

Ending Abuse of the Emergency Clause

Restoring Our Right of Referendum

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Introduction

To provide a check on the legislature, the state constitution grants the people the power to veto unwanted legislation through the use of a referendum. This right is guaranteed on any bill adopted by the legislature except those that include an “emergency clause.” An emergency clause states that a bill is exempt from repeal by referendum because the bill is “necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions.”¹

The purpose of the emergency clause is to allow state government to respond to true public emergencies, such as a large-scale natural disaster or wide-spread epidemic disease.

Yet, over the years lawmakers have routinely abused the exemption by attaching an emergency clause to more than 700 bills since 1997, including 75 times during the 2007 legislative session and special session. This means the people of Washington were denied their right to repeal bills by referendum on approximately 17 percent of all the bills enacted since 1997.

Below is a year-by-year list of how many times lawmakers have attached the emergency clause to bills over the past decade.

Emergency clause usage 1997-2007

Year	Bills enacted	Emergency clauses	Percentage
1997	459	98	21%
1998	348	43	12%
1999	416	78	19%
2000	263	29	11%
2001	375	90	24%
2002	371	57	15%
2003	447	90	20%
2004	278	46	17%
2005	519	98	19%
2006	372	36	10%
2007	526	75	14%
Total	4,374	740	17%
Average	398	67	17%

¹ Washington State Constitution, Article 2, Section 1 (b)

Examples of emergency clause abuse

Following are examples of when lawmakers attached an emergency clause to bills when no true public emergency existed.

Bills containing an emergency clause that were enacted in law:

SB 6049 – To provide funding for Mariners’ stadium in Seattle, passed in 1995.

SB 5951 – Exempting a horse racing license from public inspection, passed in 2005.

SB 2419 – Allowing fundraising for the state to host the National Conference of Lieutenant Governors, passed in 2006.

HB 1813 – Changing the name of the Interagency Committee for Outdoor Recreation, passed in 2007.

SB 5926 – Creating a Joint Legislative Task Force to review the underground economy in the construction industry, passed in 2007.

Bills containing an emergency clause that were proposed in 2007 but not passed:

HB 1318 – State licensing of soil scientists.

HB 1076 – Surcharge on licenses for rockfish harvesting.

HB 2062 – Funding construction of a new NASCAR race track.

SB 5986 – Funding the Sonics’ basketball arena in Seattle.

Governor’s emergency clause vetoes

In Washington the governor has line-item veto authority over bills passed by the legislature. Responding to the public outcry over abuse of the emergency clause, Governor Gregoire in 2007 vetoed the emergency clauses off of ten bills before signing them into law.²

Here are excerpts from some of the Governor’s veto messages, in which she explains her reasons for removing the emergency clause from certain bills:

“An emergency clause is used when immediate enactment of a bill is necessary to preserve the public peace, health, or safety or when it is necessary for the support of state government. It should be used sparingly because its application has the effect of limiting citizens’ right to referendum.” (Line-item veto of HB 1000, April 17, 2007.)

² The bills were HB 1000, HB 1569, HB 1811, HB 1883, HB 1910, HB 2118, HB 2395, SB 5313, SB 5930, and SB 6023.

“Emergency clauses should be used sparingly and only when necessary.” (Line-item veto of HB 1811, May 11, 2007.)

“Emergency clauses should be restricted to bills that address public emergencies.” (Line-item veto of HB 1883, May 14, 2007.)

“We believe that the desire to avoid potential inconvenience should not be treated as a public emergency warranting an emergency clause.” (Line-item veto of HB 2118, May 11, 2007)

Despite these positive steps, the Governor failed to veto the emergency clauses off of all controversial bills passed in the 2007 session. These bills are discussed below.

Court refuses to restrict use

The State Supreme Court has accepted the legislature’s misuse of emergency clauses by declining to rule on what constitutes a “public emergency” within the meaning of law. A majority of the court ruled that an “emergency” is anything the legislature says it is.

In 2005, the state Supreme Court, in a 6-3 ruling, upheld the legislature’s use of an emergency clause on SB 6078, which amended Initiative 601. At the time no threat to public peace or safety, or to the existence of government institutions, existed.

The impact of the ruling was to give the legislature a blank check to use emergency clauses any time it wants. This has the effect of routinely stripping the people of their right of referendum. The dissenting judges, however, wrote blistering objections to the majority’s decision.

