~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

February 2, 2021

**H. 3443**

Introduced by Reps. Lucas, Jordan, J.E. Johnson, McGarry, Fry, Taylor, B. Newton, Burns, Haddon, Pope, McCravy, Forrest, Yow, Elliott, B. Cox, Wooten, T. Moore, Caskey, McGinnis and Oremus

S. Printed 2/2/21--H.

Read the first time January 12, 2021.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3443) to amend Section 1‑3‑420, Code of Laws of South Carolina, 1976, relating to gubernatorial proclamations of emergency, so as to remove references to public health, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting clause and inserting:

/ SECTION 1. Section 1‑3‑420 of the 1976 Code is amended to read:

“Section 1‑3‑420. The Governor, when in his opinion the facts warrant, shall, by proclamation, declare that, because of unlawful assemblage, violence or threats of violence, ~~or a public health emergency, as defined in Section 44‑4‑130,~~ a danger exists to the person or property of any citizen and that the peace and tranquility of the State, or any political subdivision thereof, or any particular area of the State designated by him, is threatened, and because thereof an emergency, with reference to such threats and danger, exists.

The Governor, upon the issuance of a proclamation as provided for in this section, must immediately file the proclamation in the Office of the Secretary of State, which proclamation is effective upon issuance and remain in full force and effect until revoked by the Governor.”

SECTION 2. Section 25‑1‑440(a) of the 1976 Code is amended to read:

“(A) The Governor, when an emergency has been declared, as the elected Chief Executive of the State, is responsible for the safety, security, and welfare of the State and is empowered with the following additional authority to adequately discharge this responsibility:

(1) issue emergency proclamations and regulations and amend or rescind them. These proclamations and regulations have the force and effect of law as long as the emergency exists;

(2) declare a state of emergency for all or part of the State if he finds a disaster or a public health emergency, as defined in Section 44‑4‑130, has occurred, or that the threat thereof is imminent and extraordinary measures are considered necessary to cope with the existing or anticipated situation~~. A declared state of emergency shall not continue for a period of more than fifteen days without the consent of the General Assembly;~~:

(i) after the elapse of at least thirty days following the declaration of an emergency by the Governor, pursuant to this article, the President of the Senate and the Speaker of the House may convene their respective bodies for the purpose of considering such declaration;

(ii) the General Assembly by concurrent resolution, may terminate or consent to the terms of any declaration of emergency during this called session;

(iii) the General Assembly by joint resolution, may alter or amend the terms of any declaration of emergency during this called session;

(iv) should the General Assembly not act, the terms of the declaration shall continue until such time as the General Assembly does act;

(v) a Governor may not declare successive states of emergency that have the effect of reinstating, continuing, altering, or amending any declaration of emergency addressed by the General Assembly;

(vi) the Governor may not issue additional or successive states of emergency for the same underlying events without a substantial change of circumstance;

(3) suspend provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency;

(4) utilize all available resources of state government as reasonably necessary to cope with the emergency;

(5) transfer the direction, personnel, or functions of state departments, agencies, and commissions, or units thereof, for purposes of facilitating or performing emergency services as necessary or desirable;

(6) compel performance by elected and appointed state, county, and municipal officials and employees of the emergency duties and functions assigned them in the State Emergency Plan or by Executive Order;

(7) direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is considered necessary for the preservation of life or other emergency mitigation, response, or recovery; to prescribe routes, modes of transportation, and destination in connection with evacuation; and to control ingress and egress at an emergency area, the movement of persons within the area, and the occupancy of premises therein;

(8) within the limits of any applicable constitutional requirements and when a major disaster or emergency has been declared by the President to exist in this State:

(i) request and accept a grant by the federal government to fund financial assistance to individuals and families adversely affected by a major disaster, subject to terms and conditions as may be imposed upon the grant but only upon his determination that the financial assistance is essential to meet disaster‑related expenses or serious needs that may not be met otherwise from other means of assistance;

(ii) enter into an agreement with the federal government, through an officer or agency thereof, pledging the State to participate in the funding of the financial assistance authorized in subitem (i), under a ratio not to exceed twenty‑five percent of the assistance;

(iii) make financial grants to meet disaster‑related, necessary expenses or serious needs of individuals or families adversely affected by a major disaster which may not otherwise be adequately met from other means of assistance. No individual or family may receive grants aggregating more than ten thousand dollars with respect to any single major disaster subject to the limitations contained in subitem (ii). The ten thousand‑dollar limit annually must be adjusted to reflect changes in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor; and

