CONCEPTS LEGISLATURES CAN IMPLEMENT TO REIN IN EXECUTIVE AUTHORITY DURING STATES OF EMERGENCY

1. Resolutions to immediately nullify an emergency proclamation by resolution.

2. Resolutions to nullify an emergency proclamation after a certain length of time by resolution. (Fourteen days, 30 days, etc.) Both #1 and #2 can be done with either the approval of both houses of a legislature, or just one house.

3. Pass a resolution that requires the governor to call a special session to approve of an emergency proclamation if the legislature is out of session.

4. Permit an interim committee or group of legislative leaders to extend or reject emergency proclamations.

5. Impose specific limits to executive authority during an emergency proclamation. (i.e., restrict the governor from unilaterally closing businesses, closing houses of worship, or shutting down freedom of the press and the right to bear arms.)

** These guidelines are meant to plug into, revise, amend existing state statutes. Additionally, these are not necessarily mutually exclusive. Please consult either Heartland Government Relations staff or your state legislature’s legal counsel/Parliamentarian to determine applicability to your state.

** Be mindful of Governors using end-arounds such as redefining emergency, or shifting goals (Flatten the Curve to Slow the Spread), or renewing orders under the authority of a state health agency.

STATES THAT HAVE LIMITED EXECUTIVE AUTHORITY THIS LEGISLATIVE SESSION

Arkansas: [SB 2](https://www.arkleg.state.ark.us/BillInfo/BillText.aspx?BillNumber=SB2). Provides that the release of any funds from the COVID-19 Rainy Day Fund require prior approval of the Speaker of the House of Representatives, majority party leader of the House, minority party leader of the House; the President Pro Tempore of the Senate; the majority party leader of the Senate and the minority party leader of the Senate.
Colorado: HB 1426. Concerns legislative engagement in the management of state operations; sets forth requirements for the receipt of information from the Executive Branch during a declared disaster emergency; provides for reporting on expenditures from the Disaster Emergency Fund and the reporting of federal funds.

Hawaii: SR 166. Requests all executive branch departments and attached agencies to inform the Senate and House of Representatives when implementing their plans and procedures relating to the coronavirus pandemic.

Kansas: HCR 5025. Ratifies and provides the continuation of the specified date for state of disaster emergency declaration. States that the Legislative Coordinating Council shall have the authority to review and revoke all orders and proclamations issued by the governor pursuant to K.S.A. 2019 Supp. 48-925(b).

HB 2016. Concerns the governmental response to the coronavirus pandemic in the state. Prohibits the governor from proclaiming any new COVID-19 related state of disaster emergency in 2020 without approval of at least six legislative members of the State Finance Committee. Also amends the Kansas Emergency Management Act relating to the powers of the governor during a disaster emergency.

Michigan: HR 250. Authorizes the Speaker of the House to commence legal action on behalf of the House of Representatives challenging the governor's authority and actions during the Coronavirus pandemic.

SR 114. Authorizes the Senate Majority Leader to commence legal action on behalf of the Senate challenging the governor's authority and actions during the coronavirus pandemic.

Mississippi: S.B. 2772. Provides that the Department of Finance and Administration shall not escalate the budget of any agency, department or institution of the state for fiscal year 2021 for the expenditure of any funds received by the state under the federal Coronavirus Aid, Relief, and Economic Security Act (P.L. 116-136), unless the escalation is specifically authorized in an appropriation bill for the agency, department or institution.

Oklahoma: HCR 1001. Provides that the approval of Executive Order No. 2020-12 shall be contingent upon the governor providing prior notice to the speaker of the House of Representatives and the president pro tempore of the State Senate of amendments to the order, specific statutes and regulations that will be suspended, and further actions the Governor deems necessary to carry out the order. Relates to the House and Senate approving the governor's actions.

Pennsylvania: HB 2643. Amends the Administrative Code, provides for access to public records during a disaster declaration, prohibits the governor from directing a Commonwealth agency to ignore requests for records or suspend the agency’s process to answer a request for records during a disaster declaration.

