

2020 Second Extraordinary Session

SENATE BILL NO. 48

BY SENATOR ROBERT MILLS

EMERGENCY POWERS. Limits the duration of declarations of emergency unless extension is authorized by the legislature. (gov sig) (Item #28)

1 AN ACT

2 To amend and reenact R.S. 29:724(B)(1) and (2) and (D)(1), 766(D)(1), and 768 and to

3 enact R.S. 29:722(D) and (E), 724(I), (J), (K) and (L), 761(C) and (D), relative to

4 emergencies and disasters in the state; to provide for duties and powers of the

5 governor and the legislature; to provide relative to renewals of certain gubernatorial

6 emergency or disaster declarations or of suspensions related to disaster declarations;

7 to provide for an effective date; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 29:724(B)(1) and (2) and (D)(1), 766(D)(1), and 768 are hereby

10 amended and reenacted and R.S. 29:722(D) and (E), 724(I), (J), (K) and (L), 761(C) and (D)

11 are hereby enacted to read as follows:

12 §722. Purpose; **intent**

13 * * *

14 **D. It is further declared that the purpose of this Chapter is not intended**

15 **to allow executive orders, proclamations, or suspensions to be lengthy or an**

16 **indefinite grant of power that would effectively do all of the following:**

17 **(1) Violate the separation of powers by substituting executive actions that**

1 have the force of law for legislative action delegated by the people to the
2 legislature pursuant to Article III, Section 1 of the Constitution of Louisiana.

3 (2) Eliminate the people's constitutionally protected rights to the redress
4 of grievances as provided for in Article I, Section 9 of the Constitution of
5 Louisiana.

6 (a) The Constitution of Louisiana does not give the executive branch the
7 authority to make law and accordingly emergency powers are not to be
8 construed as a delegation of lawmaking powers to the executive.

9 (b) Emergency powers are by definition to be temporary, limited, and
10 narrowly tailored.

11 E. The legislature finds and declares the following:

12 (1) The people of Louisiana hold rights that are specifically protected
13 through Article I of the Constitution of Louisiana and concurrently through the
14 Constitution of the United States of America. Article I, Section 1 of the
15 Constitution of Louisiana states the following: "All government, of right,
16 originates with the people, is founded on their will alone, and is instituted to
17 protect the rights of the individual and for the good of the whole. Its only
18 legitimate ends are to secure justice for all, preserve peace, protect the rights,
19 and promote the happiness and general welfare of the people. The rights
20 enumerated in this Article are inalienable by the state and shall be preserved
21 inviolate by the state".

22 (2) Emergency powers designated to the governor are intended to be
23 limited in scope and duration and only exercised to the extent necessary to
24 address an immediate and actual emergency.

25 * * *

26 §724. Powers of the governor

27 * * *

28 B.(1) A disaster or emergency, or both, shall be declared by executive order
29 or proclamation of the governor if he finds that a disaster or emergency has occurred

1 or the threat thereof is imminent. The state of disaster or emergency shall continue
 2 until the governor finds that the threat of danger has passed or the disaster or
 3 emergency has been ~~dealt with~~ **addressed** to the extent that the emergency
 4 conditions no longer exist and terminates the state of disaster or emergency by
 5 executive order or proclamation, but no state of disaster or emergency may continue
 6 for longer than thirty days unless renewed by the governor **in compliance with**
 7 **Subsections I and J of this Section.**

8 (2) The legislature, by petition signed by a majority of the surviving members
 9 of either house, may terminate a state of disaster or emergency at any time. This
 10 petition terminating the state of emergency or disaster **shall include a date on which**
 11 **the state of emergency or disaster terminates and** may establish a period during
 12 which no other declaration of emergency or disaster may be issued. ~~Thereupon, the~~
 13 ~~governor shall issue an executive order or proclamation ending the state of disaster~~
 14 ~~or emergency.~~ **The clerk of the House of Representatives and the secretary of the**
 15 **Senate shall transmit copies of the signed petition to the governor, the secretary**
 16 **of state, and the chief justice of the Louisiana Supreme Court. The clerk and**
 17 **secretary shall give notice to the public that the legislature has terminated the**
 18 **state of emergency by publishing the petition on the joint legislative website and**
 19 **in the official state journal. No additional action is required to effectuate the**
 20 **termination of the state of emergency or disaster.**

