

POLICY NOTE

Initiative 1480, to reform Washington state's emergency powers law

By Jason Mercier, Director, Center for Government Reform

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Key Findings

1. Initiative 1480 is an initiative to the legislature that would require that lawmakers review the governor's powers in a public emergency after 30 days.
2. If the measure gains enough signatures lawmakers can adopt it next session, propose an alternative or take no action.
3. If lawmakers do not pass the initiative it will be placed on the November 2023 ballot, possibly with an alternative.
4. Starting in February 2020 Governor Inslee exercised sole emergency power for 975 days, with no review by elected lawmakers.
5. Washington is one of only four states that do not provide legislative oversight after 30 days, 60 days or other reasonable time limit.
6. Providing a 30-day limit would allow the legislature to decide whether emergency rule should continue or whether the state should return to normal democracy.

Introduction

A group of concerned citizens called Let's Go Washington is gathering signatures for a proposed people's initiative to the legislature, Initiative 1480, which would reform the state's emergency powers law.¹ The measure would implement several changes, including the requirement that the legislature review all of the governor's emergency orders after 30 days.²

Initiative sponsors need to collect 324,516 valid signatures (8% of the votes cast in the last election for governor) to submit Initiative 1480 for consideration in the 2023 legislative session. The signatures must be received by the Secretary of State's office by December 31, 2022.³

If the measure qualifies lawmakers have three choices:⁴

- They can enact the initiative into law as is (the governor's signature is not required);
- They can take no action in which case the initiative is forwarded to voters on the November 2023 ballot. If voters approve the initiative it becomes law;
- They can pass their own alternative version, in which case both versions, the original and the legislature's, will appear on the November 2023 ballot. Voters will first decide if either version should become law and, if so, indicate on the same ballot which one should pass.

Text of Initiative 1480

Here is the official ballot title and summary for Initiative 1480:⁵

1 "I-1480, Emergency Powers Review," The Initiatives, Let's Go Washington, accessed October 22, 2022, at <https://letsgowashington.com/initiatives/>.

2 "Text of Initiative 1480," Code Reviser's Office, Office of the Secretary of State, Washington State, April 8, 2022, at https://www.sos.wa.gov/_assets/elections/initiatives/finaltext_2629.pdf.

3 "Initiatives and Referenda Handbook – 2022," Elections Division, Office of the Secretary of State, Washington State, accessed October 20, 2022, at https://www.sos.wa.gov/_assets/elections/initiatives/initiative-and-referenda-handbook-2022.pdf.

4 Ibid.

5 "Initiative 1480, Ballot Title and Ballot Measure Summary," Office of the Attorney General, Washington State, April, 15, 2022, at https://www.sos.wa.gov/_assets/elections/initiatives/ballottitleletter_2629.pdf.

Ballot Title

“Initiative Measure No. 1480 concerns governmental emergency powers. This measure would modify limitations on the Governor’s emergency proclamations, related orders, and agency emergency rules; reclassify the crime of violating emergency orders to a misdemeanor; and modify judicial review of proclamations. Should this measure be enacted into law?”

Ballot Measure Summary

“This measure would modify limitations on governor emergency proclamations, allowing them to cover only one county and only facts/circumstances not in existing law; limit such proclamations, related orders, and agency emergency rules to 30 days unless legislatively-extended; allow for legislative modification after 30 days; require judicial review to occur in the county subject to the proclamation and receive first priority; and reclassify the crime of violating emergency orders from a gross misdemeanor to a misdemeanor.”

Current oversight of emergency power is weak

The current emergency law in Washington state provides the weakest oversight in the nation of the governor’s executive powers during a declared emergency. The governor can declare an emergency on his own authority and only he can decide when his use of emergency power ends.

The emergency law gives the governor the sole power to stop the enforcement of any law or regulation (waiving of a law, however, expires after 30 days unless approved by the legislature), and to impose broad mandates on the public, with no limit, oversight or guidance from the elected legislature.

Governor Inslee announced on February 29th, 2020 that he had assumed emergency power, and he continue to exercise that power until October 31, 2022, a period of 975 days, or more than two-and-a-half years. This is far longer than what the public expected when the emergency was announced.