Utah: HB 3005. Requires the governor to provide notice to certain legislative branch officers before issuing a declaration of a state of emergency or making other executive orders or actions in response to an epidemic or pandemic disease, provides an exemption to the notice requirement if there is an imminent threat of serious
injury, loss of life, or harm to property, prohibits the Governor from suspending the enforcement or application of certain provisions.

**Washington: SB 5260.** Revises provisions relating to powers to waive statutory obligations or limitations during a state of emergency in order to cope with the emergency. Provides that the governor shall give as much notice as practical to legislative leadership and impacted local governments when issuing orders. Provides that no orders concerning waiver or suspension of statutory obligations or limitations may continue for longer than thirty days unless extended by the legislature through concurrent resolution.

### LEGISLATURES AND EMERGENCY DECLARATIONS: STATUTES

**The Really Good:**

**District of Columbia:** Emergency executive orders issued by the Mayor shall be effective for no more than 15 calendar days from the day it is signed by the Mayor. Such orders may be extended for up to an additional 15-day period, only upon request by the Mayor of, and the adoption of, an emergency act by the Council of the District of Columbia. Section c-1 of this statute grants a unique 90-day extension specific to the COVID-19 public health emergency. DC ST § 7-2306.

**Kansas:** No state of disaster emergency may continue for longer than 15 days unless ratified by concurrent resolution of the legislature, with the single exception that upon specific application by the governor to the state finance council and an affirmative vote of a majority of the legislative members thereof, a state of disaster emergency may be extended once for a specified period not to exceed 30 days beyond such 15-day period. Kan. Stat. Ann. § 48-924.

**Minnesota:** For wartime emergencies: If the legislature is not in regular session, the governor, concurrently with the proclamation declaring the emergency issues, shall immediately call for a convening of both houses of the legislature. Otherwise, the governor may exercise emergency powers for a period not to exceed 30 days. For peacetime emergencies: the governor must immediately notify the majority and minority leaders of the senate and the speaker and majority and minority leaders of the house of representatives. A peacetime emergency must not be continued for more than five days unless extended by resolution of the Executive Council up to 30 days. An order, or proclamation declaring, continuing, or terminating an emergency must be given prompt and general publicity and filed with the secretary of state. Minn. Stat. Ann. § 12.31.

**Utah:** A state of emergency may not continue for longer than 30 days unless extended by joint resolution of the Legislature, which may also terminate a state of emergency by joint resolution at any time. The governor shall
issue an executive order ending the state of emergency on receipt of the Legislature's resolution. Utah Code Ann. § 53-2a-206.

**Virgin Islands:** No state of emergency may continue for longer than 30 days unless renewed by the governor. The governor may renew the initial state of emergency for one additional 30-day period. To extend the state of emergency beyond the two 30-day periods, before the expiration of the second 30-day period, the governor shall submit legislation to the Legislature requesting an extension of the state of emergency. The request must include the specific reasons for the extension, the time period of the extension, and a plan of action to address the conditions that necessitate the extension of the state of emergency. All subsequent requests for an extension must be submitted to the Legislature before the expiration of the extension that is in effect. The Legislature shall consider a request for an extension of the state of emergency not later than 5 days after its receipt. If the Legislature fails to consider the request within the 5-day period, the state of emergency is automatically extended for an additional 30 days. The Legislature may limit or modify the emergency powers granted to the Governor. 23 V.I.C. § 1005.

**Washington:** No order or orders concerning waiver or suspension of statutory obligations or limitations (during a declared emergency) may continue for longer than 30 days unless extended by the legislature through concurrent resolution. If the legislature is not in session, the waiver or suspension of statutory obligations or limitations may be extended in writing by the leadership of the senate and the house of representatives until the legislature can extend the waiver or suspension by concurrent resolution. For purposes of this section, “leadership of the senate and the house of representatives” means the majority and minority leaders of the senate and the speaker and the minority leader of the house of representatives. Wash. Rev. Code Ann. § 43.06.220.

**Wisconsin:** A state of emergency shall not exceed 60 days, unless the state of emergency is extended by joint resolution of the legislature. A copy of the executive order shall be filed with the secretary of state. The executive order may be revoked at the discretion of either the governor by executive order or the legislature by joint resolution. Wis. Stat. Ann. § 323.10. Firearm limit to powers at Wis. Stat. Ann. § 323.24.

