130th MAINE LEGISLATURE

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H.P. 726	House of Representatives, March 9, 2021

An Act To Establish Balance in the Governor's Emergency Powers

Reference to the Committee on State and Local Government suggested and ordered printed.

ROBERT B. HUNT
Clerk

Presented by Representative SAMPSON of Alfred.
Cosponsored by Representatives: DRINKWATER of Milford, FAULKINGHAM of Winter Harbor, FECTEAU of Augusta, PICKETT of Dixfield, WADSWORTH of Hiram.

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Be it enacted by the People of the State of Maine as follows:

Sec. 1. 37-B MRSA §742, sub-§1, ¶C, as amended by PL 2019, c. 617, Pt. H, §1, is further amended to read:

C. ~~After~~ For 7 days following the filing of the emergency proclamation and in addition to any other powers conferred by law, the Governor may:

(1) Suspend the enforcement of any statute prescribing the procedures for conduct of state business, or the orders or rules of any state agency, if strict compliance with the provisions of the statute, order or rule would in any way prevent, hinder or delay necessary action in coping with the emergency;

(2) Utilize all available resources of the State Government and of each political subdivision of the State as reasonably necessary to cope with the disaster emergency;

(3) Transfer the direction, personnel or functions of state departments and agencies, or units thereof, for the purposes of performing or facilitating emergency services;

(4) Authorize the obtaining and acquisition of property, supplies and materials pursuant to section 821;

(5) Enlist the aid of any person to assist in the effort to control, put out or end the emergency or aid in the caring for the safety of persons;

(6) Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the State, if the Governor determines this action necessary for the preservation of life or other disaster mitigation, response or recovery;

(7) Prescribe routes, modes of transportation and destinations in connection with evacuations;

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

(9) Suspend or limit the sale, dispensing or transportation of alcoholic beverages, explosives and combustibles;

(10) Make provision for the availability and use of temporary emergency housing;

(11) Order the termination, temporary or permanent, of any process, operation, machine or device which may be causing or is understood to be the cause of the state of emergency for which this proclamation was made;

(12) Take whatever action is necessary to abate, clean up or mitigate whatever danger may exist within the affected area; and

(13) During a state of emergency declared by the Governor in accordance with this section due to the outbreak of COVID-19:

(a) Reasonably adjust time frames and deadlines imposed by law for state, county and municipal governments and other entities when such an adjustment is reasonably necessary to mitigate an effect of the emergency;

(b) In consultation with the Public Utilities Commission, suspend the termination of residential electricity and water services during the period of emergency and up to 60 days after the state of emergency is terminated; and

(c) Modify or suspend the requirements for professional or occupational licensing or registration by any agency, board or commission if strict compliance with such requirements would in any way prevent, hinder or delay necessary action in dealing with the emergency.

The powers granted in divisions (a) and (c) terminate 30 days following the termination of the state of emergency.

Sec. 2. 37-B MRSA §742, sub-§1, ¶E is enacted to read:

E. The Governor, during the pendency of a state of emergency, may not reissue or renew an emergency proclamation, issue another emergency proclamation that is substantially similar to one that expired or reissue an emergency proclamation that the Legislature has terminated pursuant to paragraph F without approval of the Legislature pursuant to paragraph F, except that the Governor, based on significant changes in circumstances, may reimpose such an emergency proclamation for a single period of 3 days if the Governor calls upon the Legislature to reconsider the order and changed circumstances.

Sec. 3. 37-B MRSA §742, sub-§1, ¶F is enacted to read:

F. After 7 days have elapsed from the issuance of an emergency proclamation by the Governor, all emergency powers revert to the Legislature. Emergency proclamations may be extended or discontinued by the Legislature pursuant to this paragraph.

(1) The Legislature may extend an emergency proclamation issued pursuant to this subsection up to a maximum of 30 days by a 2/3 majority vote in each House of the Legislature. Additional 30-day extensions of the emergency proclamation may be approved, but only if done in compliance with this subparagraph.

(2) Either House of the Legislature may terminate an emergency proclamation issued pursuant to this subsection, in whole or in part, by a majority vote.

(3) Debate and voting conducted pursuant to this paragraph by each House of the Legislature may be done remotely by electronic or other means as established by each House's rules, or in the absence of such rules, as specified by the presiding officer of each House.

Sec. 4. 37-B MRSA §742, sub-§1, as amended by PL 2019, c. 617, Pt. A, §1 and Pt. H, §1, is further amended by enacting at the end a new first blocked paragraph to read:

It is an impeachable offense, punishable by removal from office and a lifetime prohibition on serving in any elected or appointed office in the State, for a Governor to exercise any emergency powers conferred by this subsection except as provided in this subsection.

Sec. 5. 37-B MRSA §742, sub-§1-A is enacted to read:

1-A. Limitation on emergency powers. The exercise of any emergency power the Governor or other state or local official may have under the Constitution of Maine or the laws of this State that binds or regulates the public is limited as provided in this subsection.

A. As used in this subsection, unless the context otherwise indicates, the following terms have the following meanings.

(1) "Emergency order" means an order, decree, regulation or other mandate proclaimed or promulgated by the Governor or a state or local official.

(2) "State or local official" means the Governor, a person within the executive branch or an elected or appointed member of a municipal government.

B. Notwithstanding subsection 1, paragraph D or any other law to the contrary, an emergency order that is issued by a state or local official that binds, curtails or infringes the rights of private parties must be narrowly tailored to serve a compelling health or safety purpose. Each emergency order must be limited in duration, applicability and scope in order to reduce any infringement of individual liberty.

C. A court of this State has jurisdiction to hear a case challenging the legality of an emergency order, including compliance with the limitations imposed on emergency orders pursuant to this subsection. A court shall expedite consideration of a challenge brought pursuant to this paragraph to the extent practicable. Inequality in the applicability of the impact of emergency orders on analogous groups, situations and circumstances may constitute one ground among others for a court to invalidate or enjoin an emergency order, or some of its applications, on the basis that it is not narrowly tailored to serve a compelling public health or safety purpose.

SUMMARY

This bill places limitations on the powers of the Governor to issue and maintain powers pursuant to an emergency proclamation, including:

1. Limiting the length of the time period of an emergency proclamation to 7 days;

2. Requiring an extension of an emergency proclamation beyond 7 days to be approved by a 2/3 vote of each House of the Legislature;

3. Allowing the Senate or House, individually, by a majority vote, to discontinue an emergency proclamation;

4. Prohibiting the Governor, during a state of emergency, from reissuing or renewing an emergency proclamation, issuing a similar proclamation to one that has expired or reissuing an emergency proclamation that the Legislature has discontinued; and

5. Providing that a violation by the Governor of the exercise of emergency powers is an impeachable offense.

This bill allows the Legislature to debate and vote by remote or other electronic means on the extension or discontinuation of a Governor's emergency proclamation.

This bill also requires the emergency powers exercised by the Governor, a person within the executive branch or a municipal official that bind, curtail or infringe on the rights of private parties to be narrowly tailored to serve a compelling health or safety purpose and to be limited in duration, applicability and scope to reduce any infringement of individual liberty.

Finally, this bill gives a state court jurisdiction to hear a case challenging the legality of the exercise of emergency powers and requires the court to expedite consideration of the

case to the extent practicable. Inequality in the applicability of impact of emergency orders on analogous groups, situations and circumstances may constitute one ground among others for a court to invalidate or enjoin an emergency order, or some of its applications, on the basis that it is not narrowly tailored to serve a compelling public health or safety purpose.