

The Louisiana Homeland Security and Emergency Assistance and Disaster Act: Guidance on Emergency Declarations under [R.S. 29:727](#)

Introduction

This guidance discusses the specific requirements for emergency declarations pursuant to the Louisiana Homeland Security and Emergency Assistance and Disaster Act ("Act", Title 29, Chapter 6). The question has arisen as to how much detail must be present in the declaration to be considered valid. This guidance will first focus on the statute, certain Attorney General (AG) opinions, and finally, what might be considered best practices for future emergency situations that may arise.

The Louisiana Homeland Security and Emergency Assistance and Disaster Act

The Louisiana Homeland Security and Emergency Assistance and Disaster Act under [R.S. 29:727](#) sets forth the applicable law governing emergency situations in the State of Louisiana. The Act confers powers on the Parish President that may go beyond the powers conferred by the constitution, laws, or a home rule charter or plan of government in order to deal with a major disaster. The grant of such broad powers is why it is crucial that the details of the Act be carefully followed.

Requirements

The basic requirements of the Act are as follows:

- The parish president, and only the parish president, may declare a local disaster or emergency;
- The declaration is only effective for thirty days, but may be extended every thirty days until the parish president finds that the threat of danger has been dealt with and the emergency conditions no longer exist; and
- The declaration may be terminated by the parish president, the governor, a petition signed by a majority of the legislature, or a majority of the parish governing authority. In practice, the checks and balances is provided by the parish governing authority. Under the statute, the parish governing authority may terminate the emergency declaration at any time.

The Act then provides what must be in the declaration. The declaration must indicate:

- The nature of the emergency;
- The area or areas which are or may be affected;
- The conditions which brought the emergency about; and
- The order or proclamation declaring, continuing, or terminating the emergency must be given prompt publicity and filed with the office of emergency preparedness and the office of the clerk of court.

Powers

The powers given under the Act at [R.S. 29:727\(F\)](#), are specifically in addition to any other powers conferred upon the parish president by the constitution, laws, or by a home rule charter or plan of government.

Specifically, the parish president may:

- (1) Suspend the provisions of any regulatory ordinance prescribing the procedures for conduct of local business, or the orders, rules, or regulations of any local agency, if strict compliance with the provisions of any ordinance, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency.
- (2) Utilize all available resources of the local government as reasonably necessary to cope with the local disaster or emergency.
- (3) Transfer the direction, personnel, or functions of local departments and agencies or units thereof for the purpose of performing or facilitating emergency services.
- (4) Subject to any applicable requirements for compensation, commandeer or utilize any private property if he finds this necessary to cope with the local disaster.
- (5) Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the boundaries of the parish if he deems this action necessary for mitigation, response, or recovery measures.
- (6) Prescribe routes, modes of transportation, and destinations in connection with evacuation within the local government's jurisdiction.
- (7) Control ingress and egress to and from the affected area, the movement of persons within the area, and the occupancy of premises therein.
- (8) Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles.

It becomes quite clear then that the powers granted by the Act are broad indeed. With such a broad grant of power, it becomes crucial that these powers be used only in emergency situations, and there be some limitations on this authority. The statute itself and the AG provide some safeguards.

Limitations in the Statute

The emergency powers granted by [R.S. 29:727](#) are limited somewhat by the statute itself. The declaration of emergency has specific requirements that must be followed.

R.S. 29:727(D) specifically states that:

All executive orders or proclamations issued under this Subsection shall indicate the nature of the emergency, the area or areas which are or may be affected, and the conditions which brought it about.

The AG determined in [AG Op. No. 08-0057](#) that the emergency declaration required by R.S. 29:727 is not valid if it fails to contain these three factors. The AG further determined that the declaration is not valid if it is not an order of the parish president, also required by the Act. It

logically follows from the AG's opinion then that if any of the requirements related to the declaration as set forth in the Act are not followed, the declaration may not be valid. What other

requirements are there? We have seen that the AG believes the declaration is not valid if it is not an order of the parish president, and if the three factors are not present in the declaration.

Further, [R.S. 29:727\(D\)](#) provides that:

The state of emergency may be terminated by executive order or proclamation, but no state of emergency may continue for longer than thirty days unless extended by the parish president.

Presumably, if the declarations are not extended timely, before the expiration of the thirty day time limit, then any extension of the declaration of emergency is also not valid.

The other clear limitation on the emergency declaration is the power granted to the parish governing authority to terminate it at any time. The parish governing authority concerned about this broad grant of powers to the parish president has the power to end the emergency declaration at will with a majority vote.

This brings us to the question, how much detail is enough detail?

The Devil is in the Details

Let's examine the three requirements. The declaration must indicate:

- The nature of the emergency;
- The area or areas which are or may be affected; and
- The conditions which brought the emergency about.

