of the substance of the ordinance to be disseminated in a fashion that its substance will likely be communicated to the public in general, or to those who may be particularly affected by the ordinance if it does not affect the public generally. As soon as practicable thereafter, appropriate distribution or publication of the full text of any such ordinance shall be made.

(d) When Prohibitions and Restrictions Take Effect. - All prohibitions and restrictions imposed by declaration pursuant to ordinances adopted under this section shall take effect in the emergency area immediately upon publication of the declaration unless the declaration sets a later time. For the purpose of requiring compliance, publication may consist of reports of the substance of the prohibitions and restrictions in the mass communications media serving the emergency area or other effective methods of disseminating the necessary information quickly. As soon as practicable, however, appropriate distribution of the full text of any declaration shall be made. This subsection shall not be governed by the provision of G.S. 1-597.

(e) Expiration of Prohibitions and Restrictions. - Prohibitions and restrictions imposed pursuant to this section shall expire upon the earliest occurrence of any of the following:

- (1) The prohibition or restriction is terminated by the official or entity that imposed the prohibition or restriction.
- (2) The state of emergency terminates.

(f) Intent to Supplement Other Authority. - This section is intended to supplement and confirm the powers conferred by G.S. 153A-121(a), G.S. 150A-174(a), and all other general and local laws authorizing municipalities and counties to enact ordinances for the protection of the public health and safety in times of riot or other grave civil disturbance or emergency.

(g) Previously Enacted Ordinances Remain in Effect. - Any ordinance of a type authorized by this section promulgated prior to October 1, 2012, if otherwise valid, continue in full force and effect without reenactment.

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§ 166A-19.31. Power of municipalities and counties to enact ordinances to deal with states of emergency.

(a) Authority to Enact Prohibitions and Restrictions. - The governing body of any municipality or county may enact ordinances designed to permit the imposition of prohibitions and restrictions within the emergency area during a state of emergency declared pursuant to G.S. 166A-19.22. Authority to impose by declaration prohibitions and restrictions under this section, and to impose these prohibitions and restrictions at a particular time as appropriate, may be delegated by ordinance to the mayor of a municipality or to the chair of the board of county commissioners of a county.

(b) Type of Prohibitions and Restrictions Authorized. - The ordinances authorized by this section may permit prohibitions and restrictions:

- (1) Of movements of people in public places, including any of the following:
 - a. Imposing a curfew.
 - b. Directing and compelling the voluntary or mandatory evacuation of all or part of the population from any stricken or threatened area within the governing body's jurisdiction.
 - c. Prescribing routes, modes of transportation, and destinations in connection with evacuation.
 - d. Controlling ingress and egress of an emergency area, and the movement of persons within that area.
 - e. Providing for the closure, within the emergency area, of streets, roads, highways, bridges, public vehicular areas, or other areas ordinarily used for vehicular travel, except to the movement of emergency responders and other persons necessary for recovery from the emergency. In addition to any other notice or dissemination of information, notification of any closure of a road or public vehicular area under the authority of this sub-subdivision shall be given to the Department of Transportation as soon as practicable. The ordinance may designate the sheriff to exercise the authority granted by this sub-subdivision. G.S. 166A-19.70(c) and (d) shall apply to this sub-subdivision.
- (2) Of the operation of offices, business establishments, and other places to or from which people may travel or at which they may congregate.
- (3) Upon the possession, transportation, sale, purchase, and consumption of alcoholic beverages.
- (4) Upon the possession, transportation, sale, purchase, storage, and use of gasoline, and dangerous weapons and substances, except that this subdivision does not authorize prohibitions or restrictions on lawfully possessed firearms or ammunition. As used in this subdivision, the term "dangerous weapons and substances" has the same meaning as it does under G.S. 14-288.1. As used in this subdivision, the term "firearm" has the same meaning as it does under G.S. 14-409.39(2).
- (5) Upon other activities or conditions the control of which may be reasonably necessary to maintain order and protect lives or property during the state of emergency.

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Chapter 166A

Violations of Executive Orders, Local Government Emergency Declarations or Emergency Ordinances

166A-19.30(d) Violation. - Any person who violates any provision of a declaration or executive order issued pursuant to this section shall be guilty of a Class 2 misdemeanor in accordance with G.S. 14-288.20A

166A-19.31(h) Violation. - Any person who violates any provision of an ordinance or a declaration enacted or declared pursuant to this section shall be guilty of a Class 2 misdemeanor in accordance with G.S. 14-288.20A.

14-288.20A. Violation of emergency prohibitions and restrictions. Punishment 1-60 days in jail depending on prior criminal history \$1000.00 fine.

