

HB 452 - AS INTRODUCED

2015 SESSION

15-0271
05/06

HOUSE BILL **452**

AN ACT repealing the governor's authority to declare a state of emergency.

SPONSORS: Rep. Itse, Rock 10; Rep. Hoell, Merr 23; Rep. Ingbretson, Graf 15; Rep. Hannon, Straf 25; Rep. D. McGuire, Merr 21; Rep. Seaworth, Merr 20; Rep. Seidel, Hills 28

COMMITTEE: Legislative Administration

ANALYSIS

This bill removes the governor's authority to declare a state of emergency and provides that only the legislature shall have the authority to declare a state of emergency.

Explanation: Matter added to current law appears in ***bold italics.***
 Matter removed from current law appears [~~in brackets and struck through.~~]
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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1 stricken or threatened area or areas within the state and to take such steps as are necessary for the
2 receipt and care of such evacuees.

3 (d) Subject to the provisions of the state constitution, to remove from office any public
4 officer having administrative responsibilities under RSA 21-P:34 through 21-P:48. Such removal
5 shall be upon charges after service upon such person of a copy of such charges and after giving him
6 or her an opportunity to be heard in his or her defense. Pending the preparation and disposition of
7 charges, the general court may suspend such person for a period not exceeding 30 days. A vacancy
8 resulting from removal or suspension pursuant to this section shall be filled by the general court
9 until it is filled as otherwise provided by law.

10 (e) To perform and exercise such other functions, powers, and duties as are necessary to
11 promote and secure the safety and protection of the civilian population.

12 (f) To declare an emergency temporary location or locations for the seat of state
13 government at such place or places within this state as the general court may deem advisable under
14 the circumstances and to take such action and issue such orders as may be necessary for an orderly
15 transaction of the affairs of state government to such emergency temporary location or locations.
16 Such emergency temporary location or locations shall remain the seat of government until the
17 legislature shall by law establish a new location or locations or until the state of emergency is
18 declared to be ended by the general court and the seat of government is returned to its normal
19 location.

20 2 Homeland Security and Emergency Management. Amend RSA 21-P:45 to read as follows:

21 21-P:45 Enforcement. It shall be the duty of every organization for emergency management
22 established under this subdivision and of the officers of such organization to execute and enforce
23 such orders, rules, and regulations as may be made by the ~~[governor under authority of this~~
24 ~~subdivision or RSA 4:45]~~ **general court under RSA 14:51.**

25 3 Public Health Emergency. Amend RSA 21-P:53, II to read as follows:

26 II. The commissioner may, without the approval of the governor's council or the legislative
27 fiscal committee, and notwithstanding the provisions of RSA ~~[4:45]~~ **14:51**, 9:13-d, and 9:19, and any
28 other law to the contrary, purchase and distribute anti-toxins, serums, vaccines, immunizing agents,
29 antibiotics, and other pharmaceutical agents that the commissioner deems to be in the interest of
30 public health.

31 4 Authority of Officers During State of Emergency. Amend the introductory paragraph of
32 RSA 106-I:2, I to read as follows:

33 I. For the duration of any state of emergency declared by the ~~[governor]~~ **general court**
34 because of a natural disaster, riot, or act of terrorism, notwithstanding any law to the contrary:

35 5 Nuclear Planning and Response Program. Amend RSA 107-B:6 to read as follows:

36 107-B:6 Authority in Radiological Emergency. In the event of a radiological emergency at a
37 nuclear electric generating facility where the operator is unable to control the situation as necessary

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1 to protect public health and safety, the ~~[governor]~~ **general court** shall regulate the facility under
2 RSA ~~[4:45-4:47]~~ **14:51**.

3 6 Communicable Diseases. Amend RSA 141-C:28 to read as follows:

4 141-C:28 No Conflict With Emergency Management Powers. Nothing in this chapter shall be
5 construed to limit or restrict the exercise of the ~~[governor's]~~ **general court's** emergency
6 management powers under RSA ~~[4:45-RSA 4:47]~~ **14:51**.

7 7 Oil Discharge or Spillage in Surface Water or Groundwater. Amend RSA 146-A:12 to read as
8 follows:

9 146-A:12 Emergency Proclamation; Governor's Powers. Whenever any disaster or catastrophe
10 exists or appears imminent arising from the discharge of oil, petroleum products or their by-
11 products, the ~~[governor]~~ **general court** shall by proclamation declare the fact and that an emergency
12 exists in any or all sections of the state. ~~[If the governor is temporarily absent from the state or is~~
13 ~~otherwise unavailable, the next person in the state who would act as governor if the office of~~
14 ~~governor were vacant shall, by proclamation, declare the fact and that an emergency exists in any or~~
15 ~~all sections of the state.]~~ A copy of such proclamation shall be filed with the secretary of state. **After**
16 **declaration of a state of emergency by the general court**, the governor shall have general
17 direction and control of the department of environmental services and shall be responsible for
18 carrying out the purposes of this chapter.

19 I. In performing his **or her** duties under this chapter, the governor is authorized and
20 directed to cooperate with all departments and agencies of the federal government, with the offices
21 and agencies of other states and foreign countries, and the political subdivisions thereof, and with
22 private agencies in all matters pertaining to a disaster or catastrophe.

