

Chapter 34

Emergency Management

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Cities and counties are vested with both the authority and the responsibility to prepare for, respond to, recover from, and mitigate the impact of natural and man-made disasters. These functions are carried out through local emergency-management agencies. Growing out of World War II-era civil defense organizations, today's emergency-management agencies are expected to prepare for and to respond to a wide array of disasters ranging from floods, tornadoes, and hurricanes to terrorist attacks and pandemic disease outbreaks. As a result, the skills, training, and resources necessary to respond effectively to these threats have become increasingly specialized and complex. In today's post-9/11 world, there is greater public concern about threats both natural and man-made. In today's post-Katrina world, there is also increased public scrutiny of the government's responsiveness to these threats. Regardless of their magnitude or scope, all disasters are, at their core, local events, requiring local governments to act as first responders in protecting public health, safety, and welfare.

What Is Emergency Management?

Protecting the public health, safety, and welfare is a basic function of government at all levels. When a disaster strikes, this function is carried out under what is generally referred to as “emergency management,” which is collectively “those measures taken by the populace and government at federal, state, and local levels to minimize the adverse effect of any type [of] emergency.”¹ Examples of such measures include evacuation, sheltering, search and rescue, emergency medical care, and debris removal.

Emergency management is, however, more encompassing than the obvious and necessary activities that occur during and immediately after a disaster event. It is a “never-ending preparedness cycle of prevention, response, recovery, mitigation, warning, movement, shelter, emergency assistance, and recovery.”² Emergency managers typically refer to the following activities as the four phases of emergency management: preparedness, response, recovery, and mitigation. Under federal law, local governments are encouraged to develop comprehensive disaster-preparedness and -assistance plans, threat analyses, and community risk assessments, as well as hazard-mitigation measures to reduce losses from disasters (including developing land use and construction regulations).³ Under state law, each county is required to coordinate all emergency-management efforts within the county, including any municipalities inside the county.⁴ Ideally, each county will develop emergency-management plans that address not only initial post-disaster first response and subsequent recovery activities, but also prevention and mitigation measures, all of which, when taken together, result in effective and efficient management of disasters in which injury and loss of life and property are minimized.

Sources of Authority

Emergency-management programs and authorities are governed by both state and federal law. North Carolina law also authorizes the adoption of local emergency-management ordinances that are required for local governments to exercise certain emergency powers.

At the federal level, emergency-management activities are governed by statutes, regulations, policies, and guidance documents. The Robert T. Stafford Disaster Relief and Emergency Assistance Act (commonly referred to as “the Stafford Act”)⁵ is the statute enacted by Congress empowering the federal government to support a state’s response in times of crisis. It authorizes the president to issue disaster declarations and establishes the programs and processes the federal government uses to provide emergency and major disaster assistance to states, local governments, and other eligible recipients of federal disaster aid, including individual citizens. Various parts of Title 44 of the Code of Federal Regulations (Emergency Management and Assistance) further define this assistance. Administrative policies and guidance documents adopted by various federal agencies (including the U.S. Department of Homeland Security and the Federal Emergency Management Agency) provide detailed instructions for administering federal disaster-assistance programs.

1. Chapter 166A, Section 19.3(8) of the North Carolina General Statutes (hereinafter G.S.).

2. G.S. 166A-19.3(8). *See also* Ward v. Long Beach Volunteer Rescue Squad, 151 N.C. App. 717 (2002).

3. 42 U.S.C. § 5121(b); 44 C.F.R. § 206.3(b).

4. G.S. 166A-19.15(a).

5. Pub. L. No. 93-288, 88 Stat. 143 (1974), *codified as amended at* 42 U.S.C. §§ 5121–5206. Enacted by Congress in 1988, the Stafford Act, Pub. L. 100-707, 102 Stat. 4689 (1988), amended the Disaster Relief Act of 1974.

In North Carolina, the legal authority for emergency-management activities by state and local governments is found in Chapter 166A of the North Carolina General Statutes (hereinafter G.S.) (the North Carolina Emergency Management Act of 1977).⁶ Article 1A of Chapter 166A outlines the powers of and the relationships between state and local governments for disaster planning and response activities and authorizes both state and local governments to issue disaster declarations. Article 36A of G.S. Chapter 14 (Riots, Civil Disorders, and Emergencies) imposes criminal penalties for certain activities undertaken during riots and emergency situations.

Disaster declarations at the federal, state, and local levels trigger a wide array of governmental powers as well as disaster-relief assistance. These declarations, and their significance, are discussed more fully in this chapter.

What Is the Difference Between a “Disaster” and an “Emergency”?

In North Carolina, the word “disaster” often conjures up images of major hurricanes, such as Hugo, Fran, Floyd, Isabel, Ophelia, Ivan, Frances, and Irene, or of severe ice storms accompanied by prolonged power outages. In recent years, tornadoes have struck a number of North Carolina communities with devastating effects. While these examples are certainly disasters in every sense of the word, the meaning of the word “disaster” in North Carolina law refers only to the declaration issued by the governor based on the impact of an “emergency.”

State law defines an “emergency” 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, weather related, or riot related cause.”⁷ Federal law, through the Stafford Act, defines a “major disaster” as “any natural catastrophe or, regardless of cause, any fire, flood, or explosion in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.”⁸ The Stafford Act defines an “emergency” as “any occasion for which, in the determination of the President, Federal Assistance is needed to supplement state and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.”⁹

Two points regarding these definitions are worth noting. First, North Carolina’s definition of emergency and the federal definition of disaster both include natural and man-made occurrences. Thus, local governments should plan for a broad array of potential threats (not just hurricanes or ice storms). Second, under the Stafford Act, federal assistance is supplemental to the resources of state and local governments, which bear responsibility for the initial disaster response. Indeed, the primary responder in any disaster is, first and foremost, the local government in whose jurisdiction the emergency has occurred.

