



AN ACT GENERALLY REVISING EMERGENCY AND DISASTER LAWS; LIMITING THE LENGTH OF TIME FOR MARTIAL RULE WITHOUT LEGISLATIVE APPROVAL; PROVIDING FOR AN EXPEDITED LEGISLATIVE POLL BY THE SECRETARY OF STATE TO EXTEND A GOVERNOR'S DECLARATION OF EMERGENCY OR DISASTER; EXPEDITING THE SPECIAL SESSION POLLING PROCESS DURING A DISASTER OR EMERGENCY DECLARATION; PROVIDING FOR A CONTINUED STATE OF EMERGENCY OR DISASTER FOR A DROUGHT, EARTHQUAKE, FLOOD, OR WILDFIRE; PROHIBITING DISCRIMINATORY ACTION BY THE GOVERNMENT; PROVIDING FOR CIVIL RELIEF; PROHIBITING A GOVERNOR FROM SUSPENDING A STATUTE THAT AFFECTS THE EXERCISE OF AN INDIVIDUAL'S CONSTITUTIONAL RIGHTS; LIMITING THE ABILITY TO INTERFERE WITH THE COLLECTION OF RENT OR WITH ACTIONS FOR TERMINATION AND POSSESSION; PROVIDING FOR RELIGIOUS FREEDOM DURING AN EMERGENCY OR DISASTER; PROVIDING DEFINITIONS; 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 EFFECTIVE DATE.

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

**Section 1. Legislative poll -- continuation of state of emergency or disaster.** (1) (a) When the legislature is not in session, the governor 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 senate are in favor of a legislative declaration affirming to extend a state of emergency or disaster under 10-3-303 or approving a proclamation of martial rule under 10-1-106.

(b) The legislature may extend a state of emergency or disaster for up to an additional 45 days by using the polling provisions of this section. The governor may make additional requests to extend a state of emergency or disaster, and the legislature may extend a state of emergency or disaster for up to an additional

45 days per request.

(2) The request must:

- (a) state the conditions warranting the poll; and
- (b) contain a legislative declaration to extend the governor's power.

(3) Within 3 calendar days after receiving a request, the secretary of state shall send a ballot to all legislators by using any reasonable and reliable means, including electronic delivery, that contains:

- (a) the legislative declaration subject to the vote; and
- (b) the date by which legislators shall return the ballot, which may not be more than 7 calendar days

after the date the ballots were sent.

(4) A legislator may cast and return a vote by delivering the ballot in person, by mailing, or by sending the ballot by facsimile transmission or electronic mail to the office of the secretary of state. A legislator may not change the legislator's vote after the ballot is received by the secretary of state. The secretary of state shall tally the votes within 1 working day after the date for return of the votes. If a majority of the members in each house vote to approve an extension of a state of emergency or disaster, the state of emergency or disaster continues based on the declaration that was sent with the ballot.

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

**Section 2. Claim or defense against state action -- remedies -- limitations.** (1) A religious organization may assert a violation of 10-3-102 or [section 3] as a claim against a state, local, or interjurisdictional agency or public official in any judicial or administrative proceeding or as a defense in any judicial proceeding.

(2) In any civil action based on this section, the court may grant:

- (a) declaratory relief;
- (b) injunctive relief;
- (c) compensatory damages for pecuniary and nonpecuniary losses;
- (d) reasonable attorney fees and costs; and
- (e) any other appropriate relief.

(3) A religious organization may not bring an action to assert a claim under this section later than 2 years after the date that it knew or could have known that a discriminatory action or other violation occurred.

**Section 3. Protections against government discrimination.** An agency or a political subdivision of the state may not take discriminatory action against a religious organization wholly or partially on the basis that the organization is religious, operates or seeks to operate during an emergency or disaster, or engages in the exercise of religion as protected under the first amendment to the United States constitution. Discriminatory action means to:

(1) alter in any way the tax treatment of a religious organization, or cause any tax, fine, civil or criminal penalty, payment, damages award, or injunction to be assessed against a religious organization;

(2) deny, delay, revoke, or otherwise make unavailable an exemption from taxation for a religious organization; or

(3) withhold, reduce, exclude, terminate, materially alter the terms or conditions of, or otherwise make unavailable or deny any grant, contract, scholarship, license, accreditation, certification, entitlement, or other benefit under any government program.