21 * * *

22 D. In addition to any other powers conferred upon the governor by law, he
 23 may do any or all of the following:

24 (1) Suspend the provisions of any regulatory statute prescribing the
 25 procedures for conduct of state business, or the orders, rules, or regulations of any
 26 state agency, if strict compliance with the provisions of ~~any~~ **the regulatory** statute,
 27 order, rule, or regulation would in any way prevent, hinder, or delay necessary action
 28 in coping with the emergency, **but no suspension may continue for longer than**
 29 **thirty days unless as provided for in Subsections I and J of this Section. The**

1 suspension of a regulatory statute shall be narrowly tailored to avoid the
2 prevention, hindrance, or delay of the action necessary to cope with the
3 emergency, and the language suspending the statute shall state with specificity
4 the obstacles to the action necessary for addressing the emergency that strict
5 compliance with the provisions of the statute would cause.

6 * * *

7 I. If the governor determines that the circumstances which precipitated
8 the initial executive order, proclamation, or suspension are still present, then at
9 least seven days before the expiration of the order, proclamation, or suspension
10 the governor may do either of the following:

11 (1) Call the legislature into an emergency session pursuant to his
12 constitutional authority under Article III, Section 2(B) of the Constitution of
13 Louisiana to address the emergency.

14 (2) Notify the legislature and request a continuation of the executive
15 order, proclamation, or suspension. The notification shall contain, at a
16 minimum, the reasons for the continued need for a declaration of emergency,
17 the duration of the renewal, and a plan of action to address the conditions
18 necessitating the renewal.

19 (a) The notification shall be delivered to the president of the Senate or
20 his office in the state capitol and the speaker of the House of Representatives or
21 his office in the state capitol.

22 (b) If in-person delivery pursuant to Subparagraph (a) of this Paragraph
23 is not practical, the notice may be emailed to the president of the Senate and the
24 speaker of the House of Representatives or transmitted by whatever means as
25 practical.

26 J. No later than three days after receipt of the notification from the
27 governor pursuant to Paragraph (I)(2) of this Section, the president of the
28 Senate and the speaker of the House shall notify their respective members of the
29 governor's request to continue the executive order, proclamation, or suspension

1 for an additional thirty days in writing, by email, facsimile, or by any other
2 means which the speaker or the president deem practical under the
3 circumstances.

4 (1) The notification of the request for extension shall provide a ballot for
5 each member of the legislature so that the member may vote to approve or
6 reject the extension.

7 (2) The members of the legislature may return their ballots by mail,
8 email, facsimile, or by any other means which the speaker or the president deem
9 practical under the circumstances.

10 (3) A majority of the members of each house shall approve the
11 declaration to extend the executive order, proclamation, or suspension prior to
12 the expiration date of the executive order, proclamation, or suspension.

13 (4) If the legislature votes in favor of extending the executive order,
14 proclamation, or suspension is necessary, the executive order, proclamation, or
15 suspension shall continue for an additional thirty days. Any additional
16 extensions shall be brought to the legislature as provided in Subsection I of this
17 Section.

18 K. Nothing in this Section is intended to prevent the legislature from
19 calling itself into session pursuant to Article III, Section 2(B) of the Constitution
20 of Louisiana to address the emergency issues which are contained in the
21 executive order, proclamation, or suspension address. Members of the
22 legislature may participate remotely pursuant to R.S. 24:7.1 at any session
23 called by the governor or the legislature.

