

NORTH CAROLINA GENERAL ASSEMBLY
1977 SESSION

CHAPTER 848
HOUSE BILL 1184

AN ACT REPEALING CHAPTER 166 OF THE NORTH CAROLINA GENERAL STATUTES, ENTITLED, "NORTH CAROLINA CIVIL PREPAREDNESS ACT OF 1951" AND ENACTING A NEW CHAPTER 166A IN LIEU THEREOF RELATING TO CIVIL PREPAREDNESS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 166 of the General Statutes entitled "North Carolina Civil Preparedness Act of 1951" is hereby repealed.

Sec. 2. A new Chapter 166A of the General Statutes is hereby enacted to read as follows:

"§ 166A-1. Short title. — This Chapter may be cited as 'North Carolina Civil Preparedness Act of 1977'.

"§ 166A-2. Purposes. — The purposes of this Chapter are to set forth the authority and responsibility of the Governor, State agencies, and local governments in prevention of, preparation for, response to and recovery from natural or man-made disasters or hostile military or paramilitary action and to:

- (a) reduce vulnerability of people and property of this State to damage, injury, and loss of life and property;
- (b) prepare for prompt and efficient rescue, care and treatment of threatened or affected persons;
- (c) provide for the rapid and orderly rehabilitation of persons and restoration of property; and
- (d) provide for cooperation and coordination of activities relating to emergency and disaster mitigation, preparedness, response and recovery among agencies and officials of this State and with similar agencies and officials of other states, with local and federal governments, with interstate organizations and with other private and quasi-official organizations.

"§ 166A-3. Limitations. — Nothing in this act shall be construed to:

- (a) interfere with dissemination of news or comment on public affairs; but any communications facility or organization, including but not limited to radio and television stations, wire services, and newspapers, may be requested to transmit or print public service messages furnishing information or instructions in connection with an emergency, disaster or war; or
- (b) limit, modify or abridge the authority of the Governor to proclaim martial law or exercise any other powers vested in him under the Constitution, statutes, or common law of this State independent of, or in conjunction with, any provisions of this Chapter.

"§ 166A-4. Definitions. — The following words and phrases as used in this Chapter shall have the following meanings:

- (a) 'Civil preparedness.' Those measures taken by the populace and governments at federal, State, and local levels to minimize the adverse effect of any type

disaster, which include the never-ending preparedness cycle of prevention, mitigation, warning, movement, shelter, emergency assistance and recovery.

(b) 'Civil preparedness agency.' A State or local governmental agency charged with coordination of all civil preparedness activities for its jurisdiction.

(c) 'Disaster.' An occurrence or 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.

(d) 'Political subdivision.' Counties and incorporated cities, towns and villages.

"§ 166A-5. State civil preparedness. — The State civil preparedness program includes all aspects of preparations for, response to and recovery from war or peacetime disasters.

(a) Governor. The Governor shall have general direction and control of the State civil preparedness program and shall be responsible for carrying out the provisions of this Chapter.

(1) The Governor is authorized and empowered:

- a. To make, amend or rescind the necessary orders, rules and regulations within the limits of the authority conferred upon him herein, with due consideration of the policies of the federal government.
- b. To delegate any authority vested in him under this Chapter and to provide for the subdelegation of any such authority.
- c. To cooperate and coordinate with the President and the heads of the departments and agencies of the federal government, and with other appropriate federal officers and agencies, and with the officers and agencies of other states and local units of government in matters pertaining to the civil preparedness of the State and nation.
- d. To enter into agreements with the American National Red Cross, Salvation Army, Mennonite Disaster Service and other disaster relief organizations.
- e. To make, amend, or rescind mutual aid agreements in accordance with G.S. 166A-10.
- f. To utilize the services, equipment, supplies and facilities of existing departments, offices and agencies of the State and of the political subdivisions thereof. The officers and personnel of all such departments, offices and agencies are required to cooperate with and extend such services and facilities to the Governor upon request. This authority shall extend to a state of disaster, disaster, imminent threat of disaster or civil preparedness planning and training purposes.
- g. To agree, when required to obtain federal assistance in debris removal, that the State will indemnify the federal government against any claim arising from the removal.
- h. To sell, lend, lease, give, transfer or deliver materials or perform services for disaster purposes on such terms and conditions as may be prescribed by any existing law, and to account to the State Treasurer for any funds received for such property.

