



# Members Brief

An informational brief prepared by the LSC staff for members and staff of the Ohio General Assembly

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## Governor’s Authority to Declare Emergency

Ohio’s governors use an emergency declaration for many purposes. The effects of these declarations are not set forth in the Ohio Constitution or Revised Code. One must look to the declaration itself or an accompanying executive order to determine the Governor’s intended effects. An emergency declaration directs the response of executive branch agencies and personnel to urgent and immediate needs or, in some cases, qualifies the state for federal funds.

The Governor’s authority to declare a state of emergency derives primarily from the Governor’s constitutionally granted supreme executive authority, though the General Assembly enacted legislation in 2021 to limit the duration of a declaration and to create legislative oversight for the Governor’s actions during an emergency.

### Contents

Effect of a declaration .....	1
Authority to declare emergency .....	2
Method of declaring an emergency .....	2
Duration; extension; termination .....	3
Special types of emergency declarations .....	3
Examples of emergency declarations .....	4
Role of the Ohio Emergency Management Agency .....	4
Emergency Management Assistance Compact .....	4
Other executive branch emergency authority .....	5

### Effect of a declaration

When declaring an emergency, the Governor announces the declaration’s effect – including the length of time the emergency status is expected to last (up to 90 days), the people or areas of the state impacted, and the state personnel or resources that will be used to help aid in resolving the emergency. See below for examples of previous emergency declarations. The Governor is not permitted, constitutionally, to take actions as part of an emergency declaration that are constitutionally impermissible, such as violating the separation of powers doctrine, but

the power to declare an emergency is otherwise broad. In brief, in an emergency declaration, the Governor directs executive branch agencies and resources to address urgent and immediate needs.

The General Assembly enacted legislation in 2021 to require the Governor to report to the Senate President and Speaker of the House about every action the Governor takes in response to an emergency. The General Assembly can adopt a concurrent resolution to rescind, in whole or in part, any order or rule the Governor issues in response to the emergency.<sup>1</sup> Via the Health Oversight and Advisory Committee, a joint legislative committee, the General Assembly oversees actions taken by the Governor and provides advice.<sup>2</sup> The Department of Health is subject to this oversight as well; see the LSC *Members Brief* on the [Department of Health's Authority in an Emergency that Affects the Public Health \(PDF\)](#), which is available on LSC's website, [lsc.ohio.gov](http://lsc.ohio.gov).

During an emergency, the Department of Administrative Services (DAS) can suspend competitive bidding and competitive selection requirements state agencies would otherwise be required to follow.<sup>3</sup>

In some cases, a declared emergency qualifies the state to receive federal assistance. Often, federal funds become available to states impacted by a natural disaster or other public health crisis upon an emergency declaration.

## **Authority to declare emergency**

The Governor generally declares emergencies pursuant to the Governor's supreme executive authority.<sup>4</sup> The Ohio Constitution also empowers the Governor to call forth the militia, to execute Ohio laws, to suppress insurrection, to repel invasion, and to act in the event of a disaster within Ohio.<sup>5</sup> Finally, the Revised Code authorizes the Governor to declare emergencies addressing specific circumstances (see below).

### **Method of declaring an emergency**

With certain exceptions, there is not a prescribed manner of declaring an emergency. Often, the Governor declares an emergency by executive order. In other instances, the Governor may declare the emergency by news release and direct specified agencies to implement the declaration's requirements.

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<sup>1</sup> Also subject to this provision are the Lieutenant Governor, Secretary of State, Auditor of State, Attorney General, Treasurer of State, and all administrative departments and other state agencies. If an order or rule is rescinded, the same order or rule (or a similar one) cannot be adopted for the next 60 days unless approved by the General Assembly (see below).

<sup>2</sup> S.B. 22 of the 134<sup>th</sup> General Assembly; R.C. 103.651(B) and 107.43(B).

<sup>3</sup> R.C. 125.061.

<sup>4</sup> Ohio Constitution, Article III, Section 5.

<sup>5</sup> Ohio Const., Art. IX, Sec. 4.

## Duration; extension; termination

The General Assembly's 2021 legislation limits the duration of a state of emergency declared by the Governor to 90 days, unless extended by the General Assembly. The General Assembly may extend a state of emergency for up to an additional 60 days by adopting a concurrent resolution, and can do so continuously by adopting subsequent concurrent resolutions. The General Assembly also has authority, after a state of emergency declared by the Governor has been in effect for 30 days, to terminate the state of emergency by adopting a concurrent resolution.

If the General Assembly does not extend a state of emergency or if the General Assembly terminates a state of emergency, the Governor cannot declare an identical or substantially similar state of emergency — or issue a declaration with any part of the initial declaration — for 60 days following the expiration or termination. However, during those 60 days, the Governor can submit a request to the General Assembly to issue such a declaration before the 60 day period ends. The General Assembly can review the request and adopt a concurrent resolution authorizing the request.<sup>6</sup>

## Special types of emergency declarations

The Revised Code provides for specific types of emergency declarations as follows.

Type of Emergency	Impact of Emergency Declaration
Air pollution emergency <sup>7</sup>	Governor is authorized to declare emergency and restrict energy consumption and the use of vehicles.
Energy shortage emergency <sup>8</sup>	Similar to air pollution emergency.
Adulterated consumer product emergency <sup>9</sup>	Governor may declare a public health state of emergency and order, for instance, that the product be removed from public display by all retailers.
Temporary location for seat of government <sup>10</sup>	The Governor may designate an emergency temporary location for the seat of government (Columbus) if an emergency renders it necessary.

<sup>6</sup> R.C. 107.42.

