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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 against 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 be prepared 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

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type of disaster.”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, and mitigation.² Under federal law, local governments are encouraged to develop comprehensive disaster preparedness and assistance plans, threat analysis, and community risk assessment, as well as hazard mitigation measures to reduce losses from disasters (including developing land use and construction regulations).³ Under state law, counties are, in fact, required to develop emergency management plans.⁴ Ideally, emergency management plans address not only initial post-disaster first response and subsequent recovery activities, but also comprehensive prevention and mitigation measures, all of which, when taken together, result in effective and efficient management of disasters in which injury to 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 and authorities.

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.

In North Carolina, the legal authority for state and local governments is found in Chapter 166A (North Carolina Emergency Management Act of 1977)⁶ and Article 36A of Chapter 14 (Riots and Civil Disorders) of the North Carolina General Statutes. Chapter 166A outlines the authorities of and 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 Chapter 14 enumerates certain powers that local government may exercise under a local disaster declaration through local ordinances.

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

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1. N.C. GEN. STAT. § 166A-4(4) (hereinafter G.S.).
 2. G.S. 166A-4(4); *Ward v. Long Beach Volunteer Rescue Squad*, 151 N.C. App. 717, 568 S.E.2d 626 (2002).
 3. 42 U.S.C. 5121(b); 44 C.F.R. 206.3(b).
 4. G.S. 166A-7(a).
 5. Pub. L. No. 93-288, 88 Stat. 143, codified as amended at 42 U.S.C. 5121-5206. Enacted by Congress in 1988, the Stafford Act amended the Disaster Relief Act of 1974, Pub. L. No. 93-288.
 6. Enacted in 1977, G.S. Chapter 166A is a rewrite of the former G.S. Chapter 166, “Civil Defense Preparedness Act.”

What Is a “Disaster?”

In North Carolina, the word “disaster” often conjures up images of major hurricanes such as Hugo, Fran, Floyd, Isabel, Ophelia, Ivan, and Frances,⁷ or severe ice storms accompanied by prolonged power outages. While these examples are certainly disasters in every sense of the word, a “disaster” is actually more broadly defined under state and federal law.

State law defines a disaster as being “an occurrence of imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made accidental, military or paramilitary cause.”⁸ 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.”⁹ Similarly, 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.”¹⁰

Two points regarding these definitions are worth noting. First, both state and federal law define disasters to 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 who 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 event has occurred.

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 (FEMA).

FEMA was formally authorized in 1979 by Presidential Executive Order issued by President Jimmy Carter.¹¹ Its mission is to lead the national effort to prepare for all hazards and 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 over twenty years as an independent federal agency with its director appointed by and reporting directly to the president. In March 2003, FEMA joined twenty-two other federal agencies, programs, and offices to become the Department of Homeland Security. Now, the director of FEMA serves under the Secretary of Homeland Security, but still retains responsibility for the agency’s core mission. Functionally, FEMA is not a *direct* response agency (i.e., FEMA

7. North Carolina’s coastline has suffered direct hits from hurricanes forty-six times since 1851, making it the fourth most frequently struck state in the nation. This does not include damage caused by hurricanes that made landfall in other states and passed into North Carolina, as was the case in Hurricane Hugo and Hurricanes Ivan and Frances. NOAA Technical Memorandum NWS TPC-4 (August 2005). Cape Hatteras has been identified as the leading community in the nation and ranked fifth in the entire Atlantic Basin for hurricane strikes, averaging one every 2.5 years. For the complete ranking, see www.hurricanecity.com.

8. G.S. 166A-4(1).

9. 42 U.S.C. 5122(2); *see also* 44 C.F.R. 206.2(a)(17).

10. 42 U.S.C. 5122(1); *see also* 44 C.F.R. 206.2(a)(9).

11. Prior to 1979, federal emergency response efforts had 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.

officials are not first responders), but 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 Bush directed the U.S. Department of Homeland Security to develop and administer a National Incident Management System (NIMS).¹² 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.¹³ These unified efforts are to be employed in all disaster situations whether natural or man-made (the “all-hazards” approach). By proclamation, Governor Easley established NIMS as the standard for incident management in North Carolina in May 2005 and directed all counties and departments to adopt and apply NIMS for management of all incidents. Similarly, federal directives also require local governments to adopt and utilize NIMS and train local personnel “directly involved” in emergency management operations on NIMS procedures and protocols.¹⁴ Local governments must have met this compliance requirement by October 1, 2006 (corresponding with the beginning of federal FY 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 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.¹⁵ Under the governor, the secretary of the Department of Crime Control and Public Safety oversees state emergency management activities. Within the department, the Division of Emergency Management (NCEM) has direct responsibility for day-to-day operations and primary responsibility in coordinating the state’s disaster response efforts. NCEM 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 provide technical assistance to local governments.¹⁶