**The Good:**

**Alabama:** The legislature may declare a state of emergency by joint resolution. Additionally, the lieutenant governor or the speaker of the House may request in writing that the governor call the Legislature into special session. Ala. Code § 31-9-8.

**Alaska:** A state of emergency declared as a result of an actual enemy or terrorist attack in or against the state, or credible threat thereof, may not remain in effect longer than 30 days unless extended by the legislature by law and may be terminated by law or withdrawal of the declaration. Alaska Stat. Ann. § 26.20.040.
A proclamation of disaster emergency may not remain in effect longer than 30 days unless extended by the legislature by a concurrent resolution. The proclamation must indicate the nature of the disaster, the area threatened or affected, and the conditions that have brought it about or that make possible the termination of the disaster emergency. A proclamation to declare a condition of disaster emergency must also state whether the governor proposes to expend state funds to respond to the disaster... (i) If the governor declares a condition of disaster emergency, the governor may expend during a fiscal year not more than $1,000,000 of state funds per disaster declaration, including the assets of the disaster relief fund, to (1) save lives, protect property and public health and safety, or lessen or avert the threat of the disaster that poses a direct and imminent threat of sufficient severity and magnitude to justify state action; (2) implement provisions of law relating to disaster relief to cope with the disaster; (3) alleviate the effects of the disaster by making grants or loans to persons or political subdivisions on terms the governor considers appropriate or by other means the governor considers appropriate. (j) If the disaster described in the governor's proclamation to declare a condition of disaster emergency is a fire, the governor may expend state funds as necessary to save lives or protect property and public health and safety. (k) The governor may expend more than $500,000 of state funds to cope with an incident under (h) of this section or more than $1,000,000 of state funds to cope with a disaster under (i) of this section under the following circumstances: (1) if the legislature is in session, the legislature approves a financing plan to cope with the incident or disaster that identifies the amount in excess of the expenditure limits that is to be expended from state funds; or (2) if the legislature is not in session, either (A) the governor convenes a special session of the legislature within five days after declaring the condition of disaster emergency or within five days after providing a financing plan to cope with an incident to the legislature and the legislature convenes in special session and approves a financing plan to cope with the incident or disaster that identifies the amount in excess of the expenditure limits that is to be expended from state funds; or (B) the presiding officers of both the house of representatives and the senate agree that a special session should not be convened and so advise the governor in writing. Alaska Stat. Ann. § 26.23.020.

When the governor declares a condition of disaster emergency (described in the paragraph immediately above), concurrently with the issuance of the proclamation, the governor shall prepare and deliver to the presiding officers of the legislature and to the persons who chair the finance committees in each house of the legislature a financing plan describing the amount by fund source of money, including the amount of state match for federal funds, that the governor proposes to use to cope with the disaster, the estimated total expenditures necessary to cope with the disaster, and the estimated time frame necessary to cope with the disaster. (b) Notwithstanding any other provision of this chapter, if the declaration of a disaster emergency occurs while the legislature is in session or if a special session is held, actions taken by the governor under this chapter after the close of the session that are not ratified by law adopted during that session are void. (c) The legislature may terminate a disaster emergency at any time by law. Alaska Stat. Ann. § 26.23.025.

Arizona: The powers granted the governor with respect to a state of war emergency shall terminate if the legislature is not in session and the governor, within 24 hours after the beginning of such state of war emergency, has not issued a call for an immediate special session of the legislature for the purpose of legislating on subjects relating to such state of war emergency. The powers granted the governor by this chapter with


California: State of war emergency powers terminate when the governor has not, within 30 days after the beginning of such state of war emergency, issued a call for a special session of the Legislature for the purpose of legislating on subjects relating to such state of war emergency, except when the Legislature is already convened with power to legislate on such subjects. CA GOVT § 8624. Non-war emergency may be terminated by concurrent resolution of the legislature declaring it at an end. CA GOVT § 8629.

Colorado: The general assembly, by joint resolution, may terminate a state of disaster emergency at any time. CO ST § 24-33.5-704.