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Chapter 166A

§166A-19.21 and §166A-19.41 Gubernatorial Disaster Declaration and State Emergency Assistance Funds.

- Step 1. Preliminary Damage Assessment (PDA) – Secretary of the Department of Public Safety provides the Governor and General Assembly with a PDA as soon as possible.
- Step 2. Declaration of Disaster – Governor declares a disaster and it is classified as either a Type I, Type II, or Type III.

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Type I Disaster Declaration

Two types of assistance:

1. Individual Assistance (IA)
 - a. Temporary housing/rental assistance.
 - b. Repair/replacement of dwelling.
 - c. Replacement of personal property.
 - d. Repair/replacement of privately owned vehicles.
 - e. Medical or dental expenses.
 - f. Funeral or burial expenses resulting from emergency.
 - g. Funding for the cost of first year's flood insurance to meet National Flood Insurance Act.

2. Public Assistance (PA)
 - a. Debris clearance.
 - b. Emergency protective measures.
 - c. Roads and bridges.
 - d. Crisis Counseling.
 - e. Assistance with public transportation needs.

Duration:
 Expires 60 days after issuance unless renewed by the Governor or the General Assembly.
 Increments of 30 days, not to exceed a total of 120 days from the date of issuance.

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Type II Disaster Declaration

-May be declared if the President of the United States has issued a major disaster declaration pursuant to the Stafford Act.

-The Governor may request federal assistance without making a Type II disaster declaration.

Types of State Assistance:

-State Acquisition and Relocation Funds

-Supplemental repair and replacement housing grants to locate person or family to safe, decent and sanitary housing, not to exceed \$25,000 per family.

Duration:

-Expires 12 months after issuance unless renewed by the Governor or General Assembly.

-Maybe renewed in increments of three months each, not to exceed a total of 24 months.

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Type III Disaster Declaration

May be declared if the President of the United States has issued a major declaration under the Stafford Act and either of the following is true:

1. The PDA indicates that the extent of damage is reasonably expected to meet the threshold for an increased federal share of disaster assistance.
2. The PDA prompts the Governor to call a special session of the General Assembly to set up programs to meet unmet needs of individuals, businesses and political subdivisions affected by the emergency.

Types of State Assistance:

-State Acquisition and Relocation Funds

-Supplemental repair and replacement housing grants to locate person or family to safe, decent and sanitary housing, not to exceed \$25,000 per family.

-Any programs authorized by the General Assembly.

Duration:

Shall expire 24 months after its issuance unless renewed by the General Assembly.

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Federal Programs

The Small Business Administration Disaster Loan Assistance Program in 13 CFR 123.

The Robert T. Stafford Act program administered by the Federal Emergency Management Agency in 42 U.S.C. 5121 et. seq

- Section 401 Major Disaster Declaration
- Section 501(b) Emergency Declaration

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Federal Programs

- Stafford Act 42 U.S.C. 5121 et. Seq and implemented in 44 CFR Part 206.

When a local, state, territorial, or Indian Tribal Government determines that an incident exceeds their capabilities to respond, the mayor, governor or Indian Tribal Chief Executive must request a declaration from the President. The President may authorize Individual Assistance and Public Assistance programs and services based upon whether the resulting damage and its effects are of such severity and magnitude as to be beyond the response capabilities of the state, affected local governments, and other potential recipients of supplementary Federal assistance.

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Federal Programs

Example of Individual Assistance for COVID-19

- Crisis Counseling Assistance and Training Program (CCP), Section 416, 42 U.S.C. 5183: CCP provides eligible State, Tribal and Local governments, and non-governmental organizations with supplemental funding to assist disaster-impacted individuals and communities in recovering from the major disasters through the provision of community-based outreach and psycho-educational services. The goal is to aid survivors in recovering from the adverse reactions to disasters and to begin to rebuild their lives.
- Other Needs Assistance: Lost Wage Program, The President authorized the FEMA Administrator to provide grants to the states to make supplemental lost wages payments to those receiving unemployment insurance compensation, in accordance with section 408(e)(2) and (f) of the Stafford Act (42 U.S.C. §§ 5174(e)(2), (f)).