6. Enacted in 1977, G.S. Chapter 166A is a rewrite of the former G.S. Chapter 166, the Civil Defense Preparedness Act. Article 1 of Chapter 166A was repealed and recodified as Chapter 1A in 2012.

7. G.S. 166A-19.3(6).

8. 42 U.S.C. § 5122(2); *see also* 44 C.F.R. § 206.2(a)(17).

9. 42 U.S.C. § 5122(1); *see also* 44 C.F.R. § 206.2(a)(9).

Roles and Responsibilities—Federal and State

Federal Government

Emergency-management operations in any major disaster necessarily involve coordination and cooperation between a myriad of federal, state, and local government agencies and personnel, as well as private disaster-relief organizations such as the Red Cross and the Salvation Army. This coordinated effort is led at the federal level by the Federal Emergency Management Agency (hereinafter FEMA).

FEMA was formally authorized in 1979 in an executive order issued by President Jimmy Carter.¹⁰ Its mission is to lead the national effort to prepare for all hazards and to effectively manage federal response and recovery efforts following any national incident. FEMA also initiates proactive mitigation activities, trains first responders and other emergency-management personnel, and manages the National Flood Insurance Program. FEMA operated for more than twenty years as an independent federal agency, with its director appointed by and reporting directly to the president. In March 2003, however, FEMA joined twenty-two other federal agencies, programs, and offices to form the U.S. Department of Homeland Security. Now the director of FEMA serves under the Secretary of Homeland Security, though he or she still retains responsibility for the agency's core mission. Functionally, FEMA is not a *direct* response agency (i.e., FEMA officials are not first responders), but it is a *support* agency, coordinating federal resources and assets to supplement those of state and local governments. In major disasters, this effort can involve numerous federal, state, and local agencies and private disaster-relief organizations from across the country.

To better facilitate communication and coordination between multiple governmental agencies across multi-jurisdictional lines in domestic disaster-response situations, President George W. Bush directed the Department of Homeland Security to develop and administer a National Incident Management System (NIMS).¹¹ Under NIMS, federal, state, and local governments are expected to utilize standardized terminology and organizational structures, interoperable (technically compatible) communications, consolidated action plans, unified command structures, and other similar measures designed to facilitate consistent, efficient, and effective incident management.¹² These unified efforts are to be employed in all disaster situations whether natural or man-made (the “all-hazards” approach). By proclamation, Governor Mike Easley established NIMS as the standard for incident management in North Carolina in May 2005 and directed all counties to adopt and apply NIMS for management of all incidents. Similarly, federal directives also require local governments to adopt and utilize NIMS and to train local personnel “directly involved” in emergency-management operations on NIMS procedures and protocols.¹³ Local governments were required to meet this compliance requirement by October 1, 2006 (corresponding with the beginning of federal fiscal year 2006), in order to be eligible for federal preparedness-assistance funds (which include first-responder grants, emergency-management planning grants, and hazardous-materials program grants). Federal

10. Federal emergency-response efforts had actually existed since the early 1800s but had been handled in a fragmented manner by multiple and sometimes overlapping agencies without overall coordination at the federal level.

11. U.S. Department of Homeland Security, Homeland Security Presidential Directive/HSPD-5—Management of Domestic Incidents (Feb. 28, 2003) (hereinafter HSPD-5).

12. A key component of NIMS is the Incident Command System (ICS) used by major firefighting agencies for almost thirty years. ICS is a standardized on-scene system used by all emergency responders that allows for coordinated use of equipment and personnel with standardized processes for response to all sizes and types of incidents. ICS is used at the local, state, and federal levels and by private sectors involved in emergency-management activities. Information about ICS, including available training courses, is available at the ICS Resource Center, which is located on the Emergency Management Institute's webpage on the FEMA website at www.training.fema.gov/emiweb/is/icsresource/.

13. HSPD-5 § 20.

disaster-relief funds administered under the Stafford Act are not considered “preparedness funds,” so local governments not in compliance with NIMS are still eligible for federal aid in a federally declared disaster.

State Government

In North Carolina, the governor has general direction and control of the state’s emergency-management program and is vested with broad powers to act when necessary in a disaster situation.¹⁴ Under the governor, the Secretary of the Department of Public Safety oversees state emergency-management activities. Within the public safety department, the Division of Emergency Management (NCDEM) has direct responsibility for day-to-day operations and primary responsibility in coordinating the state’s disaster-response efforts. To fulfill this responsibility, NCDEM oversees the State Emergency Response Team (SERT), a group of state agency personnel designated to carry out emergency-management support functions and to coordinate “the activities of all agencies for emergency management within the State, including planning, organizing, staffing, equipping, training, testing, and the activation of emergency management programs.”¹⁵ NCDEM also administers the state’s hazard-mitigation program and flood-plain mapping program and is authorized to promulgate standards for local emergency-management plans and programs and to provide technical assistance to local governments.¹⁶ Other responsibilities of NCDEM include maintaining the State Emergency Operations Center, planning for emergencies at nuclear power plants, and managing mutual aid.

In responding to disasters, the state coordinates with local emergency-management agencies. During disaster response and recovery operations, local governments communicate damage assessments and requests for assistance to the state, and deployment of assets and resources are coordinated at the state level. Similarly, in a major disaster involving federal agencies, local needs not met at the state level are communicated by NCDEM to FEMA. NCDEM also delivers training programs and planning assistance for local emergency-management agencies.¹⁷

Roles and Responsibilities—Local Government

Emergency-management response activities are initiated at the local level, augmented by state resources where local resources are insufficient, and, in major emergencies, augmented by federal resources at the request of the state. Local governments clearly play a critical role in the “never-ending preparedness cycle” of emergency management operations.¹⁸

Legal Authority

Under the North Carolina Emergency Management Act, the governing body of each county is specifically charged with the responsibility for coordinating all emergency-management efforts at

14. G.S. 166A-19.10(b).

15. G.S. 166A-19.12 (1).

16. G.S. 166A-19.12(5).

17. See N.C. Department of Public Safety (website), “Emergency Management,” accessed June 7, 2024; see also N.C. Department of Public Safety, *2020 North Carolina Disaster Recovery Framework*, January 2020.

