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Act 403 of the Regular Session

State of Arkansas

93rd General Assembly

A Bill

Regular Session, 2021

SENATE BILL 379

By: Senator K. Hammer

By: Representative Gazaway

For An Act To Be Entitled

AN ACT CONCERNING THE PROCESS FOR EMERGENCY DECLARATIONS IN THE STATE OF ARKANSAS; CONCERNING DIRECTIVES ISSUED TO ADDRESS A STATEWIDE STATE OF DISASTER EMERGENCY RELATED TO PUBLIC HEALTH; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

CONCERNING THE PROCESS FOR EMERGENCY DECLARATIONS AND DIRECTIVES ADDRESSING A STATEWIDE STATE OF DISASTER EMERGENCY RELATED TO PUBLIC HEALTH; AND TO DECLARE AN EMERGENCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. LEGISLATIVE INTENT. The General Assembly finds that:

(1) The Tenth Amendment to the United States Constitution vests in the states the rights and powers not delegated to the United States;

(2) The Tenth Amendment to the United States Constitution is generally interpreted to permit states to establish and enforce laws protecting the health, safety, and welfare of the public;

(3) When the State of Arkansas experiences emergency situations, including statewide emergencies, it is critical to the public welfare that the state provide an organized and measured response; and

(4) This act establishes a process for emergencies in this state that provides for appropriate checks and balances of the legislative and executive branches of government to ensure that the state's response to emergencies is appropriate and well-designed to serve the needs of the state's citizens during the emergency.

SECTION 2. Arkansas Code § 12-75-107 is amended to read as follows:

12-75-107. Declaration of disaster emergencies.

(a)(1) A disaster emergency shall be declared by executive order or proclamation of the Governor if he or she finds a disaster has occurred or that the occurrence or the threat of disaster is imminent.

(2) When time is critical because of rapidly occurring disaster emergency events, the Governor may verbally declare for immediate response and recovery purposes until the formalities of a written executive order or proclamation can be completed in the prescribed manner.

(b)(1) The state of disaster emergency shall continue until:

(A) The Governor finds that the threat or danger has passed and terminates the state of disaster emergency by executive order or proclamation; or

(B) The disaster has been dealt with to the extent that emergency conditions no longer exist and the employees engaged in the restoration of utility services have returned to the point of origin.

(2)(A) ~~No~~ Except as provided in subdivision (b)(2)(B) of this section, a state of disaster emergency ~~may~~ shall not continue for longer than sixty (60) days unless renewed by the Governor.

(B) A statewide state of disaster emergency related to public health under subsection (g) of this section shall not continue for longer than sixty (60) days unless renewed by the Governor, so long as the Legislative Council does not vote to deny the request for renewal.

(c)(1)(A) The General Assembly ~~by concurrent resolution~~ may terminate a state of disaster emergency, including without limitation a statewide state of disaster emergency related to public health under subsection (g) of this section, at any time by the passage of a concurrent resolution terminating the state of disaster emergency.

(B)(i) The House of Representatives shall debate and vote upon a concurrent resolution to terminate a state of disaster emergency under subdivision (c)(1)(A) of this section at a committee of the whole called either by the Speaker of the House of Representatives or upon the written request of at least fifty-one (51) members of the House of Representatives.

(ii) The House of Representatives may convene a committee of the whole to consider a concurrent resolution to terminate a state of disaster emergency at any time, including without limitation during a regular, fiscal, or extraordinary session of the General Assembly.

(C)(i) The Senate shall debate and vote upon a concurrent resolution to terminate a state of disaster emergency under subdivision (c)(1)(A) of this section at a committee of the whole called either by the President Pro Tempore of the Senate or upon the written request of at least eighteen (18) members of the Senate.

(ii) The Senate may convene a committee of the whole to consider a concurrent resolution to terminate a state of disaster emergency at any time, including without limitation during a regular, fiscal, or extraordinary session of the General Assembly.

(2) ~~Thereupon, the Governor shall issue an executive order or proclamation ending the state of disaster emergency~~ If the General Assembly enacts a concurrent resolution terminating a state of disaster emergency under subdivision (c)(1) of this section, the state of disaster emergency shall terminate on the date on which the state of disaster emergency will expire as provided in the executive order or proclamation declaring the state of disaster emergency unless the concurrent resolution provides for an earlier date of termination.

