

1 HOUSE BILL NO. 122

2 INTRODUCED BY D. BEDEY

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING DISASTER AND EMERGENCY SERVICES;
5 PROVIDING FOR A LEGISLATIVE POLLING PROCESS BY THE SECRETARY OF STATE TO EXTEND A
6 GOVERNOR'S DECLARATION OF EMERGENCY OR DISASTER; EXPEDITING THE SPECIAL SESSION
7 POLLING PROCESS DURING A DISASTER OR EMERGENCY DECLARATION; LIMITING THE DURATION
8 OF A GOVERNOR'S DECLARATION OF DISASTER OR EMERGENCY; ELIMINATING A CONTINUING
9 DISASTER OR EMERGENCY BASED ON ACTIONS OF THE PRESIDENT OF THE UNITED STATES;
10 EXPANDING LEGISLATIVE AUTHORITY AND INVOLVEMENT DURING A DISASTER OR EMERGENCY;
11 PROVIDING FOR TERMINATION OF A STATUTORY APPROPRIATION DURING A DISASTER OR
12 EMERGENCY BY JOINT RESOLUTION; AMENDING SECTIONS 5-3-105, 5-3-106, 5-3-108, 10-3-102, 10-3-
13 103, 10-3-203, 10-3-302, AND 10-3-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

14

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16

17 **NEW SECTION. Section 1. Legislative poll -- continuation of state of emergency or disaster. (1)**

18 (a) When the legislature is not in session, the governor may, in writing, request the secretary of state to poll the
19 members of the legislature to determine if a majority of the members of the house of representatives and a
20 majority of the members of the senate are in favor of a legislative declaration to extend a state of emergency
21 under 10-3-302 or a state of disaster under 10-3-303.

22 (b) The legislature may extend a state of emergency or disaster for up to an additional 60 days by
23 using the polling provisions of this section. The governor may make additional requests to extend a state of
24 emergency or disaster, and the legislature may extend a state of emergency or disaster for up to an additional
25 60 days per request.

26 (2) The request must:

27 (a) state the conditions warranting the poll; and

28 (b) contain a legislative declaration to extend the governor's power.

1 (3) Within 3 calendar days after receiving a request, the secretary of state shall send a ballot to all
2 legislators by using any reasonable and reliable means, including electronic delivery, that contains:

3 (a) the legislative declaration subject to the vote; and

4 (b) the date by which legislators shall return the ballot, which may not be more than 7 calendar days
5 after the date the ballots were sent.

6 (4) A legislator may cast and return a vote by delivering the ballot in person, by mailing, or by sending
7 the ballot by facsimile transmission or electronic mail to the office of the secretary of state. A legislator may not
8 change the legislator's vote after the ballot is received by the secretary of state. The secretary of state shall tally
9 the votes within 1 working day after the date for return of the votes. If a majority of the members of each house
10 vote to approve an extension of a state of emergency or disaster, the state of emergency or disaster continues
11 based on the declaration that was sent with the ballot.

12

13 **Section 2.** Section 5-3-105, MCA, is amended to read:

14 **"5-3-105. Request by 10 members to poll legislators.** (1) When the legislature is not in session,
15 any 10 members or the legislative council may in writing request the secretary of state to poll the legislators to
16 determine if a majority are in favor of a special session.

17 (2) The request must state:

18 (a) the conditions warranting the call of a special session;

19 (b) the purposes of the special session; and

20 (c) the proposed convening date and time of the special session."

21

22 **Section 3.** Section 5-3-106, MCA, is amended to read:

23 **"5-3-106. Procedure for polling legislators.** (1) Within 5 days after receiving a request, the
24 secretary of state shall send to all legislators by certified mail a ballot that contains:

25 ~~(1)~~(a) the names of the legislators making the request;

26 ~~(2)~~(b) the reasons for calling the special session;

27 ~~(3)~~(c) the purposes of the special session;

28 ~~(4)~~(d) the requested convening date and time of the special session;

1 ~~(5)(e)~~ subject to subsection (2), the date by which legislators shall return the ballot, which may not be
2 more than 30 days after the date of the mailing of the ballots; and

3 ~~(6)(f)~~ a stamped return envelope.

4 (2) Within 2 calendar days after receiving a request to consider an existing state of emergency
5 declared under the authority of 10-3-302 or a state of disaster declared under the authority of 10-3-303, the
6 secretary of state shall send a ballot that complies with subsection (1) using any reasonable and reliable
7 means, including electronic delivery, and is not required to use certified mail. The date by which legislators shall
8 return the ballot specified in this subsection (2) may not be more than 7 calendar days after the date the ballots
9 were sent."

