

# HB 1535 and SB 5063: to provide full legislative oversight of the governor's emergency powers

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## Key Findings

1. **Washington citizens were governed under emergency orders for nearly 1,000 days before the Governor finally ended his COVID-19 emergency declaration.**
2. **While other states provide a meaningful role for lawmakers in addressing a state of emergency, Washington has very weak statutory emergency powers oversight.**
3. **HB 1535 and SB 5063 would redress this imbalance by providing for full legislative oversight of the governor's emergency powers.**
4. **Long-lasting emergency orders should receive the input and affirmative approval of lawmakers following a public process.**
5. **At some point, the executive branch should be required to receive permission from the legislative branch to continue making far-reaching policies under an emergency order.**

## Introduction

In 2020, 2021 and 2022 Washington citizens were governed under emergency orders for nearly 1,000 days before the Governor finally ended his COVID-19 emergency declaration.<sup>1</sup> During that time the normal democratic public process of legislative oversight was limited, while significant state policy was set through executive proclamations issued by the governor's office. The length of time the governor kept the state of emergency led to discussion of whether executive emergency power in Washington

state should be subject to a time limit or reasonable review by the elected legislature.

In the current session two bills have been introduced to reform the state's emergency powers. They are HB 1535 ("Increasing legislative involvement in gubernatorial proclamations relating to a state of emergency") and SB 5063 ("Establishing balanced legislative oversight of gubernatorial powers during a declared emergency").

In an emergency, governors need broad powers to act fast. Legislative bodies inevitably take longer to assemble and to act than a single executive, so they temporarily delegate their power to the executive in a time of emergency. But these powers are supposed to be transferred for a limited period of time.

When situations last for extended periods, months or years, longer-term policies need to be implemented and the legislature needs to debate risks, benefits and trade-offs of various approaches. Lawmakers may end up passing the very policies the governor wants, but they do it after deliberation as representatives of the people and do it in a public democratic process.

It is the legislature, not the governor, that the people have charged with making law, and the governor who is charged with implementing the laws passed by the legislature. Washington, however, has very weak statutory emergency powers oversight for lawmakers and the state operated under a COVID-19 emergency order for 975 straight days.

HB 1535 and SB 5063 would redress this imbalance by providing for full legislative oversight of the governor's emergency powers.

<sup>1</sup> "Emergency powers reform still needed; state Supreme Court agrees to review Governor's authority," by Jason Mercier, Washington Policy Center, October 31, 2022 at <https://www.washingtonpolicy.org/publications/detail/emergency-powers-reform-still-needed-state-supreme-court-agrees-to-review-governors-authority>

## Washington law has weak oversight role for legislature

While other states provide a meaningful role for lawmakers in addressing a state of emergency, Washington has very weak statutory emergency powers oversight. According to a national study:<sup>2</sup>

“Vermont, **Washington**, Ohio and Hawaii are among the worst-ranking states because they bestow on their governors the sole authority to determine when and where an emergency exists, and when an emergency ceases to exist.”

This is in stark contrast to other states. For example, in Wisconsin a state of emergency cannot exceed 60 days unless it is extended by a joint resolution of the legislature. In Minnesota, a governor must call a special session if a “peace time” emergency lasts longer than 30 days.

### Text of HB 1535 and SB 5063

Here is the intent section for HB 1535:<sup>3</sup>

“The legislature recognizes that the executive branch is well-equipped to confront emergencies and lead responses. However, for long-lasting states of emergency when the continuity of government has not been disrupted, the legislature finds that each of the branches of government has a role to play. Accordingly, this act is designed to ensure adequate legislative involvement in long-lasting states of emergency.”

A press release announcing the introduction of HB 1535 described these policy changes:<sup>4</sup>

“Allows the Legislature to pass a concurrent resolution declaring the termination of a SOE;

During a SOE, the governor or Legislature may call a special session, consistent with the state constitution’s guidelines, to vote on a concurrent resolution to extend a SOE;

If the Legislature is not in session, the SOE may also be terminated in writing by unanimous agreement of all four leaders in the House and Senate;

Sixty days after being signed by the governor, unless extended by the Legislature by a concurrent resolution, the SOE will be terminated;

Prohibits the governor from reinstating the same or substantively similar SOE when the original has expired;

When needed, multiple extensions of an SOE may be issued by the Legislature; or, when the Legislature is not in session, by unanimous agreement of all four leaders of the House and Senate;

Requires clarification of changes to law made through an executive proclamation; all such changes must be defined and shown fully in the law, along with any changes made over time; and

Changes any violation of the statute from a gross misdemeanor to a civil infraction of up to \$1,000 dollars.”

