

Testimony – HB 1495  
Senate Government and Veterans Affairs Committee  
March 25, 2021  
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Chairman Vedaa and members of the Senate Government and Veterans Affairs Committee, my name is Cody Schulz. I am the Director of the Homeland Security and Deputy Director of the Department of Emergency Services (DES). I offer this testimony in opposition to SB 2124 as it is currently written.

I have a few concerns as well as a couple of considerations I respectfully ask that you contemplate. I would like to lead off with the fact that we would welcome the addition of a Senate Member and a House Member on the Department of Emergency Services Advisory Committee (DESAC) as detailed in Section 2 of the bill. We have seen first-hand the benefits of this set up on the State Interoperability Executive Committee (SIEC). It benefits the agency by gaining another perspective on our strategic mission and it benefits the Legislature by ensuring there is a trusted subject matter expert in your own membership.

My first concern with the remainder of the bill is; in issues related to public safety, and specifically emergency management, decisive and timely action is critical for successful response. I understand the intentions behind this bill and completely agree that the legislative branch provides a necessary and important oversight role in government. I do ask you to consider the potential unintended consequences of changing how we responds to disasters, which could impede our ability to respond swiftly and recover effectively from disasters and emergencies. Overall, I would argue that our current laws and processes have served us very well as we have responded to disasters ranging from 500-year floods to historic civil unrest to a once in a century pandemic in the past three decades. Anything that has the potential to bring uncertainty into processes that have worked during our recent history should be studied and contemplated very carefully.

Secondly, I am concerned how this change in process, and the potential uncertainty it could cause, would impact local government response decisions and the interaction and relationships between local and state emergency management professionals. At NDDES we pride ourselves in how well we collaborate and communicate with our local partners, and because of our efforts I believe our credibility and trust have never been higher. So, I am sensitive to changes that could disrupt how we work with our partners.

I personally had the honor of serving as a County Commission for eight (8) years in Morton County and served as Chairman in 2016 and 2017 during the Dakota Access Pipeline (DAPL) protests. I have asked myself, if this bill had been law in 2016 how would it have impacted Morton County, the response and our interaction with State agencies. My answer is, I don't know. But that uncertainty alone does cause me some pause. I do know that the County's communication and collaboration with State agencies, the Governor's Office and Legislators in Morton County worked very well under our current processes and laws.

Three other considerations I ask you to think about are:

1. The potential impacts to FEMA funding. The Stafford Act, which authorizes the President to provide Federal assistance when the magnitude of an incident or threatened incident exceeds the State's capabilities to respond or recover, requires, "as a prerequisite to major disaster assistance under this Act, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan," which in practice in North Dakota is done through the executive order declaring an emergency or disaster. Therefore, if a Governor's order is revoked, federal funding from that point forward would not be available.
2. HB 1118, which has already passed in the House, already deals with most of the issues addressed in this bill but does so in a more focused manner.
3. This bill **requires** a special legislative session to extend the length of a disaster declaration rather than making it option, as in current law and HB 1118. While North Dakota is the best place to live and work in this country, we must admit we live in a land of extremes. Since 1997, North Dakota has received thirty-seven (37) Presidential Major Disaster Declarations resulting in nearly \$2 billion in federal aid. For each of these declarations, FEMA defines an official "incident period" in which disaster impacts were recorded and eligible for reimbursement. Of those thirty-seven (37) Disasters, thirteen (13) had incident periods longer than thirty (30) days and eleven (11) had incident periods longer than sixty (60) days. Therefore, at least thirteen (13) Special Legislative sessions would have been required, and while all disasters are unique and traumatic, most of those instances were relatively commonplace.

During disaster response and the early stages of recovery, uncertainty can negatively impact operational and fiscal decisions. The National Emergency Management Association (NEMA), of which I am a member, has drafted a memo on this topic for State Legislatures to consider, and I have attached that memo to my testimony. I would like to quote just one of NEMA's points to consider: "disaster response must be swift and thorough to save lives and deal with the rapidly changing dynamics and complexity increasingly prevalent in the types of disasters being experienced today. Any legislative action that impedes a state's ability to respond quickly and comprehensively is of great concern to the emergency management community." Therefore, we ask that all effort be made to create stability and predictability for state and local decision makers, especially in the difficult and uncertain time of emergencies and disasters.

