

## 131st MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2023

**Legislative Document** 

No. 1872

S.P. 756

In Senate, May 2, 2023

## An Act to Restore Balanced Emergency Powers

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

DAREK M. GRANT Secretary of the Senate

Presented by Senator BRAKEY of Androscoggin.

Cosponsored by Senator LIBBY of Cumberland, Representative GREENWOOD of Wales, Representative WHITE of Guilford and

Senators: BENNETT of Oxford, GUERIN of Penobscot, HARRINGTON of York, KEIM of Oxford, LYFORD of Penobscot, MOORE of Washington, STEWART of Aroostook, Representative: LIBBY of Auburn.

2 3	<b>Sec. 1. 5 MRSA §8054, sub-§1,</b> as enacted by PL 1977, c. 551, §3, is amended to read:
4 5 6 7 8 9	1. Emergency. If the Governor has issued an emergency proclamation pursuant to Title 37-B, section 742 and the agency finds that immediate adoption of a rule by procedures other than those set forth in sections 8052 and 8053 is necessary to avoid an immediate threat to public health, safety or general welfare, it may modify those procedures to the minimum extent required to enable adoption of rules designed to mitigate or alleviate the threat found. Emergency rules shall be are subject to the requirements of section 8056.
10	Sec. 2. 37-B MRSA §742, sub-§1, ¶F is enacted to read:
11 12 13 14	F. 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 terminated by the Legislature without approval of the Legislature.
15	Sec. 3. 37-B MRSA §742, sub-§1-A is enacted to read:
16 17 18	1-A. Limitation on emergency powers. The exercise of any emergency power a 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.
19 20	A. As used in this subsection, unless the context otherwise indicates, the following terms have the following meanings.
21 22 23	(1) "Constitutional right" means any right guaranteed under the United States Constitution or the Constitution of Maine, including, but not limited to, the right to:
24	(a) Travel, work, assemble and speak;
25	(b) Exercise religion without government interference;
26	(c) Make contracts and hold property without government interference;
27	(d) Be free from unreasonable searches and seizures; and
28	(e) Purchase and keep firearms and ammunition.
29 30	(2) "Emergency order" means an order, decree, regulation or other mandate proclaimed or promulgated by a state or local official.
31 32	(3) "State or local official" means the Governor, a person within the executive branch or an elected or appointed member of a municipal government.
33 34 35 36 37 38 39	B. Notwithstanding any provision of law to the contrary, an emergency order that is issued by a state or local official that binds, curtails or infringes on the rights of private parties must be narrowly tailored to serve a compelling public health or safety purpose. Only the Governor may issue an order that infringes on constitutional rights, and that order must be narrowly tailored to serve a compelling public health or safety purpose. Each emergency order must be limited in duration, applicability and scope in order to reduce any infringement of the rights of private parties or constitutional rights.

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

1

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. The court shall expedite consideration of a case 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.

**Sec. 4. 37-B MRSA §743, sub-§2,** as enacted by PL 1983, c. 594, §34, is amended to read:

2. Limitation. No A state of emergency may continue for longer than 30 days unless renewed by the Governor not be issued for a period longer than 30 days. Any subsequent renewal of the same state of emergency must receive approval by a 2/3 vote of each House of the Legislature. If the renewal is rejected by the Legislature, the Governor shall issue an executive proclamation ending the state of emergency within 24 hours of the rejection. A new state of emergency may not be declared for at least 30 days without approval by a majority vote of each House of the Legislature. The Legislature, by joint resolution, may terminate a state of emergency at anytime any time. Thereupon, the The Governor shall then issue an executive proclamation ending the state of emergency.

20 SUMMARY

This bill:

- 1. 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 public health or safety purpose and to be limited in duration, applicability and scope to reduce any infringement of individual liberty. Only the Governor may issue an order that infringes on a right guaranteed under the United States Constitution or the Constitution of Maine, including, but not limited to, freedom of travel, assembly, work, speech and religion and freedom to purchase and possess firearms and ammunition. That order must be narrowly tailored to serve a compelling public health or safety purpose limited in duration, applicability and scope to reduce any infringement of a constitutional right;
- 2. 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 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;
- 3. Requires the Governor to convene the Legislature if a declared state of emergency is to be in effect for longer than 30 days. If the Legislature does not, by a 2/3 vote in each House of the Legislature, vote to extend the state of emergency, the Governor may not declare a similar, subsequent state of emergency;
- 4. Provides that the Governor may not reissue or renew an emergency proclamation that is substantially similar to one that expired or reissue an emergency proclamation terminated by the Legislature without approval of the Legislature; and

5. Prohibits state agencies from adopting emergency rules without an emergency proclamation issued by the Governor.