(2) In the threat of or event of a disaster, or when requested by the governing body of any political subdivision in the State, the Governor may assume operational control over all or any part of the civil preparedness functions within this State.

(b) Secretary of Crime Control and Public Safety. The Secretary of Crime Control and Public Safety shall be responsible to the Governor for State civil preparedness activities and shall have:

- (1) The power, as delegated by the Governor, to activate the State and local plans applicable to the areas in question and he shall be empowered to authorize and direct the deployment and use of any personnel and forces to which the plan or plans apply, and the use or distribution of any supplies, equipment, materials and facilities available pursuant to this Chapter or any other provision of law
- (2) Additional authority, duties, and responsibilities as may be prescribed by the Governor, and he may subdelegate his authority to the appropriate member of his department.

(c) Functions of State civil preparedness. The functions of the State civil preparedness program include:

- (1) Coordination of the activities of all agencies for civil preparedness within the State, including planning, organizing, staffing, equipping, training, testing, and the activation of civil preparedness programs.
- (2) Preparation and maintenance of State plans for man-made or natural disasters. The State plans or any parts thereof may be incorporated into departmental regulations and into executive orders of the Governor.
- (3) Promulgation of standards and requirements for local plans and programs, determination of eligibility for State financial assistance provided for in G.S. 166A-7 and provision of technical assistance to local governments.
- (4) Development and presentation of training programs and public information programs to insure the furnishing of adequately trained personnel and an informed public in time of need.
- (5) Making of such studies and surveys of the resources in this State as may be necessary to ascertain the capabilities of the State for civil preparedness, maintaining data on these resources, and planning for the most efficient use thereof.
- (6) Coordination of the use of any private facilities, services, and property.
- (7) Preparation for issuance by the Governor of executive orders, proclamations, and regulations as necessary or appropriate; and
- (8) Cooperation and maintenance of liaison with the other states, federal government and any public or private agency or entity in achieving any purpose of this Chapter and in implementing programs for emergency, disaster or war prevention, preparation, response, and recovery.
- (9) Making recommendations, as appropriate, for zoning, building and other land-use controls, and safety measures for securing mobile homes or other nonpermanent or semipermanent works designed to protect against or mitigate the effects of a disaster.
- (10) Coordination of the use of existing means of communications and supplementing communications resources and integrating them into a comprehensive State or State-federal telecommunications or other communications system or network.

"§ 166A-6. State of disaster. — (a) The existence of a state of disaster may be proclaimed by the Governor, or by a resolution of the General Assembly if either of these finds that a disaster threatens or exists. Any state of disaster shall terminate by a proclamation of the Governor or resolution of the General Assembly. A proclamation or resolution declaring or terminating a state of disaster shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless the circumstances attendant upon the disaster prevent or impede, promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State and the clerks of superior court in the area to which it applies.

(b) In addition to any other powers conferred upon the Governor by law, during the state of disaster, he shall have the following:

- (1) to utilize all available State resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of State agencies or units thereof for the purpose of performing or facilitating emergency services;
- (2) to take such action and give such directions to State and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this Chapter and with the orders, rules and regulations made pursuant thereto;
- (3) to take steps to assure that measures, including the installation of public utilities, are taken when necessary to qualify for temporary housing assistance from the federal government when that assistance is required to protect the public health, welfare, and safety;
- (4) subject to the provisions of the State Constitution to relieve any public official having administrative responsibilities under this Chapter of such responsibilities for wilful failure to obey an order, rule or regulation adopted pursuant to this Chapter.