The nature of the emergency would seem to require information as to the specific details of the emergency. "**A hurricane made landfall**" would not seem to be sufficient. In fact, comparing this language to the second requirement "**conditions which brought the emergency about**" would seem to indicate that the nature of the emergency is the more specific of the two. It has to be, otherwise the nature of the emergency and the conditions which brought it about would both be covered by "**a hurricane made landfall.**"

Conditions of the emergency would seem to be asking for what caused the specific emergency. That is, "**a hurricane made landfall**" or "**a tornado touched down**" would seem to answer the question of what conditions brought the emergency about. The nature of the emergency would seem to be asking what damage the hurricane, tornado, ice storm, etc., inflicted. The other requirement, area or areas which are or may be affected, is self explanatory and needs no interpretation. Therefore, a hurricane made landfall, and there is flooding and debris filling the streets of the parish would seem to be the correct way to answer the requirements of the Act.

Best Practices

Some auditing issues simply are not legal matters, or well reasoned opinions of the AG. They are common sense practices which should be followed to avoid certain unseen complications which may arise down the line. One such complication is the distance in time from the emergency declaration to the formation of a contract to deal with conditions caused by the

emergency. The necessity to be specific as to the nature of the emergency is the time factor involved in the making of contracts using the emergency powers granted by the Act.

Assuming the declaration has been timely extended every thirty days, it is valid indefinitely. Should public entities enter contracts using emergency powers after three years, four years or five years? The LLA has seen entities entering into such contracts five years after Hurricanes Katrina and Rita. There is currently no time limit on the emergency declaration in the Act; it can be renewed every thirty days. If the contract entered into under the Act is not specifically related to the declaration, what safeguards remain? Except for the ability of the parish governing authority to terminate the contract by majority vote, there is none. However, if the declaration and the subject of the contract have some relation to one another, there is a comfort level that the object of the contract has a valid purpose related to the emergency. A declaration extended for seventy-two weeks would have a relation back to a contract and the emergency if it said, "A hurricane made landfall in August 2005. As a result, the streets in the Ninth Ward were flooded and the streets were damaged." Assuming the contract entered into five years later was for street repairs in the Ninth Ward, a contract made under the aegis of the Act, you have a contract relating back to the declaration and the emergency that is unassailable.

An excellent example of an emergency declaration is Governor Jindal's declaration of emergency in the wake of the Deepwater Horizon Oil Spill, [Proclamation No. 20 BJ 2010](#), April 29, 2010. It contains the law on emergency declarations, the Governor's authority under it, the reasons for the emergency and the potential damage it may cause to the State.

Case Law

Under the Act, a parish president may extend a state of emergency for his parish when the threat of danger continues to exist, even if the governor has not extended the state of emergency statewide, so long as the governor has not issued an order or proclamation terminating the state of emergency and established a period during which no other declaration of emergency or disaster may be issued. **Clement v. Reeves, App. 3 Cir.2008, 975 So.2d 170, 2007-1154, 2007-1155 (La.App. 3 Cir. 1/3, writ denied 978 So.2d 355, 2008-0482 (La. 4/18/08).**

Attorney General Opinions

The Act, La. R.S. 29:727 *et seq.*, is constitutional. The Parish President is immune from liability for acts under the Louisiana Homeland Security and Emergency Assistance and Disaster Act, unless the acts constitute willful misconduct. The Parish Council, as the governing authority, may terminate the Declaration of Emergency provided proper procedure is followed [AG Op. No. 06-0279](#). See also [AG Op. 10-0124](#) which states: While R.S. 29:771(B)(1) might appear to only cover the state with immunity from liability, the express language of R.S. 29:735, imputes this "state immunity" upon all state agencies *and local political subdivisions thereof*. In other words, R.S. 29:771(B)(1) affords the immunity contained in R.S. 29:735 to anyone (state or any political subdivision thereof) engaged in any homeland security and emergency preparedness activity after a public health emergency is made under LHEPA, except in cases of willful misconduct.

During a declared disaster or emergency, parish presidents have broad authority to use available local government resources, including unencumbered parish funds, as reasonably necessary to cope with the local disaster or emergency without approval of the parish council,

even if those funds are budgeted for other purposes; such authority ends with the termination of the disaster or emergency [AG Op. No. 05-0397](#).

