

CS FOR SENATE BILL NO. 144(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - SECOND SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered: 4/20/22

Referred: Judiciary

Sponsor(s): SENATOR REINBOLD

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to emergency orders and declarations of disaster emergency; and**
2 **amending Rule 40, Alaska Rules of Civil Procedure."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 22.10.020 is amended by adding a new subsection to read:

5 (j) The superior court is the court of original jurisdiction over all causes of
6 action challenging the lawfulness of statewide emergency orders, including
7 compliance with limitations on emergency orders under AS 29.20.650. The superior
8 court shall expedite consideration of challenges to the lawfulness of statewide
9 emergency orders so that the challenges are heard within five days after being filed
10 and shall apply a strict scrutiny standard of judicial review. Inequality in the
11 applicability or effect of emergency orders on analogous groups, situations, and
12 circumstances is grounds for the superior court to invalidate or enjoin an emergency
13 order, or some of its applications, on the basis that it is not narrowly tailored to serve a
14 compelling public health or safety purpose.

1 * **Sec. 2.** AS 24.05 is amended by adding a new section to read:

2 **Sec. 24.05.105. Emergency declaration by legislature.** (a) When the
3 legislature is in session, the legislature may, by a concurrent resolution, declare an
4 emergency and provide notice that the legislature may discontinue meeting physically
5 at the location of the session or special session because of an emergency resulting
6 from a disaster. The concurrent resolution must include the circumstances giving rise
7 to the emergency caused by the disaster. A member may vote by teleconference or
8 digital means under this subsection.

9 (b) When the legislature is not in session, the legislature may, upon an
10 affirmative response by a majority of each house to a poll conducted of the
11 membership of each house, declare an emergency and provide notice that the
12 legislature may not be able to meet physically because of an emergency resulting from
13 a disaster. The polling question must include information regarding the circumstances
14 giving rise to the emergency caused by the disaster. Each presiding officer may
15 conduct a poll under this subsection by their joint agreement, and each shall conduct a
16 poll upon the request of 25 percent of the membership of each house, expressed orally
17 or in writing by those members. When a majority of the membership responds in the
18 affirmative, the president of the senate and speaker of the house of representatives
19 shall jointly announce the result of the poll. If the presiding officer is deceased, has
20 resigned, or is incapacitated, the majority leader may conduct the poll of the members
21 of that house. If the presiding officer and majority leader of the same house are
22 deceased, have resigned, or are incapacitated, the presiding officer of the other house
23 may conduct the poll of the members of both houses. If a majority of the membership
24 of each house responds in the affirmative, the result of the poll shall be recorded and
25 made available to the public. A poll under this subsection may also include the
26 question of whether the legislature should call itself into special session under
27 AS 24.05.100.

28 (c) Notwithstanding (a) and (b) of this section, if members are deceased,
29 incapacitated, or missing and an emergency cannot be declared under (a) or (b) of this
30 section, the legislature may, upon an affirmative response of the remaining majority of
31 the members of each house to a poll conducted of the membership of each house,

1 declare an emergency and provide notice that the legislature may discontinue meeting
 2 physically at the location of the session or special session because of an emergency
 3 resulting from a disaster. The polling question must include information regarding the
 4 circumstances giving rise to the emergency caused by the disaster.

5 (d) A declaration made under (a) - (c) of this section expires 21 days after the
 6 declaration is made. The legislature may extend a declaration made under (a) - (c) of
 7 this section

8 (1) by passage of a concurrent resolution in the same manner provided
 9 under (a) of this section if the legislature is in session; or

10 (2) upon an affirmative response to a poll conducted in the same
 11 manner provided under (b) or (c) of this section if the legislature is not in session.

12 (e) If a declaration is made under (a) - (c) of this section or extended under (d)
 13 of this section,

14 (1) each body of the legislature may hold a session in more than one
 15 location simultaneously using any means of communication, including by
 16 teleconference or digital means; during a session held under this paragraph,

17 (A) the identity of each participating member must be verified
 18 and the actions of each participating member must be authenticated in a
 19 manner satisfactory to the presiding officer; the means of communication must
 20 enable each participating member to simultaneously hear or read the comments
 21 of a member who is recognized by the presiding officer;

22 (B) documents accepted by the presiding officer shall be
 23 immediately transmitted to each participating member;

24 (C) for the purpose of determining a quorum, a participating
 25 member must be considered present as if the member were physically present;

26 (D) the presiding officer shall interpret and apply all rules of
 27 procedure in a manner that accomplishes the same purpose for which each rule
 28 was adopted;

29 (E) all actions taken have the same legal effect as if the
 30 members had been physically present;

31 (2) digital signatures may be used in place of written signatures; if

1 digital signature technology is unavailable, a signature may be made on behalf of a
 2 member not physically present if accompanied by oral authorization of the member at
 3 the time of signing;

4 (3) the legislature shall notify the governor and the chief justice of the
 5 supreme court that the legislature has declared an emergency resulting from a disaster.

