

**Questions: Do counties need to pass a disaster declaration to receive federal funds?
What types of emergency resolutions can counties adopt?**

Answer:

Access to Federal disaster assistance/FEMA funding - ORC 5502.21:

The Stafford Act authorizes the delivery of federal technical, financial, logistical, and other assistance to states and localities during declared major disasters or emergencies. The Federal Emergency Management Agency (FEMA) coordinates administration of disaster relief resources and assistance to states. Federal assistance is provided under the Stafford Act if an event is beyond the combined response capabilities of state and local governments. Under this law, the federal government will reimburse 75 percent of cost of an allowable expenditure.

The Stafford Act authorizes the President to make two types of emergency declarations: an “emergency” and a “major disaster.” An “emergency” is any situation in which the president determines that federal assistance is needed to supplement state and local efforts to save lives, protect property, public health, and safety, or to lessen or avert the threat of a catastrophe. A major disaster declaration is a response to a natural catastrophe which is of sufficient severity to warrant federal assistance to alleviate the damage, loss, or hardship caused by the event. These two types of declarations trigger different categories of aid. On March 13, President Trump had made a national declaration for the coronavirus that covered all 50 states and U.S. Territories. On March 31, the president responded to a request from Governor DeWine and declared a major disaster for Ohio.

Commissioners DO NOT need to declare a “State of Emergency” pursuant to ORC 5502.21 et seq. in order to receive federal FEMA disaster assistance (typical emergency management funding through the Stafford Act and State Disaster Relief Program). FEMA has indicated that counties (and other local governments) are covered by the President’s actions on March 13 and do not have to take any action to be able to access FEMA funding. FEMA, in a response to NACo on March 19, 2020, indicates:

“On March 13, 2020, the President declared the ongoing Coronavirus Disease 2019 (COVID-19) pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to section 501 (b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the “Stafford Act”). State, Territorial, Tribal, local government entities and certain private non-profit (PNP) organizations are eligible to apply for Public Assistance. States, Tribal and Territorial governments do not need to request separate emergency declarations to receive FEMA assistance under this nationwide declaration. The emergency declaration will reimburse for eligible emergency protective measures taken to respond to the COVID-19 emergency at the direction or guidance of public health officials under Category B of FEMA’s Public Assistance program.”

Category B Assistance includes activities to control and reduce immediate threats to public health and safety; emergency medical care; and medical sheltering that is needed when existing facilities cannot accommodate existing or future needs. For a complete list of reimbursable expenditures, please consult the FEMA [Fact sheet](#) on Eligible Emergency Protect Measures during the Coronavirus epidemic.

The presidential major disaster declaration for Ohio will make counties eligible for reimbursement for a wider set of activities, including aid to individuals. This declaration covers all areas in the state of Ohio and individual county emergency declarations are not necessary.

Small business funding through the SBA:

No commissioner action required. The governor's office has indicated that they are gathering the necessary information for the federal government and will be responsible for complying with the federal requirements to make this funding available in Ohio.

Counties may wish to consider several other types of resolutions during an emergency, including delegating certain functions to be carried out by a county administrator, and declaring an emergency to exempt certain purchases from competitive bidding.

Delegation of Functions to the County Administrator – ORC 305.30(J):

The law permits a board of county commissioners to delegate functions to the county administrator in the case of an emergency or disaster under ORC 305.30(J). Some counties have recently passed resolutions to implement this. The law allows the administrator to: "Perform any or all functions conferred or incumbent upon the board of county commissioners in the case of a disaster or emergency, provided that the board, by resolution, has delegated the specific functions or all of the functions to the administrator."

Competitive bidding exemption for "real and present emergency" – ORC 307.86 (A):

There have been a few questions raised as to whether this section can be used to temporarily avoid competitive bidding on "emergency supplies and expenditures." Our advice is that the language of the statute is explicit and does not provide a blanket exemption for items such as cleaning supplies, personal protective equipment, or other health-related items that counties may have to procure during this state of emergency. Note that ORC 307.86 (A) (2) provides: "(2) There is actual physical disaster to structures, radio communications equipment, or computers."

Otherwise, ORC 307.86 does allow for a limited exception to competitive bidding if the board of county commissioners makes a unanimous determination that a real and present emergency exists and the cost of the expenditure is less than \$100,000. Some counties have activated this provision in response to the coronavirus. When this emergency provision is used and the cost is more than \$50,000 and less than \$100,000, the county must solicit informal estimates from at least three vendors and maintain the records of the estimates for at least one year.

County Joint Purchasing

In some cases, an emergency declaration to waive competitive bidding may not be the appropriate remedy to solve a county's purchasing needs. In addition to participation in state term contracts through the Ohio Department of Administrative Services, Ohio law (ORC 9.48) provides political subdivisions, including counties, with the following additional joint purchasing options:

1. Joining with one or more political subdivisions to participate in contracts for equipment, materials, supplies, or services. The county may charge the other political subdivisions a reasonable fee to cover any additional costs incurred as a result of their participation.

2. Participating in a joint purchasing program operated by or through a national or state association of political subdivisions in which the political subdivision is eligible for membership. CCAO has a contract with OMNIA partners (formerly part of NACO) that provides access to national suppliers.

3. Participate in contract offerings of the federal government including contracts of the general services administration.

Purchases made under this law are exempt from any competitive selection requirements otherwise required by law, provided that the original contract entered into by a political subdivision was awarded pursuant to a publicly solicited request for a proposal or a competitive selection procedure. With respect to federal contracts, purchases are exempt from any competitive selection requirements. If the county has already taken bids for the same product or service, the purchase cannot be made through another political subdivision, a state or national joint purchasing program, or the federal government unless the price is lower than the bid.

Counties May Contract with Other Political Subdivisions to Perform Government Functions or Services

State law also recognizes that counties may need to join with other political subdivisions to provide certain services in addition to contracting for specific supplies or materials. This should be kept in mind during the COVID-19 emergency. Counties and other political subdivisions may contract with each other to exercise any power, perform any function, or render any service for another contracting recipient political subdivision that both entities are legally authorized to perform (ORC 9.482). A county elected officer must give written consent before a county can enter into an agreement for the exercise or performance of the elected officer's functions or duties. An agreement cannot extend to levying any tax or performing an investment function for public funds, but a contract may allow for the collection and administration of a tax. Employees acting pursuant to an agreement outside of the boundaries of their employing political subdivision continue to possess immunity from civil liability and are covered by Ohio Workers' Compensation Law.

For further information, please consult County Advisory Bulletin 1998-02, Joint and Cooperative Purchasing Programs for Counties, available at <https://ccao.org/wpcontent/uploads/CAB%20199802.pdf>.

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