24 L. Any executive order, proclamation, or suspension executed pursuant
25 to this Chapter that is in effect at any time that the legislature is in session shall
26 terminate as of the effective date for laws enacted during that legislative session
27 as provided in Article III, Section 19 of the Constitution of Louisiana.

28 * * *

29 §761. Purpose; intent

* * *

C. It is further declared that the purpose of this Chapter is not intended to allow executive orders, proclamations, or suspensions to be lengthy or an indefinite grant of power that would effectively do all of the following:

(1) Violate the separation of powers by substituting executive actions that have the force of law for legislative action delegated by the people to the legislature pursuant to Article III, Section 1 of the Constitution of Louisiana.

(2) Eliminate the people's constitutionally protected rights to the redress of grievances as provided for in Article I, Section 9 of the Constitution of Louisiana.

(a) The Constitution of Louisiana does not give the executive branch the authority to make law and accordingly, emergency powers are not to be construed as a delegation of lawmaking powers to the executive.

(b) Emergency powers are by definition to be temporary, limited, and narrowly tailored.

D. The legislature finds and declares the following:

(1) The people of Louisiana hold rights that are specifically protected through Article I of the Constitution of Louisiana and concurrently through the Constitution of the United States of America. Section 1 of Article I of the Constitution of Louisiana states the following: "All government, of right, originates with the people, is founded on their will alone, and is instituted to protect the rights of the individual and for the good of the whole. Its only legitimate ends are to secure justice for all, preserve peace, protect the rights, and promote the happiness and general welfare of the people. The rights enumerated in this Article are inalienable by the state and shall be preserved inviolate by the state".

(2) Emergency powers designated to the governor are intended to be limited in scope and duration and only exercised to the extent necessary to address an immediate and actual emergency.

* * *

§766. Declaration of a state of public health emergency

* * *

D. Emergency powers.

During a state of public health emergency, in addition to any powers conferred upon the governor by law, he may do any or all of the following:

(1) Suspend the provisions of any regulatory statute prescribing procedures for the conducting of state business, or the orders, rules, or regulations of any state agency, if strict compliance with the provisions of ~~any~~ **the regulatory** statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency, **but no suspension may continue for longer than thirty days unless renewed by the governor in compliance with the provisions of R.S. 29:768(C). The suspension of a regulatory statute shall be narrowly tailored to avoid the prevention, hindrance, or delay of the action necessary to cope with the emergency, and the language suspending the statute shall state with specificity, the obstacles to the action necessary for addressing the emergency that strict compliance with the provisions of the statute would cause.**

* * *

§768. Termination of declaration of public health emergency

A. The state of public health emergency shall continue until the governor finds that the threat of danger has passed or the disaster or emergency has been ~~dealt with~~ **addressed** to the extent that the emergency conditions no longer exist and terminates the state of public health or emergency by executive order or proclamation, but no state of public health emergency may continue for longer than thirty days unless renewed by the governor **in compliance with Subsections C and D of this Section.**

B. The legislature, in consultation with the public health authority, by a petition signed by a majority of the surviving members of either house, may terminate a state of public health emergency at any time. This petition terminating

1 the public health emergency shall include a date on which the state of public
2 health emergency terminates and may establish a period during which no other
3 declaration of public health emergency may be issued. ~~Thereupon, the governor shall~~
4 ~~issue an executive order or proclamation ending the state of public health or~~
5 ~~emergency.~~ The clerk of the House of Representatives and the secretary of the
6 Senate shall transmit copies of the signed petition to the governor, the secretary
7 of state, and the chief justice of the Louisiana Supreme Court. The clerk and
8 secretary shall give notice to the public that the legislature has terminated the
9 state of emergency by publishing the petition on the joint legislative website and
10 in the official state journal. No additional action is required to effectuate the
11 termination of the state of public health emergency.

12 C. If the governor determines that the circumstances which precipitated
13 the initial executive order, proclamation, or suspension are still present, then at
14 least seven days before the expiration of the order, proclamation, or suspension,
15 the governor may do the following:

16 (1) Call the legislature into an emergency session pursuant to his
17 constitutional authority under Article III, Section 2(B) of the Constitution of
18 Louisiana to address the emergency.