6 (f) The Legislative Affairs Agency shall provide training on the procedures
 7 authorized by this section as part of orientation for new members.

8 (g) Notwithstanding (a) - (c) of this section, within seven days after convening
 9 a regular session, the presiding officer may, for training purposes, designate up to two
 10 days during that regular session on which to hold a session in the manner provided
 11 under (e) of this section.

12 (h) Nothing in the section prevents the use of teleconferencing for the purpose
 13 of holding a committee meeting absent a legislative disaster declaration.

14 (i) In this section, "disaster" means a severe or prolonged, natural or human-
 15 caused occurrence that threatens health, property, infrastructure, the environment, the
 16 security of this state or a portion of this state, or critical systems, including computer,
 17 telecommunications, or agricultural systems that make the ability of the legislature to
 18 meet in person impossible, impractical, or of great risk to health or safety.

19 * **Sec. 3.** AS 26.23.020(c) is amended to read:

20 (c) If the governor finds that a disaster has occurred or that a disaster is
 21 imminent or threatened, the governor shall, by proclamation, declare a condition of
 22 disaster emergency. The disaster emergency remains in effect until the governor finds
 23 that the danger has passed or the disaster has been dealt with so that the emergency no
 24 longer exists. The governor may terminate the disaster emergency by proclamation. A
 25 proclamation of disaster emergency, **including a proclamation of disaster**
 26 **emergency that is substantially similar to a prior proclamation of disaster**
 27 **emergency,** may not remain in effect longer than 30 days unless extended by the
 28 legislature by a concurrent resolution. The proclamation must indicate the nature of
 29 the disaster, the area threatened or affected, and the conditions that have brought it
 30 about or that make possible the termination of the disaster emergency. A proclamation
 31 to declare a condition of disaster emergency must also state whether the governor

proposes to expend state funds to respond to the disaster under (i) or (j) of this section.

If the governor issues a proclamation that is substantially similar to a statewide disaster emergency proclamation that expired without legislative approval or that the legislature terminated, the substantially similar proclamation of statewide disaster emergency may not take effect unless the legislature adopts a concurrent resolution ratifying the proclamation of disaster emergency. The legislature may terminate or amend a proclamation of disaster emergency by law, including a law voted on by teleconference or digital means.

* **Sec. 4.** AS 26.23.020 is amended by adding new subsections to read:

(l) If the governor issues a proclamation that is substantially similar to a statewide disaster emergency proclamation that expired, or if the legislature extends a statewide declaration of disaster emergency, and the proclamation or declaration infringes on a constitutional right, the governor shall provide to the legislature and make available to the public an advisory economic impact assessment of potential economic effects caused by the proclamation or declaration, including any future extension of the proclamation or declaration.

(m) If a statewide declaration of disaster emergency is extended beyond 30 days, the governor shall, not later than one year after the date the declaration of disaster emergency is terminated, provide to the legislature and make available to the public a report detailing the economic impacts of the disaster, of the declaration of disaster emergency, and of any subsequent orders related to the declaration of disaster emergency.

* **Sec. 5.** AS 29.10.200 is amended by adding a new paragraph to read:

(68) AS 29.20.650 (statewide disaster emergencies; municipal emergency orders).

* **Sec. 6.** AS 29.20 is amended by adding a new section to read:

Sec. 29.20.650. Statewide disaster emergencies; municipal emergency orders. (a) During a statewide declaration of disaster emergency, a municipality may not issue a mandate, guideline, or recommendation that is stricter than a mandate, guideline, or recommendation contained in the statewide declaration of disaster emergency. A municipal mandate, guideline, or recommendation related to a statewide

1 declaration of disaster emergency expires when the statewide declaration of disaster
2 emergency expires.

3 (b) To the extent that the municipality may issue emergency orders, the
4 municipality may not issue an emergency order that infringes constitutional rights in a
5 nontrivial manner. In this subsection, "constitutional rights" include the right to travel,
6 work, assemble, and speak, the free exercise of religion, contract and property rights,
7 freedom from unreasonable searches and seizures, and the freedom to purchase lawful
8 firearms and ammunition.

9 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

11 **INDIRECT COURT RULE AMENDMENT.** AS 22.10.020(j), enacted by sec. 1 of
12 this Act, has the effect of amending Rule 40, Alaska Rules of Civil Procedure, by providing
13 for a specific expedited time frame for superior court review of challenges to the lawfulness
14 of statewide emergency orders.

15 * **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 **CONDITIONAL EFFECT.** AS 22.10.020(j), enacted by sec. 1 of this Act, takes effect
18 only if sec. 7 of this Act receives the two-thirds majority vote of each house required by art.
19 IV, sec. 15, Constitution of the State of Alaska.