

SB 5909 - H AMD TO SGOV COMM AMD (H-2848.1/22) **1330**
By Representative Walsh

1 Beginning on page 1, line 3, strike all material through "RCW."
2 on page 7, line 5 and insert the following:

3 "NEW SECTION. **Sec. 1.** The state Constitution declares that all
4 political power is inherent in the people, and governments derive
5 their just powers from the consent of the governed, and are
6 established to protect and maintain individual rights. The
7 Constitution further declares that no person shall be deprived of
8 life, liberty, or property, without due process of law, and the right
9 of petition and of the people peaceably to assemble for the common
10 good shall never be abridged. Therefore, the legislature intends to
11 protect the rights of the people by limiting and constraining the
12 governor's power and scope of authority in the event of an emergency
13 by ensuring proclamations of emergency are subject to judicial review
14 and requiring legislative action to extend any proclamation.

15 **Sec. 2.** RCW 43.06.210 and 2013 c 21 s 1 are each amended to read
16 as follows:

17 (1) The proclamation of a state of emergency and other
18 proclamations or orders issued by the governor pursuant to RCW
19 43.06.010, and 43.06.200 through 43.06.270 as now or hereafter
20 amended shall be in writing and shall be signed by the governor and
21 shall then be filed with the secretary of state. A proclamation of a
22 state of emergency is effective upon the governor's signature.

23 (2) A proclamation of a state of emergency must identify the area
24 of the state in which the emergency exists. Such area may not exceed
25 a single county in any single proclamation. The governor may issue
26 multiple proclamations intended to address simultaneous emergencies
27 in multiple counties, even where those simultaneous emergencies arise
28 from the same facts constituting an emergency.

29 (3) A proclamation of a state of emergency must identify the
30 specific facts giving rise to the emergency in the area covered by
31 that proclamation and the specific facts under which order will be

1 determined to have been restored in the area affected. Facts giving
2 rise to an emergency may not include circumstances addressed in
3 existing statutes or regulations.

4 (4) The governor shall give as much public notice as practical
5 through the news media of the issuance of proclamations or orders
6 pursuant to RCW 43.06.010, and 43.06.200 through 43.06.270 as now or
7 hereafter amended.

8 (5) The state of emergency shall cease to exist (~~upon the~~) the
9 earlier of:

10 (a) The issuance of a proclamation of the governor declaring its
11 termination: PROVIDED, That the governor must terminate said state of
12 emergency proclamation when order has been restored in the area
13 affected; or

14 (b) Fourteen days after a proclamation of a state of emergency is
15 signed by the governor unless extended by the legislature through
16 concurrent resolution. If the legislature is not in session, the
17 state of emergency may be extended in writing by the leadership of
18 the senate and the house of representatives until the legislature can
19 extend the state of emergency by concurrent resolution. No individual
20 extension may exceed 14 days. The legislature may pass subsequent
21 resolutions of extension. For purposes of this section, "leadership
22 of the senate and the house of representatives" means the majority
23 and minority leaders of the senate and the speaker and the minority
24 leader of the house of representatives.

25 (6) Any person may seek judicial review in the superior court of
26 the county subject to an emergency proclamation to determine whether
27 the facts identified in a proclamation as constituting an emergency
28 constitute a circumstance addressed in existing law. Such judicial
29 determination constitutes a determination that the proclamation of
30 emergency is void.

31 **Sec. 3.** RCW 43.06.220 and 2019 c 472 s 2 are each amended to
32 read as follows:

33 (1) The governor after proclaiming a state of emergency and prior
34 to terminating such, may, in the area described by the proclamation
35 issue an order prohibiting:

36 (a) Any person being on the public streets, or in the public
37 parks, or at any other public place during the hours declared by the
38 governor to be a period of curfew;

1 (b) Any number of persons, as designated by the governor, from
2 assembling or gathering on the public streets, parks, or other open
3 areas of this state, either public or private;

