



131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 1872

S.P. 756

In Senate, May 2, 2023

An Act to Restore Balanced Emergency Powers

Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator BRAKEY of Androscoggin.
Cosponsored by Senator LIBBY of Cumberland, Representative GREENWOOD of Wales,
Representative WHITE of Guilford and
Senators: BENNETT of Oxford, GUERIN of Penobscot, HARRINGTON of York, KEIM of
Oxford, LYFORD of Penobscot, MOORE of Washington, STEWART of Aroostook,
Representative: LIBBY of Auburn.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 5 MRSA §8054, sub-§1**, as enacted by PL 1977, c. 551, §3, is amended to
3 read:

4 **1. Emergency.** If the Governor has issued an emergency proclamation pursuant to
5 Title 37-B, section 742 and the agency finds that immediate adoption of a rule by
6 procedures other than those set forth in sections 8052 and 8053 is necessary to avoid an
7 immediate threat to public health, safety or general welfare, it may modify those procedures
8 to the minimum extent required to enable adoption of rules designed to mitigate or alleviate
9 the threat found. Emergency rules shall be are subject to the requirements of section 8056.

10 **Sec. 2. 37-B MRSA §742, sub-§1, ¶F** is enacted to read:

11 F. The Governor, during the pendency of a state of emergency, may not reissue or
12 renew an emergency proclamation, issue another emergency proclamation that is
13 substantially similar to one that expired or reissue an emergency proclamation
14 terminated by the Legislature without approval of the Legislature.

15 **Sec. 3. 37-B MRSA §742, sub-§1-A** is enacted to read:

16 **1-A. Limitation on emergency powers.** The exercise of any emergency power a state
17 or local official may have under the Constitution of Maine or the laws of this State that
18 binds or regulates the public is limited as provided in this subsection.

19 A. As used in this subsection, unless the context otherwise indicates, the following
20 terms have the following meanings.

21 (1) "Constitutional right" means any right guaranteed under the United States
22 Constitution or the Constitution of Maine, including, but not limited to, the right
23 to:

24 (a) Travel, work, assemble and speak;

25 (b) Exercise religion without government interference;

26 (c) Make contracts and hold property without government interference;

27 (d) Be free from unreasonable searches and seizures; and

28 (e) Purchase and keep firearms and ammunition.

29 (2) "Emergency order" means an order, decree, regulation or other mandate
30 proclaimed or promulgated by a state or local official.

31 (3) "State or local official" means the Governor, a person within the executive
32 branch or an elected or appointed member of a municipal government.

33 B. Notwithstanding any provision of law to the contrary, an emergency order that is
34 issued by a state or local official that binds, curtails or infringes on the rights of private
35 parties must be narrowly tailored to serve a compelling public health or safety purpose.
36 Only the Governor may issue an order that infringes on constitutional rights, and that
37 order must be narrowly tailored to serve a compelling public health or safety purpose.
38 Each emergency order must be limited in duration, applicability and scope in order to
39 reduce any infringement of the rights of private parties or constitutional rights.

1 5. Prohibits state agencies from adopting emergency rules without an emergency
2 proclamation issued by the Governor.