



Legislative Oversight of Emergency Executive Powers

Will Clark, National Conference of State Legislatures
March 2023





- Serve and represent 7,558 legislators and over 25,000 staff
- Forum for sharing ideas and policies
- Nonpartisan research and analysis
- Voice of state legislatures on Capitol Hill



State Constitutional and Statutory Provisions Related to Executive Emergency Powers



Legislative Oversight of Emergency Executive Powers

Emergency Oversight

Governor Authority for Executive Orders

- Governors authorized in all 50 states
- Commonly found in constitution/statute, sometimes case law

Governor Authority Over State of Emergency

- Governors authorized to declare in all 50 states
- Emergency plans
- Expansion of executive powers
- Guidance on limits in federal law, state constitution, state emergency management acts

Legislative Authority Over State of Emergency

- Cancel a state of emergency
- Modify or limit individual executive orders
- Declare an emergency
- Special sessions – 37 states with the ability to call themselves in

Legislative Oversight of Emergency Executive Powers

States of Emergency



State of War
or Attack on
the State



Natural
Disaster



Manmade
Disaster



Public Health
Emergency

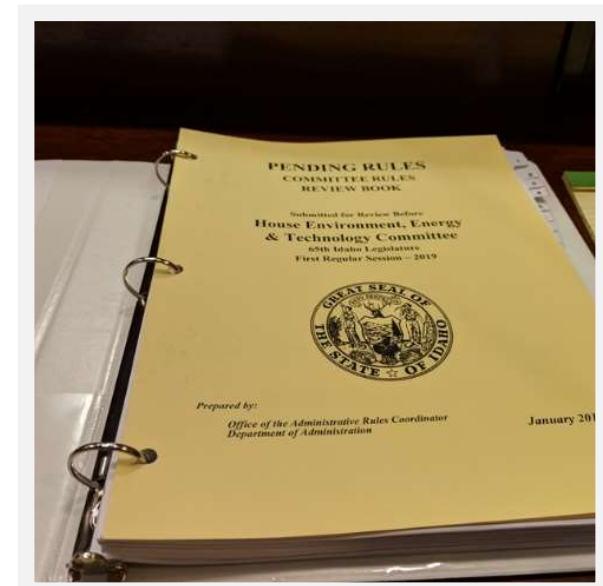


Other Threats
to Safety

Legislative Oversight of Emergency Executive Powers

Expanded Executive Powers

- Assume command of the state militia and other forces
- Create temporary regulations with force of law
- Suspend or modify existing rules and regulatory statute
- Utilize state resources
- Seize property
- Control the movement of persons



Legislative Oversight of Emergency Executive Powers

Termination of Emergency by Legislature

- By Concurrent Resolution
- By Law or Joint Resolution
- Lack of Passage of an Extension



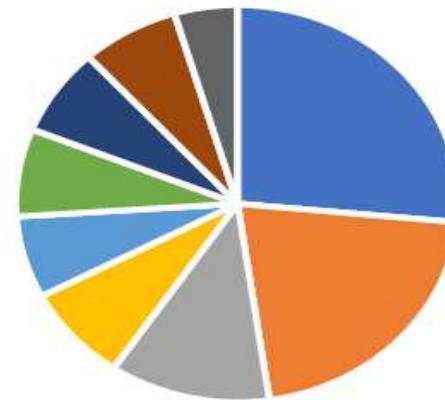
Legislative Oversight of Emergency Executive Powers

Time Limits on Duration of Emergency Orders



- Ranges from 5 days to 6 months
- Governor or legislature may have power to renew emergency orders
- Some states have no limits

Common Provisions in 2021 Introduced Bills



- Requires Leg Approval to Extend SoE
- Limit Length of SoE
- Leg May Terminate SoE or EOs
- Gov Must Call Spec Sess in Emergency
- Leg May Call Itself into Spec Session
- Gov May Not Suspend Laws
- No New SoE if Same Circumstances
- Leg Review of EOs
- Leg Review of Spending

Legislative Oversight of Emergency Executive Powers 2022 Enacted Legislation



Arizona [S.B. 1009](#)

- Governor-declared emergencies may only be extended to 120 days.
- Legislature may extend by periods of 30 days.
- No new states of emergency based on previous conditions without consent by legislature.

Legislative Oversight of Emergency Executive Powers 2022 Enacted Legislation

Virginia [S.B. 4](#)

- Limits emergency rules, regulations and orders issued by Governor to 45 days.
- Prohibits issuance of the same or similar rule after 45 days without action by legislature.



Legislative Oversight of Emergency Executive Powers 2023 Enacted Legislation



West Virginia [S.B. 128](#)

- Emergencies declared by the Governor expire after 60 days, unless extended by legislature through concurrent resolution.
- Legislature may proclaim or terminate a state of emergency via concurrent resolution.

NCSL Web Resources

<https://www.ncsl.org/about-state-legislatures/legislative-oversight-of-emergency-executive-powers>

<https://www.ncsl.org/about-state-legislatures/continuity-of-legislature-during-emergency>

Questions?

- William.Clark@ncsl.org

NCSL Center for Legislative Strengthening