<sup>7</sup> R.C. 3704.032.

<sup>8</sup> R.C. 4935.03.

<sup>9</sup> R.C. 3715.74.

<sup>10</sup> R.C. 5502.24.

## Examples of emergency declarations

1. 2020 – Governor DeWine declared an emergency in response to the outbreak of the COVID-19 virus in Ohio. Under the declaration, certain public purchasing and contracting requirements were suspended, the Department of Health was required to issue guidelines for public and private entities to help reduce the spread of the virus, and state agencies were directed to take actions necessary to alleviate the public health threat.<sup>11</sup>
2. 2014 – Governor Kasich declared an emergency for Lucas and Wood counties when an algae contamination affected the public water system, and arranged for drinking water to be shipped to those counties.<sup>12</sup>
3. 2007 – Governor Strickland declared an emergency for several Ohio counties due to flood conditions. The emergency declaration was made to ensure qualified Ohio citizens could seek disaster relief benefits.<sup>13</sup>
4. 2006 – Governor Taft declared an emergency to create the Pandemic Influenza State Services Advisory Council. The Council was charged with monitoring development of agency continuity of operations plans and working with the Ohio Emergency Management Agency during pandemic influenza outbreaks.<sup>14</sup>

## Role of the Ohio Emergency Management Agency

The Ohio Emergency Management Agency (OEMA) within the Department of Public Safety (DPS) is required to develop the State of Ohio Emergency Operations Plan. Under the Agency's Base Plan, the Governor is responsible for overall decision-making and coordination of state emergency operations. A primary function of the plan is the provision of resources to communities experiencing an emergency.

The OEMA Executive Director coordinates all emergency management activities of state agencies and acts as the liaison between Ohio and emergency management agencies in other states and the federal government. The Governor or DPS Director can assign additional authority, duties, or responsibilities to the OEMA Executive Director as necessary.<sup>15</sup>

## Emergency Management Assistance Compact

Ohio is a party state to the Emergency Management Assistance Compact. The Compact is a mutual aid agreement that allows states to share resources during governor-declared states of

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<sup>11</sup> Governor Mike DeWine, [Executive Order 2020-01D \(PDF\)](#), March 9, 2020. Governor DeWine rescinded the declaration on June 18, 2021, via [Executive Order 2021-08D \(PDF\)](#). S.B. 22 of the 134<sup>th</sup> General Assembly took effect June 23, 2021.

<sup>12</sup> Governor John Kasich August 2, 2014, [news release \(PDF\)](#).

<sup>13</sup> Governor Ted Strickland August 22, 2007, [news release \(PDF\)](#).

<sup>14</sup> Governor Bob Taft, Executive Order 2006-18T, August 15, 2006.

<sup>15</sup> R.C. 5502.22; see also Ohio Emergency Management Agency, [Emergency Operations Base Plan \(PDF\)](#), which is available by clicking "State Plans," then "Ohio Emergency Operations Plan," and finally "Base Plan" on OEMA's website, [ema.ohio.gov](http://ema.ohio.gov).

emergency. All 50 states and the District of Columbia, as well as other United States territories, are members of the Compact. As a Compact member, the Ohio Governor could request that other member states provide assistance in Ohio after a declared emergency.<sup>16</sup>

## Other executive branch emergency authority

Other state agencies, through emergency rulemaking, have the ability to impact state policy during an emergency situation. This power typically is exercised by the adoption of emergency rules. Emergency rules are not subject to the same requirements that apply to rulemaking, such as public hearings, opportunity for comment, and review by the Joint Committee on Agency Rule Review.<sup>17</sup> And, the General Assembly can adopt a concurrent resolution to override the actions of an agency with respect to an emergency rule; this means the General Assembly may invalidate a rule that was adopted or amended on an emergency basis, or may authorize a rule rescinded by an agency in response to an emergency to be readopted.<sup>18</sup>

Emergency rulemaking requires an executive order from the Governor. Some examples of emergency rulemaking include:

1. 2022 – Governor DeWine declared an emergency requiring the immediate amendment of Ohio Department of Health rules regarding the training of nurse aides employed by long-term care facilities in light of staff shortages;<sup>19</sup>
2. 2016 – Governor Kasich declared an emergency requiring the immediate amendment of a Department of Medicaid rule that would allow licensed independent chemical dependency counselors to provide services under the Medicaid Program;<sup>20</sup>
3. 2009 – Governor Strickland declared an emergency requiring the immediate amendment of a Department of Job and Family Services rule regarding reimbursement for flu vaccinations under Medicaid.<sup>21</sup>

An emergency rule takes effect immediately on filing, but expires on the 121<sup>st</sup> day after its effective date—unless, in the meantime, the agency has readopted the rule under the normal rulemaking procedure. For more information about emergency rules, see the *LSC Members Brief, Administrative Rulemaking (PDF)*, which is available on LSC's website, [lsc.ohio.gov](https://lsc.ohio.gov).

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<sup>16</sup> R.C. 5502.40; see also [Emergency Management Assistance Compact](#), which is available at [emacweb.org](https://emacweb.org).

<sup>17</sup> R.C. 119.03(G).

<sup>18</sup> R.C. 107.43(C)(1), 106.022, 111.15, and 119.03. If a rule is rescinded, the same rule (or a similar one) cannot be adopted for the next 60 days unless approved by the General Assembly.

<sup>19</sup> Executive Order 2022-13D, July 29, 2022.

<sup>20</sup> Executive Order 2016-02K, June 21, 2016.

<sup>21</sup> Executive Order 2009-20S, September 30, 2009.