

Guidelines for Special Districts in Declaring a State of Emergency

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Introduction

Since the Governor declared a state of emergency in Oregon on March 8, 2020, many local governing bodies have been acting to declare their own state of emergency within their jurisdictions. The process for cities and counties to make an emergency declaration is laid out in statute, but special districts have little guidance for doing the same, and some may be wondering whether they should consider making a local declaration, and what the import and effect of a declaration would be for their district.

Purpose of Emergency Declarations

The primary purpose of an emergency declaration is to maintain continuity of service in situations where the normal decision-making process may be unavailable. Emergency declarations allow governments to quickly mobilize to minimize, respond to, or recover from the emergency presented. While each emergency will present its own unique set of facts and needs, the common purpose for a declaration is when the risks of delay or inability to take certain actions outweighs the public benefits from following the ordinary procedure. An emergency declaration functions as the triggering action for a government to activate a menu of powers and authority that may not be ordinarily available, or to use processes that may not be ordinarily used, in order to respond to the emergency circumstance. Special districts should consider the type of powers, processes, and authority that it would want to authorize in the event of an emergency.

Authorized Actions in a State of Emergency

Declaring a state of emergency allows special districts to make adjustments to a variety of functions. Below are some of the more common actions and functions that may be authorized or adjusted through an emergency declaration:

1. ***Provide additional sources of funding.*** Divert funds appropriated for certain purposes to meet the needs of the emergency.
2. ***Designate a line of succession for the governing body and district staff / Authorize individuals to take action that they would not otherwise be authorized to take.*** In an emergency, a quorum of the governing body may be unable or unavailable to take an action that is needed to protect the district. Or the administrative or executive head of a district may be unavailable to make day-to-day decisions. An emergency declaration may designate a line of succession for individuals authorized to perform the needed functions in their place.
3. ***Authorize the suspension or waiver of local policies or ordinances.***
4. ***Suspend local procurement rules and spending authority limits.***
5. ***Allow for greater cooperation among local governments.*** Authorize the district's entrance into contracts and agreements with other governments. Provide and receive resources with or without a formal contract.
6. ***Prioritize certain district activities and functions.***
7. ***Demonstrate eligibility for certain funding.*** Some emergency funding sources require documentation of the existence of an emergency and spending during that time.

8. Raise public awareness.

9. Provide legal protection for actions taken during a state of emergency.

Process for Declaring an Emergency

Unlike for the state, cities, and counties, there is no statutory process in place for special districts to declare an emergency. Special districts do, however, generally have broad authority to adopt local rules and regulations and to take all action that is necessary or proper to perform the functions and purposes for which the district was formed. For special districts, a two-step process is recommended.

First, the governing body should act to generally authorize declarations of local states of emergency. This may be in the form of an ordinance or resolution. This first action should identify, at a minimum: (i) what would constitute a local emergency; (ii) who is authorized to make a declaration of a state of emergency; (iii) delegations to individuals for actions that the governing body as a board may be unable to make; (iv) a line of succession of board officers and district staff; (v) the additional powers and authorities; and, (vi) any processes that are authorized to be revised or suspended during the emergency.

The next step would be to declare a state of emergency that is specific to the circumstances presented at the time of the declaration – for example, to respond to the threats imposed by the COVID-19 outbreak. This would be in the form of a resolution or declaration. This second action should contain, at a minimum, the following elements: (i) findings of the criteria meeting the definition of a local emergency; (ii) the actions that are authorized as appropriate for the current emergency; (iii) the individuals who are ordered or authorized to take the authorized actions; (iv) the method for keeping the governing body apprised of all actions taken pursuant to the emergency powers that are taken other than by the governing body; (v) the duration of the emergency during which time the actions would be authorized.

Limitations on Emergency Declarations / Conclusion

While declaring a state of emergency has multiple purposes and value for a special district, and can assist it to respond to the emergency at hand, districts should also keep in mind that a declaration is about continuing operations and does not provide a district with authority beyond the reasonable protection of district assets and resources. Such a declaration does not serve to override federal law. Further, state statutory requirements for special districts will continue to remain in place, such as the requirement to hold public meetings and hearings, and to adopt a budget before the start of the fiscal year. A special district may additionally be restricted by its unionized collective bargaining. This makes it imperative for each special district to take into account the authorities it has pursuant to its organizing statute, along with any other limits it may have placed on itself through policies, rules, or contracts.