
HOUSE BILL 1381

State of Washington

67th Legislature

2021 Regular Session

By Representative Kraft

1 AN ACT Relating to limiting the governor's emergency powers,
2 ensuring legislative balance of power, and regulating government
3 agency emergency authority; amending RCW 43.06.210, 43.06.220, and
4 34.05.350; and declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 43.06.210 and 2013 c 21 s 1 are each amended to read
7 as follows:

8 (1) The proclamation of a state of emergency and other
9 proclamations or orders issued by the governor pursuant to RCW
10 43.06.010, and 43.06.200 through 43.06.270 as now or hereafter
11 amended shall be in writing and shall be signed by the governor and
12 shall then be filed with the secretary of state. A proclamation of a
13 state of emergency is effective upon the governor's signature.

14 (2) The governor shall give as much public notice as practical
15 through the news media of the issuance of proclamations or orders
16 pursuant to RCW 43.06.010, and 43.06.200 through 43.06.270 as now or
17 hereafter amended.

18 (3) The state of emergency shall cease to exist upon the earlier
19 of:

20 (a) The issuance of a proclamation of the governor declaring its
21 termination: PROVIDED, That the governor must terminate said state of

1 emergency proclamation when order has been restored in the area
2 affected; or

3 (b) Fourteen days after the state of emergency proclamation is
4 signed by the governor, unless extended by the legislature through a
5 concurrent resolution approved by a two-thirds vote in both the house
6 of representatives and the senate. If the legislature is not in
7 session, the state of emergency proclamation may be extended only
8 during a special legislative session called for that purpose. The
9 vote described in this subsection must take place during an in-person
10 floor session unless meeting in-person is not feasible because of the
11 emergency, in which case a virtual legislative session may be held if
12 the session is conducted with a live visual and audio feed that
13 provides continuous viewing of every legislator attending the
14 session. However, if the emergency also prevents the legislature from
15 using live visual feed, a telephonic session may be held if:

- 16 (i) All legislators are requested to participate by telephone;
17 (ii) An audio feed of the session is recorded and made available
18 to the public as soon as possible;
19 (iii) A written transcript of the session is produced and made
20 available to the public as soon as possible; and
21 (iv) To the extent practicable, members of the public and press
22 who wish to attend the session are permitted to listen to the session
23 live through operable telecommunications devices.

24 **Sec. 2.** RCW 43.06.220 and 2019 c 472 s 2 are each amended to
25 read as follows:

26 (1) The governor after proclaiming a state of emergency and prior
27 to terminating such, may, in the area described by the proclamation
28 issue an order prohibiting:

29 ~~(a) ((Any person being on the public streets, or in the public~~
30 ~~parks, or at any other public place during the hours declared by the~~
31 ~~governor to be a period of curfew;~~

32 ~~(b) Any number of persons, as designated by the governor, from~~
33 ~~assembling or gathering on the public streets, parks, or other open~~
34 ~~areas of this state, either public or private;~~

35 ~~(c))~~ The manufacture, transfer, use, possession or
36 transportation of a molotov cocktail or any other device, instrument
37 or object designed to explode or produce uncontained combustion;

38 ~~((d))~~ (b) The transporting, possessing or using of gasoline,
39 kerosene, or combustible, flammable, or explosive liquids or

1 materials in a glass or uncapped container of any kind except in
2 connection with the normal operation of motor vehicles, normal home
3 use or legitimate commercial use; and

4 ~~((f))~~ (c) The sale, purchase or dispensing of alcoholic
5 beverages ~~((f~~

6 ~~(f) The sale, purchase or dispensing of other commodities or~~
7 ~~goods, as he or she reasonably believes should be prohibited to help~~
8 ~~preserve and maintain life, health, property or the public peace;~~

9 ~~(g) The use of certain streets, highways or public ways by the~~
10 ~~public; and~~

11 ~~(h) Such other activities as he or she reasonably believes should~~
12 ~~be prohibited to help preserve and maintain life, health, property or~~
13 ~~the public peace)).~~