18. G.S. 166A-19.3(8).

the local level, including those of *cities within the county*.¹⁹ To accomplish these functions, counties are authorized to

- establish local emergency-management agencies;
- appoint an emergency-management coordinator;
- appropriate and expend local funds;
- make contracts;
- obtain and distribute equipment, materials, and supplies;
- develop emergency-management plans;
- establish voluntary registries of functionally and medically fragile persons; and
- provide for the health and safety of persons and property.

Counties are also authorized to adopt ordinances imposing restrictions and prohibitions during a declared state of emergency.²⁰ While cities are similarly authorized,²¹ their agencies and activities are still subject to coordination by the counties in which they are located.²²

Organizational Structure

Each county is required to designate an emergency-management coordinator (or director; the terms are used interchangeably herein), and many cities have similarly designated personnel. Roughly, only a quarter of the counties in the state employ full-time emergency-management coordinators; the majority designate an employee or department head who performs other duties generally related to emergency management and first responder activities (such as EMS director, fire marshal, or 911 supervisor). The emergency-management coordinator maintains and implements the jurisdiction's emergency-management plan and oversees other administrative and operational functions. His or her duties include coordinating the activities of other local departments involved in disaster response and recovery operations, such as public information, public works, EMS, fire and rescue, law enforcement, finance, social services, and public health, as well as coordinating local efforts with those of state and federal agencies and private relief organizations. The number of additional staff assigned to local emergency-management agencies varies from jurisdiction to jurisdiction and traditionally has been small. Employees of local emergency-management agencies receiving federal grant-in-aid funds are covered under the State Personnel Act²³ and are subject to certain statutory requirements as conditions of employment.²⁴

As with federal and state emergency-management agencies, local agencies serve a coordinating role in emergency events; they are not ordinance-enforcing agencies. Some emergencies, by their nature, require other agencies to take certain actions and even assume lead roles, such as public health agencies in pandemic flu outbreaks or law enforcement agencies in terrorism events. Whatever the specific nature of the emergency, however, the local emergency-management director is still responsible for coordinating response and recovery efforts and for communicating the local government's needs to state and federal agencies. An effective emergency-management director is not only well-prepared and well-trained, but he or she also fully understands the state and federal emergency-management systems and has developed within the state the contacts necessary to

19. G.S. 166A-19.15(a).

20. G.S. 166A-19.22.

21. G.S. 166A-19.31.

22. G.S. 166A-19.15(c).

23. G.S. 126-5(a)(2)(d). For more information about the State Personnel Act and its application to local government employees, see Chapter 13, "Public Employment Law."

24. G.S. 166A-19.75.

effectively and efficiently secure the resources his or her local government and community need in times of crisis.

Planning

One of the most important ongoing responsibilities of the local emergency-management director is developing and maintaining the local government's emergency-management plan. Local plans must be consistent with federal NIMS requirements and are subject to state and federal approval. The county or local emergency-operation plan (EOP) may be a single or a multi-jurisdictional (watershed) plan.²⁵ Taking the federal "all-hazards" approach to incident management, local plans should identify all potential risks and hazards to the community and outline procedures for responding to and recovering from those threats. Plans delineate the roles and responsibilities of agencies and resources at the local level (including volunteer organizations) and set out the chain of command through which decisions are made and communicated. Plans must be updated every five years to be eligible for FEMA hazard-mitigation grant funding.²⁶ Ideally, local jurisdictions conduct exercises and drills of their plans and operations to maintain readiness. Some jurisdictions containing certain high-risk facilities, such as nuclear power plants, have additional planning and exercise requirements mandated by both state and federal law. If properly developed, exercised, and implemented, a local plan can effectively guide a jurisdiction's response and recovery operations in a disaster event and can also serve as the basis for determining whether local resources are sufficient to meet community needs. If not, local jurisdictions can seek emergency aid and assistance from other units of government.

State and local governments must also adopt hazard-mitigation plans in which mitigation strategies are identified for hazards that threaten the particular jurisdiction.²⁷ FEMA's Local Mitigation Plan Review Tool may be used to assist local departments and elected officials involved in implementing a local mitigation plan.²⁸ Regulations require documentation that all stakeholders, including "agencies that have authority to regulate development including . . . elected officials[.]" had an opportunity to be involved in plan development.²⁹ Local emergency managers are encouraged to solicit public participation in maintaining their emergency-management plans through presentations to elected officials and community groups.³⁰

Intergovernmental Cooperation

Disasters rarely impact an area conveniently located within just one government's jurisdiction and can exceed the response capabilities of local and even state governments. Recognizing the need for coordinated responses and emergency assistance across jurisdictional lines, North Carolina law

25. 44 C.F.R. § 201.6(a)(4). Multi-jurisdictional hazard-mitigation plans are prepared jointly by more than one jurisdiction and may include counties, municipalities, cities, towns, townships, school districts or other special districts, councils of government or other regional organizations, or unincorporated areas. These plans may contemplate cost-saving measures through sharing resources and personnel in large-scale events. For more information about multi-jurisdictional mitigation planning, see FEMA, *Local Mitigation Planning Policy Guide, FP 206-21-0002*, effective April 19, 2023 (hereinafter *Planning Policy Guide*).

26. 44 C.F.R. § 201.6(d)(3).

27. The requirements and procedures for state, tribal, and local mitigation plans are set out in 44 C.F.R. Part 201. See generally FEMA (website), "Regulations, & Guidance."

28. FEMA, *Planning Policy Guide*, Appendix A.

29. 44 C.F.R. § 201.6(b)(2).

