



**THE LOUISIANA HOMELAND SECURITY
AND EMERGENCY ASSISTANCE AND DISASTER
ACT:
GUIDANCE ON EMERGENCY DECLARATIONS
BY PARISH PRESIDENTS
UNDER [R.S. 29:727](#)**

This document provides specific guidance for emergency declarations by Parish Presidents under the Louisiana Homeland Security and Emergency Assistance and Disaster Act (R.S. 29:721, et seq.). This power is separate and apart from and subject to the powers provided to the Governor in issuing emergency declarations for the State. The question has arisen as to the level of detail required for the declaration to be considered valid. This guidance is limited to emergency declarations issued by Parish Presidents and will focus on the pertinent statute, certain Attorney General (AG) opinions, and best practices for 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 sets forth the applicable law governing emergency situations in the State of Louisiana. In order to deal with a major disaster, the Act under [R.S.29:727](#) confers powers on Parish Presidents that may exceed the powers otherwise conferred by the constitution, laws, or a home rule charter or plan of government. Because the emergency powers granted to Parish Presidents under the Act are broad in nature, the Act provides for specific requirements that must 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 effective until the parish president finds that the threat of danger has been dealt with and the emergency conditions no longer exist or the disaster declaration is terminated; 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 are provided by the parish governing authority. Under the statute, the parish governing authority may terminate the parish president's emergency declaration at any time.

The Act provides that the declaration must:

- Indicate the nature of the emergency;
- Indicate the area or areas that are or may be affected;
- Indicate the conditions that brought the emergency about; and
- Be given prompt publicity and filed with the office of emergency preparedness and the office of the clerk of court, whether the declaration be proclaiming the emergency, continuing the proclamation, or terminating the emergency.

Powers

The emergency powers given to the parish president during a declared disaster under the Act at [R.S. 29:727\(F\)](#), are specifically additive 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 for coping with the emergency.
- (2) Use 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 use any private property that the parish president finds necessary to cope with the local disaster. **For purposes of this paragraph, private property does not include firearms, ammunition, or components of firearms or ammunition.***
- (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 the parish president deems this action necessary for mitigation, response, or recovery measures.
- (6) Prescribe routes, modes of transportation, and destinations within the local government's jurisdiction to facilitate evacuation.

- (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 transporting of alcoholic beverages, explosives, and combustibles, **excluding those components of firearm ammunition***.

Because these emergency powers granted by the Act are broad in nature, the powers may only be used in emergency situations. The Act, including R.S. 29:727, places certain limits on the parish president's exercise of these emergency powers and provides safeguards against abuse.

*Amended by **Act 325 of the 2020 Regular Session** (Effective August 1, 2020).



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Mandatory Specific Requirements

Specific requirements for the declaration of emergency must be followed. R.S. 29:727 provides limitations on the emergency powers granted to the parish president under the Act by requiring that the declaration specify the nature and extent of the emergency, including providing geographic boundaries.

This requirement can be found in R.S. 29:727(D) which states:

... 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 in [AG Op. No. 08-0057](#) opined that the emergency declaration required by R.S. 29:727 is not valid if it fails to contain the three factors listed in R.S. 29:727(D). The AG further stated that the declaration is not valid if it is not an order of the parish president, as required by the Act. Based upon the AG's guidance, it appears that if any of the Act's requirements related to the declaration are not followed, the declaration may ultimately be determined to be invalid.

In summary, a declaration may ultimately be considered invalid if it is not an order of the parish president, and/or if the three factors specified by R.S. 29:727(D) are not present in the declaration.

Another limitation or safeguard placed upon parish president's emergency powers under the Act is the power granted to the parish governing authority to terminate the emergency declaration at any time. If a parish governing authority exercises its statutory authority to terminate the emergency declaration through a majority vote of the council/police jury, the parish president and governing authority will resume their ordinary powers under the Constitution, law, and charter provisions, if applicable.

