

SENATE BILL REPORT

SB 5909

As of January 26, 2022

Title: An act relating to legislative oversight of gubernatorial powers concerning emergency proclamations and unanticipated receipts.

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 History:

Committee Activity: State Government & Elections: 1/28/22.

Brief Summary of Bill

- Authorizes the majority and minority leaders of the Senate and the speaker and minority leader of the House of Representatives to terminate a state of emergency if the Legislature is not in session and it has been more than 90 days since the Governor declared the state of emergency.
- Authorizes the majority and minority leaders of the Senate and the speaker and minority leader of the House of Representatives to terminate a gubernatorial order prohibiting activities if the Legislature is not in session.
- Makes permanent the Joint Legislative Unanticipated Revenue Oversight Committee.

SENATE COMMITTEE ON STATE GOVERNMENT & ELECTIONS

Staff: Melissa Van Gorkom (786-7491)

Background: State of Emergency. A state of emergency is proclaimed by the Governor

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after finding that a public disorder, disaster, energy emergency, or riot exists within the state or any part thereof which affects life, health, property, or the public peace. The Governor may proclaim a state of emergency in the area affected. The state of emergency is effective upon the Governor's signature and remains in effect until the Governor declares its termination. The Governor must terminate a state of emergency when order has been restored in the area effected.

Powers of the Governor. An emergency proclamation enables the Governor to issue orders prohibit specific activities during the state of emergency, such as public gatherings, transfer of combustible materials, and the use of public streets at any time. In a state of emergency, the Governor may also issue an order to prohibit other activities the Governor reasonably believes is necessary to help preserve and maintain life, health, property, or the public peace. The Governor may impose the restrictions for such times, upon such conditions, with such exceptions and in such areas of the state deemed necessary.

During a state of emergency the Governor also has authority to waive or suspend statutory obligations or limitations for certain executive functions if strict compliance with the provision of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency, unless:

- authority is expressly granted to another statewide elected official; or
- the waiver or exemption would conflict with federal requirements that are a prescribed condition to the allocations of federal funds to the state, or first amendment rights of freedom of speech and of the people to peaceably assemble.

A waiver or suspension of statutory obligations or limitations issued by the Governor is limited to 30 days unless the Legislature extends it by concurrent resolution, or in writing by the majority and minority leaders of the Senate and the speaker and minority leader of the House of Representatives if the Legislature is not in session.

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.

Process. Whenever any money in the amount of \$5,000,000 or more which was not anticipated in any budget approved by the Legislature has been awarded or has actually been received when the Legislature is not in session, and the use of the money is unrestricted or provides discretion to use the moneys for more than one agency, program, or purpose, the Governor must submit a copy of the proposed allotment amendment to the committee with an explanation of the timing, source, and availability of such funds and why the need for the expenditure could not have been anticipated in time for such expenditure to have been approved as part of a budget act for that particular fiscal year.

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. 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 the committee.

Actions of the committee are limited to the review and comment on requests received by the Governor and must be made by a majority vote of members. Committee actions may take the form of a recommendation approving, rejecting, or proposing an alternative allotment amendment for the Governor's consideration prior to approval. The committees actions are not binding on the Governor.

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 cochairs 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. Staff support for the committee is provided by Senate Committee Services and the House of Representatives Office of Program Research. Committee members serve without additional compensation but must be reimbursed for travel expenses. The expenses are paid jointly by the Senate and the House of Representatives, subject to approval.

Summary of Bill: State of Emergency. If the Legislature is not in session the majority and minority leaders of the Senate and the speaker and minority leader of the House of Representatives may terminate a state of emergency in writing—by all four members—if it has been more than 90 days since the Governor declared the state of emergency.

Powers of the Governor. If the Legislature is not in session the majority and minority leaders of the Senate and the speaker and minority leader of the House of Representatives may terminate in writing—by all four members—an order or orders issued by the Governor to prohibit activities.

Joint Legislative Unanticipated Revenue Oversight Committee. Makes permanent the Joint Legislative Unanticipated Revenue Oversight Committee to review requests for proposed allotment amendments to spend unanticipated and unbudgeted moneys received by the state from federal and nonstate sources in the amount of \$5,000,000 or more.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: Yes.

Effective Date: Ninety days after adjournment of session in which bill is passed.