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Federal Programs

Public Assistance

Emergency Declaration
Emergency Work

- Category A—Debris Removal
- Category B—Emergency Protective Measures

Major Disaster Declaration

Emergency Work

- Category A—Debris Removal
- Category B—Emergency Protective Measures

Permanent Work

- Category C—Roads and Bridges
- Category D—Water Control Facilities
- Category E—Buildings and Equipment
- Category F—Utilities
- Category G—Parks, Recreational, Other

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COVID-19 Orders

Timeline of Notable State and Federal Action
 This is not exhaustive list of all Executive Orders. For all the COVID-19 Executive and Secretarial orders go to: <https://www.nc.gov/covid-19/covid-19-orders>

- January 30, 2020, World Health Organization (WHO) determines Public Health Emergency of International Concern.
- January 31, 2020 DHHS Secretary Azar declares U.S. Public Health Emergency.
- March 10, 2020 Governor Cooper declares a State of Emergency in Executive Order 116.
- March 11, 2020 WHO declares COVID-19 a global pandemic.
- March 13, 2020 POTUS declares a National Emergency under sections 201 and 301 of the National Emergencies Act and Section 501 of the Stafford Act.
- March 14, 2020 Governor Cooper issues Executive Order 117 which was first mass gathering limitations and closed schools both with the concurrence of the Council of State.
- March 17, 2020 Governor Cooper issues Executive Order 118 limits operations of restaurants and closes bars under G.S. 166A-19.30(c) powers and expands unemployment benefits with concurrence of Council of State.
- March 23 Governor Cooper issues Executive Order 120 and adds additional restrictions on mass gatherings: (50), closes, gyms, barber shops, salons, entertainment facilities and movie theaters and restrictions on long term care facilities with concurrence of the Council of State.
- March 26, 2020 POTUS declares a major disaster declaration for North Carolina under section 401 of the Stafford Act.
- March 27, 2020 Governor Cooper issues Executive Order 121, the Stay at Home order, under his G.S. 166A-19.30(c) powers and lowers mass gathering limits to 10 indoor and 25 outdoor.
- March 31, 2020 Governor Cooper issues Executive Order 124 prohibits utility shutoffs and late fees and provides additional guidance on evictions on top of the Chief Justice's Orders. These were done with concurrence of the Council of State.
- April 8, 2020 Governor Cooper issues Executive Order 130 which expanded activity to various health care, public health and human services resources, delegated authority to DHHS Secretary to waive various to respond to COVID-19 and other action. This was done with the concurrence of the Council of State.
- April 9, 2020 Governor Cooper issues Executive Order #131 which requires new social distancing policies for open retail stores, institutes mandatory protective measures for nursing homes, and includes additional measures that increase the rate at which unemployment claims are processed. Also enacted a limited preemption for retail space to create statewide uniformity. This was a mix of G.S. 166A-19.10(b)(4), 166A-19.30(a)(1), 166A-19.30(c) powers.

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COVID-19 Orders

Timeline of Notable State and Federal Action
 This is not exhaustive list of all Executive Orders. For all the COVID-19 Executive and Secretarial orders go to: <https://www.nc.gov/covid-19/covid-19-orders>

- May 5, 2020 Governor Cooper issues Executive Order #138 (Phase One) eases some restrictions but keeps Stay at Home order in place and removes distinction on essential/non-essential businesses and face coverings recommended. This was done under G.S. 166A-19.30(c) powers.
- May 21, 2020 Governor Cooper issues Executive Order #141 (Phase Two) ends Stay at Home order and eases additional restrictions. Refines mass gathering language for protected first amendment activities and exempts certain businesses from these requirements as those classes of retail, restaurants and other spaces have their own occupancy rules. This was done under G.S. 166A-19.30(c) powers.
- June 24, 2020 Governor Cooper issues Executive Order #147 extends Phase 2 and implements face covering requirement. This was done under G.S. 166A-19.30(c) powers.
- July 16, 2020 Governor Cooper issues Executive Order #151 extends Phase 2 a second time and provides clarification on indoor gym usage and parties and receptions. This was done under G.S. 166A-19.30(c) powers.
- July 28, 2020 Governor Cooper issues Executive Order #153 imposes a curfew on alcohol sales after 11 p.m. at night for restaurants and other businesses that were allowed to remain open that sold alcohol, bars remained closed. This was done under G.S. 166A-19.30(c) and G.S. 166A-19.31(b)(3) and (b)(5).
- September 1, 2020 Governor Cooper issues Executive Order #163 and revises prohibitions and restrictions that move the state in Safer at Home Phase 2.5 measures. Reopens gyms and moves mass gathering limits to 25 indoor and 50 outside. This was done under G.S. 166A-19.30(c) powers.
- September 30, 2020 Governor Cooper issues Executive Order #169 revises prohibitions and restrictions that move the state into Phase 3 measures. Mass gathering limits remain same, but reopens bars to outdoor limited service and capacity allows for large outdoor venues to have 7 percent capacity of facility capacity. This was done under G.S. 166A-19.30(c) powers.

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Q and A and Contact Info

Will Polk

NC Department of Public Safety

E-mail: will.polk@ncdps.gov

Phone: 919-825-2706

Linkedin: <https://www.linkedin.com/in/willpolk/>

Twitter: @PolkEMLegal
