

1 HOUSE BILL NO. 230

2 INTRODUCED BY M. REGIER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING EMERGENCY AND DISASTER LAWS;
5 LIMITING THE LENGTH OF TIME FOR MARTIAL RULE, A DECLARED EMERGENCY, OR A DECLARED
6 DISASTER WITHOUT LEGISLATIVE APPROVAL; PROVIDING FOR AN EXPEDITED LEGISLATIVE POLL
7 TO AFFIRM, EXTEND, REVISE, OR TERMINATE THE GOVERNOR'S EMERGENCY POWERS; PROVIDING
8 FOR RELIGIOUS FREEDOM AND PREVENTING THE QUARANTINE OF HEALTHY INDIVIDUALS DURING
9 AN EMERGENCY OR DISASTER; AMENDING SECTIONS 10-1-106, 10-3-101, 10-3-102, 10-3-103, 10-3-104,
10 10-3-303, AND 10-3-1210, MCA; REPEALING SECTION 10-3-302, MCA; AND PROVIDING AN IMMEDIATE
11 EFFECTIVE DATE."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14
15 NEW SECTION. **Section 1. Statement of purpose -- legislative poll -- funding -- continuation of**
16 **state of emergency or disaster.** (1) In order to prevent an overly broad delegation of legislative powers to the
17 executive branch and to ensure continuity of government during a period of emergency as provided in Article III,
18 section 2, of the Montana constitution, the legislature retains the power to affirm, extend, revise, or terminate
19 the governor's power and responsibilities in parts 1 through 4 of this chapter while providing a means to provide
20 for a prompt and timely oversight through the expedited polling process.

21 (2) When the legislature is not in session, the governor, president of the senate, speaker of the
22 house, or any 15 members may, in writing, request the secretary of state to poll the members of the legislature
23 to determine if a majority of the members of the house of representatives and a majority of the members of the
24 senate are in favor of a legislative declaration affirming, extending, revising, or terminating a proclamation of
25 martial rule under 10-1-106 or a state of emergency or disaster under 10-3-303.

26 (3) The request must:

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

28 (b) provide a legislative declaration to affirm, extend, revise, or terminate the governor's power.

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

4 (a) the names of the legislators making the request;

5 (b) the legislative declaration subject to the vote; and

6 (c) the date by which legislators shall return the ballot, which may not be more than 10 calendar days
7 after the date the ballots were sent.

8 (5) The speaker of the house or the president of the senate, or both, may propose amendments to a
9 declaration provided in the poll. The amendments must be sent by the secretary of state using the polling
10 process provided in this section.

11 (6) A legislator may cast and return a vote by delivering the ballot in person, by mailing, or by sending
12 the ballot by facsimile transmission or electronic mail to the office of the secretary of state. A legislator may not
13 change the legislator's vote after the ballot is received by the secretary of state. The secretary of state shall tally
14 the votes within 1 working day after the date for return of the votes. If a majority of the members in each house
15 vote to approve the legislative declaration, then the governor is bound by its terms and conditions.

16 (7) A ballot that is not returned by the deadline established by the secretary of state is considered a
17 vote against the declaration.

18

19 **Section 2.** Section 10-1-106, MCA, is amended to read:

20 **"10-1-106. Proclamation of martial rule.** ~~(1) When~~ Subject to subsections (2) and (3), when the
21 militia is employed in aid of civil authority, the governor may by proclamation declare any part of a county or
22 municipality in which troops are serving to be subject to martial rule.

23 (2) The governor shall confer with the president of the senate and the speaker of the house on a
24 continual basis throughout the duration of a proclamation. If the president or the speaker disagrees with the
25 actions of the governor, either one may request a poll of the legislature pursuant to [section 1].

26 (3) A proclamation of martial rule is void after 21 days unless a majority of the members in each
27 house vote to approve the proclamation through a poll of the legislature as provided in [section 1] or through
28 joint resolution in a regular or special session. A ballot that is not returned by the deadline established by the

1 secretary of state is considered a vote to discontinue martial rule."