(3) If the Governor vetoes or otherwise does not approve a concurrent resolution terminating a state of disaster emergency within five (5) days, Sundays excepted, of its presentation to him or her, the House of Representatives and the Senate may convene a committee of the whole in the same manner provided in subdivisions (c)(1)(B) and (C) of this section for the purpose of debating and voting upon a repassage of the concurrent resolution that will override the Governor's failure to approve the concurrent resolution.

(d)(1) All executive orders or proclamations issued under this section shall indicate the nature of the disaster, the area or areas threatened, and the conditions which have brought it about or which make possible termination of the state of disaster emergency.

(2) In the case of a disaster, each provider of utility services whose services were interrupted shall prepare a report describing:

(A) The type of disaster emergency;

(B) The duration of the disaster emergency, which includes the time the utility personnel is dispensed to the work site and returns to the personnel's point of origin; and

(C) The personnel utilized in responding to the disaster emergency.

(3) If the disaster is related to public health, including without limitation an infectious, contagious, and communicable disease, then the executive order or proclamation shall specify that the state of disaster emergency is related to public health.

(e) An executive order or proclamation shall be disseminated promptly by means calculated to bring its contents to the attention of

the general public and, unless the circumstances attendant upon the disaster prevent or impede, filed promptly with the Secretary of State.

(f) An executive order or proclamation of a state of disaster emergency shall activate the disaster response and recovery aspects of the state, local, and interjurisdictional disaster emergency plans applicable to the political subdivision or area in question and be authority for the deployment and use of any forces to which the plan or plans apply and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to this chapter or any other provision of law relating to disaster emergencies.

(g)(1) The Governor shall declare a statewide state of disaster emergency related to public health if a disaster related to public health, including without limitation an infectious, contagious, and communicable disease, includes:

(A) At least nineteen (19) counties of the state, either at one (1) time or in the aggregate, if the states of disaster emergency are related to the same disaster related to public health; or

(B) A total number of persons in counties under a state of disaster emergency related to public health equal to or greater than twenty- five percent (25%) of the population of the State of Arkansas according to the most recent federal decennial census, either at one (1) time or in the aggregate, if the states of disaster emergency are related to the same disaster related to public health.

(2)(A) The House of Representatives and the Senate shall each convene as a committee of the whole within eight (8) business days of the declaration of a statewide state of disaster emergency related to public health to vote upon and debate a concurrent resolution to terminate the statewide state of disaster emergency related to public health.

(B) The House of Representatives and the Senate may each convene as a committee of the whole under subdivision (g)(2)(A) of this section at any time, including without limitation during a regular, fiscal, or extraordinary session of the General Assembly.

(C)(i) If the General Assembly enacts a concurrent resolution to terminate the statewide state of disaster emergency related to public health at committees of the whole under subdivision (g)(2)(A) of this section, the statewide state of disaster emergency related to public health shall terminate on the date on which the statewide state of disaster emergency related to public health will expire as provided in the executive order or proclamation declaring the statewide state of disaster emergency related to public health, unless the concurrent resolution provides for an earlier date of termination.

(ii) This subdivision (g)(2)(C) does not prohibit the Governor from terminating a statewide state of disaster emergency related to public health at a date earlier than the date specified in the resolutions of the House of Representatives and Senate terminating the statewide state of disaster emergency related to public health.

(D) If the Governor vetoes or otherwise does not approve a concurrent resolution terminating a statewide state of disaster emergency related to public health within five (5) days, Sundays excepted, of its presentation to him or her, the House of Representatives and the Senate may convene a committee of the whole in the manner provided in subdivisions (c)(1)(B) and (C) of this section for the purpose of debating and voting upon a repassage of the concurrent resolution that will override the Governor's failure to approve the concurrent resolution.

(3)(A) If the General Assembly does not terminate a statewide state of disaster emergency related to public health, the statewide state of disaster emergency related to public health shall not continue for longer than sixty (60) days from the date of the executive order or proclamation declaring the statewide state of disaster emergency related to public health unless renewed by the Governor, so long as the Legislative Council does not vote to deny the request for renewal.

(B) If the Governor desires to renew a statewide state of disaster emergency related to public health, he or she shall submit a written statement to the Legislative Council at least ten (10) days prior to the date on which the statewide state of disaster emergency related to public health will expire that includes without limitation the following information:

(i) The number of days that the statewide state of disaster emergency related to public health will continue, not to exceed sixty (60) days; and

(ii) The rationale for continuing the statewide state of disaster emergency related to public health.

(C) A statewide state of disaster emergency related to public health under this subdivision (g)(3) shall be renewed unless, by a majority vote of a quorum present, the Legislative Council votes to deny the Governor's request for renewal.