For example, Justice Richard Sanders warned that the ruling allows the legislature to avoid the people’s right of referendum:

“Where the legislature uses an emergency clause simply to avoid a referendum rather than respond in good faith to a true ‘emergency’ . . . and where the court essentially delegates its independent role as a constitutional guardian to the legislative branch of government in its power struggle against the popular branch of government; I find little left of the people’s right of referendum.”

Constitutional reform proposed

Due to the state Supreme Court’s refusal to serve as a check on the legislative abuse of the emergency clause, the only recourse remaining for the people to restore their right of referendum is with a constitutional fix. One such proposal was introduced last session.

HJR 4218 would require a sixty percent vote of the legislature to enact a bill with an emergency clause. Despite a legislative hearing at which no opposition to the reform was expressed, no public vote was scheduled.

The proposed constitutional amendment would amend Article 2, Section 1 (b) to read as follows (the proposed changes that would be added by HJR 4218 are underlined):

“The second power reserved by the people is the referendum. It may be ordered on any act, bill, law, or any part thereof passed by the legislature, except such laws approved by an affirmative vote of sixty percent of the members of each house of the legislature as necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions . . . An appropriations bill authorizing expenditures for operating, capital, or transportation purposes and imposing any requirements, conditions, or limitations on such expenditures contained therein is exempt from the sixty percent voting requirement of this section.”

This means that the legislature would be prohibited from attaching an emergency clause unless the bill was approved by a 60 percent vote. Budget bills, however, would be exempt from the supermajority vote requirement, allowing them to pass with a simple majority and not be subject to referendum.

Examples of how HJR 4218 would work

As previously discussed, the legislature attached emergency clauses to 75 bills last session (including the special session). Had HJR 4218 been the law, the following seven bills would have been barred from having an emergency clause and thus be eligible for the people’s right of referendum, because they did not pass the legislature with a 60 percent vote:

HB 1569 – Reforming the health care system in Washington state. (emergency clause vetoed)

HB 2079 – Concerning use of agency shop fees.

HB 2391 – Eliminating retirement system gain-sharing and providing alternate pension benefits.

SB 5627 – Requiring a review and development of basic education funding.

SB 5659 – Establishing family and medical leave insurance.

SB 6023 – Concerning the Washington assessment of student learning. (emergency clause vetoed)

SB 6178 – Property tax deferral for low income.

The remaining 68 bills with emergency clauses either received a 60 percent vote or were budget bills and HJR 4218 would not have applied to them.

Had the provisions of HJR 4218 been part of the state constitution since 2002 the following controversial bills would have been subject to the people's right of referendum:

SB 6819 – Suspending 2/3 vote requirement for tax increases and for expenditures from emergency reserve account (passed in 2002).

SB 6828 – Securitizing the revenue stream from the tobacco settlement agreement (passed in 2002).

HB 1397 – Adopting California vehicle standards (passed in 2005).

HB 2255 – Adopting changes to the state's unemployment insurance system (passed in 2005).

HB 2314 – Increasing various state taxes (passed in 2005).

SB 5097 – Requiring the use of apprentices on public work projects (passed in 2005).

SB 6078 – Suspending 2/3 vote requirement for tax increases and changing the calculation of the state spending limit (passed in 2005).

SB 6103 – Increasing transportation-related taxes (passed in 2005).

SB 6096 – Creating a state-only death tax (passed in 2005).

SB 6896 – Increasing the state spending limit (passed in 2006).

Conclusion

The best way the legislature can preserve the people's constitutional right of referendum is to refrain from attaching an emergency clause to controversial bills, and return to using the clause for its original purpose: to respond to true public emergencies.

Short of that, the only way to rein in the legislature's abuse of the emergency clause is with a constitutional amendment creating a supermajority vote requirement for its use, such as that proposed by HJR 4218. If a true public emergency occurs that warrants denying the people their right of referendum, a 60 percent vote requirement in the legislature should not be difficult to achieve. In the case of a true emergency, the public would most likely welcome the use of the emergency clause by the legislature, recognizing it is intended to be used at just such a time.

Political convenience should no longer qualify as an exemption to the people's right of referendum. Governor Gregoire was exactly right when she said in her veto messages: "Emergency clauses should be used sparingly and only when necessary," and they "should be

restricted to bills that address public emergencies,” since “its application has the effect of limiting citizens’ right to referendum.”

Jason Mercier is director of WPC’s Center for Government Reform. Washington Policy Center is a non-partisan public policy research organization in Seattle and Olympia. Nothing here should be construed as an attempt to aid or hinder the passage of any legislation before any legislative body. For more information contact WPC at 206-937-9691 or online at www.washingtonpolicy.org.