I will just finish by saying this bill feels like a reaction to a very traumatic and difficult year of response to a once in a century pandemic and I ask that you please consider that making permanent process changes to deal with an outlier event could have the unintended consequence of making the more common, routine events more difficult to respond to.

On behalf of the Department of Emergency Services, I recommend HB 1495, as written, receive a Do Not Pass.

Thank you for your time; I will do my best to answer any questions you may have.



## Considerations for State Legislation Addressing Emergency and Disaster Authorities

[The National Emergency Management Association \(NEMA\)](#) represents the voice and consensus policy positions of the directors of the emergency management agencies of the 50 states, the U.S. territories, and the District of Columbia who are responsible for all hazards emergency and disaster preparedness, mitigation, response, and recovery across the nation.

In these times of increasing complexity and the proliferation of risks and hazards faced by the American public, including pandemics, the combined and integrated efforts of all of government are essential for success. Laws, authorities, policies, and funding decisions must be inclusive and foster unity of effort to ensure truly resilient states and communities.

*As state legislatures consider a variety of disaster and public health emergency related bills, NEMA would like to offer points of consideration to help ensure the continued effectiveness of disaster response and recovery, including public health emergencies such as pandemics.*

### State Emergency Declarations for COVID-19 – Impacts of Terminating During Ongoing Response

There is discussion within some states, at the executive and legislative levels, about terminating the state emergency declaration for COVID-19. Decision-makers should keep in mind that ending an emergency declaration before the response has concluded may cause the Federal Emergency Management Agency (FEMA) to close the incident period for a presidentially declared disaster under the Stafford Act.

If FEMA were to close the disaster incident period, access to a range of federal programs could immediately end. In that case, the state could be responsible for covering the costs for all ongoing COVID-19 response actions after the state emergency declaration has ended. These costs may include, but are not limited to:

- Personal Protective Equipment: procurement of supplies, equipment, warehousing, transportation, and distribution;
- Vaccine logistics, distribution, and support;
- National Guard support under Title 32 for COVID-19 operations;
- COVID-19 testing support and contact tracing;
- Reopening and operation of eligible schools, child-care facilities, healthcare facilities, domestic violence shelters, transit systems, and other eligible facilities; and disinfecting services and supplies for those facilities;
- Emergency feeding and distribution associated with COVID positive, COVID exposed or COVID vulnerable populations;
- Emergency non-congregate housing for COVID positive, COVID exposed or COVID vulnerable populations, as well as displaced disaster survivors during the pandemic; and
- Funeral assistance.

### Legislation and Governors' Emergency Authorities: Disaster Response and Recovery Implications

This year, more than 30 states and territories have had bills introduced in the state legislature that would seek to limit the governor's emergency powers. Many of these bills focus on limiting the length of time an emergency declaration remains in place; requiring the approval of the General Assembly to extend an emergency declaration; limiting the governor's ability to suspend statutes and regulations during disasters; giving the legislature the authority to direct

federal funding coming to states for disaster recovery programs; and changing the definition of the terms “disaster” and “emergency”.

A governor’s emergency declaration is most often the first step in disaster response as it activates the state emergency operations plan and a range of emergency protective measures for the public. Some of these actions are a pre-requisite to requesting federal disaster assistance.