According to a 2021 national study comparing legislative oversight of emergency powers across the country:⁶

“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.”

Though waiving of a statute during an emergency by the governor expires after 30 days in Washington unless approved by the legislature, restrictive proclamations (mandates placed on citizens or businesses) are not subject to time limits, nor do they require any legislative review. This is why some of the governor’s emergency order were allowed to remain in place for 975 straight days without legislative approval.

6 “Scoring emergency powers in all 50 states (2021),” by Nick Murray, Policy Analyst, Maine Policy Institute, February 2, 2022, at <https://mainepolicy.org/project/emergency-powers/>.



Jason Mercier is the Director of the Center for Government Reform at Washington Policy Center and is based in the Tri-Cities. He has served on the boards of the Washington Coalition for Open Government and Verify More, and was an advisor to the 2002 Washington State Tax Structure Committee. Jason is an ex-officio member for the Tri-City Regional Chamber of Commerce and serves on the Chamber's government affairs committee. He worked with lawmakers in 2008 to create the state's renowned budget transparency website www.fiscal.wa.gov and has been a champion for many of the state's important budget reform tools including the four-year balanced budget requirement adopted in 2012. In 2010, former Governor Gregoire appointed Jason as WPC's representative on her Fiscal Responsibility and Reform Panel.

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On August 9, 2022, Inslee-appointed Court of Appeals Judge Bernard Veljacic wrote this dissent in a case concerning emergency powers:⁷

“Even so, I am not convinced that the legislature, in making the grant of authority, anticipated such a broad and lengthy imposition of emergency health measures when it first enacted chapter 43.06 RCW. It is true that our Supreme Court has recognized that the broad grant of authority ‘evidence[s] a clear intent by the legislature to delegate requisite police power to the governor in times of emergency.’ But this begs the question: ‘for how long?’

Certainly, while initial executive response to emergencies should be robust and unhindered by the burden of administrative or legislative oversight, this should not be the case over a longer period of time. Of course, in the early days of an emergency, Washingtonians would suffer if required to wait on the executive to set a legislative session, assemble the necessary quorum, and oversee a vote on a course of action. But at some point, over the long term, an emergency grows less emergent. After all, time allows for the opportunity to reflect. That same opportunity should include legislative review.

In all instances, we must be careful with such broad grants of authority. We would do well to employ a healthy skepticism of such authority upon objective consideration of who might possibly wield it at some point, or what they might deem an emergency.”⁸

Conclusion

Our system of governance is not meant to be the arbitrary rule of one official operating behind closed doors. Judge Veljacic is correct that “...we must be careful with such broad grants of authority.” An emergency order should never last more than 975 straight days unless it has received affirmative authorization for continuation by the legislative branch of government.

As an initiative to the legislature, when considering Initiative 1480 lawmakers could also propose alternative emergency powers reforms, such as the recommendation by the Washington Policy Center to simply harmonize the existing law so that both waiving of statute and restrictive proclamations expire after 30 days unless the legislature affirmatively votes to continue.⁹

At some point the executive branch should receive permission from the legislative branch to continue making far-reaching policies under an emergency order. This process would allow a governor to respond quickly to a public emergency then, after more information is available, the legislature could decide whether one-man rule should continue, or whether the state should return to normal democratic governance.

⁷ Inslee appoints Bernard Veljacic to the Court of Appeal, Division 2,” press release, Office of the Governor, December 8, 2020, at <https://www.governor.wa.gov/news-media/inslee-appoints-bernard-veljacic-court-appeals-division-2>. “Sehmel et al. v. Shah,” Dissenting Opinion, Judge Bernard Veljacic, Court of Appeals, Division II, Washington State, No. 55970-6-II, August 9, 2022, at <https://www.courts.wa.gov/opinions/pdf/D2%2055970-6-II%20Published%20Opinion.pdf>.

⁸ Ibid.

⁹ “WPC emergency powers reform testimony,” by Jason Mercier, statement on HB 1772 and SB 5909, blogpost, Washington Policy Center, January 7, 2022, at <https://www.washingtonpolicy.org/publications/detail/wpc-emergency-powers-reform-testimony>.