30. 44 C.F.R. § 201.6(c)(4)(iii); see also FEMA, *Planning Policy Guide*, 17.

authorizes three main forms of interlocal cooperation with other units of government. First, for cooperation with other jurisdictions *outside North Carolina*, the General Assembly enacted the Emergency Management Assistance Compact (EMAC), under which North Carolina and other EMAC member states provide reciprocal emergency assistance when a state of emergency has been declared in an affected state.³¹ The governor is authorized to enter into mutual aid agreements with other states and with the federal government for disaster assistance and relief, and local governments in North Carolina are authorized to enter into mutual aid agreements with units of local government in other states (subject to the governor's approval).³² Operating under mutual aid agreements allows for effective and efficient cooperation among units of government, addresses liability and insurance issues (personnel operating under a mutual aid agreement enjoy the same liability protections as employees of the unit of government to whom the assistance is rendered), and can expedite federal reimbursement in a federally declared disaster. North Carolina personnel providing disaster assistance to out-of-state jurisdictions are advised to do so either under the direction of the state through EMAC or through a mutual aid agreement entered into directly with the jurisdiction they are assisting.

Second, for cooperation between local jurisdictions *within North Carolina*, local governments are authorized to enter into mutual aid agreements with one another for reciprocal emergency-management aid and assistance.³³ This assistance includes furnishing or exchanging supplies, equipment, personnel, and services on a temporary basis during an emergency event. A common example of mutual aid is law enforcement personnel from other cities and counties deploying to the affected jurisdiction to assist in enforcing curfews, traffic control, and re-entry checkpoints.

Third, to facilitate coordination *between North Carolina counties and the cities within those counties*, state law authorizes counties and cities within those counties to form joint local emergency-management agencies.³⁴ Typically, each unit of local government participating in the joint agency assigns a representative to serve on that unit's behalf in the command structure of the joint agency, and all units agree to coordinate emergency-management functions under a unified set of standard operating procedures. Local governments may also enter into interlocal agreements under Article 20 of G.S. Chapter 160A to cooperatively undertake any function they are authorized to carry out. Under such interlocal agreements, units of local government may agree to perform specific services or functions (such as debris removal) jointly or on behalf of one another instead of forming a joint agency.

Disaster and Emergency Declarations—Federal and State

Federal Declarations

A declaration of a state of disaster (or, in the case of state and local governments, a state of emergency) is issued when the declaring authority has determined that a disaster (or emergency) or the threat thereof exists. At the federal level, a disaster declaration is issued by the president, upon request of the governor of an affected state (after a state declaration has been issued), when the president finds that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the state and the affected local governments and that federal assistance

31. G.S. Ch. 166A, Art. 4.

32. G.S. 166A-19.72.

33. G.S. 166A-19.72(c).

34. G.S. 166A-19.15(d).

is necessary.³⁵ The severity and magnitude of a disaster is initially evaluated through preliminary damage assessments that gauge the scope of the damage, estimated repair costs, the combined capabilities of state and local governments to respond, and unmet needs for which supplemental federal assistance is required.³⁶ In evaluating a state's request and preliminary damage-assessment reports, consideration is given to such factors as

- the amount and type of damage;
- the impact of that damage on state and local governments and individual citizens;
- the level of resources available to affected states, local governments, and their citizens;
- the extent and type of insurance in place to cover losses;
- the existence of imminent threats to public health and safety; and
- any other factors relevant to determining whether federal assistance is needed.

If FEMA recommends and the president finds that a situation is of sufficient severity and magnitude to warrant federal assistance, a presidential major disaster declaration is issued identifying the affected geographic areas covered under the declaration and authorizing federal assistance under various individual and public-assistance programs.³⁷

State Declarations

At the state level, a state of emergency can be declared by either the governor or the General Assembly upon a finding that an emergency exists.³⁸ A state of emergency declaration activates the state's emergency operations plan. Once the emergency has passed, the severity and magnitude of the event is determined by preliminary damage assessments. Based on those assessments, the governor is authorized to issue a disaster declaration.³⁹ Depending on the level of damage and losses, along with additional statutory criteria, one of three types of state disaster declarations can be issued, in ascending order of severity: Type I, Type II, or Type III.⁴⁰ A disaster declaration describes the affected geographic area covered under the declaration and authorizes state assistance programs. The length of time that a disaster declaration remains in effect depends on its type, ranging from sixty days to twenty-four months. A state disaster declaration may be extended by either the governor or the General Assembly, depending on the declaration type. G.S. 166A-19.21(c) specifies the period of time for which each type of declaration may be renewed, the total number of renewals permitted, and the procedures to be followed for renewal.

A state disaster declaration triggers a broad array of gubernatorial powers (some of which require concurrence by the Council of State), including the power to direct or compel evacuations; restrict movement of people and vehicular traffic; deploy resources and assets of the state for relief efforts and to maintain public order and safety; establish a system of economic controls over critical resources (such as rationing or price freezing); and condemn, seize, or otherwise take property.⁴¹ The governor also has the authority to declare the existence of an "abnormal market disruption" to the production, distribution, or sale of goods and services resulting from a natural or man-made disaster in this state as well as in other states where a federal declaration has been issued (an example would be the threat of disruption to fuel supplies in North Carolina following Hurricane

35. 42 U.S.C. § 5170.

36. 44 C.F.R. § 206.36.

37. 44 C.F.R. §§ 206.37, .38.

38. G.S. 166A-19.20.

39. G.S. 166A-19.21.

40. G.S. 166A-19.21 (describing the three types of declarations in more detail).

41. G.S. 166A-19.30.

Katrina and the resulting spiraling increase in gas prices). If the governor finds and declares that an abnormal market disruption exists, then excessive pricing practices prohibitions are triggered and remain in effect for forty-five days unless extended by the governor.⁴²

State of Emergency Declarations—Local

At the local government level, only cities and counties are authorized to issue local state of emergency declarations.⁴³ Such declarations activate local plans, mutual aid and interlocal agreements and compacts, and local ordinances authorizing certain restrictions, prohibitions, and other measures taken to protect public health, safety, and welfare during the period of an emergency declaration in the affected areas covered by the declaration.

