

Gubernatorial Emergency Powers



ISSUE
MEMORANDUM
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Introduction

The Constitution of South Dakota has, since its inception, vested executive power in a Governor who is responsible for the faithful execution of the law. That responsibility includes enforcing compliance with and restraining any violation of the law. [S.D. Const. art. IV, §§ 1 and 3]

When it comes to "emergencies," however, the Constitution charges, not the Governor, but the Legislature, with ensuring the continuity of state and local governmental operations. That provision was adopted on Nov. 8, 1960.

Not every "emergency" falls within the constitutional grant of authority to the Legislature. In fact, the grant of authority may be exercised only when there is an emergency that results "from disasters caused by enemy attack" In such cases, the Legislature is to:

- Provide for the prompt and temporary succession to the powers and duties of public offices; and
- Adopt such other measures as may be necessary and proper for ensuring the continuity of governmental operations.

In the exercise of such powers, the Legislature is directed to "conform to the requirements of this Constitution except to the extent that in the judgment of the Legislature so to do would be impracticable or would admit of undue delay." [S.D. Const. art. III, § 29]

State of South Dakota Civil Defense Act of 1949

Even prior to the Cold War, the Legislature recognized there are other circumstances in which the state might need emergency response preparedness. In 1949, the Legislature created a State Civil Defense Agency and authorized the formation of local organizations for civil defense within the political subdivisions of the state. The Legislature gave the Governor general direction and control of the new agency and authorized the Governor to prepare a comprehensive plan for the civil defense of the state, procure various supplies and equipment, institute training programs and public information programs, and ascertain the capabilities of industries, facilities, and other resources in the state in relation to civil defense needs. [SL 1949, ch. 236 § 2]

"Emergency functions," as described in the Act, did not include those functions for which military forces were primarily responsible, but did include all functions necessary to minimize and repair injury and damage resulting from disasters caused by enemy attack, sabotage or other hostile actions, and fire, flood, earthquake, or other natural causes. Specifically listed as contemplated functions were "fire fighting services, policy [sic] services, medical and health services, rescue, engineering, air raid warning services, communications, radiological, chemical, and other special weapons of defense, evacuation of persons from stricken [sic] areas, emergency welfare services, emergency transportation, existing or properly assigned functions of plant protection, temporary restoration of public utility services, and other functions related to civilian protection" [SL 1949, ch. 236 § 3]

During the ensuing years, the Governor's authority under the Civil Defense Act was extended in response to various historical events. These extensions included preparing for and responding to blackout and air raid drills, as well as the needs of livestock. Following the terrorist attacks of September 11, the Governor, in the 2002 legislative session, was given additional authority to:

- Procure, acquire, store, distribute, and dispense any pharmaceutical agents or medical supplies located within the state as may be reasonable and necessary to respond to the disaster, emergency, or act of terrorism;
- Appoint and prescribe the duties of such out-of-state health care providers as may be reasonable and necessary to respond to the disaster, emergency, or act of terrorism;
- Provide for the examination and safe disposal of any dead body as may be reasonable and necessary to respond to the disaster, emergency, or act of terrorism; and
- Provide for the protection, construction or reconstruction, repair, and maintenance of public or private transportation facilities. [SL 2002, ch. 162, §§ 1 -2]

South Dakota Emergency Preparedness – 2020

Today, the state's emergency preparedness is codified in SDCL chapter 34-48A. For most of the prior two decades, the chapter remained largely untouched. However, in response to concerns stemming from the COVID-19 pandemic, legislation was introduced, considered, and passed on the 37th day of the 2020 legislative session. Because those changes are temporary in duration and set to expire on June 30, 2021, this memorandum will summarize the chapter as it stood prior to the "veto day" additions and then address the specific changes that were made.

In order to provide for the common defense, protect the peace, health, and safety of the citizenry, and to preserve lives and property, the chapter:

- Creates a Division of Emergency Management;
- Authorizes the creation of emergency management organizations in the political subdivisions;
- Provides emergency powers to the Governor, the Secretary of the Department of Public Safety, and the executives or governing bodies of the various political subdivisions; and
- Provides for a coordinated rendering of mutual aid among the state's political subdivisions, as well as with other states, the federal government, and "private agencies of every type."

The power and authority vested in the Governor by the chapter becomes effective if there is:

- A disaster;
- A war;
- An act of terrorism; or
- An emergency that is beyond local government capability.