Connecticut: Any such proclamation, or order issued pursuant thereto, issued by the governor because of a disaster resulting from man-made cause may be disapproved by majority vote of a joint legislative committee consisting of the president pro tempore of the Senate, the speaker of the House of Representatives and the majority and minority leaders of both houses of the General Assembly, provided at least one of the minority leaders votes for such disapproval. Such disapproval shall not be effective unless filed with the Secretary of the State not later than 72 hours after the filing of the governor's proclamation with the Secretary of the State. As soon as possible after such proclamation, if the General Assembly is not then in session, the governor shall meet with the president pro tempore of the Senate, the speaker of the House of Representatives, and the majority and minority leaders of both houses of the General Assembly and shall confer with them on the advisability of calling a special session of the General Assembly. Conn. Gen. Stat. Ann. § 28-9.


Georgia: As a condition precedent to declaring that a state of emergency or disaster exists as a result of a public health emergency, the governor shall issue a call for a special session of the General Assembly... which session shall convene at 8:00 A.M. on the second day following the date of such declaration for the purpose of concurring with or terminating the public health emergency. Ga. Code Ann. § 38-3-51.

Guam: By a majority vote, the legislature may terminate a declaration of a state of public health emergency at any time from the date of original declaration upon finding that the occurrence of an illness or health condition that caused the emergency does not or no longer poses a high probability of a large number of deaths in the affected population, a large number of incidents of serious permanent or long-term disability in the affected population or a significant risk of substantial future harm to a large number of people in the affected population. Such a termination shall override any renewal by the governor. 10 G.C.A. § 19405.
Idaho: The legislature by concurrent resolution may terminate a state of disaster emergency at any time. Idaho Code Ann. § 46-1008.

Indiana: The general assembly, by concurrent resolution, may terminate a state of disaster emergency at any time. Ind. Code Ann. § 10-14-3-12.

Iowa: The general assembly may, by concurrent resolution, rescind a proclamation of a state of public disorder emergency. If the general assembly is not in session, the legislative council may, by a majority vote, rescind this proclamation. Rescission shall be effective upon filing of the concurrent resolution or resolution of the legislative council with the secretary of state. Iowa Code Ann. § 29C.3. A virtually identical provision exists for disaster emergency proclamations, located at Iowa Code Ann. § 29C.6.

Louisiana: The legislature, by petition signed by a majority of the surviving members of either house, may terminate a state of disaster or emergency at any time. This petition terminating the state of emergency or disaster may establish a period during which no other declaration of emergency or disaster may be issued. Thereupon, the governor shall issue an executive order or proclamation ending the state of disaster or emergency. La. Stat. Ann. § 29:724.


Maryland: The General Assembly by joint resolution may terminate a state of emergency at any time. After the General Assembly terminates a state of emergency, the governor shall issue an executive order or proclamation that terminates the state of emergency. MD PUBLIC SAFETY § 14-107.

Missouri: Any emergency shall terminate upon the proclamation thereof by the governor, or the passage by the legislature, of a resolution terminating such emergency. Mo. Rev. Stat. Ann. § 44.100.

Nebraska: The Legislature by resolution may terminate a state of emergency proclamation at any time, whereupon the governor shall terminate the proclamation by letter of notice to such agency, the Secretary of State, and the clerks of the local governments in the area to which it applies. Neb. Rev. Stat. Ann. § 81-829.40.

Nevada: Any such emergency or disaster terminates upon the proclamation of the termination thereof by the governor, or the passage by the Legislature of a resolution terminating the emergency or disaster. Nev. Rev. Stat. Ann. § 414.070.

New York: The legislature may terminate by concurrent resolution executive orders issued under this section at any time. N.Y. Exec. Law § 29-a (McKinney).
North Dakota: The legislative assembly by concurrent resolution may terminate a state of disaster or emergency at any time. N.D. Cent. Code Ann. § 37-17.1-05.

Oklahoma: The existence of such emergency may be proclaimed by the governor or by concurrent resolution of the Legislature if the governor in such proclamation, or the Legislature in such resolution, finds that an emergency or disaster has occurred or is anticipated in the immediate future. Any such emergency, whether proclaimed by the governor or by the Legislature, shall terminate upon the proclamation of the termination thereof by the governor, or by passage by the Legislature of a concurrent resolution terminating such emergency. Okla. Stat. Ann. tit. 63, § 683.9.


