

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)



132nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2025

Legislative Document

No. 551

S.P. 203

In Senate, February 11, 2025

An Act to Restore Balanced Emergency Powers

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

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator HARRINGTON of York.
Cosponsored by Representative SOBOLESKI of Phillips and
Senator: BENNETT of Oxford.

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

2 **Sec. 1. 5 MRSA §8054, sub-§1**, as enacted by PL 1977, c. 551, §3, is amended to
3 read:

4 **1. Emergency.** If the Governor has issued an emergency proclamation pursuant to
5 Title 37-B, section 742 and the agency finds that immediate adoption of a rule by
6 procedures other than those set forth in sections 8052 and 8053 is necessary to avoid an
7 immediate threat to public health, safety or general welfare, it may modify those procedures
8 to the minimum extent required to enable adoption of rules designed to mitigate or alleviate
9 the threat found. Emergency rules shall be ~~are~~ subject to the requirements of section 8056.

10 **Sec. 2. 37-B MRSA §741-A** is enacted to read:

11 **§741-A. Limitation on emergency powers**

12 The exercise of any emergency power a state or local official may have under the
13 Constitution of Maine or the laws of this State that binds or regulates the public is limited
14 as provided in this section.

15 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
16 following terms have the following meanings.

17 A. "Constitutional right" means any right guaranteed under the United States
18 Constitution or the Constitution of Maine, including, but not limited to, the right to:

19 (1) Travel, work, assemble and speak;

20 (2) Exercise religion without government interference;

21 (3) Make contracts and hold property without government interference;

22 (4) Be free from unreasonable searches and seizures; and

23 (5) Purchase and keep firearms and ammunition.

24 B. "Emergency order" means an order, decree, regulation or other mandate proclaimed
25 or promulgated by a state or local official.

26 C. "State or local official" means the Governor, a person within the executive branch
27 or an elected or appointed member of a municipal government.

28 **2. Orders infringing on rights.** Notwithstanding any provision of law to the contrary,
29 an emergency order that is issued by a state or local official that binds, curtails or infringes
30 on the rights of private parties must be narrowly tailored to serve a compelling public health
31 or safety purpose. Only the Governor may issue an order that infringes on constitutional
32 rights, and that order must be narrowly tailored to serve a compelling public health or safety
33 purpose. Each emergency order must be limited in duration, applicability and scope in
34 order to reduce any infringement of the rights of private parties or constitutional rights.

35 **3. Procedure for hearings on orders.** A court of this State has jurisdiction to hear a
36 case challenging the legality of an emergency order, including compliance with the
37 limitations imposed on emergency orders pursuant to this section. The court shall expedite
38 consideration of a case brought pursuant to this subsection to the extent practicable.
39 Inequality in the applicability of the impact of emergency orders on analogous groups,
40 situations and circumstances may constitute one ground among others for a court to

1 invalidate or enjoin an emergency order, or some of its applications, on the basis that it is
2 not narrowly tailored to serve a compelling public health or safety purpose.

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

4 F. The Governor, during the pendency of a state of emergency, may not reissue or
5 renew an emergency proclamation, issue another emergency proclamation that is
6 substantially similar to one that expired or reissue an emergency proclamation
7 terminated by the Legislature without approval of the Legislature.

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

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

19 SUMMARY

20 This bill:

21 1. Requires the emergency powers exercised by the Governor, a person within the
22 executive branch or a municipal official that bind, curtail or infringe on the rights of private
23 parties to be narrowly tailored to serve a compelling public health or safety purpose and to
24 be limited in duration, applicability and scope to reduce any infringement of individual
25 liberty. Only the Governor may issue an order that infringes on a right guaranteed under
26 the United States Constitution or the Constitution of Maine, including, but not limited to,
27 freedom of travel, assembly, work, speech and religion and freedom to purchase and
28 possess firearms and ammunition. That order must be narrowly tailored to serve a
29 compelling public health or safety purpose limited in duration, applicability and scope to
30 reduce any infringement of a constitutional right;

31 2. Gives a state court jurisdiction to hear a case challenging the legality of the exercise
32 of emergency powers and requires the court to expedite consideration of the case to the
33 extent practicable. Inequality in the applicability of the impact of emergency orders on
34 analogous groups, situations and circumstances may constitute one ground among others
35 for a court to invalidate or enjoin an emergency order, or some of its applications, on the
36 basis that it is not narrowly tailored to serve a compelling public health or safety purpose;

37 3. Requires the Governor to convene the Legislature if a declared state of emergency
38 is to be in effect for longer than 30 days. If the Legislature does not, by a 2/3 vote in each
39 House of the Legislature, vote to extend the state of emergency, the Governor may not
40 declare a similar, subsequent state of emergency;

41 4. Provides that the Governor may not reissue or renew an emergency proclamation
42 that is substantially similar to one that expired or reissue an emergency proclamation
43 terminated by the Legislature without approval of the Legislature; and

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