

HOUSE BILL NO. 1495

Introduced by

Representatives K. Koppelman, Kasper, Klemin, Louser

Senators Dever, Myrdal

1 A BILL for an Act to create and enact a new section to chapter 54-03 of the North Dakota
 2 Century Code, relating to virtual sessions of the legislative assembly: to amend and reenact
 3 subsection 12 of section 23-01-05 and sections 37-17.1-02.2, 37-17.1-03, 37-17.1-04,
 4 37-17.1-05, 37-17.1-10, and 37-17.1-11 of the North Dakota Century Code, relating to the state
 5 health officer's authority and the governor's and legislative assembly's authority during a
 6 declared state of disaster or emergency; and to provide a penalty.

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

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

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

1 emergency or disaster may not exceed in duration or scope the authority of the
2 governor under chapter 37-17.1.

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

5 **37-17.1-02.2. Advisory committee to department of emergency services.**

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

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

24 **37-17.1-03. Limitations.**

25 Nothing in this chapter may:

- 26 1. Interfere with the course or conduct of a labor dispute, except that actions otherwise
27 authorized by this chapter or other laws may be taken when necessary to forestall or
28 mitigate imminent or existing danger to public health or safety.
- 29 2. Interfere with dissemination of news or comment on public affairs. Any
30 communications facility or organization, including radio and television stations, wire
31 services, and newspapers may be required to transmit or print public service

1 messages furnishing information or instructions in connection with a disaster or
2 emergency situation.

3 3. Affect the jurisdiction or responsibilities of units of the armed forces of the United
4 States or of this state, or of any personnel thereof, when on active duty. State and
5 local emergency operational plans must place reliance upon the forces available for
6 performance of functions related to disasters or emergencies.

7 4. Limit, modify, or abridge the authority of the governor to ~~proclaim martial law~~, provide
8 aid or assistance to civil authorities; or exercise any other powers vested in the
9 governor under the Constitution of North Dakota, or statutes, common law, or
10 sovereign powers of this state independent of, or in conjunction with, any provisions of
11 this chapter.

12 5. Change or modify the responsibilities of the American National Red Cross as defined
13 by the Congress of the United States in 36 U.S.C. 300101.

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

16 **37-17.1-04. Definitions.**

17 As used in this chapter:

18 1. "Critical industry sectors" means any of the critical infrastructure sectors identified by
19 the United States government whose assets, systems, and networks, whether physical
20 or virtual, are considered so vital to the United States and the state that the sectors'
21 incapacitation or destruction would have a debilitating effect on security, economic
22 security, public health or safety, or any combination thereof.

23 2. "Disaster" means the occurrence of widespread or severe damage, injury, or loss of
24 life or property resulting from any natural or manmade cause, including fire, flood,
25 earthquake, severe high and low temperatures, tornado storm, wave action, chemical
26 spill, or other water or air contamination, epidemic, blight, drought, infestation,
27 explosion, riot, or hostile military or paramilitary action, or cyber attack which is
28 determined by the governor to require state or state and federal assistance or actions
29 to supplement the recovery efforts of local governments in alleviating the damage,
30 loss, hardship, or suffering caused thereby.

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- 1 3. "Disaster or emergency worker" means any person performing disaster or emergency
2 responsibilities or duties at any place in this state subject to the order or control of, or
3 pursuant to a request of, the state government or any political subdivision.
- 4 4. "Emergency" means any situation that is determined by the governor to require state
5 or state and federal response or mitigation actions to protect lives and property, to
6 provide for public health and safety, or to avert or lessen the threat of a disaster.
7 Emergencies require an immediate supplement to local governments or aid to critical
8 industry sectors that provide essential lifeline services.
- 9 5. "Emergency management" means a comprehensive integrated system at all levels of
10 government and in the private sector which provides for the development and
11 maintenance of an effective capability to prevent, mitigate, prepare for, respond to,
12 and recover from known and unforeseen hazards or situations, caused by an act of
13 nature or man, which may threaten, injure, damage, or destroy lives, property, or our
14 environment.
- 15 6. "Homeland security" means a concerted national effort to prevent terrorist attacks
16 within the United States, reduce America's vulnerability to terrorism, and minimize the
17 damage and recover from attacks in the United States.
- 18 7. "Incident command system" means a standardized on-scene incident management
19 concept designated specifically to allow responders to adopt an integrated
20 organizational structure equal to the complexity and demands of any single incident or
21 multiple incidents without being hindered by jurisdictional boundaries.
- 22 8. "Mass care" means food, clothing, shelter, and other necessary and essential
23 assistance provided to a large number of affected people in response to, or recovery
24 from, a disaster or emergency.
- 25 9. "National incident management system" means a system that provides a consistent
26 nationwide approach for federal, state, and local governments to work effectively and
27 efficiently together to prepare for, respond to, and recover from domestic incidents
28 regardless of cause, size, or complexity.
- 29 10. "Regulatory statute" means a statute prescribing, regulating, or limiting the procedures
30 for the conduct of state business; or licensing, issuing permits, or prohibiting conduct
31 or an activity by a person.