(iv) promulgate necessary regulations for carrying out the purposes of this item;

(9) authorize, by executive order, a party to exceed the terms of a curfew if:

(i) the party is a business that sells emergency commodities, an employee of a business that sells emergency commodities, or a local official; and

(ii) exceeding the terms of the curfew is necessary to ensure emergency commodities are available to the public. As defined in this section, an emergency commodity means a commodity needed to sustain public health and well‑being as determined by a local authority. Nothing in this section may be construed to supersede the authority of the Governor under Section 25‑1‑440;

(10) by executive order, authorize operators of solid waste disposal facilities to extend operating hours to ensure the health, safety, and welfare of the general public.”

SECTION 3. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

CHRIS MURPHY for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**State Expenditure**

This bill removes a public health emergency from the list of reasons the Governor may declare a state of emergency. Additionally, this bill states that the terms of the declaration shall continue indefinitely until such time that the General Assembly acts. At least 30 days after the declaration of an emergency, the President of the House and the Speaker of the Senate may convene their respective bodies to consider the declaration. By concurrent resolution, the General Assembly may terminate, alter, amend, or consent to the terms of the declaration. The Governor may not declare successive states of emergency once the General Assembly has acted, nor may the Governor issue additional or successive states of emergency for the same underlying event without a substantial change of circumstance.

**House of Representatives and Senate.** This bill allows the President of the House and the Speaker of the Senate, at least 30 days after the declaration of an emergency, to convene their respective bodies to consider the declaration. By concurrent resolution, the General Assembly may terminate, alter, amend, or consent to the terms of the declaration. If the General Assembly convenes on a non-session day, each member will receive per diem of $35, subsistence of $198.09, and mileage of $0.56 per mile for each meeting. These expenses should be able to be managed within the budgets of the legislative bodies.

**Governor’s Office.** This bill removes a public health emergency from a list of reasons the Governor may declare a state of emergency and disallows the declaration by the Governor of successive states of emergency once the General Assembly has acted. Revenue and Fiscal Affairs anticipates this bill will have no expenditure impact on the Governor’s Office as declaring a state of emergency is within the Governor’s normal scope of responsibilities.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 1‑3‑420, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO GUBERNATORIAL PROCLAMATIONS OF EMERGENCY, SO AS TO REMOVE REFERENCES TO PUBLIC HEALTH EMERGENCIES; AND TO AMEND SECTION 25‑1‑440, RELATING TO POWERS AND DUTIES OF THE GOVERNOR DURING A DECLARED EMERGENCY, SO AS TO PROVIDE THAT AFTER THE ELAPSE OF AT LEAST THIRTY DAYS FOLLOWING THE DECLARATION OF AN EMERGENCY BY THE GOVERNOR, THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE MAY CONVENE THEIR RESPECTIVE BODIES FOR THE PURPOSE OF CONSIDERING SUCH DECLARATION, THAT THE GENERAL ASSEMBLY BY CONCURRENT RESOLUTION, MAY TERMINATE, ALTER, AMEND, OR CONSENT TO THE TERMS OF ANY DECLARATION OF EMERGENCY DURING THIS CALLED SESSION, THAT SHOULD THE GENERAL ASSEMBLY NOT ACT, THEN THE TERMS OF THE DECLARATION SHALL CONTINUE UNTIL SUCH TIME AS THE GENERAL ASSEMBLY DOES ACT, THAT A GOVERNOR MAY NOT DECLARE SUCCESSIVE STATES OF EMERGENCY THAT HAVE THE EFFECT OF REINSTATING, CONTINUING, ALTERING, OR AMENDING ANY DECLARATION OF EMERGENCY ADDRESSED BY THE GENERAL ASSEMBLY, AND THAT THE GOVERNOR MAY NOT ISSUE ADDITIONAL OR SUCCESSIVE STATES OF EMERGENCY FOR THE SAME UNDERLYING EVENTS WITHOUT A SUBSTANTIAL CHANGE OF CIRCUMSTANCE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 1‑3‑420 of the 1976 Code is amended to read:

“Section 1‑3‑420. The Governor, when in his opinion the facts warrant, shall, by proclamation, declare that, because of unlawful assemblage, violence or threats of violence, ~~or a public health emergency, as defined in Section 44‑4‑130,~~ a danger exists to the person or property of any citizen and that the peace and tranquility of the State, or any political subdivision thereof, or any particular area of the State designated by him, is threatened, and because thereof an emergency, with reference to such threats and danger, exists.

