

HOUSE BILL NO. 230

INTRODUCED BY M. REGIER, J. CARLSON, J. GILLETTE, C. HINKLE, J. HINKLE, M. HOPKINS, L. JONES,
S. KERNS, C. KNUDSEN, R. KNUDSEN, B. LER, R. MARSHALL, B. MITCHELL, J. READ, A. REGIER, D.
SKEES, J. TREBAS, S. VINTON, M. BLASDEL, K. BOGNER, B. BROWN, J. ELLSWORTH, G. HERTZ, S.
HINEBAUCH, B. KEENAN, T. MANZELLA, T. MCGILLVRAY, R. OSMUNDSON, K. REGIER, C. SMITH

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING EMERGENCY AND DISASTER LAWS;
LIMITING THE LENGTH OF TIME FOR MARTIAL RULE, ~~A DECLARED EMERGENCY, OR A DECLARED~~
~~DISASTER~~ WITHOUT LEGISLATIVE APPROVAL; PROVIDING FOR AN EXPEDITED LEGISLATIVE POLL
BY THE SECRETARY OF STATE TO AFFIRM, EXTEND, REVISE, OR TERMINATE THE A GOVERNOR'S
EMERGENCY POWERS DECLARATION OF EMERGENCY OR DISASTER; EXPEDITING THE SPECIAL
SESSION POLLING PROCESS DURING A DISASTER OR EMERGENCY DECLARATION; PROVIDING FOR
RELIGIOUS FREEDOM ~~AND PREVENTING THE QUARANTINE OF HEALTHY INDIVIDUALS DURING AN~~
EMERGENCY OR DISASTER; AMENDING SECTIONS 5-3-106, 5-3-108, 10-1-106, 10-3-101, 10-3-102, 10-3-
103, 10-3-104, 10-3-303, AND 10-3-1210, MCA; REPEALING SECTION 10-3-302, MCA; AND PROVIDING AN
IMMEDIATE EFFECTIVE DATE."

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

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

~~(2) When the legislature is not in session, the governor, president of the senate, speaker of the~~
~~house, or any 15 members may, in writing, request the secretary of state to poll the members of the legislature~~
to determine if a majority of the members of the house of representatives and a majority of the members of the

1 senate are in favor of a legislative declaration affirming, ~~extending, revising, or terminating a proclamation of~~
 2 ~~martial rule under 10-1-106 or~~ TO EXTEND a state of emergency or disaster under 10-3-303 OR APPROVING A
 3 PROCLAMATION OF MARTIAL RULE UNDER 10-1-106.

4 (B) THE LEGISLATURE MAY EXTEND A STATE OF EMERGENCY OR DISASTER FOR UP TO AN ADDITIONAL 45 DAYS
 5 BY USING THE POLLING PROVISIONS OF THIS SECTION. THE GOVERNOR MAY MAKE ADDITIONAL REQUESTS TO EXTEND A
 6 STATE OF EMERGENCY OR DISASTER, AND THE LEGISLATURE MAY EXTEND A STATE OF EMERGENCY OR DISASTER FOR UP
 7 TO AN ADDITIONAL 45 DAYS PER REQUEST.

8 ~~(3)~~(2) The request must:

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

10 (b) ~~provide~~ CONTAIN a legislative declaration to ~~affirm, extend, revise, or terminate~~ EXTEND the
 11 governor's power.

12 ~~(4)~~(3) Within 3 calendar days after receiving a request ~~or a proposed amendment to a request from~~
 13 ~~the speaker of the house or the president of the senate,~~ the secretary of state shall send a ballot to all
 14 legislators by using any reasonable and reliable means, including electronic delivery, that contains:

15 (a) ~~the names of the legislators making the request;~~

16 (b) ~~the legislative declaration subject to the vote; and~~

17 ~~(c)~~(B) the date by which legislators shall return the ballot, which may not be more than ~~40~~ 7 calendar
 18 days after the date the ballots were sent.

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

22 ~~(6)~~(4) A legislator may cast and return a vote by delivering the ballot in person, by mailing, or by
 23 sending the ballot by facsimile transmission or electronic mail to the office of the secretary of state. A legislator
 24 may not change the legislator's vote after the ballot is received by the secretary of state. The secretary of state
 25 shall tally the votes within 1 working day after the date for return of the votes. If a majority of the members in
 26 each house vote to approve ~~the legislative declaration, then the governor is bound by its terms and conditions~~
 27 AN EXTENSION OF A STATE OF EMERGENCY OR DISASTER, THE STATE OF EMERGENCY OR DISASTER CONTINUES BASED
 28 ON THE DECLARATION THAT WAS SENT WITH THE BALLOT.