Statute

The Louisiana Homeland Security and Emergency Assistance and Disaster Act

R.S. 29 § 727. Powers of the parish president; penalties for violations

- A. Each political subdivision within this state shall be within the jurisdiction of and served by the Governor's Office of Homeland Security and Emergency Preparedness for purposes of homeland security and emergency preparedness and by a parish homeland security and emergency preparedness agency responsible for emergency or disaster mitigation, preparedness, response, and recovery.
- B. Each parish president is hereby authorized and directed to establish an office of homeland security and emergency preparedness for the respective parish.
- C. Each parish president shall maintain a homeland security and emergency preparedness agency which, except as otherwise provided under this Chapter, has jurisdiction over and serves the entire parish.
- D. A local disaster or emergency may be declared only by the parish president, except as otherwise provided in this Chapter. In that event, the state of emergency shall continue until the parish president finds that the threat of danger has been dealt with to the extent that emergency conditions no longer exist. The state of emergency may be terminated by executive order or proclamation, but no state of emergency may continue for longer than thirty days unless extended by the parish president. The state of emergency or disaster may be terminated by the governor, a petition signed by a majority of the surviving members of either house of the legislature, or a majority of the surviving members of the parish governing authority. The document terminating the state of emergency or disaster may establish a period during which no other declaration of emergency or disaster may be issued. All executive orders or proclamations issued under this Subsection shall indicate the nature of the emergency, the area or areas which are or may be affected, and the conditions which brought it about. Any order or proclamation declaring, continuing, or terminating a local disaster or emergency shall be given prompt and general publicity and shall be filed promptly with the office of emergency preparedness and the office of the clerk of court.
- E. Notwithstanding any other provision of this Chapter, when the parish president declares a local disaster or emergency within such subdivision the parish president shall carry out the provisions of this Chapter. Nothing contained herein shall be construed to confer upon the parish president any authority to control or direct the activities of any state agency. When the disaster or emergency is beyond the capabilities of the local government, the parish president shall request assistance from the Governor's Office of Homeland Security and Emergency Preparedness. The declaration of a local emergency will serve to activate the response and recovery program of the local government.
- F. In addition to any other powers conferred upon the parish president by the constitution, laws, or by a home rule charter or plan of government, such authority may do any or all of the following:

- (1) Suspend the provisions of any regulatory ordinance prescribing the procedures for conduct of local business, or the orders, rules, or regulations of any local agency, if strict compliance with the provisions of any ordinance, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency.
 - (2) Utilize all available resources of the local government as reasonably necessary to cope with the local disaster or emergency.
 - (3) Transfer the direction, personnel, or functions of local departments and agencies or units thereof for the purpose of performing or facilitating emergency services.
 - (4) Subject to any applicable requirements for compensation, commandeer or utilize any private property if he finds this necessary to cope with the local disaster.
 - (5) Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the boundaries of the parish if he deems this action necessary for mitigation, response, or recovery measures.
 - (6) Prescribe routes, modes of transportation, and destinations in connection with evacuation within the local government's jurisdiction.
 - (7) Control ingress and egress to and from the affected area, the movement of persons within the area, and the occupancy of premises therein.
 - (8) Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles.
- G. In the event of an emergency declared by the parish president pursuant to this Chapter, any person or representative of any firm, partnership, or corporation violating any order, rule, or regulation promulgated pursuant to this Chapter, shall be fined not more than five hundred dollars, or confined in the parish jail for not more than six months, or both.
- H. No organization for homeland security and emergency preparedness established under this Chapter shall be employed directly or indirectly for political purposes.
- I. (1) Each parish or police jury president, through the parish director of homeland security and emergency preparedness appointed pursuant to R.S. 29:728, shall form a parish emergency management advisory committee, to offer advice and counsel to the parish or police jury president on homeland security and emergency management issues set forth in the report prepared in accordance with Paragraph (4) of this Subsection. The parish or police jury president may consider the advice and counsel from the committee on such matters as planning, development, prioritization, coordination, and implementation of homeland security and emergency management issues to include but not be limited to homeland security and emergency management mitigation, preparedness, response and recovery, grant requests, and the expenditure of grant funds.
- (2) The parish or police jury president shall serve as the chairperson of the committee or shall designate the parish director of homeland security and emergency preparedness to serve as the chairperson. If the parish or police jury president serves as the chairperson,

the parish director of homeland security and emergency preparedness shall serve as vice chairperson of the committee.

(3)(a) At a minimum, the committee shall consist of the following for each parish:

(i) A fire chief from the parish as a representative of all the fire chiefs in the parish.

(ii) A chief executive officer from one of the municipalities of the parish, as a representative of all chief executive officers of the municipalities of the parish.

(iii) A police chief from the parish as a representative of all the police chiefs of the parish.

(iv) The sheriff of the parish or his designee.

(v) A senior executive from the emergency medical services community within the parish.

(b) The representatives of the fire chiefs, municipal chief executive officers, police chiefs, and emergency medical services shall be appointed to the committee by those persons holding the same position within the parish.

(4) The committee shall meet no less than twice per year and shall submit a report to the director of the Governor's Office of Homeland Security and Emergency Preparedness on or before April first of each year, commencing on April 1, 2010. The annual report shall address those issues identified by the director in consultation with the regional parish office of emergency preparedness parish directors' subcommittee pursuant to R.S. 29:725.6(B)(6)(c) by January first of each year.

(5) The requirement of the parish or police jury president to form a parish emergency advisory committee may be satisfied through any existing committee formed within the parish for the purpose of addressing the issues of homeland security and emergency preparedness provided that such existing committee meets the membership requirement set forth in Paragraph (3) of this Subsection.

(6) Nothing herein shall restrict or impair the rights and responsibilities of a parish or police jury president to respond to an emergency.

(7) Nothing herein shall restrict or impair the rights and responsibilities of a committee created by a parish police jury and other local agencies and municipalities pursuant to a joint services agreement to develop and implement a plan in response to an emergency.