The Governor, upon the issuance of a proclamation as provided for in this section, must immediately file the proclamation in the Office of the Secretary of State, which proclamation is effective upon issuance and remain in full force and effect until revoked by the Governor.”

SECTION 2. Section 25‑1‑440(a) of the 1976 Code is amended to read:

“(a) The Governor, when an emergency has been declared, as the elected Chief Executive of the State, is responsible for the safety, security, and welfare of the State and is empowered with the following additional authority to adequately discharge this responsibility:

(1) issue emergency proclamations and regulations and amend or rescind them. These proclamations and regulations have the force and effect of law as long as the emergency exists;

(2)(i) declare a state of emergency for all or part of the State if he finds a disaster or a public health emergency, as defined in Section 44‑4‑130, has occurred, or that the threat thereof is imminent and extraordinary measures are considered necessary to cope with the existing or anticipated situation~~. A declared state of emergency shall not continue for a period of more than fifteen days without the consent of the General Assembly;~~:

(ii) after the elapse of at least thirty days following the declaration of an emergency by the Governor, pursuant to this article, the President of the Senate and the Speaker of the House may convene their respective bodies for the purpose of considering such declaration. The General Assembly by concurrent resolution, may terminate, alter, amend or consent to the terms of any declaration of emergency during this called session. Should the General Assembly not act, the terms of the declaration shall continue until such time as the General Assembly does act;

(iii) a Governor may not declare successive states of emergency that have the effect of reinstating, continuing, altering, or amending any declaration of emergency addressed by the General Assembly;

(iv) the Governor may not issue additional or successive states of emergency for the same underlying events without a substantial change of circumstance;

(3) suspend provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency;

(4) utilize all available resources of state government as reasonably necessary to cope with the emergency;

(5) transfer the direction, personnel, or functions of state departments, agencies, and commissions, or units thereof, for purposes of facilitating or performing emergency services as necessary or desirable;

(6) compel performance by elected and appointed state, county, and municipal officials and employees of the emergency duties and functions assigned them in the State Emergency Plan or by Executive Order;

(7) direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is considered necessary for the preservation of life or other emergency mitigation, response, or recovery; to prescribe routes, modes of transportation, and destination in connection with evacuation; and to control ingress and egress at an emergency area, the movement of persons within the area, and the occupancy of premises therein;

(8) within the limits of any applicable constitutional requirements and when a major disaster or emergency has been declared by the President to exist in this State:

(i) request and accept a grant by the federal government to fund financial assistance to individuals and families adversely affected by a major disaster, subject to terms and conditions as may be imposed upon the grant but only upon his determination that the financial assistance is essential to meet disaster‑related expenses or serious needs that may not be met otherwise from other means of assistance;

(ii) enter into an agreement with the federal government, through an officer or agency thereof, pledging the State to participate in the funding of the financial assistance authorized in subitem (i), under a ratio not to exceed twenty‑five percent of the assistance;

(iii) make financial grants to meet disaster‑related, necessary expenses or serious needs of individuals or families adversely affected by a major disaster which may not otherwise be adequately met from other means of assistance. No individual or family may receive grants aggregating more than ten thousand dollars with respect to any single major disaster subject to the limitations contained in subitem (ii). The ten thousand‑dollar limit annually must be adjusted to reflect changes in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor; and

(iv) promulgate necessary regulations for carrying out the purposes of this item;

(9) authorize, by executive order, a party to exceed the terms of a curfew if:

(i) the party is a business that sells emergency commodities, an employee of a business that sells emergency commodities, or a local official; and

(ii) exceeding the terms of the curfew is necessary to ensure emergency commodities are available to the public. As defined in this section, an emergency commodity means a commodity needed to sustain public health and well‑being as determined by a local authority. Nothing in this section may be construed to supersede the authority of the Governor under Section 25‑1‑440;

(10) by executive order, authorize operators of solid waste disposal facilities to extend operating hours to ensure the health, safety, and welfare of the general public.”

SECTION 3. This act takes effect upon approval by the Governor.

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