1 (5) A ballot that is not returned by the deadline established by the secretary of state is considered a
2 vote against the declaration.

3

4 **SECTION 2. SECTION 5-3-106, MCA, IS AMENDED TO READ:**

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

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

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

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

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

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

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

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

19

20 **SECTION 3. SECTION 5-3-108, MCA, IS AMENDED TO READ:**

21 **"5-3-108. Failure to approve special session -- ballots void. # (1)** Subject to subsection (2), if a
22 majority of the legislators fail to approve the call for a special session within 30 days after the secretary of state
23 mails the ballots or notifies each legislator, all ballots are void and may not be used again.

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

28 (3) The If a poll is not approved under subsection (1) or (2), the entire process must be repeated to

1 call the legislature into special session."
2

3 **Section 4.** Section 10-1-106, MCA, is amended to read:

4 **"10-1-106. Proclamation of martial rule.** ~~(1) When Subject to subsections (2) and (3), when the~~
5 militia is employed in aid of civil authority, the governor may by proclamation declare any part of a county or
6 municipality in which troops are serving to be subject to martial rule.

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

10 ~~(3) A proclamation of martial rule is void after 21 days unless a majority of the members in each~~
11 ~~house vote to approve the proclamation through a poll of the legislature as provided in [section 1] or through~~
12 ~~joint resolution in a regular or special session. A ballot that is not returned by the deadline established by the~~
13 ~~secretary of state is considered a vote to discontinue martial rule."~~

14

15 **Section 5.** Section 10-3-101, MCA, is amended to read:

16 **"10-3-101. Declaration of policy.** Because of the existing and increasing possibility of the occurrence
17 of disasters or emergencies of unprecedented size and destructiveness resulting from enemy attack, sabotage,
18 or other hostile action and natural disasters and in order to provide for prompt and timely reaction to an
19 emergency or disaster, to ensure that preparation of this state will be adequate to deal with disasters or
20 emergencies, and generally to provide for the common defense and to protect the public peace, health, and
21 safety and to preserve the lives and property of the people of this state to the fullest extent practicable, it is
22 declared to be necessary to:

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

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

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

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

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

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

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

12 (8) assist in prevention of disasters caused or aggravated by inadequate planning for public and
13 private facilities and land use;

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

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

21

22 **Section 6.** Section 10-3-102, MCA, is amended to read:

23 **"10-3-102. Limitations.** Parts 1 through 4 of this chapter may not be construed to give any state,
24 local, or interjurisdictional agency or public official authority to:

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

28 (2) interfere with dissemination of news or comment on public affairs. However, any communications

1 facility or organization, including but not limited to radio and television stations, wire services, and newspapers,
 2 may be required to transmit or print public service messages furnishing information or instructions in connection
 3 with an emergency or disaster.

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

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

9 ~~(3)(5)~~ (4) affect the jurisdiction or responsibilities of police forces, firefighting forces, units of the
 10 armed forces of the United States, or any personnel of those entities when on active duty, but state, local, and
 11 interjurisdictional disaster and emergency plans must place reliance upon the forces available for performance
 12 of functions related to emergencies and disasters; ~~or~~

13 ~~(4)(6)~~ (5) limit, modify, or abridge the authority of the governor to proclaim martial law or exercise any
 14 other powers vested in the governor under the constitution, statutes, or common law of this state independent
 15 of or in conjunction with any provisions of parts 1 through 4 of this chapter; or

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

19

20 **Section 7.** Section 10-3-103, MCA, is amended to read:

21 **"10-3-103. Definitions.** As used in parts 1 through 4 of this chapter, the following definitions apply:

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

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

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

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

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

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

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

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

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

23 (b) The term does not include a state of emergency or disaster declared by the governor pursuant to
24 ~~10-3-302~~ or 10-3-303.