10

11 **Section 4.** Section 5-3-108, MCA, is amended to read:

12 "**5-3-108. Failure to approve special session -- ballots void.** ~~If~~(1) Subject to subsection (2), if a
13 majority of the legislators fail to approve the call for a special session within 30 days after the secretary of state
14 mails the ballots or notifies each legislator, all ballots are void and may not be used again.

15 (2) When the purpose of the special session is to consider an existing state of emergency declared
16 under the authority of 10-3-302 or a state of disaster declared under the authority of 10-3-303, if a majority of
17 the legislators fail to approve the call for a special session within 7 calendar days after the secretary of state
18 sends the ballots or notifies each legislator pursuant to 5-3-106(2), all ballots are void and may not be used
19 again.

20 ~~(3) The~~ If a poll is not approved under subsection (1) or (2), the entire process must be repeated to
21 call the legislature into special session."

22

23 **Section 5.** Section 10-3-102, MCA, is amended to read:

24 "**10-3-102. Limitations.** Parts 1 through 4 of this chapter may not be construed to give any state,
25 local, or interjurisdictional agency or public official authority to:

26 (1) interfere with the course or conduct of a labor dispute, except that actions otherwise authorized by
27 parts 1 through 4 of this chapter or other laws may be taken when necessary to forestall or mitigate imminent or
28 existing danger to public health or safety;

1 (2) interfere with dissemination of news or comment on public affairs. However, any communications
 2 facility or organization, including but not limited to radio and television stations, wire services, and newspapers,
 3 may be required to transmit or print public service messages furnishing information or instructions in connection
 4 with an emergency or disaster.

5 (3) affect the jurisdiction or responsibilities of police forces, firefighting forces, units of the armed
 6 forces of the United States, or any personnel of those entities when on active duty, but state, local, and
 7 interjurisdictional disaster and emergency plans must place reliance upon the forces available for performance
 8 of functions related to emergencies and disasters; ~~or~~

9 (4) limit, modify, or abridge the authority of the governor to proclaim martial law or exercise any other
 10 powers vested in the governor under the constitution, statutes, or common law of this state independent of or in
 11 conjunction with any provisions of parts 1 through 4 of this chapter; or

12 (5) limit, modify, or abridge the authority of the judicial branch or the legislature to exercise any
 13 powers vested in the judicial branch or the legislature under the constitution, statutes, or common law of this
 14 state independent of or in conjunction with any provisions of parts 1 through 4 of this chapter."

15

16 **Section 6.** Section 10-3-103, MCA, is amended to read:

17 **"10-3-103. Definitions.** As used in parts 1 through 4 of this chapter, the following definitions apply:

18 (1) "All-hazard incident management assistance team" means a team that includes any combination
 19 of personnel representing local, state, or tribal entities that has been established by the state emergency
 20 response commission provided for in 10-3-1204 for the purpose of local incident management intended to
 21 mitigate the impacts of an incident prior to a disaster or emergency declaration.

22 (2) "Civil defense" means the nuclear preparedness functions and responsibilities of disaster and
 23 emergency services.

24 (3) "Department" means the department of military affairs.

25 (4) "Disaster" means the occurrence ~~or imminent threat~~ of widespread or severe damage, injury, or
 26 loss of life or property resulting from any natural or artificial cause, including tornadoes, windstorms,
 27 snowstorms, wind-driven water, high water, floods, wave action, earthquakes, landslides, mudslides, volcanic
 28 action, fires, explosions, air or water contamination requiring emergency action to avert danger or damage,

1 blight, droughts, infestations, riots, sabotage, hostile military or paramilitary action, disruption of state services,
2 accidents involving radiation byproducts or other hazardous materials, outbreak of disease, bioterrorism, or
3 incidents involving weapons of mass destruction.

4 (5) "Disaster and emergency services" means the preparation for and the carrying out of disaster and
5 emergency functions and responsibilities, other than those for which military forces or other state or federal
6 agencies are primarily responsible, to mitigate, prepare for, respond to, and recover from injury and damage
7 resulting from emergencies or disasters.

8 (6) "Disaster medicine" means the provision of patient care by a health care provider during a disaster
9 or emergency when the number of patients exceeds the capacity of normal medical resources, facilities, and
10 personnel. Disaster medicine may include implementing patient care guidelines that depart from recognized
11 nondisaster triage and standard treatment patient care guidelines determining the order of evacuation and
12 treatment of persons needing care.