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

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

8 **37-17.1-05. The governor and disasters or emergencies - Penalty.**

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

1 the original declaration be declared. If the legislative assembly is not in session
2 and the governor determines disaster or emergency circumstances remain or are
3 likely to continue, the governor may call the legislative assembly into special
4 session to request the legislative assembly take action to address the disaster or
5 emergency.

6 b. The legislative assembly by concurrent resolution may terminate a state of
7 disaster or emergency at any time. The legislative assembly may act by a remote
8 session to approve a concurrent resolution terminating a state of disaster or
9 emergency if the legislative management approves the session to be conducted
10 remotely. If a state of disaster or emergency is terminated by the legislative
11 assembly by concurrent resolution, the governor may not declare another state of
12 disaster or emergency for the same disaster or emergency conditions.

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

23 4-5. An executive order or proclamation of a state of disaster or emergency shall
24 activateactivates the state and local operational plans applicable to the political
25 subdivision or area in question and beconstitutes authority for the deployment and use
26 of any forces to which the plan or plans apply and for use or distribution of any
27 supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to
28 be made available pursuant to this chapter or any other provision of law relating to a
29 disaster or emergency.

30 5-6. During the continuance of any state of disaster or emergency declared by the
31 governor, the governor is commander in chief of the emergency management

1 organization and of all other forces available for emergency duty. To the greatest
2 extent practicable, the governor shall delegate or assign command authority by prior
3 arrangement embodied in appropriate executive orders or emergency operational
4 plans, but ~~nothing herein restricts~~this subsection does not restrict the governor's
5 authority to do so by orders issued at the time of the disaster or emergency.

6 ~~6.7.~~ ~~In~~The governor may not amend, alter, or expand the provisions of a statute, but
7 subject to prohibitions and limitations in law, and in addition to any other powers
8 conferred upon the governor by law, the governor may:

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

14 ~~(1)~~ ~~The~~However, the governor may not suspend a regulatory statute, order, or
15 rule if:

16 ~~(a)~~ ~~(1)~~ Doing so will impose greater restrictions; or

17 ~~(b)~~ ~~(2)~~ The statute, order, or rule affords a citizen due process of law.

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

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

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

27 ~~(c)~~ ~~The suspension is arbitrary or capricious; or~~

28 ~~(d)~~ ~~The suspension is unreasonable or unnecessary.~~

29 ~~(3)~~ ~~If the governor disagrees with the decision of the administrative rules~~
30 ~~committee to void a proposed suspension, the governor may call a special~~
31 ~~session of the legislative assembly.~~

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

- 7 b. Utilize all available resources of the state government as reasonably necessary
8 to manage the disaster or emergency and of each political subdivision of the
9 state.
- 10 c. Transfer the direction, personnel, or functions of state departments and agencies
11 or units thereof for the purpose of performing or facilitating emergency
12 management activities.
- 13 d. Subject to any applicable requirements for compensation under section
14 37-17.1-12, commandeer or utilize any private property if the governor finds this
15 necessary to manage the disaster or emergency.
- 16 e. Direct and compel the evacuation of all or part of the population from any stricken
17 or threatened area within the state if the governor deems this action necessary
18 for the preservation of life or other disaster or emergency mitigation, response, or
19 recovery.
- 20 f. Prescribe routes, modes of transportation, and destinations in connection with an
21 evacuation.
- 22 g. Control ingress and egress in a designated disaster or emergency area, the
23 movement of persons within the area, and the occupancy of premises therein.
- 24 h. Suspend or limit the sale, dispensing, or transportation of alcoholic beverages,
25 explosives, and combustibles, not including ammunition.
- 26 i. Make provision for the availability and use of temporary emergency housing.
- 27 j. Make provisions for the control, allocation, and the use of quotas for critical
28 shortages of fuel or other life and property sustaining commodities.
- 29 k. Designate members of the highway patrol, North Dakota national guard, or others
30 trained in law enforcement, as peace officers.

1 8. During a declared state of disaster or emergency, a public official or executive
2 branch employee may not withhold, direct, or require the use or expenditure of
3 any money in a manner or for a purpose other than the manner or purpose for
4 which the money was appropriated by the legislative assembly, emergency
5 commission, or budget section.

6 ~~7.9.~~ Any person who willfully violates any provision of an executive order or proclamation
7 issued by the governor pursuant to this chapter is guilty of an infraction.

8 ~~8.10.~~ ~~Authorize~~The governor may authorize the adjutant general to recall to state active
9 duty, on a volunteer basis, former members of the North Dakota national guard. Those
10 recalled must possess the qualifications required by the disaster or emergency. Recall
11 under this subsection is effective only for the duration of the disaster or emergency
12 and recalled personnel will be released from state active duty upon competent
13 authority that the requirement of their service under this subsection has passed.
14 Compensation for personnel recalled under this subsection will be based upon section
15 37-07-05.