Through a local state of emergency declaration, local officials may put in place temporary restrictions and other measures necessary to preserve public order and protect public safety and welfare during the emergency. When properly authorized by local ordinance, law enforcement personnel (including those from other jurisdictions assisting under mutual aid agreements) can aid in emergency response efforts by fully enforcing locally imposed restrictions and prohibitions. Local declarations are also, in most instances, a prerequisite to receiving financial assistance through state and federal disaster-relief programs. This assistance is critical to a local government's response and recovery efforts; it can also help mitigate the fiscal disaster that can follow a natural or man-made disaster.

Who Can Issue a Declaration?

State law authorizes the governing board of a city or a county to issue a local state of emergency declaration. By local ordinance, a board may delegate its declaration authority to the board chair or to the mayor.⁴⁴ State law does not require a governing board to ratify a local official's declaration. The state of emergency remains in effect until terminated by the official or governing body that declared it.

Where Do Local Declarations Apply?

A state of emergency may apply to all or part of a declaring jurisdiction's geographic area. This allows local officials to impose restrictions only on the affected areas of their jurisdictions. If a declaration does not specify a particular geographic area, it applies throughout the entire jurisdiction.⁴⁵

Declarations issued in an individual local jurisdiction are not applicable to neighboring jurisdictions except by consent. Thus, ordinances adopted by a county imposing the kinds of restrictions and prohibitions discussed above do not apply in a city within that county unless consented to by the city's mayor or council. Similarly, a city can only enforce its emergency ordinance within its own corporate jurisdiction. However, the chair of a county board of commissioners may extend to some or all parts of the county emergency restrictions imposed within a city by a mayor if so requested, even if the emergency has not occurred directly within the county itself.⁴⁶ Such an extension of

42. G.S. 75-38.

43. G.S. 166A-19.22.

44. G.S. 166A-19.22(a); 166A-19.15(f)(4). In the case of the mayor's or the board chair's absence or disability, the person authorized to act in that official's stead may act. G.S. 166A-19.3(2), (11).

45. G.S. 166A-19.22(b)(1).

46. G.S. 166A-19.22(b)(3).

city-imposed measures may be necessary to assist the city in responding to an emergency. In a major event, it is common for a state of emergency declaration to be issued jointly or cooperatively by a county and by cities within the county imposing county-wide uniform prohibitions and restrictions.

The authority granted independently to cities and counties to declare emergencies and impose restrictions does not override the management structure set out in G.S. Chapter 166A, where the county is designated as the primary coordinator of emergency management activities at the local level. Cities, while vested with independent authority to declare states of emergency within their jurisdictions,⁴⁷ must still coordinate emergency-management plans, activities, and operations with and under the direction of the county in which they are located.⁴⁸ While these statutory provisions may at first appear to be in conflict, taken together, they properly distinguish between the legal authority to impose restrictions and take other such measures necessary in times of emergency and the operational planning and implementation of such plans necessary to respond to emergencies in an efficient and coordinated manner.

What Restrictions Can Be Imposed?

Local governments may adopt ordinances that are then triggered by local state of emergency declarations.⁴⁹ If authorized in a local ordinance, a local governing board or official (if operating under delegated authority) may impose during a state of emergency the following restrictions and prohibitions, alone or in combination depending on the circumstances and severity of the emergency:

- restrictions/prohibitions on the movement of people in public places, including imposing curfews; 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; prescribing routes, modes of transportation, and destinations in connection with evacuation; and controlling ingress and egress of an emergency area and the movement of persons within the area;
- restrictions/prohibitions on the operation of businesses and other places to or from which people may travel or congregate;
- restrictions/prohibitions on the possession, transportation, sale, purchase, and consumption of alcoholic beverages;
- restrictions/prohibitions on the possession, transportation, sale, purchase, storage, and use of dangerous weapons and substances and gasoline, except that restrictions on dangerous weapons cannot be imposed on lawfully possessed firearms (handguns, shotguns, and rifles) and ammunition; and/or
- restrictions/prohibitions on any other activity or condition the control of which may be reasonably necessary to maintain order and protect lives or property during a state of emergency.

A local government is not *required* to impose these measures when it declares a local state of emergency; it may *elect* to impose only those measures it determines are required to effectively respond to that particular emergency. In order to be legally effective, however, these measures *must* be authorized by local ordinance; measures not authorized cannot be triggered under a state of

47. G.S. 166A-19.22.

48. G.S. 166A-19.15.

49. G.S. 166A-19.31. The constitutionality of these restrictions and prohibitions has been upheld as a proper delegation of the state's police powers to local governments. *State v. Dobbins*, 277 N.C. 484 (1971); *United States v. Chalk*, 441 F.2d 1277 (4th Cir.), *cert. denied*, 202 U.S. 943 (1971).

emergency declaration. Nor can such measures be enforced by law enforcement officials without having been authorized by local ordinance. For example, if a local government restricts or prohibits general public access to a particularly devastated area within its jurisdiction because of public safety concerns (washed-out roads, sinkholes, environmental contamination, unstable and falling buildings, etc.), law enforcement personnel will have difficulty enforcing this restriction, and prosecutors will have difficulty prosecuting violators of it, without proper legal authority for imposing the restriction in the first place. Violations of any such measures or other emergency ordinance provisions are punishable as Class 2 misdemeanors.⁵⁰

Emergency restrictions and prohibitions may remain in effect for the duration of an emergency event, or they may be modified and rescinded as the affected unit progresses through response and recovery after the event. For example, a mayor might impose a curfew city-wide immediately after a tornado strikes, and then lift the curfew in unaffected areas of the city after damage assessments have been completed. Modifications to emergency declarations are issued in the same manner as the original declaration.