14 (2) ~~((The))~~ During the 14 days after the governor ~~((after~~
15 ~~proclaiming))~~ proclaims a state of emergency ~~((and prior to~~
16 ~~terminating such)),~~ the governor may, in the geographic area
17 described by the proclamation, issue an order or orders concerning
18 waiver or suspension of statutory obligations or limitations as
19 described in this subsection. After those 14 days, a waiver or
20 suspension may continue only if extended by the legislature through
21 concurrent resolution approved by a two-thirds vote in both the house
22 of representatives and the senate. An order may waive or suspend
23 statutory obligations or limitations only in the following subject
24 areas:

25 (a) Liability for participation in interlocal agreements;

26 (b) Inspection fees owed to the department of labor and
27 industries;

28 (c) Application of the family emergency assistance program;

29 (d) Regulations, tariffs, and notice requirements under the
30 jurisdiction of the utilities and transportation commission;

31 (e) Application of tax due dates and penalties relating to
32 collection of taxes;

33 (f) Permits for industrial, business, or medical uses of alcohol;
34 and

35 (g) Such other statutory and regulatory obligations or
36 limitations prescribing the procedures for conduct of state business,
37 or the orders, rules, or regulations of any state agency if strict
38 compliance with the provision of any statute, order, rule, or
39 regulation would ~~((in any way))~~ prevent, hinder, or delay necessary
40 action in coping with the emergency, unless (i) authority to waive or

1 suspend a specific statutory or regulatory obligation or limitation
2 has been expressly granted to another statewide elected official
3 prior to the state of emergency, (ii) the waiver or suspension would
4 conflict with federal requirements that are a prescribed condition to
5 the allocation of federal funds to the state, or (iii) the waiver or
6 suspension would conflict with any of the freedoms and rights of the
7 people, under the ~~((First Amendment, of freedom of speech or of the~~
8 ~~people to peaceably assemble))~~ Washington state or United States
9 Constitutions. The governor shall give as much notice as practical to
10 ~~((legislative leadership))~~ all members of the legislature directly
11 and impacted local governments when issuing orders, or any changes
12 relating to those orders, under this subsection (2)(g).

13 (3) Any order issued under this section must protect all rights
14 guaranteed by the Constitutions of Washington state and the United
15 States, and the order must be the least restrictive or intrusive
16 means. In imposing the restrictions provided for by RCW 43.06.010,
17 and 43.06.200 through 43.06.270, the governor may impose them for
18 such times, upon such conditions, with such exceptions, and in such
19 areas of this state ~~((he or she from time to time deems necessary))~~
20 where there is clear evidence of an immediate and present danger to
21 the public and therefore a state of emergency.

22 (4) No order or orders concerning waiver or suspension of
23 statutory obligations or limitations under subsection (2) of this
24 section may continue for longer than ~~((thirty))~~ 14 days unless
25 extended by the legislature through concurrent resolution approved by
26 a two-thirds vote in both the house of representatives and the
27 senate. If the legislature is not in session, the waiver or
28 suspension of statutory obligations or limitations may be extended
29 ~~((in writing by the leadership of the senate and the house of~~
30 ~~representatives until the legislature can extend the waiver or~~
31 ~~suspension by concurrent resolution. For purposes of this section,~~
32 ~~"leadership of the senate and the house of representatives" means the~~
33 ~~majority and minority leaders of the senate and the speaker and the~~
34 ~~minority leader of the house of representatives))~~ only during a
35 special legislative session called for that purpose. The vote
36 described in this subsection must take place during an in-person
37 floor session unless meeting in-person is not feasible because of the
38 emergency, in which case a virtual legislative session may be held if
39 the session is conducted with a live visual and audio feed that
40 provides continuous viewing of every legislator attending the

1 session. However, if the emergency also prevents the legislature from
2 using live visual feed, a telephonic session may be held if:

3 (a) All legislators are requested to participate by telephone;

4 (b) An audio feed of the session is recorded and made available
5 to the public as soon as possible;

6 (c) A written transcript of the session is produced and made
7 available to the public as soon as possible; and

8 (d) To the extent practicable, members of the public and press
9 who wish to attend the session are permitted to listen to the session
10 live through operable telecommunications devices.