**Section 4.** Section 5-3-106, MCA, is amended to read:

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

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

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

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

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

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

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

(2) Within 2 calendar days after receiving a request to consider an existing state of emergency or disaster declared under the authority of 10-3-303, the secretary of state shall send a ballot that complies with

subsection (1) using any reasonable and reliable means, including electronic delivery, and is not required to use certified mail. The date by which legislators shall return the ballot specified in this subsection (2) may not be more than 7 calendar days after the date the ballots were sent."

**Section 5.** Section 5-3-108, MCA, is amended to read:

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

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

(3) ~~The~~ If a poll is not approved under subsection (1) or (2), the entire process must be repeated to call the legislature into special session."

**Section 6.** Section 10-1-106, MCA, is amended to read:

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

(2) The governor shall confer with the president of the senate and the speaker of the house on a continual basis throughout the duration of a proclamation.

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

**Section 7.** Section 10-3-101, MCA, is amended to read:

**"10-3-101. Declaration of policy.** Because of the existing and increasing possibility of the occurrence

of disasters or emergencies of unprecedented size and destructiveness resulting from enemy attack, sabotage, or other hostile action and natural disasters and in order to provide for prompt and timely reaction to an emergency or disaster, to ensure that preparation of this state will be adequate to deal with disasters or emergencies, and generally to provide for the common defense and to protect the public peace, health, and safety and to preserve the lives and property of the people of this state to the fullest extent practicable, it is declared to be necessary to:

- (1) authorize the creation of local or interjurisdictional organizations for disaster and emergency services in the political subdivisions of this state;
- (2) reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or human-caused disasters;
- (3) provide a setting conducive to the rapid and orderly start of restoration and rehabilitation of persons and property affected by disasters;
- (4) clarify and strengthen the roles of the governor, the legislature, state agencies, local governments, and tribal governments in prevention of, preparation for, response to, and recovery from emergencies and disasters;
- (5) authorize and provide for cooperation in disaster prevention, preparedness, response, and recovery;
- (6) authorize and provide for coordination of activities relating to disaster prevention, preparedness, mitigation, response, and recovery by agencies and officers of this state and similar state-local, interstate, federal-state, and foreign activities in which the state, its political subdivisions, and tribal governments may participate;
- (7) provide an emergency and disaster management system embodying all aspects of emergency or disaster prevention, preparedness, response, and recovery;
- (8) assist in prevention of disasters caused or aggravated by inadequate planning for public and private facilities and land use;
- (9) supplement, without in any way limiting, authority conferred by previous statutes of this state and increase the capability of the state, local, and interjurisdictional disaster and emergency services agencies to perform disaster and emergency services; ~~and~~

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

(11) ensure the continuity of religious services as essential services to the welfare of the people of the state."

**Section 8.** Section 10-3-102, MCA, is amended to read:

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

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

~~(2)~~<sup>(1)</sup> interfere with dissemination of news or comment on public affairs. However, any communications facility or organization, including but not limited to radio and television stations, wire services, and newspapers, may be required to transmit or print public service messages furnishing information or instructions in connection with an emergency or disaster.

(2) interfere with or otherwise limit, modify, or abridge a person's physical attendance at a religious service or operation of a religious organization;

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

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

(5) limit, modify, or abridge the authority of the judicial branch or the legislature to exercise any powers vested in the judicial branch or the legislature under the constitution, statutes, or common law of this

state independent of or in conjunction with any provisions of parts 1 through 4 of this chapter; or

(6) except in areas evacuated or subject to control of ingress pursuant to 10-3-104, and for no more than 60 days without legislative approval, interfere with the collection of rent or with actions for termination and possession pursuant to Title 70, chapter 24, part 4, chapter 27, or chapter 33."

