



LEGISLATIVE EMERGENCY POWERS

This memorandum addresses the constitutional and statutory emergency power of the Legislative Assembly.

CONSTITUTIONAL AUTHORITY

Section 7 of Article XI of the Constitution of North Dakota authorizes the Legislative Assembly to act in periods of emergency; however, the authority is limited to emergencies resulting from disasters caused by enemy attack.

Section 7 was approved by the voters in 1962. A wave of states amended statutory and constitutional provisions at this time to provide for continuity of government during the Cold War period. The federal government heavily lobbied states to adopt continuity of government provisions and provided the states a model constitutional measure in 1959. The legislative history for this section indicates the Legislative Assembly's intent was to limit these powers to emergency situations involving enemy "nuclear" or "atomic" attacks and "radioactive fallout," not just any type of emergency.¹

Section 7 provides:

The legislative assembly, in order to ensure continuity of state and local governmental operations in periods of emergency resulting from disasters caused by enemy attack, shall have the power and immediate duty (1) to provide for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices, and (2) to adopt such other measures as may be necessary and proper for ensuring the continuity of governmental operations including, but not limited to, waiver of constitutional restrictions upon the place of transaction of governmental business, upon the calling of sessions of the legislative assembly, length of sessions, quorum and voting requirements, subjects of legislation and appropriation bill requirements, upon eligibility of legislators to hold other offices, residence requirements for legislators, and upon expenditures, loans or donations of public moneys. In the exercise of the powers hereby conferred the legislative assembly shall in all respects conform to the requirements of this constitution except to the extent that in the judgment of the legislative assembly so to do would be impracticable or would admit of undue delay.

STATUTORY AUTHORITY

The Legislative Assembly has limited statutory emergency authority compared to the Governor. As the chief executive of the state, the Governor has the responsibility to ensure the state's business is well administered pursuant to Section 7 of Article V of the Constitution of North Dakota. The Governor also serves as the commander-in-chief of the state's military forces and may mobilize those forces to execute laws and maintain order. In times of disasters or emergencies, the Governor has broad statutory authority under North Dakota Century Code Chapter 37-17.1, the North Dakota Disaster Act.

A disaster or emergency must be declared by executive order or proclamation of the Governor, pursuant to Section 37-17.1-05. Executive orders, proclamations, and regulations issued by the Governor have the force of law. Once declared, the state of disaster or emergency continues until the Governor determines the threat of an emergency has passed or the disaster has been dealt with to the extent the emergency conditions no longer exist. Under Section 37-17.1-05(3), the Legislative Assembly, by concurrent resolution, has the power to terminate a state of disaster or emergency.

Section 37-17.1-27, which establishes a state disaster relief fund, provides:

Moneys in the fund are to be used subject to legislative appropriations for providing the required state share of funding for expenses and administration associated with federal emergency management

¹<https://www.legis.nd.gov/files/resource/36-1959/legislative-management-final-reports/1961finalreport.pdf>.

agency disaster response, recovery, and mitigation grants and for the purposes of reimbursing costs under section 37-17.1-28 . . . Before any expenditure is made from the fund, the agency authorized to make the expenditure shall provide information on the purpose and payee of the expenditure to the appropriation committees of the house of representatives and senate or to the budget section if the legislative assembly is not in session.

Chapter 54-16 establishes the Emergency Commission on which the Majority Leaders of the Senate and House of Representatives, the appropriations chairmen of the Senate and House of Representatives, the Governor, and the Secretary of State serve as members. The role of the Emergency Commission is to consider budgetary issues during an emergency. Section 54-16-04.1 sets forth the procedure for state agencies to gain authorization from the Emergency Commission and Budget Section to accept and disburse federal funds. Section 54-16-04.1 provides:

1. The emergency commission, upon the advice and counsel of the office of management and budget, may authorize the state treasurer to receive any moneys not appropriated by the legislative assembly which are made available by any federal agency and which the legislative assembly has not indicated an intent to reject.
2. The emergency commission may authorize passthrough federal funds from one state agency to another state agency.
3. The emergency commission, with approval of the budget section of the legislative management if the amount under consideration exceeds fifty thousand dollars, may authorize any state officer to receive and expend federal moneys from the date such moneys become available until June thirtieth following the next regular legislative session.
4. Any federal funds made available to this state which are not for a specific purpose or program and which are not required to be spent prior to the next regular legislative session, upon the approval for acceptance by the emergency commission and the budget section of the legislative management, must be deposited into a special fund until the legislative assembly appropriates the funds.
5.
 - a. Approval by the budget section of the legislative management is not required for the acceptance of federal funds if the acceptance is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state.
 - b. Budget section approval is required before the expenditure of any funds accepted under these conditions.
6. The expenditures must be consistent with state law and with the terms of the grant and the program may not commit the legislative assembly for matching funds in the future unless the program has first been approved by the legislative assembly.
7. A state officer may not expend funds received from the federal government which have not been specifically appropriated by the legislative assembly except as provided in this chapter.
8. A state officer shall submit an expenditure plan with a request for approval under this section of expenditure of federal funds combined with or as part of a block grant for a new or existing program.

Section 54-16-04.2 provides, "[u]pon a finding that an emergency exists, the emergency commission, upon the advice of the office of management and budget . . . may authorize a state officer to receive moneys from gifts, grants, donations, or other sources, not otherwise appropriated by the legislative assembly, for new or existing programs if the legislative assembly has not indicated an intent to reject the moneys or the program." Although this section does not require approval of the Budget Section for the acceptance of money if the acceptance is necessary to avoid an imminent financial loss to the state, Budget Section approval is required for the expenditure of any funds accepted under those conditions.

CONCLUSION

Although the Legislative Assembly has limited statutory and constitutional authority during an emergency, there is express authority for the Legislative Assembly to terminate an emergency, approve appropriations, and ensure continuity of state and local government.