2

3 **Section 3.** Section 10-3-101, MCA, is amended to read:

4 **"10-3-101. Declaration of policy.** Because of the existing and increasing possibility of the occurrence
5 of disasters or emergencies of unprecedented size and destructiveness resulting from enemy attack, sabotage,
6 or other hostile action and natural disasters and in order to provide for prompt and timely reaction to an
7 emergency or disaster, to ensure that preparation of this state will be adequate to deal with disasters or
8 emergencies, and generally to provide for the common defense and to protect the public peace, health, and
9 safety and to preserve the lives and property of the people of this state to the fullest extent practicable, it is
10 declared to be necessary to:

11 (1) authorize the creation of local or interjurisdictional organizations for disaster and emergency
12 services in the political subdivisions of this state;

13 (2) reduce vulnerability of people and communities of this state to damage, injury, and loss of life and
14 property resulting from natural or human-caused disasters;

15 (3) provide a setting conducive to the rapid and orderly start of restoration and rehabilitation of
16 persons and property affected by disasters;

17 (4) clarify and strengthen the roles of the governor, the legislature, state agencies, local governments,
18 and tribal governments in prevention of, preparation for, response to, and recovery from emergencies and
19 disasters;

20 (5) authorize and provide for cooperation in disaster prevention, preparedness, response, and
21 recovery;

22 (6) authorize and provide for coordination of activities relating to disaster prevention, preparedness,
23 mitigation, response, and recovery by agencies and officers of this state and similar state-local, interstate,
24 federal-state, and foreign activities in which the state, its political subdivisions, and tribal governments may
25 participate;

26 (7) provide an emergency and disaster management system embodying all aspects of emergency or
27 disaster prevention, preparedness, response, and recovery;

28 (8) assist in prevention of disasters caused or aggravated by inadequate planning for public and

1 private facilities and land use;

2 (9) supplement, without in any way limiting, authority conferred by previous statutes of this state and
3 increase the capability of the state, local, and interjurisdictional disaster and emergency services agencies to
4 perform disaster and emergency services; and

5 (10) authorize the payment of extraordinary costs and the temporary hiring, with statutorily
6 appropriated funds under 10-3-312, of professional and technical personnel to meet the state's responsibilities
7 in providing assistance in the response to, recovery from, and mitigation of disasters in state, tribal government,
8 or federal emergency or disaster declarations."

9

10 **Section 4.** Section 10-3-102, MCA, is amended to read:

11 "**10-3-102. Limitations.** Parts 1 through 4 of this chapter may not be construed to give any state,
12 local, or interjurisdictional agency or public official authority to:

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

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

20 (3) interfere with or otherwise limit, modify, or abridge a person's physical attendance at or operation
21 of a religious facility, church, synagogue, or other place of worship;

22 (4) order physical separation and confinement of a healthy individual or groups of healthy individuals
23 that do not show signs or symptoms of a communicable disease or that do not have a confirmed case of a
24 communicable disease from one another to prevent or limit the transmission of the communicable disease;

25 ~~(3)(5)~~ affect the jurisdiction or responsibilities of police forces, firefighting forces, units of the armed
26 forces of the United States, or any personnel of those entities when on active duty, but state, local, and
27 interjurisdictional disaster and emergency plans must place reliance upon the forces available for performance
28 of functions related to emergencies and disasters; ~~or~~

1 ~~(4)~~(6) limit, modify, or abridge the authority of the governor to proclaim martial law or exercise any
 2 other powers vested in the governor under the constitution, statutes, or common law of this state independent
 3 of or in conjunction with any provisions of parts 1 through 4 of this chapter; or

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

7

8 **Section 5.** Section 10-3-103, MCA, is amended to read:

9 **"10-3-103. Definitions.** As used in parts 1 through 4 of this chapter, the following definitions apply:

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

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

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

17 (4) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or
 18 loss of life or property resulting from any natural or artificial cause, including tornadoes, windstorms,
 19 snowstorms, wind-driven water, high water, floods, wave action, earthquakes, landslides, mudslides, volcanic
 20 action, fires, explosions, air or water contamination requiring emergency action to avert danger or damage,
 21 blight, droughts, infestations, riots, sabotage, hostile military or paramilitary action, disruption of state services,
 22 accidents involving radiation byproducts or other hazardous materials, outbreak of disease, bioterrorism, or
 23 incidents involving weapons of mass destruction.