13 (7) "Division" means the division of disaster and emergency services of the department.

14 (8) "Emergency" means the imminent threat of a disaster causing immediate peril to life or property
15 that timely action can avert or minimize.

16 (9) (a) "Incident" means an event or occurrence, caused by either an individual or by natural
17 phenomena, requiring action by disaster and emergency services personnel to prevent or minimize loss of life
18 or damage to property or natural resources. The term includes the imminent threat of an emergency.

19 (b) The term does not include a state of emergency or disaster declared by the governor pursuant to
20 10-3-302 or 10-3-303.

21 (10) "Political subdivision" means any county, city, town, or other legally constituted unit of local
22 government in this state.

23 (11) "Principal executive officer" means the mayor, presiding officer of the county commissioners, or
24 other chief executive officer of a political subdivision.

25 (12) "Temporary housing" means unoccupied habitable dwellings, suitable rental housing, mobile
26 homes, or other readily fabricated dwellings.

27 (13) "Tribal government" means the government of a federally recognized Indian tribe within the state
28 of Montana.

1 (14) "Volunteer professional" means an individual with an active, unrestricted license to practice a
2 profession under the provisions of Title 37, Title 50, or the laws of another state."

3

4 **Section 7.** Section 10-3-203, MCA, is amended to read:

5 **"10-3-203. Acceptance of services, gifts, grants, and loans.** (1) Whenever the federal government
6 or any agency or officer of the federal government offers to the state, or through the state to any political
7 subdivision of the state, services, equipment, supplies, materials, or funds by way of gift, grant, reimbursement
8 of mutual aid, or loan for purposes of emergency or disaster services, the state, acting through the governor, or
9 the political subdivision, acting through its executive officer or governing body, may accept the offer. Upon the
10 acceptance, the governor of the state or the executive officer or governing body of the political subdivision may
11 authorize any officer of the state or of the political subdivision to receive the services, equipment, supplies,
12 materials, or funds on behalf of the state or political subdivision and subject to the terms of the offer and the
13 rules, if any, of the agency making the offer.

14 (2) ~~The~~ Subject to subsection (3), the funds, items, and services set forth in subsection (1) are
15 statutorily appropriated, as provided in 17-7-502, to the governor for the purposes set forth in subsection (1) or
16 to the department of natural resources and conservation for fire suppression purposes or costs.

17 (3) The statutory appropriation provided for in this section continues until termination by the
18 legislature through a joint resolution in a regular or special session."

19

20 **Section 8.** Section 10-3-302, MCA, is amended to read:

21 **"10-3-302. Declaration of emergency -- effect and termination.** (1) A state of emergency may be
22 declared by the governor when the governor determines that an emergency as defined in 10-3-103 exists.

23 (2) An executive order or proclamation of a state of emergency activates the emergency response
24 and disaster preparation aspects of the state disaster and emergency plan and program applicable to the
25 political subdivision or area and is authority for the deployment and use of any forces to which the plans apply
26 and for the distribution and use of any supplies, equipment, and materials and facilities assembled, stockpiled,
27 or arranged to be made available pursuant to parts 1 through 4 of this chapter or any other provision of law
28 pertaining to disasters and disaster-related emergencies. An executive order or proclamation may authorize the

1 practice of disaster medicine. The provisions of 10-3-110 do not apply to the state of emergency unless the
2 order or proclamation includes a provision authorizing the practice of disaster medicine.

3 (3) A state of emergency may not continue for longer than ~~30~~ 60 days ~~unless continuing conditions of~~
4 ~~the state of emergency exist, which must be determined by a declaration of an emergency by the president of~~
5 ~~the United States or by a declaration of the legislature by joint resolution of continuing conditions of the state of~~
6 ~~emergency and may not be declared again by the governor for the same emergency~~ UNLESS CONTINUING
7 CONDITIONS OF THE STATE OF EMERGENCY EXIST, WHICH MUST BE DETERMINED BY A DECLARATION OF THE
8 LEGISLATURE BY JOINT RESOLUTION OR BY A POLL OF THE MEMBERS OF THE LEGISLATURE AS PROVIDED IN [SECTION 1]
9 OF CONTINUING CONDITIONS OF THE STATE OF EMERGENCY. THE GOVERNOR MAY NOT ISSUE ANOTHER STATE OF
10 EMERGENCY IF THE LEGISLATURE TERMINATED A STATE OF EMERGENCY BASED ON THE SAME OR SUBSTANTIALLY
11 SIMILAR FACTS AND CIRCUMSTANCES."
12