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

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

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

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

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

7

8 **Section 8.** Section 10-3-104, MCA, is amended to read:

9 **"10-3-104. General authority of governor.** (1) ~~The~~ THE LEGISLATURE FINDS THAT THE GOVERNOR HAS
10 BROAD AUTHORITY TO PROCLAIM A STATE OF EMERGENCY OR DISASTER IN THE STATE AND TO EXERCISE EMERGENCY
11 POWERS DURING THE EMERGENCY. THE LEGISLATURE INTENDS TO ALLOW THE GOVERNOR TO IMMEDIATELY RESPOND
12 DURING A PROCLAIMED STATE OF EMERGENCY OR DISASTER, INCLUDING THROUGH THE ISSUANCE OF EXECUTIVE
13 ORDERS, PROCLAMATIONS, AND ORDERS NECESSARY TO CARRY OUT THE PURPOSE OF THIS CHAPTER, AND THE ABILITY
14 TO AMEND OR RESCIND THEM. THESE EXECUTIVE ORDERS, PROCLAMATIONS, AND REGULATIONS HAVE THE FORCE OF
15 LAW. Subject to legislative oversight, the governor is responsible for carrying out parts 1 through 4 of this
16 chapter.

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

18 (a) suspend the provisions of any regulatory statute prescribing the procedures for conduct of state
19 business or orders or rules of any state agency if the strict compliance with the provisions of any statute, order,
20 or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster;

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

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

26 (3) Under this section, the governor may issue executive orders, proclamations, and regulations and
27 amend and rescind them. All executive orders or proclamations declaring or terminating a state of emergency
28 or disaster must indicate the nature of the emergency or disaster, the area threatened, and the conditions that

1 have brought about the declaration or that make possible termination of the state of emergency or disaster."

2

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

4 **"10-3-303. Declaration of emergency or disaster -- effect and termination.** (1) A state of
 5 emergency may be declared by the governor when the governor determines that an emergency as defined in
 6 10-3-103 exists. A state of disaster may be declared by the governor when the governor determines that a
 7 disaster, as defined in 10-3-103, has occurred. The governor may not declare another state of emergency or
 8 disaster based on the same or substantially similar facts and circumstances without legislative approval.

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

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

13 (c) Both the disaster preparation aspects and disaster response and recovery aspects of the plans in
 14 subsections (2)(a) and (2)(b) are the and program programs applicable to the political subdivision or area and is
 15 are authority for the deployment and use of any forces to which the plans apply and for the distribution and use
 16 of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made
 17 available pursuant to parts 1 through 4 of this chapter or any other provision of law pertaining to disaster and
 18 disaster-related emergencies. The An executive order or proclamation may authorize the practice of disaster
 19 medicine. The provisions of 10-3-110 do not apply to the state of emergency or disaster unless the order or
 20 proclamation includes a provision authorizing the practice of disaster medicine.

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

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

27 (a) the emergency or disaster has passed;

28 (b) the emergency or disaster has been dealt with to the extent that emergency or disaster conditions

1 no longer exist; or

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

3 However, after termination of the state of emergency or disaster, disaster and emergency services required as
4 a result of the emergency or disaster may continue.

5 (5) THE LEGISLATURE MAY, BY JOINT RESOLUTION IN A REGULAR OR SPECIAL SESSION:

6 (A) TERMINATE A STATE OF EMERGENCY OR DISASTER AS PROVIDED IN SUBSECTION (4)(C);

7 (B) EXTEND A STATE OF DISASTER;

8 (C) PROVIDE CONDITIONS OR LIMITS ON THE GOVERNOR'S ACTIONS TAKEN PURSUANT TO 10-3-104; AND

9 (D) APPROVE OR DISAPPROVE THE CONTINUATION OF ANY EXECUTIVE ORDER, PROCLAMATION, OR

10 REGULATION THAT WAS ENACTED BASED ON A STATE OF EMERGENCY OR DISASTER."

11

12 **Section 10.** Section 10-3-1210, MCA, is amended to read:

13 **"10-3-1210. Controlling provisions for state of emergency -- liability of responsible persons.** In
14 the event that a state of emergency is declared by proper authority pursuant to ~~40-3-302~~ 10-3-303, as the result
15 of an incident, the provisions of 10-3-303 govern."

16

17 NEW SECTION. Section 11. Repealer. The following section of the Montana Code Annotated is
18 repealed:

19 10-3-302. Declaration of emergency -- effect and termination.

20

21 NEW SECTION. Section 12. Severability. If a part of [this act] is invalid, all valid parts that are
22 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
23 the part remains in effect in all valid applications that are severable from the invalid applications.

24

25 NEW SECTION. Section 13. Codification instruction. [Section 1] is intended to be codified as an
26 integral part of Title 10, chapter 3, part 1, and the provisions of Title 10, chapter 3, part 1, apply to [section 1].

27

28 NEW SECTION. Section 14. Effective date. [This act] is effective on passage and approval.

1

- END -