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

28 (6) "Disaster medicine" means the provision of patient care by a health care provider during a disaster

1 or emergency when the number of patients exceeds the capacity of normal medical resources, facilities, and
 2 personnel. Disaster medicine may include implementing patient care guidelines that depart from recognized
 3 nondisaster triage and standard treatment patient care guidelines determining the order of evacuation and
 4 treatment of persons needing care.

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

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

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

11 (b) The term does not include a state of emergency or disaster declared by the governor pursuant to
 12 ~~10-3-302~~ or 10-3-303.

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

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

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

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

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

23

24 **Section 6.** Section 10-3-104, MCA, is amended to read:

25 **"10-3-104. General authority of governor.** (1) ~~The~~ Subject to legislative oversight, the governor is
 26 responsible for carrying out parts 1 through 4 of this chapter.

27 (2) In addition to any other powers conferred upon the governor by law, the governor may:

28 (a) suspend the provisions of any regulatory statute prescribing the procedures for conduct of state

1 business or orders or rules of any state agency if the strict compliance with the provisions of any statute, order,
2 or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster;

3 (b) direct and compel the evacuation of all or part of the population from an emergency or disaster
4 area within the state if the governor considers this action necessary for the preservation of life or other disaster
5 mitigation, response, or recovery;

6 (c) control ingress and egress to and from an incident or emergency or disaster area, the movement
7 of persons within the area, and the occupancy of premises within the area.

8 (3) Under this section, the governor may issue executive orders, proclamations, and regulations and
9 amend and rescind them. All executive orders or proclamations declaring or terminating a state of emergency
10 or disaster must indicate the nature of the emergency or disaster, the area threatened, and the conditions that
11 have brought about the declaration or that make possible termination of the state of emergency or disaster."
12

13 **Section 7.** Section 10-3-303, MCA, is amended to read:

14 **"10-3-303. Declaration of emergency or disaster -- effect and termination.** (1) A state of
15 emergency may be declared by the governor when the governor determines that an emergency as defined in
16 10-3-103 exists. A state of disaster may be declared by the governor when the governor determines that a
17 disaster, as defined in 10-3-103, has occurred. The governor may not declare another state of emergency or
18 disaster based on the same or substantially similar facts and circumstances without legislative approval.

19 (2) (a) An executive order or proclamation of a state of emergency activates the emergency
20 response and disaster preparation aspects of the state disaster and emergency plan.

21 (b) An executive order or proclamation of a state of disaster activates the disaster response and
22 recovery aspects of the state disaster and emergency plan.

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

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

3 (3) A state of emergency or disaster may not continue for longer than ~~45~~30 days unless continuing
 4 conditions of the state of emergency or disaster exist, which must be determined ~~by a declaration of a major~~
 5 ~~disaster by the president of the United States through a poll of the legislature as provided in [section 1]~~ or by
 6 the declaration of the legislature by joint resolution of continuing conditions of the state of emergency or
 7 disaster.

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

9 (a) the emergency or disaster has passed;

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

12 (c) at any time the legislature terminates the state of emergency or disaster by joint resolution.

13 However, after termination of the state of emergency or disaster, disaster and emergency services required as
 14 a result of the emergency or disaster may continue."
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16 **Section 8.** Section 10-3-1210, MCA, is amended to read:

17 **"10-3-1210. Controlling provisions for state of emergency -- liability of responsible persons.** In
 18 the event that a state of emergency is declared by proper authority pursuant to ~~40-3-302~~ 10-3-303, as the result
 19 of an incident, the provisions of 10-3-303 govern."
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21 NEW SECTION. Section 9. Repealer. The following section of the Montana Code Annotated is
 22 repealed:

23 10-3-302. Declaration of emergency -- effect and termination.
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25 NEW SECTION. Section 10. Severability. If a part of [this act] is invalid, all valid parts that are
 26 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
 27 the part remains in effect in all valid applications that are severable from the invalid applications.
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28

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

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

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