2 “Scoring Emergency Executive Power in all 50 States,” by Nick Murray, Maine Policy Institute, accessed on January 14, 2022, at <https://mainepolicy.org/project/emergency-powers/>.

3 “HB 1535: Increasing legislative involvement in gubernatorial proclamations relating to a state of emergency,” Washington State Legislature, January 24, 2023, at <https://app.leg.wa.gov/billsummary?BillNumber=1535&Year=2023&Initiative=false>

4 “Rep. Chris Corry, Rep. Peter Abbarno revive emergency powers reform battle with new bill,” press release, January 24, 2023, at <https://chrisorry.housepublicans.wa.gov/2023/01/24/rep-chris-corry-rep-peter-abbarno-revive-emergency-powers-reform-battle-with-new-bill/>

Here is the intent section for SB 5063:<sup>5</sup>

“This act may be known and cited as the bipartisan approach to legislative authority necessary in continuing emergencies (BALANCE) act of 2023.”

SB 5063 would implement three important reforms to address the current lack of meaningful legislative oversight for Washington’s emergency powers law:

1. When in session, allow the legislature to pass a concurrent resolution terminating an emergency declaration;
2. When out of session and more than 90 days after an emergency declaration has been issued, all four members of the House and Senate leadership may terminate the declaration in writing; and
3. Harmonizing the treatment of restrictive declarations and suspension of law by requiring both actions to expire after 30 days unless extended by the legislature (when out of session all four legislative leaders in House and Senate can extend in writing).

### Policy analysis

While all of these commonsense reforms proposed by SB 5063 should be enacted, the third one is the most important to ensuring essential legislative oversight for all emergency actions by the executive branch. Harmonizing the existing law so that both waiving of statute and restrictive proclamations expire after 30 days unless the legislature votes to continue should not be controversial.

There is no logical reason to treat those emergency actions by the Governor differently whether or not one agrees or disagrees with every decision the Governor made during Washington’s “temporary,” 975 days-long state of emergency, the fact remains these decisions with vast impact on individuals and

businesses were made behind closed doors in the executive branch.

Long-lasting emergency orders should receive the input and affirmative approval of lawmakers following a public process, allowing the perfection of policies through a collaborative weighing of all the options, alternatives, and tradeoffs. This is precisely why the people’s legislative branch of government exists – to deliberate and provide guidance to the executive branch on what policies should be in place and how to implement them.

Requiring affirmative legislative approval after a set point in time removes not a single tool from the Governor’s toolbox. All existing authority remains, the only change is that the closed-door policymaking is required to be justified to the people’s legislative branch of government to continue a policy (i.e., the separations of power and checks and balances envisioned and promised under our republican form of government).

### Conclusion

The Governor should not fear being required to explain to lawmakers why a particular emergency restriction should continue, and the legislature should not hide from its constitutional responsibility to debate and adopt policy. At some point, the executive branch should be required to receive permission from the legislative branch to continue making far-reaching policies under an emergency order.

Our system of governance is not meant to be the arbitrary rule of one official working behind closed doors. An emergency order should never last for nearly 1,000 days without affirmative authorization from the legislative branch.

By adopting either HB 1535 or SB 5063, the legislature would serve the public interest by providing balance, public accountability, and full oversight for the immense executive emergency powers it has previously created.

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*Nothing here should be construed as an attempt to aid or hinder the passage of any legislation before any legislative body.*

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<sup>5</sup> “SB 5063: Establishing balanced legislative oversight of gubernatorial powers during a declared emergency,” Washington State Legislature, December 19, 2022, at <https://app.leg.wa.gov/billsummary?BillNumber=5063&Year=2023&Initiative=false>