11 (5) Any person willfully violating any provision of an order
12 issued by the governor under this section is guilty of a gross
13 misdemeanor.

14 **Sec. 3.** RCW 34.05.350 and 2011 1st sp.s. c 2 s 1 are each
15 amended to read as follows:

16 (1) ~~((If))~~ (a) An agency may not adopt an emergency rule under
17 this section that responds or relates to:

18 (i) A state of emergency declared by the governor under RCW
19 43.06.010; or

20 (ii) Legislation that responds or relates to such a governor-
21 declared state of emergency.

22 (b) An agency may not amend or repeal an existing rule in
23 response to a governor-declared state of emergency, unless:

24 (i) The governor expressly authorizes the agency to do so by a
25 proclamation issued within the first 14 days after a state of
26 emergency is declared; or

27 (ii) The legislature expressly authorizes the agency to do so in
28 legislation passed by a two-thirds vote in both the house of
29 representatives and the senate.

30 (c) An agency is instead limited to:

31 (i) Executing the provisions of the governor's proclamations
32 during the initial 14 days of the emergency; and

33 (ii) Executing the provisions of legislation responding or
34 relating to the emergency that has been approved by a two-thirds vote
35 in both the house of representatives and the senate.

36 (2) Except as provided in subsection (1) of this section, if an
37 agency for good cause finds:

38 (a) That immediate adoption, amendment, or repeal of a rule is
39 necessary for the preservation of the public health, safety, or

1 general welfare, and that observing the time requirements of notice
2 and opportunity to comment upon adoption of a permanent rule would be
3 contrary to the public interest; or

4 (b) That state or federal law or federal rule or a federal
5 deadline for state receipt of federal funds requires immediate
6 adoption of a rule(~~(; or~~

7 ~~(c) In order to implement the requirements or reductions in~~
8 ~~appropriations enacted in any budget for fiscal year 2009, 2010,~~
9 ~~2011, 2012, or 2013, which necessitates the need for the immediate~~
10 ~~adoption, amendment, or repeal of a rule, and that observing the time~~
11 ~~requirements of notice and opportunity to comment upon adoption of a~~
12 ~~permanent rule would be contrary to the fiscal needs or requirements~~
13 ~~of the agency)),~~

14 the agency may dispense with those requirements and adopt, amend, or
15 repeal the rule on an emergency basis. The agency's finding and a
16 concise statement of the reasons for its finding shall be
17 incorporated in the order for adoption of the emergency rule or
18 amendment filed with the office of the code reviser under RCW
19 34.05.380 and with the rules review committee.

20 ~~((+2))~~ (3) An emergency rule adopted under this section takes
21 effect upon filing with the code reviser, unless a later date is
22 specified in the order of adoption, and may not remain in effect for
23 longer than ~~((one hundred twenty))~~ 90 days after filing. Identical or
24 substantially similar emergency rules may not be adopted in sequence
25 unless conditions have changed or the agency has filed notice of its
26 intent to adopt the rule as a permanent rule, and is actively
27 undertaking the appropriate procedures to adopt the rule as a
28 permanent rule. This section does not relieve any agency from
29 compliance with any law requiring that its permanent rules be
30 approved by designated persons or bodies before they become
31 effective.

32 ~~((+3))~~ (4) Within seven days after the rule is adopted, any
33 person may petition the governor requesting the immediate repeal of a
34 rule adopted on an emergency basis by any department listed in RCW
35 43.17.010. Within seven days after submission of the petition, the
36 governor shall either deny the petition in writing, stating his or
37 her reasons for the denial, or order the immediate repeal of the
38 rule. ~~((In ruling on the petition, the governor shall consider only~~
39 ~~whether the conditions in subsection (1) of this section were met~~
40 ~~such that adoption of the rule on an emergency basis was necessary.))~~

1 If the governor orders the repeal of the emergency rule, any sanction
2 imposed based on that rule is void. (~~(This subsection shall not be~~
3 ~~construed to prohibit adoption of any rule as a permanent rule.)~~)

4 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
5 preservation of the public peace, health, or safety, or support of
6 the state government and its existing public institutions, and takes
7 effect immediately.

--- END ---