Texas: The legislature by law may terminate a state of disaster at any time. On termination by the legislature, the governor shall issue an executive order ending the state of disaster. Tex. Gov't Code Ann. § 418.014.

West Virginia: Any state of emergency or state of preparedness, whether proclaimed by the governor or by the Legislature, terminates upon the proclamation of the termination by the governor, or the passage by the Legislature of a concurrent resolution terminating the state of emergency or state of preparedness. W. Va. Code Ann. § 15-5-6.

The Bad:

Delaware: No relevant provisions found. Statute addressing emergency executive authority is located at Del. Code Ann. tit. 20, § 3116.

Illinois: No relevant provisions found. Statute addressing emergency executive authority is located at 20 ILCS 3305/7.

Kentucky: No relevant provisions found. Statute addressing emergency executive authority is located at KY ST § 39A.100.

Massachusetts: No relevant provisions found. Emergency response statutes may be found in Chapter 639 of the Acts of 1950: Civil Defense Act.

**Mississippi**: No relevant provisions found. Statute addressing emergency executive authority is located at Miss. Code Ann. § 33-15-11.

**New Jersey**: No relevant provisions found. Statutes addressing emergency executive authority are located at N.J.S.A. 26:13-3 and N.J.S.A. App. A:9-34.

**New Mexico**: No relevant provisions found. Statute addressing emergency executive authority is located at N.M. Stat. Ann. § 12-10A-5.

**Ohio**: No relevant provisions found. Statute addressing emergency executive authority is located at OH ST § 5502.22.

**South Carolina**: No relevant provisions found. Statute addressing emergency executive authority is located at S.C. Code Ann. § 1-3-420.

**South Dakota**: No relevant provisions found. Statute addressing emergency executive authority is located at S.D. Codified Laws § 34-48A-5.


**Vermont**: The governor, upon receiving notice that a majority of the legislative body of a municipality affected by a natural disaster no longer desires that the state of emergency continue within its municipality, shall declare the state of emergency terminated within that particular municipality. Vt. Stat. Ann. tit. 20, § 13.

**Virginia**: The Governor shall cause copies of any order, rule, or regulation proclaimed and published by him pursuant to § 44-146.17 to be transmitted forthwith to each member of the General Assembly. Va. Code Ann. § 44-146.17:1.


**The Ugly:**

**Hawaii**: The governor or mayor shall be the sole judge of the existence of the danger, threat, or circumstances giving rise to a declaration of a state of emergency in the State or a local state of emergency in the county, as applicable. Haw. Rev. Stat. Ann. § 127A-14.

**Montana**: A proclamation is ineffectual unless the legislature is then in session or the governor simultaneously issues an order convening the legislature in special session within 45 days. Mont. Code Ann. § 10-3-505.
New Hampshire: The legislature may terminate a state of emergency by concurrent resolution adopted by a majority vote of each chamber. The governor's power to renew a declaration of a state of emergency shall terminate upon the adoption of a concurrent resolution under this subparagraph; provided, however, that such resolution shall not preclude the governor from declaring a new emergency for different circumstances under paragraph I of this section. N.H. Rev. Stat. Ann. § 4:45.


Pennsylvania: The state of disaster emergency shall continue until the governor finds that the threat or danger has passed or the disaster has been dealt with to the extent that emergency conditions no longer exist and terminates the state of disaster emergency by executive order or proclamation, but no state of disaster emergency may continue for longer than 90 days unless renewed by the governor. The General Assembly by concurrent resolution may terminate a state of disaster emergency at any time. Thereupon, the governor shall issue an executive order or proclamation ending the state of disaster emergency. All executive orders or proclamations issued under this subsection shall indicate the nature of the disaster, the area or areas threatened and the conditions which have brought the disaster about or which make possible termination of the state of disaster emergency. 35 Pa. Stat. and Consol. Stat. Ann. § 7301.

Puerto Rico: The legislature shall pass judgment on the content of emergency executive orders and may delimit their scope through a concurrent resolution. 3 L.P.R.A. § 1942.