

HB 1772 and SB 5039: to provide full legislative oversight of the governor's emergency powers

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Key Findings

1. **Washington has been governed under emergency orders for nearly two years, since February of 2020.**
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. **Two bipartisan bills have been introduced to reform the state's emergency powers. They are HB 1772 (to increase legislative involvement in gubernatorial proclamations relating to a state of emergency) and SB 5039 (to subject all gubernatorial emergency orders to legislative approval after thirty days).**
4. **It is time to end governance by press conference and return to the normal public legislative process.**
5. **By adopting either HB 1772 or SB 5039, the legislature would provide balance, public accountability and full oversight for the immense executive emergency powers it has previously created.**

Introduction

Washington has been governed under emergency orders for nearly two years, since February of 2020.¹ During that time, the normal democratic public process of legislative

oversight has been limited and significant state policy has been set through proclamations issued by the governor's office. The length of the state of emergency has led to discussion of whether executive emergency power in Washington state should be reformed.

Two bipartisan bills have been introduced to reform the state's emergency powers. They are HB 1772 (to increase legislative involvement in gubernatorial proclamations relating to a state of emergency) and SB 5039 (to subject all gubernatorial emergency orders to legislative approval after thirty days).

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 emergencies. But these powers are supposed to be transferred for a limited period of time.

When situations last for extended periods, 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 would prefer to see implemented, but they do it after deliberation as representatives of the people and do it in a democratic public process.

It is the legislature, not the governor, that is 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 has been operating under an ongoing emergency order for nearly two years.

HB 1772 and SB 5039 would redress this imbalance by providing for full legislative oversight of the governor's emergency powers.

¹ "Inslee issues COVID-19 emergency proclamation," News Release, Office of the Governor, Washington state, February 29, 2020, at <https://www.governor.wa.gov/news-media/inslee-issues-covid-19-emergency-proclamation>.

Washington's emergency powers statute 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:²

“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 bipartisan HB 1772 and SB 5039

Here is the intent section for the bipartisan HB 1772:³

“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 1772 described these policy changes:⁴

“Allows the Legislature to pass a concurrent resolution declaring the termination of a SOE [State of Emergency];

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.”

Among the bipartisan co-sponsors of HB 1772 is Democratic Rep. Mike Chapman. Rep. Chapman was one of the panelists on January 6th at Washington Policy Center's Solution

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 1772: Increasing legislative involvement in gubernatorial proclamations relating to a state of emergency,” Washington State Legislature, January 5, 2022, at <https://app.leg.wa.gov/bills/summary?BillNumber=1772&Year=2021&Initiative=false>.

4 “House Republicans introduce emergency powers reform bill to restore balance, trust in state government,” press release, January 6, 2022, at <https://chrisocorry.houserepublicans.wa.gov/2022/01/06/house-republicans-introduce-emergency-powers-reform-bill-to-restore-balance-trust-in-state-government/>.

Summit discussion of emergency powers reform.⁵ He told me after the panel:

“The reason I co-sponsored HB 1772 is that whether one agrees with the Governor’s emergency powers decisions or not we still need three effective co-equal branches of Government with appropriate checks and balances.”

In the Senate, bipartisan SB 5039 was introduced last year but was not given a public hearing. This bill has been reintroduced in the Senate for consideration this year. SB 5039 would subject all of the governor’s emergency orders to legislative oversight after 30 days.⁶ This is the type of reasonable time limit and legislative public accountability for emergency powers that exists in many other states across the country.

Conclusion

Washington has been under an ongoing state of emergency for nearly two years. Long lasting emergency orders should receive the input of 147 legislators from across the state following a democratic 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.

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 is not meant to be the arbitrary rule of one behind closed doors. It is time to end governance by press conference and return to the normal public legislative process.

Jason Mercier is the director of Washington Policy Center’s Center for Government Reform.

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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5 “Emergency Powers Panel - WPC 2022 Solutions Summit,” WPC YouTube Channel, January 10, 2022, at <https://www.youtube.com/watch?v=pxDusTTqsAA>.

6 “SB 5039: Subjecting all gubernatorial emergency orders to legislative approval after thirty days,” Washington State Legislature, December 24, 2020, at <https://app.leg.wa.gov/billsummary?BillNumber=5039&Initiative=fals&Year=2021>.