

HOUSE BILL NO. 1495

Introduced by

Representatives K. Koppelman, Kasper, Klemin, Louser

Senators Dever, Myrdal

1 A BILL for an Act to amend and reenact subsection 12 of section 23-01-05 and sections
2 37-17.1-02.2, 37-17.1-03, 37-17.1-04, 37-17.1-05, 37-17.1-10, and 37-17.1-11 of the North
3 Dakota Century Code, relating to the state health officer's authority and the governor's and
4 legislative assembly's authority during a declared state of disaster or emergency; and to provide
5 a penalty.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Subsection 12 of section 23-01-05 of the North Dakota Century
8 Code is amended and reenacted as follows:

9 12. ~~Issue any~~With the advice and consent of the governor, issue temporary orders for no
10 longer than thirty days relating to disease control measures ~~deemed~~the state health
11 officer deems necessary to prevent the spread of communicable disease. Disease
12 control measures may include special immunization activities and decontamination
13 measures. Written orders issued under this section ~~shall~~ have the same effect as a
14 physician's standing medical order. ~~The~~If the state health officer believes an injunction
15 to restrict or cancel public events or restrict the operation of places of business is
16 necessary to control a communicable disease, the state health officer ~~may~~shall apply
17 to the district court in ~~a~~the judicial district where ~~a~~the communicable disease is present
18 for an injunction ~~canceled, not to exceed thirty days, to restrict or cancel~~ public events
19 or ~~closing~~to restrict places of business. On application of the state health officer
20 ~~showing~~clearly demonstrating the necessity of ~~such~~the restriction or cancellation, the
21 court may issue an ex parte preliminary injunction, pending a full hearing.

22 **SECTION 2. AMENDMENT.** Section 37-17.1-02.2 of the North Dakota Century Code is
23 amended and reenacted as follows:

1 **37-17.1-02.2. Advisory committee to department of emergency services.**

2 The adjutant general shall create one or more advisory committees to the department of
3 emergency services. An advisory committee may consist of not more than ~~twelve~~fourteen
4 members ~~representing, including the house majority leader or the leader's designee and the~~
5 senate majority leader or the leader's designee, to represent local and state interests in the
6 department. Members must be appointed to four-year staggered terms, except the members
7 from the legislative assembly must be appointed to two-year terms. An advisory committee shall
8 advise the department regarding collaboration with political subdivisions, and each member of
9 an advisory committee shall report to the ~~local~~ interest each member represents concerning
10 recommendations approved by the committee. Each member of the advisory committee, other
11 than the members from the legislative assembly, is entitled to be paid sixty-two dollars and fifty
12 cents per day for time spent in attendance at meetings and is entitled to be reimbursed for the
13 member's actual and necessary expenses at the rates and in the manner provided by law for
14 other state officers. The compensation and expenses must be paid out of department
15 appropriations. The compensation and expenses of members from the legislative assembly
16 must be paid by the legislative council at the rates set forth in section 54-35-10 for attendance
17 at meetings.

18 **SECTION 3. AMENDMENT.** Section 37-17.1-03 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **37-17.1-03. Limitations.**

21 Nothing in this chapter may:

- 22 1. Interfere with the course or conduct of a labor dispute, except that actions otherwise
23 authorized by this chapter or other laws may be taken when necessary to forestall or
24 mitigate imminent or existing danger to public health or safety.
- 25 2. Interfere with dissemination of news or comment on public affairs. Any
26 communications facility or organization, including radio and television stations, wire
27 services, and newspapers may be required to transmit or print public service
28 messages furnishing information or instructions in connection with a disaster or
29 emergency situation.
- 30 3. Affect the jurisdiction or responsibilities of units of the armed forces of the United
31 States or of this state, or of any personnel thereof, when on active duty. State and

- 1 local emergency operational plans must place reliance upon the forces available for
2 performance of functions related to disasters or emergencies.
- 3 4. Limit, modify, or abridge the authority of the governor to ~~proclaim martial law~~; provide
4 aid or assistance to civil authorities; or exercise any other powers vested in the
5 governor under the Constitution of North Dakota, or statutes, common law, or
6 sovereign powers of this state independent of, or in conjunction with, any provisions of
7 this chapter.
- 8 5. Change or modify the responsibilities of the American National Red Cross as defined
9 by the Congress of the United States in 36 U.S.C. 300101.