NCEM was established by the General Assembly in 1977 as part of the North Carolina Emergency Management Act. The division serves the state and coordinates with local emergency management agencies through a regional structure reflecting the state’s geography—three branch offices (eastern, central, and western) and fifteen areas within the three branches.¹⁷ During disaster response and recovery operations, local governments communicate damage assessments and requests for assistance through this administrative structure, 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 NCEM to FEMA. Through its branch and area structure, NCEM also delivers training programs and planning assistance for local emergency management agencies.

12. Homeland Security Presidential Directive/HSPD-5 (February 2003).

13. A key component of NIMS is the Incident Command System (ICS) used by major fire-fighting agencies for almost thirty years.

14. HSPD-5(20).

15. G.S. 166A-5(1).

16. G.S. 166A-5(3)(c).

17. To determine where a particular county is assigned within the Area and Branch structure, see <http://www.ncem.org/em-areas.PDF>.

Roles and Responsibilities—Local Government

Emergency management response activities are initiated at the local level, augmented by state resources where local resources are lacking, and, in major disasters, 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.

Legal Authority

Under the North Carolina Emergency Management Act, the governing body of the *county* is specifically charged with the responsibility for coordinating all emergency management efforts at the local level, *including* those of cities within the county.¹⁸ To accomplish these functions, counties are authorized to

- establish local emergency management agencies,
- appoint an emergency management coordinator,
- appropriate and expend funds,
- make contracts,
- obtain and distribute equipment, materials and supplies,
- develop emergency management plans, 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.¹⁹ While cities are similarly authorized, their agencies and activities are still subject to coordination by the county.²⁰

Organizational Structure

Each county is required to designate an emergency management coordinator (or director), and many cities have similarly designated personnel. Currently only a quarter of the counties in the state employ full-time emergency management coordinators; the majority designate an employee or department head who holds 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 plans and oversees other administrative and operational functions. These 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 Act,²¹ and are subject to certain statutory requirements as conditions of employment.²²

As with federal and state emergency management agencies, local agencies serve a supporting and coordinating role in disaster events; they are not ordinance enforcing agencies. Some disaster events, 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 disaster, however, the local emergency management director is still responsible for coordinating response and recovery efforts and communicating the local

18. G.S. 166A-7(a).

19. G.S. 14-288.13; similar authority is granted to cities under G.S. 14-288.12.

20. G.S. 166A-7(b).

21. G.S. 126-5(a)(2)(d). For more information about the State Personnel Act and its application to local government employees, see in this publication Article 19, *Public Employment Law*, by Diane M. Juffras.

22. G.S. 166A-13.

government's needs to state and federal agencies. An effective emergency management director is one who is not only well-prepared and well-trained, but also is one who fully understands the state and federal emergency management systems and has developed within the state the contacts necessary to 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 approval. 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 the chain of command through which decisions are made and communicated. 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, the local plan can effectively guide the 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 the community's needs. If not, local jurisdictions can seek emergency aid and assistance from other units of government.

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 authorizes three main forms of interlocal cooperation with other units of government. First, for cooperation with other jurisdictions *outside of our state*, 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.²³ The governor is authorized to enter into mutual aid agreements with other states and 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 approval of the governor).²⁴ 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. Local 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 our state*, local governments are authorized to enter into mutual aid agreements with each other for reciprocal emergency management aid and assistance.²⁵ This assistance includes furnishing or exchanging supplies, equipment, personnel, and services on a temporary basis during a disaster 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 reentry checkpoints.

23. G.S. Chapter 166A, Article 4.

24. G.S. 166A-10(a), (c).

25. G.S. 166A-10(b).

Third, to facilitate coordination *between counties and the cities within those counties*, state law authorizes cities and counties within their jurisdictions to form joint local emergency management agencies.²⁶ 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 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 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 jointly or on behalf of one another (such as debris removal) instead of forming a joint agency authorized under Chapter 166A.