(D) After receiving the written statement of the Governor under subdivision (g)(3)(B) of this section, the Legislative Council may consider the renewal of a statewide state of disaster emergency related to public health under subdivision (g)(3)(A) of this section at any time prior to the expiration of the statewide state of disaster emergency related to public health.

(E) If the Legislative Council does not deny the Governor's request for renewal by a majority vote of a quorum present, the statewide state of disaster emergency related to public health shall be renewed for the number of days specified by the Governor in the written statement under subdivision (g)(3)(B)(i) of this section.

(h)(1) If a state of disaster emergency related to public health is not statewide upon its initial declaration but later becomes statewide by the addition of areas to the state of disaster emergency declaration, the Governor shall declare a statewide state of disaster emergency related to public health under subdivision (g)(1) of this section.

(2) The statewide state of disaster emergency declaration under subdivision (h)(1) of this section shall supersede past state of disaster emergency declarations related to the same disaster related to public health.

(i)(1) The Legislative Council may meet at any time to perform its duties under this section, including without limitation during a regular session, fiscal session, or extraordinary session of the General Assembly.

(2) The duties of the Legislative Council under this section shall not be delegated to a subset of the membership of the Legislative Council, including without limitation a subcommittee of the Legislative Council.

(3) The Legislative Council may adopt rules concerning the performance of its duties under this section.

SECTION 3. Arkansas Code § 12-75-114(e)(7), concerning the disaster emergency responsibilities of the Governor, is amended to read as follows:

(7)(A) Control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein.

(B) This chapter does not permit the Governor to prohibit members of the General Assembly from accessing the seat of government;

SECTION 4. Arkansas Code § 12-75-114, concerning the disaster emergency responsibilities of the Governor, is amended to add an additional subsection to read as follows:

(f)(1) An executive order or proclamation issued to meet or mitigate dangers to the people and property of the state presented or threatened by a statewide state of disaster emergency related to public health under § 12-75- 107(g):

(A) Shall be in effect for the remaining duration of the statewide state of disaster emergency related to public health; and

(B) Except as provided in subdivision (f)(3) of this section, shall be submitted to the Legislative Council for review.

(2)(A) If the Governor seeks to renew a statewide state of disaster emergency related to public health under § 12-75-107(g), he or she may also request the renewal of an executive order or proclamation under subdivision (f)(1) of this section.

(B) If the Governor requests the renewal of more than one (1) executive order or proclamation under subdivision (f)(2)(A) of this section, the Legislative Council may consider each executive order or proclamation individually.

(C) If the Legislative Council does not deny the Governor's request to renew the executive order or proclamation by a majority vote of a quorum present prior to the expiration of the statewide state of disaster emergency related to public health, the executive order or proclamation shall be renewed for the same time period as the statewide state of disaster emergency related to public health.

(3)(A) If the Governor issues an executive order or proclamation to meet or mitigate dangers to the people and property of the state presented or threatened by a statewide state of disaster emergency related to public health after a statewide state of disaster emergency related to public health has been renewed under § 12-75-107(g)(3), the executive order or proclamation is subject to termination by the Legislative Council.

(B)(i) An executive order or proclamation issued under subdivision (f)(3)(A) of this section shall become effective immediately upon its issuance by the Governor and shall remain in effect unless the Legislative Council, by a majority vote of a quorum present, votes to terminate the executive order or proclamation.

(ii) If the Governor issues more than one (1) executive order or proclamation under subdivision (f)(3)(A) of this section, the Legislative Council may consider each executive order or proclamation individually.

(C) If the Legislative Council does not terminate an executive order or proclamation under this subsection, the executive order or proclamation shall expire when the statewide state of disaster emergency declared for public health purposes expires or is terminated.

(4)(A) The Legislative Council may meet at any time to perform its duties under this subsection, including without limitation during a regular session, fiscal session, or extraordinary session of the General Assembly.

(B) The duties of the Legislative Council under this subsection shall not be delegated to a subset of the membership of the Legislative Council, including without limitation a subcommittee of the Legislative Council.

(C) The Legislative Council may adopt rules concerning the performance of its duties under this section.

SECTION 5. Arkansas Code § 20-7-110 is amended to read as follows:

20-7-110. Study and prevention of diseases.

(a)(1) The State Board of Health has general supervision and control of all matters pertaining to the health of the citizens of this state.

(2) The board shall make a study of the causes and prevention of infectious, contagious, and communicable diseases, and, except as otherwise provided in this act, the board shall have direction and control of all matters of quarantine rules and enforcement. The board shall have full power and authority to prevent the entrance of such diseases from points outside the state.

