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## Coates' Canons Blog: State Emergency Management Act Rewrite: More Than Changes to Emergency Firearms Restrictions

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Article: <https://canons.sog.unc.edu/bateman-decision-on-emergency-weapons-restrictions-legislative-response-step-2-and-more/>

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In two previous blogs ([here](#) and [here](#)), I discuss a 2012 federal district court ruling (*Bateman v. Perdue*) on the constitutionality of North Carolina's emergency weapons restriction statutes and the legislative response to that ruling. The General Assembly responded to the court's ruling by limiting the authority of cities and counties to impose restrictions and prohibitions on lawfully possessed firearms and ammunition under a state of emergency declaration. This limitation was included in a comprehensive rewrite of the State Emergency Management Act (S.L. 2012-12; HB843). While much attention was focused on the "gun ban" issue, HB843 included many other changes to our state's emergency management statutes. So, what other changes were included in HB843 and what do they mean for state and local emergency management officials?

HB843, "Modernize NC Emergency Management Act," represents the most comprehensive update and reorganization of our state's emergency management statutes since their enactment over three decades ago. The bill's primary purpose was to consolidate and reorganize the statutes that establish emergency management authorities for state and local governments previously set out in Article 1 of G.S. Chapter 166A (now repealed) and Article 36A of G.S. Chapter 14 (Riots and Civil Disorders). Chapter 166A was enacted in 1977 to update the old civil preparedness laws. Article 36A was enacted in 1969 during the height of the civil rights era. Article 1 of Chapter 166A defined responsibilities within State government for direction and control of the state's emergency management program, and authorized cities and counties to establish local emergency management programs (municipal emergency management programs are subject to coordination with the county). Article 36A authorized cities and counties to enact ordinances imposing various restrictions and prohibitions during a locally declared state of emergency (for more information about local emergency authorities, see this blog post).

Working with these laws had been a challenge for local officials. First, their emergency management authorities and responsibilities were spread among two different chapters of the General Statutes, making it difficult to easily and fully identify their responsibilities and authorities. Second, the terminology throughout the statutes was inconsistent, and some terms lacked clear definitions while others were not defined at all. Third, the statutes had not kept pace with current operational practices, creating gaps and inconsistencies between the law and real-world operations. HB843 addressed these issues.

*First*, the bill consolidated and reorganized Article 1 of Chapter 166A and relevant sections of Article 36A of Chapter 14 into a new Article 1A of Chapter 166A – which means that all state and local emergency management authorities and responsibilities are consolidated in one place in the General Statutes. These statutes were reorganized into logical sections and parts, making it easier to research, find, and compare relevant laws and authorities.

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*Second*, the bill clarified and made uniform terminology throughout the emergency management statutes – for example, a state of emergency is now “declared” (under current law it is either “declared” or “proclaimed,” resulting in either a “declaration” or a “proclamation”). More importantly, the bill drew a clear distinction between a state of emergency declaration and a disaster declaration – the former being the declaration issued by either the governor or a city or county local government official when there is an actual or imminent threat of an emergency, while the latter is a declaration issued by the governor based on the severity and impact of an emergency and which triggers state assistance programs. The terms “emergency” and “disaster” are similarly distinguished.

*Third*, the bill incorporated operational practices that have evolved in recent years, and clears up points of confusion under current law, including:

- Codifying existing operational practices of the NC Division of Emergency Management to establish clear authority for NCEM to maintain the state EOC and a 24-hour operations center, plan for emergencies at nuclear power facilities, and manage mutual aid.
- Eliminating prior inconsistencies about the expiration date of a local state of emergency by simply providing that it remains effective until it is terminated by the issuing authority.
- Clarifying confusion about the geographic scope of a local state of emergency declaration by authorizing local officials to define the emergency area as being either part or all of their jurisdiction.
- Clearly authorizing local officials to impose the emergency restrictions or prohibitions deemed necessary in response to a particular emergency (in other words, clarifying that all restrictions and prohibitions provided for in local ordinances are not automatically triggered when an emergency is declared).
- Specifically including among local emergency restrictions the authority to impose a curfew and order evacuations that may be either voluntary or mandatory.
- Increasing the penalty for violations of local emergency restrictions from a Class 3 misdemeanor to a Class 2 misdemeanor to conform to the punishment level for violations of emergency orders issued by the governor.
- And, of course, imposing limitations on emergency gun restrictions summarized in this blog post.

What HB843 did *not* do is fundamentally alter the legal or operational relationships between cities, counties, and the state. Nor did the bill contain a significant number of substantive changes – while it may look like an entirely new set of statutes (all that underlining you see in the bill is a technical function of the legislative bill drafting process), I'd estimate that 95% of the language in HB843 is virtually identical to existing law.

For a complete analysis of HB843 and a crosswalk of the various statutory changes and recodifications, see the “Legislative Updates” section of our SOG emergency management microsite.

## Links

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