A "disaster" is defined as a natural, nuclear, man-made, war-related, or other catastrophe, which in the determination of the Governor causes damage of sufficient severity and magnitude to warrant all state assistance that is reasonably available. An "emergency" is likewise a natural, nuclear, man-made, war-related, or other catastrophe, which in the determination of the Governor requires the commitment of less than all available state resources to supplement the efforts of political subdivisions. [SDCL § 34-48A-1]

Upon the occurrence of a disaster, a war, an act of terrorism, or an emergency, the Governor may:

- Assume direct operational control over emergency management functions;
- Employ emergency management to assist local authorities in affecting relief and restoration;
- Call upon and use any facilities, equipment, other nonmedical supplies, and resources available from any source, other than personal or private funds, in order to carry out the purposes of this



chapter by contributing to the expense incurred in providing relief, with the exception of taking firearms without the owner's consent;

- Suspend the rules of any state agency;
- Control, within a designated disaster or emergency area, ingress and egress, the movement of vehicles upon highways, the movement of persons, and the occupancy of premises;
- Procure, acquire, store, distribute, and dispense any pharmaceutical agents or medical supplies located within the state;
- Appoint and prescribe the duties of out-of-state health care providers;
- Provide for the examination and safe disposal of any dead body; and
- Provide for the protection, construction, or reconstruction, repair, and maintenance of public or private transportation facilities. [SDCL § 34-48A-5]

The power and authority granted to the Governor under SDCL § 34-48A-5 remains in effect for six months. At the end of that period, the power and authority may be continued for one or more six month periods. The continuance is contingent upon the Governor declaring that the "conditions permitting such powers persist."

On veto day, the Legislature, at the request of the Governor, amended several provisions pertaining to gubernatorial authority in the event of a disaster, war, act of terrorism, or emergency.

Firstly, the Governor already had the ability to employ emergency management to affect relief and restoration. The legislation added the ability to affect "evacuation . . . as deemed necessary to preserve life or other disaster or emergency mitigation, response, or recovery . . ." [SDCL § 34-48A-5(2)]

Secondly, the Governor already had the ability to suspend the rules of a state agency, if strict compliance would prevent, hinder, or delay necessary action in managing the disaster, war, act of terrorism, or emergency. The legislation provided the Governor with the ability to suspend any statute that regulates, or that prescribes the promulgation of a rule to regulate, the procedures for the conduct of state business or the business of a local subdivision, if strict compliance would prevent, hinder, or delay necessary action in managing the disaster, war, act of terrorism, or emergency. [SDCL § 34-48A-5(4)]

Thirdly, the legislation authorized the Governor to suspend, by executive order, the provisions of any statute that prescribed procedures for conducting "local subdivision business," if strict compliance would prevent, hinder, or delay necessary action in coping with the emergency. [SDCL § 34-48A-5(10)]

Fourthly, the legislation clarified that the events which might engender an emergency gubernatorial response -- i.e. fire, flood, earthquake, severe temperatures, tornado, wave, oil spill, water or air contamination, epidemic, blight, drought, infestation, explosion, riot, or hostile military or paramilitary action, should include "pandemics." [SDCL § 34-48A-5(4)] In the nomenclature of the federal Centers for Disease Control and Prevention, a higher-than-expected number of occurrences of a disease in a specific location and time is referred to as an "outbreak." A sudden increase in the number of occurrences of a disease is an "epidemic" and an event in which disease spreads across several countries and affects a large number of people is a "pandemic." [Source: National Center for Immunization and Respiratory Diseases, Division of Viral Diseases, CDC]

Finally, the veto day legislation expanded upon a prohibition that has existed since 2004. [See, SL 2004, ch. 223, § 1] The Governor may call upon and use various public and private resources to carry out the chapter, but the Governor may not take firearms, without the consent of the owner. The language of this section now precludes the Governor and various state and local officials from prohibiting, regulating, or curtailing the lawful possession, carrying, sale, transportation, transfer, defensive use, or other lawful use of firearms, ammunition, ammunition-



reloading equipment and supplies, or other personal weapons other than firearms. It also precludes restrictions on the issuance and revocation of concealed carry permits, the operating hours of gun shops and shooting ranges, and the type or quantity of firearms and personal weapons that are sold or serviced, as well as ammunition and reloading equipment.