Other Restrictions and Prohibitions

In addition to the restrictions that may be imposed through local ordinance during a state of emergency, Article 36A of G.S. Chapter 14 directly prescribes other restrictions on public conduct in times of emergency. Among these are prohibitions against rioting (G.S. 14-288.2), looting, and trespassing during an emergency (G.S. 14-288.6); manufacturing or possessing weapons of mass destruction (G.S. 14-288.8); and assaulting emergency personnel (G.S. 14-288.9). Additionally, law enforcement officers are authorized to frisk persons who are violating an emergency curfew (G.S. 14-288.10) and to inspect vehicles entering or approaching a city in which a state of emergency has been declared (G.S. 14-288.11).

A local state of emergency declaration also triggers protections for consumers against price gouging, which, unfortunately, often follows soon after a major disaster.⁵¹ G.S. 75-38 prohibits excessive pricing practices during a state of emergency by a seller of goods or services (1) consumed or used as a direct result of the emergency or (2) consumed or used to preserve, protect, or sustain life, health, safety, or economic well-being. This prohibition applies not only to the seller, but to all parties in the chain of distribution of the good or services (such as the manufacturer, wholesaler, or distributor). A state disaster declaration also triggers these consumer protection measures.

Paying for Disasters—Who Bears the Costs?

Local Funding

The regular operational costs for most local emergency-management agencies are funded through local General Fund appropriations. All counties receive federal emergency-management-planning grant (EMPG) funds to support local emergency-management operations and are eligible for other federal grant funds for one-time expenses (equipment, training, etc.). Some local governments (typically those in high-risk areas of the state) have established reserve funds to pay for expenses incurred during emergencies. Normal local funding levels are often inadequate to cover the costs of emergency response and recovery operations, however, especially in major disasters. In these

50. G.S. 14-288.20A.

51. G.S. 166A-19.23.

instances, federal and state disaster declarations authorize various assistance programs through which eligible local governments can receive supplemental funding.

Federal Assistance Programs

Under a federal disaster declaration, three main categories of assistance can be authorized: *public assistance* (PA), which is assistance to public entities such as cities, counties, school systems, and other units of government; *individual assistance* (IA), which is assistance to private individuals; and *hazard mitigation*, which is available to both public entities and private individuals. Examples of PA include reimbursement for costs incurred for repair to public infrastructure, debris removal, and emergency protective measures. Examples of IA include temporary housing assistance, home-repair funds, unemployment benefits, food coupons, legal services, crisis counseling, and small-business loans. Examples of hazard mitigation include funding for building elevation and flood-control measures.

The guidelines for PA are described in 44 C.F.R. Part 206. PA programs operate primarily on a cost-sharing reimbursement basis—a local government incurs an eligible cost directly associated with a declared disaster and applies to the federal government for reimbursement. Federal reimbursement is provided at a rate of at least 75 percent of eligible costs⁵² and may be extended to cover as much as 100 percent of eligible costs in severe disasters. The nonfederal share of these costs is traditionally funded by the state, but local governments could be required to assume some portion of the nonfederal share if that share is not fully covered by state funds.

Local governments can seek cost reimbursement for three main categories of disaster-related work expenses: debris removal, emergency protective measures, and permanent restoration (such as repair of public infrastructure). While there are specific eligibility criteria for each category of work, all work performed and all costs incurred must be as a direct result of a declared emergency and must occur within an area covered under an emergency declaration, and the work must be the legal responsibility of the affected local government. Federal reimbursement is not available for costs that are covered by another source (such as insurance) or for “losses” (as opposed to costs), such as lost tax revenues.

There are seven specific categories of disaster-related work for which local governments may seek PA reimbursement.⁵³

1. *Debris removal*—generally limited to the removal of debris from public property; debris that presents an imminent threat to public health or safety or to property; or debris removal necessary for the economic recovery of the community.
2. *Emergency protective measures*—includes activities such as Emergency Operations Center activation; search and rescue; emergency medical care; sheltering; distribution of food, water, and other essential supplies; and security measures.
3. *Roads and bridges*—covers repairs to transportation infrastructure not covered under other federal programs such as the Federal Highway Administration (FHWA).
4. *Water-control facilities*—covers repairs to dams, reservoirs, levees, irrigation facilities, and pumping stations.

52. 42 U.S.C. § 5170b(b); 44 C.F.R. § 206.65. In extraordinary circumstances, the president may authorize direct federal assistance under which the federal government itself performs the emergency work and bears 100 percent of the costs.

53. For more information about PA programs and eligibility criteria, see FEMA, *Public Assistance Program and Policy Guide, FP 104-009-2*, effective June 1, 2020; see generally FEMA (website), “Public Assistance Resource Library.”

5. *Building and equipment*—covers repairs to public buildings and repairs or replacement of damaged contents such as furnishings and equipment.
6. *Utilities*—covers repairs to water-treatment plants, power-generation and -distribution facilities, and sewage systems.
7. *Parks, recreational, and other*—covers repairs to publicly owned recreational facilities such as playgrounds, boat docks and piers, golf courses, and so on.

When a local government requests reimbursement for an eligible cost, that request is reviewed and processed by FEMA in conjunction with state emergency-management personnel and, if granted, funding is awarded. The complexity of this review process depends on the size, scope, and cost of the project. If a reimbursement request is denied, the local government may appeal that decision within FEMA. If a reimbursement request is granted, the local government must manage the federal funds consistent with federal regulations and guidelines governing most federal grant-in-aid programs; individuals who mismanage FEMA PA funds are subject to civil fines and criminal penalties.⁵⁴ When all funding requests have been fully processed (including appeals if necessary) and all federal funds have been obligated, the local government's receipt and expenditure of federal PA funds is audited (or reconciled).⁵⁵

IA programs provide assistance directly to eligible individuals and are administered by federal agencies. Local governments might be called upon to help facilitate the delivery of IA assistance to eligible members of their communities through efforts such as publicizing information about the availability of federal assistance or providing temporary office space for federal program counselors.