4 (c) The manufacture, transfer, use, possession or transportation
5 of a molotov cocktail or any other device, instrument or object
6 designed to explode or produce uncontained combustion;

7 (d) The transporting, possessing or using of gasoline, kerosene,
8 or combustible, flammable, or explosive liquids or materials in a
9 glass or uncapped container of any kind except in connection with the
10 normal operation of motor vehicles, normal home use or legitimate
11 commercial use;

12 (e) The sale, purchase or dispensing of alcoholic beverages;

13 (f) The sale, purchase or dispensing of other commodities or
14 goods, as he or she reasonably believes should be prohibited to help
15 preserve and maintain life, health, property or the public peace;

16 (g) The use of certain streets, highways or public ways by the
17 public; and

18 (h) Such other activities as he or she reasonably believes
19 (~~should~~) must be prohibited to help preserve and maintain life,
20 health, property or the public peace.

21 (2) The governor after proclaiming a state of emergency and prior
22 to terminating such may, in the area described by the proclamation,
23 issue an order or orders concerning waiver or suspension of statutory
24 obligations or limitations in the following areas:

25 (a) Liability for participation in interlocal agreements;

26 (b) Inspection fees owed to the department of labor and
27 industries;

28 (c) Application of the family emergency assistance program;

29 (d) Regulations, tariffs, and notice requirements under the
30 jurisdiction of the utilities and transportation commission;

31 (e) Application of tax due dates and penalties relating to
32 collection of taxes;

33 (f) Permits for industrial, business, or medical uses of alcohol;
34 and

35 (g) Such other statutory and regulatory obligations or
36 limitations prescribing the procedures for conduct of state business,
37 or the orders, rules, or regulations of any state agency if strict
38 compliance with the provision of any statute, order, rule, or
39 regulation would in any way prevent, hinder, or delay necessary
40 action in coping with the emergency, unless (i) authority to waive or

1 suspend a specific statutory or regulatory obligation or limitation
2 has been expressly granted to another statewide elected official,
3 (ii) the waiver or suspension would conflict with federal
4 requirements that are a prescribed condition to the allocation of
5 federal funds to the state, or (iii) the waiver or suspension would
6 conflict with the rights, under the First Amendment, of freedom of
7 speech or of the people to peaceably assemble. The governor shall
8 give as much notice as practical to legislative leadership and
9 impacted local governments when issuing orders under this subsection
10 (2)(g).

11 ~~(3) ((In imposing the restrictions provided for by RCW 43.06.010,~~
12 ~~and 43.06.200 through 43.06.270, the governor may impose them for~~
13 ~~such times, upon such conditions, with such exceptions and in such~~
14 ~~areas of this state he or she from time to time deems necessary.))~~
15 Any order issued under subsections (1) and (2)(g) of this section
16 must be narrowly tailored, using the least restrictive means to
17 accomplish a compelling government interest to protect the public.

18 (4) No order or orders ~~((concerning waiver or suspension of~~
19 ~~statutory obligations or limitations))~~ under ~~((subsection (2) of))~~
20 this section may continue for longer than ~~((thirty))~~ 14 days unless
21 extended or modified by the legislature through concurrent
22 resolution. If the legislature is not in session, the ~~((waiver or~~
23 ~~suspension of statutory obligations or limitations))~~ order or orders
24 may be extended or modified in writing by the leadership of the
25 senate and the house of representatives for up to 30 days, until the
26 legislature can extend the waiver or suspension by concurrent
27 resolution. For purposes of this section, "leadership of the senate
28 and the house of representatives" means the majority and minority
29 leaders of the senate and the speaker and the minority leader of the
30 house of representatives.

31 (5) Any person willfully violating any provision of an order
32 issued by the governor under this section is guilty of a ~~((gross))~~
33 misdemeanor under RCW 9.92.030.