The expansion of gubernatorial powers, as set forth in the veto day legislation, expire on June 30, 2021 and the affected SDCL sections will be returned to their respective pre-veto day form.

Gubernatorial Emergency Powers – Selected Other States

Although many emergencies and disasters are handled at the local level, the Governors of all states have constitutional, statutory, or implied powers and authority to issue executive orders for the purpose of addressing or managing emergencies or disasters of magnitude. The nature and extent of such powers and authority, including when and how they may begin and terminate, is unique to each state. Likewise, the degree of legislative oversight during the time the powers are in effect is unique to each state. [See *attachment*, Gubernatorial Executive Orders: Authorization, Provisions, Procedures, *The Book of the States 2019*. Source: The Council of State Governments] Following is a synopsis of gubernatorial emergency powers and authority in the surrounding states and in the state of Michigan, where a legal challenge was recently considered.

Iowa

Iowa recognizes two types of emergencies. The first is referred to as a public disorder emergency and the second is referred to as a state of disaster emergency.

A “public disorder” emergency is one in which there is “such substantial interference with the public peace as to constitute a significant threat to the health and safety of the people or a significant threat to public or private property.” [IC § 29C.2(8)] The term includes insurrection, rioting, looting, and persistent violent civil disobedience.

A “state of disaster” emergency means “man-made and natural occurrences, such as fire, flood, drought, earthquake, tornado, windstorm, hazardous substance, or nuclear power plant accident or incident” The occurrence must “threaten the public peace, health, and safety of the people or . . . damage and destroy public or private property.” [IC § 29C.2(4)] The term includes attack, sabotage, or other hostile action from within or without the state. A state of disaster emergency may also constitute a “public health disaster” -- i.e. an imminent threat of an illness or health condition that is reasonably believed to have been caused by bioterrorism, an infection agent or biological toxin, a chemical attack or accidental release, various nuclear or radiologic events, or a natural or man-made occurrence or which is likely to cause a large number of deaths, serious or long term disabilities, or substantial risk of future harm to a large number of the affected population. [IC § 135.140(6)]

A state of public disorder emergency may continue for 10 days, unless it is terminated sooner by the Governor. In addition, the Legislature may, by concurrent resolution, rescind the gubernatorial proclamation. If the Legislature is not in session, the Legislative Council is authorized to rescind the proclamation. [IC § 29C.2(3)]

A state of disaster emergency remains in effect for 30 days, unless extended or terminated by the Governor. This proclamation may also be rescinded by the Legislature and if the Legislature is not in session, the Legislative Council may rescind it. During the time that the state of disaster emergency is in effect, the Governor may:

- Suspend the provisions of any regulatory statute prescribing the procedures for conducting state business, or the orders or rules of any state agency, if strict compliance would in any way prevent, hinder, or delay necessary action in coping with the emergency;



- Commandeer or utilize any private property if the Governor finds this necessary to cope with the disaster emergency, subject to requirements for compensation;
- Direct the evacuation of people from any stricken or threatened area within the state, if necessary for the preservation of life, disaster mitigation, response, or recovery;
- Prescribe routes, modes of transportation, and destinations in connection with any evacuation;
- Control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises in such area; and
- Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, and combustibles. [IC § 29C.6]

Minnesota

The Governor of Minnesota is authorized to declare a "peacetime emergency" when an act of nature, a technological failure or malfunction, a terrorist incident, an industrial accident, a hazardous materials accident, or a civil disturbance endangers life and property and local government resources are inadequate to handle the situation. When the Governor declares a peacetime emergency, the Governor must immediately notify the majority and minority leaders of the Senate and the speaker and majority and minority leaders of the House of Representatives. [Minn. Stat. § 12.31]

A peacetime emergency may not be continued for more than five days, unless extended by a resolution of the Executive Council, which consists of the Governor, the Lieutenant Governor, the Secretary of State, the State Auditor, and the Attorney General. That extension may not be for more than 30 days. If additional time is needed, the Governor must seek such by going before or convening the Legislature.

A declaration of a peacetime emergency authorizes the Governor to invoke the necessary portions of the state emergency operations plan relating to response and recovery aspects and to exercise various legislatively conferred powers. Those powers include requiring that persons, except those who are members of the federal or state military forces and officers of the state or of a political subdivision, perform services for emergency management purposes. Those powers also include commandeering motor vehicles, tools, appliances, medical supplies, and other personal property and any facilities, but do not extend to firearms and ammunition. [Minn. Stat. § 624.7192]

Any orders issued by the Governor, when approved by the Executive Council, have the full force and effect of law and any conflicting rules or ordinances are suspended for the duration of the emergency – with a notable exception.