10 **SECTION 4. AMENDMENT.** Section 37-17.1-04 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **37-17.1-04. Definitions.**

13 As used in this chapter:

- 14 1. "Critical industry sectors" means any of the critical infrastructure sectors identified by
15 the United States government whose assets, systems, and networks, whether physical
16 or virtual, are considered so vital to the United States and the state that the sectors'
17 incapacitation or destruction would have a debilitating effect on security, economic
18 security, public health or safety, or any combination thereof.
- 19 2. "Disaster" means the occurrence of widespread or severe damage, injury, or loss of
20 life or property resulting from any natural or manmade cause, including fire, flood,
21 earthquake, severe high and low temperatures, tornado storm, wave action, chemical
22 spill, or other water or air contamination, epidemic, blight, drought, infestation,
23 explosion, riot, or hostile military or paramilitary action, or cyber attack which is
24 determined by the governor to require state or state and federal assistance or actions
25 to supplement the recovery efforts of local governments in alleviating the damage,
26 loss, hardship, or suffering caused thereby.
- 27 3. "Disaster or emergency worker" means any person performing disaster or emergency
28 responsibilities or duties at any place in this state subject to the order or control of, or
29 pursuant to a request of, the state government or any political subdivision.
- 30 4. "Emergency" means any situation that is determined by the governor to require state
31 or state and federal response or mitigation actions to protect lives and property, to

1 provide for public health and safety, or to avert or lessen the threat of a disaster.

2 Emergencies require an immediate supplement to local governments or aid to critical
3 industry sectors that provide essential lifeline services.

4 5. "Emergency management" means a comprehensive integrated system at all levels of
5 government and in the private sector which provides for the development and
6 maintenance of an effective capability to prevent, mitigate, prepare for, respond to,
7 and recover from known and unforeseen hazards or situations, caused by an act of
8 nature or man, which may threaten, injure, damage, or destroy lives, property, or our
9 environment.

10 6. "Homeland security" means a concerted national effort to prevent terrorist attacks
11 within the United States, reduce America's vulnerability to terrorism, and minimize the
12 damage and recover from attacks in the United States.

13 7. "Incident command system" means a standardized on-scene incident management
14 concept designated specifically to allow responders to adopt an integrated
15 organizational structure equal to the complexity and demands of any single incident or
16 multiple incidents without being hindered by jurisdictional boundaries.

17 8. "Mass care" means food, clothing, shelter, and other necessary and essential
18 assistance provided to a large number of affected people in response to, or recovery
19 from, a disaster or emergency.

20 9. "National incident management system" means a system that provides a consistent
21 nationwide approach for federal, state, and local governments to work effectively and
22 efficiently together to prepare for, respond to, and recover from domestic incidents
23 regardless of cause, size, or complexity.

24 10. "Regulatory statute" means a statute prescribing, regulating, or limiting the procedures
25 for the conduct of state business; or licensing, issuing permits, or prohibiting conduct
26 or an activity by a person.

27 11. "Wide area search and rescue" means the employment, coordination, and utilization of
28 available resources and personnel in activities occurring within large geographical
29 areas for the purpose of locating, relieving distress, and preserving the life of an
30 individual reported or believed to be lost, stranded, or deemed a high-risk missing
31 individual, and removing any survivor to a place of safety.