34 **Sec. 4.** RCW 4.12.020 and 2001 c 45 s 2 are each amended to read
35 as follows:

36 Actions for the following causes shall be tried in the county
37 where the cause, or some part thereof, arose:

38 (1) For the recovery of a penalty or forfeiture imposed by
39 statute;

1 (2) Against a public officer, or person specially appointed to
2 execute his or her duties, for an act done by him or her in virtue of
3 his or her office, or against a person who, by his or her command or
4 in his or her aid, shall do anything touching the duties of such
5 officer;

6 (3) For the recovery of damages for injuries to the person or for
7 injury to personal property, the plaintiff shall have the option of
8 suing either in the county in which the cause of action or some part
9 thereof arose, or in the county in which the defendant resides, or if
10 there be more than one defendant, where some one of the defendants
11 resides, at the time of the commencement of the action; and

12 (4) For judicial review of an emergency proclamation under RCW
13 43.06.210.

14 **Sec. 5.** RCW 34.05.350 and 2021 c 333 s 717 are each amended to
15 read as follows:

16 (1) If an agency for good cause finds:

17 (a) That immediate adoption, amendment, or repeal of a rule is
18 necessary for the preservation of the public health, safety, or
19 general welfare, and that observing the time requirements of notice
20 and opportunity to comment upon adoption of a permanent rule would be
21 contrary to the public interest;

22 (b) That state or federal law or federal rule or a federal
23 deadline for state receipt of federal funds requires immediate
24 adoption of a rule; or

25 (c) In order to implement the requirements or reductions in
26 appropriations enacted in any budget for fiscal year 2009, 2010,
27 2011, 2012, 2013, or in an omnibus transportation appropriations act
28 for the 2021-2023 biennium related to setting toll rates or ferry
29 fares, which necessitates the need for the immediate adoption,
30 amendment, or repeal of a rule, and that observing the time
31 requirements of notice and opportunity to comment upon adoption of a
32 permanent rule would be contrary to the fiscal needs or requirements
33 of the agency,

34 the agency may dispense with those requirements and adopt, amend, or
35 repeal the rule on an emergency basis. The agency's finding and a
36 concise statement of the reasons for its finding shall be
37 incorporated in the order for adoption of the emergency rule or
38 amendment filed with the office of the code reviser under RCW
39 34.05.380 and with the rules review committee.

1 (2) An emergency rule adopted under this section takes effect
2 upon filing with the code reviser, unless a later date is specified
3 in the order of adoption, and may not remain in effect for longer
4 than one hundred twenty days after filing. An emergency rule adopted
5 during a state of emergency proclaimed under RCW 43.06.210 may not
6 remain in effect for longer than 30 days after the state of emergency
7 ceases to exist. Identical or substantially similar emergency rules
8 may not be adopted in sequence unless conditions have changed or the
9 agency has filed notice of its intent to adopt the rule as a
10 permanent rule, and is actively undertaking the appropriate
11 procedures to adopt the rule as a permanent rule. This section does
12 not relieve any agency from compliance with any law requiring that
13 its permanent rules be approved by designated persons or bodies
14 before they become effective.

15 (3) Within seven days after the rule is adopted, any person may
16 petition the governor requesting the immediate repeal of a rule
17 adopted on an emergency basis by any department listed in RCW
18 43.17.010. Within seven days after submission of the petition, the
19 governor shall either deny the petition in writing, stating his or
20 her reasons for the denial, or order the immediate repeal of the
21 rule. In ruling on the petition, the governor shall consider only
22 whether the conditions in subsection (1) of this section were met
23 such that adoption of the rule on an emergency basis was necessary.
24 If the governor orders the repeal of the emergency rule, any sanction
25 imposed based on that rule is void. This subsection shall not be
26 construed to prohibit adoption of any rule as a permanent rule.

27 (4) No more than three days after an emergency rule is adopted
28 during a state of emergency proclaimed under RCW 43.06.210, the
29 agency shall provide an opportunity for oral comment to be received
30 by the agency in a rule-making hearing that follows RCW 34.05.325 (4)
31 and (5). The agency must provide notice of the hearing as described
32 in RCW 34.05.320(1).

