

**FIRST ENGROSSMENT  
with Senate Amendments  
ENGROSSED 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, and 37-17.1-11 of the North Dakota Century Code, relating to the state health  
5 officer's authority and the governor's and legislative assembly's authority during a declared state  
6 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 relating  
11 to disease control measures ~~deemed~~the state health officer deems necessary to  
12 prevent the spread of communicable disease during an emergency or disaster  
13 declared by the governor or as otherwise specifically authorized in this title. Disease  
14 control measures may include special immunization activities and decontamination  
15 measures. Written orders issued under this section shall have the same effect as a  
16 physician's standing medical order. ~~The~~If the state health officer believes an injunction  
17 to restrict or cancel public events or restrict the operation of places of business is  
18 necessary to control a communicable disease, the state health officer mayshall apply  
19 to the district court in ~~a~~the judicial district where ~~a~~the communicable disease is present  
20 for an injunction ~~cancelling, not to exceed thirty days, to restrict or cancel~~ public events  
21 or ~~closing~~to restrict places of business. On application of the state health officer  
22 ~~showing~~clearly demonstrating the necessity of ~~such~~the restriction or cancellation, the  
23 court may issue an ex parte preliminary injunction, pending a full hearing. An order

1           issued under this section during an emergency or disaster may not exceed in duration  
2           or scope the authority of the 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.

- 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 shall 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 ~~activate~~ activates the state and local operational plans applicable to the political  
25 subdivision or area in question and ~~be~~ constitutes 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.~~ ~~¶~~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 the provisions of ~~any~~a regulatory statute prescribing the procedures for  
10 conduct of state business, or the orders, or rules, ~~or regulations~~ of any state  
11 agency, if strict compliance with the provisions of ~~any~~the statute, order, or rule, ~~or~~  
12 ~~regulation~~ would in any way prevent, hinder, or delay necessary action in  
13 managing a disaster or emergency. However, the governor may not suspend a  
14 regulatory statute, order, or rule if:

15 (1) Doing so will impose greater restrictions; or

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

17 b. Utilize all available resources of the state government as reasonably necessary  
18 to manage the disaster or emergency and of each political subdivision of the  
19 state.

20 c. Transfer the direction, personnel, or functions of state departments and agencies  
21 or units thereof for the purpose of performing or facilitating emergency  
22 management activities.

23 d. Subject to any applicable requirements for compensation under section  
24 37-17.1-12, commandeer or utilize any private property if the governor finds this  
25 necessary to manage the disaster or emergency.

26 e. Direct and compel the evacuation of all or part of the population from any stricken  
27 or threatened area within the state if the governor deems this action necessary  
28 for the preservation of life or other disaster or emergency mitigation, response, or  
29 recovery.

30 f. Prescribe routes, modes of transportation, and destinations in connection with an  
31 evacuation.

- 1 g. Control ingress and egress in a designated disaster or emergency area, the
- 2 movement of persons within the area, and the occupancy of premises therein.
- 3 h. Suspend or limit the sale, dispensing, or transportation of alcoholic beverages,
- 4 explosives, and combustibles, not including ammunition.
- 5 i. Make provision for the availability and use of temporary emergency housing.
- 6 j. Make provisions for the control, allocation, and the use of quotas for critical
- 7 shortages of fuel or other life and property sustaining commodities.
- 8 k. Designate members of the highway patrol, North Dakota national guard, or others
- 9 trained in law enforcement, as peace officers.

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

14 ~~7.9.~~ Any person who willfully violates any provision of an executive order or proclamation  
15 issued by the governor pursuant to this chapter is guilty of an infraction.

16 ~~8.10.~~ Authorize~~The governor may authorize~~ the adjutant general to recall to state active  
17 duty, on a volunteer basis, former members of the North Dakota national guard. Those  
18 recalled must possess the qualifications required by the disaster or emergency. Recall  
19 under this subsection is effective only for the duration of the disaster or emergency  
20 and recalled personnel will be released from state active duty upon competent  
21 authority that the requirement of their service under this subsection has passed.  
22 Compensation for personnel recalled under this subsection will be based upon section  
23 37-07-05.

24 **SECTION 6. AMENDMENT.** Section 37-17.1-11 of the North Dakota Century Code is  
25 amended and reenacted as follows:

26 **37-17.1-11. Disaster or emergency mitigation.**

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



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

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

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

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

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

8 **SECTION 7.** A new section to chapter 54-03 of the North Dakota Century Code is created  
9 and enacted as follows:

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

- 11 1. If the governor calls a special session of the legislative assembly to address a state of  
12 emergency or disaster or if the legislative assembly reconvenes to address a state of  
13 emergency or disaster, the legislative assembly may use any technology or electronic  
14 means available to conduct meetings and transact legislative business.
- 15 2. For purposes of section 7 of article IV of the Constitution of North Dakota, a meeting of  
16 the legislative assembly which occurs under this section is deemed to have occurred  
17 at the seat of the government, and all actions taken during the meeting have the same  
18 legal effect as if the members of the legislative assembly were physically present at  
19 the seat of government.