
State Government & Tribal Relations Committee

SB 5909

Brief Description: Concerning legislative oversight of gubernatorial powers concerning emergency proclamations and unanticipated receipts.

Sponsors: Senators Randall, Van De Wege, Carlyle, Conway, Hunt, Mullet, Rolfes and Stanford.

Brief Summary of Bill

- Authorizes the Majority and Minority Leaders of the Senate, and the Speaker and Minority Leader of the House (Legislative Leadership) to terminate a State of Emergency (SOE) if it has been in effect for more than 90 days and the Legislature is not in session.
- Authorizes Legislative Leadership to terminate a prohibition in a Governor order related to a SOE when the Legislature is not in session.
- Makes permanent the Joint Legislative Unanticipated Revenue Oversight Committee.

Hearing Date:

Staff: Jason Zolle (786-7124).

Background:

States of Emergency.

By statute, the Governor is authorized to proclaim a State of Emergency (SOE) after finding that a public disorder, disaster, energy emergency, or riot affects life, health, property, or the public peace in this state. The proclamation is limited to the area affected by the emergency. The SOE

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

is in effect until the Governor declares that it is over. The Governor is required to terminate a SOE when order has been restored in the area affected.

The Governor may order the state militia or the state patrol to assist in restoring order in the area described by the SOE. The Governor is also granted additional statutory powers during a SOE, which generally fall into two categories: (1) orders prohibiting certain actions; and (2) orders waiving or suspending certain provisions of law.

Prohibitions. In the area described by the SOE, the Governor may issue an order prohibiting certain specified activities, such as being in public during a period of curfew, using explosive devices, selling or purchasing certain goods in order to maintain health or peace, and using certain highways or roads. More generally, the Governor may also prohibit such other activities that the Governor reasonably believes should be prohibited to help preserve and maintain life, health, property, or the public peace in this state.

These prohibitions may be in effect for such times, upon such conditions, with such exceptions, and in such areas of the state that the Governor deems necessary. A person who willfully violates a Governor's order is guilty of a gross misdemeanor.

Waivers and Suspensions. In the area described by the SOE, the Governor may issue an order waiving or suspending certain specified statutory obligations or limitations. These include inspection fees and tax due dates. In addition, the Governor may suspend statutory or regulation obligations regarding state business, or the orders, rules, or regulations of a state agency, if strict compliance with the provisions of law would prevent, hinder, or delay necessary action in coping with the SOE. However, the Governor's suspension power does not apply if:

- the authority to suspend a specific provision is expressly granted to another statewide elected official;
- the waiver or suspension would conflict with federal requirements that are a condition to receive federal funds; or
- the waiver or suspension would conflict with First Amendment rights to free speech or peaceable assembly.

When issuing suspension orders, the Governor is required to give as much notice as is practical to leadership of the Legislature and impacted local governments. Waiver and suspension orders may continue for no longer than 30 days, unless they are extended by the Legislature through concurrent resolution. If the Legislature is not in session, the orders may be extended in writing by legislative leadership: the Majority and Minority Leaders of the Senate, and the Speaker and Minority Leader of the House of Representatives (hereafter "Legislative Leadership").

Joint Legislative Unanticipated Revenue Oversight Committee.

During the 2021-2023 fiscal biennium, the Legislature created the Joint Legislative Unanticipated Revenue Oversight Committee (Committee) of 16 members to review requests for proposed allotment amendments to spend unanticipated and unbudgeted moneys from federal and nonstate sources.

Membership. The Committee includes the following members:

- the Majority and Minority Leaders of the Senate;
- the Speaker and the Minority Leader of the House of Representatives;
- six additional members of the Senate, with three members from each of the two largest caucuses of the Senate appointed by their respective leaders; and
- six additional members of the House of Representatives, with three members from each of the two largest caucuses of the House of Representatives appointed by their respective leaders.

The Co-Chairs of the Committee are the leaders of the two largest caucuses of the Senate in even-numbered years and the leaders of the two largest caucuses of the House of Representatives in odd-numbered years.

Process. Whenever the Legislature is not in session and the state receives an award of \$5,000,000 or more that was not anticipated in any budget approved by the Legislature, and the use of the money is unrestricted or provides discretion to use for multiple purposes, the Governor must submit information about the proposed allotment amendment to the Committee. The Governor's submission must also explain why the expenditure could not have been anticipated in time to have been approved as part of a budget act.

The Committee must meet as necessary to review requests from the Governor and provide comment within 14 calendar days. If the committee holds a public hearing on a proposed allotment they must provide the Office of Financial Management (OFM) five calendar days' notice. The OFM must appear before the Committee to present the proposed allotment amendment and respond to questions. The Committee may also require other agencies to appear before it.

The Committee may recommend approving or rejecting the allotment amendment, or it may propose an alternative for the Governor to consider. Any action taken requires the support of a majority of the members in attendance at that meeting. The Committee's actions are not binding on the Governor.

Summary of Bill:

Legislative Leadership is given the authority to terminate a SOE after it has been in effect more than 90 days and the Legislature is not in session.

Legislative Leadership may terminate a prohibition in a Governor order related to a SOE when the Legislature is not in session.

The Joint Legislative Unanticipated Revenue Oversight Committee is made permanent.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.