(c) In addition, during a state of disaster, with the concurrence of the Council of State, the Governor has the following powers:

- (1) to direct and compel the evacuation of all or part of the population from any stricken or threatened area within the State, to prescribe routes, modes of transportation, and destinations in connection with evacuation; and to control ingress and egress of a disaster area, the movement of persons within the area, and the occupancy of premises therein;
- (2) to establish a system of economic controls over all resources, materials and services to include food, clothing, shelter, fuel, rents and wages, including the administration and enforcement of any rationing, price freezing or similar federal order or regulation;
- (3) to regulate and control the flow of vehicular and pedestrian traffic, the congregation of persons in public places or buildings, lights and noises of all kinds and the maintenance, extension and operation of public utility and transportation services and facilities;
- (4) to waive a provision of any regulation or ordinance of a State agency or a local governmental unit which restricts the immediate relief of human suffering;
- (5) to use contingency and emergency funds as necessary and appropriate to provide relief and assistance from the effects of a disaster, and to reallocate such other funds as may reasonably be available within the appropriations of the various departments when the severity and magnitude of such disaster so requires and the contingency and emergency funds are insufficient or inappropriate;
- (6) to perform and exercise such other functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population;
- (7) to appoint or remove an executive head of any State agency or institution the executive head of which is regularly selected by a State board or commission.

A. Such an acting executive head will serve during:

1. the physical or mental incapacity of the regular office holder, as determined by the Governor after such inquiry as the Governor deems appropriate;
2. the continued absence of the regular holder of the office; or
3. a vacancy in the office pending selection of a new executive head.

B. An acting executive head of a State agency or institution appointed in accordance with this subdivision may perform any act and exercise any power which a regularly selected holder of such office could lawfully perform and exercise.

C. All powers granted to an acting executive head of a State agency or institution under this section shall expire immediately:

1. upon the termination of the incapacity as determined by the Governor of the officer in whose stead he acts;
2. upon the return of the officer in whose stead he acts; or
3. upon the selection and qualification of a person to serve for the unexpired term, or the selection of an acting executive head of the agency or institution by the board or commission authorized to make such selection, and his qualification.

(8) to procure, by purchase, condemnation, seizure or by other means to construct, lease, transport, store, maintain, renovate or distribute materials and facilities for civil preparedness without regard to the limitation of any existing law.

"§ 166A-7. County and municipal civil preparedness. — (a) The governing body of each county is responsible for civil preparedness, as defined in G.S. 166A-4, within the geographical limits of such county. All civil preparedness efforts within the county will be coordinated by the county, including activities of the municipalities within the county.

- (1) The governing body of each county is hereby authorized to establish and maintain a civil preparedness agency for the purposes contained in G.S. 166A-2.
- (2) The governing body of each county which establishes a civil preparedness agency pursuant to this authorization will appoint a coordinator who will have direct responsibility for the organization, administration and operation of the county program and will be subject to the direction and guidance of such governing body.
- (3) In the event any county fails to establish a civil preparedness agency, and the Governor, in his discretion, determines that a need exists for such a civil preparedness agency, then the Governor is hereby empowered to establish a civil preparedness agency within said county.

(b) All incorporated municipalities are authorized to establish and maintain civil preparedness agencies subject to coordination by the county. Joint agencies composed of a county and one or more municipalities within its borders may be formed.

(c) Each county and incorporated municipality in this State is authorized to make appropriations for the purposes of this Chapter and to fund them by levy of property taxes pursuant to G.S. 153A-149 and G.S. 160A-209 and by the allocation of other revenues, whose use is not otherwise restricted by law.

(d) In carrying out the provisions of this Chapter each political subdivision is authorized:

- (1) to appropriate and expend funds, make contracts, obtain and distribute equipment, materials, and supplies for civil preparedness purposes and to

provide for the health and safety of persons and property, including emergency assistance, consistent with this Chapter;

- (2) to direct and coordinate the development of civil preparedness plans and programs in accordance with the policies and standards set by the State;
- (3) to assign and make available all available resources for civil preparedness purposes for service within or outside of the physical limits of the subdivision; and
- (4) to delegate powers in a local state of emergency under G.S. 166A-8 to an appropriate official.