33 **Sec. 6.** RCW 43.70.130 and 1990 c 132 s 2 are each amended to
34 read as follows:

35 (1) The secretary of health shall:

36 ~~((1))~~ (a) Exercise all the powers and perform all the duties
37 prescribed by law with respect to public health and vital statistics;

38 ~~((2))~~ (b) Investigate and study factors relating to the
39 preservation, promotion, and improvement of the health of the people,

1 the causes of morbidity and mortality, and the effects of the
2 environment and other conditions upon the public health, and report
3 the findings to the state board of health for such action as the
4 board determines is necessary;

5 ~~((3))~~ (c) Strictly enforce all laws for the protection of the
6 public health and the improvement of sanitary conditions in the
7 state, and all rules, regulations, and orders of the state board of
8 health;

9 ~~((4))~~ (d) Enforce the public health laws of the state and the
10 rules and regulations promulgated by the department or the board of
11 health in local matters, when in its opinion an emergency exists and
12 the local board of health has failed to act with sufficient
13 promptness or efficiency, or is unable for reasons beyond its control
14 to act, or when no local board has been established, and all expenses
15 so incurred shall be paid upon demand of the secretary of the
16 department of health by the local health department for which such
17 services are rendered, out of moneys accruing to the credit of the
18 municipality or the local health department in the current expense
19 fund of the county;

20 ~~((5))~~ (e) Investigate outbreaks and epidemics of disease that
21 may occur and advise local health officers as to measures to be taken
22 to prevent and control the same;

23 ~~((6))~~ (f) Exercise general supervision over the work of all
24 local health departments and establish uniform reporting systems by
25 local health officers to the state department of health;

26 ~~((7))~~ (g) Have the same authority as local health officers,
27 except that the secretary shall not exercise such authority unless
28 the local health officer ~~((fails or))~~ is unable to do so, or when in
29 ~~((a))~~ a proclaimed state of emergency the safety of the public
30 health demands it, or by agreement with the local health officer or
31 local board of health;

32 ~~((8))~~ (h) Cause to be made from time to time, personal health
33 and sanitation inspections at state owned or contracted institutions
34 and facilities to determine compliance with sanitary and health care
35 standards as adopted by the department, and require the governing
36 authorities thereof to take such action as will conserve the health
37 of all persons connected therewith, and report the findings to the
38 governor;

1 (~~(9)~~) (i) Review and approve plans for public water system
2 design, engineering, operation, maintenance, financing, and emergency
3 response, as required under state board of health rules;

4 (~~(10)~~) (j) Take such measures as the secretary deems necessary
5 in order to promote the public health, to establish or participate in
6 the establishment of health educational or training activities, and
7 to provide funds for and to authorize the attendance and
8 participation in such activities of employees of the state or local
9 health departments and other individuals engaged in programs related
10 to or part of the public health programs of the local health
11 departments or the state department of health. The secretary is also
12 authorized to accept any funds from the federal government or any
13 public or private agency made available for health education training
14 purposes and to conform with such requirements as are necessary in
15 order to receive such funds; and

16 (~~(11)~~) (k) Establish and maintain laboratory facilities and
17 services as are necessary to carry out the responsibilities of the
18 department.

19 (2) (a) Any emergency order or policy issued by the secretary in
20 response to a proclaimed state of emergency must identify the area of
21 the state in which the emergency exists. Such area may not exceed a
22 single county in any single proclamation. The secretary may issue
23 multiple proclamations intended to address simultaneous emergencies
24 in multiple counties, even where those simultaneous emergencies arise
25 from the same facts constituting an emergency.

26 (b) No order or policy issued under this subsection (2) may
27 continue for longer than 14 days unless extended or modified by the
28 legislature through concurrent resolution. If the legislature is not
29 in session, the order or policy may be extended or modified in
30 writing by the majority and minority leaders of the senate and the
31 speaker and the minority leader of the house of representatives for
32 up to 30 days, until the legislature can extend the order or policy
33 by concurrent resolution.