19 (2) Notify the legislature and request a continuation of the executive
20 order, proclamation, or suspension. The notification shall contain, at a
21 minimum, the reasons for the continued need for declaration of emergency, the
22 duration of the renewal, and a plan of action to address the conditions
23 necessitating the renewal.

24 (a) The notification shall be delivered to the president of the Senate or
25 his office in the state capitol and the speaker of the House of Representatives or
26 his office in the state capitol.

27 (b) If in-person delivery pursuant to Subparagraph (a) of this Paragraph
28 is not practical, the notice may be emailed to the president of the Senate and the
29 speaker of the House of Representatives or transmitted by whatever means as

1 **practical.**

2 **D. No later than three days after receipt of the notification from the**
3 **governor pursuant to Paragraph (C)(2) of this Section, the president of the**
4 **Senate and the speaker of the House shall notify their respective members of the**
5 **governor's request to continue the executive order, proclamation, or suspension**
6 **for an additional thirty days in writing, by email, or by any other means which**
7 **the speaker or the president deem practical under the circumstances.**

8 **(1) The notification of the request for extension shall provide a ballot to**
9 **each member of the legislature so that the member may vote to approve or**
10 **reject the extension.**

11 **(2) The members of the legislature may return their ballots by mail,**
12 **email, facsimile, or by any other means which the speaker or the president deem**
13 **practical under the circumstances.**

14 **(3) A majority of each house must approve the declaration to extend the**
15 **executive order, proclamation, or suspension prior to the expiration date of the**
16 **executive order, proclamation, or suspension.**

17 **(4) If the legislature votes in favor of extending the executive order,**
18 **proclamation, or suspension is necessary, the executive order, proclamation, or**
19 **suspension shall continue for an additional thirty days. Any additional**
20 **extensions must be brought to the legislature pursuant to Subsection C of this**
21 **Section.**

22 **E. Nothing herein is intended to prevent the legislature from calling itself**
23 **into session pursuant to Article III, Section 2(B) of the Constitution of Louisiana**
24 **to address the emergency issues which are contained in the executive order,**
25 **proclamation, or suspension address. Members of the legislature may**
26 **participate remotely pursuant to R.S. 24:7.1 at any session called by the**
27 **governor or the legislature.**

28 **F. Any executive order, proclamation, or suspension executed pursuant**
29 **to this Chapter that is in effect at any time that the legislature is in session shall**

1 **terminate as of the effective date for laws enacted during that legislative session**
2 **as provided in Article III, Section 19 of the Constitution of Louisiana.**

3 * * *

4 Section 2. This Act shall become effective upon signature by the governor or, if not
5 signed by the governor, upon expiration of the time for bills to become law without signature
6 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
7 vetoed by the governor and subsequently approved by the legislature, this Act shall become
8 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Carla S. Roberts.

DIGEST

SB 48 Original

2020 Second Extraordinary Session

Robert Mills

Present law provides for the governor to declare a state of emergency or disaster, including a public health emergency, by executive order or proclamation. Restricts the length of any declaration to 30 days. Allows the governor to renew the state of emergency or disaster. Authorizes the governor to suspend the provisions of any regulatory statute prescribing procedures for conducting state business, or the orders, rules, or regulations of any state agency, if strict compliance with the statute, order, rule, or regulation would prevent, hinder, or delay necessary action in coping with the emergency.

Proposed law retains present law and requires the suspension of a statute to be narrowly tailored to avoid the prevention, hindrance, or delay of the action necessary to cope with the emergency. Further requires the language suspending the statute to state with specificity the obstacles to the action necessary for addressing the emergency that strict compliance with the provisions of the statute would cause.

Present law authorizes the legislature to terminate a state of disaster or emergency at any time by a petition signed by a majority of the surviving members of either house.