Given the requirements of R.S. 29:727(D) to identify the nature and extent of the emergency, the question arises in how much detail is enough detail?

Level of Specificity in Declaration

The declaration must indicate:

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

The nature of the emergency apparently requires specific information about the details of the emergency. “**A hurricane made landfall**” will likely not be sufficient. Because the statutory requires that the declaration indicate the “**conditions which brought the emergency about**” in addition to identifying the nature of the emergency, it appears to indicate that the declaration must in identifying the nature of the emergency be more specific than just providing that an event occurred . Otherwise, there would be no reason to require that the declaration identify both the nature of the emergency and the conditions that brought it about.

The requirement that the declaration identify the conditions of the emergency appears to require that the declaration state 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; however, appears to be a separate question as to identifying the extent of damage inflicted by the hurricane, tornado, ice storm, etc, or the specific issue that must be addressed post-storm. For example, the nature of an emergency following a hurricane, may be the demolition and removal of destroyed structures, clearing of debris from roadways, or the interim repair and stabilization of buildings and infrastructure.

The final requirement to identify the area or areas that are or may be affected, is self-explanatory. Therefore, “a hurricane made landfall, and there is parish wide flooding and debris filling the streets of the parish” would appear to be a correct way to fulfill the requirements of the Act.

Best Practices

Some audit-related issues arise during and following a declared disaster which are not explicitly addressed in the Act or through the opinions of the Attorney General. However, here are some common sense practices that should be followed to avoid certain unforeseen complications that might arise.

One potential complication is the length of time from the issuance of the emergency declaration to the formation of a contract to deal with conditions caused by the emergency. The length of

time that will be acceptable in making of contracts using the emergency powers granted by the Act will depend upon the specific nature of the emergency. Thus, it is important that any emergency declaration provide sufficient information as to the nature and extent of the emergency.

Assuming the declaration has not been terminated, it can be potentially valid indefinitely. However, absent extremely limited circumstances, public entities generally should not be entering contracts using emergency powers once it is able to otherwise resume ordinary processes of procurement.

While the Act places no time limit on the emergency declaration, any contract entered into under the emergency powers provided through the Act should specifically be related to the declaration. In other words, the declaration and the subject of the contract must have some relation to one another in order for the object of the contract to be presumed to have a valid purpose related to the emergency.

An example of an emergency declaration can be seen through the Lafourche Parish President's declaration of emergency <http://www.lafourchegov.org/home/showdocument?id=35803> in addressing the potential impact to the Parish from Tropical Storm Gordon on September 2, 2018. It contains the law on emergency declarations, the Parish President's authority under it, the reasons for the emergency and the potential damage it may cause to the Parish.

Case Law

Under the Act, a parish president may continue a state of emergency for the 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*, La.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).

A declaration of emergency is not required for the governmental immunity provisions of the Homeland Security and Emergency Assistance and Disaster Act (R.S. 29:735) to take effect with respect to emergency preparedness and recovery activities. *Cooley v. Acadian Ambulance*, 65 So.3d 192, 2010-1229 (La.App. 4 Cir. 5/4/11).

The Parish was not immune from suit under the Louisiana Emergency Assistance and Disaster Act for damage to owners' homes related to construction of a canal; canal was constructed for general purposes rather than as part of emergency preparedness activity. *Banks v. Parish of Jefferson*, 990 So.2d 26, 08-27 (La.App. 5 Cir. 6/19/08).

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. No. 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 Louisiana Health Emergency Powers Act (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](#).
- ❖ FEMA funds are not treated differently from other revenue for budgeting purposes and should be included in a political subdivision's annual budget even if only shown as an estimated amount. If the receipt of FEMA funds after the budget has been adopted results in a political subdivision having a change in operations, the budget must be amended to reflect receipt of the funds [AG Op. No. 10-0232](#).



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ADDITIONAL RESOURCES

The Louisiana Municipal Association supplies additional guidance.

[LMA's Mayor's Guide to Emergency Management and Disaster Management.](#)