Disaster Declarations—Federal and State

Federal Declarations

The declaration of a state of disaster is issued when the declaring authority has determined that a disaster threatens or exists. At the federal level, a disaster declaration is issued by the president upon request of the governor of the affected state (after a state disaster 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 is necessary.²⁷ The severity and magnitude of the disaster is initially evaluated through preliminary damage assessments that assess 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.²⁸ In evaluating the state's request and preliminary damage assessment reports, consideration is given to such factors as the

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

If FEMA recommends and the president finds that the 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.²⁹

State Declarations

At the state level, a state of disaster can be declared by either the governor or the General Assembly.³⁰ A state disaster declaration is required before a federal declaration can be issued. Just as with a federal declaration, the severity and magnitude of the disaster is determined by preliminary damage assessments. Depending on the level of damage and losses along with additional criteria set out in G.S. 166A-6, one of three types of state disaster declarations are issued: Type I, Type II, or Type III (most severe). The 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 thirty days to twelve months. All state disaster declarations may be extended by either the governor or the General Assembly.

26. *Id.*

27. 42 U.S.C. 5170.

28. 44 C.F.R. 206.36.

29. 44 C.F.R. 206.37-38.

30. G.S. 166A-6.

A state disaster declaration triggers a broad array of gubernatorial powers, 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.³¹ 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 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 fifty-five days unless extended by the governor.³²

Finally, the issuance of a state disaster declaration activates the state’s emergency operations plan. Similarly, at the local government level, the issuance of a local disaster declaration triggers certain local authorities and activates local plans.

Disaster Declarations—Local

Both cities and counties are authorized to issue local state of emergency declarations.³³ 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 the disaster declaration in the effected areas covered by the declaration.

Who Can Issue a Declaration?

State law authorizes any one of the following officials to issue a local state of emergency declaration on his or her own authority: chair of the County Board of Commissioners (or the chair’s designee named in the local ordinance), the mayor (or the mayor’s designee named in the local ordinance), or any chief executive official or acting chief executive official of a county or city.³⁴ Article 36A does not require ratification of a local official’s declaration by the local governing body, and that body may even, through its ordinance, delegate its emergency authorities to an individual official during a state of emergency.³⁵

What Restrictions Can Be Imposed?

Article 36A of Chapter 14 of the General Statutes authorizes local governments to adopt ordinances that can be triggered by local disaster declarations.³⁶ These ordinances may authorize the following restrictions and prohibitions:

- movement of people in public places;
- operation of businesses and other places to or from which people may travel or congregate;
- possession, transportation, sale, purchase, and consumption of alcoholic beverages;
- possession, transportation, sale, purchase, storage, and use of dangerous weapons and substances and gasoline;

31. *Id.*, G.S. 166A-11.

32. G.S. 75-38.

33. G.S. 166A-8.

34. G.S. 14-288.1(2)

35. G.S. 166A-7(d)(4).

36. G.S. 14-288.12 (for cities) and G.S. 14-288.13 (for counties). The constitutionality of this article has been upheld as a proper delegation of the state’s police powers to local governments. *State v. Dobbins*, 277, N.C. 484, 178 S.E.2d 449 (1971), *United States v. Chalk*, 441 F.2d 1277 (4th Cir. 1971), *cert. denied*, 202 U.S. 943, 92 S. Ct. 294, 30 L. Ed. 2d 258 (1971).

- 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 disaster. In order to be legally effective, however, these measures *must* be authorized by local ordinance; measures not authorized cannot be triggered under a disaster declaration. Nor can such measures be enforced by law enforcement officials without having been authorized by the 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 without there being proper legal authority for imposing this restriction. Violations of any such measures or other emergency ordinance provisions are punishable as a Class 3 misdemeanor.

Other Restrictions and Prohibitions

In addition to the restrictions that may be imposed through local ordinance during a state of emergency, Article 36A 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), transporting dangerous weapons or substances during an emergency (G.S. 14-288.7), 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 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. G.S. 75-38 prohibits excessive pricing practices during a state of emergency by a seller of goods or services consumed or used as a direct result of an emergency or which are 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.

Where Do Local Declarations Apply?

Declarations issued in an individual local jurisdiction are not applicable to neighboring jurisdictions except by consent. Thus, the ordinances adopted by a county imposing the restrictions and prohibitions discussed above do not apply in a city within that county unless consented to by resolution adopted by the city. Similarly, a city can only enforce its emergency management 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 disaster has not occurred directly within the county itself.³⁷ Such an extension of city-imposed measures may be necessary to assist the city in responding to a disaster. In major disasters, it is common for emergency declarations to be issued jointly or cooperatively by the county and cities within the county imposing county-wide uniform prohibitions and restrictions.

