

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 1862

H.P. 1192

House of Representatives, May 2, 2023

An Act to Restore Balanced Powers During a State of Emergency

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

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative WHITE of Guilford.
Cosponsored by Senator BRAKEY of Androscoggin and
Representatives: CAMPBELL of Orrington, DRINKWATER of Milford, HAGGAN of
Hampden, LEMELIN of Chelsea, LYMAN of Livermore Falls, PAUL of Winterport,
RUDNICKI of Fairfield, Senator: BENNETT of Oxford.

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

2 **Sec. 1. 37-B MRSA §742, sub-§1, ¶C**, as amended by PL 2019, c. 617, Pt. H, §1,
3 is further amended by amending subparagraph (4) to read:

4 (4) Authorize the obtaining and acquisition of ~~property~~, supplies and materials
5 ~~pursuant to section 821~~;

6 **Sec. 2. 37-B MRSA §742, sub-§1, ¶C**, as amended by PL 2019, c. 617, Pt. H, §1,
7 is further amended by amending subparagraph (5) to read:

8 (5) Enlist the aid of any willing person to assist in the effort to control, put out or
9 end the emergency or aid in the caring for the safety of persons;

10 **Sec. 3. 37-B MRSA §742, sub-§1, ¶C**, as amended by PL 2019, c. 617, Pt. H, §1,
11 is further amended by amending subparagraph (6) to read:

12 (6) Direct ~~and compel~~ the evacuation of all or part of the population from any
13 stricken or threatened area within the State, if the Governor determines this action
14 necessary for the preservation of life or other disaster mitigation, response or
15 recovery. An action taken under this subparagraph must be applied to the smallest
16 political subdivision possible. Statewide application of this subparagraph must be
17 approved by 2/3 of the membership of the Legislative Council;

18 **Sec. 4. 37-B MRSA §742, sub-§1, ¶C**, as amended by PL 2019, c. 617, Pt. H, §1,
19 is further amended by amending subparagraph (8) to read:

20 (8) Control ingress and egress to and from a disaster area, the movement of persons
21 within the area and the occupancy of premises therein. Occupancy limitations that
22 would have a substantial impact on the operation of businesses in the State must
23 be approved by 2/3 of the membership of the Legislative Council;

24 **Sec. 5. 37-B MRSA §742, sub-§1, ¶C**, as amended by PL 2019, c. 617, Pt. H, §1,
25 is further amended by repealing subparagraph (9).

26 **Sec. 6. 37-B MRSA §742, sub-§1, ¶C**, as amended by PL 2019, c. 617, Pt. H, §1,
27 is further amended by amending subparagraph (12) to read:

28 (12) Take ~~whatever~~ any action is necessary to abate, clean up or mitigate ~~whatever~~
29 any danger that may exist within the affected area. Any action under this
30 subparagraph that would directly result in the temporary or permanent closure of
31 any business or civic or religious organization must be approved by 2/3 of the
32 membership of the Legislative Council; and

33 **Sec. 7. 37-B MRSA §742, sub-§1, ¶F** is enacted to read:

34 F. If an order issued by the Governor, pursuant to the powers granted in paragraph C,
35 is to be in effect for longer than 30 days, the Governor shall, before the 20th day
36 following the issuance of the order, convene the Legislature, and the Legislature must,
37 by a 2/3 vote in each House of the Legislature, vote to approve the Governor's authority
38 to extend that order.

39 **Sec. 8. 37-B MRSA §742, sub-§1, ¶G** is enacted to read:

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

5 **Sec. 9. 37-B MRSA §742, sub-§1-A** is enacted to read:

6 **1-A. Limitation on emergency powers.** The exercise of any emergency power a state
7 or local official may have under the Constitution of Maine or the laws of this State that
8 binds or regulates the public is limited as provided in this subsection.

9 A. As used in this subsection, unless the context otherwise indicates, the following
10 terms have the following meanings.

11 (1) "Constitutional right" means any right guaranteed under the United States
12 Constitution or the Constitution of Maine, including, but not limited to, the right
13 to:

14 (a) Travel, work, assemble and speak;

15 (b) Exercise religion without government interference;

16 (c) Make contracts and hold property without government interference;

17 (d) Be free from unreasonable searches and seizures; and

18 (e) Purchase and keep firearms and ammunition.

19 (2) "Emergency order" means an order, decree, regulation or other mandate
20 proclaimed or promulgated by a state or local official.

21 (3) "State or local official" means the Governor, a person within the executive
22 branch or an elected or appointed member of a municipal government.

23 B. Notwithstanding any provision of law to the contrary, an emergency order that is
24 issued by a state or local official that binds, curtails or infringes on the rights of private
25 parties must be narrowly tailored to serve a compelling public health or safety purpose.
26 Only the Governor may issue an order that infringes on constitutional rights, and that
27 order must be narrowly tailored to serve a compelling public health or safety purpose.
28 Each emergency order must be limited in duration, applicability and scope in order to
29 reduce any infringement of the rights of private parties or constitutional rights.