1 **SECTION 5. AMENDMENT.** Section 37-17.1-05 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **37-17.1-05. The governor and disasters or emergencies - Penalty.**

- 4 1. The governor is responsible to minimize or avert the adverse effects of a disaster or
5 emergency.
- 6 2. Under this chapter, the governor may issue executive orders and proclamations, and
7 amend or rescind them. Executive orders, proclamations, and regulations issued
8 under this chapter have the force of law.
- 9 3. ~~A disaster or emergency must be declared by executive order or proclamation of the~~
10 ~~governor if~~ if the governor determines a disaster has occurred or a state of emergency
11 exists, the governor may declare a state of disaster or emergency by executive order.
- 12 a. ~~The state of disaster or emergency shall continue~~ continues until the governor or
13 the legislative assembly determines ~~that~~ the threat of an emergency has passed
14 or the disaster has been dealt with to the extent ~~that~~ emergency conditions no
15 longer exist, whichever comes first. The duration of an executive order relating to
16 an epidemic or pandemic is limited to thirty days, but an executive order may be
17 extended for good cause by the governor, with the consent of the legislative
18 assembly, for an additional thirty-day period. If the legislative assembly is not in
19 session, the governor may call a special session of the legislative assembly to
20 request the legislative assembly approve a thirty-day extension by concurrent
21 resolution. A special session to approve an extension may be conducted remotely
22 if approved by the legislative management. If a state of disaster or emergency
23 declaration continues for sixty days, the state of disaster or emergency may not
24 be reissued, nor may a disaster or emergency declaration substantially similar to
25 the original declaration be declared. If the legislative assembly is not in session
26 and the governor determines disaster or emergency circumstances remain or are
27 likely to continue, the governor may call the legislative assembly into special
28 session to request the legislative assembly take action to address the disaster or
29 emergency.
- 30 b. The legislative assembly by concurrent resolution may terminate a state of
31 disaster or emergency at any time. The legislative assembly may act by a remote

1 session to approve a concurrent resolution terminating a state of disaster or
2 emergency if the legislative management approves the session to be conducted
3 remotely. If a state of disaster or emergency is terminated by the legislative
4 assembly by concurrent resolution, the governor may not declare another state of
5 disaster or emergency for the same disaster or emergency conditions.

6 c. All executive orders or proclamations issued under this subsection must indicate
7 the nature of the disaster or emergency, the area ~~or areas~~ threatened, the
8 conditions ~~which that~~ have brought ~~it~~ the disaster or emergency about or which
9 make possible termination of the state of disaster or emergency. An executive
10 order or proclamation must be disseminated promptly by means calculated to
11 bring ~~it~~ the contents of the order to the attention of the general public, unless the
12 circumstances attendant upon the disaster or emergency prevent or impede such
13 dissemination, and ~~it~~ the order must be ~~promptly~~ promptly filed with the
14 department of emergency services, the secretary of state, the legislative council,
15 and the county or city auditor of the jurisdictions affected.

16 4. An executive order or proclamation of a state of disaster or emergency ~~shall~~
17 ~~activate~~ activates the state and local operational plans applicable to the political
18 subdivision or area in question and ~~be~~ constitutes authority for the deployment and use
19 of any forces to which the ~~plan or~~ plans apply and for use or distribution of any
20 supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to
21 be made available pursuant to this chapter or any other provision of law relating to a
22 disaster or emergency.

23 5. During the continuance of any state of disaster or emergency declared by the
24 governor, the governor is commander in chief of the emergency management
25 organization and of all other forces available for emergency duty. To the greatest
26 extent practicable, the governor shall delegate or assign command authority by prior
27 arrangement embodied in appropriate executive orders or emergency operational
28 plans, but ~~nothing herein restricts~~ this subsection does not restrict the governor's
29 authority to do so by orders issued at the time of the disaster or emergency.

1 6. ~~In~~The governor may not amend, alter, or expand the provisions of a statute, but
2 subject to prohibitions and limitations in law, and in addition to any other powers
3 conferred upon the governor by law, the governor may:

4 a. ~~Suspend~~With the consent of the legislative assembly, suspend the provisions of
5 any a regulatory statute prescribing the procedures for conduct of state business,
6 or the orders, ~~or~~ rules, ~~or~~ regulations of any state agency, if strict compliance with
7 the provisions of ~~any~~the statute, order, ~~or~~ rule, ~~or~~ regulation would in any way
8 prevent, hinder, or delay necessary action in managing a disaster or emergency.