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

18 **37-17.1-10. Local disasters, mandatory evacuations, or emergencies.**

- 19 1. Unless so declared in accordance with the provisions of subsection 4 of section
20 37-17.1-05, a local disaster, emergency, or mandatory evacuation order may be
21 declared only by the principal executive officer of the county or city. ~~†The order~~ may
22 not be continued or renewed for a period in excess of seven days except by or with
23 the consent of the governing board of the county or city. Any order ~~or proclamation~~
24 declaring a local disaster, emergency, or mandatory evacuation must be given prompt
25 and general publicity and must be filed promptly with the county or city auditor.
- 26 2. The effect of a declaration of a local disaster or emergency is to activate the response
27 and recovery aspects of any and all applicable local disaster or emergency operational
28 plans and to authorize the furnishing of aid and assistance ~~thereunder~~under the plans.
- 29 3. The terms of an order or declaration by a county or city pursuant to this section
30 relating to an epidemic or pandemic must be approved by the state health officer and
31 may be terminated by the legislative assembly.

1 4. Notwithstanding sections 11-9.1-05, 11-11-14, 40-05-01, and 40-05.1-06, the terms of
2 an order, declaration, or ordinance by a county or city may not be more restrictive than
3 those expressly permitted in state law.

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

6 **37-17.1-11. Disaster or emergency mitigation.**

- 7 1. In addition to disaster or emergency mitigation measures as included in the state and
8 local disaster or emergency operational plans, the governor shall consider, on a
9 continuing basis, steps that could be taken to mitigate or reduce the harmful
10 consequences of disasters or emergencies. At the governor's direction, and pursuant
11 to any other authority and capability they have, state agencies charged with
12 responsibilities in connection with floodplain management, stream encroachment and
13 flow regulation, weather modification, fire prevention and control, air quality, public
14 works, land use and land use planning, and construction standards, shall make
15 studies of disaster or emergency mitigation-related matters. The governor, from time to
16 time, shall make recommendations to the legislative assembly, local governments, and
17 other appropriate public and private entities as may facilitate measures for mitigation
18 or reduction of the harmful consequences of disasters or emergencies.
- 19 2. The North Dakota state engineer and the water commission, in conjunction with the
20 division of homeland security, shall keep land uses and construction of structures and
21 other facilities under continuing study and identify areas ~~which are~~ particularly
22 susceptible to severe land shifting, subsidence, flood, or other catastrophic
23 occurrence. The studies under this subsection must concentrate on means of reducing
24 or avoiding the dangers caused by this occurrence or the consequences ~~thereof~~ of the
25 occurrence.
- 26 3. If the division of homeland security determines, in coordination with lead and support
27 agencies, on the basis of the studies or other competent evidence, that an area is
28 susceptible to a disaster of catastrophic proportions without adequate warning;
29 existing building standards and land use controls in that area are inadequate and
30 could add substantially to the magnitude of the disaster or emergency; and changes in
31 zoning regulations, other land use regulations, or building requirements are needed in

1 order to further the purposes of this section, ~~the department~~ shall specify the
2 essential changes to the governor. If the governor, upon review of the determination,
3 finds after public hearing, that the changes are essential, the governor shall ~~se-~~
4 recommend the changes to the agencies or local governments with jurisdiction over
5 that area and subject matter. If no action or insufficient action pursuant to the
6 governor's recommendations is taken within the time specified by the governor, the
7 governor shall ~~se~~ inform the legislative assembly and request legislative action
8 appropriate to mitigate the impact of the disaster or emergency.

- 9 4. ~~The governor, at the same time that the governor makes recommendations pursuant~~
10 ~~to subsection 3, may suspend the standard or control which the governor finds to be~~
11 ~~inadequate to protect the public safety and by regulation place a new standard or~~
12 ~~control in effect. The new standard or control remains in effect until rejected by~~
13 ~~concurrent resolution of both houses of the legislative assembly or amended by the~~
14 ~~governor. During the time it is in effect, the standard or control contained in the~~
15 ~~governor's regulation must be administered and given full effect by all relevant~~
16 ~~regulatory agencies of the state and local governments to which it applies. The~~
17 ~~governor's action is subject to judicial review in accordance with chapter 28-32 but is~~
18 ~~not subject to temporary stay pending litigation.~~

19 **SECTION 8.** A new section to chapter 54-03 of the North Dakota Century Code is created
20 and enacted as follows:

21 **Virtual session of the legislative assembly during emergency or disaster.**

- 22 **1. If the governor calls a special session of the legislative assembly to address a state of**
23 **emergency or disaster or if the legislative assembly reconvenes to address a state of**
24 **emergency or disaster, the legislative assembly may use any technology or electronic**
25 **means available to conduct meetings and transact legislative business.**
- 26 **2. For purposes of section 7 of article IV of the Constitution of North Dakota, a meeting of**
27 **the legislative assembly which occurs under this section is deemed to have occurred**
28 **at the seat of the government, and all actions taken during the meeting have the same**
29 **legal effect as if the members of the legislative assembly were physically present at**
30 **the seat of government.**