13 **Section 9.** Section 10-3-303, MCA, is amended to read:

14 **"10-3-303. Declaration of disaster -- effect and termination.** (1) (A) A state of disaster may be
15 declared by the governor when the governor determines that a disaster has occurred, without regard to whether
16 a state of emergency was previously declared. No later than 2 calendar days after declaring a state of disaster,
17 the governor shall provide a written explanation of what conditions justified the declaration of a state of disaster
18 to the legislative council provided for in 5-11-101. ~~The~~ SUBJECT TO SUBSECTION (1)(B), THE legislative council
19 shall determine whether a special session poll of the legislature should be requested as provided in 5-3-105. If
20 the legislative council requests a special session poll, it must have a joint resolution prepared for introduction
21 prior to the start of the special session regarding the state of disaster.

22 (B) (i) THE HIGHEST RANKING OFFICERS OF THE MAJORITY PARTY OF THE HOUSE AND THE MAJORITY PARTY
23 OF THE SENATE THAT ARE NOT MEMBERS OF THE LEGISLATIVE COUNCIL ARE EX OFFICIO VOTING MEMBERS FOR THE
24 SOLE PURPOSE OF BREAKING A TIE VOTE ON A QUESTION BEFORE A COMMITTEE INVOLVING A REQUEST FOR A SPECIAL
25 SESSION POLL. THE RANKING ORDER FOR THE:

26 (ii) HOUSE IS SPEAKER PRO TEMPORE, MAJORITY LEADER, AND MAJORITY WHIP; AND

27 (iii) SENATE IS PRESIDENT PRO TEMPORE, MAJORITY LEADER, AND MAJORITY WHIP.

28 (2) An executive order or proclamation of a state of disaster activates the disaster response and

1 recovery aspects of the state disaster and emergency plan and program applicable to the political subdivision
 2 or area and is authority for the deployment and use of any forces to which the plans apply and for the
 3 distribution and use of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged
 4 to be made available pursuant to parts 1 through 4 of this chapter or any other provision of law pertaining to
 5 disaster and disaster-related emergencies. The executive order or proclamation may authorize the practice of
 6 disaster medicine. The provisions of 10-3-110 do not apply to the state of disaster unless the order or
 7 proclamation includes a provision authorizing the practice of disaster medicine.

8 (3) A state of disaster ~~may not continue for longer than 45~~ terminates after 60 days unless continuing
 9 conditions of the state of disaster exist, which must be determined ~~by a declaration of a major disaster by the~~
 10 ~~president of the United States or by the declaration of the legislature by joint resolution~~ OR BY A POLL OF THE
 11 MEMBERS OF THE LEGISLATURE AS PROVIDED IN [SECTION 1] of continuing conditions of the state of disaster.

12 (4) The governor shall terminate a state of emergency or disaster when:

13 (a) the emergency or disaster has passed;

14 (b) the emergency or disaster has been dealt with to the extent that emergency or disaster conditions
 15 no longer exist; or

16 (c) at any time the legislature terminates the state of emergency or disaster by joint resolution. The
 17 governor may not declare another state of emergency or disaster for the same emergency or disaster if the
 18 legislature terminates either declaration. However, after termination of the state of emergency or disaster,
 19 disaster and emergency services required as a result of the emergency or disaster may continue.

20 (5) The legislature may, by joint resolution in a regular or special session:

21 (a) terminate a state of emergency or disaster as provided in subsection (4)(c);

22 (b) extend a state of disaster;

23 (c) provide conditions or limits on the governor's actions taken pursuant to 10-3-104; and

24 (d) approve or disapprove the continuation of any executive order, proclamation, or regulation that
 25 was enacted based on a state of emergency or disaster."

26
 27 **NEW SECTION. Section 10. {standard} Severability.** If a part of [this act] is invalid, all valid parts
 28 that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its

1 applications, the part remains in effect in all valid applications that are severable from the invalid applications.

2

3 NEW SECTION. Section 11. Codification instruction. [Section 1] is intended to be codified as an
4 integral part of Title 10, chapter 3, part 3, and the provisions of Title 10, chapter 3, part 3, apply to [section 1].

5

6 NEW SECTION. Section 12. Effective date. [This act] is effective on passage and approval.

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