(3) The board shall also have direction and control over all sanitary and quarantine measures for dealing with all infectious, contagious, and communicable diseases within the state and direction and control to suppress them and prevent their spread.

(b) Whenever the health of the citizens of this state is threatened by the prevalence of any epidemic or contagious disease in this or any adjoining state and, in the judgment of the Governor, the public safety demands action on the part of the board, then the Governor shall call the attention of the board to the facts and order it to take such action as the public safety of the citizens demands to prevent the spread of the epidemic or contagious disease.

(c)(1)(A) The board or its designee may adopt directives imposing restrictions upon individuals, commerce, or travel to prevent the introduction of infectious, contagious, and communicable disease into the state or from one place to another within the state.

(B) A directive under subdivision (c)(1)(A) of this section shall not be subject to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and § 10-3-309.

(C) The board or its designee shall not combine multiple subjects or directives into a single directive under subdivision (c)(1)(A) of this section.

(2)(A) If the Governor has declared a statewide state of disaster emergency related to public health under § 12-75-107(g) and the board or its designee, either upon its own motion or pursuant to an order of the Governor under subsection (b) of this section, adopts one (1) or more directives imposing restrictions upon individuals, commerce, or travel under subdivision (c)(1)(A) of this section within the area of the statewide state of disaster emergency related to public health, then the directive shall be subject to review and termination by the Executive Subcommittee of the Legislative Council.

(B) A directive issued under this subdivision (c)(2) shall:

(i) Not continue for longer than thirty (30) days unless renewed under this subsection;

(ii) Become effective immediately upon its issuance by the board or its designee;

(iii) Be drafted in a manner that allows for the Executive Subcommittee of the Legislative Council to vote upon each directive separately; and

(iv) Remain in effect unless a majority of a quorum of the Executive Subcommittee of the Legislative Council votes to terminate the directive.

(C) If the board or its designee issues more than one (1) directive under subdivision (c)(2)(A) of this section, the Executive Subcommittee of the Legislative Council may consider each directive individually.

(D) The Executive Subcommittee of the Legislative Council shall meet to consider the termination of a directive under subdivision (c)(2)(A) of this section within four (4) business days of its issuance.

(E) If the Executive Subcommittee of the Legislative Council, by a majority vote of a quorum present, does not vote to terminate a directive under subdivision (c)(2)(A) of this section, it shall continue for the number of days specified by the board or its designee.

(F) If the Executive Subcommittee of the Legislative Council votes to terminate a directive, the directive shall be terminated immediately.

(3)(A) A directive under subdivision (c)(2) of this section shall not continue for longer than thirty (30) days from the date of its issuance by the board or its designee unless renewed by the board or its designee, so long as the Legislative Council does not deny the request for renewal.

(B) If the board or its designee desires to renew a directive under subdivision (c)(2) of this section, it shall submit a written statement to the Legislative Council at least ten (10) days prior to the date on which the directive will expire that includes without limitation the following information:

(i) The number of days that the directive will continue, not to exceed thirty (30) days; and

(ii) The rationale for continuing the directive.

(C) A directive under subdivision (c)(3)(A) of this section shall be renewed unless the Legislative Council, by a majority vote of a quorum present, denies the request to renew the directive.

(D) After receiving the written statement under subdivision (c)(3)(B) of this section, the Legislative Council may consider the renewal of a directive at any time prior to the expiration of the directive.

(E) If the Legislative Council does not deny the request to renew the directive by a majority vote of a quorum present prior to the expiration of the directive, the directive shall be renewed for the number of days specified by the board or its designee in the written statement under subdivision (c)(3)(B)(i) of this section.

(4)(A) The Legislative Council may meet at any time to perform its duties under this section, including without limitation during a regular session, fiscal session, or extraordinary session of the General Assembly.

(B) Except as provided in this section, the duties of the Legislative Council under this section shall not be delegated to a subset of the membership of the Legislative Council, including without limitation a subcommittee of the Legislative Council.

(C) The Legislative Council may adopt rules concerning the performance of its duties under this section.

SECTION 6. DO NOT CODIFY. TEMPORARY LANGUAGE. (a) If a state of disaster emergency meeting the description of a statewide state of disaster emergency related to public health under § 12-75-107(g) as created by this act is in effect on the effective date of this act, then renewals of the state of disaster emergency shall comply with § 12-75-107(g)(3) regarding renewals of a statewide state of disaster emergency related to public health.