The Stafford Act also authorizes post-disaster assistance designed to stimulate hazard-mitigation efforts at the state and local levels.⁵⁶ Hazard mitigation involves measures that are cost-effective and that substantially reduce the risk of future damage and loss, especially where there is evidence of repetitive loss in past disaster events. A typical example of hazard mitigation is property acquisition and relocation assistance for homeowners in flood-hazard areas who have suffered repeated flood damage. Other examples include structural hazard controls and retrofitting of facilities. The amount of funding made available for hazard-mitigation projects equals either 7.5 or 20 percent (depending on the state's hazard-mitigation plan) of the total PA and IA federal funds awarded following a major disaster. The federal funding available for each individual hazard-mitigation project may be up to 75 percent of the total project cost. Although federally funded, hazard-mitigation programs may be administered at the state level. In order to receive hazard-mitigation funding, both the state and the local government applicant must have adopted federally approved hazard-mitigation plans, and each hazard-mitigation project must be consistent with the jurisdiction's plan.

State Assistance Programs

The state also provides a number of disaster-assistance programs that are triggered by a state disaster declaration issued by the governor.⁵⁷ State disaster assistance can be made available in certain circumstances regardless of whether a federal declaration is issued, but it does require that a local state of emergency declaration be issued. Mirroring the structure of federal programs (and intended to supplement federal programs where federal assistance is either not available or not adequate), the scope and number of state programs available depends on the type of disaster declaration issued. For Type I disasters (the least severe in terms of damage), both state IA and PA

54. 44 C.F.R. § 206.14.

55. 42 U.S.C. § 5161(c).

56. 42 U.S.C. § 5170c; 44 C.F.R. Part 206, Subpart N.

57. G.S. 166A-19.41.

programs are authorized. State IA programs include assistance for temporary housing and home repair, relocation, replacement of personal property and vehicles, medical and dental expenses, and funeral or burial expenses. State PA programs include assistance to local governments for costs incurred in disaster activities such as debris removal, emergency protective measures, road and bridge repair, crisis counseling, and public transportation needs.

In order to be eligible for Type I PA assistance, a unit of local government must meet four criteria: (1) it must have suffered at least \$10,000 in uninsurable losses; (2) those uninsurable losses must equal or exceed 1 percent of the unit's annual operating budget; (3) it must have an approved hazard-mitigation plan; and (4) for flood damage, it must participate in the National Flood Insurance Program. If the local government meets these criteria, it becomes eligible to receive reimbursement for 75 percent of eligible costs; the local government must absorb the remaining 25 percent of the costs. No PA programs are authorized for Type II and Type III disasters, and only a limited number of IA programs are authorized for these two types of disasters (for which, presumably, greater federal assistance is available).

Contracting and Other Requirements for Reimbursement

It should be noted that compliance with all applicable federal regulations and guidelines is a condition of any federal grant award. Where federal guidelines specify conditions or restrictions not found in state law, those conditions or restrictions still must be followed by local government applicants. Local governments should seek the advice of counsel about applicable federal requirements that may not exist within state law and yet could present a barrier to funding awards if not followed. For example, debris-removal contracts are considered service contracts under state law and, as such, are not subject to North Carolina bidding laws. However, federal law requires that certain competitive bidding procedures be followed in the award of service contracts for which federal funds are spent.⁵⁸ A local government may, in good faith, award a debris-removal contract without utilizing a competitive bidding process and act entirely consistent with state law yet not be in compliance with federal law. This is also the case with “piggybacking” onto another local government's existing debris-removal (or other service) contract. While not prohibited under state law, this practice violates federal procurement procedures.

Similarly, North Carolina law allows waivers of competitive bidding requirements “in cases of special emergency involving the health and safety of the people and their property.”⁵⁹ Again, in a disaster situation, a local government may choose to enter into a service contract without following competitive bidding requirements under this emergency exemption.⁶⁰ When seeking federal funding assistance, a local government may engage in noncompetitive procurement methods if “[t]he public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation.”⁶¹ When using this exception to federal competitive-solicitation requirements, a local government should consult FEMA guidance to ensure that it properly documents the justification for the exception in the procurement record and observes other applicable federal-funding eligibility requirements.⁶²

58. See 2 C.F.R. Part 200.

59. G.S. 143-129(e)(2).

60. For more information on North Carolina purchasing and contracting requirements, see Frayda S. Bluestein, *A Legal Guide to Purchasing and Contracting for North Carolina Local Governments*, 2nd ed. (UNC School of Government, 2004).

61. 2 C.F.R. § 200.320(c)(3).

62. For further guidance about the emergency and exigent circumstances exception, see FEMA (website), “An Exception to the Rules During Emergency or Exigent Circumstances.”

Another example of a conflict between state/local and federal law that can be a barrier to reimbursement involves personnel costs. Generally, overtime pay for *nonexempt* employees is eligible for federal reimbursement in a federally declared disaster. Some local governments will authorize, by local ordinance or in their personnel policies, the award of overtime compensation for *exempt* employees in disaster situations, and they will leave the decision to award the overtime compensation in any particular disaster to the discretion of their governing board or manager; others will award overtime compensation only if a federal disaster declaration has been issued. Such policies are not prohibited under state law. Under federal regulations, however, compensation for personnel costs is contingent on an affected local government having an “established policy that is consistently applied to both Federal and non-Federal activities.”⁶³ Thus, if the award of overtime pay for exempt employees is not in a written policy and is either discretionary or dependent on a federal disaster declaration, it is not considered “consistently applied to both federal and non-federal activities” and is not eligible for federal reimbursement.