Notwithstanding laws, rules, or orders made or promulgated in response to a national security emergency or peacetime emergency, individuals have a fundamental right to refuse medical treatment, testing, physical or mental examination, vaccination, participation in experimental procedures and protocols, collection of specimens, and preventive treatment programs. An individual who has been directed by the commissioner of health to submit to medical procedures and protocols because the individual is infected with or reasonably believed by the commissioner of health to be infected with or exposed to a toxic agent that can be transferred to another individual or a communicable disease, and the agent or communicable disease is the basis for which the national security emergency or peacetime emergency was declared, and who refuses to submit to them may be ordered by the commissioner to be placed in isolation or quarantine [Minn. Stat. § 12.39(1)]

The Commissioner of Health is directed to obtain a written, ex parte order from the District Court authorizing the isolation or quarantine, unless doing so would jeopardize the Commissioner's ability to prevent or limit the transmission of a communicable or potentially communicable life-threatening disease. The person so isolated



must be notified that he or she may request a court hearing. The Commissioner must thereafter seek an ex parte order and notify the Governor and various legislative leaders. [Minn. Stat. § 144.4195]

Montana

Montana gives the Governor general authority to respond to disasters and emergencies. Like many other states, the authority involves suspending "any regulatory statute prescribing the procedures for conduct of state business or orders or rules of any state agency if the strict compliance with the provisions of any statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster," compelling evacuation, controlling "ingress and egress from an incident or emergency or disaster area, the movement of persons within the area, and the occupancy of premises within the area." A gubernatorial response includes the issuance, amendment, and rescission of executive orders, proclamations, and regulations. [MCA § 10-3-104]

If the Governor proclaims a disaster or an emergency in response to an enemy attack, the proclamation is ineffective unless either the Legislature is in session or the Governor simultaneously issues an order convening the Legislature in a special session within 45 days. [MCA 10-3-505] The Legislature has the power to terminate the proclamation. In the absence of such action, the proclamation is automatically terminated six months after its issuance and a similar proclamation may not be reissued by the Governor unless the Legislature concurs. [MCA § 10-3-505]

If in response to something other than an enemy attack the Governor proclaims an "emergency," the proclamation may remain effective for 30 days, unless the Legislature, by a joint resolution, declares a continuance. If the Governor proclaims a state of "disaster," the proclamation may remain effective for 45 days, unless the Legislature, by a joint resolution, declares a continuance. [MCA §§ 10-3-302 and 10-3-303]

An "emergency" is the "imminent threat of a disaster causing immediate peril to life or property that timely action can avert or minimize." [MCA § 10-3-103(8)] A "disaster" is "the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or artificial cause, including tornadoes, windstorms, snowstorms, wind-driven water, high water, floods, wave action, earthquakes, landslides, mudslides, volcanic action, fires, explosions, air or water contamination requiring emergency action to avert danger or damage, blight, droughts, infestations, riots, sabotage, hostile military or paramilitary action, disruption of state services, accidents involving radiation byproducts or other hazardous materials, outbreak of disease, bioterrorism, or incidents involving weapons of mass destruction." [MCA § 10-3-103(4)]

A state of emergency or a state of disaster may be terminated by either the Governor or the Legislature. [MCA § 10-3-303]

Nebraska

In accordance with Neb. Rev. Stat. § 81-829.40, the Governor may issue proclamations pertaining to natural or manmade events that are causing or imminently could cause widespread or severe damage, injury, or loss of life or property. Such a proclamation remains effective until the Governor determines that the danger or threat has passed and terminates the proclamation or, in the alternative, until the Unicameral, by resolution, terminates the proclamation.

During the time that such a proclamation is in effect, the Governor may suspend statutes that prescribe procedures for conducting state business, as well as any agency rules, if strict compliance would in any way prevent, hinder, or delay necessary action in coping with the danger or threat.