**Section 9.** Section 10-3-103, MCA, is amended to read:

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

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

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

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

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

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

(6) "Disaster medicine" means the provision of patient care by a health care provider during a disaster or emergency when the number of patients exceeds the capacity of normal medical resources, facilities, and personnel. Disaster medicine may include implementing patient care guidelines that depart from recognized

nondisaster triage and standard treatment patient care guidelines determining the order of evacuation and treatment of persons needing care.

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

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

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

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

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

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

(12) "Religious organization" means:

(a) a house of worship, including but not limited to churches, mosques, shrines, synagogues, and temples; or

(b) a religious group, association, educational institution, ministry, order, society, or similar entity, regardless of whether it is integrated or affiliated with a house of worship.

(13) "Religious services" means a meeting, gathering, or assembly of multiple persons organized by a religious organization for the purpose of worship, teaching, training, providing educational services, conducting religious rituals, or other activities that involve the exercise of religion.

~~(12)~~(14) "Temporary housing" means unoccupied habitable dwellings, suitable rental housing, mobile homes, or other readily fabricated dwellings.

~~(13)~~(15) "Tribal government" means the government of a federally recognized Indian tribe within the state of Montana.

~~(14)~~(16) "Volunteer professional" means an individual with an active, unrestricted license to practice a profession under the provisions of Title 37, Title 50, or the laws of another state."



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

**"10-3-104. General authority of governor.** (1) ~~The~~ The legislature finds that the governor has broad authority to proclaim a state of emergency or disaster in the state and to exercise emergency powers during the emergency. The legislature intends to allow the governor to immediately respond during a proclaimed state of emergency or disaster, including through the issuance of executive orders, proclamations, and orders necessary to carry out the purpose of this chapter, and the ability to amend or rescind them. These executive orders, proclamations, and regulations have the force of law. Subject to legislative oversight, the governor is responsible for carrying out parts 1 through 4 of this chapter.

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

(a) except as provided in subsection (4), suspend the provisions of ~~any~~ a regulatory statute prescribing the procedures for conduct of state business or orders or rules of any state agency if the strict compliance with the provisions of any statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster;

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

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

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

(4) The governor may not suspend a statute that affects the exercise of an individual's constitutional rights under the United States constitution or the Montana constitution, including 13-19-104(3), even if the statute is otherwise considered a regulatory statute prescribing the procedures for conduct of state business."

**Section 11.** Section 10-3-303, MCA, is amended to read:

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

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

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

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

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

(b) A state of emergency or disaster may continue for a drought, an earthquake, flooding, or a wildfire as long as continuing conditions of the state of emergency or disaster exist unless terminated by the declaration of the legislature by joint resolution of termination of the state of emergency or disaster.

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

(a) the emergency or disaster has passed;

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

no longer exist; or

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

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

(5) The legislature may, by joint resolution in a regular or special session:

(a) terminate a state of emergency or disaster as provided in subsection (4)(c);

(b) extend a state of disaster;

(c) provide conditions or limits on the governor's actions taken pursuant to 10-3-104; and

(d) approve or disapprove the continuation of any executive order, proclamation, or regulation that was enacted based on a state of emergency or disaster."

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

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

**Section 13. Repealer.** The following section of the Montana Code Annotated is repealed:

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

**Section 14. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 15. Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 10, chapter 3, part 1, and the provisions of Title 10, chapter 3, part 1, apply to [sections 1 through 3].

**Section 16. Coordination instruction.** (1) If both Senate Bill No. 172 and [this act] are passed and

approved, then Senate Bill No. 172 is void.

(2) If both Senate Bill No. 173 and [this act] are passed and approved, then Senate Bill No. 173 is void.

(3) If both Senate Bill No. 185 and [this act] are passed and approved, then Senate Bill No. 185 is void.

**Section 17. Effective date.** [This act] is effective July 1, 2021.

- END -

I hereby certify that the within bill,  
HB 230, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2021.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2021.

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

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