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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Carla S. Roberts.

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DIGEST

SB 48 Original

2020 Second Extraordinary Session

Robert Mills

Present law provides for the governor to declare a state of emergency or disaster, including a public health emergency, by executive order or proclamation. Restricts the length of any declaration to 30 days. Allows the governor to renew the state of emergency or disaster. Authorizes the governor to suspend the provisions of any regulatory statute prescribing procedures for conducting state business, or the orders, rules, or regulations of any state agency, if strict compliance with the statute, order, rule, or regulation would prevent, hinder, or delay necessary action in coping with the emergency.

Proposed law retains present law and requires the suspension of a statute to be narrowly tailored to avoid the prevention, hindrance, or delay of the action necessary to cope with the emergency. Further requires the language suspending the statute to state with specificity the obstacles to the action necessary for addressing the emergency that strict compliance with the provisions of the statute would cause.

Present law authorizes the legislature to terminate a state of disaster or emergency at any time by a petition signed by a majority of the surviving members of either house.

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.

Proposed law retains present law but requires that the date of the vote by either house of the legislature to terminate the state of emergency will include a date on which the state of emergency or disaster terminates.

Present law provides for the governor to issue an executive order or proclamation ending the state of disaster or emergency upon the petition is signed by the required members of the legislature.

Proposed law instead provides for notification of the governor, the secretary of state, the chief justice of the La. Supreme Court, and the public. Specifies that no additional action is required to effectuate the termination of the state of emergency or disaster.

Proposed law provides that, after the initial 30-day period, if the governor determines that the circumstances which precipitated the initial executive order, proclamation, or suspension are still present, then at least seven days before the expiration of the order, proclamation, or suspension the governor may do either of the following:

- (1) Call the legislature into an emergency session pursuant to his constitutional authority to address emergency events which are continuing in nature.

- (2) Notify the legislature and request a continuation of the executive order, proclamation, or suspension.

Proposed law provides that the notification will contain the reasons for the continued need for declaration of emergency, the duration of the renewal, and a plan of action to address the conditions necessitating the renewal.

Proposed law provides that notification will be delivered to the president of the Senate or his office and the speaker of the House of Representatives or his office. Proposed law further provides that if in-person delivery of the notification is not practical, the notice may be emailed or transmitted by whatever means are practical.

Proposed law provides that no later than three days after receipt of the notification from the governor, the president of the Senate and the speaker of the House will notify the legislators of the governor's request to continue the emergency declaration for an additional 30 days in writing, by email, or by any other means practical under the circumstances.

Proposed law provides that notification of the request for extension will provide a ballot to each member of the legislature so that the member may vote to approve or reject the extension.

Proposed law provides that a majority of each house must approve the declaration to extend the executive order, proclamation, or suspension prior to the expiration date of the executive order, proclamation, or suspension.

Proposed law provides that, if the legislature votes in favor of extending the emergency declaration, it will continue for an additional 30 days. Any additional extensions must be brought to the legislature again for renewal every 30 days.

Proposed law provides that nothing herein in proposed law is intended to prevent the legislature from calling itself into session pursuant to the La. Constitution to address the emergency issues contained in the declaration of emergency.

Proposed law provides that members of the legislature may participate remotely pursuant to present law at any session called by the governor or the legislature.

Proposed law provides that any executive order, proclamation, or suspension that is in effect at any such time that the legislature is in session will terminate on the date that laws enacted that session take effect.

Proposed law provides that the purpose of proposed law is not intended to allow executive orders or actions in a state of emergency be lengthy or an indefinite grant of power that would effectively do all of the following:

- (1) Violate the separation of powers by substituting executive actions that have the force of law for legislative action delegated by the people to the legislature by the La. Constitution. The

La. Constitution does not give the executive branch the authority to make law and, therefore, emergency powers are not to be construed as a delegation of lawmaking powers to the executive.

- (2) Eliminate the people's constitutionally protected rights to the redress of grievances as provided for by the La. Constitution. Emergency powers are by definition to be temporary, limited, and narrowly tailored.

Proposed law provides that the legislature finds and declares the following:

- (1) The people of Louisiana hold rights that are specifically protected through the La. Constitution and concurrently through the U.S. Constitution. "All government, of right, originates with the people, is founded on their will alone, and is instituted to protect the rights of the individual and for the good of the whole. Its only legitimate ends are to secure justice for all, preserve peace, protect the rights, and promote the happiness and general welfare of the people. The rights enumerated in this Article are inalienable by the state and shall be preserved inviolate by the state", as provided for in the La. Constitution.
- (2) Emergency powers designated to the governor are intended to be limited in scope and duration and only exercised to the extent necessary to address an immediate and actual emergency.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 29:724(B)(1), (2) and (D)(1), 766(D)(1), and 768; adds R.S. 29:722(D) and (E), 724(I), (J), (K) and (L), 761(C) and (D))