9 (1) The governor may not suspend a regulatory statute, order, or rule if:

10 (a) Doing so will impose greater restrictions; or

11 (b) The statute, order, or rule affords a citizen due process of law.

12 (2) If the legislative assembly is not in session at the time the governor wishes
13 to suspend a regulatory statute, order, or rule under this subsection and the
14 governor does not wish to call the legislative assembly into special session,
15 a proposed suspension may be brought before the administrative rules
16 committee. The administrative rules committee may void the proposed
17 suspension if the committee determines the proposed suspension violates
18 any of the following:

19 (a) There is an absence of statutory authority for the suspension;

20 (b) The suspension fails to comply with legislative intent;

21 (c) The suspension is arbitrary or capricious; or

22 (d) The suspension is unreasonable or unnecessary.

23 (3) If the governor disagrees with the decision of the administrative rules
24 committee to void a proposed suspension, the governor may call a special
25 session of the legislative assembly.

26 (4) If approval of the administrative rules committee is required under this
27 subsection, the governor may authorize executive orders under the same
28 authority and oversight by the administrative rules committee as provided in
29 chapter 28-32 for emergency rules. An executive order may come before
30 any regular or special meeting of the administrative rules committee at any
31 time subsequent to the issuance of the order.

- 1 b. Utilize all available resources of the state government as reasonably necessary
- 2 to manage the disaster or emergency and of each political subdivision of the
- 3 state.
- 4 c. Transfer the direction, personnel, or functions of state departments and agencies
- 5 or units thereof for the purpose of performing or facilitating emergency
- 6 management activities.
- 7 d. Subject to any applicable requirements for compensation under section
- 8 37-17.1-12, commandeer or utilize any private property if the governor finds this
- 9 necessary to manage the disaster or emergency.
- 10 e. Direct and compel the evacuation of all or part of the population from any stricken
- 11 or threatened area within the state if the governor deems this action necessary
- 12 for the preservation of life or other disaster or emergency mitigation, response, or
- 13 recovery.
- 14 f. Prescribe routes, modes of transportation, and destinations in connection with an
- 15 evacuation.
- 16 g. Control ingress and egress in a designated disaster or emergency area, the
- 17 movement of persons within the area, and the occupancy of premises therein.
- 18 h. Suspend or limit the sale, dispensing, or transportation of alcoholic beverages,
- 19 explosives, and combustibles, not including ammunition.
- 20 i. Make provision for the availability and use of temporary emergency housing.
- 21 j. Make provisions for the control, allocation, and the use of quotas for critical
- 22 shortages of fuel or other life and property sustaining commodities.
- 23 k. Designate members of the highway patrol, North Dakota national guard, or others
- 24 trained in law enforcement, as peace officers.
- 25 7. Any person who willfully violates any provision of an executive order or proclamation
- 26 issued by the governor pursuant to this chapter is guilty of an infraction.
- 27 8. ~~Authorize~~The governor may authorize the adjutant general to recall to state active
- 28 duty, on a volunteer basis, former members of the North Dakota national guard. Those
- 29 recalled must possess the qualifications required by the disaster or emergency. Recall
- 30 under this subsection is effective only for the duration of the disaster or emergency
- 31 and recalled personnel will be released from state active duty upon competent

1 authority that the requirement of their service under this subsection has passed.
2 Compensation for personnel recalled under this subsection will be based upon section
3 37-07-05.