The Governor is also authorized to "[s]uspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, and combustibles" Until 2014, the Governor also had the authority to suspend or limit the sale, dispensing, or transportation of firearms. [2014 LB 390]

North Dakota

Because the Governor has the responsibility to "minimize or avert" the effects of a disaster or emergency, the Governor is given the authority, by order or proclamation, to declare that a disaster has occurred or that a state of emergency exists. A "disaster" is defined as "the occurrence of widespread or severe damage, injury, or loss of life or property resulting from any natural or manmade cause, including fire, flood, earthquake, severe high and low temperatures, tornado storm, wave action, chemical spill, or other water or air contamination, epidemic, blight, drought, infestation, explosion, riot, or hostile military or paramilitary action, or cyber attack which is determined by the governor to require state or state and federal assistance or actions to supplement the recovery efforts of local governments in alleviating the damage, loss, hardship, or suffering caused thereby." An "emergency" is defined as "any situation that is determined by the governor to require state or state and federal response or mitigation actions to protect lives and property, to provide for public health and safety, or to avert or lessen the threat of a disaster." [NDCC § 37-17.1-04] An emergency requires an immediate supplement to local governments or aid to critical industry sectors that provide essential lifeline services.

Under a declaration of disaster or emergency, the Governor is authorized to:

- Suspend various regulatory statutes prescribing the procedures for the conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with the provisions would in any way prevent, hinder, or delay necessary action in managing a disaster or emergency;
- Commandeer or utilize private property if necessary to manage the disaster or emergency;
- Direct and compel the evacuation of all or part of the population from any stricken or threatened area;
- Prescribe routes, modes of transportation, and destinations in connection with an evacuation;
- Control ingress and egress in a designated disaster or emergency area, the movement of persons within the area, and the occupancy of premises therein;
- Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, and combustibles, not including ammunition;
- Provide for the availability and use of temporary emergency housing;
- Ration fuel or other life and property sustaining commodities; and
- Designate members of the highway patrol, North Dakota national guard, or others trained in law enforcement, as peace officers. [NDCC § 37-17.1-05]

Once declared, the status remains until the Governor determines the threat of an emergency has passed or the disaster has been dealt with to the extent that emergency conditions no longer exist. The Legislative Assembly may, however, by concurrent resolution, terminate a state of disaster or emergency at any time. [NDCC § 37-17.1-05]

Wyoming

Wyoming has created an Office of Homeland Security within the Governor's office and has conferred upon the Governor the power to assume direct operational control over homeland security functions within the state. Those functions are defined as "emergency functions essential to the recovery and restoration of the economy by supply and resupply of resources to meet urgent survival and military needs, other than functions for which military forces are primarily responsible, necessary to deal with disasters caused by enemy attack, sabotage,



terrorism, civil disorder or other hostile action, or by fire, flood, earthquake, other natural causes and other technological, industrial, civil and political events." [WY Stat. § 19-13-102]

Those functions include "the coordination of fire-fighting services, police services, medical and health services, rescue, engineering, attack warning services, communications, radiological events, evacuation of persons from stricken areas, emergency welfare services (civilian war aid), emergency transportation, existing or properly assigned functions of plant protection, temporary restoration of public utility services, mitigation activities in areas threatened by natural or technological hazards, and other functions related to civilian protection, together with all other activities necessary or incidental to the preparation for any carrying out of the foregoing functions" [WY Stat. § 19-13-102]

Wyoming statutes are non-specific with respect to any required proclamations or legislative oversight. They do, however, prohibit the Governor and various other officials or employees from confiscating firearms or imposing additional restrictions regarding the lawful possession, transfer, sale, carrying, storage, display, or use of firearms, ammunition, or components of firearms or ammunition. [WY Stat. § 19-13-102]

Wyoming statutes also define a "public health emergency." This is an "occurrence or imminent threat of an illness or health condition caused by an epidemic or pandemic disease, a novel and highly fatal infectious agent or a biological toxin that poses a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability." It is up to the Governor to declare when one exists and when one has ended. No additional directives are set forth. However, when one is in effect, the State Health Officer is authorized to prescribe pharmaceutical or therapeutic interventions en masse, as necessary to protect the public health. [WY Stat. § 35-1-240]

Michigan

In 1945, Michigan enacted legislation to provide emergency powers to the Governor. The Act stated that it is "the legislative intent to invest the governor with sufficiently broad power of action in the exercise of the police power of the state to provide adequate control over persons and conditions during such periods of impending or actual public crisis or disaster. The provisions of this act shall be broadly construed to effectuate this purpose." [MCL § 10.32] The specific language is as follows:

"During times of great public crisis, disaster, rioting, catastrophe, or similar public emergency within the state, or reasonable apprehension of immediate danger of a public emergency of that kind, when public safety is imperiled . . . the governor may proclaim a state of emergency and designate the area involved. After making the proclamation or declaration, the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control. Those orders, rules, and regulations may include, but are not limited to, providing for the control of traffic, including public and private transportation, within the area or any section of the area; designation of specific zones within the area in which occupancy and use of buildings and ingress and egress of persons and vehicles may be prohibited or regulated; control of places of amusement and assembly and of persons on public streets and thoroughfares; establishment of a curfew; control of the sale, transportation, and use of alcoholic beverages and liquors; and control of the storage, use, and transportation of explosives or inflammable materials or liquids deemed to be dangerous to public safety" [MCL § 10.31(1)]

The orders, rules, and regulations remain in effect until the Governor declares that the emergency no longer exists. [MCL § 10.31(2)]



In 2006, MCL § 10.31 was amended to clarify that the Governor's authority does not extend to seizing, taking, or confiscating "lawfully possessed firearms, ammunition, or other weapons."

Michigan also has an Emergency Management Act, which authorizes gubernatorial orders, proclamations, and directives declaring a state of disaster or a state of emergency. A proclamation under this section continues until:

- The Governor finds that the threat or danger has passed;
- The Governor finds that the threat or danger has been dealt with to the extent that the conditions no longer exist; or
- The declaration has been in effect for 28 days.

After the 28th day, the Governor must declare the state of disaster to be terminated or seek and obtain from the Legislature, an extension for a specific number of days.

On October 2, 2020, the Michigan Supreme Court decided a case that was brought by the Midwest Institute of Health, et al., against the Governor of Michigan and various other state officials. The case pertained to the legitimacy of a gubernatorial order that was issued under the emergency powers provisions. The order prohibited healthcare providers from performing nonessential procedures. The Court, by a 4-3 ruling, found that the Michigan statutes unconstitutionally delegated legislative powers to the executive branch. The Court also stated:

As the scope of the powers conferred upon the Governor by the Legislature becomes increasingly broad, in regard to both the subject matter and their duration, the standards imposed upon the Governor's discretion by the Legislature must correspondingly become more detailed and precise. MCL 10.31(1) . . . delegated broad powers to the Governor to enter orders "to protect life and property or to bring the emergency situation within the affected area under control," and under MCL 10.31(2), the Governor could exercise those powers until a "declaration by the governor that the emergency no longer exists." Thus, the Governor's emergency powers were of indefinite duration, and the only standards governing the Governor's exercise of emergency powers were the words "reasonable" and "necessary," neither of which supplied genuine guidance to the Governor as to how to exercise the delegated authority nor constrained the Governor's actions in any meaningful manner. [In re Certified Questions from the United States District Court, Western District of Michigan, Southern Division (Midwest Institute of Health, PLLC v Governor) No. 161492, October 2, 2020]

Conclusion

During the course of history, all states have recognized that the occurrence of certain natural or man-made events may require a coordinated, nimble response in order to address, manage, and mitigate any deleterious effects. Some states have provided for this constitutionally, some have provided for this statutorily, and some further supported either or both through case law and common practice. Even given the states that have been referenced in this memorandum, it is readily evident that there are many similarities in the approaches that have been used and equally evident that there are notable differences in the nature and scope of the approaches.

The onset of the COVID-19 pandemic has afforded each Governor the opportunity to utilize the emergency power and authority ensconced within the executive function and it has allowed each Legislature to begin assessing the appropriateness of that power's depth and breadth. The appropriateness extends not only to the practical implementation of those gubernatorial powers, but also to the implications associated with such exercise. Those



implications touch upon constitutional rights and personal freedoms, they affect the provision of education and healthcare services, and they engender heretofore unimaginable fiscal impacts.

While the perfect combination of gubernatorial responsiveness and legislative oversight will probably remain elusive, most if not all states may very well consider amendments to their existing statutes. Those amendments will likely bolster that which worked well and restrict or eliminate that which did not. The one thing that can be expected for certain is that each state's effort will in the end reflect its unique experience and the system of values by which it seeks to be governed during trying times.

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This issue memorandum was written by L. Anita Thomas, Principal Legislative Attorney, on November 16, 2020 for the Legislative Research Council. It is designed to provide background information on the subject and is not a policy statement made by the Legislative Research Council.