30 C. A court of this State has jurisdiction to hear a case challenging the legality of an
31 emergency order, including compliance with the limitations imposed on emergency
32 orders pursuant to this subsection. The court shall expedite consideration of a case
33 brought pursuant to this paragraph to the extent practicable. Inequality in the
34 applicability of the impact of emergency orders on analogous groups, situations and
35 circumstances may constitute one ground among others for a court to invalidate or
36 enjoin an emergency order, or some of its applications, on the basis that it is not
37 narrowly tailored to serve a compelling public health or safety purpose.

38 **Sec. 10. 37-B MRSA §742, sub-§2, ¶C**, as amended by PL 2001, c. 353, §5, is
39 further amended by repealing subparagraph (1).

40 **Sec. 11. 37-B MRSA §742, sub-§2, ¶C**, as amended by PL 2001, c. 353, §5, is
41 further amended by amending subparagraph (2) to read:

1 (2) The enforcement powers granted in sections 786 and 829, unless the Governor
2 specifically invokes these powers by an order issued pursuant to an energy
3 emergency proclamation and approved by a ~~majority~~ 2/3 of the membership of the
4 Legislative Council. That order must specify those emergency orders or rules that
5 are enforceable pursuant to this paragraph and must further specify the
6 enforcement activities emergency management organizations are to pursue. ~~No~~
7 An enforcement action may not be taken pursuant to this paragraph without
8 publication of the order authorizing the action in a manner reasonably calculated
9 to give affected persons adequate notice of the order or rule to be enforced, ~~which~~
10 ~~may include publication on the Internet~~, and the sanctions to be applied.
11 Publication of the order may include publication on the Internet.

12 **Sec. 12. 37-B MRSA §743, sub-§2**, as enacted by PL 1983, c. 594, §34, is amended
13 to read:

14 **2. Limitation.** ~~No~~ A state of emergency may ~~continue for longer than 30 days unless~~
15 ~~renewed by the Governor~~ not be issued for a period longer than 30 days. Any subsequent
16 renewal of the same state of emergency must receive approval by a 2/3 vote of each House
17 of the Legislature. If the renewal is rejected by the Legislature, the Governor shall issue
18 an executive proclamation ending the state of emergency within 24 hours of the rejection.
19 A new state of emergency may not be declared for at least 30 days without approval by a
20 majority vote of each House of the Legislature. The Legislature, by joint resolution, may
21 terminate a state of emergency at ~~anytime~~ any time. ~~Thereupon, the~~ The Governor shall
22 then issue an executive proclamation ending the state of emergency. The Legislature may
23 terminate or amend any specific emergency order of the Governor with respect to a state
24 of emergency by a majority vote of each House of the Legislature. This subsection does
25 not apply to the Governor's powers under chapter 3.

26 **Sec. 13. 37-B MRSA §821**, as enacted by PL 1983, c. 460, §3 and corrected by RR
27 2019, c. 1, Pt. B, §§49 to 52, is repealed.

28 SUMMARY

29 This bill:

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

40 2. Gives a state court jurisdiction to hear a case challenging the legality of the exercise
41 of emergency powers and requires the court to expedite consideration of the case to the
42 extent practicable. Inequality in the applicability of the impact of emergency orders on
43 analogous groups, situations and circumstances may constitute one ground among others

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

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

7 4. Requires the Governor to convene the Legislature if, after a state of emergency is
8 declared, an order issued by the Governor is to be in effect for longer than 90 days. The
9 Legislature must, by a 2/3 vote in each House of the Legislature, vote to approve the
10 Governor's authority to extend that order;

11 5. Provides that the Governor may not reissue or renew an emergency proclamation
12 that is substantially similar to one that expired or reissue an emergency proclamation
13 terminated by the Legislature without approval of the Legislature; and

14 6. Amends the scope of the Governor's authority with regard to emergency
15 proclamations by:

16 A. Removing the authority of the Governor to obtain and acquire property;

17 B. Eliminating the Governor's authority to take possession of real and personal property
18 through eminent domain when an emergency proclamation has been issued;

19 C. Changing the Governor's authority from enlisting any person to enlisting any willing
20 person to provide aid in an emergency;

21 D. Removing the authority to suspend or limit the sale, dispensing or transportation of
22 alcoholic beverages, explosives and combustibles;

23 E. Directing but not compelling evacuation for the smallest political subdivision
24 possible and if statewide evacuation is sought, requiring approval of 2/3 of the
25 membership of the Legislative Council;

26 F. Requiring approval of 2/3 of the membership of the Legislative Council for
27 limitations on the occupancy of premises that would have a substantial impact on the
28 operation of businesses; and

29 G. Requiring approval of 2/3 of the membership of the Legislative Council if action to
30 abate, clean up or mitigate a danger would result in the temporary or permanent closure
31 of any business or civic or religious organization.