4 **SECTION 6. AMENDMENT.** Section 37-17.1-10 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **37-17.1-10. Local disasters, mandatory evacuations, or emergencies.**

- 7 1. Unless ~~se~~ declared in accordance with the provisions of subsection 4 of section
8 37-17.1-05, a local disaster, emergency, or mandatory evacuation order may be
9 declared only by the principal executive officer of the county or city. ~~¶The order~~ may
10 not be continued or renewed for a period in excess of seven days except by or with
11 the consent of the governing board of the county or city. Any order ~~or proclamation~~
12 declaring a local disaster, emergency, or mandatory evacuation must be given prompt
13 and general publicity and must be filed promptly with the county or city auditor.
- 14 2. The effect of a declaration of a local disaster or emergency is to activate the response
15 and recovery aspects of any and all applicable local disaster or emergency operational
16 plans and to authorize the furnishing of aid and assistance ~~thereunder~~under the plans.
- 17 3. The terms of an order or declaration by a county or city pursuant to this section
18 relating to an epidemic or pandemic must be approved by the state health officer and
19 may be terminated by the legislative assembly.
- 20 4. Notwithstanding sections 11-9.1-05, 11-11-14, 40-05-01, and 40-05.1-06, the terms of
21 an order, declaration, or ordinance by a county or city may not be more restrictive than
22 those expressly permitted in state law.

23 **SECTION 7. AMENDMENT.** Section 37-17.1-11 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **37-17.1-11. Disaster or emergency mitigation.**

- 26 1. In addition to disaster or emergency mitigation measures as included in the state and
27 local disaster or emergency operational plans, the governor shall consider, on a
28 continuing basis, steps that could be taken to mitigate or reduce the harmful
29 consequences of disasters or emergencies. At the governor's direction, and pursuant
30 to any other authority and capability they have, state agencies charged with
31 responsibilities in connection with floodplain management, stream encroachment and

1 flow regulation, weather modification, fire prevention and control, air quality, public
2 works, land use and land use planning, and construction standards, shall make
3 studies of disaster or emergency mitigation-related matters. The governor, from time to
4 time, shall make recommendations to the legislative assembly, local governments, and
5 other appropriate public and private entities as may facilitate measures for mitigation
6 or reduction of the harmful consequences of disasters or emergencies.

7 2. The North Dakota state engineer and the water commission, in conjunction with the
8 division of homeland security, shall keep land uses and construction of structures and
9 other facilities under continuing study and identify areas ~~which are~~ particularly
10 susceptible to severe land shifting, subsidence, flood, or other catastrophic
11 occurrence. The studies under this subsection must concentrate on means of reducing
12 or avoiding the dangers caused by this occurrence or the consequences ~~thereof of the~~
13 occurrence.

14 3. If the division of homeland security determines, in coordination with lead and support
15 agencies, on the basis of the studies or other competent evidence, that an area is
16 susceptible to a disaster of catastrophic proportions without adequate warning;
17 existing building standards and land use controls in that area are inadequate and
18 could add substantially to the magnitude of the disaster or emergency; and changes in
19 zoning regulations, other land use regulations, or building requirements are needed in
20 order to further the purposes of this section, ~~it~~the department shall specify the
21 essential changes to the governor. If the governor, upon review of the determination,
22 finds after public hearing, that the changes are essential, the governor shall ~~se-~~
23 recommend the changes to the agencies or local governments with jurisdiction over
24 that area and subject matter. If no action or insufficient action pursuant to the
25 governor's recommendations is taken within the time specified by the governor, the
26 governor shall ~~se~~ inform the legislative assembly and request legislative action
27 appropriate to mitigate the impact of the disaster or emergency.

28 4. ~~The governor, at the same time that the governor makes recommendations pursuant~~
29 ~~to subsection 3, may suspend the standard or control which the governor finds to be~~
30 ~~inadequate to protect the public safety and by regulation place a new standard or~~
31 ~~control in effect. The new standard or control remains in effect until rejected by~~

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Legislative Assembly

1 concurrent resolution of both houses of the legislative assembly or amended by the
2 governor. During the time it is in effect, the standard or control contained in the
3 governor's regulation must be administered and given full effect by all relevant
4 regulatory agencies of the state and local governments to which it applies. The
5 governor's action is subject to judicial review in accordance with chapter 28-32 but is
6 not subject to temporary stay pending litigation.