(b)(1) If on the effective date of this act the Governor has in effect one (1) or more executive orders or proclamations issued to meet or mitigate dangers to the people and property of the state presented or threatened by a state of disaster emergency meeting the description of a statewide state of disaster emergency related to public health under § 12-75-107(g) as created by this act, then the executive orders or proclamations shall comply with § 12-75-114(f)(2) regarding renewals of an executive order or proclamation.

(2) Executive orders or proclamations issued after the effective date of this act related to a state of disaster emergency in effect on the effective date of this act meeting the description of a statewide state of disaster emergency related to public health under § 12-75-107(g) as created by this act shall comply with § 12-75-114(f)(3) regarding termination by the Legislative Council.

SECTION 7. DO NOT CODIFY. TEMPORARY LANGUAGE. (a) If the State Board of Health or its designee has one (1) or more directives that serve as restrictions upon individuals, commerce, or travel to prevent the introduction of infectious, contagious, and communicable disease into the state or from one place to another within the state in effect on the effective date of this act that are related to a state of disaster emergency meeting the description of a statewide state of disaster emergency related to public health under § 12-75-107(g) as created by this act, the board or its designee shall file those directives with the following committees within three (3) business days of the effective date of this act:

(1) The Senate Committee on Public Health, Welfare, and Labor;

(2) The House Committee on Public Health, Welfare, and Labor; and

(3) The Legislative Council.

(b)(1) The Senate Committee on Public Health, Welfare, and Labor and the House Committee on Public Health, Welfare, and Labor shall:

(A) Review the directives within fifteen (15) days of receipt from the board or its designee under subsection (a) of this section; and

(B) Recommend to the Legislative Council whether the directives should be continued or terminated.

(2) The Senate Committee on Public Health, Welfare, and Labor and the House Committee on Public Health, Welfare, and Labor may invite one (1) or more other committees of the General Assembly to participate in the review of a directive if either the Senate Committee on Public Health, Welfare, and Labor or the House Committee on Public Health, Welfare, and Labor believes the subject matter of the directive aligns with the duties or jurisdiction of one (1) or more other committees of the General Assembly.

(c)(1) After receiving the recommendation under subsection (b) of this section, the Legislative Council shall consider whether to approve the continuation of the directive or to terminate the directive.

(2) Consideration of the Legislative Council shall occur within thirty (30) days of the effective date of this act.

(3) If there is more than one (1) directive in effect on the effective date of this act, the Legislative Council may consider each directive individually.

(d)(1) If the Legislative Council, by a majority vote of a quorum present, does not terminate a directive under this section within thirty (30) days of the effective date of this act, the directive shall not continue for longer than thirty (30) days unless renewed by the board so long as the Legislative Council does not deny the request to renew.

(2) If the board desires to renew a directive under this section, it shall submit a written statement to the Legislative Council at least ten (10) days prior to the expiration of the directive that includes without limitation the following information:

(A) The number of days that the directive will continue, not to exceed thirty (30) days; and

(B) The rationale for continuing the directive.

(3) A directive under this subsection shall be renewed unless the Legislative Council, by a majority vote of a quorum present, denies the request to renew the directive.

(4) After receiving the written statement of the board under subdivision (d)(2) of this section, the Legislative Council may consider the renewal of a directive under this section at any time prior to its expiration.

(5) If the Legislative Council does not deny the request to renew the directive, it shall be renewed for the number of days specified by the board in the written statement under subdivision (d)(2)(A) of this section.

(e)(1) The Legislative Council may meet at any time to perform its duties under this section, including without limitation during a regular session, fiscal session, or extraordinary session of the General Assembly.

(2) The duties of the Legislative Council under this section shall not be delegated to a subset of the membership of the Legislative Council, including without limitation a subcommittee of the Legislative Council.

(3) The Legislative Council may adopt rules concerning the performance of its duties under this section.

SECTION 8. SEVERABILITY. If any provision of this act or the application of this act to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end, the provisions of this act are declared severable.

SECTION 9. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the public health emergency related to coronavirus 2019 (COVID-19) highlights the need for an expanded approach to emergency situations to allow for input of both the legislative and executive branches to ensure preservation of the public peace, health, and safety; that this act revises the process for the issuance and extension of emergency declarations to allow for legislative input to ensure that the necessary considerations are taken into account during emergencies; and that this act is immediately necessary to allow the state to be able to better respond to emergency situations and ensure the protection of the health, safety, and welfare of the citizens of the State of Arkansas. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

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