The legal authorities under Article 36A, which are granted independently to cities and counties, do not override the management structure set out in Chapter 166A, where the county is designated as the primary coordinator of emergency management at the local level. Cities, while vested with independent authority to declare states of emergency within their jurisdictions, must still coordinate emergency management plans, activities, and operations with and under the direction of the county. While these two 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 disaster and the operational planning and implementation of such plans necessary to respond to a disaster.

37. G.S. 14-288.14.

Significance of Declarations

Local state of emergency declarations enable local officials to put into place temporary restrictions and other measures necessary to preserve public order and protect public safety and welfare during a disaster event. 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 local declarations. 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.

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 disaster events. Normal local funding levels are often inadequate to cover the costs of disaster response and recovery operations, however, especially in major disasters. In these 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—the 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 the eligible cost³⁸ and may be extended to cover as much as 100 percent of the 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 the state.

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 costs incurred must be as a direct result of a declared disaster and occur within an area covered under a disaster declaration, and the work must be the legal responsibility of the 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:³⁹

38. 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.

39. For more information about PA programs and eligibility criteria, see FEMA Publications 321 (*Public Assistance Policy Digest*), 322 (*Public Assistance Guide*), 323 (*Applicant Handbook*), 325 (*Debris Management Guide*), and 329 (*Debris Management Brochure*), all of which are available at www.fema.gov.

1. *Debris removal*—generally limited to removal of debris from public property or that which presents an imminent threat to public health or safety or property, or which is 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*—repairs to transportation infrastructure not covered under other federal programs such as the Federal Highways Administration (FHWA).
4. *Water control facilities*—repairs to dams, reservoirs, levees, irrigation facilities, and pumping stations.
5. *Building and equipment*—repairs to public buildings, and repairs or replacement of damaged contents such as furnishings and equipment.
6. *Utilities*—repairs to water treatment plants, power generation and distribution facilities, and sewage systems.
7. *Parks, recreational, and other*—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 the 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, and individuals who mismanage FEMA PA funds are subject to civil fines and criminal penalties.⁴⁰ 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).⁴¹

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 level.⁴² Hazard mitigation involves measures that are cost-effective and 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.⁴³ State disaster assistance can be made available in certain circumstances regardless of whether a federal declaration is issued, but does require that a local 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 programs are authorized. State IA programs include assistance

40. See generally, 44 C.F.R. Part 13.

41. 42 U.S.C. 5161(c).

42. 42 U.S.C. 5170c; 44 CFR 206, Subpart N.

43. G.S. 166A-6.01.

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, the unit of local government must meet four criteria: (1) it suffered at least \$10,000 in uninsurable losses; (2) those uninsurable losses equal or exceed one-half of the unit's annual operating budget; (3) it has an approved hazard mitigation plan; and (4) for flood damage, it participates 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 (in which, presumably, greater federal assistance is available).

Barriers to 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 the local governments. 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.⁴⁴ 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 does violate 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.”⁴⁵ Again, in a disaster situation, a local government may choose to enter into a contract without following competitive bidding requirements under this emergency exemption. However, no similar exemption exists in 44 C.F.R. Part 13, so local governments would still be required to follow competitive bidding requirements in a federally declared disaster situation if that local government sought federal funding assistance to pay for the costs incurred under that contract.⁴⁶

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 will leave the decision to award the overtime compensation in any particular disaster to the discretion of the 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 the local government having an “established policy that is consistently applied to both Federal and non-Federal activities.”⁴⁷ Thus, if the award of overtime pay for exempt employees 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.

44. 44 C.F.R. 13.36(c).

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

46. 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*, 2d ed. (Chapel Hill, N.C.: School of Government, The University of North Carolina at Chapel Hill, 2004).

47. OMB Circular A-87 (2004), Attachment B; 44 C.F.R. 13.22.

Immunity and Liability

Broad immunity is granted for emergency management functions. G.S. 166A-14 exempts from liability the state, any political subdivision of the state, and any emergency management worker who is, in good faith,⁴⁸ complying or attempting to comply with any order, rule, regulation, or ordinance relating to any emergency management measures. This immunity is extended to situations of death or injury to persons or damage to property and applies wherever the 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 they are subject to the order or control of, or are working at the request of state or local government. While this definition is very broad, it is not clear whether it extends so far as to include private vendors and contractors working for hire under contract with state or local governments in a disaster situation. Even though the 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 contract.⁴⁹

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48. The immunity under G.S. 166A-14 does not extend in cases of willful misconduct, gross negligence, or bad faith.

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