Infrastructure

One of the primary concerns of all local officials is how to expedite the disaster-recovery process as much as possible to reinstate private services and begin economic and budgetary recovery. Building and inspections is one area in which local governments may implement extraordinary procedures, such as modifying local ordinances or employing additional inspectors and personnel to expedite recovery. Several inspections and assessments take place in the days following an event. Local building officials may initially conduct safety and habitability inspections of damaged buildings to assess whether each structure is safe to enter, has limited access, or is condemned. Local floodplain-management and permitting officials may also inspect structures to assess zoning or floodplain status and obtain information on each property owner’s rebuilding plan and compliance with state and local regulations. Under state law, every inspector or code-enforcement official must hold a valid certification of qualification issued by the North Carolina Code Officials Qualification Board for building, electrical, mechanical, plumbing, or fire code enforcement.⁶⁴ The Board may issue probationary or temporary certificates to any newly employed Code enforcer who lacks prerequisite qualifications for a standard certificate for one to three years.⁶⁵ The Board may designate specialty levels with special conditions relating to place of employment, supervision, or other matters necessary to protect public health and safety.⁶⁶ The Board may also issue standard certificates following a short course to any person licensed under state law as an architect, general contractor, plumbing or heating contractor, electrical contractor, or professional engineer.⁶⁷

Under state law, ambulatory surgical centers⁶⁸ and hospitals⁶⁹ are required to develop emergency-preparedness programs with input from local emergency-management officials. Such programs must comply with the Emergency Preparedness Requirements for Medicare and Medicaid Participating

63. Office of Management and Budget, *OMB Circular A-87 Revised*, May 2004, Attachment B, “Selected Items of Cost.”

64. G.S. 143-151.13(a), (b).

65. G.S. 143-151.13(d).

66. G.S. 143-151.13(d).

67. G.S. 143-151.13(f).

68. Title 10A, Chapter 13, Subchapter C, Section .1403 of the North Carolina Administrative Code (hereinafter N.C.A.C.).

69. 10A N.C.A.C. 13B, § .6102(b).

Providers and Suppliers Final Rule promulgated by the Centers for Medicare and Medicaid Services (CMS).⁷⁰ Under Title 10A, Chapter 13, Subchapter B, Section .4110 of the North Carolina Administrative Code, each hospital in the state is required to describe services available during an external disaster, the role of its emergency department in a disaster, procedures for an internal disaster, and connections to public agencies and emergency suppliers such as the Red Cross.⁷¹ All hospital emergency-preparedness programs must also provide for evacuation and transfer of all inpatients in case of internal disaster and for mutual agreements with area providers.⁷² If local hospitals are damaged or overwhelmed during a given disaster incident, this may greatly affect the availability of emergency transportation and recovery.

Continuity of Government in the Event of Enemy Attack

In the cold-war era of the late 1950s, the General Assembly enacted not only the Civil Preparedness Act (G.S. Chapter 166, the forerunner to Chapter 166A), but also G.S. Chapter 162B, establishing measures to ensure continuity of local governments in the event of an enemy attack on the state. These statutes, which are triggered only when the governor and Council of State declare the state to be subject to impending or actual hostile attack, authorize local governments to identify alternate sites within and outside of their jurisdictions to serve as emergency locations from which the local governments might operate and at which they might meet to transact public business.⁷³ A governing body may even waive compliance with “legally prescribed procedural requirements relating to the conduct of meetings and transaction of business” if the situation makes compliance with such requirements impossible.⁷⁴ Local governments are also authorized to enact ordinances providing for emergency interim succession to local offices in the event that local officials are unavailable.⁷⁵ In cases where a legally empowered official is unavailable, a successor may exercise the powers and discharge the duties of that office until the vacancy is filled according to statute or the official returns.⁷⁶ An interim successor may exercise the powers of the office he or she assumes only in the event of an attack on the state,⁷⁷ and his or her status as an interim successor may be terminated by the local governing body at any time.⁷⁸

At the federal level, continuity of government and operations is not limited to enemy attack. The FEMA Office of National Continuity Programs has provided guidance on continuity matters for all federal executive branch agencies as well as for state, local, and tribal governments.⁷⁹

70. CMS (website), “Emergency Preparedness Rule,” effective Nov. 16, 2016.

71. 10A N.C.A.C. 13B, § .4110(a).

72. 10A N.C.A.C. 13B, §§ .4110(c)(5), (6).

73. G.S. 162B-1, -2.

74. G.S. 162B-3.

75. G.S. 162B-6.

76. G.S. 162B-9.

77. Attacks may be accomplished by “sabotage or by use of bombs, missiles, shellfire, or atomic, radiological, chemical, bacteriological, or biological means or other weapons or processes.” G.S. 162B-7.

78. G.S. 162B-11.

79. See FEMA (website), “Continuity Policy, Doctrine and Guidance” (list of authorities and references and searchable database), accessed June 11, 2024.

Immunity and Liability

Broad immunity is granted for emergency-management functions. G.S. 166A-19.60 exempts from liability the state, any political subdivision of the state, and any emergency-management worker who is, in good faith,⁸⁰ complying or attempting to comply with any order, rule, regulation, or ordinance relating to any emergency-management measures. This immunity includes situations resulting in death or injury to persons or in damage to property and applies wherever an emergency-management worker is engaged in emergency-management activities or services, whether inside or outside of the worker's own jurisdiction. Moreover, any professional work or service that would normally require a license under North Carolina law can be performed without a license by an emergency-management worker during a declared state of disaster.

Under this statute, an "emergency management worker" is broadly defined as a full- or part-time paid, volunteer, or auxiliary employee of the federal government, the state, political subdivisions of the state, or any agency or organization performing emergency-management services in any place in the state, so long as he or she is subject to the order or control of, or is working at the request of, state or local government.⁸¹ The definition also includes state medical assistance teams and emergency healthcare workers. While this definition is very broad, it does not extend to private vendors and contractors working for hire under contract with state or local governments in a disaster situation, although it does include private vendors and contractors working without compensation under a state of emergency declaration. Even though an affected unit of government itself is granted immunity (and is presumably protected even if its vendors and contractors are not), local governments would be well-served by requiring liability indemnification and hold-harmless clauses in all contracts with private companies, vendors, and individuals for any and all claims arising out of the performance of the contracts.⁸²

80. The immunity under G.S. 166A-19.60 does not extend to cases of willful misconduct, gross negligence, or bad faith.

81. G.S. 166A-19.60(e).

82. The Stafford Act requires indemnification of the federal government in all contracts involving private property debris removal. 42 U.S.C. § 5173(b).