



## **GUBERNATORIAL EXECUTIVE ORDERS DECLARING STATES OF EMERGENCY AND DEGREE OF LEGISLATIVE INVOLVEMENT**

This memorandum addresses the differences among the states with respect to the use of gubernatorial executive orders to declare a state of emergency and the degree of legislative involvement in that process.

Governors serve as the chief executive officers of the 50 states and oversee the operation of the state executive branch.<sup>1</sup> While many governors have similar roles and responsibilities in their respective states, the scope of gubernatorial power varies.

Governors employ a variety of tools, including the issuance of executive orders, to carry out their duties. The authority for governors to issue executive orders can be found in state constitutions, statutes, case law, or may be implied by the powers assigned to the state chief executive officer. Governors may use executive orders for a variety of purposes, including to trigger emergency powers during a disaster or emergency. In some states, executive orders declaring a state of emergency are subject to legislative review.

### **NORTH DAKOTA EXECUTIVE ORDERS DECLARING A DISASTER OR EMERGENCY**

As the chief executive of North Dakota, the governor has a duty to ensure the state's business is well administered pursuant to Section 7 of Article V of the Constitution of North Dakota. The governor also serves as the commander-in-chief of the state's military forces and may mobilize those forces to execute laws and maintain order. In times of disasters or emergencies, the governor has broad statutory authority to minimize or avert the effects of a disaster or emergency under North Dakota Century Code Chapter 37-17.1, the North Dakota Disaster Act. A "disaster" is defined in Section 37-17.1-04 as:

[T]he occurrence of widespread or severe damage, injury or loss of life or property resulting from any natural or manmade cause, including fire, flood, earthquake, severe high and low temperatures, tornado storm, wave action, chemical spill, or other water or air contamination, epidemic, blight, drought, infestation, explosion, riot, or hostile military or paramilitary action, or cyber attack which is determined by the governor to require state or state and federal assistance or actions to supplement the recovery efforts of local governments in alleviating the damage, loss, hardship, or suffering caused thereby.

A disaster or emergency must be declared by executive order or proclamation of the governor.<sup>2</sup> Executive orders, proclamations, and regulations issued by the governor have the force of law.<sup>3</sup> A person who willfully violates a provision of an executive order or proclamation issued by the governor is guilty of an infraction.<sup>4</sup>

When Chapter 37-17.1 was enacted in 1973, a state of disaster emergency declared by the governor could not continue for longer than 30 days unless renewed by the governor.<sup>5</sup> However, in 1985, the legislature removed the 30-day expiration date.<sup>6</sup>

Once a state of disaster or emergency has been declared by the governor, it continues until the governor determines the threat of an emergency has passed or the disaster has been dealt with to the extent the emergency

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<sup>1</sup> 38 Am. Jur. 2d *Governor* § 4.

<sup>2</sup> N.D. Cent. Code § 37-17.1-05(3).

<sup>3</sup> N.D. Cent. Code § 37-17.1-05(2).

<sup>4</sup> N.D. Cent. Code § 37-17.1-05(7).

<sup>5</sup> House Bill No. 1223 (1973).

<sup>6</sup> House Bill No. 1252 (1985). Testimony provided on the bill noted the cost of sending official disaster or emergency extensions to all localities and news media was excessive, and the issuance of extensions would be confusing to local governments and the public.

conditions no longer exist.<sup>7</sup> The Legislative Assembly by concurrent resolution has the power to terminate a state of disaster or emergency at any time.<sup>8</sup>

## DURATION OF GUBERNATORIAL DECLARED STATES OF EMERGENCY IN OTHER STATES

Most governors have the authority to issue executive orders declaring a state of disaster or emergency in certain situations. However, state laws vary regarding the duration of a governor's declared state of emergency. Some state laws expressly limit how long a governor's declared state of emergency may be in effect before the state of emergency must be renewed, from as short as 5 days to as long as 90 days. Other state laws, including North Dakota,<sup>9</sup> allow the governor to use discretion on when to terminate a state of emergency, noting the state of disaster or emergency may continue until the governor determines the threat of an emergency has passed or the disaster has been dealt with to the extent the emergency conditions no longer exist.<sup>10</sup> While the following states have hybrid laws in which the governor has the discretion to end a declared state of emergency, each state has a specific time frame limiting how long the state of disaster or emergency may be in effect until the governor must issue a renewal or the legislature must take some sort of formal action:

- Arkansas - "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.... No state of disaster emergency may continue for longer than sixty (60) days unless renewed by the Governor."<sup>11</sup>
- Colorado - "The state of disaster emergency shall continue until the governor finds that the threat of danger has passed or that the disaster has been dealt with to the extent that emergency conditions no longer exist and the governor terminates the state of disaster emergency by executive order or proclamation, but no state of disaster emergency may continue for longer than thirty days unless renewed by the governor."<sup>12</sup>
- Delaware - "The state of emergency shall continue until the Governor finds that the threat or danger has passed or the emergency or disaster has been dealt with to the extent that conditions necessitating a state of emergency no longer exist and terminates the state of emergency by subsequent order. No state of emergency can continue for more than 30 days without being renewed by the Governor...."<sup>13</sup>
- Florida - "The state of emergency shall continue until the Governor finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist and she or he terminates the state of emergency by executive order or proclamation, but no state of emergency may continue for longer than 60 days unless renewed by the Governor."<sup>14</sup>
- Georgia - "The state of emergency or disaster shall continue until the Governor finds that the threat or danger has passed or the emergency or disaster has been dealt with, to the extent that emergency or disaster conditions no longer exist, and terminates the state of emergency or disaster. No state of emergency or disaster may continue for longer than 30 days unless renewed by the Governor...."<sup>15</sup>
- Idaho - "The state of disaster emergency shall continue until the governor finds that the threat or danger has passed, or the disaster has been dealt with to the extent that emergency conditions no longer exist, and when either or both of these events occur, the governor shall terminate the state of disaster emergency by executive order or proclamation; provided, however, that no state of disaster emergency may continue for longer than thirty (30) days unless the governor finds that it should be continued for another thirty (30) days or any part thereof."<sup>16</sup>
- Indiana - "The state of disaster emergency continues until the governor: (1) determines that the threat or danger has passed or the disaster has been dealt with to the extent that emergency conditions no longer exist; and (2) terminates the state of disaster emergency by executive order or proclamation. A state of

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<sup>7</sup> N.D. Cent. Code § 37-17.1-05(3).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> See Neb. Rev. Stat. § 81-829.40(3).

<sup>11</sup> Ark. Code Ann. § 12-75-107(b).

<sup>12</sup> Colo. Rev. Stat. Ann. § 24-33.5-704(4).

<sup>13</sup> Del. Code Ann. tit. 20, § 3115(c).

<sup>14</sup> Fla. Stat. Ann. § 252.36(2).

<sup>15</sup> Ga. Code Ann. § 38-3-51(a).

<sup>16</sup> Idaho Code Ann. § 46-1008(2).

disaster emergency may not continue for longer than thirty (30) days unless the state of disaster emergency is renewed by the governor...."<sup>17</sup>

- Louisiana - "The state of disaster or emergency shall continue until the governor finds that the threat of danger has passed or the disaster or emergency has been dealt with to the extent that the emergency conditions no longer exist and terminates the state of disaster or emergency by executive order or proclamation, but no state of disaster or emergency may continue for longer than thirty days unless renewed by the governor."<sup>18</sup>
- Maine - "Whenever the Governor is satisfied that a disaster or civil emergency no longer exists, the Governor shall terminate the emergency proclamation by another proclamation.... No state of emergency may continue for longer than 30 days unless renewed by the Governor."<sup>19</sup>
- Maryland - "The state of emergency continues until the Governor: (i) finds that the threat or danger has passed or the emergency has been dealt with to the extent that emergency conditions no longer exist; and (ii) terminates the state of emergency by executive order or proclamation.... A state of emergency may not continue for longer than 30 days unless the Governor renews the state of emergency."<sup>20</sup>
- Michigan - "The state of disaster shall continue until the governor finds that the threat or danger has passed, the disaster has been dealt with to the extent that disaster conditions no longer exist, or until the declared state of disaster has been in effect for 28 days. After 28 days, the governor shall issue an executive order or proclamation declaring the state of disaster terminated, unless a request by the governor for an extension of the state of disaster for a specific number of days is approved by resolution of both houses of the legislature...."<sup>21</sup>
- Pennsylvania - "The state of disaster emergency shall continue until the Governor finds that the threat or danger has passed or the disaster has been dealt with to the extent that emergency conditions no longer exist and terminates the state of disaster emergency by executive order or proclamation, but no state of disaster emergency may continue for longer than 90 days unless renewed by the Governor...."<sup>22</sup>
- Rhode Island - "The state of disaster emergency shall continue until the governor finds that the threat or danger has passed or the disaster has been dealt with to the extent that emergency conditions no longer exist and terminates the state of disaster emergency by executive order or proclamation, but no state of disaster emergency may continue for longer than thirty (30) days unless renewed by the governor."<sup>23</sup>
- Utah - "A state of emergency shall continue until the governor finds the threat or danger has passed or the disaster reduced to the extent that emergency conditions no longer exist.... A state of emergency may not continue for longer than 30 days unless extended by joint resolution of the Legislature...."<sup>24</sup>