23 II. In performing his **or her** duties under this chapter, the governor is further authorized
24 and empowered:

25 (a) To make, amend and rescind the necessary orders, rules and regulations to carry out
26 this chapter within the limits of the authority conferred upon him and not inconsistent with the
27 rules, regulations and directives of the President of the United States or of any federal department or
28 agency having specifically authorized emergency functions.

29 (b) To delegate any authority vested in ~~[him]~~ **the governor** under this chapter and to
30 provide for the subdelegation of any such authority.

31 III. Whenever the governor is satisfied that an emergency no longer exists, ~~[he shall]~~ **the**
32 **governor shall request that the general court** terminate the proclamation by another
33 proclamation affecting the sections of the state covered by the original proclamation, or any part
34 thereof. Said proclamation shall be published in such newspapers of the state and posted in such
35 places as the ~~[governor, or the person acting in that capacity,]~~ **general court** deems appropriate.

36 IV. The provisions of RSA ~~[4:45]~~ **14:51**, RSA 4:46, and RSA 21-P:34 through RSA 21-P:48 as
37 they shall apply to the taking of private property, compensation and use, mutual aid, immunity, aid

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1 in emergency, enforcement and compensation shall apply to disasters or catastrophes proclaimed by
2 the ~~[governor]~~ **general court** under this chapter.

3 8 Leave Authorized in State of Emergency. Amend RSA 275:66, I to read as follows:

4 I. When ~~[the governor or]~~ the general court declares a state of emergency under RSA ~~[4:45]~~
5 **14:51**, a member of a fire department, rescue squad, or emergency medical services agency who is
6 called into service of the state or a political subdivision shall have the right to take leave without pay
7 from his or her place of employment to respond to the emergency. No employer shall require an
8 employee to use or exhaust his or her vacation or other accrued leave for the period of emergency
9 service. The employee may choose to take vacation or other accrued leave for the period of
10 emergency service.

11 9 Emergency Powers of the Judicial Branch. Amend RSA 490:60-a, I to read as follows:

12 I. The chief justice of the supreme court or, if the chief justice is unavailable, the most senior
13 associate justice available, shall have the power, upon the request of the governor, attorney general,
14 or the chief justice of the superior court or the administrative judge of the district or probate court or
15 the judicial branch family division, or on his or her own motion, in the event of a declared state of
16 emergency, as defined in RSA ~~[4:45]~~ **14:51**, to enter such order or orders as may be appropriate to
17 suspend, toll, or otherwise grant relief for a period of up to 21 calendar days from time deadlines
18 imposed by otherwise applicable statutes and rules of procedure regarding speedy trial procedures in
19 criminal and juvenile court proceedings, all civil and equitable court process and court proceedings,
20 and all appellate court time limitations. Such order or orders may be renewed by a majority of the
21 justices of the supreme court as justice may require; provided, however, that any such renewal with
22 respect to applicable statutes shall be effective only upon the concurrence of the governor.

23 10 Petition to Protect Water Supplies. Amend RSA 485:23, II to read as follows:

24 II. Whenever any board of water commissioners, local board of health, or other owner of a
25 public water supply has reason to believe that a public water supply is in danger of being
26 contaminated or is otherwise threatened and that an emergency condition exists such that a petition
27 pursuant to paragraph I to the department and the adoption of rules would not adequately protect
28 the water supply, the board or owner may petition the ~~[governor]~~ **general court** to declare a state of
29 emergency for the public water supply. At the request of the ~~[governor]~~ **general court**, the
30 department shall consult with the owner of the water supply and make a recommendation as to
31 emergency protections that may be necessary. If the ~~[governor]~~ **general court** declares a state of
32 emergency for a public water supply, those additional protections that the ~~[governor]~~ **general court**
33 deems necessary shall be effective immediately and for the duration of the emergency. The
34 declaration of a state of emergency for a public water supply shall not exceed 6 months. The
35 ~~[governor]~~ **general court** may renew the declaration one time for up to 6 additional months upon
36 further request by the original petitioner. At such time as any of the emergency protections are to
37 become permanent, the department shall initiate rulemaking in accordance with RSA 485:24. Any

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1 protections in the [~~governor's~~] **general court's** declaration shall be enforced in the same manner as
2 rules adopted pursuant to RSA 485:24 or RSA 485:25 with violations of the protections subject to
3 RSA 485:4 and RSA 485:58.

4 11 Agents Assisting Certain State Departments; Liability Limited. Amend RSA 508:17-a, II(c)
5 to read as follows:

6 (c) "Public health or public safety incident" means a specific incident that the
7 commissioner of the department of health and human services or the commissioner of the
8 department of safety has declared in writing poses a threat to the health and safety of the public and
9 demands a response that will require the assistance of agents from outside the state system, but
10 which does not rise to the level that would necessitate the declaration of a state of emergency by the
11 [~~governor under RSA 4:45~~] **general court under RSA 14:51**.

12 12 Sabotage Prevention. Amend RSA 649:12 to read as follows:

13 649:12 When in Force. This chapter, and all orders made under it shall be in force until May 15,
14 1945, and thereafter whenever the [~~governor and council~~] **general court** shall by proclamation
15 declare a state of emergency to exist; provided, any violation hereof, committed while this chapter is
16 in force, may be prosecuted and punished thereafter, whether or not this chapter is in force at the
17 time of such prosecution and punishment.

18 13 Repeal. RSA 4:45, relative to a declaration of emergency by the governor, is repealed.

19 14 Effective Date. This act shall take effect January 1, 2016.