(e) Each county which establishes a civil preparedness agency pursuant to State standards and which meets requirements for local plans and programs may be eligible to receive State financial assistance. Such financial assistance for the maintenance and operation of a county civil preparedness program will not exceed one thousand dollars (\$1,000) for any fiscal year and is subject to an appropriation being made for this purpose. Eligibility of each county will be determined annually by the State.

"§ 166A-8. Local emergency authorizations. — Procedures governing the declaration of a local state of emergency:

- (a) A local state of emergency may be declared for any disaster, as defined in G.S. 166A-4 under the provisions of Article 36A of G.S. Chapter 14.
- (b) Such a declaration shall activate the local ordinances authorized in G.S. 14-288.12 through G.S. 14-288.14 and any and all applicable local plans, mutual assistance compacts and agreements and shall also authorize the furnishing of assistance thereunder.
- (c) The timing, publication, amendment and revision of local 'state of emergency' declarations shall be in accordance with the local ordinance.

"§ 166A-9. Accept services, gifts, grants and loans. — (a) Whenever the federal government or any agency or officer thereof or any person, firm or corporation shall offer to the State, or through the State to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant or loan, for the purposes of civil preparedness, the State acting through the Governor, or such political subdivision, acting with the consent of the Governor and through its governing body, may accept such offer. Upon such acceptance the Governor of the State or governing body of such political subdivision may authorize any officer of the State or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials or funds on behalf of the State or of such political subdivision, and subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer.

"§ 166A-10. Establishment of mutual aid agreements. — (a) The Governor may establish mutual aid agreements with other states and with the federal government provided that any special agreements so negotiated are within the Governor's authority.

(b) The chief executive of each political subdivision, with the concurrence of the subdivision's governing body, may develop mutual aid agreements for reciprocal civil preparedness aid and assistance. Such agreements shall be consistent with the State civil preparedness program and plans.

(c) The chief executive officer of each political subdivision, with the concurrence of the governing body and subject to the approval of the Governor, may enter into mutual aid agreements with local chief executive officers in other states for reciprocal civil preparedness aid and assistance.

(d) Mutual aid agreements may include but are not limited to the furnishing or exchange of such supplies, equipment, facilities, personnel and services as may be needed; the reimbursement of costs and expenses for equipment, supplies, personnel and similar items; and on such terms and conditions as deemed necessary.

"§ 166A-11. Compensation. — (a) Compensation for services or for the taking or use of property shall be only to the extent that legal obligations of individual citizens are exceeded in a particular case and then only to the extent that the claimant has not been deemed to have volunteered his services or property without compensation.

(b) Compensation for property shall be only if the property was commandeered, seized, taken, condemned, or otherwise used in coping with a disaster and this action was ordered by the Governor. The State shall make compensation for the property so seized, taken or condemned on the following basis:

- (1) In case property is taken for temporary use, the Governor, within 30 days of the taking, shall fix the amount of compensation to be paid for such damage or failure to return. Whenever the Governor shall deem it advisable for the State to take title to property taken under this section, he shall forthwith cause the owner of such property to be notified thereof in writing by registered mail, postage prepaid, or by the best means available, and forthwith cause to be filed a copy of said notice with the Secretary of State.
- (2) If the person entitled to receive the amounts so determined by the Governor as just compensation is unwilling to accept the same as full and complete compensation for such property or the use thereof, he shall be paid seventy-five per centum (75%) of such amount and shall be entitled to recover from the State of North Carolina in an action brought in the superior court in the county of residence of claimant, or in Wake County, in the same manner as other condemnation claims are brought, within three years after the date of the Governor's award.