Minnesota has one of the shortest time frames under which a governor's declared emergency may be in effect before being subject to review. Under Minnesota law, an initial declaration by the governor of a peacetime emergency expires in 5 days unless the state's Executive Council, composed of the governor, lieutenant governor, attorney general, secretary of state, and state auditor, with the governor serving as the chair,<sup>25</sup> issues a resolution extending the declaration up to 30 days.<sup>26</sup> Minnesota law provides "[a] peacetime declaration of emergency may be declared only when an act of nature, a technological failure or malfunction, a terrorist incident, an industrial accident, a hazardous materials accident, or a civil disturbance endangers life and property and local government resources are inadequate to handle the situation."<sup>27</sup> The state legislature may terminate a peacetime emergency extending beyond 30 days by a majority vote of each house of the legislature.<sup>28</sup> If the governor determines a need to extend the peacetime emergency declaration beyond 30 days and the legislature is not in session, the governor must issue a call immediately convening both houses of the legislature.<sup>29</sup>

<sup>17</sup> Ind. Code Ann. § 10-14-3-12(a).

<sup>18</sup> La. Rev. Stat. Ann. § 724(B)(1).

<sup>19</sup> Me. Rev. Stat. tit. 37, § 743.

<sup>20</sup> Md. Code Ann., Public Safety §§ 14-107(2) and (3).

<sup>21</sup> Mich. Comp. Laws Ann. § 30.403(3)(3).

<sup>22</sup> 35 Pa. Cons. Stat. Ann. § 7301(c).

<sup>23</sup> R.I. Gen. Laws Ann. § 30-15-9.

<sup>24</sup> Utah Code Ann. §§ 53-2a-206(2) and (3).

<sup>25</sup> See Minn. Stat. § 9.011(1).

<sup>26</sup> Minn. Stat. § 12.31(2)(a).

<sup>27</sup> *Id.*

<sup>28</sup> Minn. Stat. § 12.31(2)(b).

<sup>29</sup> *Id.*

The governor of Pennsylvania has the authority to declare one of the longest states of disaster emergency for up to 90 days at which time the governor may renew the disaster emergency.<sup>30</sup>

## **DEGREE OF LEGISLATIVE INVOLVEMENT IN GUBERNATORIAL DECLARED STATES OF EMERGENCY IN OTHER STATES**

The degree of legislative involvement in gubernatorial declared states of emergency varies widely. In North Dakota,<sup>31</sup> and in at least 18 states, the state legislature may terminate a state of emergency at any time, including Alaska, Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Missouri, Nebraska, New York, Pennsylvania, Rhode Island, and Utah.<sup>32</sup>

In at least six states, including Alabama, Missouri, Nevada, New Hampshire, North Carolina, and West Virginia, the legislatures also have the power to proclaim an emergency.<sup>33</sup>

Several state legislatures have unique legislative involvement in gubernatorial declared states of emergency, including the specific authority to extend, concur, or disapprove.

In Connecticut, a declaration of a statewide or regional public health emergency by the governor may be disapproved and nullified by a majority vote of a committee consisting of the president pro tempore of the Senate, the speaker of the House of Representatives, the majority and minority leaders of both houses of the General Assembly, and the co-chairpersons and ranking members of the joint standing committee of the General Assembly having cognizance of matters relating to public health.<sup>34</sup> Connecticut defines a public health emergency as "an occurrence or imminent threat of a communicable disease, except sexually transmitted disease, or contamination caused or believed to be caused by bioterrorism, an epidemic or pandemic disease, a natural disaster, a chemical attack or accidental release or a nuclear attack or accident that poses a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability."<sup>35</sup>

In Georgia, as a condition precedent to declaring a state of emergency or disaster exists as a result of a public health emergency, the governor must issue a call for a special session of the General Assembly, which must convene at 8:00 a.m. on the 2<sup>nd</sup> day following the date of the declaration for the purpose of concurring with or terminating the public health emergency.<sup>36</sup> Georgia defines a public health emergency as "the occurrence or imminent threat of an illness or health condition that is reasonably believed to be caused by bioterrorism or the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin and poses a high probability of any of the following harms: (A) A large number of deaths in the affected population; (B) A large number of serious or long-term disabilities in the affected population; or (C) Widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population."<sup>37</sup>

In Kansas, a proclaimed state of disaster emergency may not last longer than 15 days unless ratified by a concurrent resolution of the Legislature.<sup>38</sup> In lieu of a concurrent resolution by the Legislature, the governor may specifically request the State Finance Council approve an extension of the state of disaster emergency for a specified period not to exceed 30 days beyond the 15-day period.<sup>39</sup> The extension by the State Finance Council may not be approved unless a majority of the legislative members on the council vote to approve the extension.<sup>40</sup>

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<sup>30</sup> 35 Penn. Cons. Stat. Ann. § 7301(c).