### **State Emergency Declaration**

*One of the first actions a governor takes to initiate disaster response is to issue an emergency declaration which provides a number of authorities to enhance public safety, including some or all of the following:*

- Triggers the state emergency operations plan and activation of the state emergency operations center.
- Allows access to state resources to aid in both the state and local government response. May include pre-positioning supplies and response teams in anticipation of the disaster, evacuations, warming/cooling centers and sheltering operations, distributing water, food and other commodities. Local governments may have ordinances in place that trigger their ability to respond based on a state emergency declaration.
- Activates the National Guard.
- Provides tort liability and immunity protections for jurisdictions and emergency responders performing disaster response activities (e.g., initiating a state’s crisis standards of care or granting Good Samaritan protections to volunteer healthcare providers).
- Activates the Emergency Management Assistance Compact (EMAC) to legally request mutual aid assistance from other states.
- Allows the Governor to waive statutes and regulations to expedite disaster response actions to save lives and protect property. These types of actions can allow:
  - Waiver weight restrictions for vehicles transporting equipment and supplies into the state for disaster response.
  - Suspension of tolls for emergency vehicles traveling through the state.
  - Waiver of the normal procurement process for resources needed to be obtained under exigent circumstances to aid response.
  - Expansion of healthcare provider scope of practice to allow greater access to care and treatment.
  - Elimination of licensing and reciprocity requirements for out-of-state or retired healthcare workforce.
  - Expansion of the allowable use of telehealth by healthcare providers.
  - Expanded laboratory capacity for new testing.
  - Expansion of building and capacity limits on healthcare systems.
  - Increased prescription authority of pharmacists.
- In some states, an emergency declaration is required to access state funded disaster assistance programs that provide loans, grants and other assistance to individuals and businesses.
- Serves as an indicator of the severity of the event. Actions taken by the state under an emergency declaration could be a determining factor in a request for a federal emergency declaration.

### **Federal Regulation: Federal Disaster Assistance**

By regulation (44CFR 206.35 and 206.36), only the Governor of the State or Acting Governor in his/her absence, may request an emergency or major disaster declaration from the President through the appropriate Regional Administrator.

44CFR 206.35 and 206.36 also require the Governor to take specific actions in their state prior to submitting their declaration request. The Governor must certify on behalf of the state, and if approved, it is the Governor that must sign the federal documents.

The legislative branch provides a necessary and important oversight role in government. NEMA encourages legislators to deliberate on the potential unintended consequences of legislating how a state responds to a disaster, which could impede the state's ability to respond swiftly and recover effectively from all-hazards disasters and emergencies.

Points to consider:

- The legislative process is often slow and deliberate to provide policy makers an opportunity to engage with a wide variety of stakeholders and fully assess short-term and long-term considerations. Conversely, disaster response must be swift and thorough to save lives and deal with the rapidly changing dynamics and complexity increasingly prevalent in the types of disasters being experienced today. Any legislative action that impedes a state's ability to respond quickly and comprehensively is of great concern to the emergency management community.
- The length of time that an initial state emergency declaration can remain in place should be a minimum of 30 days. Anything less does not allow sufficient time for state and local governments to take necessary response and recovery actions. Disasters such as floods and wildfires, for example, require a longer response and recovery timeframe.
- Gaps in time between an initial emergency declaration and extension by the state legislature can result in a lag in response or coordination of resources, increased loss of property, loss of life, or significant impacts on public infrastructure. Additionally, if the state were to request a presidential disaster declaration, gaps in time between emergency declarations may raise the question as to whether the request for federal disaster assistance is for the same event or multiple events. A series of smaller events would not likely meet the criteria for a federal declaration. A gap in the timing between an executive branch declaration and the ensuing legislative branch declaration may also be taken by FEMA as an indication that the situation is not in fact an emergency or disaster.
- Similarly, the absence of a state emergency declaration may send a signal to the federal government that the event has been handled and does not warrant a federal declaration.
- Disaster recovery programs are complex in nature and require emergency management's collaboration and coordination with many diverse interests within the community. Legislative oversight of disaster recovery is exceedingly helpful when solutions can be crafted that address red tape and other obstacles to expeditious community and economic recovery.

*NEMA fully understands and appreciates the authority and autonomy of legislatures to conduct oversight of executives and do that which is in the best interest of their constituents and the state. Given the depth and breadth of the potential impacts of some legislation currently being considered, the emergency management community hopes elected officials will consider some of these points as they proceed with deliberations.*



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