34 (c) Any order or policy issued under this subsection (2) must be
35 narrowly tailored, using the least restrictive means to accomplish a
36 compelling government interest to protect the public.

37 **Sec. 7.** RCW 70.05.070 and 2020 c 20 s 1066 are each amended to
38 read as follows:

1 (1) The local health officer, acting under the direction of the
2 local board of health or under direction of the administrative
3 officer appointed under RCW 70.05.040 or 70.05.035, if any, shall:

4 ~~((1))~~ (a) Enforce the public health statutes of the state,
5 rules of the state board of health and the secretary of health, and
6 all local health rules, regulations and ordinances within his or her
7 jurisdiction including imposition of penalties authorized under RCW
8 70A.125.030 and 70A.105.120, the confidentiality provisions in RCW
9 70.02.220 and rules adopted to implement those provisions, and filing
10 of actions authorized by RCW 43.70.190;

11 ~~((2))~~ (b) Take such action as is necessary to maintain health
12 and sanitation supervision over the territory within his or her
13 jurisdiction;

14 ~~((3))~~ (c) Control and prevent the spread of any dangerous,
15 contagious or infectious diseases that may occur within his or her
16 jurisdiction;

17 ~~((4))~~ (d) Inform the public as to the causes, nature, and
18 prevention of disease and disability and the preservation, promotion
19 and improvement of health within his or her jurisdiction;

20 ~~((5))~~ (e) Prevent, control or abate nuisances which are
21 detrimental to the public health;

22 ~~((6))~~ (f) Attend all conferences called by the secretary of
23 health or his or her authorized representative;

24 ~~((7))~~ (g) Collect such fees as are established by the state
25 board of health or the local board of health for the issuance or
26 renewal of licenses or permits or such other fees as may be
27 authorized by law or by the rules of the state board of health;

28 ~~((8))~~ (h) Inspect, as necessary, expansion or modification of
29 existing public water systems, and the construction of new public
30 water systems, to assure that the expansion, modification, or
31 construction conforms to system design and plans;

32 ~~((9))~~ (i) Take such measures as he or she deems necessary in
33 order to promote the public health, to participate in the
34 establishment of health educational or training activities, and to
35 authorize the attendance of employees of the local health department
36 or individuals engaged in community health programs related to or
37 part of the programs of the local health department.

38 (2) (a) Any emergency order issued by a local health officer in
39 response to a proclaimed state of emergency must be narrowly

1 tailored, using the least restrictive means to accomplish a
2 compelling government interest to protect the public.

3 (b) An order issued under this subsection (2) may not continue
4 for longer than 14 days unless extended or modified by the
5 legislature through concurrent resolution. If the legislature is not
6 in session, the order may be extended or modified in writing by the
7 majority and minority leaders of the senate and the speaker and the
8 minority leader of the house of representatives for up to 30 days,
9 until the legislature can extend the order by concurrent resolution.

10 NEW SECTION. Sec. 8. This act is necessary for the immediate
11 preservation of the public peace, health, or safety, or support of
12 the state government and its existing public institutions, and takes
13 effect immediately."

EFFECT: (1) Removes all provisions in the original bill.

(2) Requires that a State of Emergency (SOE) declaration identify the area of the state where the emergency exists, the facts giving rise to the emergency, and be issued on a county-by-county basis.

(3) Requires that a Governor order in response to a SOE be narrowly tailored using the least restrictive means to achieve a compelling governmental interest.

(4) Limits SOEs to 14 days duration, unless extended by the Legislature.

(5) Prohibits a SOE from being declared if the facts giving rise to it are addressed in existing statute or regulations, and authorizes a person to seek judicial review of that question.

(6) Limits agency rules adopted during a SOE to 30 days after the emergency is over.

(7) Implements requirements for and sets time limits on emergency orders and policies issued by the Secretary of Health or local health officers in response to a SOE.

(8) Modifies the penalty for willfully violating a Governor's order from a gross misdemeanor to a misdemeanor.

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