<sup>31</sup> Under N.D. Cent. Code § 37-17.1-05(3), the Legislative Assembly, by concurrent resolution, has the power to terminate a state of disaster or emergency.

<sup>32</sup> See Alaska Stat. Ann. § 26.23.025(c); Ark. Code Ann. § 12-75-107(c)(1); Colo. Rev. Stat. Ann. § 24-33.5-704(4); Fla. Stat. Ann. § 252.36(2); Ga. Code Ann. § 38-3-51(a); Idaho Code Ann. § 46-1008(2); Ind. Code Ann. § 10-14-3-12(a); Iowa Code Ann. § 29C.6(1); Kan. Stat. Ann. § 48-924(b)(5); La. Rev. Stat. Ann. § 724(B)(2); Me. Rev. Stat. tit. 37, § 743; Md. Code Ann., Public Safety § 14-107(1)(4)(i); Mo. Ann. Stat. § 44.100(1)(2); Neb. Rev. Stat. § 81-829.40(3); N.Y. Exec. Law § 29-a(4); 35 Pa. Cons. Stat. Ann. § 7301(c); R.I. Gen. Laws Ann. § 30-15-9; Utah Code Ann. § 53-2a-206(3).

<sup>33</sup> See Ala. Code § 31-9-8(a); Mo. Ann. Stat. § 44.100(1)(1); Nev. Rev. Stat. Ann. § 414.070; N.H. Rev. Stat. Ann. § 4:45(l); N.C. Gen. Stat. Ann. § 166A-19.20(a); W. Va. Code Ann. § 15-5-6(a).

<sup>34</sup> See Conn. Gen. Stat. Ann. § 19a-131a.

<sup>35</sup> Conn. Gen. Stat. Ann. § 19a-131(8).

<sup>36</sup> See Ga. Code Ann. § 38-3-51(a).

<sup>37</sup> Ga. Code Ann. § 38-3-3(6).

<sup>38</sup> See Kan. Stat. Ann. § 48-924(b).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

Kansas law also allows the governor to declare a state of disaster emergency upon a finding that a quarantine or other regulations are necessary to prevent the spread of a contagious or infectious disease among domestic animals, plants, raw agricultural commodities, animal feed, or processed food.<sup>41</sup> If the governor proclaims a state of disaster emergency under those particular scenarios, the state of disaster emergency may not last longer than 15 days unless ratified by a concurrent resolution of the Legislature, except: (1) if the Legislature is not in session; (2) the governor specifically requests the State Finance Council approve an extension; and (3) a majority of the legislative members on the council vote to approve the extension, the state of disaster emergency may be extended for a specific period not to exceed 30 days.<sup>42</sup> The State Finance Council may authorize additional extensions by a unanimous vote of the legislative members on the council for specified periods not to exceed 30 days each.<sup>43</sup> Those states of disaster emergency terminate on the 15<sup>th</sup> day of the next regular legislative session following the initial date of the state of disaster emergency unless ratified by a concurrent resolution of the Legislature.<sup>44</sup>

In Michigan, a state of disaster may be extended beyond 28 days if the governor's request to extend the state of disaster for a specific number of days is approved by a resolution of both houses of the Legislature.<sup>45</sup>

In Montana, a state of emergency may not continue for longer than 30 days unless continuing conditions of the state of emergency exist, which must be determined by a joint resolution of the Legislature declaring the continuing conditions of the state of emergency or a declaration of an emergency by the President of the United States.<sup>46</sup>

In Wisconsin, a state of emergency may not exceed 60 days unless the state of emergency is extended by a joint resolution of the Legislature.<sup>47</sup>

In Utah, a state of emergency may not continue for longer than 30 days unless extended by a joint resolution of the Legislature.<sup>48</sup>

## CONCLUSION

Governors have broad authority to issue executive orders for the public good to declare a state of emergency and to prepare for and respond to disasters and emergencies. Some state laws rely heavily on the governor's discretion to terminate a state of disaster or emergency, while others have express deadlines in which a state of emergency must either be renewed by the governor or the legislature must take some sort of formal action. In North Dakota, the duration of a declared state of disaster or emergency is determined by the discretion of the governor; however, the Legislative Assembly by concurrent resolution may terminate a state of disaster or emergency at any time.

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<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> See Mich. Comp. Laws Ann. § 30.403(3)(3).

<sup>46</sup> See Mont. Code Ann. § 10-3-302(3).

<sup>47</sup> See Wis. Stat. Ann. § 323.10.

<sup>48</sup> See Utah Code Ann. § 53-2a-206(3).