
That statute contains four sections:

(a) Gives the governor additional powers during a state of emergency;
(b) Gives the governor additional powers “with the concurrence of the Council of State” during a state of emergency;
(c) Gives the governor additional powers during a state of emergency “if the Governor determines that local control of the emergency is insufficient to assure adequate protection for lives and property;” and
(d) Provides that a violation of a declaration or emergency order is a misdemeanor.

You may recall some controversy over whether Cooper obtained the concurrence of the Council of State in at least one order in which he cited G.S. 166A-19.30(b). But we haven’t seen much, if any, discussion about the logical inconsistency of his reliance on section c of the statute while simultaneously telling local governments they can adopt more stringent local restrictions.

In Executive Order 121, the stay at home order, the Governor cited 166A-19.30(c). Again, that part of the statute gives the Governor additional powers when he “determines that local control of the emergency is insufficient.” Basically, by invoking this statute the Governor is telling North Carolina that their local officials cannot manage this crisis. Yet, that executive order goes to length in section 4 to allow local government to impose restrictions or prohibitions to the extent authorized under North Carolina law, such as on the activity of people or businesses, to a greater degree than in his order.

North Carolinians should be asking, if local control is insufficient and the Governor has to essentially take over, why is he giving the
greenlight to local government to adopt tighter restrictions? Why does he expressly allow tighter local government control, but not looser control?

Of course, the argument could be made that local government control could be “insufficient” on its own but still permissible as a supplement to state-level action. Nevertheless, the time has come to ask the question.