This petition terminating the state of emergency or disaster may establish a period during which no other declaration of emergency or disaster may be issued.

Proposed law retains present law but requires that the date of the vote by either house of the legislature to terminate the state of emergency will include a date on which the state of emergency or disaster terminates.

Present law provides for the governor to issue an executive order or proclamation ending the state of disaster or emergency upon the petition is signed by the required members of the legislature.

Proposed law instead provides for notification of the governor, the secretary of state, the chief justice of the La. Supreme Court, and the public. Specifies that no additional action is required to effectuate the termination of the state of emergency or disaster.

Proposed law provides that, after the initial 30-day period, if the governor determines that the circumstances which precipitated the initial executive order, proclamation, or suspension are still present, then at least seven days before the expiration of the order, proclamation, or

suspension the governor may do either of the following:

- (1) Call the legislature into an emergency session pursuant to his constitutional authority to address emergency events which are continuing in nature.
- (2) Notify the legislature and request a continuation of the executive order, proclamation, or suspension.

Proposed law provides that the notification will contain the reasons for the continued need for declaration of emergency, the duration of the renewal, and a plan of action to address the conditions necessitating the renewal.

Proposed law provides that notification will be delivered to the president of the Senate or his office and the speaker of the House of Representatives or his office. Proposed law further provides that if in-person delivery of the notification is not practical, the notice may be emailed or transmitted by whatever means are practical.

Proposed law provides that no later than three days after receipt of the notification from the governor, the president of the Senate and the speaker of the House will notify the legislators of the governor's request to continue the emergency declaration for an additional 30 days in writing, by email, or by any other means practical under the circumstances.

Proposed law provides that notification of the request for extension will provide a ballot to each member of the legislature so that the member may vote to approve or reject the extension.

Proposed law provides that a majority of each house must approve the declaration to extend the executive order, proclamation, or suspension prior to the expiration date of the executive order, proclamation, or suspension.

Proposed law provides that, if the legislature votes in favor of extending the emergency declaration, it will continue for an additional 30 days. Any additional extensions must be brought to the legislature again for renewal every 30 days.

Proposed law provides that nothing herein in proposed law is intended to prevent the legislature from calling itself into session pursuant to the La. Constitution to address the emergency issues contained in the declaration of emergency.

Proposed law provides that members of the legislature may participate remotely pursuant to present law at any session called by the governor or the legislature.

Proposed law provides that any executive order, proclamation, or suspension that is in effect at any such time that the legislature is in session will terminate on the date that laws enacted that session take effect.

Proposed law provides that the purpose of proposed law is not intended to allow executive orders or actions in a state of emergency be lengthy or an indefinite grant of power that would effectively do all of the following:

- (1) Violate the separation of powers by substituting executive actions that have the force of law for legislative action delegated by the people to the legislature by the La. Constitution. The La. Constitution does not give the executive branch the authority to make law and, therefore, emergency powers are not to be construed as a delegation of lawmaking powers to the executive.
- (2) Eliminate the people's constitutionally protected rights to the redress of grievances as provided for by the La. Constitution. Emergency powers are by definition to be temporary, limited, and narrowly tailored.

Proposed law provides that the legislature finds and declares the following:

- (1) The people of Louisiana hold rights that are specifically protected through the La. Constitution and concurrently through the U.S. Constitution. "All government, of right, originates with the people, is founded on their will alone, and is instituted to protect the rights of the individual and for the good of the whole. Its only legitimate ends are to secure justice for all, preserve peace, protect the rights, and promote the happiness and general welfare of the people. The rights enumerated in this Article are inalienable by the state and shall be preserved inviolate by the state", as provided for in the La. Constitution.
- (2) Emergency powers designated to the governor are intended to be limited in scope and duration and only exercised to the extent necessary to address an immediate and actual emergency.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 29:724(B)(1), (2) and (D)(1), 766(D)(1), and 768; adds R.S. 29:722(D) and (E), 724(I), (J), (K) and (L), 761(C) and (D))