"§ 166A-12. Nondiscrimination in civil preparedness. — State and local governmental bodies and other organizations and personnel who carry out civil preparedness functions under the provisions of this Chapter are required to do so in an equitable and impartial manner. Such State and local governmental bodies, organizations and personnel shall not discriminate on the grounds of race, color, religion, nationality, sex, age or economic status in the distribution of supplies, the processing of applications and other relief and assistance activities.

"§ 166A-13. Civil preparedness personnel. — (a) No person shall be employed or associated in any capacity in any civil preparedness agency established under this Chapter if that person:

- (1) advocates or has advocated a change by force or violence in the constitutional form of the Government of the United States or in this State;
- (2) advocates or has advocated the overthrow of any government in the United States by force or violence;
- (3) has been convicted of any subversive act against the United States;
- (4) is under indictment or information charging any subversive act against the United States; or
- (5) has ever been a member of the Communist Party. Each person who is appointed to serve in any civil preparedness agency shall, before entering upon his duties, take a written oath before a person authorized to administer oaths in this State, which oath shall be substantially as follows:

'I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of North Carolina, against all enemies, foreign and domestic; and that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter. And I do further swear (or affirm) that I do not advocate, nor am I, nor have I ever knowingly been, a member of any political party or organization that advocates the overthrow of the Government of the United States or of this State by force or violence; and that during such time as I am a member of the State Civil Preparedness Agency I will not advocate nor become a member of any political

party or organization that advocates the overthrow of the Government of the United States or of this State by force or violence, so help me God.'

(b) No position created by or pursuant to this Chapter shall be deemed an office within the meaning of Article 6, Section 9 of the Constitution of North Carolina.

"§ 166A-14. Immunity and exemption. — (a) All functions hereunder and all other activities relating to civil preparedness are hereby declared to be governmental functions. Neither the State nor any political subdivision thereof, nor, except in cases of willful misconduct, gross negligence or bad faith, any civil preparedness worker complying with or reasonably attempting to comply with this Chapter or any order, rule or regulation promulgated pursuant to the provisions of this Chapter or pursuant to any ordinance relating to any civil preparedness measures enacted by any political subdivision of the State, shall be liable for the death of or injury to persons, or for damage to property as a result of any such activity.

(b) The rights of any person to receive benefits to which he would otherwise be entitled under this Chapter or under the Workmen's Compensation Law or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of Congress shall not be affected by performance of civil preparedness functions.

(c) Any requirement for a license to practice any professional, mechanical or other skill shall not apply to any authorized civil preparedness worker who shall, in the course of performing his duties as such, practice such professional, mechanical or other skill during a state of disaster.

(d) As used in this section, the term 'civil preparedness worker' shall include any full or part-time paid, volunteer or auxiliary employee of this State or other states, territories, possessions or the District of Columbia, of the federal government or any neighboring country or of any political subdivision thereof or of any agency or organization performing civil preparedness services at any place in this State, subject to the order or control of or pursuant to a request of the State government or any political subdivision thereof.

(e) Any civil preparedness worker, as defined in this section, performing civil preparedness services at any place in this State pursuant to agreements, compacts or arrangements for mutual aid and assistance to which the State or a political subdivision thereof is a party, shall possess the same powers, duties, immunities and privileges he would ordinarily possess if performing his duties in the State, or political subdivision thereof in which normally employed or rendering services.

"§ 166A-15. No private liability. — Any person, firm or corporation owning or controlling real or personal property who, voluntarily or involuntarily, knowingly or unknowingly, with or without compensation, grants a license or privilege or otherwise permits or allows the designation or use of the whole or any part or parts of such real or personal property for the purpose of sheltering, protecting, safeguarding or aiding in any way persons shall, together with his successors in interest, if any, not be civilly liable for the death of or injury to any person or the loss of or damage to the property of any persons where such death, injury, loss or damage resulted from, through or because of the use of the said real or personal property for any of the above purposes.

"§ 166A-16. Severability. — If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable."

Sec. 3. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 30th day of June, 1977.